ppi 201502ZU4645
Publicación científica en formato digital
ISSN-Versión Impresa 0798-1406 / ISSN-Versión on line 2542-3185
Depósito legal pp 197402ZU34

CUESTIONES POLÍTICAS

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Vol.40 N° 74
2022

ppi 201502ZU4645
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Maracaibo, Venezuela

Vol.40 *N° 74*
2022

Cuestiones Políticas

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

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

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RevicyhLUZ, International Political Science Abstracts, Revista Interamericana de Bikbliografía, Centro Latinoamericano para el Desarrollo (CLAD), Bibliografía Socio Económica de Venezuela de REDINSE, International Bibliography of Political Science, Revencyt, Hispanic American Periodicals (Index/HAPI), UIrich's Periodicals DIrectory, EBSCO; y se encuentra acreditada en el Registro de Publicaciones Científicas y Tecnológicas Venezolanas del FONACIT y Latindex.

Revista Cuestiones Políticas. Av. Guajira. Universidad del Zulia. Núcleo Humanístico. Facultad de Ciencias Jurídicas y Políticas. Instituto de Estudios Políticos y Derecho Público
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Public services in the field of social protection of the population: international experience, administrative and penal aspects

DOI: https://doi.org/10.46398/cuestpol.4074.00

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Abstract

The issue of optimizing the mechanism for providing public services in the field of social protection of the population due to the ongoing armed conflict in Ukraine on the part of Russia (from 2014 to the present), as a result of which internally displaced persons need to solve a number of urgent needs both in European countries (Poland, Germany, Bulgaria, Romania, Moldova, etc.), including related to their accounting in these countries. In this sense, the objective of this editorial is twofold, on the one hand, to present volume 40, number 74 of Political Questions and, on the other, to highlight the concept and types of guarantees of ensuring legality concerning provision of public services in the sphere of social protection of population. It is concluded that the following types of guarantees of ensuring legality concerning provision of public services in the sphere of social protection of population in Ukraine have been justified: appeal of decisions, actions or inaction of public administration subjects on the provision of public services in the sphere of social protection of population in court (administrative proceedings); control over activities of public administration subjects concerning provision of public services in the sphere of social protection of population.

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Recibido el 14/04/2022 Aceptado el 25/06/2022

Keywords: service; public service; appeal; responsibility; social protection of the population.

Servicios públicos en el ámbito de la protección social de la población: experiencia internacional, aspecto administrativo y penal

Resumen

La cuestión de optimizar el mecanismo para la prestación de servicios públicos en el campo de la protección social de la población debido al conflicto armado en curso en Ucrania por parte de Rusia (desde 2014 hasta el presente), como resultado de lo cual los desplazados internos deben resolver una serie de necesidades urgentes en países europeos (Polonia, Alemania, Bulgaria, Rumanía, Moldavia, etc.), incluidas las relacionadas con su contabilidad en estos países. En este sentido, el objetivo de este editorial es doble, por un lado, presentar el volumen 40, número 74 de Cuestiones Políticas y, por el otro, resaltar el concepto y tipos de garantías de aseguramiento de la legalidad en la prestación de los servicios públicos en el ámbito de la protección social de la población. Se concluye que se han justificado los siguientes tipos de garantías para responder a la legalidad en relación con la prestación de servicios públicos en el ámbito de la protección social de la población en y de Ucrania: apelación de decisiones, acciones o inacción de sujetos de la administración pública sobre la prestación de servicios públicos en el ámbito de la protección social de la población en los tribunales (procedimientos administrativos).

Palabras clave: servicio; servicio público; apelación; responsabilidad; protección social de la población.

Exordium

In the modern world, the degree of security of rights and freedoms of individuals in various spheres, in particular in the sphere of public services, is an important indicator of the level of civilization achieved by the society and the state. For everyone to actually exercise his or her subjective rights in Ukraine, it is important to determine the effective mechanisms that will ensure the possibility for citizens to exercise their rights in the modern conditions of political and economic transformations. It is effective juridical guarantees that can ensure the practical implementation of each person's rights, including rights of receiving public services in Ukraine.

In order to solve modern problems in the state and to fulfill orders of the Cabinet of Ministers of Ukraine by the Ministry of Economy of Ukraine the Strategy of Ukraine's Development "Ukraine 2020: the Strategy of National Modernization" was developed in 2014; this strategy was also reflected in the Decree of the President of Ukraine "On the Strategy of Sustainable Development "Ukraine-2020" dated 12 January, 2015 It envisages 60 reforms, special programs in various areas, including introduction of quality guarantees of ensuring legality concerning provision of public services; through execution of these reforms Ukraine will be prepared to apply for membership in the European Union.

The System of public services provision in Ukraine, in particular, guarantees of legality concerning their provision, is currently facing serious problems in providing objective, timely, fair and, most importantly, high-quality services to the consumer (natural or legal persons). These problems include numerous gaps and conflicts of legislation applied by the subjects of ensuring legality of public services provision; the mechanism of public services provision; absence of effective control over public services provision; problems of legal culture of officials entrusted with powers to ensure legality concerning provision of public services; peculiarities of prosecution for poor quality provision of public services, etc. The above problems cause impossibility of proper implementation of existing guarantees of ensuring legality concerning provision of public services.

When considering the foreign experience of providing public services in the field of social protection of the population, it is necessary to pay attention to the fact that the world practice on this issue comes from the social policy models chosen by the government, which are the basis of state activity. Some scientists distinguish four main types of organization of social protection systems: continental, social-democratic (Scandinavian), universal (Anglo-Saxon) and southern European, others - three types: continental, Anglo-Saxon and Scandinavian.

The criterion for classifying countries by type is the way of organizing social protection, which the state prefers (social assistance or social insurance), as well as the form of providing public services in the field of social protection of the population (private or state). In countries with a continental model of social protection (Germany, Austria, the Netherlands, Belgium), the principle applies, according to which the amount of social assistance depends on a person's success in work. The social-democratic model developed on the basis of the principle of social solidarity and the responsibility of society and the state for the well-being of every member of society, but later the system underwent reformation and contractual forms of provision and social protection were introduced.

The purpose of the article is to highlight the concept and types of guarantees of ensuring legality concerning provision of public services in the sphere of social protection of population.

1. The concept and types of guarantees of ensuring legality concerning provision of public services in the sphere of social protection of population

As a matter of fact, certain "means and methods" become juridical guarantees only through their legal form and through their enshrining in legal norms. The term "juridical guarantees" itself indicates their legal basis. However, the guarantee of security consists primarily in exercising rights and duties provided for in the current legal norms. It is generally known that the norm by itself cannot cause certain legal results; the latter are achieved through legal activity. The activity should be understood as exercising subjective rights and fulfillment of legal obligations imposed by the law on the relevant subjects of labor law relations (Hida, 2011).

Juridical guarantees are an independent form in the system of guarantees. The word "guarantee" (French. "guarantie" – to provide) means "warranty", "a condition that ensures something". In legal literature sources guarantees of rights and freedoms are understood as a) a set of subjective and objective factors, b) a system of socioeconomic, political, moral, legal and organizational prerequisites, conditions, means and methods. The term "factors" may not be used to indicate guarantees, since it is more likely to mean the nature of phenomena and factors. The second definition does not really reveal the meaning of guarantees, but only lists their types. On the other hand, there is no doubt that correct definition of guarantees is "conditions, means and methods" which ensure the realization and comprehensive protection of rights (Kashanyna, 1981).

Guarantees of legality are a complex of interrelated objective conditions and subjective factors as well as special means that provide the regime of legality. Structurally, guarantees of legality are divided into general ones and special ones (Kelman, 2003).

In view of this, we consider it expedient to distinguish two elements in the structure of guarantees of legality - legal norms and activity of subjects. For example, the rule of law establishes specific obligations for a subject of legal relations; and fulfillment of these obligations (that is, activity of this subject) will ensure realization of rights of another subject. In its turn the law acts as a legal basis for legal activity, and juridical activity is a means of implementing the law.

Thus, in general legal meaning M. V. Kravchuk notes that it is correct to define juridical guarantees as a complex of "means and methods" (Kravchuk, 2013).

So, V. M. Soroka divides public services into the following groups:

- Protection: of life, property, environment, intellectual property, etc.
- Social protection: of children, elderly people, people with special needs, unemployed.
- Registration, licensing: changes in the public status, the status of objects and subjects. formation of communities, organizations; certain types of activity.
- Everyday life activities: health care; provision of communal, household spheres; agrarian issues, etc.
- Communication: email, telecommunications, Internet; transport; mass media;
- Spiritual and cultural self-expression: recreation, cultural and mass events; physical culture and sport (Soroka, 2007).

A. Y. Shastytko proposes to view the category of "public services" through their main task, namely increasing the efficiency of public administration. He developed two approaches to understanding this concept – empiric one and theoretical one. Within the framework of the first approach, public services are services provided (in connection with the performance of official functions) by executive authorities and their institutions in direct interaction with citizens. According to the second approach, public services are considered by the scientist as services that have properties of private goods, but are directly connected with the specification and protection of property rights of individuals (Shastytko, 2004).

V. B. Avveryanov suggests the following signs of public services: 1) they provide activities of general significance; 2) they have an unlimited range of subjects using them; 3) they are executed either by a body of state and municipal power, or by another entity; 4) they are based on both public and private ownership (Averyanov, 2002).

It should be noted that the first of the above signs of public services demonstrates presence of public interest in implementation of such activities and allows us to conclude that regardless of the subject (state body, municipal body, non-governmental organization) in each specific case public services are provided by a public authority obliged to ensure their implementation. If there are people in the private sector willing to provide public services of this kind, or it is not within the power of a private organization for established reasons then in this case the state, municipal body is obliged to undertake implementation of such a service which must be provided because of its social significance.

For example, garbage collection, waste disposal, water supply and other similar services should be provided regardless of the interest of certain entities. And if there is no interest in such activity, then the public authority is obliged to either form such interest, or simply undertake implementation of such a public service. Therefore, the sphere of socially significant services should always be

in the spotlight of public authorities, regardless of the subjects these services are provided by.

Thus, public services are all services provided by the public sector, as well as by the private sector, under the responsibility of public authorities and at the expense of public funds (Tymoschuk, 2003).

Public services are based *on public interest* which means the interest of the social community determined by the state and secured by the law, and satisfaction of this public interest serves as a condition and guarantee of the social community's existence and development. In the most general form, public interest means interest of the human community – population, people, etc. (Spasybo-Fatiieieva, 2005).

What exactly the state authorities define as public interest depends on the level of legal culture and legal awareness of law-making subjects. And what the authorities see as the common good may actually conflict with the interests of a large part of the population. But in any case, requirements placed on the objects of public administration must ensure the general good of Ukrainian people and must not express private interest of the subjects of public administration. It is exactly in the last thesis that the essential difference between private interest and public interest lies.

Fairly complete in its content meaning of "juridical guarantees" (meaning revealing all the essential features of this concept in the general legal aspect) should be presented as follows: legal norms that determine specific legal means, conditions and procedures for realization of rights, legal means of their security and protection in case of violations.

V. F. Pohorilko understands juridical guarantees as special means provided by the law for practical protection of human and civil rights and freedoms (Pohorilko, 1997). This definition attention is not paid to the purpose of juridical guarantees, that is, to the fact what exactly they provide. Instead, definition of this concept should indicate designation of these "means and methods" as one of the most essential features of juridical guarantees. Therefore, we should pay attention to definitions which emphasize that juridical guarantees are intended to ensure actual realization, comprehensive security and protection of rights of citizens.

Let us consider definitions of the term "juridical guarantees of legality". For example, Y. Leheza understands juridical guarantees of legality as special normative and legal means that guarantee strict implementation of legal norms, prevention of arbitrariness on the part of state bodies and officials in relation to citizens and that ensure restoration of violated rights and the punishment of violators of legality (Leheza, 2022).

Scientist Y. Leheza views juridical guarantees of legality not only as a set of means and methods (as is often the case in the above definitions), but as a unity of elements, as a complete legal entity (Leheza ect., 2022).

Special guarantees include legal (juridical) guarantees of legality, which are specific legal means and internal legal mechanisms being a real embodiment of legality in the legal sphere. Juridical guarantees of legality include: completeness and effectiveness of legal norms; a high level of control and supervision over implementation of legality; high-quality activity of competent authorities aimed at ensuring legality; improvement and refinement of legal practice; effectiveness of legal liability measures (Leheza ect., 2020).

Special juridical guarantees can be divided into the following groups:

- General-legal guarantees (development of the legal system as a whole; completeness and consistency of legislation; availability of developed legal technique and legal procedure; a certain level of legal culture of the society).
- Organizational and legal guarantees (activities of the legislative, executive, judicial authorities and the President as the guarantor of the Constitution of Ukraine, as well as special-purpose bodies as the guarantors of efficiency of laws and creation of conditions for their implementation and protection).
- Procedural guarantees (availability of effective means of state coercion; presumption of innocence; equality of legal status; inalienability of rights and obligations of subjects; normatively determined principle of inevitability of punishment for violation of the Law) (Leheza ect., 2022).

2. Foreign experience ensuring the legality of the provision of public services in the field of social protection of the population

In the process of transformation in the Federal Republic of Germany in the early 1990s of state authorities into service institutions, the idea arose to create "service offices" ("burgerburo", or "burgeramt"), which are currently operating effectively. Each of the offices independently determines the range of services that will be provided. In Germany, such a list includes services that are often in demand and the provision of which does not require long processing: from the sale of tickets and garbage bags to the registration of vehicles. Instead, most of the services in the offices consist of issuing IDs to a person. For example, the office for citizens of Weinheim provides the following services, which can be attributed to public services in the field of social protection of the population: providing children's ID cards, ID cards for large families, ID cards for the disabled.

The German Federal Law on Social Insurance of March 23, 1994 contains a list of public services in the field of social protection of the population, which are provided in this country. In particular, paragraph 21 specifies that these include food assistance in the form of one-time payments, repair of clothing, underwear and shoes, purchase of fuel for individual heating devices, provision of special educational resources for students, repair of household appliances, care by apartment.

The Netherlands belongs to the pioneer leaders in the introduction of centers for the provision of public services in the field of social protection of the population. The peculiarity of the central office of the municipality of The Hague (Den Haag) is that citizens' social protection issues are handled separately from all other issues in offices on the second floor, taking into account the delicate and confidential nature of these cases (Leheza, 2022).

For the United States of America, the main idea of e-government is that e-government acts as a tool for the development of democracy, the expansion of public participation, as well as the strengthening of control over the state by the people. In general, the process of restructuring public administration in Western countries based on the model of electronic democracy is inextricably linked with the reorganization of state bodies and the introduction of innovative management technologies, which were supposed to improve the quality of public services in the field of social protection of the population, make them competitive compared to the services of the commercial and non-commercial sectors.

All services provided by the public sector and for which the public administration is responsible are called "public services", "services of general interest", "services of general interest". general economic interest" ("services of general economic interest"), "services for citizens" ("services for citizens"), which, in addition to other public ones, include services classified as administrative services in Ukraine (Leheza, 2022).

Services included in the social protection system, which cover the main risks that may occur during life, as well as a number of other important public services in the field of social protection of the population, which are provided directly to the person and play a preventive role, are mostly defined as "social services, that are of general interest" ("social services of general interest" (SSGI) (Social services of general interest, 2022).

It is established that the provision of public services in the field of social protection of the population in foreign countries (the Kingdom of the Netherlands, the United States of America, the Federal Republic of Germany, the Swiss Confederation, etc.) is regulated by relevant legal acts and is fixed in the administrative regulations of the activities of the subjects of executive power and local self-government, which specify the procedure for conducting cases, deadlines, the list of documents submitted by the subject of the appeal, features of the appeal, etc.

Conclusions

Therefore, based on the understanding of the guarantees of legality, we propose to highlight the following types of guarantees to ensure legality concerning provision of public services in the sphere of social protection of population in Ukraine:

1. Applications of natural persons (citizens and stateless persons) in accordance with the Law of Ukraine "On Applications of Citizens".
2. Control over activities of public administration subjects concerning provision of public services in the sphere of social protection of population.
3. appeal of decisions, actions or inaction of public administration subjects on the provision of public services in the sphere of social protection of population in court (administrative proceedings).
4. Prosecution of public officials for refusal to provide a certain type of public service in the sphere of social protection of population.

It has been established that the importance of juridical guarantees of ensuring legality concerning provision of public services consists in the following activities: a) ensuring rights and freedoms of a person and a citizen in the process of receiving various public services; b) compliance with international standards for protection of human rights in the sphere of public services; c) raising the image of the state in the person of the subjects of appealing the specified services; d) increasing the level of legal awareness of public officials in the process of providing public services, which will be manifested in the strict observance of the legislation of Ukraine; e) improvement of the mechanism of provision of public services by subjects of public administration, etc.

Guarantees of ensuring legality concerning provision of public services include regulation through normative legal acts, availability of specific legal means, establishment of certain conditions and the procedure for realization of rights of appealing subjects, legal means of protecting rights of the subjects - consumers of public services, protection in the event of a violation in the process consideration of the application of a natural or legal entity for issuance of an administrative act (decision, permit, license, certificate, act, certificate).

Taking into account the experience of foreign countries (the United Kingdom of Great Britain and Northern Ireland, the United States of America, the Federal Republic of Germany, the French Republic, etc.), the emphasis is on the need to develop and adopt a separate law of Ukraine "On Public Services", which would establish all services provided bodies of executive power and local self-government.

The law must include the following elements: general provisions (definition of terms, scope of the Law, legislation in the field of providing public services, in particular in the field of social protection of the population, state policy in the field of providing public services, in particular in the field of social protection of the population, basic requirements to the regulation of the provision of public services); organization of the provision of public services, in particular in the field of social protection of the population (the procedure for the provision of public services, the register of public services, the terms of the provision of public services, the fee for the provision of public services (administrative fee), subjects of the provision of public services); responsibility for violating the requirements of legislation on the provision of public services, in particular in the field of social protection of the population, etc.

The need to intensify the activity of public administration bodies through the introduction of an electronic governance system that minimizes corruption, makes it impossible to miss the deadlines for the provision of public services and ensures a service approach in the specified area is substantiated.

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Derecho Público

Cuestiones Políticas Vol. 40, Nº 74 (2022), 29-47
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Security of the participants in the criminal process: procedural and criminological aspects

DOI: https://doi.org/10.46398/cuestpol.4074.01

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Abstract

This article is devoted to the study of procedural and criminological aspects of ensuring the safety of participants in criminal proceedings. The problems of legal regulation of ensuring the safety of participants in these proceedings are also considered. The legal status of the subjects of relevant decisions is analyzed and the international and Ukrainian experience in regulating these issues is studied. The methods of dialectical, formal-logical, historical, structural-functional, institutional analysis, content analysis of laws and regulations and the method of evaluation of scientific positions were used. Among the relevant results of the research, the necessity of implementing security measures for participants of criminal proceedings in the Criminal Procedure Code of Ukraine in a separate section was demonstrated. Similarly, the expediency of creating in Ukraine a specialized independent structural unit for the implementation of measures to protect persons involved in criminal proceedings is discussed. In the main conclusions the need for the introduction in Ukraine of corresponding programs for the protection of participants in criminal proceedings is argued.

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Recibido el 24/06/2022 Aceptado el 15/08/2022

Keywords: criminal proceedings; opposition to the investigation; individual rights and freedoms; security of participants in criminal proceedings; security measures.

Seguridad de los participantes en el proceso penal: aspectos procesales y criminológicos

Resumen

Este artículo está dedicado al estudio de los aspectos procesales y criminológicos para garantizar la seguridad de los participantes en los procesos penales. También se consideran los problemas de regulación legal para garantizar la seguridad de los participantes en estos procesos. Se analiza el estado legal de los sujetos de las decisiones relevantes y se estudia la experiencia internacional y ucraniana en la regulación de estos temas. Se utilizaron los métodos de análisis dialéctico, formal-lógico, histórico, estructural-funcional, institucional, análisis de contenido de leyes y reglamentos y el método de evaluación de posiciones científicas. Entres los resultados relevantes de la iunvestigacion, se demostró la necesidad de implementar medidas de seguridad para los participantes en procesos penales en el Código de Procedimiento Penal de Ucrania en una sección separada. Del mismo modo, se discute la conveniencia de crear en Ucrania una unidad estructural independiente especializada para la implementación de medidas para proteger a las personas involucradas en procesos penales. En las principales consclusiones se argumenta la necesidad de la introducción en Ucrania de los programas correspondientes de protección de los participantes en los procesos penales.

Palabras clave: proceso penal; oposición a la investigación; derechos y libertades individuales; seguridad de los participantes en el proceso penal; medidas de seguridad.

Introduction

Indispensable phenomenon of public life is crime of various characteristics - organized, corrupt, professional, economic, transnational, etc., the fight against which in modern conditions requires a fairly new approach to the means and methods of detecting and investigating criminal acts, gathering information about it, etc. (Kopetyuk, 2013). Equally important is the activity to combat the relevant criminal manifestations, because modern crime is changing, becoming multi-purpose and difficult to predict.

The Great Ukrainian Legal Encyclopedia defines crime prevention as the activity of criminal justice bodies, other authorized institutions and organizations and individual citizens to identify, stop, investigate and prosecute perpetrators of criminal offenses, as well as search, record and prevent intelligence and subversive activities of special services foreign states, organizations or individuals in order to protect and ensure the security of citizens, society and the state from unlawful encroachments. One of the spheres of public relations covered by the fight against crime is crime prevention (detection, elimination or neutralization of the causes and conditions of criminal offenses; the other is law enforcement (national security, protection of human rights and freedoms) (The Great Ukrainian Legal Encyclopedia, 2019), Both of these areas in one way or another relate to security measures, which, subject to appropriate conditions and grounds, may be applied to participants in criminal proceedings.

Some scholars (Austin) link the effectiveness of the fight against crime with the application of harsh measures to those who have committed socially dangerous acts (Austin, 1992). However, most scholars (Laitinen; Pasechnik) Support the view that the severity of criminal punishment and crime reduction rarely coincide (Laitinen, 1993; Pasechnik, 2019).

The ultimate goal of preventing crimes against participants in criminal proceedings is to identify the causes and conditions that determine these socially dangerous acts; deterring citizens from committing them in order to reduce and reduce to a minimum the totality of crimes. Therefore, speaking about improving the effectiveness of preventive activities, we should, in our opinion, pay special attention to special criminological measures, which include measures to ensure the safety of participants in criminal proceedings.

Techniques and methods of physical and psychological influence are often used against participants in criminal proceedings in order to change or deny their testimony. Such illegal actions in criminal proceedings are carried out mainly in order to prevent the establishment of the circumstances of a criminal offense. However, this is not the only goal. Post-criminal action, as practice shows, can also be carried out in order to prevent the promotion of justice, coercion of persons to stop assistance, revenge for assistance, and so on. Accordingly, the causes of encroachment are mostly the intention and even the potential ability of the person to promote justice, direct assistance. It is these factors, and not the presence of a person of a particular criminal procedural status is the cause of post-criminal influence (endowed with procedural status, a person can take a passive position).

It is indisputable that the personal security of each subject of criminal procedural relations, his relatives and friends, protection of property from unlawful encroachments are important conditions for effective solution of general problems of criminal proceedings. The importance of security

guarantees for participants in criminal proceedings is also emphasized in international legal acts. Legal norms governing such legal relations are contained, for example, in Art. 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture and Other Cruel, Inhuman or Defendant, 1987) and articles 54, 57, 64, 68, 93 of the Rome Statute of the International Criminal Court (Rome Statute of The International Criminal Court, 2002).

Ensuring the state protection of participants in modern criminal justice in any country is one of the important elements of its criminal procedural policy. Security is especially needed for those who contribute to criminal justice through their participation in the proceedings: it is for this reason that they are most often subjected to illegal action by criminal elements.

In recent decades, the Institute for Ensuring Safe Conditions for Participation in Criminal Proceedings has attracted the attention of experts due to the need to establish important criminal procedural guarantees for gathering evidence and fulfilling the purpose of criminal proceedings. This complex procedure combines a number of problems, among which a special place is occupied by: a) ensuring the interests of the state in the fight against crime and b) protection from illegal influence of citizens as participants in criminal proceedings.

Security issues are confirmed by the fact that certain provisions of the Criminal procedure code of Ukraine on the application of criminal security measures are often the subject of consideration by higher courts, which do not see violations of constitutional requirements for security measures in certain criminal proceedings.

In addition to the existing legislative, procedural and criminological, which we will discuss in more detail in the article, scholars highlight the economic and organizational problems of applying security measures to participants in criminal proceedings. Organizational problems include: timeliness of security measures; insufficient awareness of law enforcement officers who decide on the application of security measures; lack of proper interaction between the initiating entities and the entities implementing the decision to take security measures; partial (incomplete) awareness of decision-making bodies on the application of security measures, on all available capabilities and resources of special units of the judicial police, etc. (Bardatska and Orleans, 2010).

Thus, in the current conditions of development of criminal procedural legal relations, the need to identify and study new legal means and ways to protect the rights and interests of the individual participants in criminal proceedings, which ensure healthy coexistence in society, is becoming increasingly important. At the same time, national and international legal systems preach the freedom of the individual and the autonomy of the will

in combination with the free development of the individual and dignity (Leal Esper, 2021).

1. Methodology of the study

According to the purpose, tasks, object and subject of research, general scientific and special methods of cognition were used. The methodological basis of the scientific article is based on the methods of dialectical, formal-logical, historical, structural-functional, institutional analysis, as well as content analysis of laws and regulations and the method of evaluating scientific positions.

Using the dialectical method, the author's tasks to define the concept of «security measures» as an independent component of the national security system were solved.

The formal-logical method allowed to clarify the peculiarities of certain legal acts, identify inconsistencies in the legislation, as well as helped to draw conclusions and provide suggestions for further improvement of security mechanisms for participants in criminal proceedings on the principles of logic and problem solving. The logical-dogmatic method was used in the interpretation of certain scientific and legislative terms, provisions of legislation, the formulation of definitions of criminal procedural and criminological concepts and categories.

The structural-functional method allowed to consider measures to prevent and detect criminal offenses as a holistic system, to explore its structural elements and to determine the place in this system of measures to ensure the safety of criminal proceedings.

The method of systematic analysis and synthesis was used to compare the concepts of «crime prevention», protection of individual rights and «security measures».

The article uses the institutional method of research, which allowed to determine the role of security measures for participants in criminal proceedings in the implementation of the tasks of the criminal process. At the same time, the methodology of the actual system analysis of the object of study consisted of system, structural-functional and evolutionary methods.

The most important methodological role in the study was played by the conceptual provisions and the conceptual and categorical apparatus of the theory of criminal procedure and criminological science.

2. Analysis of recent research

Analyzing the degree of scientific development of research on the security of participants in criminal proceedings, it should be emphasized that the science of criminal procedure and criminology and the cycle of other legal sciences lacks an understanding of «security of participants in criminal proceedings». Important publications on this topic have been made by such scholars as M. Pasechnik (Pasechnik, 2019), A. Orlean (Orlean, 2016), Kopetyuk (Kopetyuk, 2013), O. Podobnij, (Podobnij, 2015), Austin (Austin, 1992) and others.

Given the interests of the investigation, as well as that the Constitution of Ukraine in art. 3 proclaims the human person, his life and health, inviolability and security as the highest social value, it is necessary to ensure the safety of witnesses, victims and others within the relevant legal institution. The existing institute of security of participants in criminal proceedings in Ukraine is not effective enough, the use of foreign experience and recommendations of international organizations on this phenomenon will allow to focus on existing problems and develop ways to solve them.

We also share the view of some scholars that the tools available in Ukraine to ensure the safety of participants in criminal proceedings does not cause significant dissonance with existing European standards in this area, and the current state does not allow to argue about their harmonious compliance (Orlean, 2016). The mechanism for selecting and applying certain security measures in accordance with the standards of the witness protection program provided for in Recommendation Rec (2005) 9 of the Committee of Ministers of the Council of Europe on the protection of witnesses and persons cooperating with the judiciary requires need protection.

Therefore, there is a need to further study the world experience and develop appropriate recommendations for improving Ukrainian legislation. This determines the relevance of the chosen research topic.

The purpose of the article is to study Ukrainian and foreign legislation, developments of scientists and world best practices to ensure the security of criminal proceedings and develop recommendations, practical provisions for improving this institution in Ukraine.

Achieving this goal involves the following tasks: 1) to outline the features of the legal regulation of the procedure for ensuring the safety of participants in criminal proceedings in Ukraine; 2) determine international standards for ensuring the safety of participants in criminal proceedings; 3) to study the foreign experience of organizing the relevant institution within different legal systems; 4) to formulate proposals for the improvement of normative legal acts, which regulate the relations concerning the protection of participants in criminal proceedings.

3. Results and discussion

3.1. General characteristics of security measures of participants in criminal proceedings

Nowadays, it is not uncommon for participants in criminal proceedings, in particular witnesses, victims, and sometimes suspects and accused, to refuse to disclose to authorized entities information about a criminal offense committed or being prepared, due to fears of life, health, property benefits of themselves and their relatives and friends.

Under such conditions, the application of security measures is an effective means of investigating criminal offenses and preventing unlawful influence on participants in criminal proceedings and other interested persons.

Ensuring the safety of participants in criminal proceedings since 1993 is decided on the legal basis established by the laws of Ukraine «On ensuring the safety of persons involved in criminal proceedings» and «On state protection of court and law enforcement officers» (On Ensuring The Safety Of Persons Participating In Criminal Proceedings, 1993; On State Protection Of Employees Of Courts And Law Enforcement Bodies, 1994).

Ensuring the safety of persons involved in criminal proceedings, ie in the detection, prevention, cessation or investigation of criminal offenses, as well as in the trial of criminal proceedings - is the implementation of law enforcement agencies legal, organizational, technical and other measures to protect life, housing, health and property of these persons from unlawful encroachments, in order to create the necessary conditions for the proper administration of justice (On Ensuring The Safety Of Persons Participating In Criminal Proceedings, 1993).

In the Law of Ukraine «On Ensuring the Security of Persons Participating in Criminal Proceedings», the legislator classifies the following as security measures: personal protection; protection of housing and property through equipment with fire and burglar alarms; change of apartment telephone numbers and state license plates of vehicles; issuance of special means of individual protection and danger notification; use of technical means of control and eavesdropping on telephone and other conversations; visual observation in case of danger to life and health of the persons taken under protection; visual observation in case of threat of violence or other illegal actions against persons taken under protection; replacement of documents and change of appearance; change of place of work or study; relocation to another place of residence; placement in a preschool educational institution or an institution of social protection bodies; ensuring the confidentiality of personal information; closed trial (On Ensuring The Safety Of Persons

Participating In Criminal Proceedings, 1993). In addition, in Part 2 of art. 7 of the said Law indicates the possibility of applying other security measures taking into account the nature and degree of danger to life, health, housing and property of persons taken under protection, ie the list of such means is open (Law Of Ukraine, 1993).

Some scholars identify other measures that in specific circumstances best meet the interests of security of participants in criminal proceedings: official written warning of a person who may pose a potential threat to the person under protection, criminal liability under art. 386 of the Criminal Code of Ukraine for obstructing the appearance of a witness, victim or expert in court, pre-trial investigation bodies, forcing them to refuse to testify or report, as well as to give knowingly false testimony or opinion by threatening to kill, violence, destroy property or their close relatives or the disclosure of information that discredits them, or the bribery of a witness, victim or expert for the same purpose, as well as the threat to commit such acts in retaliation for previous testimony or conclusion; declaration of a person taken under protection as dead or missing; adoption of a juvenile under protection who has lost a parent as a result of a crime; change of home and mobile phone numbers to numbers that will not be displayed in telephone directories and information about which will not be provided by operators without special permission; minimizing open contacts with police officers in the form and use of secret premises for contact with a person, etc. (Orleans, 2016).

Also, in accordance with art. 10 of the Criminal-Executive Code of Ukraine, the following security measures may be additionally applied to convicts: isolated detention; transfer to another penitentiary institution; transfer of the convict to a safe place (Criminal Enforcement Code Of Ukraine, 2003).

It should be emphasized that this list of security measures is not exhaustive and taking into account the nature and degree of danger to life, health, housing and property of persons taken under protection; other measures may be applied to them.

Based on the generalization of legislative definitions of security of persons involved in criminal proceedings, as well as scientific views on their nature, we can define security measures for participants in criminal proceedings as a set of organizational, legal, technical and other measures provided by authorized entities , and which are aimed at protecting the life, health, housing, property, honor, dignity of persons involved in criminal proceedings, their relatives and friends from unlawful encroachments in order to create appropriate conditions for the administration and administration of justice.

Scientists have repeatedly drawn attention to the lack of correctness in the list of security measures specified in the regulations. In particular, R. Tarasenko emphasizes the expediency of their classification as follows: measures aimed at ensuring the confidentiality of information about participants in criminal proceedings; measures aimed at protecting the life, health, housing and property of participants in criminal proceedings; long-term relocation measures. The researcher emphasizes that decisions on the application and practical implementation of certain security measures in criminal proceedings to varying degrees restrict the rights and legitimate interests of the accused, and therefore require a clear criminal procedure (Tarasenko, 2015).

The effectiveness of security measures is ensured under the conditions of integrated application, in particular in combination with measures to ensure the confidentiality of personal information. The responsibility for carrying out these measures in the framework of operational and investigative support of criminal proceedings rests with the employees of authorized operational units. Therefore, O. Podobnij emphasizes that the use of technical means of control, wiretapping and other conversations, visual observation in today's legal environment should be implemented through qualified covert investigative (investigative) actions under the Criminal Procedure Code of Ukraine in articles 260, 268, 269, 270. Taking these security measures in accordance with the legal procedure provided for covert investigative (investigative) actions will make it possible to immediately introduce them into the criminal proceedings as evidence of relevant criminal activity (Podobnij, 2015).

Summing up, we note that we defend the position on the feasibility of implementing security measures for participants in criminal proceedings, which are an element of investigative secrecy, to the Criminal Procedure Code of Ukraine in a separate section «Ensuring the safety of participants in criminal proceedings». Instead, the concretization of the provisions set out in the Criminal Procedure Code of Ukraine should be ensured by the Laws of Ukraine «On Ensuring the Security of Persons Participating in Criminal Proceedings», «On Investigative Activities» and «On State Protection of Court and Law Enforcement Employees» and other departmental regulations.

It should also be noted that an important guarantee of the activity of individuals in exposing corruption offenses is the institute of protection of whistleblowers introduced to implement international conventions against corruption.

Yes, in accordance with art. 33 of the United Nations Convention against Corruption, each State Party shall consider including in its domestic legal system appropriate measures to ensure the protection of all persons who, in good faith and on reasonable grounds, report to the competent authorities

any facts relating to crimes under this Convention from any unjust treatment (United Nations Convention Against Corruption, 2003).

Also, the provision on the need to protect such persons is contained in art. 22 of the Council of Europe Criminal Law Convention on Corruption, which requires each Party to take such measures as may be necessary to ensure the effective and adequate protection of persons who report corruption offenses under the Convention or otherwise cooperate with investigative and prosecuting authorities. , as well as witnesses who testify about these crimes (Criminal Convention For The Suppression Of Corruption, 1999). A similar rule is contained in Art. 9 of the Council of Europe Civil Convention against Corruption, according to which each Party provides in its domestic law for adequate protection against any unjustified sanction against workers who have sufficient grounds to suspect corruption and report their suspicions in good faith to responsible persons or competent authorities (Civil Convention Against Corruption, 1999).

In accordance with Part 2 of art. 53 of the Law of Ukraine «On Ensuring the Security of Persons Participating in Criminal Proceedings» the right to security is available only to whistleblowers who reported a criminal corruption offense and acquired procedural status of the applicant, as well as relatives of whistleblowers who reported a criminal corruption offense (Ensuring The Safety Of Persons Participating In Criminal Proceedings, 1993). Therefore, whistleblowers who report corruption, not corruption, or other violations of the law are not eligible for security.

3.2. International standards for ensuring the safety of participants in criminal proceedings

The study of international standards for ensuring the safety of participants in criminal proceedings includes the analysis of interstate, intergovernmental and interdepartmental agreements, as well as legal acts of international organizations in this field.

The issue of interrogation of a witness with confidentiality of his identity largely affects the rights of the accused guaranteed by paragraph 1 and subparagraph «d» of paragraph 3 of article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. and to demand the summoning and questioning of defense witnesses on the same terms as prosecution witnesses (Judgment of the European Court of Human Rights in the case of Miralishvili v. Russia; Judgment of the European Court of Human Rights in the case of Van Mechelen and Others v. The Netherlands; Judgment of the European Court of Human Rights in the case of Doorson v. The Netherlands).

This issue was thoroughly analyzed in the decision in the case of Miralishvili v. Russia. Following the review of the European Court of Human

Rights, it developed the following criteria for assessing the decision of the national court to conceal information about a witness from the defense: 1) whether the reasons for concealing information were appropriate and sufficient (paragraph 196); 2) whether the hidden materials had significant probative value (paragraph 199); 3) whether there were significant procedural guarantees in the decision-making procedure to restrict access to information.

In particular, it is important whether the decision to restrict access to information was made by the court and whether the court had access to non-disclosed materials, and how the court could investigate the relationship (balance) between the disclosure interests and the public interest in non-disclosure of such data (paragraph 197).

Also important is the possibility of the accused's participation in the issue of non-disclosure of data (paragraph 198) Judgment of the European Court of Human Rights in the case of Miralishvili v. Russia). Thus, as a result of the case, the court reprimanded the Russian national court for the fact that the decision to restrict access to materials was based solely on the type of materials and legal restrictions on their disclosure. At the same time, the said court failed to analyze the balance between the interests of the accused and the public interest in non-disclosure of such data (paragraphs 206209) (Didenko, 2022).

Therefore, the above conclusions of the European Court of Human Rights should encourage national courts to approach the issue of interrogation of a witness with confidentiality of his identity, not formally but substantively. The court, considering the relevant issue, must substantially determine the existence of reasons for concealing information about the witness. It is also necessary to assess whether such reasons are sufficient to consider that the public interest in non-disclosure outweighs the legitimate interests of the parties to the proceedings to ensure adversarial proceedings. The accused must be provided with the right to participate in deciding whether there are grounds for non-disclosure of witness data (Didenko, 2022).

According to case law, quite often the prosecution is unable to prove that a witness really needs protection. Thus, in the decision of the Volodymyr-Volyn City Court of the Volyn region of August 2, 2019, attention was focused on the lack of evidence of the exceptional circumstances justifying the prosecutor's request to interrogate the witness with security measures. It was pointed out that there is evidence that the defendants are aware of the identity of the witness at the time of the petition (Decision of the Volodymyr-Volyn City Court of the Volyn Region, 2019).

From the above it can be concluded that the defense must be active in collecting and submitting to the court appropriate and sufficient evidence for examination by the court. Such evidence must confirm both the

procedural status of the witness as a person subject to security measures in criminal proceedings and the availability of evidence of a real threat to his or her safety.

At the same time, it should be borne in mind that even if all the above requirements are met, the data obtained from the testimony of a person cannot be the only or decisive proof of a person's guilt. This is emphasized, in particular in paragraph 51 of the judgment in Van Mechelen and Others v. The Netherlands, the European Court of Human Rights stated: of Human Rights in the case of Van Mechelen and Others v. The Netherlands).

3.3. Foreign experience in applying security measures to participants in criminal proceedings

In order to succeed in the process of ensuring the security of participants in criminal proceedings, it is advisable to analyze the legislation of both states that are successful in protecting witnesses and victims, and neighboring states with which Ukraine is historically connected. It should be noted that in most developed countries, various special programs have been developed to provide protection and moral and material assistance to victims, witnesses and other participants in criminal proceedings. Such programs are effectively used in the United States, Germany, France and other countries.

The scientific literature (Rivman and Ustinov) emphasized the dependence of crime prevention on a number of circumstances, such as the formal possibility of isolation of actors in the conflict situation, the availability of public authorities «forces and means to timely stop criminal events» (Rivman and Ustinov, 1998). One of the effective options may be to develop a legal basis for the police to remove (isolate) the victim and the perpetrator, control and response by the police to the further behavior of the perpetrator.

This experience of preventing secondary victimization has been implemented in a number of foreign countries. For example, in the Federal Republic of Germany, in the field of combating domestic violence, the sources of police law in various federal states provide for the possibility of applying such police measures as: removal from the apartment (house) of the person from whom the danger comes; ban on access to an apartment (house) and ban on contacting such a person (Maile, 2012).

In the Kingdom of the Netherlands, a person who has finally decided to change his or her name cannot change his or her place and date of birth, as civil and political rights, such as the right to a pension and the right to vote, depend on them. Therefore, new personal data is usually provided to those involved in the program for temporary use, which allows you to change the place and date of birth. At the end of participation in the program, these

temporary personal data also lose their validity (Recommended practices in the field of witness protection in organized crime, 2008).

The Witness and Victim Protection Program in the Slovak Republic covers persons who report important evidence to the court about the criminal activities of terrorist organizations, those who prepare or have committed a terrorist act, and the criminal activities of organized criminal groups. The program may also cover those persons who themselves took part in the commission of crimes, but refused to commit them further. But because these people are criminals, any of their information is verified. Police officers are not covered by the program. Other special social norms are provided for them (Brit, 2017).

Particular attention should be paid to the study of foreign experience in identifying entities authorized to apply security measures to participants in criminal proceedings. In particular, the question of which body decides on the application of security measures is important. In some countries, the decision to apply security measures is made by one official (Minister of Justice, Prosecutor or Chief of Police). In Germany, decisions on inclusion in or exclusion from the program are made by the security unit and the public prosecutor (Azarov, 2003). In Ukraine, such persons are, in accordance with paragraph 2 of art. 3 law, investigator, prosecutor and court, as well as the body carrying out operational and investigative activities (On Ensuring The Safety Of Persons Participating In Criminal Proceedings, 1993).

In our opinion, this list of persons, although extensive, does not indicate the possibility of an objective assessment of the threats reported by the witness or the victim. In this case, it is important that the authorized entity has a set of skills, abilities and knowledge in this area. Such knowledge is not always related to holding a position of legal orientation, here, obviously, knowledge of the psychology of human behavior in conditions of constant fear and intimidation is necessary, it will allow you to really assess the level of threat and choose a balanced decision.

The best practices of European countries include the establishment of an interagency Commission that decides on the inclusion of a witness in the protection program. For example, in Belgium and Italy it is implemented by multidisciplinary bodies: a commission consisting of the Deputy Secretary of State of the Ministry of Interior, judges, prosecutors, experts in the field of organized crime (Semkiv, 2017).

It is also important to note the different place in the system of public authorities of those structures that are designed to ensure the safety of witnesses. In the United States, the Bailiffs Service is responsible for the WITSEC program, and in the Federal Republic of Germany, it is handled by a special criminal police unit. In the United Kingdom, Austria and Slovakia, witness protection is provided by the police; in the Kingdom of

the Netherlands, the program operates within the executive and judiciary (Semkiv, 2017).

The key feature in these examples is that these bodies have operational autonomy and do not participate in the preparation of the case or the investigation, which corresponds to paragraph 28 of the Council of Europe Recommendations (2005) 9 (Recommendation № Rec (2005) 9 of the Committee of Ministers of the Council of Europe to member states on the protection of witnesses and persons cooperating with justice). According to art. 3 of the Law (On Ensuring The Safety Of Persons Participating In Criminal Proceedings, 1993).

In fact, these bodies are part of the prosecution, they are not endowed with the appropriate autonomy, and the high degree of fragmentation in the investigation indicates the lack of any specialization and properly trained staff. It should also be noted that there is a lack of coordination and quality interaction between these bodies, given that there is also no single center in the form of a coordinating body, we can talk about the low efficiency of the existing institution of security of persons involved in criminal proceedings.

In view of the above, we see the expediency of creating in Ukraine a specialized independent structural unit for the implementation of measures to protect persons involved in criminal proceedings. The main goal is to recruit qualified staff and create a single center to coordinate decisions and actions of pre-trial investigation bodies.

In general, the experience of foreign countries shows that the effective implementation of security measures leads to positive results and strengthens public confidence in justice, encourages them to testify in criminal proceedings. Thus, given the positive foreign experience in the implementation of programs to protect witnesses and other participants in criminal proceedings. We share the view of some scholars that a significant gap in domestic legislation should be the lack of witness protection programs in the practice of ensuring the safety of participants in criminal proceedings, as the presence of such programs would be an effective means of combating crime, would give law enforcement agencies ensuring the safety of persons involved in criminal proceedings (Mikhailova, 2010).

Of course, the problems studied in the scientific article are complex and concern the interests of various subjects of legal relations that arise in connection with the application of security measures against participants in criminal proceedings. The main criteria for the effectiveness of public authorities should be the legality, efficiency and effectiveness of their work. It is obvious that the rights and legitimate interests of the protected person should be a priority in the positive solution of these issues.

Conclusions

The study of procedural and criminological aspects of ensuring the safety of participants in criminal proceedings allowed us to draw the following main conceptual conclusions:

Measures to ensure the safety of participants in criminal proceedings - a set of organizational, legal, technical and other measures provided by authorized entities, which are aimed at protecting the life, health, housing, property, honor, dignity of persons involved in criminal proceedings, their relatives and friends from unlawful encroachments in order to create appropriate conditions for the administration and administration of justice.

An important guarantee of the activity of individuals in detecting corruption offenses is the institute of protection of whistleblowers introduced to implement international conventions on combating corruption. However, whistleblowers who report corruption but other corruption or other legal requirements are not entitled to security.

The defense must be active in gathering and submitting to the court appropriate and sufficient evidence for examination by the court, which should confirm both the procedural status of the person subject to security measures in criminal proceedings and the availability of evidence of real threat to him. security. At the same time, even if all the statutory requirements are met, the data obtained from a person's testimony cannot be the only or decisive proof of a person's guilt.

The effectiveness of security measures is ensured under the conditions of integrated application, in particular in combination with measures to ensure the confidentiality of personal information.

It is expedient to implement security measures for participants in criminal proceedings in the Criminal Procedure Code of Ukraine in the form of a separate section «Ensuring the security of participants in criminal proceedings». Instead, the specification of these provisions should be ensured by the Laws of Ukraine «On Ensuring the Safety of Persons Participating in Criminal Proceedings», «On Investigative Activities» and «On State Protection of Court and Law Enforcement Officials» and other departmental regulations.

We see the expediency of establishing in Ukraine a specialized independent structural unit for the implementation of measures to protect persons involved in criminal proceedings, which will require the creation of a single center to coordinate decisions and actions of pre-trial investigation and competent personnel policy.

Given the positive foreign experience in the implementation of protection programs for witnesses and other participants in criminal proceedings,

arguments are presented for the introduction of appropriate protection programs in Ukraine, which would be an effective means of improving crime, giving law enforcement agencies greater powers to create special conditions for security.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 48-62
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Legal tools of security of the financial sector of Ukraine

DOI: https://doi.org/10.46398/cuestpol.4074.02

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Abstract

The structure of crimes in the financial and economic sphere is analyzed by means of the dialectical method. Based on the analysis of the latest legislative and theoretical achievements, applied to the issues of legal regulation of the studied financial and legal relations, scientific approaches are substantiated and proposals for improvement of regulations in this area are developed. In particular, economic security is viewed through the prism of the state's potential to ensure independent development, stability of civil society and its institutions, sufficient defense potential and its ability to protect national economic interests from internal and external threats. It is proposed to supplement Article 1 of the Law of Ukraine "On National Security of Ukraine" with the term "economic security" as a state of the national economy providing resilience to threats (exogenous and endogenous), ensuring a high level of competitiveness in the global economic space, to strengthen the comprehensive development. In the conclusions of the case, the convenience of implementing macroprudential tools as one of the dominant primary sources of information for risk assessment activities in the policies of the Directorate of Economic Security is supported.

Keywords: financial security; criminal violations; macroprudential policy; financial risks; economic and legal relations.

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Recibido el 05/05/22 Aceptado el 14/07/2022

Herramientas legales de seguridad del sector financiero de Ucrania

Resumen

Mediante el método dialéctico se analiza la estructura de los delitos en el ámbito financiero y económico. A partir del análisis de los últimos logros legislativos y teóricos, aplicados en los temas de regulación jurídica de las relaciones financieras y jurídicas estudiadas, se fundamentan los enfoques científicos y se desarrollan propuestas de mejora de la normativa en esta materia. En particular, la seguridad económica se ve a través del prisma del potencial del Estado para asegurar el desarrollo independiente, la estabilidad de la sociedad civil y sus instituciones, suficiente potencial de defensa y su capacidad para proteger los intereses económicos nacionales de las amenazas internas y externas. Se propone complementar el artículo 1 de la Ley de Ucrania «Sobre la seguridad nacional de Ucrania» con el término «seguridad económica» como un estado de la economía nacional que proporciona resiliencia a las amenazas (exógenas y endógenas), garantizando un alto nivel de competitividad en el espacio económico mundial, para fortalecer el desarrollo integral. En las conclusiones del caso, se fundamenta la conveniencia de implementar herramientas macroprudenciales como una de las fuentes de información primarias dominantes para las actividades de evaluación de riesgos en las politicas de la Dirección de Seguridad Económica.

Palabras clave: seguridad financiera; infracciones penales; política macroprudencial; riesgos financieros; relaciones económicas y jurídicas.

Introduction

At the present stage, Ukraine is in a state of financial instability, caused by some problems not only financial but also legal, political, social, martial law, and several external and internal factors that destroy the state's potential. However, government officials, the financial sector, and economists characterize this stage as a path to the national economy's development and transformation.

In today's conditions, the issue of choosing ways to ensure economic security ensuring sustainable financial and economic development is of particular importance. In Ukraine, there is a need not just for adjustment but for forming a new paradigm of financial and economic security at various levels of government. Due to the active development of the financial system, technological improvement of financial transactions, and the penetration

of transnational crime into national economies, the problem of preventing and combating economic crime is becoming global. By becoming a system of threats to financial markets, particularly national ones, economic crime becomes a problem for national economic security.

1. Methodology of the study

The article is based on general and special methods of scientific knowledge. Based on general scientific dialectical approach, economic and legal nature of economic crime is considered. With the help of formal-legal analysis of the current legislation, the content was clarified, and shortcomings of normative-legal regulation were revealed; functional system method was used to analyze the main aspects of economic security; formal-logical – to monitor the peculiarities of legal regulation; technical and legal analysis – in the interpretation of procedural legal norms, the disclosure of the content of concepts, which allowed to identify certain gaps in the legal regulation of the object of study.

2. Analysis of recent research

The category of «economic security» and its structural, functional components in Ukraine has been the subject of scientific research recently, since independence, the formation of a national security environment, and the formation of national economic interests.

Despite making a significant contribution to modern theory and practice of economic security by legal means (Vasylevych *et al.*, 2022; Derhaliuk *et al.*, 2022; Nusratullin *et al.*, 2022; Chernyavsky *et al.*, 2017; Savina, 2018; Orlov, 2015), the issue of implementing unified tools for regulating economic security issues, was considered in fragments or within a separate economic and procedural legal plane and required further investigation.

The purpose of the article is to monitor the economic and legal approach to interpreting the essence of economic security; analyze trends in criminal offenses in financial and economic relations; substantiate proposals for improving the relevant normative categorical-definitive apparatus.

3. Results and discussion

New multi-vector challenges and threats to the security environment caused by endogenous and exogenous factors are increasingly heard in modern society. The COVID pandemic 2019 changed the approaches to the

interpretation of economic security and its level, encouraging deepening the analysis of this phenomenon in all its manifestations. As a social phenomenon, economic security is a platform for well-being because the state of stability and relative confidence is a certain motivator of social development.

Article 3 of the Constitution of Ukraine (Constitution of Ukraine, 1996) defines a person, his life and health, honor and dignity, inviolability, and security as the highest social value. Since human activities directly affect all sectors of the national economy, the issue of economic security in the financial sector is important.

Economic security is the state economy, which is determined by a universal platform that reflects the protection of socio-economic relations at all levels of government, from the state to the citizen. Economic security of the financial sector should be based on certain priorities: ensuring the economic independence of the state, guaranteeing citizens a decent standard of living, etc.

The concept of economic security of Ukraine defines the essence of economic security as:

> ...the ability of the national economy to ensure its free, independent development and maintain the stability of civil society and its institutions, as well as sufficient defense potential of the country in case of adverse events, protection of national economic interests from external and internal threats (Concept of Economic Security of Ukraine, 1999: 56).

The Concept identifies the main threats to Ukraine's national security and reveals their essence, considers the security of real and financial sectors of the economy, functional and reproductive aspects of economic security, and provides integrated indicators of Ukraine's economic security (Concept of Economic Security of Ukraine, 1999). There is no single interpretation of the category of «economic security» in the scientific community. This phenomenon is considered in different areas (Figure 1).

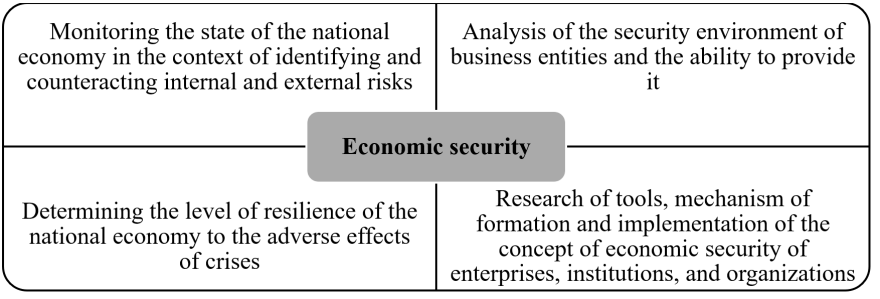


Figure 1. Interpretation of the category of economic security.

In most scientific papers, the concept of "economic security" is seen as the ability of the economy to ensure its free and independent development, the stability of civil society and its institutions, as well as sufficient defense potential of the state under adverse conditions and scenarios; the ability of the state to protect national interests.

Economic security is a universal category that represents the protection of all subjects of socio-economic relations at all levels of government, from the state to each citizen.

Having analyzed the economic security systems of countries with a high level of economic development, we can conclude that the most effective economic security systems are Germany, France, Britain, Italy, and Spain. The peculiarities of the state policy have oriented in the vector of increasing the efficiency level of various spheres of the national economy, and the states mentioned above recognize the observance of a high level of security as a priority.

Following the current order of the Ministry of Economic Development and Trade of Ukraine №1277 of 29.10.2013, they approved Guidelines for calculating the level of economic security of Ukraine (On Approval Of Methodological Recommendations On Calculation Of The Level Of Economic Security Of Ukraine, 2013), which interprets economic security as "... state of the national economy, which allows maintaining resilience to domestic and external threats, ensuring high competitiveness in the global economic environment and characterizes the ability of the national economy to sustainable and balanced growth.

The components of economic security include industrial security, demographic security, energy security, foreign economic security, investment, and innovation security, macroeconomic security, food security, social and financial security. In turn, financial security contains

the following components: banking security; security of the non-banking financial sector; debt security; budget security; currency security; and monetary security.

Figure 2. Components of financial security.

Banking security	the level of financial stability of the country's banking institutions, which allows ensuring the efficiency of the country's banking system and protection from external and internal destabilizing factors, regardless of the conditions of its operation
Security of the non-banking financial sector	the level of development of stock and insurance markets, which allows to fully meet the needs of society in these financial instruments and services
Budget security	the state of ensuring the solvency and financial stability of public finances, which enables public authorities to perform their functions as effectively as possible
Debt security	the level of internal and external debt of the state, taking into account the cost of its services and the efficiency of internal and external borrowing based on optimality, is sufficient to meet urgent socio-economic needs that do not threaten the sovereignty of the state and its financial system
Monetary security	the state of the monetary system, which provides all subjects of the national economy with quality and affordable credit resources in amounts and conditions favorable for achieving economic growth of the national economy
Currency security	the state of exchange rate formation, which has characterized by high public confidence in the national currency its stability, creates optimal conditions for the progressive development of the domestic economy, attracting foreign investment, Ukraine's integration into the world economic system, and protects against shocks in international currency markets

(On Approval of Methodological Recommendations on Calculation of the Level of Economic Security of Ukraine, 2013).

Over the past ten years, the state of financial security (with the average value of financial security for this period at 42 percent of the optimal value)

was assessed as unsatisfactory due to persistent state budget deficits and associated significant debt burden, insufficient long-term development investment lending to the economy and the stock market. In 2019, the level of financial security decreased by four percentage points (compared to 2018) to 42 percent and by three percentage points to 38 percent in the first half of 2020 compared to the level in the first half of 2019 (Economic Security Strategy for the Period Until 2025, 2021).

The current state of economic development, globalization, and the pandemic of the acute respiratory disease COVID-19 caused by the coronavirus SARS-CoV-2 has led to reduced financial security and the formation of critical risks, including slowing global economic growth; rising prices for raw materials and energy; global acceleration of inflation; public debt growth trend; limited production resources; shadowing of the economy; escalation of the military conflict; cybersecurity; political and economic situation; popularization of legalization (laundering) of proceeds from crime.

According to the requirements of the current Criminal Code of Ukraine (Section VII) (Criminal Code of Ukraine, 2001) the main offenses that threaten financial security include:

- Manufacture, storage, purchase, transportation, shipment, import to Ukraine for use in the sale of goods, sale of counterfeit money, government securities, state lottery tickets, excise tax stamps or holographic security features (article 199 Criminal Code of Ukraine).
- Illegal actions in respect of remittance documents, payment cards and other means providing access to bank accounts, electronic money and equipment for their production (article 200 Criminal Code of Ukraine).
- Smuggling (article 201 Criminal Code of Ukraine).
- Legalization (laundering) of property proceeding from crime (article 209 Criminal Code of Ukraine).
- Willful violation of the law on prevention and counteraction to legalization (laundering) of proceeds from crime, terrorist financing, and financing of weapons of mass destruction (article 2091 Criminal Code of Ukraine).
- Evasion of taxes, duties or other compulsory payments (article 212 Criminal Code of Ukraine).
- Bringing a bank to insolvency (article 2181 Criminal Code of Ukraine).
- Making bankrupt (article 219 Criminal Code of Ukraine).

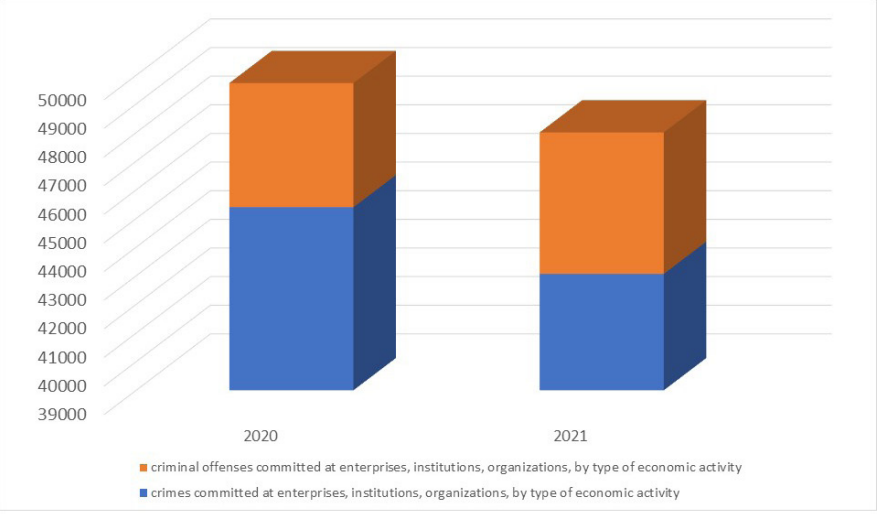
- Violation of the procedure for maintaining a database of depositors or the procedure for reporting (article 2201 Criminal Code of Ukraine).
- Falsification of financial documents and reporting of a financial organization, concealment of insolvency of a financial institution or grounds for revocation (cancellation) of a financial institution's license (article 2202 Criminal Code of Ukraine);
- financial fraud (article 222 Criminal Code of Ukraine).
- Counterfeit of documents submitted for registration of securities (article 2231 Criminal Code of Ukraine).
- Production, sale and use of counterfeit non-government securities (article 224 Criminal Code of Ukraine).
- Illegal collection for the purpose of use or use of information that constitutes banking or trade secrets (article 231 Criminal Code of Ukraine).
- Disclosure of trade or banking secrets (article 232 Criminal Code of Ukraine).

Economic crime in Ukraine and some of its types have been characterized by a steady increase in latency, the spread and improvement of shady schemes of misuse of budget funds, manifestations of corruption by government officials and management within the exercise of their powers, and more.

Due to the active development of the financial system, technological improvement of financial transactions, the penetration of transnational crime into national economies, the problem of preventing and combating economic crime is becoming global. By becoming a system of threats to financial markets, particularly national ones, economic crime becomes a problem of national economic security.

The criminalization of economic relations appears as one of the main threats to Ukraine's economic security. Effective law enforcement is a crucial factor in neutralizing this threat (Chernyavsky *et al*., 2017).

Figure 3. Dynamics of criminal offenses in the economic sphere in 2020-2021.



(Report on criminal offenses committed at enterprises, institutions, organizations by type of economic activity, n/y).

The marker is reducing the so-called "economic crime," as there has been an evident trend in the total number of registered offenses since 2018 (2018 - 58606; 2019 - 56903; 2020 - 49728; 2021 - 48005). However, in our opinion, this positive trend is entirely conditional because the implementation of control measures by law enforcement agencies in the conditions of the declared quarantine, in particular, is limited.

If we analyze the trend of criminal offenses in the financial sector, the dynamics remain similar.

Table 1. Criminal offenses in the financial sector

Type of	2017		2018		2019		2020		2021	
	number	%	number	%	number	%	number	%	number	%
monetary intermediation	916	*21,97*	1271	*27,48*	1127	*35,19*	868	*24,06*	853	*27,69*
activities of holding companies	5	*0,12*	3	*0,07*	1	*0,03*	3	*0,08*	6	*0,19*

trusts, funds, and similar financial entities	43	*1,03*	10	*0,22*	17	*0,53*	9	*0,25*	15	*0,49*
provision of other financial services, except insurance and pension provision	2762	*66,25*	2746	*59,39*	1729	*53,98*	2432	*67,41*	1897	*61,57*
insurance, reinsurance, and private pension provision	54	*1,3*	185	*4,0*	137	*4,28*	104	*2,88*	32	*1,04*
ancillary activities	389	*9,33*	409	*8,84*	192	*5,99*	192	*5,32*	278	*9,02*
Together	**4169**	***100***	**4624**	***100***	**3203**	***100***	**3608**	***100***	**3081**	***100***

* (Report on criminal offenses committed at enterprises, institutions, organizations by type of economic activity, n/y).

In general, offenses' number in the financial sector is decreasing, but there is some volatility in their structure by type of economic activity.

A financial investigation has prevented the risks of economic crime and minimized its destructive impact on the stability of the national economy. Financial investigations are activities related to the monitoring, collection, analysis of information on the commission of criminal offenses related to the financial activities of enterprises, institutions, and organizations.

The methodology of financial investigations is regulated by current legislation, in particular, the Criminal Procedure Code of Ukraine, Recommendations FATF «Operational Issues Financial Investigations Guidance» (On the Bureau of Economic Security of Ukraine, 2021).

The mission of the financial investigation is to identify, analyze, capture risks and threats to economic security. The challenge to achieve the purpose of a financial investigation is to establish correlations between the risks and the factors that caused them.

Financial investigations can be a means of identifying predicate socially dangerous acts that were previously unknown and make it possible to identify other persons involved. It is imperative to make the most of financial intelligence throughout such an investigation. It necessitates disseminating

financial information among all law enforcement and other competent authorities by applicable law and should obtain results (Chernyavsky *et al*., 2017).

The Bureau of Economic Security (On the Bureau of Economic Security of Ukraine, 2021) is the subject of counteraction to offenses in the sphere of the national economy. In turn, the State Financial Monitoring Service of Ukraine is the body responsible for implementing state policy in preventing and combating legalization (laundering) of proceeds from crime, terrorist financing, and financing the proliferation of weapons of mass destruction (Regulations on The Civil Service of Financial Monitoring of Ukraine, 2015).

The Bureau of Economic Security of Ukraine is the central body of executive power entrusted with counteracting offenses that infringe on the functioning of the state economy.

Pre-trial investigation and inquiry had carried out by detective units of the Bureau of Economic Security of Ukraine and the relevant units of inquiry (Article 38 of the CPC of Ukraine). According to Article 41 of the CPC of Ukraine, the Bureau of Economic Security had also assigned to operational units that carry out investigative (investigative) and covert investigative (investigative) actions in criminal proceedings, on the investigator's written instructions prosecutor (Criminal Procedure Code, 2012).

The Bureau of Economic Security of Ukraine operates based on a risk-oriented approach. Risk criteria (article 12) (Macroprudential Policy Strategy of The National Bank of Ukraine), however, are determined depending on: the type of offense, type of illegal action and its nature; features of financial processes; the number of financial losses, etc.

Macroprudential policy tools had used in financial activities to minimize systemic risks in the financial sector.

Macroprudential policy is a set of measures to identify and assess systemic risks for financial stability and mitigate them (Macroprudential Policy Strategy of The National Bank of Ukraine).

The purpose of macroprudential supervision is to ensure financial stability, the ability of the financial system to counter exogenous and endogenous risks, promote economic growth.

An essential feature of macroprudential policy is the permanent use of tools because, in the period of global challenges, crises are cyclical, the probability of their occurrence is evident.

The macroprudential policy cannot eliminate systemic risks but may prevent their excessive accumulation and reduce the likelihood of their implementation. Thus, it increases the economy's stability reduces GDP volatility, which confirms the results (Boar *et al*., 2017).

A characteristic feature of macroprudential policy is its cyclical nature, which is determined by the economic cycle, in particular:

- determination of systemic risks with the help of quantitative indicators of monitoring the activities of financial-industrial groups, stress testing;
- a sampling of macroprudential tools;
- macroprudential response (risk warning, implementation of macroprudential tools);
- evaluation of the effectiveness of the macroprudential policy.

Macroprudential supervision in the context of permanent systemic risks in the global financial space serves as an effective tool for ensuring financial stability.

In our opinion, it is advisable to implement macroprudential tools as one of the primary sources of information for risk assessment activities.

Conclusions

Economic security is a universal category that reflects the protection of socio-economic relations at all levels of government, from the state to each citizen, by forming a development strategy, increasing competitiveness, financial stability, the invulnerability of the state to these threats. Economic security represents the state's potential to ensure independent development, stability of civil society and its institutions, sufficient defense potential of the state, its ability to protect national economic interests from internal and external threats.

So far, there are no unified approaches to defining economic security, its categorical apparatus, which, in our opinion, is a negative factor because economic security is a component of national security, and its interpretation should acquire a normative format.

We propose to supplement Article 1 of the Law of Ukraine "On National Security of Ukraine" with the term "economic security" as a state of the national economy that provides resilience to threats (exogenous and endogenous), guarantees a high level of competitiveness in the global economic space and represents economic development.

We propose to supplement Article 1 of the Law of Ukraine "On National Security of Ukraine" with the term "economic security" as a state of the national economy that provides resilience to threats (exogenous and endogenous), guarantees a high level of competitiveness in the global economic space and represents economic development.

In our opinion, it is also advisable to implement macroprudential tools as one of the dominant, primary sources of information for risk assessment activities in the Bureau of Economic Security activities.

Paragraph 4 of Article 13 of the Law of Ukraine "On the Bureau of Economic Security of Ukraine" "Complex of measures to assess risks in the economy" should be supplemented with the plot "Macroprudential tools," amend this article as follows: In the field of economics, there are, in particular, reporting on combating criminal offenses and preventing threats to economic security, analytical reviews, and references of participants in a set of measures to assess risks in the economy (using macroprudential tools), responses questionnaires of the Bureau of Economic Security of Ukraine, the results of a sample analysis of court decisions in criminal proceedings, the results of scientific research, the results of public opinion monitoring.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 63-90
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Prospects of state regulation of venture entrepreneurship in Ukraine

DOI: https://doi.org/10.46398/cuestpol.4074.03

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Abstract

Using general and special scientific methods and generalized statistical data, the article reveals the essence of venture entrepreneurship, identifies the features and influence of venture investments on the innovative development of the Ukrainian economy in conditions of limited state resources. It has demonstrated the need to develop a strategy to improve the investment climate and expand venture investment in Ukraine, the main measures of which should include: improvement of the legislative framework; development of the innovation ecosystem in accordance with major global trends; formation of a favorable investment climate and tax regime for investors; development and implementation of new organizational and legal forms of venture investment; creation of conditions for the development of infrastructure units of the entrepreneurship ecosystem; formation of conditions for the development of innovative entrepreneurship in the real sector of the economy, as well as in the scientific and technical sphere, etc. It concludes with recommendations on the need to increase the volume of venture capital investments in high-tech projects with an emphasis on the defense industrial complex, IT sphere and construction, among others.

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Recibido el 15/05/2022 Acpetado el 18/06/2022

Keywords: venture entrepreneurship; business and investment; innovation and government regulation; startup; risk management.

Perspectivas de la regulación estatal del espíritu empresarial de riesgo en Ucrania

Resumen

Mediante el uso de métodos científicos generales y especiales y datos estadísticos generalizados, el artículo revela la esencia del espíritu empresarial de riesgo, identifica las características y la influencia de las inversiones de riesgo en el desarrollo innovador de la economía de Ucrania en condiciones de recursos estatales limitados. Se ha demostrado la necesidad de desarrollar una estrategia para mejorar el clima de inversión y expandir la inversión de riesgo en Ucrania, cuyas medidas principales deben incluir: mejora del marco legislativo; desarrollo del ecosistema de innovación de acuerdo con las principales tendencias mundiales; formación de un clima de inversión y un régimen fiscal favorables para los inversores; desarrollo e implementación de nuevas formas organizativas y legales de inversión de riesgo; creación de condiciones para el desarrollo de unidades de infraestructura del ecosistema de emprendimiento; formación de condiciones para el desarrollo del espíritu empresarial innovador en el sector real de la economía, así como en el ámbito científico y técnico, etc. Se concluye con recomendaciones sobre la necesidad de aumentar el volumen de inversiones de capital de riesgo en proyectos de alta tecnología con un énfasis en el complejo industrial de defensa, la esfera de TI y la construcción, entre otras.

Palabras clave: emprendimiento de riesgo; negocios e inversión; innovación y regulación estatal; startup; gestión de riesgos.

Introduction

Creation of a favorable investment climate is one of the main means of ensuring the improvement of quality indicators of the economy of any country. In the conditions of economic transformations, the effectiveness of the venture financing system is a significant prerequisite for accelerating the pace of economic growth, transitioning to an investment-innovation model of economic development and increasing its competitiveness. It

is important to develop the toolset of venture financing, optimize the innovative infrastructure and create institutional conditions to ensure the effective functioning of venture funds. Determining effective areas of venture financing and creating favorable conditions for attracting investments will ensure the development of high-tech production, will contribute to the provision of high-quality and affordable public services to citizens.

The approaches to the formation and implementation of the state innovation policy that have been in effect in recent years have proven to be unable to raise Ukraine to a higher level, and therefore require fundamental changes. Previous attempts to form a state policy to support innovation in Ukraine through selective assistance in the development of certain industries, sub-industry and projects had a limited positive impact.

Approaches that are based on the determination of industry priorities do not lend themselves well to strategic planning, since innovation is a difficult to predict process. At the same time, priority in the use of available resources was given to current tasks, and not to the development of innovative infrastructure, which would have a much greater and long-term effect. In addition, the determination of industry priorities can become the object of influence of current interests, which will lead to the distortion of public policy, and benefits and other preferences for such support can become a source of abuse.

The current state of innovative activity is partly caused by the lack of a strategic vision and consistent state policy regarding the transition of Ukraine to an innovative path of development, the formation of a national innovation ecosystem that would ensure its implementation and increase the development of innovative culture in the state, using, in addition to financial, other mechanisms for the development of innovative activity. Despite the presence of individual elements, there is no integrated national innovation system, the purpose of which is to create innovative products (processes) and their quick introduction to the market (implementation).

The formation of the innovation ecosystem, which took place in Ukraine before the military aggression at a rapid pace, when new start-up accelerators and business incubators appeared in the country, the amount of funding for start-ups increased, the market for venture financing developed, and the state supported innovative business, from March 2022 year slowed down significantly. It is quite logical that in the II quarter of 2022, activity in the field of deals in Europe may decrease somewhat due to the war in Ukraine, combined with the growth of inflation rates and interest rates. Despite the fact that there is a significant amount of cash reserves in the market, venture capitalists may refrain from making investments in the near term, given the level of uncertainty.

Thus, global events of a global scale - COVID-19, the war in Ukraine, have made adjustments to the venture business as well, and for venture investors, the vector of interest has shifted towards environmental, social and corporate governance and electronic commerce.

Today, a number of factors act as an obstacle to the involvement of venture business in the development of entrepreneurship, namely: military actions on the territory of Ukraine, economic and political instability, the lack of an effective legal framework regulating the functioning of venture financing, the lack of interest of the state in the development of small and medium-sized innovative entrepreneurship, small the share of domestic venture capital compared to foreign venture capital, the lack of an institutional environment for venture financing, the lack of economic and tax incentives from the state to attract funds to science-intensive production, etc. (Gontareva and Cherednyk, 2018).

It is appropriate to note that the world economy, which has not yet recovered from the consequences of the pandemic, is also feeling the consequences of the war caused by Russia on the territory of Ukraine, in particular the threat of a food crisis. In today's conditions of constant changes, it is impossible to be limited only to long-known, time-tested economic mechanisms, and to respond promptly and adequately to relevant crisis phenomena.

All over the world, in connection with the emergence of large companies and new and promising business ideas, venture capital investment is a profitable direction chosen by countries with developed economies. Despite the existence of a system of generally recognized procedures, generalized practices and recommendations of the UN for building a venture financing industry, the creation of an effective national venture industry depends on the optimal use of a number of factors and features of the country's national economic potential.

It should be emphasized that the mechanical transfer of positive foreign experience to Ukraine is impossible due to sometimes significant differences in business conditions, regulatory and legal framework, socio-cultural environment and the state of the country's economy. At the same time, it should not be denied that although Ukraine lags behind in the development of venture capital investment, the globalization of the economy and the development of information technologies, as well as the proactive steps of the state itself, can speed up these processes.

Currently, Ukraine lags far behind countries with a developed innovation ecosystem. There is an understanding that the development of startups requires a significant influx of special investments, taking into account the high level of risks inherent in innovative activities. Venture investment mechanisms have long been developed in the world, which are in the stage of formation in Ukraine (Hrebennyk *et al.,* 2021).

The system of attracting investments for the development of startups in our country requires careful analysis and study, which determines the relevance of the research topic. After all, in the conditions of the financial and economic crisis in Ukraine, the involvement of venture business can become a catalyst for the development of innovative processes and knowledge-intensive production.

1. Methodology of the study

The work uses a set of methods and approaches, which made it possible to realize the conceptual unity of the research. Systemic and structural methods were used to reveal the essence of venture financing as a tool for stimulating innovation processes. With the help of comparative and factor methods, the experience of the development of the venture financing system in countries with developed and transformational economies is summarized and systematized.

The methods of scientific abstraction and synthesis were applied in determining the priority areas of financial policy in relation to the development of the national innovation system. The information base of the study consists of legislative and regulatory acts on venture financing, statistical and analytical materials of the Ministry of Finance, the Ministry of Economic Development, Trade and Agriculture, the State Statistics Service, the State Treasury Service, relevant monographs, scientific articles by scientists.

2. Analysis of recent research

Investment activity is the object of research by many scientists. Among the scientists who researched the mechanisms of venture financing, the scientific works of such scientists as M. Homon (Homon, 2020), O. Kuzmin (Kuzmin and Lytvyn, 2019), I. Lyakh (Lyakh, 2015), N. Kraus, O. Shevchenko (Kraus and Shevchenko, 2013), A. Poklonskyi, O. Poklonska (Poklonskyi *et al.,* 2020), N. Martynovych, P. Leshenko (Martynovych and Leshenko, 2022) and others.

Despite the large number of scientific works devoted to these issues, the theoretical and applied aspects of solving the problem of attracting venture business and its formation in the conditions of the global market, taking into account national characteristics, remain insufficiently disclosed. The specified circumstances determined the choice of the research topic, its focus and content.

The purpose of this article is to study the theoretical and methodological foundations of venture investing and, using advanced foreign experience, to determine ways to improve venture entrepreneurship in Ukraine in today's conditions.

3. Results and discussion

3.1. Forms and methods of state support for venture capital business

The state acts as an organizer of the economic and legal space, the main purpose of which is to form a system of priorities and directions of economic development, create conditions for investment activity, and ensure the competitive advantages of the national economy. The formation and development of venture business should be facilitated by state policy, which should be based on the principles of long-term and economic interest in increasing the efficiency of management and the stability of legislation.

The state uses a whole arsenal of tools, levers and other means of influencing the innovative development of the country. Their set changes and improves depending on the chosen strategy of the state's innovation policy, the model of venture financing, the state of society and governing bodies. In a broad sense, the methods of state regulation of the innovation process are certain actions, starting with forecasting and planning and ending with decision-making on transformation, improvement of the functioning of innovation processes and the economy in general.

Venture capital investment is the investment of capital in start-ups, that is, in enterprises that are just beginning to develop, in order to receive dividends. However, such capital investments are risky because: they are aimed at promising beginners who have the opportunity to potentially increase the invested funds, they do not yet have income or a defined client base; investors are not able to quickly return their finances, as making venture capital investments requires a long time.

Currently, there are the following models of venture capital investment: investments by venture capital firms, investments by «business angels» and their associations, investments by non-financial corporations, investments by banks, investments with state participation (funds of funds).

The fundamental differences between these models are: differentiation of the goals of venture investors; their use of various organizational and legal forms of business; specific decision-making mechanisms and investment management; different levels of responsibility for investment results. Forms (individual entrepreneurship, partnership, corporation, limited

liability company) and models of venture investment are not static, but are in the process of constant changes, but the main thing is the existence at the macroeconomic level of a stable positive correlation between venture investments and the productivity of production factors (as a result of innovation), and therefore economic growth (Pylypenko, 2014).

Venture capital is risk capital that is invested in the shares of new and fast-growing companies to obtain large profits after listing the shares of these companies on the stock exchange. Venture investments exist to support the development of a young business, as a result of which the investor becomes its shareholder.

Venture capital can be characterized as direct long-term investments in high-tech enterprises (projects) at the early stages of development or at the stage of expansion, which have the potential for growth and are characterized by a high degree of risk, potentially high profitability, involve the investment of not only financial funds, but also certain knowledge and experience venture investors in the field of marketing, strategic and financial management.

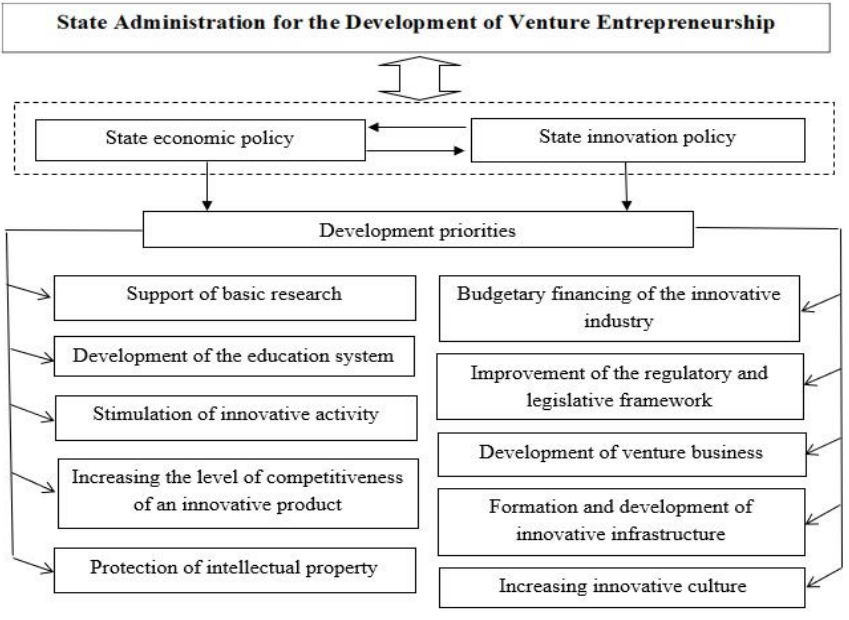
Recipients of venture capital are venture capital firms that are not obliged to pay interest or return the received sums. The investor's interest is satisfied by the acquisition of rights to all innovations and profit from the implementation of scientific and technical developments.

It must be stated that today the development of Ukrainian venture entrepreneurship is hindered by financial factors, which is primarily due to a lack of funds. There are no mechanisms for attracting venture capital, attracting public savings for innovative activities, unresolved financial and credit issues regarding small businesses (including lack of access to credit resources due to high interest rates), and mechanisms for insurance of innovative risks have not been developed. The share of funding from the state budget is extremely low.

As the experience of developed countries shows, venture business is impossible without a developed stock market, since venture financing is not aimed at obtaining a certain percentage of invested capital, but at increasing the market value of venture companies where the venture investor becomes a co-owner. In addition, in order to ensure the proper functioning of innovative institutes, the appropriate development of the banking system, insurance market, pension funds, etc. should be ensured.

It is appropriate to note that the mission of generators of high technologies and innovative products should be performed by the financial mechanism of venture investment. In order to actively develop and operate the financial mechanism, appropriate conditions should be created at the state administration level, where the key issue is the effective combination of the goals of the state and venture entrepreneurs. The main tasks of the state in this field should be:

- formation of a favorable investment climate and tax regime for both domestic and foreign venture investors;
- development and implementation of new organizational and legal forms of venture investing;
- creation of conditions for the development of infrastructural units of the venture ecosystem (technology parks, incubators, accelerators, centers of entrepreneurial activity, stock exchanges);
- formation of conditions for the development of innovative entrepreneurship in the real sector of the economy, as well as in the scientific and technical sphere;
- creation of effective mechanisms of commercialization of the results of scientific, technical and innovative activities;
- increasing the financial literacy of the population and its investment activity.



(Own creation).

The proposed scheme clearly shows the direct influence of the state on the formation of the main priorities for the development of venture entrepreneurship. The latter are formed in accordance with economic and social development strategies and the Laws of Ukraine «On Innovative Activity», «On Priority Areas of Innovative Activity in Ukraine» and include budget financing of the innovation sphere, improvement of innovative infrastructure, development of venture business, etc.

Forms and methods of state support for venture activity can be divided into two groups: direct and indirect. State participation in the financing of venture projects within the framework of approved state programs or state venture funds or through the provision of state loans to venture companies and small innovative firms belongs to direct state support measures for venture entrepreneurship.

In many cases, the direct participation of the state in venture capital is always the optimal solution. Thus, with insufficient processing, such schemes can lead to unsuccessful investments and large losses for the state. Government programs can be used to finance or support non-viable projects or enterprises that cannot attract private capital because they are unsuccessful objects for investment.

Indirect measures include improving the system of tax benefits and preferences, establishing special tax regimes for venture capital entities, expanding the range of venture investors (granting the right to invest in venture capital to institutions such as pension funds or insurance companies), guaranteeing loans or part of losses from venture capital investments.

Often, the optimal approach is to improve the macroeconomic and legal environment to overcome some of the financial barriers to making high-risk investments. The importance of supporting venture business in today's conditions is undeniable, because supporting small companies reduces the overall level of unemployment in the country, creates new technologies that contribute to the long-term growth of the national economy.

3.2. The current state of venture entrepreneurship in Ukraine

Since the beginning of the military invasion of Ukraine, almost all companies have needed financial support. Only after a certain time, the demand on the market recovered by an average of 40-50 %. A somewhat better situation was observed in the field of education, where a drop in demand by only 10-20 % was recorded. The effects of the war were immediately felt by venture capital funds that had portfolio companies related to logistics, physical goods and movement. According to separate data, at the beginning of the war, only 24.3 % of Ukrainian start-ups

continued their work and 16.7% of businesses had security for 3-6 months. Others are in a more critical situation, which has put them in survival mode (Startup voice: results of the survey of the startup ecosystem of Ukraine, n/y).

Therefore, the main task of venture capital funds is to urgently help portfolio companies. In the first days of the war, investors and CEOs of startups were concerned with the physical safety of all employees and the provision of housing. Startups that worked in offices quickly decided the format in which they should function in the future: moving to another city, switching to a remote work format or creating a hybrid model.

It is also obvious that after the invasion of Ukraine, most domestic companies that worked in Russia left there. This is absolutely the right thing to do, but there was a question about entering new markets, involvement of specialists with relevant experience, clear planning and prioritization of directions.

In our opinion, in the near future, we should expect the emergence of startups in Ukraine in such areas as defense, construction, cyber security, mental health and medicine. And here, without a doubt, separate support from the state will be needed.

By the way, defense startups are already serving our defenders. For example, the Ukrainian company Culver Aviation develops its own drones and recently transferred part of its fleet of unmanned aerial vehicles to the Armed Forces of Ukraine. Instead, the Ukrainian start-up Delfast sent the army electric bikes of its own production, which carry containers of NLAW missiles.

The cryptocurrency market and everything related to it should also be relevant. During the war, a large share of donations was made through this channel. According to official data, in just two weeks, the Aid for Ukraine project collected more than $71 million of cryptocurrency. It is also worth pointing out the trend of p2p transfers abroad and within the country. So, according to some forecasts, the demand for this service will only grow and by 2030 will reach $9,097.06 billion (P2P-payment-market).

There have been changes in the field of transport, because the shortage of fuel is pushing for decisive changes - the transition to electric vehicles. Oil and gas are exhaustible resources, but their alternative options are actively being developed in advanced countries. According to some estimates, about 6.7 million units of electric vehicles were sold in 2021, which is double the number of the previous year (Carlier, 2022).

The domestic government loan bond market of Ukraine, which continues to grow, needs special attention. On April 27, 2022, about 1,000 legal entities and individuals received UAH 3.3 billion from the repayment of

the first issue of military bonds (P2P-payment-market). Therefore, there is a high probability that in the near future, investments in various securities will gain more popularity in Ukraine.

If we talk about the specific steps of startups and funds, founders should optimize the operational efficiency of their business based on statistical cash flow forecasting methods, and funds should evaluate and analyze each product of the company in order to maintain or increase its return on investment. At the same time, it is important to prioritize work concepts in order to concentrate the company's limited resources only on profitable areas. At the same time, the funds can contribute to the construction of a long-term marketing strategy for startups entering or expanding into Western markets.

Currently, entrepreneurs have a chance to replenish the team with highly professional personnel and provide work for Ukrainians who lost it due to the war. In general, business processes should be restructured in such a way as to attract funds from Western investors, who can play a significant role in the recovery of business in Ukraine.

Currently, there are many problems in Ukraine regarding venture investing: martial law; crisis phenomena and instability of the social and political situation; low level of development of IT entrepreneurship; imperfection of the legislative sphere and insecurity of investors; public distrust and insufficient government support for joint investment institutions; lack of conditions for the activity of investment funds, a low share of innovative development of enterprises; low level of commercialization of the results of scientific research and development; imperfect startup development procedure; the demand for innovations has not been formed and the market for innovative products and infrastructure is imperfect.

However, it makes no sense to talk about any generalized statistics regarding the size and conditions of financing since the beginning of the war, because most investors are not yet ready to consider new projects in Ukraine, and the investment leaders before the war, real estate and the agricultural sector, have now lost their positions and almost do not attract new funds. IT is not the only sector that will continue to be actively invested in under almost the same conditions (Zalevska, 2022).

According to the calculations of AVentures Capital, 2021 was a record year for the Ukrainian IT industry in terms of the amount of capital raised (venture and private). Compared to 2020, it increased by 46% to $832 million. Startups at the early stages (Seed – Series A) attracted a record amount of investment - $242 million. The number of exits per year is also a record - 28 (Sudolsky, 2022). Before the start of the military invasion on the territory of Ukraine, the country rather unexpectedly held the first

positions in Europe in the field of training IT specialists, as well as in the volume of IT services exports, having more than 110 R&D centers of well-known international companies, and 21 companies of Ukrainian origin with development offices Ukraine, which is included in the list of Global Outsourcing 100» (Vasyuk, 2020).

The industry that shows the most activity and scalability is «Software & Data / Software and data». It has more than 24,000 startups, of which 255 are unicorns, that is, companies that have reached a capitalization of $1 billion in a short period of time. The next most active industry is Social & Leisure Technology, with more than 8,000 startups but a relatively small number of unicorns at 26. On the other hand, the e-commerce and retail technology industry has fewer startups represented (less than 7,000), but the second highest level of scalability – 119 unicorns (Venture Pulse: Global Analysis of Venture Funding. KPMG International, n/y).

The market of venture investments in Ukraine is only developing, but it is already showing good results. Startups Gitlab, Grammarly, People. ai, Ajax Systems have found their place at the international level, and according to the forecasts of specialists, the venture investment market in Ukraine will grow at least two to three times by 2023. It is about investing in foreign companies (Filippov, 2020).

Despite the war, there was almost no decline in capital investments in the IT sector and startups. The relocation of key specialists of IT teams to safe regions of the country makes it possible not to lose the pace of work. Therefore, investors willingly invest in our companies, and venture capital funds easily raise funds to finance Ukrainian startups. Although martial law and military mobilization were introduced in the country, businesses and team members were relocated, the IT industry in the first quarter of 2022 brought the state a record $2 billion in export earnings. This is 500 million dollars more than in the corresponding period of the last peaceful year.

In the new conditions, the industry managed to reformat quickly thanks to anti-crisis business plans. Most companies have maintained the volume of contracts and customers. Thanks to this, the segment has an appropriate level of financial stability. At the same time, the number of industry specialists increased by 41,000 to 285,000 (Zalevska, 2022). Of course, such indicators attract potential investors, so the Ukrainian IT business can continue to count on funds from investors and venture capital funds.

Unfortunately, the Ukrainian Startup Fund (USF) has suspended financing of new projects. This is explained by the fact that a large number of founders of startups protect our Ukraine as part of the army, ground defense and IT army of Ukraine. However, funding will be restored immediately after the victory, the foundation promises (Zalevska, 2022).

In general, we can state that the IT sector has become the locomotive on which Ukraine entered the world venture market, but the country has a rich potential for the development of innovations in other areas of the economy. This requires a modern venture investment system, which is developed on the basis of modern practices and is fully integrated into the global system.

Another promising sector for attracting investments is the agricultural sector. But here everything is not so optimistic. The war on the territory of the country carries many risks for agricultural producers. Therefore, investors are more focused on pessimistic forecasts: in particular, it should be expected that in 2022, national agricultural investors will direct resources mainly to the preservation of existing capacities located in controlled territories. If the risks of investors caused by the objective situation in Ukraine will significantly decrease or disappear, investment processes in agriculture will quickly intensify.

However, there are investment options in the agricultural sector. Some experts are convinced that the strongest real estate is land, and currently there is a unique opportunity to invest in fertile Ukrainian land, because its prices have not yet increased to 70%, as it is planned after January 1, 2024. Such an asset is the least prone to crises and gives a profit of 8% per annum. At the same time, it must be stated that such investment is currently not available for foreigners, and Ukrainian investors do not have sufficient funds. And in general, all these processes are frozen (Zalevska, 2022).

Currently, we can cite other examples of venture capital investment. Thus, Glovo, which invests in the Ukrainian delivery market, plans to continue developing its own innovative projects: last-mile b2b delivery, development of the Q-Commerce vertical and dark stores, as well as Cook Room (cloud kitchens). Mastercard in Ukraine focused on investments in projects that will help Ukrainians. The company continues to invest in innovative technologies and experience for the development of the digital economy and further growth of the country.

According to some analysts, after the war, Ukraine will need businesses in the following areas: logistics (creating railway connections with European capitals); processing of agricultural products; construction; services; Light industry; creation of new technologies (in particular, in combination with the defense industry); a new system of education and training of specialists; development of energy efficiency (Business and investment in war conditions: how Ukrainian entrepreneurs are looking for new opportunities for development).

Also, in view of the importance of the prospective development of the domestic production of weapons and military equipment in order to ensure the territorial integrity and independence of Ukraine, to minimize threats to national security, venture capital, subject to state support and the

appropriate defense industry policy, can become a locomotive of innovative development of the defense industry, which will give impetus to the active movement innovative «center of attraction» for civilian sectors of the economy, while ensuring the rapid development of high-tech projects.

To restore the economy, large-scale deregulation, investment, large labor resources, extraordinary efforts of the business community are needed. But, according to business, effective post-war recovery of the country is possible only if appropriate state policy is implemented, including a liberal innovative economy (creating conditions for fair competition and business cooperation, attracting investments and forming a high level of trust in the state; developing human potential; stimulating development innovation and modernization (including digitization) of the economy, barrier-free movement of capital and anticipatory development (recognition) of virtual assets, etc. (Dligach, 2022).

In our opinion, for the inflow of investments to Ukraine, it is necessary to introduce risk insurance, in particular, insurance against war. There are already international organizations that are ready to launch such insurance programs for Ukraine. Important steps under such conditions are: changing the attitude of the authorities at all levels towards business, faster decision-making, issuing the necessary permits, changing the tax system, opening a business, access to quick funds, etc. (Business and investment in war conditions: how Ukrainian entrepreneurs are looking for new opportunities for development).

In general, for the sustainable development of the state, it is necessary to provide favorable conditions for the formation and operation of innovatively active enterprises, the development of the national innovation ecosystem, and the attraction of domestic and foreign investors. At all levels, investment priorities should be reassessed taking into account ESG sustainability criteria, i.e. environmental, social and governance criteria of corporate governance.

3.3. Organizational and economic measures of management of innovative activities in the field of venture entrepreneurship

Innovations are important for the formation of a new economy, which is explained by the action of the fundamental factors of economic transformation. The field of venture entrepreneurship is no exception in this regard. Such factors act in different ways. Some of them put pressure on subjects of economic activity and speed up innovation processes, while others open more and more opportunities for the introduction of innovations. Also, in the conditions of war on the territory of Ukraine, there is an increase in uncertainty and turbulence in the national economy, which actualizes the feasibility of introducing innovations in all spheres of life, in particular, the development of venture business.

The active innovation policy of the state, which covers the training of scientific personnel, the introduction of innovative business development programs, cooperation between enterprises and research institutions in all industrialized countries of the world, has become a prerequisite for their long-term economic growth and stable social well-being. The basis of such a policy at the state level is the development of a national strategy for technological modernization, the concentration of resources in selected areas and the formation of competitive advantages of small enterprises in the relevant areas and the realization of these advantages in the markets (Kraus and Shevchenko, 2013).

Managing the innovative development of business entities, taking into account the current geopolitical crisis, the state of the economy and science, is a difficult task, but moving forward is extremely necessary, because the creation of a favorable regulatory environment for venture entrepreneurship is one of the defining tools for restoring dynamic economic growth, modernizing the national economy and creating a basis for improving the welfare of the population of Ukraine.

In particular, an important issue in the development of innovative activities of enterprises is the determination of sources of financing of innovative projects. Far from all domestic enterprises have the opportunity to implement innovations in a sufficient amount with their own funds. The amount of funding from the state budget is also limited, and support from foreign investors and international grants are currently insufficient (Homon, 2020).

Currently, the venture capital market in Ukraine is narrow. Investors explain this trend with the following factors: the absence of an effective mechanism of state guarantees for the protection of investments; existence of pressure on business; high tax rates; improper methods of legal protection: inefficiency of judicial and law enforcement systems (fe3 - is there a future?, 2020).

In Ukraine, joint investment institutions require development support from the state, namely a reduction in the tax burden (the tax rate on investment income is 9%, in contrast to Estonia - 0%, Lithuania - 0%, Slovakia - 0%, the Czech Republic - 5%. That is why it is more profitable for venture investors to create funds in foreign countries, and for startups to go to these countries, where the investment climate, effective investor protection mechanisms and jurisdictions are more favorable.

As experts rightly emphasize, it is important to create a so-called offshore zone for startups. Some states also provide them with a tax holiday: the minimum tax rate works for the first three years after the company is established. Other mechanisms are possible, but innovative business needs them very much. In addition, it is necessary to leave the companies alone,

to stop the constant raids of law enforcement agencies (Ukraine needs to create an offshore zone for startups - the executive director of UVCA, 2017). After all, the main advantage of venture funds, unlike an investment company, is the exemption from income tax. The income itself is not subject to taxation, it is only paid out by the participants of the fund after the completion of its activities.

Innovative development requires attracting significant resources, especially for small and medium-sized enterprises, which, having innovative ideas, are mostly unable to implement them. An important issue in the development of innovative activities of enterprises is the determination of sources of financing of innovative projects. Far from all domestic enterprises have the opportunity to implement innovations in a sufficient amount with their own funds. The amount of funding from the state budget is also limited, and support from foreign investors and international grants are currently insufficient (Homon, 2020).

Preservation of the scientific, technical and innovative potential available in Ukraine is possible only with systemic support for innovations. At the same time, due to a number of factors, the main of which is the military aggression of the Russian Federation, the country does not have the financial resources to ensure full-scale development of an innovative type. Under such conditions, it is possible to preserve and increase the innovative potential only at the expense of financial and credit support of the innovative sector of the economy. It is necessary to select basic technologies, enterprises, research institutes, educational institutions that determine innovative development and ensure the competitiveness of the state, and create favorable financial conditions for them, adequate to the tasks.

In our opinion, today the main factors contributing to the development of venture business of an innovative type are: the presence of a scientific and educational base and a powerful research sector, scientific schools; development of financial institutions and markets of the insurance and pension sectors; availability of the stock market; political and macroeconomic stability, sustainable economic growth; stable demand from the state and the private sector for scientific research and development; availability of free capital (Venture Pulse: Global Analysis of Venture Funding, n/y).

World practice shows that venture financing is carried out in various forms. When considering the forms of venture capital as one of the components of the innovation process in the conditions of modernization of the economy, it should be borne in mind that due to the national peculiarities of the legislative regulation of the financial sphere of different countries, the structure of venture capital differs. Sources of venture capital formation have significant regional differences and are determined by historically formed practices.

In our opinion, venture funds are the most optimal mechanism for the formation of venture capital, as they accumulate the main volumes of potential venture investments; through them, the most optimal connection of venture capital with highly qualified financial and innovative management is carried out; with the help of funds, the state can actively act, which uses the advantages of venture capital to solve priority tasks; venture funds contribute to strengthening the internationalization of the venture capital market.

3.4. Ways to activate venture capital investment in the innovation sphere in Ukraine, taking into account advanced foreign experience

Venture investment and venture funds are an indispensable component of the development of an innovative economy. Innovations are one of the priority directions of state policy in most developed countries because they are the basis of national independence, security and economic development. State regulation of venture activity is an integral component of venture investing and the development of the venture industry in Ukraine (Kunitsyn, 2014).

Among the reasons for the need for state regulation of venture investments, O. Kunitsyn rightly attributes: strengthening of monopolistic tendencies in the financial market; insufficient funds for initial entrepreneurs; society's need for technical innovations; fight against the tinization of the economy; protecting national interests and increasing the financial and economic security of the state (Kunitsyn, 2014).

If we consider the global trends in the direction of venture capital by economic sector, then, analyzing the quarterly reports of KPMG Enterprise Venture Pulse (Venture Pulse: Global Analysis of Venture Funding. KPMG International, n/y), it can be emphasized that software remains the unchanging leader, the share of which in recent years accounts for 34% of all venture investments. Promising directions for venture investments today are biotechnology and the pharmaceutical industry (10%), leasing services (9%), consumer goods and tourism business (5%), the IT industry, energy saving systems, the media sphere, medical services and services, etc. (3 4%).

Compared to others, venture business in Ukraine is a relatively new direction of economic development, the formation of its institutions began in the last decade of the 20th century. Moreover, the first steps regarding the use of venture business principles were not carried out in the field of financing innovative projects, but during economic reforms during the transition to new organizational and legal forms of entrepreneurial activity.

Today, Ukraine's share in the global venture investment market remains insignificant - about 0.1%. Various sources of venture capital financing have become widespread in Europe and the United States. These are, first of all, investment funds, which have about 67 % of the venture market, and corporate financing - about 30%. For Ukraine, the main ones in this direction are joint investment institutions operating on the basis of the Law of Ukraine «About joint investment institutions (equity and corporate investment funds)» (About Joint Investment Institutions (Equity And Corporate Investment Funds): Law Of Ukraine, 2001). They represent investment funds that accumulate funds of individual investors with the aim of obtaining profit by investing these funds in assets and are divided into several types, among which there are joint investment venture institutions.

The main factors contributing to the development of venture business are: the presence of a scientific and educational base and a powerful research sector, scientific schools; development of financial institutions and markets of the insurance and pension sectors; availability of the stock market; political and macroeconomic stability, sustainable economic growth; stable demand from the state and the private sector for scientific research and development; availability of free capital (Venture Pulse: Global Analysis of Venture Funding, n/y). In Ukraine, most of the mentioned conditions are contradictory, since today the venture business is only at an early stage of development, having certain features and specific features, which is determined by the political and economic situation (Mordan, 2018).

As experts rightly point out, the Ukrainian economy has been in need of modernization for a long time by removing bureaucratic barriers and making maximum use of available advanced foreign experience. However, in order to implement something as effectively as possible, the country needs a strategy, transparency, interaction, awareness of responsibility at all levels (Business and Investments in War Conditions: How Ukrainian Entrepreneurs Search for New Opportunities for Development).

Globalization and modern communication technologies create opportunities for the existence and development of successful innovative enterprises and clusters, even despite the general technological backwardness, low purchasing power of consumers and territorial remoteness, through inclusion in international chains of creation of added value (value). This will have a positive impact on the development of the vast majority of economic sectors and will provide additional opportunities for domestic small and medium-sized enterprises.

In addition, innovations are capable of scaling, which is best realized on the global market, in which the share of the domestic sector is currently 0.12% (Strategy for the development of the sphere of innovative activity for the period until 2030, Order of the Cabinet of Ministers of Ukraine No. 526, 2019).

It is worth emphasizing that the legislative system of any developed country does not contain a separate normative legal act on venture activity. Venture investing is carried out within the framework of general legal norms and uses legal forms and schemes regulated by the legislation on the rules of corporate and investment activity; in most developed countries, legislative acts concerning the forms and methods of venture investing are adopted with the aim of stimulating this type of activity by providing various tax benefits, deferrals and prerogatives to investors, mainly employed in the field of high technologies; the need to develop legislative norms that regulate venture investing is recognized as appropriate if the state authorities are interested in the participation of venture investors in the intensive development of economic entities in critical directions from the point of view of state priorities (Lepylo, 2012).

The modern Ukrainian state has very limited financial and institutional capacity. Therefore, it is advisable to focus available resources and potential on supporting scientific research, which is one of the foundations of innovation potential, and creating an effective infrastructure that will facilitate the transformation of research results into a product suitable for commercialization. In order to solve the task of transition to innovative growth in the Strategy for the Development of the Sphere of Innovative Activity for the Period Until 2030, among the wide variety of possible tools, those are offered which year No. 526): best correspond to overcoming the obstacles that most hinder the innovation process in Ukraine; require the least budget expenditures and fiscal resources, but at the same time are able to bring tangible results for minimal investments; are the least vulnerable to corruption and other abuses.

It is also necessary to review and implement schemes for tax incentives for innovative activities, to conduct a favorable state policy for venture financing; provide tax benefits only to those venture funds that finance projects that correspond to the priority directions and strategy of innovative development of the state.

At various stages of the innovation process, the following problems were identified, which should be solved with the help of state policy tools, in particular at the stage of innovation creation: insufficient funding, in particular state funding; lack of necessary information about the market prospects of the proposed idea and knowledge and advisory support for the project from the idea to the commercialization stage; insufficient use by scientists and small and medium-sized businesses of opportunities to participate in international programs; lack of established communications between scientists and business representatives who are interested in the development of innovations, both for the needs of business in innovation, and for data about new and improved technological solutions that can be used in production insufficient promotion and dissemination of information

about positive examples of transforming an idea into an innovative one product; lack of reliable forecasting of trends and studies of the influence of instruments of state regulation on the innovative development of the economy.

The problems of the functioning of the national innovation ecosystem at the stage of introducing innovations through the creation of a specialized small innovative enterprise - startup N. Zakharchenko include: burdensome regulation, in particular complicated access to the labor market for foreigners and an excessively complicated process of liquidation of the enterprise, which is extremely relevant for startups, since innovative activity is a high-risk type of business and some startups turn out to be unsuccessful; high level of taxes (primarily on wages and profits of enterprises); lack of necessary knowledge and skills for conducting business activities; large-scale expenses for a newly formed enterprise for renting premises and equipment, paying for third-party services (primarily accounting); insufficient development of venture financing in Ukraine and problems of legal protection of property of foreign investors; the absence or limited efficiency of innovative infrastructure, which should contribute to the development of innovative entrepreneurship (Zakharchenko, 2020).

There are also a number of problems that concern all stages of the transformation of an idea into an innovative product, in particular the problem of the departure of qualified personnel, scientists, inventors, and entrepreneurs abroad, the main reasons for which are: better opportunities for the implementation of ideas abroad (primarily access to financing, legal protection, proximity to sales markets, lower cost of doing business); higher quality of life (security and rule of law, education and health care, social protection in case of need, infrastructure, ecology, etc.); a creative and entrepreneurial environment created in the world's best centers of innovation.

Financial incentives for investing in venture funds, small and medium-sized innovative firms can be introduced by: reducing the state's venture risks of private investors, including through state guarantees for loans to venture funds or new small companies, and promoting the diversification of capital of private venture funds through the participation of the state venture capital fund in specially selected projects; implementation and development of the mechanism of state insurance of loans provided by market financial and credit institutions for the implementation of innovative projects.

Perhaps the most important condition is the promotion of the development of innovative infrastructure, important elements of which are technology parks, business incubators, technology transfer centers and, of course, venture funds; holding innovative competitions, expert councils, venture fairs at the national and regional level (Lyakh, 2015).

The combination of all elements of the innovative infrastructure into an information network will allow interaction between business and capital, project authors and potential investors, will facilitate the establishment of partnership relations between them, obtain comprehensive information about the latest trends and prospects of the venture industry, and demonstrate the possibilities of innovative business.

It should also be emphasized that almost no marketing research is conducted in the innovative field, which is caused by deficiencies in the intellectual property protection system. The development of venture entrepreneurship is hindered by an imperfect information base, because in order to make a decision to invest in the activities of a high-tech company, venture investors must have enough information about its innovative potential and development prospects (Polishchuk and Polishchuk, 2017). In addition, the development of venture investments is negatively affected by the lack of highly qualified specialists in the innovation field, who would be able to provide effective management of both venture business and all other subjects of innovative entrepreneurship (Lyakh, 2015).

Prospects in today's conditions of martial law in Ukraine can be seen in preferential taxation, which is not related to direct budget expenditures, but to deductions from revenues. In our opinion, the tax policy in the field of promoting the development of venture entrepreneurship should be carried out in the direction of: influence on the production spheres of the material enterprise and commercial structures and banks in order to increase the volume of investment, which is directed to innovative processes, in particular, to venture enterprises; acceleration of production development and renewal of fixed capital on a modern technical basis; stimulation of scientific activity.

So, a comparative analysis of the main models of venture capital investment made it possible to single out the following advantages, which are promising for use in Ukraine. In our opinion, these should include: the active participation of the state in the creation of adequate venture investment institutions, the formation of material, legal and educational conditions for the emergence of a sufficient number of innovative companies; availability of state guarantees for venture investors; developed infrastructure and stock market; adequate legislative regulation of venture activity, in particular with regard to preferential taxation; availability of various investment mechanisms; defined methods of insurance of venture risks; interest of large credit and financial institutions, corporations in supporting venture activity.

We believe that the consistent implementation of the mentioned measures will create favorable conditions for increasing the innovative activity of state enterprises in all spheres of economic activity, will contribute to the increase of venture investments, and thereby expand the possibilities of realizing the innovative potential of the Ukrainian economy.

In general, it should not be denied that there is a significant potential for attracting venture financing by Ukrainian startups, in particular in the field of software development, online services and hardware products.

In order to bring the Ukrainian venture investment market into line with world trends, advanced foreign practices of developed innovation ecosystems should be introduced into the Ukrainian environment. For example, to improve the development of venture capital investment in Ukraine, the following forms of state instruments, successfully used in other countries, can be used:

- provide capital to venture capital funds or small companies as a loan at low interest rates or in the form of direct investments. So, for example, in Denmark there is a state program VaekstFonden (Business Development Finance) Loan Program, which provides state loans;
- provide benefits or state guarantees for loans to venture capital funds and small businesses. In the UK, tax breaks or exemptions are available through the Enterprise Investment Scheme and Venture Capital Trusts.

3.5. Legislative perspectives of regulation of venture entrepreneurship in Ukraine

The weak legislative framework, the instability of the regulatory field and the insufficient effectiveness of the protection of intellectual property rights are the primary problems of the development of the venture industry of Ukraine.

Several years ago, I. Lyakh highlighted the main shortcomings of the current legislation in the field of venture business development in Ukraine, which remain relevant even now: the legal status of venture business entities is not clearly defined; legislative acts are not sufficiently interconnected, and many legal provisions regulating business activities do not correspond to the real economic situation in the country; there is no legislation that regulates relations related to the use of scientific discoveries, because patent and copyright law do not protect the rights of scientists to the fundamental results of scientific research obtained by them for the first time; patent law also needs improvement, so it does not have a clear definition regarding venture business; necessary changes in the laws on business companies, on investment activities, on income taxation, in antimonopoly legislation and others (Lyakh, 2015).

The modern legal framework of Ukraine includes more than 217 thousand documents, and only 8 documents contain the term «venture fund» (and all of them refer to securities) (Official web portal of the Verkhovna Rada

of Ukraine, n/y). Also at the current stage, the Concept of the Development of the National Innovation System (2009–2025) is in effect, one of the directions of which is to create conditions for investing venture capital in high-tech innovation projects.

The database contains about 200 specialized legal documents regulating venture activity in terms of its innovative, investment, scientific and technical, intellectual components, in addition to certain provisions of the Constitution of Ukraine, the Economic Code, the Civil Code and the Concept of the Development of the National Innovation System, which need improvement, because they have a low effectiveness of influencing the development of this activity in Ukraine.

Therefore, we note the blurring and uncertainty of many concepts and the contradictory nature of certain normative legal documents, which prevent the formation of a unified base for venture investing in Ukraine. Adoption of the draft law «On Venture Funds for Innovative Development» or «On Venture Activity in the Innovative Sector» can be a positive development in the sector of domestic innovative business.

It is undeniable that the recovery of the economy after the full-scale war in Ukraine will require financing, including the widespread involvement of international capital in individual projects of Ukrainian business. However, such projects already exist and require urgent financial support. At the same time, national legislation limits the provision of such support during martial law.

Therefore, precisely with the aim of ensuring business financing during this period, a group of People's Deputies of the Verkhovna Rada registered a draft law on amendments to the Law of Ukraine «On Investment Activity» on supporting manufacturers and attracting foreign investment during martial law» No. 7456.

The document provides for ensuring support for the state's economy in the conditions of martial law, taking into account the main export groups, which will allow to support manufacturers and maximize foreign currency inflows to Ukraine, gives certain preferences to foreign investors who, despite all the risks of war, decide to invest in Ukraine.

According to the current Law of Ukraine «On Investment Activity», any investments cannot be made in conditions of a state of emergency or war, and therefore neither development nor support of production can take place during such a period.

The war period is the most difficult for the economic and budgetary sectors, and it is during this period that budgetary and donor support for the export sectors of the economy should be maximally activated. That is why the draft law proposes to consider not only the actions of citizens, legal

entities, but also the state, foreign financial institutions and international financial organizations regarding the implementation of investments as investment activity. A special investment project is being created for state support of private business under martial law. This means the possibility of state support for the preservation of existing industries.

If the business entity was conducting activities and had valid contracts, it can evacuate (receive free transportation of production facilities, a land plot on preferential terms for the location of evacuated production outside the territory of hostilities, etc.); quickly launch new critically important areas of economic activity. In the event that international partners of the private sector wish to launch a new joint venture (border transshipment terminals, elevators, road infrastructure, etc.) that will help in the mobility and export of Ukrainian products, according to the draft law, the state will provide a free plot for this, and will ensure the purchase of equipment and production equipment.

In general, it should be noted that the introduction of relevant changes to the Law of Ukraine «On Investment Activities» creates only a legal framework and is not a guarantee of the planned implementation. The full implementation of such a concept requires attracting funds, which due to the war are not available in the state budget, as well as conviction in restoring the evacuated or starting a new business.

At the same time, we consider it urgent to improve the legislation on venture financing. The development of the Concept for the development of the national venture industry should be focused on the formation and implementation of a unified state policy on the protection of venture investors, the attraction of investment capital and technologies, the development and operation of the market for securities and their derivatives, the circulation of shares on the secondary market, and to facilitate the adaptation of the national stock market to international standards.

We see the need for a clear legislative definition of the concept of venture financing and the principles and mechanisms of its implementation. In particular, apart from the concept of «venture entrepreneurship», which is contained in the normative legal acts of Ukraine, there is no definition of the essence of the functions, principles of activity of venture companies and funds, etc.

Conclusions

The main part of the scientific article contributed to the formulation of the following conclusions:

Venture financing contributes to the creation of new products, technologies, services or management solutions. Venture capital is one of the most effective mechanisms for financing innovation and scientific and technological progress, and its uniqueness is determined by accompanying additional services (management, marketing, consulting, etc.).

The state has a special role in stimulating the development of venture entrepreneurship, which creates appropriate institutional conditions for: providing venture business with state aid, encouraging the creation of venture funds, improving the legal framework and tax system in terms of taxation of venture funds, promoting the development of financial markets. It is necessary to develop a strategy to improve the investment climate and expand venture investing in Ukraine, the main measures of which should include: revision of the legislative framework, improvement of the investment climate, and measures to stabilize the economic situation in the country.

Specialized joint investment institutes, business angels of venture projects, and crowdfunding are the main tools for financing venture business in modern conditions. The spread of venture financing technologies, which involve the investment activity of business angels and the use of crowdfunding, requires the dissemination of information about their capabilities, the creation of an appropriate legal framework for the legalization and normal functioning of private venture capital, as well as tax incentives for individual investors who invest in risky projects.

The main tasks of the state in the field of venture business in Ukraine are defined as: development of the innovation ecosystem in accordance with the leading world trends; improvement of the legislative framework in order to create a foundation for investors, in particular in the field of venture business; formation of a favorable investment climate and tax regime for both domestic and foreign venture investors; development and implementation of new organizational and legal forms of venture investing; creation of conditions for the development of infrastructural units of the venture ecosystem (technology parks, incubators, accelerators, centers of entrepreneurial activity, stock exchanges); formation of conditions for the development of innovative entrepreneurship in the real sector of the economy, as well as in the scientific and technical sphere; creation of effective mechanisms of commercialization of the results of scientific, technical and innovative activities; increasing the financial literacy of the population and its investment activity; raising the awareness of potential innovators and startups about venture investment opportunities in Ukraine; building a system of protection of intellectual property and protection of the rights of owners and investors; formation of a modern securities market for startups going to Initial Public Offering.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 91-114
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Innovative entrepreneurship policy in Ukraine and roadmap strategy

DOI: https://doi.org/10.46398/cuestpol.4074.04

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Abstract

Using an empirically based methodology, the scientific approaches to define the concepts of "innovation" and "innovation policy" are summarized. It is substantiated that the goal of implementing innovative entrepreneurship is the transition to an innovative model of development, which requires the implementation of the following priority tasks: integration of all stages of innovative entrepreneurship in the region; formation of competitive regional innovative products; increasing the level of quality of institutional infrastructure; improvement of information provision of innovative processes; stimulation of regional business entities to ensure innovative activity; creation of communications in the "science-production" system; ensuring quality training of specialists in the field of innovative entrepreneurship; development of knowledge-intensive industries; effective use of innovative potential and intellectual capital of the region. Modeling of the innovative entrepreneurship profile of the regions led to the conclusion that the main task, for each of the regions, is to develop measures to increase the level of formation of its innovative entrepreneurship space, which will have the effect of optimizing the economic results of the operation and increase its competitiveness in domestic and international markets.

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Recibido el 04/05/2022 Aceptado el 28/07/2022

Keywords: innovation space; innovative entrepreneurship; region; innovative activity; socioeconomic development.

Política de emprendimiento innovador en Ucrania y estrategia de hoja de ruta

Resumen

Mediante una metodología de base empírica, se resumen los enfoques científicos para definir los conceptos de «innovación» y «política de innovación». Se fundamenta que el objetivo de implementar el emprendimiento innovador es la transición a un modelo innovador de desarrollo, lo que requiere la implementación de las siguientes tareas prioritarias: integración de todas las etapas del emprendimiento innovador en la región; formación de productos innovadores regionales competitivos; aumentar el nivel de calidad de la infraestructura institucional; mejora de la provisión de información de procesos innovadores; estímulo de las entidades empresariales regionales para asegurar la actividad innovadora; creación de comunicaciones en el sistema «ciencia-producción»; garantizar una formación de calidad de especialistas en el campo del espíritu empresarial innovador; desarrollo de industrias intensivas en conocimiento; uso efectivo del potencial innovador y del capital intelectual de la región. El modelado del perfil innovador de emprendimiento de las regiones permitió llegar a la conclusión de que la tarea principal, para cada una de las regiones, es desarrollar medidas para aumentar el nivel de formación de su espacio empresarial innovador, lo que tendrá el efecto de optimizar los resultados económicos de la operación y aumentar su competitividad en los mercados nacionales e internacionales.

Palabras clave: espacio de innovación; emprendimiento innovador; región; actividad innovadora; desarrollo socioeconómico.

Introduction

In the modern conditions of civilizational development and world globalization realities with post-industrial and industrial methods of production, the quality of management of innovative processes of business entities becomes a determining factor in the competitiveness of national economies. World experience proves that it is innovative entrepreneurship at the stage of its development that becomes the main structure-forming

element of the competitive market environment, an important driving force of the development of the economic system.

Ensuring the appropriate level of development of innovative entrepreneurship in the country makes it possible to increase the level of competitiveness of the economy and contributes to the growth of the country's gross domestic product. Given the role that the innovation sphere should play in the economic system, one of its most important functions from the point of view of ensuring economic growth is the production of innovations.

The importance of activating innovative entrepreneurship is realized by any business entity, because it is new innovative ideas, solutions embodied in a specific product that can provide competitive advantages. However, the active development of innovative entrepreneurship in Ukraine is hindered by a number of factors of the external environment, which affects both the total number of business entities that implement innovations and the effectiveness of their innovative activities.

Among the important factors that restrain the development of innovative entrepreneurship, scientists note the insignificant demand from consumers for innovative products, the insufficient amount of funding for the scientific and technical development of the national economy; limitation of venture financing instruments; imperfect motivation for active innovative activity (Krylova, 2020); high credit rates; imperfection of legislation; high economic risk; lack of demand for products; lack of information about sales markets, etc.

The main reasons for the weak development of innovative entrepreneurship at the regional level are attributed by S. Taran to the unfavorable investment climate for the implementation of innovative entrepreneurship in the region, low innovative activity of regional business entities, the ineffectiveness or absence of programs for the innovative development of the region, insufficient financial support for the development of innovative entrepreneurship in the region, and a low level of integration in the «science-business-government» system, the low level of technological structure of the region's economy (Taran, 2021).

The analysis of the sub-indices of the Global Innovation Index shows that the main obstacles that hinder the development of innovation processes in Ukraine are political instability (123rd place in the world), non-compliance with the rule of law (109), an underdeveloped business environment (104), the complexity of resolving insolvency issues (117), low rate of capital formation (104), unsatisfactory investment (121), slow formation of strategic alliances (113). At the same time, more and more strengths are forming, which contributes to the growth of entrepreneurial innovation: the ease of starting a business (52), the development of school

education (23), the development of higher education (32), the development of Internet services (42), research and development (44) have improved , ease of obtaining credit (34), protection of investors' rights (44), level of trade, competition and market scale (45), level of knowledge of employees (47), high-tech imports (33), creativity of knowledge (23, including return of useful models (1)), impact of knowledge (45), diffusion of knowledge (32), development of the field of intangible assets (23), Internet creativity (39) (Cornell University, INSEAD, and WIPO, 2020).

It should also be emphasized that the full-scale invasion of the occupiers affected various spheres of life in Ukraine, in particular the economy and the functioning of enterprises. Due to the aggression of a neighboring country, more than 50% of businesses on the territory of Ukraine are currently closed, and about 80% of its representatives plan to relocate to safer regions (almost 50% of businesses are closed due to the war).

According to statistics, as of July 2002, business in the east and south of Ukraine is recovering worst from the shock of the war in Ukraine. At the same time, which cannot help but please, more than 35% of enterprises already have a development strategy taking into account the new realities (almost 50% of businesses are out of business due to the war).

We believe that the strategy and road map for the development of entrepreneurship in the regions will contribute to increasing the efficiency of the functioning of the regional socio-economic system, taking into account as a predicted result the priority and irreversibility of the development of innovation-oriented sectors, stimulating the development of other businesses, and contributing to the implementation and increase the export potential of key sectors, the priority of modernization and technical and technological renewal of business structures, development of knowledge-intensive, energy and environmentally efficient, high-tech industries with increasing economic and social impact, which will strengthen the position at the meso and macro levels, expand markets and export potential.

Therefore, the issues of developing not only methodological provisions, but also separate scientific recommendations for the purpose of implementing priority tasks of innovative entrepreneurship at the national and regional level, developing a road map for the development of innovative entrepreneurship in individual regions are currently relevant.

1. Methodology of the study

The methodological basis of the research is the synthesis of the results of fundamental and applied research of domestic and foreign scientists on the problems of the development of innovative entrepreneurship, methods

of theoretical and empirical research. In the research process, a complex of general scientific and special methods was used to substantiate the provisions given in the article, in particular: analysis and synthesis - to compare the main approaches to the interpretation of the concepts and criteria of effective strategizing of innovative entrepreneurship; comparison and grouping - for the systematization of indicators used to evaluate innovative entrepreneurship; graphic method - for visual representation of the results of analytical studies; abstract-logical - for theoretical generalization and formulation of conclusions.

The methods of terminological analysis and theoretical generalization were used to substantiate the theoretical and methodological foundations, the main factors and criteria of effective strategizing of innovative entrepreneurship; analytic-logical method, method of analysis and synthesis - for the selection of modern strategies according to the level of formation of the innovation space and their role in the process of building a road map; graphical method of visualization and method of mathematical modeling - in order to build the value of a potential representative region on the basis of a comprehensive approach to the assessment of the integral indicator of innovativeness and the rating of regions by the level of innovativeness of entrepreneurship.

2. Analysis of recent research

The modern innovative development of various sectors of the economy of Ukraine, individual entrepreneurial structures and households of the country is characterized by unevenness and disproportionality, often acquiring signs of chaotic movement, when significant achievements are combined with subsequent regression. Processes aimed at accelerating innovative development in certain spheres of economic activity are combined with their restraint in others, causing low predictability of possible changes.

In this regard, scientific research related to the determination of directions, principles and conditions necessary for a successful innovative and informative transformation of modern society, which would ensure the growth of the quality of life of the population and the competitiveness of the economic system, is being updated (Zayats, 2021). The investigated problems found their partial solution in the scientific publications of modern scientists O. Didchenko, A. Tkachuk (Didchenko and Tkachuk, 2015), L. Malyuta (Malyuta, 2013), T. Marchenko (Marchenko, 2021), O. Mashtaler (Mashtaler, 2020), D. Ocheretny (Ocheretny, 2017), O. Olshanska (Olshanska *et al*., 2020), O. Sobko (Sobko *et al*., 2021), O. Zarichna (Zarichna, 2018), A. Poklonskyi (Poklonskyi *et al*., 2021).

Therefore, it should be recognized that the development of innovative entrepreneurship is currently in the center of attention of many scientists, because it acts as a catalyst for economic processes in any country, ensures an increase in its export activity, and stimulates the improvement of many spheres of activity at enterprises and in the economic environment of the country. This requires a study of the development of innovative entrepreneurship in Ukraine in order to reveal the factors influencing its position in the global economy.

At the same time, it must be stated that despite a significant number of publications on the activation of innovative entrepreneurship, to a greater extent they relate to the development of small and medium-sized businesses in the field of creation and dissemination of innovations, and in some places they do not take into account the conditions of today, which requires in-depth attention in order to produce them at the regional level and national levels.

Such directions of further research are the identification of factors that prevent the activation of the effectiveness of innovative activities of enterprises and the development of a set of measures to find opportunities to eliminate the main obstacles to the development of innovative business.

The purpose of the study is to analyze trends in the development of innovative entrepreneurship in Ukraine at the state and regional level, to assess and identify reserves for its improvement in order to revive existential processes in the face of modern challenges, to develop proposals for the activation of the development of innovative entrepreneurship in Ukraine, in particular, to analyze and create a model of the dependence of the functioning indicator entrepreneurship of the region and its rating according to the level of internal capabilities to carry out innovative activities and the ability to transform internal capabilities to carry out innovative activities into results.

3. Results and discussion

3.1. Prospects for the implementation of innovative entrepreneurship policy at the state and regional levels in Ukraine

The scientific and technological development of an individual country is determined primarily by its priorities, the means of achieving them, which are measured by the results and scope of their use. When forming guidelines for scientific and technical development to create promising production and technological potential, a significant role is played by the state innovation policy, which is developed within the framework of the national and international development strategy.

The modern market economy requires the performance of a number of basic tasks to increase the country's competitiveness. One of these tasks is the formation of innovation policy. Because, as international experience shows, a balanced national innovation policy contributes to high rates of innovative development.

Given the role that the innovation sphere should play in the economic system, one of its most important functions, from the point of view of ensuring economic growth, is the production of innovations. Innovation is the final result of innovative activity, in the form of a new or improved product or technological process, which is endowed with qualitative advantages in use and design, production, sale, is used in practical activities and has a social advantage. Innovation strategy is a coordinated set of management decisions that affect the innovative activity of the enterprise and have long-term consequences (Didchenko and Tkachuk, 2015).

Innovation policy - state management of the process of creating favorable conditions for innovative activity, the formation of innovative ideas and projects, the construction of scientific and research samples of innovations, their development and promotion to the market. Innovations include the latest equipment and technologies, modern production processes, scientific, organizational, managerial know-how and other novelties (Fedulova, 2006).

Entrepreneurship is characterized by the mandatory presence of an innovative component, whether it is the production of a new product, a change in the portfolio of activities or the establishment of a new enterprise. A new production management system, quality, application of new methods of production organization or new technologies are also innovative moments. In entrepreneurship, it is advisable to consider two main innovative aspects: the actions of the entrepreneur as a carrier and implementer of this function; groundbreaking innovative activity as an entrepreneurial function (Fadeev, 2012).

The legal foundations of Ukraine's innovation policy are contained in the Constitution of Ukraine and the following laws of Ukraine: «On innovative activity», «On investment activity», «On scientific and scientific and technical activity», «On special regime, investment and innovative activity of technological parks) and in other legislative acts regulating social relations in this area. In particular, according to the Law of Ukraine «On Innovative Activities», the main goal of the state innovation policy is to create socio-economic, organizational and legal conditions for the effective reproduction, development and use of the country's scientific and technical potential, ensuring the implementation of modern ecologically clean, safe, energy and resource-saving technologies, production and sale of new types of competitive products (On Innovative Activity: Law Of Ukraine, 2002).

With the aim of implementing the transition to innovative growth, the Decree of the Cabinet of Ministers of Ukraine № 526 dated 10.07.2019 approved the Strategy for the Development of the Sphere of Innovative Activity for the Period Until 2030, which envisages «initiating a communication mechanism of technological platforms where business and the state can become potential customers of innovations : on the one hand, business and the state make an application to solve their problems, and on the other - scientists, students, inventors offer innovative solutions that will be further scaled and become the basis for their own innovative business» (Strategy for the development of the sphere of innovative activity for the period up to 2030, 2019).

The innovative development of Ukraine takes place in complex socio-political and socio-economic conditions of uncertain prospects and instability of its regulatory and legal regulation, which increases the uncertainty of investors in maintaining a stable demand for innovative products or returning investments, producers - in the possibilities of profitable production and sales, consumers - in the ability to take advantage of the innovative product due to its high cost.

It is obvious that the affirmation of the values of innovative development as one of the basic principles by which subjects in economic activity should be guided requires a change from the modern fragmentary format of interaction of the main subjects to a systemic one – with strengthening of aspects of motivation for cooperation, stimulation of innovative activity of business structures, the interest of local authorities and public structures in spreading innovative social practices.

Despite the low international ratings of innovativeness of Ukraine's economy, the population positively perceives activities related to their development, demonstrating openness to science, technology, the latest technologies, readiness to use its results, as well as understanding the importance of innovations for the country's competitiveness in the global space. However, a pessimistic attitude towards transformational changes in the economy, a skeptical assessment of the chosen course, and disbelief in the success of the implemented reforms, mostly related to military aggression on the territory of Ukraine, oppose the establishment of value guidelines for innovative development.

Unfortunately, the key barriers to the spread of innovations in Ukrainian society arise at the stage of forming the relevant directions of state policy, defining its priorities, goals and tasks for the near and distant future. And although every year in the country the circle of subjects involved in innovative activity is constantly growing (public movements also join it), its effectiveness remains low due to the weakness of mechanisms for state stimulation of innovative development and insufficient investment in the field of scientific research.

Thus, the establishment of value guidelines for innovative development goes far beyond the acceptance or non-acceptance of innovative ideas or products of innovative activity. This is a rather wide range of problems, covering the practice of forming state innovation policy, innovative activity of business structures and consumer behavior of households. Ukraine should intensify the formation of the European model of innovative development in order to reduce the significant technological lag (due to wear and tear of fixed assets, high resource intensity of production, personnel losses, low level of innovative activity) and to avoid new waves of systemic crisis of the domestic economy.

The development of effective measures for the activation of innovative entrepreneurship, first of all, requires focusing attention on identifying the strengths and weaknesses of the development of innovative entrepreneurship, as well as opportunities and threats for its activation in Ukraine. In this sense, it is important to assess the existing level of the innovation process, its supply of personnel and financial resources, the level of development of the innovation infrastructure, the establishment of integration relations between the main participants of the innovation process, the effectiveness of innovation activities, the presence of demand for innovative products, etc.

To ensure the further innovative development of entrepreneurship in Ukraine, I. Kryvyovyazyuk recommends the creation of an effective mechanism for activating innovative, scientific and technical potentials and ensuring the possibility of innovative self-development of the country, which involves the implementation of the following strategic tasks: ensuring the priority conditions for the country's innovative development; achieving such a level of quality and innovativeness of the national manufacturer's products that will ensure its high competitiveness on international markets; optimal combination of state management methods, which will take into account the potential opportunities of the innovative sector of the economy of Ukraine; ensuring the formation of favorable conditions for the development of intellectual potential capable of productively carrying out activities in conditions of turbulence of the country's economy; legislative support for innovative development of business entities (Krivovyazyuk, 2021).

It is important to achieve positive results for society thanks to the comprehensive use of all possible influence tools, primarily related to the effective innovation policy of the state. We share the point of view of T. Zayats, that:

> It should be formed as a policy of a systemic and long-term nature, based on clearly defined quantitative and qualitative parameters, become a kind of

> «locomotive» for the development of socially responsible business structures capable of generating innovative ideas and gradually implementing them (Zayats, 2021: 17).

Thus, we can detail the priorities for the development of innovative entrepreneurship in the region, which include: integration between all stages of innovative entrepreneurship in the region; formation and implementation of competitive regional innovative products; increasing the level of quality of the institutional infrastructure of the region; improvement of information provision of innovative processes; stimulation of regional business entities to ensure innovative activity; creation of communications in the «science-production» system; ensuring quality training of specialists in the field of innovative entrepreneurship; development of knowledge-intensive industries; effective use of the innovative potential and intellectual capital of the region.

3.2. Strategizing the road map of innovative entrepreneurship in Ukraine

Phenomena and processes occurring in socio-economic systems depend on a significant number of factors. As a rule, each factor does not separately determine the phenomenon under study in its entirety. Only a set of factors in their interdependence can give a more complete picture of the nature of the phenomenon.

Socio-economic systems of the regions are characterized by varying degrees of formation of innovative entrepreneurship, which is determined by the action of a significant number of internal and external factors. Influencing these factors can help increase the integrated indicator of the formation of innovative space for the development of entrepreneurship in the region.

Typology of regions according to the formation of innovation space is carried out on two grounds:

1. the achieved value of the integrated rating of the formation of the innovation space of the region;
2. by the place of the region in the integrated rating of the formation of innovation space.

To form the types of regions on the first sign, consider that the lower limit of the interval series is 0, and the upper corresponds to 1, given that all indicators have limits from 0 to 1. For the second sign, to determine the types of regions by place in the integrated rating of the formation of innovation space, based on the most common typology of innovative enterprises, according to which among them there are three types -

leaders in innovative business, followers, and outsiders. The leaders in the innovative entrepreneurial activity are proposed to include the regions that took 1st to 5th place in the ranking, and the outsiders - from 21st to 25th place. All other regions are followers. We believe that it is optimal to group regions using at least 5 types. Thus, 15 follower regions are proposed to be divided into three subtypes.

The expediency of increasing the level of formation of the innovative space of regional entrepreneurship can be established by constructing the dependence of the functioning of the country's regions on the components of the integrated indicator (Dyba *et al.*, 2013) of the formation of Ukraine's innovation space (ranking of region's innovation in the results) (Hromozdova and Stenicheva, 2019).

Given the high reliability of this model, it can be used not only to justify the feasibility of decision-making in the field of innovation of the regions but also to predict the results of their implementation.

Before building an appropriate model, it is necessary to determine which indicator should be used as an indicator to assess the functioning of entrepreneurial activity in the regions of Ukraine. Most often, the gross regional product of the region is used as the main indicator for assessing the functioning of the regions.

However, we believe that this indicator cannot be used to build dependency models, as the comparability of gross regional products of different regions is questionable. Therefore, it is better to use a relative indicator - gross regional product per capita, which more accurately reflects the results of entrepreneurship of individual regions and allows a sufficient degree of objectivity to compare them with each other.

That is why it is advisable to build a model gross regional product dependence per capita in the regions of Ukraine on the indicators: rating internal opportunities for innovation, rating ability to transform internal opportunities for innovation into results, indicator of functioning regions.

Based on the data in the table, we propose to build a correlation-regression model. At the same time, first of all, it is expedient to determine the coefficients of pair correlation, which will allow us to conclude that there is a relationship between performance (Y - gross regional product per person, UAH) and factor indicators (X1 - rating of regions by level of internal opportunities to innovate). Activities, in points, X2 - ranking of regions by the level of ability to transform the internal opportunities for innovation in the results, in points).

Comparing the calculated data with the data of the Shaddock scale, the following conclusions can be made: the most significant influence on the change of the performance indicator is the region's rating on the level

of ability to transform internal opportunities for innovation into results (correlation coefficient equal to 0.761); the relationship between the performance indicator and the ranking of regions by the level of internal opportunities for innovation is also close and direct (the correlation coefficient is equal to 0.756).

Table 1. Pair correlation coefficients

Factor indicator	Correlation coefficient of the performance indicator (Y) with the corresponding factor indicator
rating of regions by the level of internal opportunities for innovation, points (X1)	0,756
ranking of regions by the level of ability to transform internal opportunities for innovation into results, points (X2)	0,761

(Own elaboration).

It should also be determined whether the calculated correlation coefficients are significant, for which they are compared with the critical value of t - Student's t test:

$$t = \frac{r}{\frac{1 - r^2}{\sqrt{(n-1)}}}$$

r - is the pair correlation coefficient;

n – is the number of units in the aggregate.

where

The actual and critical values of the student's t-test are presented in table 2.

Table 2. Comparison of actual and critical values of Student's t'-test

Variable number	X1	X2
t-critical	2,074	2,074
t-calculated	8,650	8,873

(Own elaboration).

The table shows that t-critical is less than t-calculated, i.e., the correlation coefficients can be considered significant. Determine the type of relationship between indicators (Hromozdova *et al.*, 2020: 4909 - 4915). To do this, we construct graphs of empirical regression lines.

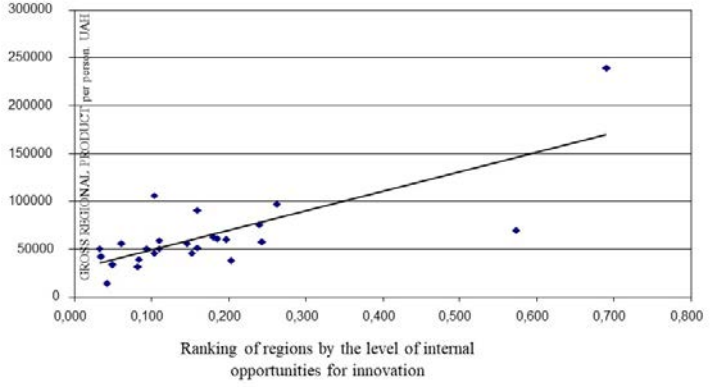

Figure 1. Empirical regression line between gross regional product per capital and the rating of regions by the level of internal opportunities for innovation. (Own elaboration).

As can be seen from the constructed regression line, the relationship between gross regional product per capital and the ranking of regions by the level of internal opportunities for innovation is close to linear

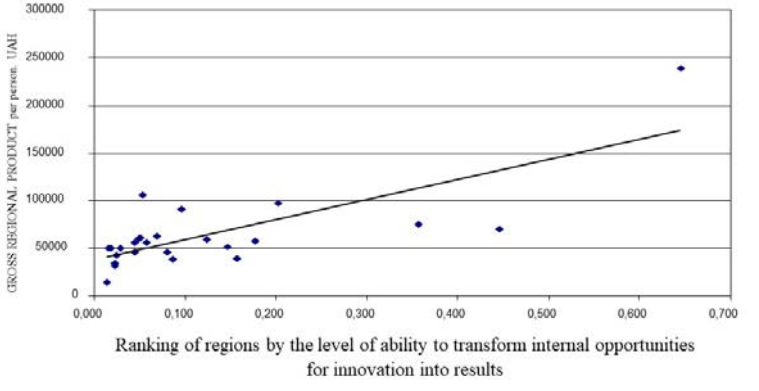

Figure 2. Empirical regression line between gross regional product per capita and the ranking of regions by the level of ability to transform internal opportunities for innovation into results (Own elaboration).

As can be seen from the constructed regression line, the relationship between gross regional product per capita and the ranking of regions by the level of ability to transform internal opportunities for innovation in the results can also be represented by the dependence of the linear type.

Therefore, this connection can be represented as follows:

$$Y = a_0 + a_1 X_1 + a_2 X_2$$

Using the method of correlation-regression analysis, we find the parameters of the regression equation (Bludova *et al.,* 2019). The constructed dependency function will look like:

$$Y = 31881{,}6 + 98914{,}713 X_1 + 117620{,}697 X_2$$

This model was tested for adequacy using Fisher's test. The actual value of F - Fisher's test, obtained as a result of calculations, is 16.57, while its tabular value is 3.4 at K 1 = 25-2-1 = 22 and K 2 = 2, ie (Froz.> Ftab), which means that the regression equation is adequate to reality.

The coefficient of multiple correlations according to the constructed research model is 0.775, which indicates a close relationship between performance and factor indicators.

Thus, the constructed dependence model can be used for further research. At the same time, taking into account the results of its construction, it can be argued that the indicators that reflect the formation of the innovation space have a significant impact on the performance of the regions.

That is why the development of measures to increase the level of formation of its innovative business space, which will have the effect of improving the performance of the region, can be considered a priority for each of the regions.

Such measures can be reflected in the roadmap for the formation of innovative entrepreneurship in the regions.

Unfortunately, traditional approaches to identifying and solving problems often remain stereotypical: the problem is considered without a need's assessment.

Ukraine is actively reforming the decentralization of power. Territorial communities receive greater financial and managerial powers. This allows them to independently plan policy, development, resource allocation, and respond to existing problems. At the same time, the received powers must contribute as much as possible to the fulfillment of responsibilities

for ensuring the principles of sustainable development. This possibility of coordination is provided by the development and implementation of a modern strategic document - a road map.

This document should be agreed upon within the Strategist 4.0 expert community and intended for business leaders, as well as Industry 4.0 innovators and other stakeholders involved in shaping the innovation space of the region's socio-economic system. According to the official data of regional road maps, the formation of innovative entrepreneurship in Ukraine does not exist.

The result of creating a road map is an appropriate scenario of the process or the implementation of certain measures, taking into account all the requirements, restrictions, risks, deadlines, and alternatives. The issue of construction and application of road maps is considered in more depth in the works of foreign scientists and practitioners.

In general, the road map is a medium- or long-term plan for the development of any socio-economic process (Farrukh *et al*., 2001). This strategic planning tool is fairly new. The first road maps were developed in the United States in the 1970 s by large industrial corporations - Motorola and Corning and were a simple but effective method of planning certain areas of future development of corporations, which allowed to link strategic and operational objectives, adjust global the purpose of management and to establish the necessary resources to achieve it.

A positive aspect of the roadmaps was the ability to identify the performers responsible for certain activities reflected in the roadmap. Subsequently, road maps began to be used in the field of public administration of economic policy. Thus, in 1970–1981, road maps were first used in the United States to gradually deregulate some of the country's industries, to reduce government spending and inflation.

The development of tools for the public administration of economic development and industry in the world has led to the improvement of road maps on an in-depth scientific basis. Today, the scientific literature presents a variety of approaches to defining the essence of the concept of "road map", which are mainly based on a comprehensive approach that combines the achievements of economics, management of mathematical modeling, and forecasting.

In general, most authors emphasize such features of road maps as the definition of goals for each direction of the map; the need to form development priorities; the need to justify development scenarios; building communication links between processes within the map.

With the development of the theory of strategic management and the improvement of approaches to planning and forecasting socio-economic

processes in the regions, road maps have taken a special place among the innovative tools of regional management.

It should be noted that in the context of this study, the road map combines these two functions and is a list of goals and key tasks to create innovative space regions of Ukraine for the next five years. It can also be part of the Strategy for the Development of the National Innovation System and an action plan for the formation of innovative business space on both the meso and macro levels, as well as a document aimed at implementing common priorities.

Given the lack of available financial resources to conduct large-scale reform of the national scientific and technological systems required is the development strategy of interaction research infrastructures and industry.

Lack of demand from the national economy in the medium term for the formation of innovation space, you can use the roadmap for the formation of innovative entrepreneurship in the region as a ready business plan with indicators to monitor its implementation to receive technological assistance from donors in Ukraine. The roadmap for the formation of innovative entrepreneurship in the region is based on the principles of interactivity, which provides for the possibility of making adjustments at any stage of the map in any indicator.

The construction of the roadmap for the formation of innovative business space in the region was based on the definition of priority goals for the development of the region, as well as the stimulation of specific joint actions and projects aimed at improving the results of innovation.

Involving Ukrainian business in the Single Market can create a corresponding demand from national and European business to science for scientific support of the formation of innovative business space of the regions and the solution of common social problems.

Recommendations for inclusion in the road map:

- formation of a permanent working group on the formation of innovative entrepreneurship in the region;
- creation of a coordination committee between managers of public funds by agreeing on pooling financial, organizational, and human resources to achieve a common goal;
- implementation of a mechanism to promote the development of technologies for sustainable development in terms of forming the agenda and holding an annual forum for the implementation of measures for the formation of innovative entrepreneurship in the region;

- creation of a joint international fund with donors of Ukraine for the formation of innovative entrepreneurship in the region and its key indicators.

Roadmap for the formation of innovative business space:

Step 1: Gather enough information.

Accordingly, the first step includes (depending on local characteristics) a quantitative study of the formation of innovative business space in the region.

The authors conducted a comprehensive study of the regions of Ukraine on the level of formation of the innovation space. On this basis, a working hypothesis was formed, namely - for the formation of innovative business space of the socio-economic system of the region it is necessary to identify strengths and weaknesses of the region in the field of innovative entrepreneurship, their opportunities, and threats, to build a matrix for diagnosing strengths taking into account the interdependence of indicators that reflect the formation of innovative business space, confirmed by the results of modeling, and the results of the functioning of the regions as a whole. A questionnaire was formed to identify priorities and identified risks of mainly methodological and methodological nature.

Step 2: to establish the joint work of the public, representatives of local governments, businesses.

Developing a vision for the innovation space of the regions.

A vision is an idea of the image of the future. Developing a vision is one of the steps to create a roadmap for the formation of an innovative business space of the socio-economic system of the region as a strategic document. Relevant foresight studies of innovation activities and certified strategic programs of regional development research can be additional documents.

Risks: passivity of participants.

Step 3: Develop an action strategy to expand the innovation space of the regions or their integration to obtain a synergistic effect.

Monitoring the status of implementation of the developmental steps is one of the sections of the Strategy, which is described in detail in a specific document. For effective monitoring, it is necessary to create a monitoring group with the participation of government officials and the public, as they are the main actors in the process of forming an innovative business space. Provide for the definition of "nodes" and indicators for assessing the implementation of the process of formation of innovative entrepreneurship and the appropriate system of control over its implementation.

According to the built model, the road map provides an opportunity to increase the rate of innovation entrepreneurship and as a result of the implementation of the measures envisaged in it - an increase in gross regional product and Ukraine's position in international rankings of innovations and more.

It is established that for the Mykolaiv area which is chosen as the representative region of a cluster and, the important feature of innovation space is its big territorial disparities. Practically all research and design institutions are located in Mykolayiv. The main problems that need to be addressed include:

- insufficient efficiency of the existing innovation infrastructure facilities in the region;
- low level of interaction and cooperation between the subjects of innovation, including regional and local authorities;
- lack of innovation structures in the field, which provide 100 innovators with several specialized services for the development, promotion, prototyping, innovation, etc.;
- the level of interaction between enterprises and research institutions is insufficient for qualitative structural changes in the region's economy.
- Given the main problems that hinder the development of the scientific and technological potential of economic transformations in the region, the main directions of joint efforts soon should be:
- development of a modern research base and infrastructure for technology transfer in scientific institutions and free economic zones;
- creation of infrastructure of industrial parks and techno parks for scientists and business;
- introduction of an effective mechanism of the mutually beneficial partnership of the triple spiral "power-business-science";
- creation of centers of innovations and technology transfer; innovation centers; experimental zones and laboratories, centers for increasing productivity and technology transfer, innovative venture funds; centers for commercialization of intellectual property rights, etc.;
- development and implementation of the Program of scientific, technical, and innovative development of the region; creation of innovative and creative clusters in the region.

The basic strategic priority within the road map of the Mykolaiv area is the development of innovation-oriented sectors of the economy, which will give a push for the development of other spheres, and also will promote the realization of export potential of key sectors of the economy, modernization and technical and technological re-equipment of industrial enterprises, high-tech industrial productions with the growing economic and social return, expansion of the markets for the production of domestic manufacturers.

Assessing the research and innovation potential of the region in terms of types and subtypes of economic activity, taking into account the potential of related industries, it is determined that the basis for innovation space can form such economic activities as processing fruits and vegetables and baby food based on eco-technologies; development of the aqua industry; mechanical engineering, including shipbuilding. These areas are relevant to achieving the goals of sustainable development, facilitating the transition to a resource-saving economy, creating competitive advantages in domestic and foreign markets; supporting structural change, offering new and better jobs, and social innovation.

The formation of an innovative business space makes it possible to unlock the regional potential for structural and technological change, as well as for industrial modernization on an innovative basis. The growth of the role of innovation will be achieved through the development of innovation-oriented sectors of the economy. Achieving the strategic goal is expected through the implementation of innovative projects.

The following innovative projects are included in the road map for the Mykolaiv area:

Table 3. Innovative projects on the road map of the Mykolaiv area

Project	Expected costs and results
Development of the Innovation Cluster "RInnoHUB"	Stimulating the development of innovation infrastructure and supporting innovation activities (UAH 5,000 thousand - UAH 12,000 thousand)
Economic and social business is an incubator for OTG	Entrepreneurship support (UAH 3,600,000 - UAH 6,000 thousand)
Incubator for starting a business in the field of aquaculture (AQUABATOR)	Stimulating the development of innovation infrastructure and supporting innovation activities (UAH 5,000 thousand - UAH 12,000 thousand)

Support for the institutional development of the Maritime Cluster of Ukraine	Entrepreneurship support (UAH 3,600,000 - UAH 6,000 thousand)
Modern irrigation is the basis of innovative development of agricultural production of the Mykolaiv area	Stimulating the development of innovation infrastructure and supporting innovation activities (UAH 5,000 thousand - UAH 12,000 thousand)
Construction of the industrial park "New Bug" in the territory of the Novobuzhsky city council of Mykolaiv area	Stimulating the development of industrial investment (UAH 12,000 thousand - UAH 48,000 thousand)
Construction of Berezan industrial park in Berezanskaya OTG of the Mykolaiv area.	Stimulating the development of industrial investment (12000 thousand UAH - 48000 thousand UAH)

(Own elaboration).

Monitoring of the achievement of the strategic vision will be based on control over the implementation of strategic goals. The main quantitative indicators for each strategic goal for the monitoring period will be the indicators arising from the list of projects to be implemented.

Expected results - gross regional product (in actual prices) per capita 70,336 thousand UAH and approaching the regional level to the national average, while maintaining the growth trend of gross regional product per capita - not less than 75%. Differentiation of gross regional product per capita (ratio to the average in Ukraine) by 0.83% approaching the level of the region to the level of the national average.

According to the built model, the road map provides an opportunity to increase the indicator of innovation space and as a result of the implementation of the measures envisaged in it - an increase in gross regional product and Ukraine's position in international innovation rankings, etc.

Conclusions

Therefore, at the national level, the state should become a catalyst of the innovation process and a reliable assistant for subjects of innovation activity, it is necessary to create and implement an economic model of innovation activity, which would be based on clear economic criteria of high efficiency at all stages of the innovation system, from fundamental research and development to production development. Orientation to an innovative path of development requires the subjects of economic activity to rebuild the management system, to create, based on marketing principles, a

system of operational search for new areas and ways of realizing one's own potential based on new products, technologies, methods of production and sales organization. Fulfillment of the above conditions and awareness of the importance of innovative transformations by business entities, interest in the implementation of a complex of investment and innovative ideas, will ensure the competitiveness of Ukrainian products on the world market, ensure the strengthening of the potential of business entities and contribute to sustainable economic growth of the Ukrainian economy.

The priority directions for the development of innovative entrepreneurship in the region include: integration between all stages of innovative entrepreneurship in the region; formation and implementation of competitive regional innovative products; increasing the level of quality of the institutional infrastructure of the region; improvement of information provision of innovative processes; stimulation of regional business entities to ensure innovative activity; creation of communications in the «science-production» system; ensuring quality training of specialists in the field of innovative entrepreneurship; development of knowledge-intensive industries; effective use of the innovative potential and intellectual capital of the region.

A scale for determining the point assessment of opportunities and a scale of threats to the formation of an innovative space have been created. The general view of the profile of the region according to the formation of the innovation space was considered. It is substantiated that, taking into account the fact that the most typical is the situation in which the formation of the innovation space of the region is at a critical level, it is advisable to build the innovation profile of the region for the region, which is a typical representative of this cluster.

An innovation profile of the regions of Ukraine for 2019 was built, which made it possible to determine that Mykolaiv region can be considered the most typical (representative) representative of this cluster, since the quadratic deviation of the integral rating of the formation of the innovation space here is minimal and amounts to only 0.002 points. Its innovative profile was built precisely for this representative region.

The basic strategic priority in the framework of the road map of the Mykolaiv region is the development of innovation-oriented sectors of the economy, which will provide an impetus for the development of other areas, as well as contribute to the realization of the export potential of key sectors of the economy, the modernization and technical-technological re-equipment of industrial enterprises, the development of knowledge-intensive, energy- and ecologically efficient and high-tech industrial productions with growing economic and social returns, expansion of sales markets for the products of domestic manufacturers.

Evaluating the research and innovation potential of the Mykolaiv region in terms of types and subtypes of economic activity, taking into account the potential of adjacent industries, it was determined that the following types of economic activity can form the basis for an innovative space: processing of fruits and vegetables and production of baby food based on eco-technologies; development of aqua industry; mechanical engineering, including shipbuilding.

These directions are relevant for achieving the goals of sustainable development, contribute to the transition to a resource-saving economy, create competitive advantages in domestic and foreign markets; support structural change by offering new and better jobs and social innovation.

The modeling of the innovative profile of entrepreneurship of the regions of Ukraine made it possible to come to the conclusion that the primary task for each of the regions is to develop measures to increase the level of formation of its innovative entrepreneurial space, which will have the effect of improving the economic results of the operation of this region and increasing its competitiveness on national and international markets.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 115-131
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Using the possibilities of criminal analysis during the pre-trial investigation in criminal proceedings

DOI: https://doi.org/10.46398/cuestpol.4074.05

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Abstract

The article identifies theoretical and applied problems of the use of criminal analysis in the investigation of criminal offenses. The main characteristics, components and types of criminal analysis are highlighted. The positive experience of the American model of criminal analysis is studied. The peculiarities of the use of criminal analysis in the territory of Ukraine are clarified, the prospects of legalization of its results are determined, as well as active implementation at the national level to enhance the fight against organized criminal activity. With the help of general philosophical and special scientific methods, the prospects of analytical support of criminal proceedings during pre-trial investigation are examined, proposals are made on active implementation and effective use of methods and results of criminal analysis in criminal procedural evidence. It is concluded that an effective way to analytically obtain information about the suspect's contacts, his probable connections and other entities having an interest of operational and investigative units of Ukrainian law enforcement agencies is to use the method of telephone connections analysis during pre-trial investigation of criminal offences.

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Recibido el 14/04/2022 Aceptado el 25/06/2022

Keywords: crime prevention; registration; criminal analysis; strategist; operational and tactical analysis.

Uso de las posibilidades del análisis criminal durante la investigación previa al juicio en el proceso penal

Resumen

El artículo identifica problemas teóricos y aplicados del uso del análisis criminal en la investigación de delitos penales. Se destacan las principales características, componentes y tipos de análisis criminal. Se estudia la experiencia positiva del modelo americano de análisis criminal. Se aclaran las peculiaridades del uso del análisis criminal en el territorio de Ucrania, se determinan las perspectivas de legalización de sus resultados, así como la implementación activa a nivel nacional para aumentar la lucha contra la actividad delictiva organizada. Con la ayuda de métodos filosóficos generales y científicos especiales, se examinan las perspectivas de apoyo analítico de los procedimientos penales durante la investigación previa al juicio, se hacen propuestas sobre la aplicación activa y el uso efectivo de métodos y resultados del análisis criminal en la prueba procesal penal. Se concluye que una forma eficaz de obtener analíticamente información sobre los contactos del sospechoso, sus probables conexiones y otras entidades que tienen un interés de las unidades operativas y de investigación de los organismos encargados de hacer cumplir la ley de Ucrania, consiste en utilizar el método de análisis de conexiones telefónicas durante la investigación previa al juicio por delitos penales.

Palabras clave: prevención del crimen; registro; análisis criminal; estratega; análisis operativo y táctico.

Introduction

With the development of any branch of knowledge, including forensic science, problems of varying complexity arise that require specific methods and approaches to solve them. This is also due to the fact that the volume of scientific knowledge is growing rapidly, it is necessary to improve and create new, effective methods of assimilation and practical application of the acquired knowledge. The main task at the present stage of forensic science and operational search activity should be the development of methods of both practical and theoretical orientation, which will create a solid scientific basis for its development.

In connection with the transition to the information society, the world trend in the field of law enforcement has become the use of various methods and tools for analyzing a wide range of information, both directly related to criminal activity and indirectly related to this negative social phenomenon.

After the entry into force of the new Criminal Procedure Code of Ukraine and the introduction of certain changes in other legislative acts, factors were identified that hinder the implementation of quality activities at the stage of pre-trial investigation of criminal proceedings. Within the framework of the given powers, law enforcement bodies obtain a sufficient array of information on criminal activity, including organized economic crime. In this regard, the use of tools that would be able to process a large amount of available data is a crucial task. One of such tools is criminal analysis (Koristin *et al.*, 2016).

One of such tools in the activities of operational units of the National Police of Ukraine is criminal analysis - a specific type of information-analytical activity, which consists in identifying and accurately determining the internal links between information (information, data) related to the crime and any other data obtained from various sources, their use in the interests of operational search and investigative activities, their analytical support (Bilous, 2021).

As practice shows, timely and effective analytical research contributes to the detection of a significant number of high-profile crimes, especially - "in hot pursuit", the detention of criminals and the general increase in pressure on crime. The emphasis on criminal analysis is extremely important in the context of law enforcement, given the profound impact it can have on police strategy, tactics and methods.

Currently, criminal analysis has become the beginning of active implementation of technological innovations through constant updating of software analytical tools, modernization of technical means, introduction of innovative technologies (for example, systems for rapid viewing and analysis of surveillance camera materials using Video Synopsis, innovative image processing technology) (Kalynovsky and Shkolnikov, 2017).

1. Methodology of the study

Given the set goal, the specifics of the object and subject of research, the methodological tools were chosen. The methodological basis of the article is a dialectical approach to the analysis of the use of criminal analysis in the activities of investigative and operational units. The study used a system of methods of scientific knowledge: formal logic (deduction, induction, analogy, abstraction, synthesis) to clarify in detail the content of the issues;

empirical - during experimental research and interviewing experts; system analysis method - to determine the directions of introduction of innovative approaches to solving the problem; theoretical - during the study of scientific and educational literature; modeling - in the process of studying certain objects by modeling their individual features.

2. Analysis of recent research

The issue of the content and role of criminal analysis in the criminal procedural activities of law enforcement agencies of Ukraine to combat crime has recently attracted much attention of scientists and practitioners. The scientific basis of the work is the work of authoritative scientists who study the problematic issues of analytical support of criminal proceedings, in particular R. Bilous, V. Vasilinchuk, O. Taran (Bilous *et al*., 2021), J. Eterno, C. Roberson, (Eterno and Roberson, 2015), I. Fedchak (Fedchak, 2021), O. Kalynovsky, V. Shkolnikov (Kalynovsky and Shkolnikov, 2017), A. Sakovsky, M. Klimchuk (Sakovsky and Klimchuk, 2019), O. Koristin, S. Albul, A. Kholostenko, O. Zayets (Koristin *at al*., 2016), A. Guchok (Guchok, 2012).

At the same time, today in the doctrine and practice of Ukrainian law enforcement agencies there are many problematic issues related to the definition and common understanding of the category «criminal analysis», its content and types, legal regulation of its use in criminal proceedings and, accordingly, the use of results. products) of criminal analysis in criminal procedural evidence at the stage of pre-trial investigation, etc.

Currently, organizational and legal changes in the activities of law enforcement agencies, which necessitates the continuation of scientific research in this area in the context of new conditions. This justifies the goal of determining the content, place and role of criminal analysis in ensuring effective pre-trial investigation and clarifying all the circumstances to be proved in criminal proceedings, development and publication of relevant legal and applied recommendations.

3. Results and discussion

3.1. General bases of the criminal analysis concerning activity of all law enforcement agencies concerning counteraction to crime

At the beginning of the study, it is advisable to investigate the etymology of the term «analysis», as a component of the broader concept of «criminal analysis», as well as to determine the essence of «forensic information»,

as a related category, which is more inherent in the doctrine of forensic science.

A particularly important place in the criminal process during the implementation of its stages is played by the source of information, which depends on the reliability, truthfulness and reliability. Sources of information are statutory databases and data banks with a wide range of representation, which are used in practice, the activities of state organizations, in carrying out their activities, in the transfer of personal information.

Such sources can be divided into open and closed. Sources of information on criminal analysis may be information obtained in the course of operational and service activities of the police, the media, including the Internet, from other sources, as well as the results of strategic criminal analysis and their own analytical work.

According to the provisions of Article 25 of the Law of Ukraine "On the National Police", the police have the right to carry out information and analytical activities within which they also carry out information retrieval and information-analytical work (Law Of Ukraine "On The National Police", 2015). During the criminal analysis, there is a purposeful search, detection, recording, removal, ordering, analysis and evaluation of criminal information, its presentation, transmission and implementation.

Saltevsky considers forensic information as «data on the theoretical foundations for the occurrence of traces of a crime, practical methods and means of using them to detect, investigate and prevent crimes» (Saltevsky, 1996: 37). It reduces forensic information to trace data. The proposed definition seems to be somewhat narrowed in scope, since forensic information includes not only information about traces, but also, for example, data about the offender, the situation, etc.

Parshina proposed the following definition: "Forensically significant information is information that is important for establishing the circumstances to be proved in criminal proceedings, or contributing to obtaining such, as well as any information that is important for achieving the goals of criminal proceedings" (Parshina, 2004: 8).

Taking into account the proposed comments, as the initial definition of criminal information, it can be taken as a basis that such is any factual data about the investigated crime event and the circumstances associated with it. In conclusion, we can conclude that information is the basic concept of forensic science. The practical significance of the study of forensic information is necessary in order to determine and develop the most effective ways of collecting it, researching, evaluating and using it, verifying its reliability, as well as introducing the technical means necessary for this.

In its content, «criminal analysis» combines two separate concepts: «criminal» and «analysis». Criminal - one that relates to the study of crime and crime, the fight and prevention of crime (Fedchak, 2021). The analysis ensures the completeness and versatility of the study. In the structure of any forensic research the analytical stage is allocated, its essence consists in movement of thought from the general and separate qualities of object. In this case, the completeness of the analysis is achieved by achieving a level of detail of the characteristics of the studied object, in which each of them is elementary, ie it is not divided into other individual elements, quanta of information about the qualities of the studied object.

In our opinion, it is necessary to distinguish between two aspects of the doctrine of methods. The first is the methods of obtaining a scientific title. The second is the methods of practical activity developed on this basis. A separate issue is the transformation of the first into the second and the clarification of the limitations of the transformation. Thus, we believe that the method of criminal analysis is a method of approach to identifying criminal activity, its mechanism in the time of its formation and development, the essence of which is the conditional division of the object under study (criminal activity) into separate components.

Each of them is studied in interaction as part of the whole, and the characteristic features of the latter are the use of an information system in the form of reflections of the objects of the mechanism of criminal activity, the study of the causes of formation, changes in these objects, the identification and study of relationships between these objects.

Criminal analysis is characterized as a specific type of information-analytical activity, which is to identify and more accurately determine the internal links between information relating to a criminal offense, and any other data obtained from various sources, their use in the interests of operational and investigative activities, their analytical support (Vlasyuk, 2011). The purpose of collecting and analyzing information is to create and test hypotheses and conclusions about past, present and future illegal actions, concerning the description of the structure and scope of criminal groups and the transfer to the management of clear information on operational and investigative (investigative) actions (Bilous *et al.*, 2021).

During the implementation of the criminal analysis procedure, the tasks are solved to ensure the adoption of more effective decisions in a situation of uncertainty or the presence of new challenges, to prevent possible risks and threats, as well as, in general, information support of the bodies ensuring national security, in the implementation of their operational-search activities and procedural actions.

We believe it is possible to agree with the opinion of O. Rozhko, who, having considered the practice of using the mentioned method of work of

law enforcement agencies of foreign countries, came to the conclusion that the use of criminal analysis at the stage of preliminary investigation can qualitatively increase the level of investigation of multi-episode, complex, and high-profile criminal cases (Rozhko, 2018).

In the course of criminal analysis, purposeful search, detection, fixation, removal, ordering, analysis and evaluation of criminal information, its presentation (visualization), transmission and implementation are provided.

In the process of criminal analysis there are two main types - operational and strategic.

Operational analysis is aimed directly at analytical support of operational and investigative activities, in particular in the framework of operational and investigative cases, as well as analytical support of pre-trial investigation of criminal offenses, the conduct of which belongs to the National Police of Ukraine. In addition, the results of operational criminal analysis are passed under investigation to other law enforcement agencies together with data (information) on the identified offenses (Koristin *et al*., 2021).

Operational criminal analysis consists of planning, collecting, accumulating, comparing and evaluating information, its analysis and reporting, as well as further task setting. The purpose of collecting and analyzing information is to create and test hypotheses and conclusions about past, present and future illegal actions, including a description of the structure and scope of criminal groups and the transfer of clear information to the management regarding operational and investigative measures (Zayets, 2016).

Operational criminal analysis is carried out in three forms: 1) analysis that accompanies operational and investigative and investigative activities their help is refuted); 2) analysis, which is conducted to support operational and investigative and investigative activities (the analyst undertakes analytical tasks, presents the results of the analysis, searches for information from their own databases); 3) analysis that initiates operational and investigative activities (Zayets, 2016).

It is worth noting that all forms of analysis are interconnected, if the analysis accompanies the operational and investigative activities, it simultaneously supports it and provides grounds for investigative (investigative) actions and operational and investigative measures. During the analytical process, information about the offender, the course of the event, the instruments of the crime, the time and place of its commission, etc. is evaluated. The circulation of this information takes place between operatives and investigators and consists not only in providing or receiving information, but also in its active acquisition. The source of information can be databases, materials of pre-trial investigations, including protocols

of interrogations of witnesses and suspects, materials of operative-search cases, reports of other bodies, messages of mass media, etc.

The practical application of the method of criminal analysis by the operative-search units of the National Police of Ukraine confirmed its high efficiency in multi-episode proceedings covering a large area, including a significant number of events and subjects of a criminal group with complex structural structure. In these cases, traditional methods of tracking and associating facts were not effective enough. Operational criminal analysis can cover the following areas: crime, criminals and methods of conducting business.

Analysis of the crime is to reconstruct its course by establishing the sequence of individual events; the presence of signs of recurrence of events; mutual exclusion of information from different sources. The analysis of the crime is carried out in order to determine the recommendations for the further direction of operational and investigative measures and investigative (investigative) actions. In the process of crime analysis, various analytical technologies are used, including action schemes, event schemes or activity schemes.

Also, in addition to crime analysis, it is possible to perform a comparative analysis of crimes, which consists in comparing information on criminal proceedings concerning similar crimes, in order to determine whether some of them could have been committed or organized by the same suspect. Analytical technologies such as systematic search of databases, review of reports and reports, comparison of similarity of the obtained data and determination of the probability of this similarity are used in the course of comparative analysis of crimes.

The analysis, the subject of the study of which is the offender, may relate to the criminal group or profile of a particular offender. The analysis of a criminal group is to organize information on the members of the criminal group in order to get acquainted with the structure of the group and establish the roles of its individual members.

Analytical technologies such as relationship diagrams, action diagrams, event diagrams, activity diagrams, analysis of telephone calls, analysis of financial transactions and compilation of financial profiles of participants in criminal proceedings are used in the analysis of a criminal group. Analysis of the psychological profile of the typical perpetrator allows to determine on the basis of the description of the crime, the character traits of the person who committed it, the type of identity of the perpetrator, the possible area of residence, work performed (Zayets, 2016).

Longer-term problems and challenges, such as identifying key criminal figures or criminal syndicates; Strategic analytics deals with forecasts of growth of criminal activity and establishment of priorities in law

enforcement activity. The products of strategic analysis, as a rule, are: reports on the situation; analysis of phenomena; thematic analyzes; criminological regional analyzes; structural threat analysis; concepts / suggestions for improving the fight against crime.

It should be emphasized that criminal analysis (approach) is not the only cognitive method that can be used in the pre-trial investigation of criminal offenses. All forensic methods are inextricably linked with each other and are used in scientific and practical forensic knowledge in unity, interconnection and in one or another sequence or set.

However, in many cases, it is the results of situational analysis that play a key role in determining the optimal strategy and tactics for pre-trial investigation of criminal offenses. This conclusion is confirmed, in particular, by the practical possibility of implementing during the investigation of specific criminal offenses of certain forensic methods developed by forensic science.

The study of various aspects of the application of criminal analysis gives grounds to identify priority steps for further development of this area of combating criminal offenses in criminal proceedings: the need to further develop the regulatory framework for the use of criminal analysis in law enforcement; increasing the efficiency of the use of criminal analysis in the practical activities of investigative and operational units with modern computer software; formation of appropriate information data banks on a regular basis, etc.

3.2. Typology of criminal analysis in the activities of law enforcement agencies in the United States of America

The term “criminal analysis” has long been used by law enforcement officers in other countries, including the Federal Republic of Germany, the Republic of Poland, the United States, Canada, Great Britain, etc., and has recently entered the vocabulary of investigative and operational units of Ukrainian law enforcement agencies.

In the countries of the European Union, the United States of America (hereinafter - the United States) and other countries of the world, criminal analysis is mandatory for all law enforcement agencies. International structures such as Interpol and Europol are also involved in criminal analysis. Its content, rules and procedures are clearly defined and legally regulated. This applies in particular to the pre-trial investigation procedure.

According to some estimates, criminal analysis has appeared in the UK. As early as 1846, London police detectives carried out such an analysis, which consisted in the classification of criminals and crimes and in the development of the concept of methods for analysts to investigate crimes

related to murder. The need for such an analysis was due to the growth of crime and the need for adequate countermeasures. This period can be called "island". In 1887, the experience of British police began to be introduced on the American continent.

Of particular interest is the typology of criminal analysis arising from the practice of law enforcement agencies in the United States, where in the 60s of the twentieth century the method under consideration began to be developed as a way to increase the effectiveness of the fight against organized crime.

As a basis for the typology of criminal analysis in the United States, we will take the classification, as well as the definitions and descriptions set out by Deniese Kennedy-Kollar in the Detective Handbook's, which has been prepared to help improve investigative skills of law enforcement officials (Eterno and Roberson, 2015).

Kennedy-Kollar identifies seven types of criminal analysis: forensic cartography; administrative and operational analysis; strategic criminal analysis; intelligence analysis; criminal investigation analysis; geographic profiling; tactical analysis of crimes (Kennedy-Kollar, 2015).

The essence of forensic cartography is to create a visual representation of the characteristics of the crime scene. The process involves digitally mapping information about the geographic location of the scene of the incident in order to analyze the influence of the surrounding environment (e.g., roads, parks, schools) on the causes of wrongful acts. Forensic mapping is based on the concept of predetermination of the scene.

Administrative analysis allows, by visualizing statistical data on the commission of crimes in a certain place or, for example, on the frequency of arrests, to demonstrate to the leadership of law enforcement agencies or other persons involved in the crime prevention process, the effectiveness of police operations. Operational analysis serves the purpose of optimal allocation of law enforcement resources for the implementation of activities for the protection of public order and the fight against crime. For example, an analyst can, based on the results of the analysis, suggest the most rational placement of police patrols to identify the facts of driving while intoxicated.

Strategic criminal analysis consists in the analytical processing of forensically significant information contained in databases in order to establish patterns of police activity and evaluate them. All kinds of information on a specific subject of offenses (for example, information about the earlier prosecution of a person suspected of violating traffic rules) or an object (for example, reports about actions that violated public order at an address of interest to the police) is subjected to analysis.

Intelligence analysis is used to identify criminal groups and criminal networks, as well as to establish their structure. This type of criminal analysis can be useful in investigating drug trafficking, Internet fraud, terrorist organizations and people involved in human trafficking. In the process of intelligence analysis, data obtained during the pre-trial investigation are used (testimonies of witnesses, results of operational search activities, information about telephone and other connections, information about the movement of persons, etc.). The ultimate goal of the analyst in this case is to establish links between persons and other objects of operational interest, and to determine their relationship, as well as the role of each within a particular system.

Criminal investigative analysis is an alternative and, according to D. Kennedy-Kollar, the preferred name for criminal profiling. The purpose of this activity is to create a profile of an unidentified criminal in order to identify him or narrow the circle of persons who could be involved in the commission of a crime. The analyst, studying the features of criminal behavior and the scene of the incident, develops a profile of the suspect, including his characteristics, including his criminal past, personal personality traits, features of pre- and post-criminal behavior, habits, marital status, occupation, etc. (Kennedy-Kollar, 2015).

One type of profiling that is usually of interest to the forensic mapping analyst is the so-called geographic profiling. As with other forms of profiling, the goal here is to help law enforcement identify or narrow down suspects. To draw conclusions about the characteristics of the offender, geographic profilers use information about the location of the crime to determine the approximate area of residence of an unidentified serial offender.

The most common type of analysis used in the course of crime investigation is tactical criminal analysis. The goals of this type of analytical activity are the development of investigative leads, the establishment of the circumstances of the commission of crimes and suspects, as well as other areas of work in criminal cases.

The implementation of this type of analysis is possible in the investigation of various categories of crimes, but it is most effectively applicable in the investigation of crimes for which the person to be charged as an accused has not been identified, especially if the crime is serial. Ultimately, tactical criminal analysis serves to solve such tasks of preliminary investigation as establishing a mechanism for committing a crime and persons to be held accountable, connecting criminal cases on serial crimes in order to obtain more complete forensically significant information for their disclosure.

Thus, in the activities of law enforcement agencies of the United States of America in combating crime, a certain direction of work is emerging - criminal analysis. At the same time, this type of activity is used both in the

implementation of police operations to protect public order and suppress crime, and directly in the detection and investigation of crimes. The study of the typology of criminal analysis made it possible to more clearly understand the essence of this method, as well as to develop proposals for the integration of foreign positive experience into the domestic practice of pre-trial criminal proceedings.

In the countries of the European Union and the United States, there are many opportunities for criminal analysis and enforcement for all law enforcement agencies. Of course, the rules of this procedure are clearly defined and regulated in the legal field.

3.3. Peculiarities of interaction between investigators and criminal analysis units under pre-trial investigation

The set of collected factual data as a result of the relevant actions of the authorized participants in the criminal proceedings creates at the initial stage of the pre-trial investigation of the criminal proceedings sufficient prerequisites for information support for the further course of the investigation. However, this becomes possible only when these actions are carried out taking into account all the features of the search and cognitive activities of the investigator and operative, as well as the specifics inherent in the information coverage of the crime. In today's conditions, the disclosure of high-profile, serious and especially serious criminal offenses is impossible without the participation of criminal analysts and appropriate analytical intelligence work during operational and investigative and criminal proceedings (Bilous *et al.*, 2021).

In the bodies of the National Police of Ukraine, criminal analysis belongs to the competence of a specially authorized unit. In some cases, by decision of the Head of the National Police, departments (sectors) of criminal analysis may be established in the structural units of the criminal police and pre-trial investigation of the central police body in the areas of activity of the unit.

These units are directly subordinated to the heads of the relevant structural units of the central police administration body, conduct criminal analysis, which includes their area of activity, and use common software analytical tools. These units are operatively subordinated to the structural unit of criminal analysis of the central police administration body, adhere to uniform standards of criminal analysis in the activities of the National Police, organizational and methodological support, training and retraining of employees of relevant units.

The main areas of work of the criminal analysis units The activities of the criminal analysis unit of the National Police are carried out in the following main areas: operational, tactical and strategic analysis; ensuring

round-the-clock interaction between units of criminal analysis, operative exchange of information with law enforcement agencies of Ukraine and other states; improving information and analytical activities through the development and implementation of modern software analytical tools; regulatory support, development and formalization of methods of criminal analysis, conducting and participating in trainings and practical training.

Subdivisions of criminal analysis are involved in the processing of information materials in the case of: the presence of many aspects that affect the development of the problem; coverage of the problem of large areas; the presence of a complex and branched structure of relations of objects of operative-search case; availability of a large amount of information, which makes it impossible to track and link the facts without the use of special analytical methods (Fedchak, 2021).

It should be noted that, unfortunately, the current criminal procedure legislation in Ukraine does not properly define the mechanism of using the results of criminal analysis as evidence in criminal proceedings during the pre-trial investigation.

In accordance with paragraph 3 of Part 2 of Art. 40 of the Criminal Procedure Code of Ukraine, the investigator is authorized to entrust investigative (search) actions and covert investigative (search) actions to the relevant operational units by issuing a procedural document - a power of attorney, and the operational unit, in accordance with Art. 41 of the Criminal Procedure Code of Ukraine, is obliged to comply with them. An exhaustive list of such investigative (investigative) actions and covert investigative (investigative) actions is provided in Chapters 20 and 21 of the Criminal Procedure Code of Ukraine (Criminal Procedure Code Of Ukraine, 2015). The purpose of such assignments is to obtain from the operatives the analysis of the information about the connection contained in the provided material carriers of the information set out in the protocols based on the results of the investigative (search) actions.

However, in the absence of such investigative (search) actions as analysis of communication information in the Criminal Procedure Code of Ukraine, the relevant executors use terms not provided by law, which in the future, in case of using such materials, may be declared inadmissible evidence by the court. such factual data, which are obtained in a manner not specified by the Criminal Procedure Code of Ukraine.

As rightly noted in the scientific literature, the measures specified in the instructions of investigators may be carried out by an authorized officer of the operational unit on the basis of a decision to involve specialists outlining the circumstances that need to clarify, investigate, analyze or send a letter of analysis or examination (Stashchak, 2019). It is also advisable to involve specialists in the field of telecommunications.

Based on the results of the analysis, the authorized employees of the operational unit prepare the relevant information, and the decision on the possibility of using this information in evidence in criminal proceedings at the stage of pre-trial investigation belongs to the competence of the investigator.

The above encourages the development of an optimal algorithm for the implementation of authorized personnel of operational units at the request of investigators (detectives) analysis of communication information:

- preparation by the investigator of a request for temporary access to communication information, according to Art. 160 of the the Criminal Procedure Code of Ukraine (Criminal Procedure Code Of Ukraine, 2015), in order for the court to make a decision;
- joint analysis of communication information with authorized operational units;
- preparation of an appropriate letter on the analysis (research) of communication information, indicating the questions to be answered, as well as an appendix to the physical information carrier containing an electronic copy of communication information received from the telecommunications operator;
- receipt by the investigator from the operational unit of the reference certificate on the results of information processing;
- examination by investigators in accordance with Art. 237 of the the Criminal Procedure Code of Ukraine electronic documents with information about the connection and preparation of the relevant protocol and information set out in the certificate of operational units;
- receipt by the investigator of qualified explanations on the operation of base stations, their location, etc., making in accordance with Art. 71 of the the Criminal Procedure Code of Ukraine resolutions on the involvement of employees, operators and telecommunications providers as specialists and reflect the results of these proceedings in the protocol.

The information obtained in this way in criminal proceedings can be used in criminal proceedings as a source of evidence - a document.

It should also be noted that in accordance with Part 2 of Art. 84 of the Criminal Procedure Code of Ukraine of Ukraine, procedural sources of evidence in such criminal proceedings can be used as an expert opinion in case of need to obtain an expert opinion on these issues.

One of the analytical products of criminal analysis is the method of analysis of telephone connections, the essence of which is to build a scheme of telephone calls or the use of automatic recorders of telephone calls (traffic of mobile operators). The main purpose of this method is the analysis of telephone connections to determine the possibility of the appointment of covert investigative (search) action under Art. 263 of the the Criminal Procedure Code of Ukraine «Withdrawal of information from transport telecommunications networks» and the choice of the most relevant (informative) telephone number for this investigative (search) action.

The analysis of the constructed scheme of telephone calls gives the chance: to choose the most actual (informative) telephone number for appointment and carrying out covert investigative (search) actions according to Art. 263 of the Criminal Procedure Code of Ukraine «Withdrawal of information from transport telecommunications networks»; relationships between people and organizations; strength of relationships (frequency, duration); the nature of criminal activity; location of known criminals and more.

Conclusions

The essence of the method of criminal analysis lies in the maximum use of the knowledge of forensic science and related sciences for the study of operational and other information that has to be processed during the investigation of criminal proceedings. In order for the application of this knowledge to form into a scientific method, it is necessary to develop a clear order, sequence of the use of means and operations, which creates the structure of the method of criminal analysis.

The importance of criminal analysis in combating crime by law enforcement agencies is as follows: is an important area in combating modern methods of ensuring the confidentiality of criminal activity; assists the leadership of the law enforcement agency in organizing the planning and making the right decisions in the fight against organized crime; makes it possible, in the presence of fragmentary information obtained both from open sources and in secret, to find out the potential and intentions of an organized criminal group, to reproduce the actions of criminals; is an effective tool in support of the implementation of investigative and operational to generalize the information about the organized criminal group, conducting specific investigative (investigative) or covert (investigative) investigative actions, operational and investigative measures taking into account the identity of a particular criminal, features and structure of organized criminal group, etc.

The introduction of the system of criminal analysis in the activities of law enforcement agencies of Ukraine provides an opportunity to increase the

effectiveness of analytical support of operational and general investigative activities in combating organized crime, created preconditions for national and international cooperation in risk analysis and criminal analysis.

An effective way to analytically obtain information about the contacts of the suspect, his probable connections and other entities of operational interest from the operational and investigative units of law enforcement agencies of Ukraine is to use the method of analysis of telephone connections during the pre-trial investigation of criminal offenses.

We see the prospects for further development of the institute of analytical support of criminal proceedings in the development of theoretical and methodological principles of its applied use. Successful implementation and introduction of new methods of criminal analysis will allow to actively use analytical methods and techniques that can ensure the implementation of pre-trial investigation tasks for effective investigation of criminal proceedings, will create conditions for more effective implementation of operational and investigative activities and law enforcement functions, which, in turn, will increase the effectiveness of combating crime.

What is stated in this scientific article does not cover all problematic aspects, but provides grounds for further research to improve organizational, legal and forensic aspects of criminal analysis, methods and techniques of its implementation, the development of international law enforcement cooperation in criminal analysis, creating a system of quality training specialists in this field, etc.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 132-147
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Features of legal regulation of social protection in Sweden

DOI: https://doi.org/10.46398/cuestpol.4074.06

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Abstract

The purpose of the research was to determine Sweden's positive experience in the field of social protection. To achieve this goal, general and special scientific research methods were used, in particular the system functional method, the method of hermeneutics, dialectical and statistical methods. The authors assume that the Scandinavian model of social protection (Sweden, Norway, Finland) differs from other European countries by a more developed social security system. In Scandinavian countries the state model of social protection prevails. The concept of "social protection" in these countries has been transformed into the concept of "social welfare". This model includes a compulsory social policy, a state-regulated income level and the egalitarian and general nature of social benefits and assistance. It is concluded that the fundamental principle of the Swedish social model is its universality: it covers all segments of the population. For this reason, its study is particularly relevant. The article reveals the characteristics of social protection against unemployment in Sweden. Special attention is paid to the protection of children's rights and aspects of family policy and gender equality.

Keywords: social policy; social protection; protection of women's rights; Swedish model; fair trial.

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Recibido el 15-05-22 Aceptado el 06/07/2022

Características de la regulación legal de la protección social en Suecia

Resumen

El propósito de la investigación fue determinar la experiencia positiva de Suecia en el campo de la protección social. Para lograr este objetivo, se utilizaron métodos de investigación científica generales y especiales, en particular el método funcional del sistema, el método de la hermenéutica, los métodos dialécticos y estadísticos. Los autores suponen que el modelo escandinavo de protección social (Suecia, Noruega, Finlandia) se diferencia de otros países europeos por un sistema de seguridad social más desarrollado. En los países escandinavos prevalece el modelo estatal de protección social. El concepto de «protección social» en estos países se ha transformado en el concepto de «bienestar social». Este modelo incluye una política social obligatoria, un nivel de ingresos regulado por el Estado y el carácter igualitario y general de las prestaciones y asistencias sociales. Se concluye que el principio fundamental del modelo social sueco es su universalidad: cubre todos los segmentos de la población. Por ello, su estudio es especialmente relevante. El artículo revela las características de la protección social contra el desempleo en Suecia. Se presta especial atención a la protección de los derechos del niño y los aspectos de la política familiar y la igualdad de género.

Palabras clave: política social; protección social; protección de los derechos de la mujer; modelo sueco; juicio justo.

Introduction

The XXI century was marked by high rates of development of society, which led to the need for appropriate changes in the basic form of its organization - the state. The issue of creating an appropriate legal framework that would regulate all areas of public administration and at the same time uphold human rights, is one of the most pressing tasks of modern legal science. The last decades have been a turning point for Ukraine and have been marked by significant shifts in public opinion. The Revolution of Dignity showed the need for progressive changes and improvements in legislation to build Ukraine as a developed European welfare state in accordance with modern societal requirements and the pace of science.

The urgency of this issue is confirmed by policy documents: the Constitution of Ukraine, the Universal Declaration of Human Rights, the Association Agreement between Ukraine and the EU, etc. According to the chosen course, the legislation of Ukraine is being reformed in many

spheres of public life, including social, in order to improve the functioning and mechanisms for exercising the rights enshrined in the Constitution of Ukraine.

For a long time, the Kingdom of Sweden has been one of the world's leaders in social protection and has proven its ability to function in the context of the least social crisis, tackle emigration and successfully build the social sphere and remain one of the world's most stable countries.

Insufficient coverage in domestic and foreign literature on the theory and history of state and law, history of political and legal scholars of the theoretical and legal aspect of the welfare state, including the welfare state of the Kingdom of Sweden, insufficient consideration and incomplete analysis of its formation and implementation mechanisms, lack of comprehensive systematization of welfare state and a separate analysis of its components, the lack of classification of models of the welfare state from the standpoint of law, as well as the urgency of solving the goals of social development set before Ukraine and other foreign states determined the choice of the theme of this article.

1. Objectives

The purpose of this scientific article is to determine and justify main features of the Swedish model of social protection of the population from unemployment and features of Swedish family and youth policy.

2. Materials and methods

During the writing of the article, both general and special scientific research methods were used. Using the system-functional method, the analysis of the main forms of social protection used in Sweden was carried out. The dialectical method was used to clarify the current legal status of state support for the unemployed and the prospects for its further development.

The method of hermeneutics was used to analyze the current legislation of the Scandinavian countries on the example of Sweden, aimed at supporting families and youth in order to study its effectiveness and efficiency at the present stage, as well as to identify regulatory gaps in domestic legislation to address them (in particular, Law on Social Security, Law on Social Services). The statistical method was used to obtain an empirical basis, which has become one of the main sources of information on the success of legal regulation of social protection in Sweden.

3. Results and discussion

The development of the modern welfare state began a little over a hundred years ago, when many European countries established insurance systems against the risk of loss of income. Social changes related to the emergence of the right to state social benefits should be considered in relation to other basic structural changes in European countries.

Particularly important aspects of the process of social transformation in the nineteenth century were: exacerbation of social needs through accelerating population growth, rapid urban growth and capitalist industrialization, politicization of social problems as a result of democratization of suffrage and mobilization of workers within trade unions and political parties; development of state capabilities in the process of rationalization of public administration bodies through a new organization of public finances and the creation of official statistics; the state has a large number of resources to accelerate economic growth. The welfare state provides for the right of all people to a basic level of well-being (Volkov, 1991).

Welfare states were formed in Western Europe in 1950 - 1960. In the media, they were called "welfare state" (Borevi, 2014). The welfare state in its western version is the result of a long historical process and trade union movement. Gradually, a new role of the state was defined: it must create and maintain a legal space that ensures the principle of social justice and protection.

The welfare state, which task is to create living conditions worthy of a person, not only does not object, but also contributes to the support and development of voluntary associations, mutual aid groups. It tries to influence these groups in such a way as to provide more effective assistance to those who need it. The existence of voluntary charitable organizations, mutual aid groups make it possible to reduce government spending on social needs.

The welfare state is an essential characteristic of the Northern European development model. The Nordic countries have done a lot to develop the theory and practice of the welfare state. They continue to maintain a relatively egalitarian society, all of which members have a relatively constant standard of living, as well as, most importantly, equality of opportunity and life chances.

State institutions, the state budget, the public sector of the economy, the organized trade union movement, and civil society are the institutions that ensure the functioning of the welfare state and maintain its viability. The welfare state is characterized by stability because it is based on strong social democratic traditions and highly organized professional movements.

The Kingdom of Sweden is distinguished among other countries by high economic and social achievements (Palme, 2015). In terms of social services, it ranks one of the first places in the world, and in terms of living standards it is ahead of almost all other countries. With the establishment of Sweden as one of the most developed countries, the term "Swedish model" appeared. Swedish achievements can be explained both by the peculiarities of the historical development of this country, specific features of the national character, and general laws of economic and political development.

In a broad sense, the Swedish model is the whole complex of socio-economic and political realities of the country: a high standard of living, the scale of social policy. It should also be noted that the concept of "Swedish model" does not have an unambiguous interpretation. The Swedish model of the "welfare state" is based not on the elimination of private property and a radical change in the mode of production, but on the implementation of the state function of redistribution of national income in accordance with the priorities of social needs to achieve greater social equality and greater social justice (Gorokhova, 1989).

The formation of the welfare states themselves (and not individual ideas and provisions) is associated with the high economic development of countries, which made it possible to provide the population with a living wage. It was during this period that the government's responsibility for the welfare and observance of the social rights of citizens began to be considered the main condition of social policy. This responsibility cannot be transferred to an individual, a private enterprise or a community, a neighborhood.

Such a state protects people from poverty through unemployment benefits, family benefits, cash benefits, old-age pensions, providing full health care, free education, and public housing. Social support in this case is carried out as a state intervention in the lives of people at the national and local levels through programs of social security, education, health care. This system is financed through the redistribution of income through insurance and tax policy (Kozlov, 1998).

The anti-crisis path of Sweden is a welfare state, which is based on the dominance of the state in the implementation and distribution of social policy. The progress and development of the state is impossible without the main social capital – people to whom the state must ensure a normal and dignified existence. The welfare state assumes: support for socially unprotected segments of the population (unemployed, pensioners, disabled people); fight against unemployment; labor protection and human health; support for family, motherhood, childhood; financial support for educational and cultural programs.

The Swedish model is characterized by an active state employment policy, which aims to increase the competitiveness of the workforce, primarily through vocational training, job creation, both in the public sector and by subsidizing private companies, combining job seekers and vacancies, including through information and career guidance. Sweden spends more money on these goals than any other country.

The main direction of active employment policy in Sweden is assistance in obtaining vocational training and advanced training, which is carried out either through the preparation and adoption of special programs at the legislative level, or through joint participation of the state and enterprises in training and retraining.

Sweden's social policy has flourished for several decades, when the country ranked first in the world in terms of the share of social spending in GDP. The main principle of the Swedish social model is its universality – it covers all segments of the population. All citizens, regardless of their social status, participate in its financing, making a contribution commensurate with their income (the principle of solidarity).

The state assumes the functions of redistribution of social benefits from the wealthy to the most vulnerable categories of the population. The tax rate in Sweden is about 67% and is one of the highest in the world, but in Sweden it is fully offset by the high level of social protection, the lack of significant contrasts between wealth and poverty and, consequently, high political and social stability (Rivchachenko, 2012).

Swedish social security is divided into insurance which depends on the place of residence, which covers state-guaranteed benefits and allowances, and workplace insurance, which deals with benefits in the event of loss of income. Both types of insurance apply equally to people living or working in Sweden, i.e., having Swedish citizenship is not a prerequisite for insurance (Melnyk, 2008).

Unemployment insurance system is separated from the general social protection system. It is voluntary and implemented by trade unions.

Unemployed people in Sweden refer to those between the ages of 15 and 74 who:

- currently have no work;
- ready to start work within 14 days;
- the last 4 weeks were actively looking for employment or waiting for the start of the promised work for 3 months (Employment outcomes and policies, 2019).

The unemployment insurance system consists of a basic and a voluntary component, which is calculated based on the taxes paid. The latter is paid only to members of the unemployment insurance fund, which is called the Alfa-cash insurance fund, in Swedish Alfa-kassan. There are certain conditions for membership, such as the length of employment and the nature of the work, the need to be registered with the State Employment Service (Arbetsförmedlingen). It is necessary to be a member of the insurance fund for the payment of unemployment benefits for at least 12 months, where a person must pay monthly contributions.

The amount of compensation is 80 percent of the previous daily earnings, but not more than the established maximum. In the first 200 days of assistance, unemployed can get 80 % of the average income, in the following days – 70% of the average income. However, there is a limitation on the amount of the benefit. In the first 100 days of the payment of assistance, it is a maximum of 910 Swedish Kronor per day (96 EUR), on the following days – a maximum of 760 Swedish Kronor per day (80 EUR). Aid is subject to income tax. The allowance is paid only for five working days of the week, Saturday and Sunday are not counted (European Commission, 2020).

Membership in unemployment insurance funds is usually mandatory for union members, but all funds must be open to the voluntary admission of any employee in the relevant field of activity. Membership in the voluntary component of unemployment insurance is free for all workers and self-employed people without any restrictions. About 80 percent of all employees are members of unemployment insurance funds.

The maximum period for receiving unemployment benefits is 300 days, and for parents of minor children – 450 days. If during the job search individuals participated in one of the programs of Employment Service, then this period will be credited to their future insurance period (days of participation in the program will be credited as working days). The allowance is paid five days a week.

Workers in Sweden have been nearly exempting from paying insurance premiums and participate in the social security system through taxes (Hindriks and De Donder, 2003). Over the last 20 years, there has been a trend of gradual increase in the participation of employees in the financing of insurance programs and an increase in insurance deductions from wages, despite the fact that government spending on social protection has decreased significantly.

In addition to wages, the employer must pay income tax (inkomstskatt) and insurance, social security contributions (arbetsgivaravgifter) for all employees. These deductions are paid monthly to the Tax Service.

Unemployment insurance is formally private, so it belongs to the unions. With some exceptions, unemployment insurance has never been

in the interests of the private insurance industry. Sweden is currently undergoing changes where several unions have entered into an agreement with a separate insurance company to insure "management decisions" in addition to the basic state insurance system for those with higher incomes.

Circumstances in the labor market at the beginning of the 21st century are significantly different from those that existed in this market for most of the 90s (Clasen and Oorschot, 2002; Ladychenko *et al.*, 2019). In 1999, there was a sharp quantitative jump in employment. Swedish labor market policy aims to support the "work for all" strategy, i.e., to provide work before providing financial support. For example, during the last economic downturn, active measures in the labor market had large-scale nature. More than 3 percent of the workforce has been trained and involved in practical or other forms of active reintegration. Sweden's social program aims to return the unemployed to normal employment as soon as possible.

In Sweden the unemployed are retrained and return to work, in particular by providing subsidies for moving to vacant jobs, and huge sums are not spent to help the unemployed as compensation for lost income. Thus, cash benefits for the unemployed are provided only when it is impossible to offer a job or when active measures in the labor market are unsuccessful.

Sweden is the world leader in family and youth welfare. Even during the economic downturn of the early 1990s, during which unemployment was high, the priority of the following fundamental goals of family policy in Sweden was never questioned: providing good conditions for raising children, providing social protection for families, and adhering to the principles of equal rights of men and women to work; ensuring good child care; effective combination of universal and targeted types of social benefits; empowering men to take on parental responsibilities.

Family policy in Sweden is an independent area of social policy, which contains clearly defined measures aimed at the family and focuses on social protection and support of citizens by the state in the process of solving family problems. This type of policy includes certain programs and actions designed to achieve the stated goals regarding the family and its position in society (Semenets-Orlova, 2011). The Swedish model of state youth policy provides for significant state intervention in society-youth relations and state control over society-youth relations.

Sweden's family policy dates back to the 18th century. However, modern family policy with a universal model of social protection was introduced in the early 1930s during a deep economic downturn. As the birth rate was very low, it was considered necessary to improve the living conditions of families. In addition to the introduction of monthly child benefits, large loans were issued to young couples. The availability of modern housing was perceived as a human right, not a privilege, and therefore significant

government subsidies were issued to accelerate the restructuring of the housing stock.

The universal model of social protection is based on the well-known principle of general welfare (Bergh, 2004). Its feature is the presence of a standard basic system of state social protection, covering society. Almost all citizens of the country take part in national social programs. Preservation of the principle of general welfare has become possible due to the presence of a significant public sector of the economy and a high level of taxation.

Social and medical support systems include preventive measures, including free (or very inexpensive) medical examinations during pregnancy, prenatal and postpartum education programs, and regular health check-ups. Insurance benefits for parents in Sweden have gained international recognition because they are designed to ensure that both men and women have the opportunity to combine parenthood with employment. The insurance system allows the mother or father to stay at home for up to 360 days after the birth of the child, while maintaining 80 % of their income. In addition, parents are entitled to sick leave to care for a sick child for a total of 60 days a year (for each child under the age of twelve), while retaining 80 % of the salary (Social work, 2018). Labor legislation guarantees parents to keep their jobs during parental leave and while exercising their parental rights.

Municipalities are responsible for providing childcare subsidies for each child between the ages of one and six if their parents work or study. As the vast majority of parents of preschool children work, access to childcare has become a necessity in everyday life. The childcare system in Sweden has always been at a high level. To improve the quality-of-service provision, preschool educational institutions received significant subsidies: for every 3-4 children in preschool educational institutions there was one employee. At present, the number of employees in preschool educational institutions has decreased, however, compared to other countries, it remains high (one employee for 5-6 children) (Country report, 2018).

Sweden's family policy is based on the principles of gender and class equality. This ideology has long been implemented in society and is one of the foundations of the relative success of Swedish family policy (Oleksenko and Oleksenko, 2020).

Sweden ranks among the first cities in the world among countries where citizens respect the values of gender equality: the idea that men and women have equal access to power, worthy remuneration for work and influence in society. Aspects of family policy and gender equality in Swedish society are closely linked: most social benefits are universal, and after divorce neither party pays alimony, as both will work in paid work in the future and will be subject to individual taxation.

The most important component of Sweden's family policy is the flexible parental leave system introduced in 1978. Interestingly, Sweden was the first country to involve a father in caring for a child on a par with the mother. Parents who have been in a paid job for at least 6 months during the year before the birth of the child receive six months of paid leave with the payment of 90 % of the previously received income. Those with an employment period of less than 6 months receive a flat-rate payment of 130 Swedish Kronor per day. Payments are made by the social insurance fund and are taxable. Parents are guaranteed a previous job. Vacation can be taken per day or hour before the child reaches the age of eight (Zelleke, 2016; Funta, 2021).

In Sweden, parental involvement in the upbringing of a child is encouraged by providing 2 months of childbirth leave, which can only be used by a father. There is a developed system of providing loans for the purchase of housing for young families and housing maintenance assistance, which is provided in the amount corresponding to the family income (Khomitsky, 2007; Ladychenko and Golovko, 2018).

There are a number of laws on the protection of children's rights in Sweden. One of them is The Children and Parental Code. The law states that children have the right to care, safety and good upbringing. In addition, the law states that children must be treated with respect for their individuality. They may not be subjected to corporal punishment or degrading treatment. The law also defines the responsibilities of parents (or other guardians). At the same time, the state reserves the right to intervene if the child's basic needs are not met.

The provision of social assistance, in accordance with the Law on Social Security, which defines the types of assistance to all those who need it, is the responsibility of local councils. Municipal social protection programs for individuals or families are designed to support vulnerable groups (Larsson, 2003). The programs consist of preventive measures and targeted educational work with children, youth and people at risk; social assistance (material support); assistance in the form of family counseling (Degtyar, 2013).

The Social Services Act regulates a set of measures to provide assistance to individuals, certain social groups, who are in difficult life circumstances and cannot overcome them on their own, in order to solve their life problems. It is a framework law that regulates the basic principles of providing social services, including the functioning of the system of children's preschool institutions, development of the child care system.

In fact, the organization of child welfare in Sweden is not the same throughout the country and differs in different administrative districts. In some cities there are specialized units within the social services, in others they exist on the basis of schools.

Swedish child welfare law does not make a strict distinction between the protection of children's rights and juvenile justice. Antisocial behavior of young people under the age of 20 is a problem of social security for children and is outside the scope of criminal justice. The activities of local social services are aimed primarily at providing social support and cooperation with families. Social services cannot legally refuse support or assistance, for example by reference to financial difficulties. In general, Swedish legislation on the protection of children's rights focuses on social support for families and the provision of social services.

Sweden's practice in the field of youth employment is also noteworthy. The reduction of taxes on wages for those enterprises and organizations that employ young people under 25. Such tax benefits promote youth employment is a useful experience of Sweden, worth applying in other countries (Employment outcomes and policies in Sweden, 2019).

Since 2006, Sweden has pursued a strategic policy to promote youth employment, in line with the recommendations of the European Employment Promotion Strategy. The main reform of the new strategy was the establishment of a job guarantee for youth in December 2007. The job guarantee for youth is aimed at young people who have been registered as unemployed with the public employment service for at least three months. The aim of the program is to help young people find work at an early stage as soon as possible, as it is believed that the more time passes, the more and more difficult it is to find a job, as the level of search activity of young people decreases over time.

Taking some measures immediately after losing a job helps young people not to become long-term unemployed. Young people in Sweden are often unemployed for a relatively short time, but those who have not finished secondary school are at risk of long-term unemployment. Young people at risk of long-term employment are subject to "active measures", such as on-the-job training and training from the first day of unemployment.

The services provided to unemployed youth are the same throughout the country. Of course, the rate of employment is influenced by factors such as local differences in labor demand, but in general all measures are proposed at the national level. Youth employment policy should be pursued in cooperation with other actors in the labor market, namely government agencies, local authorities, private enterprises and organizations. In addition to helping young people find jobs, the government is implementing a number of other measures to create more employment opportunities for young people, including: supporting job creation, investment in education, internships and vocational programs, and reducing social security contributions.

There is no specific law on youth in Sweden, but many provisions on youth and children are reflected in the Law on Social Services. The social problems of young people in Sweden are directly addressed by the so-called Social Council, which is created in each commune within the social service. Such a Council should be well aware of local problems, coordinate the efforts of all organizations, institutions, agencies, youth services.

For this, Sweden has a certain system of social assistance, which the state provides to young people in education, acquisition of qualifications, work, life, leisure, etc. (Youth policies, 2017). Some youth problems in Sweden are solved through the State Youth Council, which has the opportunity, in particular, to allocate assistance to youth organizations directly from the state budget.

Such an experience is extremely interesting for Ukraine as a country that has an ambitious goal to become a full member of the European Community. In the context of the above, the work of the authors' teams is informative and interesting in particular regarding new approaches to providing of environmental management in Ukraine on the way to Euro integration (Gulac *et al.*, 2019; Gulac *et al.*, 2019; Kachur *et al.*, 2020), legal grounds for social work organization in rural communities of Ukraine (Vasiuk *et al.*, 2020; Kutsevych *et al.*, 2018), foreign experience ensuring sustainable development of local self-government (Ladychenko *et al.*, 2021; Funta *et al.*, 2016) and analysis of the phenomenon of the modern Ukrainian voter (Oleksenko *et al.*, 2021), in which the authors give considerable attention to issues of social protection in Ukraine and the need to adapt it to relevant European standards.

Conclusions

The Swedish model of welfare state is a unique historical, political and legal phenomenon. Sweden's welfare state differs significantly from other welfare state models by significant government intervention in the redistribution of total social income through a system of taxes and social benefits from low-risk to high-risk groups, from high-income to low-income citizens and between different stages of human life which achieves the equalization of incomes of citizens, the elimination of class differences and contributes to the reduction of social tensions in society.

A significant asset of Sweden in the social sphere is a balanced, detailed and prescribed rules of social law, which regulate relations at all stages of human life so that a person feels protected throughout the life. State intervention in all spheres of public life without exception, high taxes and proportional taxation, redistribution of social benefits, control over the implementation of social legislation has secured for Sweden a leading position in the world in many respects.

Sweden has an extensive social security system in which the state plays an important role.

The state provides social assistance (various directions of subsidies and payments, or tax deductions) not only to vulnerable groups (children, pensioners, unemployed, low-income citizens), but also supports citizens in various life situations (construction costs, housing costs, student grants, maternity benefits, etc.) and in all areas at different stages of human life.

In addition to state aid, Sweden has a well-developed system of assistance with insurance funds, public programs that combine both corporate elements and private insurance policies. Trade unions play a special role.

A significant number of state institutions established to ensure the social sphere and institutions for monitoring the implementation of social legislation provide a stable existence of the welfare state, and sufficient access of public institutions and organizations to the functioning of the social sphere confirms the high development of Sweden as a welfare state.

The monopoly of the Swedish welfare state as the main supplier and employer in the social sphere and the extent of state intervention in economic life in accordance with the concept of the Swedish model allows to put Sweden in first place among developed countries. The very intervention of the state in all spheres of life is defined by critics of the social model of welfare state of Sweden as the main shortcoming that negatively affects many social processes and phenomena in the country.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 148-159
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Firearms as a means of committing criminal offenses

DOI: https://doi.org/10.46398/cuestpol.4074.07

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Abstract

The article analyzes the current legislation on weapons and the opinion of scientists on firearms, ammunition, explosives or explosive devices. The fundamental importance of firearms in the forensic characterization of crimes is emphasized. It is noted that firearms are goods subject to a special regime of regulation, which can be carried out only by the Law of Ukraine. It is a particular type of weapon intended for attack, defense or sound signals, which is set off by the energy of gunpowder combustion gas. The authors' definition of firearms is given and the characteristic features of ammunition, explosives and explosive devices are highlighted. It is concluded that, for the purpose of legislative regulation of relations arising during the circulation of civilian firearms, as well as similar to weapons and ammunition products, in particular, to avoid free interpretation of the assessment of the actions of a person involved in crimes with the use of weapons, the development of a corresponding law comprehensively regulating this criminal methery is needed.

Keywords: criminal offenses; forensic characteristics; firearms; ammunition; explosive devices.

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Recibido el 03/05/2022 Aceptado el 07/07/2022

Las armas de fuego como medio para cometer delitos

Resumen

El artículo analiza la legislación vigente en materia de armas y la opinión de los científicos sobre armas de fuego, municiones, explosivos o artefactos explosivos. Se enfatiza la importancia fundamental de las armas en la caracterización forense de los delitos. Se señala que las armas de fuego son bienes sujetos a un régimen especial de regulación, que solo puede llevarse a cabo por la Ley de Ucrania. Es un tipo particular de arma destinada al ataque, defensa o señales sonoras, que se pone en marcha por la energía de gas de combustión de pólvora. Se da la definición de armas de fuego de los autores y se destacan los rasgos característicos de municiones, explosivos y artefactos explosivos. Se concluye que, a los efectos de la regulación legislativa de las relaciones que surgen durante la circulación de armas de fuego civiles, así como similares a armas y productos de municiones, en particular, para evitar la libre interpretación de la evaluación de las acciones de una persona involucrada en los delitos con uso de armas, se necesita el desarrollo de una ley correspondiente que regule integralmente esta metería penal.

Palabras clave: delitos penales; características forenses; armas de fuego; municiones; artefactos explosivos.

Introduction

In the forensic characterization of crimes, information about the features of the subject is of fundamental importance for their investigation. This is due to the fact that the properties of the object of encroachment are naturally related to the peculiarities of the conditions of crime (conditions of existence of the object). The same correlation exists between the object of encroachment and the identity of the offender and other elements of the mechanism of the crime. Thus, the subject of the crime largely determines the actions of criminals to prepare, commit and conceal the crime, which, in turn, are associated with the formation of certain traces - sources of evidence (Volobuev, 2000; Kravchuk, 2015).

Traditionally, the subject of a crime is understood as any thing of the material world, with certain properties of which the law of criminal liability connects the presence in the actions of a person signs of a specific crime (Baulin and Borisov, 2002). Clarification of the exact concept of the subject of the crime, its content allows more accurately, fully and accurately reveal the content of the crime (Zagorodnikov, 1951), to establish a connection between the object and the objective side and other elements of the crime,

determine the nature and degree of its social danger (Panov, 1984). It is this circumstance that necessitates the study of these issues within certain methods of investigation.

The subject of crimes committed with the use of firearms is of fundamental importance in the forensic characterization of such crimes, as it affects its other elements. In particular, it determines the characteristics of the offender, certain ways of committing and concealing it (Luzgin, 1991), as well as other crimes related to illicit trafficking in weapons, explosives and ammunition, helps to clarify the manner of crime, determine its consequences, the identification of the suspect and his accomplices.

Hence the importance of clearly defining the properties, characteristics of material objects that have entered the orbit of criminal justice and can be identified as weapons, ammunition, explosives and substances.

1. Methodology of the study

The methodological basis of the study were methods and techniques of scientific knowledge. Their application is due to a systematic approach, which makes it possible to consider the problems of research in the unity of their social content and legal form. The leading research method is dialectical, which uses laws and categories to determine the nature of firearms, ammunition, explosives or explosive devices as a means of committing criminal offenses, as well as legislation governing their circulation in Ukraine. The use of the laws of formal logic and its methods such as analysis and synthesis, induction and deduction, allowed to determine the structural and logical scheme of a scientific article, identify properties and features of the phenomenon under study, create a general idea of its content.

The historical and legal method was used to study the state of legislation and scientific works on the problems of the circulation of weapons; dogmatic - to interpret legal categories such as “firearms”, “ammunition”, deepening and clarifying the conceptual apparatus; functional and typological - in order to identify the most typical subjects of criminal offenses of this type; method of system analysis, system-structural and formal-logical methods - to clearly define the properties, characteristics of material objects that have entered the orbit of criminal justice and can be identified as weapons, ammunition, explosives and substances; methods of modeling and forecasting - for the formation of proposals for improving certain provisions of the legislation; statistical method - during the analysis and generalization of the empirical base.

2. Analysis of recent research

The study of the theory and practice of issues related to the optimization of the investigation of criminal offenses, the means of which are weapons, researched in their works, Scholars such N. Akhtyrska (Akhtyrska, 2022), P. Bilenchuk (Bilenchuk *et al.,* 2003), I. Bogatyrev (Bogatyrev, 2011), V. Figursky (Figursky, 2015), M. Klymchuk (Klymchuk *et al.,* 2021), O. Kravchenko (Kravchenko *et al.,* 2022), M. Maistrenko (Maistrenko, 2010), A. Martyniuk (Martyniuk, 2017), V. Shevchuk (Shevchuk, 2007) .

The scientific results obtained by these researchers have theoretical and practical significance, and some of them do not lose their relevance and can be used in modern criminal justice. However, some provisions and recommendations of the predecessors, given the changes in the legal regulation of the circulation of weapons, are outdated and unusable in practice.

This emphasizes the importance of clarifying the nature of firearms, ammunition, explosives and explosive devices, identifying the most common weapons in the commission of criminal offenses committed with their use, and more.

3. Results and discussion

The main guiding normative documents regulating the circulation of weapons and defining them are international conventions ratified by Ukraine, certain Laws of Ukraine, Resolution of the Cabinet of Ministers of Ukraine, Resolutions of the Plenum of the Supreme Court of Ukraine, Regulations on Permitting System, Instruction of the Ministry of Internal Affairs of Ukraine and natural resources of Ukraine, etc.

According to official information, the citizens of Ukraine legally own firearms in the total number of about 1.3 million units. Despite such a significant amount in circulation, these legal relations in the country, unlike all European and most post-Soviet countries, are still not regulated by any law (On the circulation of civilian firearms and ammunition: Draft Law of Ukraine № 4335, 2020). The difficulty of legal qualification of events related to the circulation of weapons is that in Ukraine there is no general law on weapons, and instead the existing structure consists of many regulations issued by various authorities (Martyniuk, 2017).

All issues related to the circulation of this type of weapon are resolved exclusively by bylaws of the Ministry of Internal Affairs and other ministries and departments. Moreover, these regulations actually duplicate the basic provisions of the former Soviet legislation. The vast majority of norms are

now an anachronism and do not regulate even established public relations in the field of arms trafficking (On the circulation of civilian firearms and ammunition: Draft Law of Ukraine № 4335, 2020). This creates numerous difficulties in investigative and judicial practice, forcing access to international documents, various laws and regulations governing the handling of various weapons.

The definition of both the general concept of weapons and their type of firearm is considered in various branches of law through the prism of its subject, including forensics, forensic ballistics, ballistic weapons, criminal law, civil law, international private and public law, and also in operational and investigative activities. The Academic Dictionary of the Ukrainian Language defines weapons as tools for attack or defense (Dictionary of the Ukrainian Language, 2012).

At the same time, it should be noted that the definition of the term "weapon" is not fixed at the legislative level, but only its types are described. Model Law "On Weapons", in Art. 1 under the weapon means devices and objects constructively designed to destroy a living or other target and give signals "(Model Law on Weapons, 1995). It is clear that such definitions give only a general idea of this category as the subject of crimes committed with firearms, which requires detailed analysis.

The concept of weapons, depending on the rule of law, is interpreted differently - from a narrow meaning - firearms or melee weapons - to, for example, jet or missile equipment, which is in service with the military unit (Baulin and Borisov, 2002). A special type of weapon is a weapon of mass destruction which includes toxic chemicals, chemical, biological (bacteriological), nuclear weapons.

There is also no common approach among lawyers to the definition of "weapon", which means: a weapon designed to hit targets with projectiles that receive directional movement in the barrel (using the pressure force of gases formed by combustion of metal charge) and have sufficient kinetic energy to hit a target at a certain distance; objects and mechanisms specially designed to hit a living target or target, made according to certain models that meet these objectives and have no other purpose; an object specially designed (manufactured) for the destruction of a living target, which has no household purpose. Forensic scientists define weapons as devices and objects designed to destroy a living target, to provide sound or light signals (Bilenchuk *et al.*, 2004).

References characterize weapons as: devices and means used in armed struggle to defeat and destroy the enemy; means of attack and defense; a set of means adapted or technically suitable for attack or defense. Combat weapons can be traditional (firearms, cold steel, pneumatic, metal, incendiary weapons, mines, artillery, missiles, torpedoes), non-traditional

(laser, electromagnetic, psychotropic weapons) and weapons of mass destruction (nuclear, chemical, biological, chemical, (Shevchuk, 2007).

In accordance with the provisions set out in paragraph "a" of Art. 3 of the Protocol "against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition", supplementing the United Nations Convention against Transnational Organized Crime of 31 May 2001, firearms are any Portable firearms designed or can be easily adapted to fire or accelerate a bullet or projectile due to the energy of an explosive, except for old firearms (Law of Ukraine, 2013).

In the annexes to the European Convention on the Control of the Acquisition and Storage of Firearms by Private Persons, adopted in Strasbourg on 28 July 1978, "firearms" means: 1) any object prepared and belonging as a weapon from which a charge , a bullet or other projectile or harmful gas, liquid or other type, may be released by explosive, gas or air pressure or other means; 2) trigger mechanism, chamber, drum or barrel of any of the above items; 3) any charge or material clearly intended to be ejected by the above items; 4) optical sights with illumination or optical sights with electronic light-amplifying-infrared device, intended for installation on one of the above objects; 5) muffler for the nozzle on any of the above items; 6) any grenade, bomb or other projectile containing an explosive or incendiary device. The following types of weapons are distinguished: automatic, semi-automatic; multi-charged, disposable, short-barreled, long-barreled (European Convention on the Control of Acquisition and Storage of Firearms by Private Persons, 1978).

In this case, firearms do not include items that: have become irreversibly unusable; do not fall due to weak power under control in the countries of their use; designed to sound alarms, other signals, rescue operations, slaughter cattle, hunt or fish with a harpoon or for industrial or technical purposes, provided that they can be used only for that purpose; are not subject to control in the country from which they move due to prescription (European Convention on the Control of Acquisition and Storage of Firearms by Private Individuals, 1978).

Instruction on the procedure for manufacture, purchase, storage, accounting, transportation and use of firearms, pneumatic, melee and melee weapons, domestic devices for firing cartridges equipped with rubber or similar non-lethal metal projectiles, and ammunition for them, as well as ammunition to weapons, main parts of weapons and explosives, approved by the order of the Ministry of Internal Affairs of Ukraine № 622 of August 21, 1998 in paragraph 8.2 defines that firearms are weapons designed to hit targets with projectiles receiving directed movement in the barrel (using the force of pressure of gases formed by combustion of metal charge) and have kinetic energy to hit a target at a certain distance (Order of the Ministry of Internal Affairs of Ukraine № 164, 1993).

According to the Resolution of the Plenum of the Supreme Court of Ukraine № 10 of December 22, 2006 "On Judicial Practice in Hooliganism Cases" firearms are devices of factory or artisanal production designed to hit a living target with a projectile (bullet, shot, etc.), which is set in motion by the energy of powder gases or other special combustible mixtures (On Judicial Practice in Hooliganism Cases: Resolution of the Plenum of the Supreme Court of Ukraine, № 10, 2006).

According to the Resolution of the Plenum of the Supreme Court of Ukraine of April 26, 2002 № 3 "On Judicial Practice in Cases of Theft and Other Illegal Treatment of Weapons, Ammunition, Explosives, Explosive Devices or Radioactive Materials", firearms include all types of weapons , sports, rifled hunting weapons, both mass-produced and homemade or remanufactured, for the shot of which uses the pressure force of gases produced by the combustion of explosives (gunpowder or other special combustible mixtures) (On the case law on abductions and more illegal handling of weapons, ammunition, explosives, explosive devices or radioactive materials: Resolution of the Plenum of the Supreme Court of Ukraine, 2002).

V. Figursky and O. Nikiforak understand firearms as a mechanical device, structurally and functionally designed for multiple action to hit a target at a distance with a projectile that flies out of the barrel and receives directional movement through the use of energy generated in the results of combustion of gunpowder or other charge (Figursky and Nikiforak, 2015).

We consider the most successful to define this type of weapon as a firearm in the draft law for № 4335, as any portable firearm, which is designed to hit targets with projectiles that receive directional movement in the barrel (using the pressure force of gases produced by burning metal charge) and have sufficient kinetic energy to hit a target within a certain distance, except for old unloaded firearms, which were manufactured up to and including 1899 and are not intended for firing cartridges with metal cartridges of central combat and ring ignition. Kinetic energy is sufficient to hit the target, the value of which at a distance of one meter from the muzzle of the weapon must be equal to or greater than 0.5 J / mm2 (On the circulation of civilian firearms and ammunition: Draft Law of Ukraine № 4335, 2020).

The above allows us to summarize that firearms are objects of property subject to a special regime of regulation, which can be implemented only by the Law of Ukraine. It is a type of weapon designed for attack, defense, sound signals, which is set in motion by the energy of combustion of powder gas.

Scientific analysis of the positions of criminologists and other specialists in the field of weapons studies allows to identify a number of essential

features of weapons, namely: - weapons are the object of the material world in the form of monolithic objects, structures, devices, materials, substances, chemicals, biological beings ; - weapons are created only as a result of purposeful human activity; - the basic purpose of the weapon - causing damage to fatal people or animals. Destructive impact on flora, fauna, inanimate objects (natural and artificial) is an optional feature of weapons; - an object used as a weapon must not only be specially designed (constructed) and manufactured, but also suitable for its purpose (Bogatyrev, 2011).

In view of the above, a thorough analysis is needed to determine whether the components of ammunition and additional equipment for weapons belong to the subjects of individual crimes. Bill № 4335 stipulates that ammunition components are separate components of ammunition for firearms (gunpowder, metal elements (shells, bullets), metal charges, capsules, shell casings, warts, gaskets, containers, etc.) (On the circulation of civilian firearms and ammunition for it: Draft Law of Ukraine № 4335, 2020).

Weapon accessories are devices specially designed or adapted for mounting on a weapon, which serve to improve its appearance, ergonomics (user properties), comfort in use, adaptation to the anatomical features of the owner, devices (permanent or temporary) to perform appropriate tasks (self-defense, hunting or sports, etc.). Additional equipment includes recoil reduction devices, flame arresters, additional sighting and targeting means, optical sights, optical-electronic sighting devices, night vision sights and lighting devices (On the circulation of civilian firearms and ammunition: Draft Law of Ukraine № 4335, 2020).

M. Maistrenko offers the following classification of firearms: a) according to tactical and technical data: firearms: rifled, smoothbore, combined; short-barreled, medium-barreled, long-barreled; cold: bladed, non-bladed, combined, chopping, prickly, prickly-chopping, prickly-cutting, shock-crushing; gas; pneumatic; b) by purpose: military; full-time; civil: hunting, sports, self-defense; museum, antique (historical); c) by method of manufacture: industrial; artisanal; unauthorized (Maistrenko, 2010: 33).

At the same time, in many corpus delicti provided for in the Criminal Code of Ukraine, there are no exceptions to the nature of firearms. That is, the legislator actually equates smooth-bore hunting weapons to other types of firearms: in the criminal law sense, smooth-bore hunting and rifled weapons are equivalent (Sokolovsky, 2017).

Some bills do not provide an unambiguous answer to the question of classifying / not classifying smooth-bore hunting weapons as other weapons. In particular, in the bill № 4335 Art. 5 to category D refers “long-barreled smooth-bore firearms” (On the circulation of civilian firearms and

ammunition to it: Draft Law of Ukraine № 4335). At the same time from the text of the proposed changes to Art. 263 of the Criminal Code of Ukraine (in the comparative table) of the draft law № 4336 it follows that by category D firearms the legislator means "civilian firearms" (On the circulation of civilian firearms and ammunition: Draft Law of Ukraine № 4336, 2020).

This inconsistency and arbitrary use of such key terms does not stand up to criticism, and confuses the understanding of the essence of the changes proposed in the bills.

Analyzing criminal proceedings on the use of firearms, ammunition, explosives or explosive devices made it possible to identify the most common items of the following criminal offenses: firearms (submachine guns: Kalashnikov - all models, submachine gun submachine gun system Shpagin, Scorpion pistol, Uzi, Saiga carbine, etc.; anti-tank grenade launchers; Makarov, Tokarev, Astra, Beretta, Browning, Colt, Glock, Grand Power and other, revolvers: "Nagan", "Smith & Wesson"; rifles: hunting, "Mosina", DSR, etc.); ammunition (ammunition, artillery shells); explosives (hexamethylene triperoxide diamine, plastid, gunpowder, grenades); explosive devices (grenades, mines, fuses, detonators, detonating caps).

In order to prevent a free interpretation of the assessment of the actions of a person involved in the commission of crimes involving weapons, we consider it appropriate to legislate relations arising from the circulation in Ukraine of civilian firearms, ammunition, and structurally similar to weapons and ammunition products.

Conclusions

The above allows us to summarize:

1. The subject of crimes committed with the use of firearms, ammunition, explosive devices and substances is of fundamental importance in their forensic characterization, as it affects other elements.
2. Firearms are objects of property subject to a special regime of regulation, which may be exercised exclusively by the Law of Ukraine. It is a type of weapon designed for attack, defense, sound signals, which is set in motion by the energy of combustion of powder gas.
3. The most correct definition of firearms as any portable firearm designed to hit targets with projectiles that receive directional movement in the barrel (using the pressure force of gases formed by combustion of metallic charge) and have sufficient kinetic energy

to hit a target within a certain distance, except for old unloaded firearms, which were manufactured up to and including 1899 and are not intended for firing cartridges with metal cartridges of central combat and ring ignition.

4. Ammunition and explosives are related as part and all, because explosives are an integral part of ammunition, from which you can always get explosives. Characteristic features of explosive devices are determined: single use, due to the design features of the product; the ability to cause severe effects by releasing, dispersing or exposing toxic chemicals, biological agents, toxins, radiation, radioactive material and other similar substances.

5. For the purpose of legislative regulation of relations arising during the circulation in Ukraine of civilian firearms, ammunition and ammunition, as well as constructively similar to weapons and ammunition products, in particular to prevent a free interpretation of the assessment of the person involved in crimes, the means of committing which are weapons.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 160-177
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Trade agreements, digital development and international commercial arbitration

DOI: https://doi.org/10.46398/cuestpol.4074.08

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Abstract

The purpose of the article was to study the problems that arise during the settlement of disputes in the order of international commercial arbitration. The article used general scientific (dialectic, analysis and synthesis) and special legal (comparative legal, formal-logical, systemic, hermeneutic, axiological) methods. In the results of the research, it was established that the characteristic features of electronic development contracts in international trade are: electronic forms of conclusion of pre-contractual and contractual communication, making amendments and additions to the contract. Taking into account the features that accompany the chosen form of contracting prevails the need to refer to the provisions of the applicable legislation on tax and customs legislation and protection of personal data, etc. The conclusions state that the main problems in the resolution of disputes arising from e-commerce contracts, in international commercial arbitration, are the issues of requirements and validity of the arbitration clauses contained in such contracts, the importance of the agreements reached in the pre-contractual stage in the subsequent resolution of disputes between the parties and the problems of proof arising from the peculiarities of entering into relevant contracts.

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Recibido el 24/04/2022 Aceptado el 16/07/2022

Keywords: e-commerce agreements; development contracts; international commercial arbitration; arbitration clause; digital development.

Acuerdos de comercio, desarrollo digital y arbitraje comercial internacional

Resumen

El objeto del artículo fue estudiar los problemas que surgen durante la resolución de controversias en el orden del arbitraje comercial internacional. El artículo utilizó métodos científicos generales (dialéctica, análisis y síntesis) y jurídicos especiales (jurídico comparado, lógico formal, sistémico, hermenéutico, axiológico). En los resultados de la investigación se estableció que los rasgos característicos de los contratos de desarrollo electrónico en comercio internacional son: formas electrónicas de celebración de la comunicación precontractual y contractual, realizando modificaciones y adiciones al contrato. Teniendo en cuenta las características que acompañan a la forma de contratación elegida prevalece la necesidad de remitirse a lo dispuesto en la legislación aplicable en materia de legislación fiscal y aduanera y protección de datos de carácter personal, etc. En las conclusiones se fundamenta que los principales problemas de la resolución de controversias derivadas de contratos de comercio electrónico, en el arbitraje comercial internacional, son las cuestiones de requisitos y validez de las cláusulas compromisorias contenidas en dichos contratos, la importancia de los acuerdos alcanzados en la etapa precontractual en la resolución posterior de disputas entre las partes y los problemas de prueba que surgen sobre las peculiaridades de celebrar contratos relevantes.

Palabras clave: acuerdos de comercio electrónico; contratos de desarrollo; arbitraje comercial internacional; cláusula compromisoria; desarrollo digital.

Introduction

The formation and rapid development of electronic commerce in its modern sense, consolidation of international principles and the regulatory framework associated with its regulation, dated from the 90-s of the last century (Gaitan, 2020), although the concept of e-commerce itself began to penetrate into economic life in the 1970s (Wigand, 1997). At the beginning of the 21st century, the main warnings to the commercial use of electronic

resources in business were the lack of trust in the legally mandatory of electronic contracts and the lack of trust in the security of electronic communications in general (Gisler *et al.*, 2000).

Nowadays, these business fears in the global sense have gone into the past, giving place to the complex problems of establishing and executing electronic contracts, as well as resolving disputes between foreign counterparties over such contracts. Moreover, developing countries want to get access to new technologies of international trade as soon as possible, which will have a significant impact on the global market (Teremetskyi *et al.*, 2021).

The retail electronic commerce market around the world has grown by approximately $4.9 trillion in 2021. Forecasted, that this figure will grow by 50% over the next four years and reach about $7.4 trillion by 2025 (Chevalier, 2022) in the background of coronavirus restrictions and safety calls associated with the Russian Federation's war in Ukraine. Thus, over the last few decades, the digitalization of global economic life in general and the way business transactions are arranged in international trade has reached new heights and led to the creation of a new reality of public consumption and distribution of goods, mediated and stimulated by electronic tools.

The globalization and diversification of the economy became closely related to the above processes, along with digitalization, the construction of complex international systems of production and distribution of products, new logistical chains, marketing strategies and the very approach to consumption in a digital epoch. According to J. Werner, the introduction of the World Wide Web (WWW) has opened a new range of possibilities for commercial operations - companies realized that potential customers can no longer be contacted only at the enterprise, but also at home via the Internet (Werner, 2000/2001).

It's legitimate, that changes in the normative plane of regulation of the basics and mechanisms of electronic commerce, protection of rights and interests of counterparties (B2B contracts) and end consumers correspond to this reality (B2C contracts).

Alternative ways of dispute resolution especially mediation (Bortnyk *et al.*, 2021) and international commercial arbitration occupy a leading place in the system of international electronic commerce, which provide a flexible application to the digital realities of international economics both because of their neutrality and confidentiality and because of the ease of implementation of virtual process tools in arbitration proceedings.

The concepts of electronic (Ononogbu, 2020) or virtual (Knowles *et al.*, 2021) arbitration have been discussed not in vain for a long time, and the COVID-19 pandemic (Naón *et al.*, 2020) was an additional step in its development. Today arbitration is an established and effective

way of resolving contractual and postcontractual disputes in developed jurisdictions, such as Germany and Switzerland (Sviatoshniuk *et al*., 2021).

At the same time, new problems require additional research that arise during the consideration and resolution of disputes in the order of international commercial arbitration and directly emerge from the peculiarities of the conclusion and execution of electronic development contracts and international trade contracts. Study of the outlined problems is the purpose of this scientific article.

1. Research Methodology

Scientific article is based on the use of general scientific and special legal methods of scientific knowledge. Thus, the dialectic method allowed us to establish the evolutionary nature of electronic commerce as a concept that has experienced significant changes over the past decades, affecting the world economic relations as such an order of making and execution of international trade and development agreements in particular. Moreover, the appeal to the above method in this work enabled to trace the development and current status of the resolution of disputes arising from electronic contracts by means of the international commercial arbitration.

Methods of analysis and synthesis combined with the formal-logical method allowed to establish the meaning of the concept of electronic commerce in current law, as well as to identify the main approaches to the normative consolidation of this category in international and national legal acts. At the consideration of different legal approaches and traditions in the article the comparative legal method is used.

The use of the systematic method enabled to define the essence of electronic commerce and electronic trade as complex, structured phenomena of legal reality, the study of which requires taking into account not only strictly legal aspects of the problems, but also taking into account the financial and economic side of the matter.

The method of legal hermeneutics was used to analyze the doctrinal provisions and analytical works on the chosen subject, as well as the legal sources and approaches, formed by arbitration practice in disputes related to or arising from electronic transactions in the field of international trade and development. In the light of the latter aspect, it was useful to turn to the functional and axiological methods, which allowed to establish the content and value orientation of proceedings in the international commercial arbitration in this concerned category of disputes, to define the current problems in the conclusion of arbitration clauses in electronic contracts in the field of international trade, and ways to solve them.

2. Results and Discussion

2.1. Electronic Commerce: Concept and Peculiarities of Legal Regulation

The concept of electronic commerce (e-commerce) is defined by researchers as "the exchange of goods and services between (generally) independent entities and/or persons, which is ensured by means of universal use of powerful information and communication technology systems (hereinafter - ICT) and globally standardized network infrastructure" (Kütz, 2016: 20).

By a more extended definition, electronic commerce is defined as promotional activities and publicity of goods and services, the establishment and execution of a contract for appropriate business transactions, such as the sale and purchase of goods and services, payment for purchases, and everything that is done through various communication networks, whether it be the Internet or other networks that connect the seller and the buyer (Khudur *et al*., 2019). This approach points to the interpenetration of business and ICT and the Internet as their key variety, as well as to the integration of commercial transactions into a single electronic environment.

This forms the basis of today's economy, when it is no longer possible to distinguish between commercial and non-commercial parts of Internet use, since the very functioning of the latter and some Web sites itself is a business activity, and e-commerce has become a methodology, a way of conducting modern business. Out there comes a broad understanding of e-commerce as a business activity (which includes both communications and transactions) that is carried out electronically and includes not only orders, invoices and payments, but also marketing, advertising and communications (Colecchia, 1998).

So, e-commerce is not only an individual type of commercial activity, which is carried out in the global network Internet, but by a new method, a way of doing business.

The relevant attitude is reflected in the regulatory framework at the level of international and national legal acts, recommendations and concepts developed by international organizations. Thus, the World Trade Organization considers electronic commerce very broadly as the production, distribution, marketing, sale or delivery of goods and services by electronic means (Work Programme on Electronic Commerce, 1998: WT/L/274). Regarding the own normative definitions, we should note that not every national legislator considers it necessary to give such a legal definition in the strict sense. An analysis of the national legislation of the EU member states, for example, shows that such a norm-definition is mostly absent.

However, it is important that is declared in the preamble Directive 2000/31/EU of the European Parliament and Council of June 8, 2000 on certain legal aspects of information society services, in particular, electronic commerce, in the domestic market (known as the "Directive on Electronic Commerce"), the principle of legal regulation, according to which, in order to ensure unhindered development of electronic commerce, the legal framework must be clear and simple, predefined and comply with the rules, internationally applicable, so that it does not negatively affect the competitiveness of European industry or hinder innovation in this sector (Directive 2000/31/EC of the European Parliament and of the Council on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, 2000).

In accordance with this Directive, the national legislation of the EU member states is tending to duplicate the key provisions, establishing the definition of commercial communications, but not of electronic commerce as such. This can be seen in the application of Art. 2(5) of the German Telemedia Act, where, analogously to the European Directive, commercial communications mean any form of communication, which serves as a direct or indirect support for the sale of goods, services or the image of a company, other organization or individual working in the field of trade, commerce, craft or professional services (Telemediengesetz, 2007).

The formal consolidation of the definitions of the concept of electronic commerce is accepted by countries outside the EU, particularly, the India Basic Goods and Services Tax Act of 2017 defines the analysed concept as supplying goods or services or both, including digital products through a digital or electronic network (The Central Goods and Services Tax Act, 2017).

However, the key characteristic of electronic commerce, which emerges from the analysis of doctrinal and legal approaches, is the implementation of commercial activities for the production, distribution, marketing, buying and selling or supplying goods and services with the obligatory use of modern means of electronic communications, regardless of their specific type and form.

2.2. Content and Characteristics of Electronic Contracts in International Trade and Development

Electronic commerce, as any business activity on a legal plane, is mediated by the conclusion and execution of various types of contracts for their subject matter (sale and purchase, supply, leasing, etc.), which in the covered case, undoubtedly, are executed electronically in one of two ways: by means of e-mail or a similar tool of electronic communication or through "web-click" contracts using the web site's order processing and payment mechanism (Werner, 2000/2001).

Almost the widest penetration of contracting with the help of these tools has acquired in international trade, where electronic correspondence is inherent mainly to B2B contracts, and "web-click" contracts mediate B2C contracts, where one party is the end consumer of a product or service. In the first case, by means of electronic communication counterparties can be located in different parts of the world, achieving the necessary economic efficiency of implementation of business activities while preserving the legal legitimacy of transactions.

Today, traditional e-contracting tools are complemented by new systems or accessories, specialized chats, etc. In particular, electronic document management and document verification systems are widely used in international business Get Accept, Adobe Sign, Zoho Docs, Logical Doc, M-Files DMS, through which electronic transactions are increasingly penetrating into international business.

The preservation of all the features is characteristic of electronic contracts and in the field of international trade and development, with the addition of a few new features. In the first place, the general rules of making and executing contracts as such are applied to electronic contracts. In this regard, the literature notes that although the situation with electronic commerce does not always simplify the recognition of the elements of the contract, concluded through the use of the Internet, all these elements must be present in the formation of valid contracts, including the need for an electronic offer and electronic acceptance, which must be notified to the other party in an appropriate manner to declare them valid and such as to generate legal consequences.

The same applies to the extension to electronic agreements of general requirements for the legal capacity of the parties and the presence of a valid intention to be bound by contractual obligations (Nuth, 2008; Argy *et al.*, 2001). In addition, the approach of identifying any electronic form of transaction and/or communication of a commercial nature with the written form has been universally accepted at the regulatory level.

In particular, the UNCITRAL Model Law on Electronic Commerce establishes the principle of legal recognition of ("data message") as information created, sent, received or stored by electronic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy. According to Article 5 of this Model Law, information cannot be denied legal force, validity or capacity for purpose solely on the grounds that it exists in the form of data notification (UNCITRAL Model Law on Electronic Commerce, 1996).

At the same time, on the plane of due process sending and taking the notification by the party, both the offer or the acceptance, as well as already the notification within the framework of the contract execution, that the problems in the area of law enforcement and dispute resolution often lie.

An additional problem, which, according to J. Hill, "puts the legitimacy of XXI century methods of commercial contracting under consideration" (Hill, 2003: 4) is that, in contrast to the cited Model Law UNCITRAL and the approaches adopted by the national legislation of the developed countries, the Convention of the United Nations Organization on Contracts for the International Sale of Goods 1980 (the so-called Vienna Convention or CISG) in Article 13 includes only telegrams and telexes within the scope of the concept of written form (United Nations Convention on Contracts for the International Sale of Goods, 1980), not to mention contracts related to the use of computers, which are concluded through electronic data interchange (EDI), via the Internet, electronic mail, *click-wrap* and *shrink-wrap* contracts (Hill, 2003).

This problem deserves a thorough, self-sustaining research, but within the framework of this scientific article it is worth mentioning the necessity of supplementing Article 13 of the CISG by undeniable expansion of this list by means of electronic and Internet communications. Moreover, this list should be kept inexhaustible and apply an expansive interpretation of its content.

According to the DCFR provisions, the electronic form of the contract imposes additional requirements in terms of compliance with the proper pre-contractual communication, which should minimize the lack of personal contact between the parties and ensure full compliance of the reached agreements with the recognition and internal will of the counterparties.

In addition to the actual electronic form of international trade contracts as a feature, inherent in all electronic contracts and the additional requirements that must be met before contractual obligations precede, by binding to the proper communication of all contractual terms, legislation and practice establish and other attributes.

Firstly, most of such characteristics emerge from the electronic form of the contract in the sphere of international trade, requiring the parties to reach agreeing on such aspects as the order and rules of storage of notifications and contractual information, mandatory recourse to the rules of applicable law on the payment of VAT and other taxes and fees, personal data protection and non-proliferation of confidential information, etc. (Recommendation No. 31, 2000).

Secondly, additional requirements to electronic signatures, which must indicate the signing of the electronic contract, as well as such a request as "non-repudiation", i.e., nobody has the right to change the content of the contract after it has been signed (Gisler *et al.*, 2000), which must be guaranteed by technical means by the same extent as the good faith of the parties.

Thirdly, talking about the sphere of international trade in the light of the content of the relevant electronic contract, compliance with the requirements of applicable law, including international acts, on the rights and duties, distribution of responsibility between the parties. The essence of the latter is to ensure a functional balance between freedom of contract, freedom of business activities and autonomy of the will of the parties in general and the imperative norms, which preserve and extend their effect on international trade agreements entered into in electronic form.

The specificity of development agreements related to their subject and the performance of business activities in the field of real estate, at first glance, greatly limits the possibility of entering into such agreements in electronic form. However, a reference to foreign experience, in particular that of the United States and Canada, allows us to state that gradual expansion of the scope of electronic communications as a way to conclude and execute development contracts.

This is reflected both in the standard development contracts developed by some administrative units and in the contracts that are already in force. For instance, the exemplary development contract for the city of Red Deer in the Canadian province of Alberta in 2021 has a separate paragraph concerning the electronic completion and execution of the contract, according to which this agreement may be electronically concluded or scanned or signed in another way electronically and delivered electronically, and shall be deemed original and obligatory for the parties (City of Red Deer Engineering Services, 2021).

At p. 7.23 of the Economic Development Agreement, to which the U.S. state of Georgia isone of the parties, signed on May 2, 2022, expressly states that this agreement may be signed simultaneously in any number of instances and by electronic means (in particular by means of signatures in PDF, DocuSign or exchange of signatures by other electronic means), each of which shall be deemed an original, and no more than one such copy need be provided or designated for confirmation of this Treaty (The State Of Georgia, 2022). As we can see, the general logic and methods of electronic conclusion, amendments and execution, validation of development agreements follow the general trends of electronic commerce, and, therefore, it also implies that they are subject to the relevant requirements and rules.

It is with the outlined characteristics and peculiarities of electronic contracts in the field of international trade and development that cause the arbitration practice low problems in the consideration and resolution of relevant disputes.

2.3. Specifics of the settlement of disputes over electronic trading and development agreements in international commercial arbitration

Based on the application of the general principle of autonomy of arbitration clause from the main contract and its validity, enactment and compliance, the question arises regarding the admissibility and specifics of conclusion of arbitration clauses in international electronic commerce contracts. It is legitimate that in this case the arbitration clause also exists in electronic form.

Despite the fact that neither the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) nor the UNCITRAL Model Law on International Commercial Arbitration (1985) in the context of the term "written" conclusion of the arbitration agreement does not follow the electronic form of its conclusion but only the one signed by the parties or "contained in the exchange of letters or telegrams", the world arbitration practice does not consider itself restricted by these conservative provisions. It is noted that, according to the current legislation, the means of confirmation of agreement may be wider than those expressly managed in the New York Convention (Aceris Law LLC, 2021).

This is confirmed in court practice, in particular in the decision in Compagnie de Navigation et Transports SA v. MSC Mediterranean Shipping Company SA, the Supreme Court of Switzerland broadly explained the provisions of Article II (2) of the New York Convention, stating that "the exchange of letters or telegrams" includes any other means of communication (Federal Tribunal: 16.01.1995).

Also, the decision of the US District Court for the Southern District of California substantiates the position that although e-mails and web declarations are neither letters nor telegrams, the provision of the New York Convention refers to e-mails by analogy: e-mails have the basic characteristics of telegrams because they are not physically transmitted and do not confirm the identity of the sender (US District Court for the Southern District of California, 2000). At the same time, the admissibility and prevalence of the conclusion of arbitration clauses in international electronic commerce do not indicate that there are no controversial points and issues to be addressed.

Thus, apart from the need for a proper indication of all the "traditional" elements of an arbitration clause, such as the correct name of the arbitral institution, the scope of disputes covered by the clause, the desired choice of the applicable law, the number of arbitrators, the language and place of arbitration proceeding, etc., the problems of authentication of parties and verification of signatures, similar to electronic contracts themselves, are

crucial. Establishing these points directly affects the validity of an electronic arbitration clause.

In general, in disputes involving transboundary transactions that do not have a clear legal linking and a forum for conflict resolution, arbitration clause is extremely important. The presence of an arbitration clause in an electronic contract can provide such a legal guarantee for both contracting parties who face a legal problem during the implementation of such a contract (Zamroni, 2019).

In this regard, in practice, it is recommended to fictionalize that a party has the intention to abide by the terms of the contract as proof of its conclusion, and among the ways to sign an arbitration clause in electronic form are the following: (a) providing a scanned image of a handwritten signature to be added to the electronic document; (b) recognizing the name of the author at the end of the electronic mail notification; c) setting a password to identify the sender to the provider; d) creation of a "digital signature" by means of cryptography with a public key (Aceris Law LLC, 2021).

Additionally, it is effective to maintain electronic registers of international trade agreements and arbitration clauses to them both by business entities themselves and by legal companies, with the possibility to identify the date and authenticate the signatures of the parties concluded with the data contained in the relevant electronic record. Examination by the arbitral tribunal of such means of recording and the information contained in them, given their completeness and unambiguity, directly affects the decision on the competence of arbitrators to consider the dispute and on the validity of the arbitration clause.

Special attention should be paid to the issue of pre-contractual relations of the parties to the electronic contract in the field of international trade, which for a number of reasons may affect the prospects of resolution of the future dispute in the international commercial arbitration.

Firstly, often similar electronic contracts do not contain a provision about the invalidity of all previous agreements between the parties before the signing of the main contract. This can create difficulties in assessing the existing rights and obligations between the parties, specific obligations, as well as affect the formation of their legal (lawful) expectations and interests.

These preliminary agreements often consist of a statement of intentions of the parties to the future contract and enshrined in an electronic correspondence via e-mail or specialized chat-letters, if the relationship is of a long-term character, and between the parties already have a certain history before the contract is signed. As a result, this situation significantly affects not only the legal aspects of the relationship between the counterparties, but also has a psychological effect.

On that basis, the problem is the issue of the scope of the arbitration agreement concluded electronically in respect of such contract and connected relations and disputes, those aspects which remain outside the main electronic commercial contract, belonging to the sphere of pre-contractual communication. In our view, what will be important in such a case is the direct wording of the arbitration clause in the electronic contract: whether its scope is restricted to "arising out of" the main contract or to all "connected" relationships. In the latter case, of course, the arbitration agreement will also deal with pre-contractual arrangements.

Otherwise, there may also be a problem of compliance of the content of the final electronic contract with the previous agreements of the parties. Unscrupulous contractors in view of the electronic form of the contract and even the possibility of unlawful unilateral changes in the latter may abuse this circumstance and the very mechanism of contract conclusion. In such a case in the arbitration process it is extremely important to prove the facts of creation of an electronic record or fixation of the contract terms in the correspondence of the parties, as well as confirmation of the unilateral change of the contract provisions using the same data of the electronic document management systems.

It should also be taken into account that if the parties have reached certain prior agreements that are not reflected in the residual contract, which, however, does not contain a rule about the invalidity of such agreements and legal expectations of the party associated with them, the other party may claim and argue during the arbitration proceedings, their validity and imposing an obligation on the other party to fulfill them. The obligation to prove the agreements reached is usually incumbent upon the party asserting the existence of such agreements and the obligations corresponding thereto.

In general, the issue of proof in disputes arising from electronic contracts of international commerce is a separate subject of scientific interest and is closely linked to the above-mentioned toolkit of online arbitrage. A new concept of electronically stored disclosure (e-disclosure) has even been introduced into academic circulation, and nowadays, the volume of requests by parties' representatives for such disclosures and their approval by the arbitral composition is only growing (Larkin *et al*., 2021).

These trends are reflected in the new edition of the International Bar Association (IBA) Rules on the Taking of Evidence in International Arbitration (IBA Rules on The Taking of Evidence in International Arbitration, 2020). These Rules define a "document" as a written report, communication, image, drawing, picture, program or data of any kind, whether recorded or stored on paper or electronically, audio, visual or otherwise, and also assumes that documents kept by a party in electronic form are provided or made available in the form most convenient or

economical for it and reasonably acceptable to the recipients (Art. 12(b) of the IBA Rules).

The International Organization for Standardization (ISO), together with the International Electrotechnical Commission, has also developed its own Guidelines for identification, collection, acquisition and preservation of digital evidence (Guidelines for identification, collection, acquisition and preservation of digital evidence, 2012).

The Guidelines state that these processes are essential for investigation to maintain the integrity of digital evidence - an acceptable methodology for obtaining digital evidence, which will contribute to their acceptability in legal and disciplinary proceedings, as well as in other necessary cases, which, without fail, affect the arbitration proceedings. However, the development of similar rules and guidelines regarding the collection, receipt and submission of electronic evidence cannot solve all the problems associated with proving in disputes on international commercial contracts in international commercial arbitration.

In practice, there will be multidimensional problems of a technical and legal nature relating to the proper access to such evidence, and the proof of the proper degree of confirmation by means of certain circumstances of the case or the parties' agreements. Since the main importance of collecting all possible evidence is to find and prove a material fact, with the obligatory consideration of the composition of the arbitration of the provisions of the law governing the issues of evidence or the rules constituting the *lex loci arbitrii* (Malacka, 2013). This is particularly difficult in the turbulent context of the conclusion and performance of electronic contracts in international trade, requiring a balanced consideration and assessment of the admissibility and sufficiency of all electronic evidence.

Conclusions

Considering the results of the conducted research, we consider the fact of establishment and effective functioning of a qualitatively new system of current international commercial and trade activities, based on extensive use of electronic communication means. At the same time, the latter have become so important that they rightly claim to be a new methodology for doing business on a global scale.

On the legal plane is reflected, first of all, in the concept of the electronic contract, to the characteristic features of which in international trade we propose to include the electronic form of the contract itself, the use of special electronic signatures, as well as the implementation of pre-contractual and contractual communication, technical specifics of making changes and

additions to the contract, taking into account the associated features of the contract form when exchanging and saving notifications and contract data, the need to refer to the provisions of applicable law on tax and customs legislation, protection of personal data and confidential information, the impossibility of unilateral changes to the electronic text of the contract after it has been signed, and in the context of the content of the international electronic trade contract, compliance with the requirements of applicable law, including international acts, on the rights and obligations, distribution of responsibility between the parties.

On the example of the countries of North America it is worth mentioning the increasing spread of electronic methods of signing and executing international contracts in the field of development work, which at the same time imposes on the latter some of the above requirements that are not inconsistent with the object and purpose of development contracts.

In view of the subject matter of our research, we also found out that certain manifestations of electronic commercial activities in the sphere of international trade are also directly reflected in the resolution of disputes by international commercial arbitration. Among the most pressing problems of resolving disputes on international electronic commercial contracts in arbitration, we consider the requirements and validity of arbitration clauses, which are contained in such contracts, the importance of the agreements reached at the pre-contractual stage in the next settlement of disputes between the parties, evidentiary problems, which directly derive from the particularities of the conclusion and execution of the relevant contracts and require recourse to the mechanisms of appropriate verification and authentication of electronic data, which can and will be used as evidence in the arbitration proceedings.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 178-194
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

State economic security as criminal law protection object

DOI: https://doi.org/10.46398/cuestpol.4074.09

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Abstract

The existence of any state is connected with socio-economic and political-legal processes in the world. During the period of global social transformations and major economic and political reforms, Russia finds itself in a socio-political situation of necessity to protect its interests, including economic ones. Therefore, the legislator solves the most important task of legal provision of economic security by criminal legal means. This text aims to examine the theoretical foundations of economic security, analyze the current state of the Russian economy with its level of functional security and identify ways to improve security and criminal law provisions. The methodology of this research is a set of methods, techniques and tools of cognition used in research, both theoretical, empirical and applied. The authors concluded that the main threat to the economic security of the country is economic crimes, the fight against which is impossible without criminal legislation. Therefore, the modernization of criminal policy should be carried out by improving legislation and introducing a well-thought-out system of law enforcement, which includes a similar valuation of all subjects of economic relations.

Keywords: economic security; threats to economic security; criminal policy; economic crimes; criminal law measures.

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Recibido el 12/02/2022 Aceptado el 17/07/2022

La seguridad económica del estado como objeto de protección del derecho penal

Resumen

La existencia de cualquier Estado está conectada con los procesos socioeconómicos y político-jurídicos del mundo. Durante el período de transformaciones sociales globales y de importantes reformas económicas y políticas, Rusia se encuentra en una situación sociopolítica de necesidad para proteger sus intereses, incluidos los económicos. Por lo tanto, el legislador resuelve la tarea más importante de provisión legal de seguridad económica por medios jurídicos penales. Este texto tiene como objetivo examinar los fundamentos teóricos de la seguridad económica, analizar el estado actual de la economía rusa con su nivel de seguridad funcional e identificar formas de mejorar la seguridad y las disposiciones del derecho penal. La metodología de esta investigación es un conjunto de métodos, técnicas y herramientas de cognición utilizadas en la investigación, tanto teórica como empírica y aplicada. Los autores concluyeron que la principal amenaza a la seguridad económica del país son los delitos económicos, cuya lucha es imposible sin la legislación penal de por medio. Por lo tanto, la modernización de la política criminal debe realizarse mejorando la legislación e introduciendo un sistema bien pensado de aplicación de la ley, que incluya una valoración similar de todos los sujetos de las relaciones económicas.

Palabras clave: seguridad económica; amenazas a la seguridad económica; política criminal; delitos económicos; medidas de derecho penal.

Introduction

Economic security is an integral part of the economic system, an important element in developing the national economy, enterprise, society, etc. Economic security is the most important part of the national security structure of the country (Drobot and Vartanova, 2019). In current conditions, ensuring economic security is the main condition for sustainable socio-economic development of the national economy. However, modern threats to economic security are manifested at various levels of development of the socio-political system of the state (Shafieva, 2019).

The problems of ensuring economic security have now become extremely urgent. Economic security as a state of protection of the state from external and internal threats needs legal support to guarantee and respect human rights and freedoms and ensure the protection of the main institutions of civil society and the state.

The Criminal Code of the Russian Federation is designed to protect the most important public relations from the actual infliction or threat of significant harm to them by establishing a criminal law prohibition. The accuracy and clarity of criminal law norms are an important guarantee of their effective application and, as a result, ensure the implementation of the principle of the inevitability of the responsibility of punishment (Muradov, 2010).

The main threat to the State's economic security is its encroachments by criminally illegal acts of an economic nature. Criminalization of these acts was carried out in the Criminal Code of the Russian Federation ("Crimes in the sphere of economics," containing Chapters 21-23 (Articles 158-204) with extensive use of the norms of economic legislation, although Russia's criminal policy in the economic sphere does not and has never had a concept, plan, or document in which its principles and directions would be brought together (Criminal Code of the Russian Federation, 1996).

Currently, at a very general level, a promising "economic" criminal policy is considered only in the 2017-2025 Criminal Policy Roadmap (Dolinko, 2019a). The laws that toughen criminal liability for crimes in the economic sphere are mainly related to criminalizing certain acts. It should be noted a sharp increase in the activity of the state in the field of the criminal legal protection of economic activity since 2009. So, in 2001-2008, 9 laws were amended to Chapter 22 of the Criminal Code of the Russian Federation, then only in 2009 - 5 laws, for the period 2009-2011. 13 laws and 42 laws for the period 2009-2020.

The analysis of the texts of the laws that made these changes to the Criminal Code of the Russian Federation, and explanatory notes to them, allows us to conclude that there are three main directions of reforming the "economic" criminal legislation in the last two decades.

The first direction is to reduce the risks of doing business related to illegal criminal prosecution or excessive sanctions established by criminal law that do not correspond to the public danger of the act.

The second direction is to strengthen the counteraction to acts that infringe on the state's financial interests and tax crimes. Finally, it is necessary to note the counteraction to the so-called "flight of capital."

The third direction is a counteraction to new forms of illegal behavior in economic activity. The direction is conditional – unlike the other two directions and reforms within which are carried out in practice more or less purposefully, the criminalization of new types of acts in the sphere of economy is, for the most part, reactive and represents attempts to solve acute problems in the economy or society radically.

Based on this, we can conclude the chronic nature of most modern problems of Russia's "economic" criminal policy.

Currently, law enforcement practice needs to disclose the content of the norms providing for the responsibility for economic crimes and the development of scientifically based methods for the identification, disclosure, and investigation of crimes in economics.

The scientific novelty is determined by the fact that the work aims to solve problems and contradictions caused by the need to introduce new provisions of criminal legislation and form an integrated and systematic approach to improving the activities of law enforcement agencies.

The study aims to consider the theoretical foundations of economic security, the analysis of the current state of the Russian economy and the level of security of its functioning, and identify ways to improve security and the laws of its criminal law provision.

To achieve this goal, this study solves the following main tasks:

- Consideration of the role and place of economic security in the national security system of Russia;
- Analysis of the main threats to economic security and criminogenically significant factors of their determination in modern conditions;
- Substantiation of proposals for improving criminal law measures to ensure the economic security of Russia.

1. Literature Review

Currently, the Russian Federation is seriously threatened by the growing potential of organized crime, the fight against which is increasingly becoming political. Organized crime penetrates all spheres of society, and among its priorities is the economy. The development of a market economy in our country provokes the growth of external and internal threats to national economic security.

The relevance of the topic is dictated by the current global situation, characterized by the impact of the economic crisis on the processes taking place within the state since it is the economic basis of the development of the state that is a priority: the development of the economy gives impetus to the development of science, the social environment and other spheres of society. At the present stage, economic security guarantees the country's independence implements an independent economic policy, and creates conditions for stable development.

Many works on studying economic security, threats, and means of protection have been published in the scientific literature.

The research on this problem is devoted to the scientific works of such modern authors as: N.V. Genrikh, V.I. Dolinko, V.M. Egorshin, V.M. Esipov, E.S. Muradov, P.N. Panchenko, I.G. Ragozina, A.V. Syusyukin.

Genrikh (2002) "Criminological aspects of countering threats to Russia's economic security". The author examines economic security in detail as a criminological problem. He also provides criminological characteristics of crime in economic activity.

Dolinko, in his work (2019a) "Ensuring the economic security of Russia by criminal law measures," examines the issues of ensuring the economic security of the Russian Federation by criminal law measures.

Egorshin, in his study (2000) "Economic crime and security of modern Russia (theoretical and criminological analysis)," analyzes the essence and content of economic security in the national security system of the state and the criminological content of threats to economic security. He also considers economic security as the socio-economic basis of a right-wing state.

Esipov (2004) devoted his research to analyzing the current state of crime in economics "Organizational and economic mechanism of countering the criminal economy at the stage of market reforms."

Muradov (2010) "Economic security as an object of criminal law protection" in its article explores the concepts of "security," "economic security," and "threat to economic security."

Shlemko and Binko (2015) "Economic security: the essence and directions of ensuring" explore the theoretical foundations of economic security.

When working on this study, the works of the following authors were studied on the economic security of the state as an object of criminal law protection: Economic security of the individual in the system of economic security of the state (Bank, 2020). The system of economic security of territories of advanced development and assessment of their effective impact on the level of economic security of regions (Mironova, 2021).

Economic security in the tax sphere in the system of ensuring the economic security of the state (Goncharenko and Kutsenko, 2015). Sources, types and factors of threats to economic security, the creation of an economic security service (Musatayeva, 2015). Economic security and competitiveness of the region as the most important component of economic security (Makhanko and Shalaginova, 2014). Managing for the future: the 1990s and beyond (Drucker, 1993). How money is managed: the ends and means of monetary policy (Einzig, 1959). Economics in one

lesson: the shortest and the surest way to understand basic economics (Hazlitt, 1979).

2. Methodology

The methodology of scientific research is a set of methods, techniques, tools, and other tools of cognition used in research at the theoretical, empirical, and applied levels and credible information about the processes and phenomena under consideration. The research methodology is based on the scientific provisions of criminal law on the nature of crime and criminality and their impact on the state of the country's economic security.

Scientific research on this problem is carried out using the dialectical method of cognition. The application of the dialectical method made it possible to study the continuous development, qualitative changes, and interrelationships of criminal law norms in the context of responsibility for crimes aimed at undermining the country's economic security.

The dialectical approach to analyzing an object is characterized by three basic principles: development, a common connection, and contradiction. In the context of this study, the principle of development finds its identification in the emergence, formation, and appearance of the old basis of a new quality of crimes in economics. The principle of the general connection is to understand the essence of crime in the economic sphere.

This requires investigation of the external and internal connections of the object of criminal law protection; to distinguish among their diverse significant, recurring connections. Finally, the principle of contradiction orients us to analyze its main contradictions when realizing the essence of the object of criminal law protection.

The regulatory framework of the study is the Decree of the President of the Russian Federation and federal laws in the field of economic activity. The information base is statistical data.

3. Results

The need to criminalize crimes that undermine national security is because the degree and nature of the public danger of these acts indicate the impossibility of effectively countering them only by economic measures provided for by financial, business and banking legislation. This is what forced the State to resort to criminal law response measures, the positive effect of which, subject to compliance with all other principles of criminalization (in particular, the principle of unreliability of prohibition)

and the good work of law enforcement agencies, should significantly exceed the potentially possible negative social consequences.

Moreover, the social conditionality of criminalization of crimes aimed at undermining national security, the definition of their generic object as an order of public relations, which is harmed as a result of the commission of a corresponding crime in this area, indicates the need to use the preventive capabilities of criminal law to minimize them.

The solution to the criminalization of economic crimes in the Russian Federation is possible primarily by establishing criminal law prohibitions for socially dangerous acts in new socio-economic conditions and against the country's ongoing reform.

In current conditions, all activities in the field of economics should be carried out, taking into account the innovative component. In addition, innovative legislative solutions to minimize criminal abuses to undermine the country's economic security are also needed.

New ways of committing crimes require thorough research of the mechanisms of their commission and the criminalization of individual acts in economics, their classification, and the development of qualification rules.

In the modern period, crisis phenomena in the economic sphere contribute to the development of negative trends in all areas of the functioning of the state. The instability of the economic system makes it impossible to channel funds into innovative projects and the development of production, adversely affecting the state's financial and economic security. Moreover, the low level of economic security undermines the public's trust in the state represented by its law enforcement agencies (Egorshin, 2000).

Important circumstances that determine the social conditionality of criminal law norms on crimes in the economic sphere in the Russian Federation are the availability of the possibility of combating a socially dangerous act by criminal legal means and the availability of resources for the criminal prosecution of persons have committed socially dangerous acts. In the list of subject areas of national security, a special place belongs to economic security.

Economic security is a part of national security, and ensuring it is a priority task of any state. Economic security, being a synthetic category, has a fairly broad interpretation, and, first of all, in the context of balanced development, it prevents the violation of reproduced proportions, the imbalance of connections between various components of the system, and ensures the stability of the economic system, increases the ability to withstand internal and external loads. At the same time, it is the institutional vector through legal, political, and economic mechanisms that can ensure

the integrity of the national system, strengthen its ability to maintain dynamic equilibrium, successfully adapt to endogenous and exogenous challenges, and effectively overcome crisis phenomena.

It is worth noting that the institutional provision of the state's economic security has not been finally formed into a system-structural complex, which does not allow for clear monitoring, responding, and taking timely and adequate measures to eliminate threats to economic security. In particular, the disadvantage is the lack of collaborative work in ensuring economic security in spatial and structural change since the institutional and legal provision of economic security primarily concerns the macro level.

Strengthening the institutional vector in ensuring the country's economic security should first occur by modernizing existing and creating new economic and social institutions that will increase labor productivity on a qualitatively new basis and economic growth.

The addition requires forming an institutional and legal basis at different levels of the hierarchy of economic management, which is ensured by the institutions performing the functions of decision-making, informing, and motivating.

According to this approach, it is necessary to form the institutional foundations for improving the state's economic security system.

In 2010, Federal Law No. 390-FZ, as of December 28, 2010, "On Security" came into force, not fully defining the term "security". The National Security strategy of the Russian Federation, approved by Presidential Decree No. 683 as of December 31, 2015, draws attention to the need for measures to combat the shadow and criminal economy, sets goals to increase Russia's investment attractiveness, improve the business climate, overcome capital outflow, and achieve sustainable economic growth.

In the Strategy of Economic Security of the Russian Federation until 2030, approved by Presidential Decree No. 208 as of May 13, 2017, a high level of criminalization and corruption in the economic sphere is named among the main threats to Russia's economic security. Furthermore, the main goals of the state policy ensuring economic growth are named. Therefore, one of the state's priorities is ensuring the security of economic activity.

To assess economic security, certain criteria are used – indicator indicators. A set of indicators allows you to predict the danger in advance and take action (Dolinko, 2018a).

Economic security is a set of conditions and relevant factors that directly ensure the stability of the national economy, its independence, and the ability to be regularly updated and improved. It is quite difficult to establish clear criteria that would make it possible to draw a line between dangerous

and safe in the economic sphere. This, in our opinion, is the main reason for the discussion on this issue. In theory, it is proposed to allocate threshold values that serve as a danger indicator.

In general, it can be said that economic security itself is a position of protection of the country's economy from global and internal influences (Genrikh, 2002).

Thus, an important condition for ensuring the state's economic security is both the availability of a protection system and the possibility of its continuous improvement.

From the criminal-legal point of view, the following threshold values of the state's economic security level can be distinguished: the level of crime in the economic sphere of activity, a persistent negative trend towards its growth, and the amount of material damage caused. However, suppose these indicators are the basis for determining economic security. Then, there may be a false impression that threats to economic security from criminal encroachments are decreasing since there is a steady trend towards a decrease in the number of detected crimes in this area (Ragozina, 2013).

Implementing strategic guidelines for the state's socio-economic development in economic security is carried out through the modernization of criminal policy, which defines the key directions, goals, principles, and means of influencing economic crime. In addition, such an impact occurs due to the formation of legislation and law enforcement practice, determining the optimal ways to influence the legal consciousness of the population of the country, which is typical for any legal system (Kucherov *et al*.,2021).

It is necessary to determine the place and role of economic security problems in the state's national security structure at the level of federal legislation. Implemented in a specific state act, the economic security strategy will allow state authorities to make the right decisions in economics and law, actualizing the problems of countering criminal encroachments on Russia's economic security.

4. Discussion

In 2021, the main attention of the state was focused on the topic of economic recovery. However, this year, economists predict concerns related to financial and geopolitical risks, while economic growth issues will go to a secondary plan, jeopardizing the country's economic security.

The focus of economic attention remains inflation, and the key issue remains the containment of price growth. Also, the greatest risks to the

further development of the economy today are the spread of new coronavirus strains. Against the background of these events, one of the goals of modern organized crime is the desire to penetrate politics and the economy and gain a foothold in these areas (Esipov, 2004).

When considering the concept of economic security, it is advisable to rely on the following provisions: economic security is the most important component of the national security system; economic interests are the object of protection; proper protection of national interests is possible only if there is a stable system for detecting actual negative impacts, preventing probabilistic impacts and leveling the causes of their occurrence; impacts on economic security may contain internal and external factors of the country's economic system.

Economic security is a state of the economy in which the preservation and protection of a person's fundamentally necessary needs and interests, the surrounding society, and the country from actual and possible external and internal influences are ensured (Goncharenko and Kutsenko, 2015).

The economic security of the state is determined by the state of socio-economic relations and productivity, extensive use of the results of scientific and technological development in the country's economy, and the system of foreign economic relations. Furthermore, the state's economic security is interconnected with the categories of "sustainability" and "development" of the economy. A country's sustainable economic development means the strong and reliable development of its elements, including economic and related organizational ties between them and the ability to resist internal and corresponding external threats (Shlemko and Binko, 2015).

Almost all researchers, despite the subjective approach, agree that the essence of economic security is: 1) the state of the economy, ensuring a sufficient level of social, political, and defense development of society and the state; 2) the security of the economy from internal and external threats (Muradov, 2010: 100).

It is necessary to agree with the opinion of Selivanovskaya and Sboyeva. They argue that countering the criminalization of the economy as a threat to the economic security of the Russian Federation involves a theoretical and practical analysis of criminal legislation providing for the responsibility for crimes in this area (Selivanovskaya and Sboyeva, 2021).

Dolinko's position is very convincing, asserting that the law enforcement agencies of our country reliably protect the economic security of Russia and the economic sovereignty of our sovereign state, protecting Russia from the destructive effects of external and internal threats and factors, from dangers and various kinds of negative challenges and risks in the field of Russia's economic security (Dolinko, 2019b).

The concept of "economic safety" occurs mainly in the meaning of security, the ability of a person or state to withstand critical situations, effectively use financial resources, and the effectiveness of social support measures for the population (Koroleva and Senchenko, 2018).

For example, on the World Bank website: "The U.S. social and economic safety net has evolved over nearly a century, through government policies related mainly to three general areas: (1) providing basic financial security, (2) protecting vulnerable populations, and (3) promoting equality of opportunity" (Nightingale *et al.*, 2003) – it is said about the system of state provision of the population.

The term "economic security" can also be used similarly. So, President Roosevelt created the Committee on Economic Security (the Committee on Economic security), whose goals were formulated as follows: "Roosevelt asks the committee to propose "sound means" to secure against "several of the great disturbing factors in life – especially those which relate to unemployment and old age" (Marmor and Mashaw, 2011). Thus, the competence of this committee was on the issues of social protection.

The International Committee of the Red Cross characterizes economic security (economic security) as the ability of an individual, family, or society to adequately and permanently Meet immediate needs. American publications associate the problem of economic security with material well-being, affordable healthcare, family support measures, and equal opportunities for citizens (Case, 2015). Often, the term "economic security" refers to financial stability: "economic security refers to capital flows worldwide and capital markets and products that are the object of these flows.

Through these channels, currencies may be destroyed, inflation passed on, stocks exhausted, and financial institutions destroyed (Andruseac, 2015) – "economic security refers to the global movement of capital and capital markets and products to which funds are directed. Through these channels, currency depreciation, inflation growth, depletion of reserves, and destabilization of financial institutions can be achieved" (Andruseac, 2015: 235).

Internal threats are directly the state's inability to self–development, and self-preservation due directly to the state of its economy and other related factors.

External threats are directly foreign economic and geopolitical factors concerning global environmental processes, affecting national sovereignty. Ensuring absolute economic security assumes that the country's direct participation in the world economy also contributes to the development of the domestic economy.

There is also a direct threat (the threat created by the targeted, planned activity of the subject is aimed against a specific national interest, there is a target installation to counteract it); an indirect threat (acts against a specific national interest without a target installation to counteract it). According to the form of impact, threats are classified into direct (directed directly against the realization of specific national interest) and indirect (acting on a specific national interest through its relationship with other national interests).

Monitoring those threats that directly cause a negative transformation of the overall economic situation at the state level also makes it possible to create a system of direct measures to eliminate or prevent the overall results of their impact (Goncharenko and Kutsenko, 2015). At the same time, the whole package of measures is aimed not only at restoring the production and resource capabilities of the entire state but also at creating directly optimal conditions for the whole life of society.

Therefore, the mechanism and direct measures of economic policy, in general, which are formed and provided at the federal level, should be directly aimed at preventing global and domestic specific negative impacts on the economic security of the whole of Russia.

The system approach directly determines the following key structural components in the economic security system: a functional purpose, the subject-object composition, specific legal information, and directly instrumental support. Thus, economic security cannot be considered directly in isolation from the object of such security, and, directly, certain hierarchical levels can also be distinguished in the system (Syusyukin, 2004).

Ensuring economic security is one of the highest prerogatives of the state, and it should have a comprehensive nature of measures that will be supported by the entire system of state bodies and structural entities of the economy (Smirnova and Temnyakov, 2021).

The creation of a high-quality regulatory legal framework will make it possible to shift the focus to the sphere of law enforcement, that is, the law enforcement activities of national security entities, to implement a targeted approach in ensuring appropriate types of national security (Makareiko, 2020).

Because of the above, the economic security system itself is always aimed at a certain balancing of interests and specific regulation of potential collisions between certain security objects in general, directly preventing negative impacts also in the real sector of the economy, a certain strengthening of the stability of all economic activities to specific exogenous and also undesirable endogenous impacts. The objects of Russia's economic security, as is known, are the state, society, individual elements of the economic system, organizations, and territories.

Conclusion

When considering the concept of economic security, it is advisable to rely on the following provisions: economic security is the most important component of the national security system; the object of its protection is the interests of the country in the field of economics; proper protection of national interests is possible only if there is a stable system for detecting real negative impacts, preventing probabilistic causes of their occurrence; impacts on economic security may contain internal and external factors.

The purpose of economic security is to ensure stable economic development of the country to meet the economic and social needs of the population with adequate labor costs and, at the same time, directly reasonable use of natural resources and their criminal protection.

As a result of the analysis of a complex of socio-economic and other factors, it was found out that the criminalization of acts in the economic sphere is due to a significant degree of public danger of these acts, the impossibility of successfully countering them with the help of other measures. In addition, the social conditionality of the encroachments mentioned above is also due to economic transformations. The definition of the object of the crime has an important theoretical and applied significance since the correct definition of the object impacts clarifying the elements of the crime and its placement in the Criminal Code of the Russian Federation.

The object of the crime is also important for establishing the degree of public danger of the act, its correct qualification, and differentiation from other crimes and acts that are not crimes. In addition, the object of the crime allows to fully disclose the social and legal content of the committed act.

The essence of all crimes is not that they encroach on the security of society, that is, they are socially dangerous, but that they encroach on the order established in society with the help of legislation, which is necessary for the safety of citizens, society and the state. Thus, the common object of any crime is not public safety but the order of relations between people enshrined in legislation, which creates a social order necessary to ensure the country's security.

Social order should be ensured by exercising rights and performing duties by subjects exercising the rights granted lawful.

In characterizing the concept of the object of crimes in economics, it is necessary to focus on the correlation of the terminological designation of the corresponding type of crime. Furthermore, establishing the content of the concept of crimes aimed at undermining the country's security requires clarifying the essence of such a definition as "economic security."

In order to formulate the concept of crimes in the economic sphere, it is necessary to identify its essential features, based on which the definition is formulated. We believe that these crimes are characterized by certain essential features, which determine the content of the corresponding concept. Establishing the content of the concept of crime in the sphere of economic activity, in our opinion, is based on the general definition of «crime» defined in Article 14 of the Criminal Code of the Russian Federation.

Let us take the definition of a crime in the Criminal Code of the Russian Federation and its main features. It should be noted that illegality as a formal sign of a crime must be provided for in the criminal law. In the current Criminal Code of the Russian Federation, a significant part of the elements of crimes committed in the sphere of economic activity is contained in Chapter 22 of the Criminal Code, «Crimes in the sphere of economics» (Articles 158-204).

The need to criminalize crimes in the sphere of economic security of the country is because the degree and nature of the public danger of these acts indicate the impossibility of effectively countering them only by legislation. This is what forced the State to resort to criminal law response measures. The positive effect of which, subject to compliance with all other principles of criminalization and good work of law enforcement agencies, should significantly exceed the potentially possible negative social consequences.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 195-206
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

State environmental policy on the issue of legal regulation of fire safety in the forests of Ukraine

DOI: https://doi.org/10.46398/cuestpol.4074.10

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Abstract

The purpose of the research was to analyze, at the theoretical level, the state policy of organizational and legal nature on strategic issues of ensuring fire safety in Ukrainian forests. To achieve this goal, general scientific and special scientific methods of cognition were used, in particular, dialectical, logical-formal, analysis and synthesis, structural-systemic, legal-comparative, legal-formal, prognostic. The study emphasizes that the lack of approved strategic documents for the development of the forestry sector prevents the formation of a projected public policy and, therefore, creates an unresolved organizational and legal structure of governance in forestry relations in general and reduces the effectiveness of fire safety in forests. It is concluded that among the priorities for achieving the task of effective fire safety in forests are identified factors that are primarily the formation of a single interagency consensus vision of the development of the forestry sector, reflected in the Strategy for Sustainable Development of Forest Resources and, consequently, a system of rules and principles basis of the national forest policy.

Keywords: environmental law; public policies; security and society; nature; forest preservation.

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Recibido el 15/06/2022 Aceptado 08/08/2022

Política ambiental estatal sobre el tema de la regulación legal de la seguridad contra incendios en los bosques de Ucrania

Resumen

El propósito de la investigación fue analizar, a nivel teórico, la política estatal de naturaleza organizativa y legal sobre cuestiones estratégicas para garantizar la seguridad contra incendios en los bosques de Ucrania. Para lograr este objetivo, se utilizaron métodos de cognición científicos generales y científicos especiales, en particular, dialéctico, lógico-formal, análisis y síntesis, estructural-sistémico, legal-comparativo, legal-formal, pronóstico. El estudio destaca que la falta de documentos estratégicos aprobados para el desarrollo del sector forestal impide la formación de una política pública proyectada y, por lo tanto, crea una estructura organizativa y legal de gobernanza no resuelta en las relaciones forestales en general y reduce la eficacia de la seguridad contra incendios en los bosques. Se concluye que entre las prioridades para lograr la tarea de seguridad eficaz contra incendios en los bosques se identifican factores que son principalmente la formación de una visión única consensuada interinstitucional del desarrollo del sector forestal, reflejada en la Estrategia para el Desarrollo Sostenible de los Recursos Forestales y, en consecuencia, un sistema de normas y principios base de la política forestal nacional.

Palabras clave: derecho ambiental; políticas publicas; seguridad y sociedad; naturaleza; preservación de los bosques.

Introduction

Today, more than ever, security issues are at the forefront of the life support system of the entire world community. An important component of it is the symbiosis of «man - nature» and, accordingly, the need to implement a set of measures aimed at harmonizing these inseparable components from each other. That is why the problems of fire safety are becoming increasingly important.

These problems are closely related to the problems of economic, social, man-made and environmental security, are interconnected and interdependent. Analytical data from the annual National Report on the State of Man-Made and Natural Security in Ukraine show that the problem of saving forests from fire has become especially acute in recent years due to rising air temperatures. Forest fires, including at the United Nations level, have been identified as a major threat to humanity in the near future.

In particular, by mid-August 2019, the atmospheric monitoring system had detected more than 1,600 forest fires in Europe, which is three times more than the average for the decade as a whole (Zibtsev *et al*., 2019).

According to the National Report on the State of Man-Made and Natural Safety, in our country on average there are about 3.5 thousand forest fires a year, destroying more than 5 thousand hectares of forest (Nacionalna dopovid, 2017). According to the Eastern European Forest Fire Monitoring Center, the annual area of fires in the forest fund of Ukraine is over 10 thousand hectares.

However, despite a number of inconsistencies in statistics presented in various sources, the only common position of experts indicates extremely threatening trends in forest fire risks, primarily related to global climate change, catastrophic rainfall, a significant share of conifers in the structure of the Wood Fund of Ukraine (40%) (Reference book of forest resources of Ukraine, 2012) long-term hostilities and a significant area of radioactively contaminated forests in our country. "Issues of organizational and legal nature of coordination and coherence of work on fire safety in forests are not only local, regional and state cooperation, but, importantly, the need for interstate coordination of joint efforts. Given the large-scale growing forest fires around the world and the significant long-term negative consequences for the entire global ecosystem, experts and the scientific community are faced with the important task of creating an effective system for combating forest fires (Gulac, 2020).

The effectiveness of such work lies, first of all, in the context of the implementation of successful foreign experience, interstate cooperation and coordinated inter-institutional cooperation.

As Ukraine is an active member of international integration processes, a signatory to many international agreements at the global level, it is responsible for implementing its commitments (in particular, among the Sustainable Development Goals to 2030 adopted in September 2015 at the United Nations Summit, one of the priorities is security), the implementation of global goals requires their incorporation into relevant strategic regulations of domestic law, including the Strategy for Fire Safety, the Strategy for Sustainable Development of Forest Resources and a number of other documents of long-term vision. should be based on common agreed state positions, taking into account the right balance between economic, social and environmental interests of society, the development and approval of which is urgently needed today (Oleksenko *et al*., 2021).

1. Objectives

The purpose of this work is to define and substantiate the principles of state environmental policy in the field of fire safety in the forests of Ukraine.

2. Materials and methods

To achieve this goal, general scientific and special scientific methods of cognition were used, in particular dialectical, formal-logical, analysis and synthesis, system-structural, comparative-legal, formal-legal, prognostic. In particular, the application of the dialectical method allowed to study public relations in the field of fire safety in the forests of Ukraine in their unity and relationship, to identify patterns of their development, as well as to consider the dynamics of legislation in this area. Taking into account the scientific theory «the place of man in the safety of life» presented the author's model of fire safety in the forests of Ukraine and formed his own vision of a comprehensive, multilevel nature of the public system of fire safety in the forests of Ukraine.

3. Results and discussion

The role of the state in establishing the principles of development of natural resources in a safe environment for life and health of citizens is crucial. The leading place in this is occupied by the law-making function of the state, in particular the formation of normative-legal bases of administrative-legal regulation in the sphere of public relations studied by V. Pechulyak rightly stated:

> The functions of implementation of forest legislation and control over its implementation are to ensure compliance by all forest owners, forest users and other entities whose activities affect the state of forests, legal norms and provisions of forest policy. The functions of the state as the owner of forests are reduced to ensuring the ecological and social value of forests, making a profit from them. The function of state support for the needs of the forestry industry includes research, vocational education and training; statistics, forest management and planning; consulting services; fire and phytosanitary control; material quality control (Pechulyak, 2011: 352).

Likewise, Gulac reports that:

> Therefore, effective public administration in the field of forest relations is possible only in the presence of a comprehensive system of regulations governing these relations, the adoption and implementation of which should be based on

a balanced strategic forest policy, which should be characterized by sufficient predictability and stability (Gulac, 2020: s/p).

Protection and conservation of forests is an important state task, especially within our country, which is sparsely forested in general, as the forest fund is less than 16% of the area, and highly corrupt, especially in the field of forest relations. Currently, the level of forest protection organization in our country remains extremely low. Despite a number of optimization measures, a significant part of the problems in this area is caused, including the imperfection of legal regulation.

Currently, the sphere of forest relations is regulated by a number of normative legal acts, which, although not devoid of certain progressive theses and provisions, are still characterized by a certain contradiction and imperfection. The main ones are: laws of Ukraine: Forest Code of Ukraine (Law of Ukraine, 1994), Land Code of Ukraine (Land code of Ukraine, 2001 «On Environmental Protection» (Law of Ukraine, 1991), «On Hunting farm and Hunting» (Law of Ukraine, 2000), «On Wildlife» (Law of Ukraine, 2001), «On Basic Principles (Strategy)» State Environmental Policy of Ukraine for the period up to 2030 "(Law of Ukraine, 2019); Resolutions of the Cabinet of Ministers of Ukraine: «On approval of the State target program» Forests of Ukraine «for 2010-2015» (Resolution of the Cabinet of Ministers of Ukraine, 2009) «On approval of the Regulation on state forest protection» Ukraine, 2009.

Despite the fact that some areas of forest relations have undergone significant progressive regulatory changes, but practice shows that the adoption of new regulations in the field of forest protection and use does not always help to effectively address existing problems. The reasons for the ineffectiveness of the adopted legislation, in our opinion, are the following: the lack of a unified state policy in the field of forest relations; lack of a unified strategic vision for the development of the forestry industry; absence of the head of the branch for a long time; contradictions in regulations of different levels; conflict of ecological and economic interests of society and the state; the actual priority of economic interests over environmental ones (Gulac, 2013).

Thus, the Decision of the Committee on Agrarian Policy and Land Relations of February 13, 2018 (Minutes № 68) «On the results of the field meeting on» Problems of forestry reform in Ukraine «identified a number of problematic issues in the forest sector that need immediate solution . However, the main problem is the lack of strategic documents for the development of the industry, which would form the projected public policy. As a result, as stated in the Decision, there is an unregulated organizational and legal structure of forest management, which is manifested in the inefficient use of forest resources (Yavorovsky and Gurzhiy, 2017).

In particular, the lack of such strategic documents for forest development has a negative impact on the state of forest fire protection and, consequently, on fire safety in forests in general, as only national forest programs have been funded for a long time. As you know, the last approved State Program in the forest sector was the resolution of the Cabinet of Ministers of Ukraine:

«On approval of the State target program» Forests of Ukraine «for 2010-2015.» And the national task of ensuring fire safety in forests requires significant funding for the implementation of a set of all necessary preventive measures. In addition, rapid climate change requires the inclusion in the forest strategy of a set of measures to protect forests from fires and the adaptation of the forest sector to climate change in general.

The Forest Sector Development Strategies, which have been developed, but not adopted or implemented, already focus on this issue, which, as everyone knows, will only become relevant over time. Thus, a number of strategic vision documents remain at the Project level, in particular:

1. The Concept of Forestry and Hunting Reform of Ukraine, discussed on April 27, 2015 at the meeting of the Coordination Council at the State Forestry Agency of Ukraine;
2. Strategy of balanced development of forestry and hunting economy of Ukraine, the need for development and adoption of which is determined by the said Concept;
3. The Strategy for Sustainable Development and Institutional Reform of Ukraine's Forestry until 2022, adopted on November 15, 2017 at a meeting of the Cabinet of Ministers of Ukraine, but due to a number of comments, pressure from experts and the public, has not been implemented;
4. Program «Forests of Ukraine - 2030», the approval of which is provided by the Decree of the President of Ukraine «On additional measures for forestry development, environmental management and conservation of nature reserves» from 21.11.2017 № 381 to implement the Strategic Plan of the Organization United Nations Forest. However, even these draft regulations do not contain systemic issues in terms of the need to ensure fire safety in forests. In particular, the Strategy for Sustainable Development and Institutional Reform of Ukraine's Forestry until 2022 envisages, among other things, the need to amend the Criminal Code and the Code of Administrative Offenses of Ukraine in terms of strengthening liability for arson in natural landscapes. In addition, the State Forest Agency notes that the activities of the State Forest Protection, provided by the relevant Regulations on this service, are a combination of economic and control functions, as the functions of state forest protection are performed by individual officials of state forest enterprises (Results of the field meeting, 2018).

The State Forest Agency in this Strategy proposes the creation of the State Fund for Forestry Development and maintaining state support for the tasks. Establishment of the Fund is also provided by the Decree of the President of Ukraine dated 21.11.2017 № 381, the funds of which are planned to be used to finance primarily measures for reforestation, creation of protective forest belts and other protective plantations and protection (including fires) of forests, purchase of fire-fighting and forestry machinery and equipment.

Accumulation of funds is proposed to be realized at the expense of: 30% - from the rent for special use of forest resources in the part of wood harvested from felling of the main use; 25% - from the net profit (income) of state forestries; voluntary contributions of legal entities and individuals; international technical assistance; other revenues (Results of the field meeting, 2018).

In matters of fire safety in forests, it is especially important to increase the role of legal monitoring. After all, only on the basis of complete and reliable information on the practice of application of regulations it is possible to make the necessary proposals to improve legislation, improve activities (including the adoption of necessary management decisions), eliminate possible corruption in the relevant ministry.

Such work should be based on a planned basis, taking into account information and suggestions from civil society institutions and the media (Monitoring, 2011). In its ambitious plans to implement effective governance, the Government of Ukraine is working to create a modern system of local self-government that promotes the dynamic development of regions and transfers as much power as possible to the level closest to citizens - communities, including forest fire safety.

In the framework of the technical assistance project «Support to Forest Sector Reform in Ukraine» (PROFOR) in early 2018, an expert assessment of bills and recommendations for improving the relevant legislation, which states that the purpose of lawmaking is to adopt fair, effective and perfect laws as the foundation of forest relations. The basic basis for the development of quality laws is the formed state policy, which provides a holistic vision of the goals and directions of development of the forest sector. In Ukraine, unfortunately, forest policy is not defined by law. Accordingly, according to experts, the state of legislative activity in the field of forest relations is characterized by:

> Lack of a systematic and planned approach; low professional level of legislative proposals; populism and declarativeness; disregard for the specifics of forest relations in the development of related legislation; inaction of the Government as a subject of legislative initiative in the development of relevant bills; low quality of legislative equipment, uncertainty of the implementation mechanism; staffing issues; lack of monitoring of adopted laws, etc. (Storchous, 2013: s/p).

The main components of solving the problem of legislative activity in the forest industry in general, which will directly affect the effectiveness of fire safety in the forests of Ukraine are: legal (adoption of forest policy, development strategies, prioritization of legislative work); organizational (short-term and long-term planning, forecasting the consequences of the adoption of bills, professional examination of submitted bills, ensuring the evaluation of the effectiveness of their adoption, coordination of legislative work of parliament and government); economic (financial and economic support of the legislative capacity of central executive bodies, expert groups on a contractual basis, staff incentives, etc.) (Storchous, 2013).

We must pay attention to the fact that the forest is a natural resource of the nation, which, first of all, having a long period of restoration (about 150 years) should be used to ensure environmental safety and the functioning of the environment as a whole. The priority of economic and economic needs over environmental ones has already led to extremely serious consequences in a number of territories of our state, violating the basic principles of ecosystem and natural environment, causing irreparable damage to natural areas and people living in them.

In particular, Article 2 of the Forest Code of Ukraine «Forest Relations» confirms our position, noting that «forest relations - public relations relating to the possession, use and disposal of forests and aimed at ensuring the protection, reproduction and sustainable use of forest resources taking into account environmental, economic , social and other interests of society «(Law of Ukraine, 1994) and somewhat contradicts the interpretation of the terms specified in Art. 1 of the Forest Code of Ukraine. Thus, in the definitions of the main legal categories of the forest sector provided for in Article 1 of the Forest Code of Ukraine, namely: «Forest plot» and «Forest land plot»

Accordingly, in our opinion, in the current realities of our country's low forest cover and other negative trends in the forest sector, in particular, due to rapid climate change, the activities of central executive bodies in forest management should be coordinated by the Cabinet of Ministers. natural resources, as the head of the central executive bodies, which is the main in the formation and implementation of state policy in the field of environmental protection. It should also be borne in mind that the activities of the State Forest Agency have long been coordinated and directed through the Minister of Ecology and Natural Resources, and in 2010 the Ministry of Agrarian Policy was entrusted with a significant part of the Ministry of Environment.

In particular, in accordance with current legislation, the Ministry of Environment approves standards for the use of forest resources, estimated felling (logging in the order of felling of the main use), approves forest management materials, approves limits on the use of hunting animals,

shooting rates, etc. Through the coordination of the State Coinspection, the Ministry of Environment exercises state control over compliance with legislation in the field of protection, conservation, use and reproduction of forest resources, flora and fauna. Performing such functions requires constant cooperation with the State Forestry Agency and enterprises, institutions, organizations belonging to its sphere of management.

In addition, the analysis of the Forest Code of Ukraine, in particular, Articles 28-29 of this Code, which define the powers of central executive bodies in the field of forestry and forestry, in particular, shows the following: duplication of the same functions various central executive bodies, including control bodies, which does not make the system of public administration in the forest sector effective; dominance in the field of forest relations, first of all, economic and economic component; extremely complex management system in the field of forest relations, primarily at the central level of executive power.

Therefore, not only Articles 28-29 of the Forest Code of Ukraine should be amended and optimized, but also, first of all, the state policy on forest relations: relations «man - forest», «natural environment - man - his needs - forest» have to experience system-forming, fundamentally different views, and hence the normative consolidation, first of all, in the system of relevant subjects of management and their interaction with each other.

Therefore, we consider it expedient to provide in the Resolution of the Cabinet of Ministers of Ukraine «On optimizing the system of central executive bodies» and other regulations, change the coordination and direction of central executive bodies, which directly performs the functions of maintaining and managing the forest fund. accordingly ensures the formation of state policy in the field of forestry to the Minister, who ensures the formation of state policy in the field of forest relations.

Conclusions

Emphasis is placed on the fact that the lack of approved strategic documents for the development of the forest sector makes it impossible to form a projected state policy, and thus creates unregulated organizational and legal management structure in forest relations in general and reduces the effectiveness of fire safety in forests in particular; and the subordination of the State Forestry Agency to the Ministry of Agrarian Policy (as it was from the end of 2010 to 2019) and not to the Ministry of Environment (Ministry of Environment) created a number of inconsistencies and contradictions in forming strategic positions in forestry relations.

Among the priorities in achieving the task of effective fire safety in forests are identified administrative and legal factors, which are as follows: the formation of a single interagency agreed vision of forest sector development, reflected in the Strategy for Sustainable Development of Forest Resources, and hence the regulatory framework, which would consolidate the principles of national forest policy; improving the mechanism of fire safety control in communal forests and self-afforested agricultural lands; institutional strengthening of forest fire protection by involving forest public inspectors, local and voluntary fire protection units in this work; improving the system of financing fire-fighting measures in forests by creating the State Fund for Forest Resources Development; development of mechanisms for ensuring fire safety in forests harmonized with international and European standards; introduction of modern innovative technologies in preventive fire-fighting measures and extinguishing forest fires; providing a network of forest roads and reservoirs; equipping all observation towers with television cameras.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 207-223
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Legal Responsibility for Illicit Trade in Pharmaceuticals under Conditions of the Covid-19 Pandemic

DOI: https://doi.org/10.46398/cuestpol.4074.11

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Abstract

The aim of this study was to examine the optimal types and measures of legal liability for crimes in the field of illicit trade in pharmaceuticals in the conditions of the COVID-19 pandemic. The research used methods of systematic approach, descriptive analysis, synthesis and prognosis, systematic and formal legal and comparative selection. It has been established that illicit trade in pharmaceuticals is carried out by organized criminal groups and is related to corruption and cybercrime. Also, the article has revealed typical legal flaws, which complicate international cooperation in this field and lead to non-compliance with international standards of criminalization and imposition of sanctions for illegal circulation of counterfeit medicines. All this leads to the conclusion that the illicit trade in pharmaceuticals manifests itself in a series of offenses for which administrative or criminal liability must be foreseen. Equally promising is the development of a model for law enforcement activity that includes criminalization of trade in low-quality, unregistered and counterfeit pharmaceuticals, according to international standards; proportional punishments for natural persons and influence measures for legal persons and compensation for their victims.

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Recibido el 15/05/2022 Aceptado el 12/08/2022

Keywords: counterfeit pharmaceuticals; medical care; illegal markets; legal liability; organized crime.

Responsabilidad Jurídica por Comercio Ilícito de Productos Farmacéuticos en Condiciones de la Pandemia del Covid-19

Resumen

El objetivo de este estudio fue examinar los tipos y medidas óptimos de responsabilidad legal por delitos en el campo del comercio ilícito de productos farmacéuticos en las condiciones de la pandemia COVID-19. La investigación utilizó métodos de enfoque sistemático, análisis descriptivo, síntesis y pronóstico, selección sistemática y legales formales y comparativos. Se ha establecido que el comercio ilícito de productos farmacéuticos es realizado por grupos delictivos organizados y se relaciona con la corrupción y el delito cibernético. También el artículo ha revelado fallas legales típicas, que complican la cooperación internacional en este campo y conducen al incumplimiento de los estándares internacionales de criminalización e imposición de sanciones por la circulación ilegal de medicamentos falsificados. Todo permite concluir que el comercio ilícito de productos farmacéuticos se manifiesta en una serie de delitos por los que debe preverse la responsabilidad administrativa o penal. Igualmente es prometedor el desarrollo de un modelo para la actividad de aplicación de la ley que incluya la criminalización del comercio de productos farmacéuticos de baja calidad, no registrados y falsificados, según los estándares internacionales; castigos proporcionales a las personas físicas y medidas de influencia a las personas jurídicas y la indemnización a las víctimas de estos.

Palabras clave: productos farmacéuticos falsificados; atención médica; mercados ilegales; responsabilidad legal; crimen organizado.

Introduction

Access to health care and effective medicines today is a human right, similar to other rights recognized by the international community. Patient safety is the most important component of the provision of medical care (Shojaei and Salari, 2020) and the main task of health care systems in all countries of the world.

One of the main aspects here is ensuring the authenticity and quality of medicines. The pharmaceutical market is subject to falsification due to the high profitability of the illicit trade in counterfeits. Many experts claim that approximately 10% of medications sold on the legal market, especially in middle- and low-income countries, are falsified. This leads to the inclusion of counterfeit drugs in treatment protocols alongside legal medications.

As a result, there are side effects, diseases spread more rapidly, and the mortality rate increases (Haji *et al*., 2021). However, the illegal circulation of medicines has an extremely negative impact not only on the health of the population but also on the economic situation. In particular, the growth of the *markets for counterfeit pharmaceuticals* may exceed $ 16.04 trillion in 2030 with the prospect of increasing to $ 24.24 trillion in 2040 (Kasting, 2021; Kemp *et al*., 2021).

In a pandemic, the threat level increases significantly. The experience of combating the COVID-19 around the world showed that criminals quickly identified vulnerabilities in the organization of anti-epidemic measures and organized the receipt of super-profits through illicit trade in pharmaceuticals. The production and distribution of fake pharmaceuticals related to COVID-19 have significantly affected the pharmaceutical market of the vast majority of countries (Europol, 2020c). However, due to the illicit trade in pharmaceuticals, the pandemic has become more destructive to the lives, health, and well-being of the elderly, people with serious concomitant diseases, and persons with low socio-economic status (United Nations, 2020).

At the same time, the real volume of illegal circulation of counterfeit medicine can be assessed only partially. Analysis by UN experts showed that some countries did not register the production or distribution of falsified medicines, considering them to be of poor quality. This significantly affected the statistical data (United Nations Office on Drugs and Crime, 2021). However, you can use the law enforcement data. Thus, under the coordination of Interpol, more than 34,000 counterfeit medical products were seized during a global operation only in March 2020 (Interpol, 2020: 2). In October 2020, the *Director-General* of the United Nations Office on Drugs and Crime (UNODC) acknowledged the placing of fake COVID-19 vaccines on the online market as the most serious criminal threat.

EU countries supported the recognition of the fight against the counterfeiting of COVID-19-related medicines as urgent and emphasized the close connection of this illegal activity with international economic and financial crimes, committed by organized criminal structures (Csonka and Salazar, 2021).

The illegal circulation of fraudulent medicines under COVID-19 has highlighted many interrelated law enforcement problems, such as

an increase in the level of cybercrime. Under quarantine restrictions, governments have allowed online sales of medicine and medical supplies, as well as direct delivery to customers, to comply with the transportation conditions (Centre for Applied Research; Konrad-Adenauer-Stiftung E. V. Foundation Office Ukraine, 2020). This led to an increase in social media advertising scams and the creation of special websites that offered counterfeit medicines (United Nations Office on Drugs and Crime, 2021).

Enterprises that wanted to buy consumables and protective equipment became one of the first targets of fraudsters (Europol, 2020b). The number of facts of falsification of documents, used to move counterfeit pharmaceutical products (including incorrect labelling of medicine packages), has increased (Europol, 2020). Offenders are also engaged in illicit trade in legal medications through corruption, weakening of inspections, and system deficiencies that have been exacerbated by COVID-19. Corruption in the health care system is a global problem that creates optimal conditions for illegal withdrawal of state medication (United Nations Office on Drugs and Crime, 2021).

Illicit trade in pharmaceuticals under conditions of the COVID-19 pandemic has significantly affected the level of shadowing of national economies. Organized crime groups have adapted to the opportunities created by the COVID-19 pandemic by exploiting gaps and inconsistencies in the public health and criminal justice systems. They use uncertainty among the public and authorities to create demand for *scarce medicine and to* enter the legal economy (United Nations Office on Drugs and Crime, 2021). They quickly create shell companies to hide their activities which significantly complicates law enforcement activities, because most of such crimes are transnational (Europol, 2020c). In general, the profitability of illicit trade in pharmaceuticals led to the inclusion in this activity of criminal groups that were engaged in the drug business (United Nations Office on Drugs and Crime, 2020).

Thus, under the COVID-19 pandemic, a super-profitable type of transnational organized criminal activity was formed. This determines the mainstreaming of the issues of countering it with measures of legal liability, which allow influencing the behaviour of interested persons (Haji *et al.*, 2021).

The rapid formation of the market for falsified medicines related to the COVID-19 pandemic did not give the authorities enough time to develop proper investigative procedures and subsequent judicial trials of cases. Since such crimes can be transnational and complex, this requires the provision of expert opinions and legal assistance from other countries (United Nations Office on Drugs and Crime, 2021).

Today, the only specialized international document on combating crime in this field is the Council of Europe Convention on the counterfeiting of medical products and similar crimes involving threats to public health (Elliott *et al*., 2020; Medicrim, 2011). It determines the need to criminalize forgery; intentional acts aimed at the production, sale, offer, and transportation of falsified medical products; and low-quality production of approved drugs (The Council of Europe, 2021).

But to this day, there is no general understanding of the seriousness of the problem. In particular, pharmaceutical companies are trying to independently counter the counterfeiting of medicinal products through the introduction of potential protection measures (Haji *et al*., 2021). In many countries, regulations do not contain adequate definitions, provide for inadequate penalties, or do not include crimes related to the circulation of falsified medical products as predicates for anti-money laundering. In addition, there is a lack of qualified personnel or technical capabilities to detect low-quality, falsified, or counterfeit medicinal products (United Nations Office on Drugs and Crime, 2021).

All this gives grounds to speak of such negative trends in this field, as a) shift of criminal activity towards the production and delivery of falsified vaccines (United Nations Office on Drugs and Crime, 2021); b) the growth of trade in counterfeit medicines on online platforms (Interpol, 2020; Mackey *et al*., 2020).

In such conditions, the lack or insufficient development of measures of legal responsibility is extremely unfavourable, as in the future, the world will face new epidemics and pandemics. Therefore, we cannot allow repetition of the situation when the society again will not be ready for stable functioning in the conditions of the crisis (Borysov, 2021).

Although at the international and regional levels, authoritative structures are trying to reduce the scale of falsification of medicinal products to protect patient safety (Haji *et al*., 2021), the issue of legal liability for illicit trade in pharmaceuticals under conditions of the COVID-19 pandemic is gaining relevance.

Taking into account the above, the main problem is to determine the specifics of offenses in the field of illicit trade in pharmaceuticals and adequate measures of legal liability for their commission. It is also considered important to identify the prospects for the development of these measures given the trends in the development of the situation in this field.

Taking the above into consideration, the *purpose of this study* is to examine illicit trade in pharmaceuticals under conditions of the COVID-19 pandemic as an illegal behaviour with the development of appropriate types of legal responsibility for the relevant offenses. The research tasks were the following: identifying the specifics of offenses in the field of illicit

trade in pharmaceuticals under conditions of the COVID-19 pandemic; clarification of the types and measures of legal responsibility for these offenses; determination of the most effective model of combating illicit trade in pharmaceuticals under conditions of the COVID-19 pandemic using legal liability.

1. Methodology and methods

This study was carried out in the following stages: search and selection of literature and data of law enforcement practice; analysis of the material, presented in the selected sources, and evaluation of the results of these studies; identification of the current state and conceptual problems of the grounds and types of legal liability for offenses in the field of illicit trade in pharmaceuticals; determination of the purpose of the article; formulation of conclusions and practical recommendations for the formation of the most effective model of countering illicit trade in pharmaceuticals under conditions of the COVID-19 pandemic.

This study used international legal standards regarding the types of legal liability for illicit trade in pharmaceuticals, and generalization of regional and international law enforcement practice in countering it, including in the context of related offenses. This made it possible to determine the prospects for the development of the most effective model of countering illicit trade in pharmaceuticals under conditions of the COVID-19 pandemic through legal liability.

To achieve the goal, the following methods were used in this study: *the method of the systemic approach* was used to consider illicit trade in pharmaceuticals as a component of the shadow economy, on the one hand, and as the central element of a set of interrelated offenses; *the method of descriptive analysis* was used to determine the types of legal liability for illicit trade in pharmaceuticals under conditions of the COVID-19 pandemic; the *methods of synthesis and forecasting* were used to determine the prospects for the development of the most effective model of countering illicit trade in pharmaceuticals under conditions of the COVID-19 pandemic by means of legal liability; the *method of systematic selection* and *comparison method* were used to select and compare law enforcement practices countering illicit trade in pharmaceuticals; the *formal-legal method* made it possible to study the peculiarities of illicit trade in pharmaceuticals as a basis for the application of various types of legal liability.

2. Results

The analysis of legal liability for illicit trade in pharmaceuticals under conditions of the COVID-19 pandemic includes the determination of two fundamental aspects: a) the limits of the understanding of offenses related to such trade as grounds for legal liability; b) types of legal liability for these offenses.

It is advisable to take an integrated approach to the definition of offenses that can be included in the concept of "illicit trade in pharmaceuticals", as it provides for the understanding of both a criminal act and the object for which it was committed. Trade per se means a certain stage of the activity of bringing the medicinal product to the consumer and it is made illegal by the object – the peculiarities of the medicinal product.

The recommendations of the World Health Organization classify medications, including vaccines, as medicinal products and define the following types: a) substandard (low-quality) medicinal products are authorized medicinal products that do not meet quality standards and/or technical conditions; b) unregistered medical products are medical products that have not undergone evaluation and/or approval by a national or regional regulator for the market where they are sold/distributed/used; c) falsified medical products are medical products, the identity, composition or source of which were intentionally distorted (World Health Organization, 2017). Along with this, offenders can carry out illicit trade through legal activities (see Figure 1).

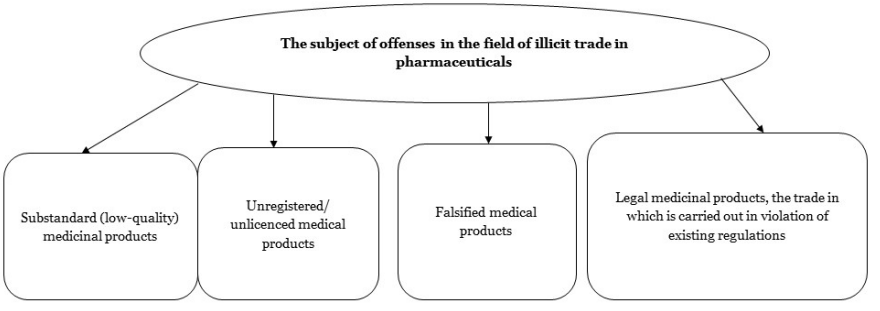

Figure 1: Offenses related to the illicit trade in pharmaceuticals

The trade in falsified medicinal products is the most dangerous offense, which is stipulated by the Council of Europe Convention on the counterfeiting of medical products and similar crimes involving threats to public health of 2011 (The Council of Europe, 2011).

Illicit trade in pharmaceuticals is often equated with other crimes, as it is a complex, sometimes long-term action, combined with other types of activities. However, for the correct assignment of legal liability, offenses must be differentiated (see Figure 2).

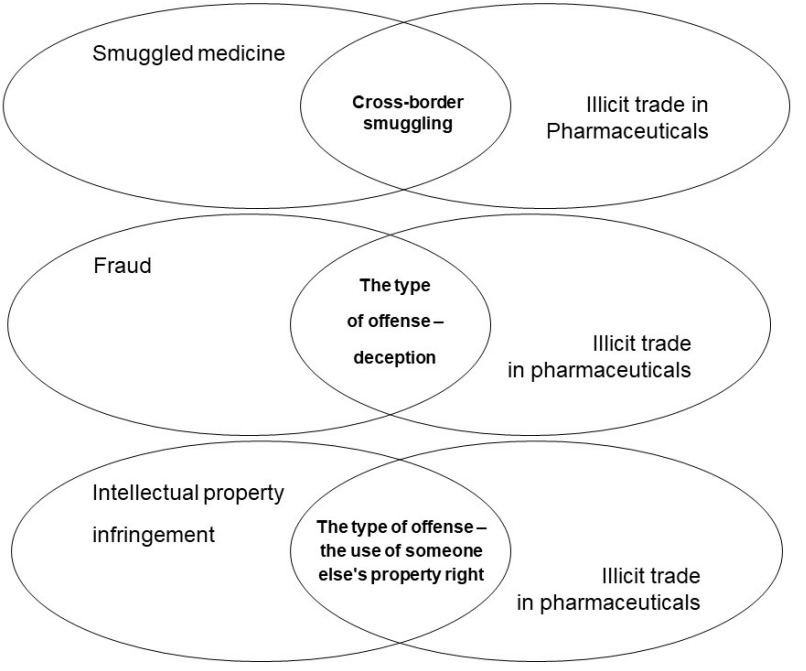

Figure 2: The ratio of offenses in the field of illicit trade in pharmaceuticals and related offenses (European Union Agency for Criminal Justice Cooperation, 2021: 21; Europol, 2020a: 3; Europol, 2020c: 8; Haji et al., 2021: 8; United Nations Office on Drugs and Crime, 2021: 13, 19).

As already mentioned, the illicit trade in pharmaceuticals is part of the shadow activities carried out by organized criminal groups. This is due to the complexity of processes in the pharmaceutical industry. However, the logistics sphere faces the greatest difficulties in the conditions of the pandemic. Quarantine hurt the organization of activities of pharmaceutical companies, which had to respond promptly to a sharp increase in demand for certain types of goods. In addition, quarantine restrictions adversely affected the global supply chains of medications (Davymuka *et al*., 2020).

The wide availability of pharmacies has shown that they are the first point of the patient's contact with the entire healthcare system (Miszewska

et al., 2022). As a result, there is a situation where inefficient management of supply chains from manufacturers to distributors allowed criminals to use a legal network of pharmacies (Haji *et al.,* 2021). Accordingly, various types of economic chains were formed depending on the capabilities of organized criminal groups (see Figure 3).

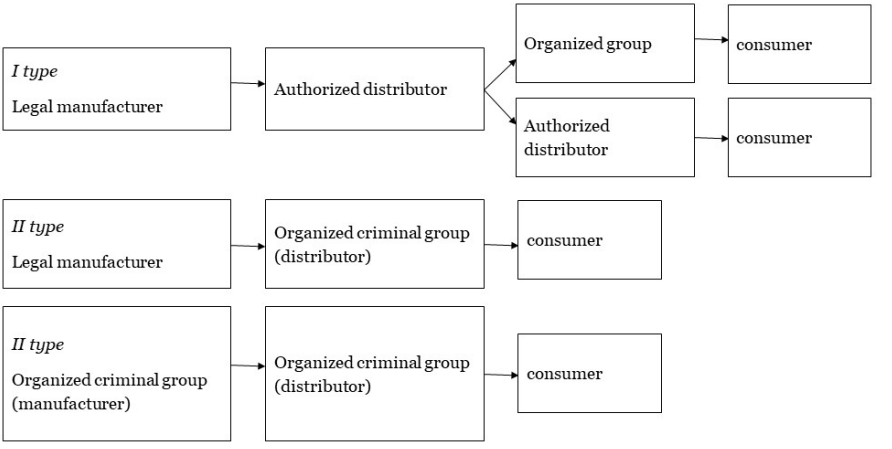

Figure 3: Economic chains involving organized criminal groups in the field of illicit trade in pharmaceuticals (Europol, 2020c: 9)

The above provides an opportunity to talk about the types of legal liability for offenses in the field of illicit trade in pharmaceuticals under conditions of the COVID-19 pandemic. Considering different dangerousness of these offenses depending on the subject of trade, it is possible to agree with the establishment of administrative liability in the case of illicit trade in legal medications. However, in other cases, criminal liability should be established.

Complex organized criminal groups often use corporate structures to hide persons involved in falsified medical product-related crimes. Therefore, it is necessary to introduce the responsibility of legal entities (United Nations Office on Drugs and Crime, 2019). Both natural persons (direct actors) and legal entities shall be subject to criminal liability. A general approach to legal liability measures can be seen in Figure 4.

When determining the amount of the fine, it should be taken into account that falsified medical product-related crimes are an extremely profitable business for criminals. When setting sanctions and imposing punishment, the cost of medical products that were related to the crime, the benefit received by the criminal, and the potential harm to public health should be

considered (United Nations Office on Drugs and Crime, 2019). Therefore, fines shall be significant both for natural and legal persons, as in this case, they will not perform the deterrent function. However, the number of fines for committing crimes should be significantly higher than for committing administrative offenses.

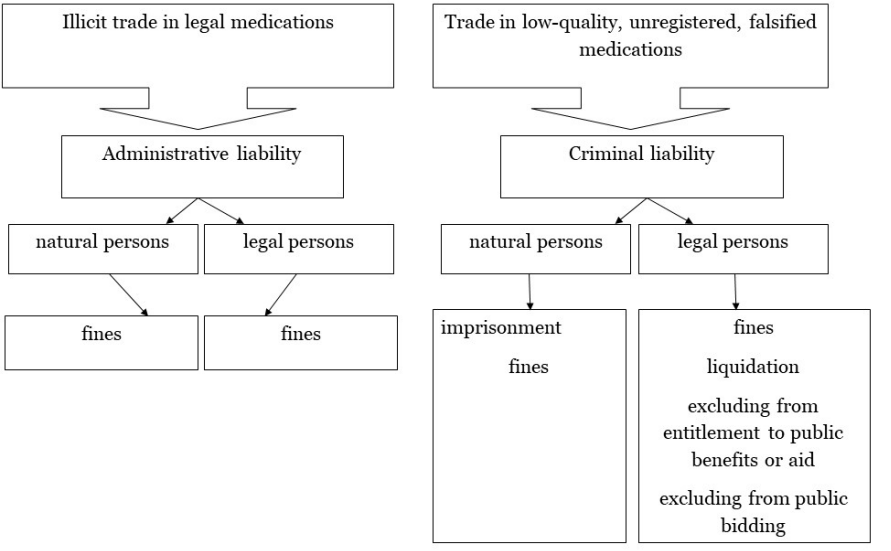

Figure 4: Legal responsibility for falsified medical product-related crimes (United Nations Office on Drugs and Crime, 2019: 42)

In addition, victims of crimes should be compensated for the damage caused by the illicit trade in pharmaceuticals.

Considering the above, there are some reasons to talk about the expediency of developing a model of legal liability for illicit trade in pharmaceuticals under conditions of the COVID-19 pandemic. Given the transnational nature of this activity, it is reasonable to focus on a general international approach to the system of combating low-quality and falsified medical products, in particular, Guide to *Good Legislative Practices* on Combating *Falsified Medical Product-Related Crime* (United Nations Office on Drugs and Crime, 2021).

This model may include such blocks as definition of Illicit trade in pharmaceuticals-*related offenses*; establishment of legal responsibility depending on the severity of offenses, but with mandatory criminalization of trade in substandard (low-quality), unregistered, and falsified medicinal products; establishment of proportional punishments for natural persons

and measures of influence on legal entities; compensation to victims of crimes.

3. Discussion

A conceptual vision of the grounds and measures of legal liability for illicit trade in pharmaceuticals under conditions of the COVID-19 pandemic is a component of a complex problem, consisting of security, economic, social, management, and law enforcement issues. This determines the diversity of scientific research and practical activities.

The COVID-19 pandemic has shown the need for a prepared, highly integrated health care system that effectively responds to emergencies (Miszewska *et al.*, 2022). In this regard, we could see the growing importance of the pharmaceutical sector of the economy – the production of drugs and vaccines (Borysov, 2021), the acceleration of trade, and the transfer of materials, means, and equipment to ensure the effectiveness and availability of the treatment of COVID-19 and overcoming its consequences (United Nations, 2020). Since the start of the pandemic, this economic direction has become the leader in the growth of business activity (Centre for Applied Research; Konrad-Adenauer-Stiftung E. V. Foundation Office Ukraine, 2020). However, in addition to the development of the health care sector, it should also be asked, how the COVID-19 pandemic affects the perpetration of offenses, as it will determine the development of strategies for crime prevention (Borysov, 2021).

In general, experts pay more attention to the circulation of falsified medicinal products as the most dangerous phenomenon, as the appearance of falsified medicines indicates significant changes in organized crime (United Nations Office on Drugs and Crime, 2021). However, this does not change the concept of organized criminal activity as a component of the shadow economy, which is characterized by the development according to general economic laws, as the main factor was the demand for scarce medicine and public pressure on health care systems. In the conditions of logistical complications, this became an impetus for the production and sale of substandard (low-quality) and falsified medical products with insufficient control and inspections (Interpol, 2022; United Nations Office on Drugs and Crime, 2021).

Based on the studies of messages on social networks Instagram and Twitter (Mackey *et al.*, 2020), it was found that the development of Internet technologies, including online marketing, had a strong impact on the illicit market in fake medicines. At the same time, we established a direct dependence of public interest in social networks on the introduction of COVID-19-related restrictions (Europol, 2020c).

In this context, it must be emphasized that there is an inconsistency of normative prescriptions regarding *falsified medical product-related crimes* and legal liability for them. The insufficiency and/or inconsistency of the legal framework for the prevention, detection, and punishment of offenders, engaged in the production or sale of falsified medical products, became evident precisely during the conditions of the pandemic.

On the one hand, the relevant offenses are not considered serious, therefore administrative responsibility is established for their commission (United Nations Office on Drugs and Crime, 2021). There is also an opinion on the expediency of economic measures prevalence (Gruszczynski, 2020). There are proposals not to consider the use of medicines that have not yet been officially approved as an offense (Shojaei and Salari, 2020). On the other hand, it is proposed to establish legal liability for the impact of medicinal products on potential consumers (Freckelton, 2020).

At the same time, the experts point to the comprehensiveness of the issues, related to the illicit trade in pharmaceuticals, that need to be resolved. These include a) cybercrimes, the detection of which is complicated by the corporate policy (Button, 2020) and technological features (Fiorella *et al*., 2021); b) corruption offenses (García, 2019; Gorazd, 2021); c) falsification of documents (Europol, 2020c). The strengthening of the cumulative effect of the mutual influence of the markets of drugs and counterfeit medicines was also rightly noted (Kasting, 2021).

Thus, one can say that the crimes of organized criminal structures have numerous destructive consequences, which cause certain difficulties for the adaptation of the law enforcement system and maintenance of public support (Ross, 2017). The main role in this aspect is played by society's perception of the risk to the health of the population (Sargeant *et al*., 2022). In general, these considerations can be used as a basis for defining a system of regulatory and institutional tools for combating illicit trade in pharmaceuticals under conditions of the COVID-19 pandemic.

Conclusions

The conducted research allows us to draw many conclusions regarding the specifics of offenses in the field of illicit trade in pharmaceuticals under conditions of the COVID-19 pandemic and measures of legal liability for their commission.

It has been established that the illicit trade in pharmaceuticals is a type of shadow economy that manifests itself in offenses of various degrees of severity, which are committed by organized criminal groups. The latter can use legal mechanisms and legal entities. However, without establishing legal liability, it is impossible to effectively combat such offenses.

It was proposed to develop such a model of law enforcement activities, which is focused on criminalizing the trade in substandard (low-quality), unregistered and falsified medicinal products under international standards; establishing of proportional punishments for individuals and measures of influence on legal entities; compensation for victims of crimes. Such a model should ensure the coordination of efforts of law enforcement agencies at the regional and international levels.

This study opens prospects for the development of safety standards in the field of health care and improving the effectiveness of law enforcement activities in the fight against the illegal circulation of medicinal products. A separate promising direction is the development of legal support for international cooperation to counter transnational organized crime to prevent its influence on pharmaceutical product markets and cyberspace security.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 224-245
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Legal coverage of will expression by means of information technologies

DOI: https://doi.org/10.46398/cuestpol.4074.12

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Abstract

The purpose of the article was to identify and reveal the main contemporary modern legislative initiatives aimed at ensuring the expression of will by means of information technology. The main methodological tools applied in the study were comparative legal analysis and observational method. The study showed that effective manifestation of will requires further implementation of state-of-the-art systems of electronic petitions, digital resources and electronic voting. Relevant legislative initiatives should serve to increase the capacity for citizen participation and discussion. It is substantiated that the priority directions of changes in legal systems should be: 1) reforms aimed at closing the digital divide in access to information technologies; 2) technical improvement of the electronic voting procedure; 3) increasing the relevant informatization of citizens; 4) ensuring maximum protection of the state digital environment. Special attention should be paid to the legal development of a comprehensive technocratic approach. It is concluded that it is desirable to apply hybrid technology for the people to realize their right to vote and give them more opportunities to participate in the processes of governance and digital governance.

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Recibido el 16/06/2022 Aceptado el 28/08/2022

Keywords: innovative technologies; e-democracy; digital transformations; e-voting; e-petition.

Cobertura jurídica de la manifestación de testamentos por medio de las tecnologías de la información

Resumen

El propósito del artículo fue identificar y revelar las principales iniciativas legislativas modernas contemporáneas destinadas a asegurar la expresión de la voluntad por medio de la tecnología de la información. Las principales herramientas metodológicas aplicadas en el estudio fueron el análisis jurídico comparado y el método de observación. El estudio mostró que la manifestación efectiva de la voluntad requiere una mayor implementación de los sistemas de última generación de peticiones electrónicas, recursos digitales y voto electrónico. Las iniciativas legislativas pertinentes deben servir para aumentar la capacidad de participación y discusión ciudadana. Se fundamenta que las direcciones prioritarias de los cambios en los ordenamientos jurídicos deben ser: 1) reformas encaminadas a cerrar la brecha digital en materia de acceso a las tecnologías de la información; 2) mejora técnica del procedimiento de voto electrónico; 3) aumentar la informatización relevante de los ciudadanos; 4) garantizar la máxima protección del entorno digital estatal. Debe prestarse especial atención al desarrollo jurídico de un enfoque tecnocrático integral. Se concluye que es conveniente aplicar una tecnología híbrida para que el pueblo haga efectivo su derecho al voto y le dé más oportunidades de participar en los procesos de gobernabilidad y gobernanza digital.

Palabras clave: tecnologías innovadoras; democracia electrónica; transformaciones digitales; voto electrónico; petición electrónica.

Introduction

The concept of free will is crucial for both individual and social life. Freedom of will can be established in terms of the ability to act otherwise, to have alternatives. To obtain freedom of will, the decision-making process should be exercised by a person without the interference of any people or mechanisms in the procedure. The said decisions cannot possibly be free if they arise as a result of random selection. Virtually every decision must be rationally motivated (List, 2019). In this light, the major negative impact of

traditional political culture is that in the minds of citizens a patriarchal idea of the implementation of the will is still retained, being deeply rooted in the impossibility of affecting the public policy.

However, the participation of citizens in the implementation of public policy as well as relevant initiative is not solely the right of citizens, but also their duty (Xiaodong *et al*., 2019). Citizens should be able to participate in collective decision-making and have actual influence on them. The degree of influence can vary from exercising a direct authority over decision-making (mandatory referendums) to an advisory role (government response to petitions, municipal polls or hearings) (Berg *et al*., 2021).

In the times of rapid globalization, deepening our understanding of digital technologies and their significance for politics becomes extremely relevant (Chen and Volpe Martinkus, 2022). Artificial intelligence, cloud computing, blockchain, and big data are fundamentally transforming the ways governments design and implement public policies and programs, and how they interact with the public. Information technology is increasingly needed as a technical platform, which mostly facilitates the direct transfer of information to citizens. Moreover, it also ensures that information is transferred from citizens to the government and avoids or reduces the likelihood of its distortion. That said, participation in the implementation of public policy in big data age requires a mechanism capable of interacting with the state in both directions. At the same time, the implementation of the "bottom up" public policy model, as well as maximizing the public interest and needs of citizens contribute to the adaptation and improvement of will expression.

The advent of the big data age provides an effective tool for citizens that can promote more active participation in the process of public policy implementation (Xiaodong *et al*., 2019). Innovations such as e-democracy, which refers to the use of information technology in political debates, decision-making processes by supplementing or opposing traditional means of communication, have begun to emerge (Aziz and Hasna, 2020).

The method of electronic voting, when citizens participate in elections using electronic devices is viewed as one of the important aspects of electronic participation (Darmawan, 2021). Unlike the conventional voting method, the electronic version increases the reliability of elections, efficiency and integrity of the process (Hang and Kim, 2019).

E-voting is extensively used in variegated forms of decision-making due to its flexibility, ease of use and low cost as compared to general elections, which are based, inter alia, on the results of electronic petitions (Chang *et al*., 2020). During the COVID-19 pandemic, which changed not only human activity, mobility, but also political processes, in particular elections, the relevance of applying information technology has considerably increased (Muñoz, 2022).

Notably, the relevant enforcement procedure should be as accessible and adaptable as possible for different categories of citizens. As compared to younger users of technologies that can easily switch between off-line and on-line activities, the elderly people and marginalized groups find it much harder to adapt to new technologies, such as online banking, QR-based registration, online shopping and virtual meetings (Yap *et al*., 2022).

With the view of adapting to new challenges, the organization's existing processes and procedures need to be revised to convey the new reality. All government initiatives, including the electoral process, need to undergo a rapid digital transformation aimed at ensuring safety, health and utmost degree of voters' participation in democratic activities.

Governments also need to develop policies, programs and projects to help people learn to use information technology. Transforming the electoral process into a digital age requires appropriate decision-making, as a result of which countries and the international community develop legislation, taking into account the new realities of the information environment (Son, 2021).

Given the above, the purpose of the article is to consider the main areas of legal support for the expression of will through information technology. The outlined goal puts forth the following research objectives:

1. to highlight the essential normative legal acts that promote the citizen's will expression with the help of information technologies on the example of the European Union and Ukraine;
2. to reveal the current state of implementation of the will expression with the help of information technology in European countries, to outline the leading vectors of future legislative and practical innovations in the field.

1. Literature Review

The chosen research topic correlates with modern vectors of scientific research carried out by representatives of the doctrine in various countries. The principal tool and basis for the article was the work of Keramidis and Charalabidis (2021). Decisive factors for the success or failure of e-democracy initiatives in the information era. In their groundbreaking research, the scholars have outlined the grounds for defining the concept of e-democracy.

Additionally, the author's position on the subject was profoundly influenced by the study conducted by *Xiaodong et al.* (2019: 4) "Research on Citizen Participation in the Implementation of Public Policy in Big

Data Age". The scholarly findings made it possible to outline the vector of research on the legal coverage of will expression with the help of information technology. In turn, the article by Lomzhets *et al*. (2021) specified for the author the legal essence of electronic (online) voting in Ukraine, as well as a number of relevant realities and prospects.

In the course of conducting the current study, due regard was taken to the works of Kneuer and Datts (2020) in terms of revising the democratic promises of the Internet when it comes to the spatial dimension and e-democracy. Special attention should be paid to the studies of Son (2021) regarding certain aspects of transforming the electoral law in the digital age as well as the insights of Darmawan (2021) on the introduction of electronic voting in a number of countries worldwide.

In the scientific work of Pereira (2021), cited in the article, the scholar emphasizes the importance of voting technology in the Estonian online voting system. It was precisely the above work that helped to track the priorities of the relevant activities and the problematic components. The study draws on the research of Chen and Volpe Martinkus (2022) and Jafar *et al*. (2021), who outline such relevant vectors as innovation (novelty), objectivity, subjectivity, purposefulness, demand, implementation in practice, the effectiveness of the potential of new digital technologies for electronic voting.

The authors' insights into the prospects of using the blockchain technology during electronic voting deserves special attention. Furthermore, the works of Vogiatzis (2021) on the historical aspect and the future right to petition the European Parliament were given a close scrutiny for the effect of the current study.

Careful research on this issue confirms the fact that the process of improving the legal support of free will expression through information technology helps to increase the political participation of citizens. Therefore, there is a pressing necessity it is urgent to conduct research on the new criteria of scientific inquiry in the context of updated and dynamic phenomena of legal environment.

2. Methods

The theoretical basis of scientific research were the works of leading Europe lawyers, authentic texts of regulations, statistical and analytical reports. In total, forty sources were examined in the study on the subject of research. Initially, the qualitative review of the sample allowed to structure the sequence of methodological tools approbation within the architectonics of the study in a clear and unambiguous way, as presented in Figure 1.

Figure 1. Step-by-step research structure on the article subject

To obtain balanced conclusions and address the tasks outlined in the article, a set of general scientific and special methods was used.

The leading practical method was the method of comparative legal analysis, which made it possible not only to compare the authentic regulatory s texts of the studied states, but also to juxtapose them with the realities and mechanisms of practical implementation. Using this method, the statistics of analytical reports of the European Union was also compared with the legal consequences of the expression of freedom through information technology in the territory of the EU Member States.

The findings of such a comparative analysis were qualitatively structured using the method of observation and presented in the copyright legal positions revealed in the article.

The method of theoretical generalization was used to identify the legal basis features for the will expression in the framework of electronic services' balanced development. The method was also useful for a comprehensive description of the transformation processes of territorial and economic systems and the digitization of voting processes.

To substantiate the principles of building a system of legal regulation of electronic public space, the abstract-logical method was used, also aimed at examining the conceptual and methodological approaches to strategic management of public participation procedures in state decision-making using digital technologies.

The method of statistical, graphical analysis, grouping was used to evaluate the status and results of the introduction of innovative information technologies in the field of public services and to assess the characteristics of the innovative impact on the expression of will by citizens. The historical and legal method has been used to study the genesis of the development of legislation, which regulates the foundations of effective implementation of information technology in the process of expressing the will of citizens of European countries. The formal-logical method made it possible to identify gaps in the current national legislation of European countries in the area under study. With the help of dogmatic method, the conclusions were formulated in accordance with the purpose of the study.

3. Results

E-democracy is usually seen as a tool for the transition from a state representative system to a system with more direct citizen participation. The main goals of e-democracy include transparency, accountability, efficiency, participation, discussion, inclusiveness, accessibility, subsidiarity, trust in democracy, relevant institutions and processes, as well as social cohesion (Council of Europe Committee of Ministers, 2009). The components of e-democracy are shown in Figure 2. At the same time, electronic participation, discussions and forums are applied in e-democracy.

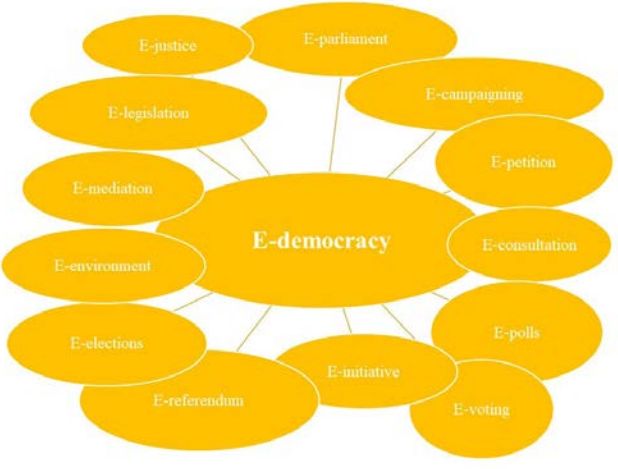

Figure 2. Components of e-democracy in the context of digital innovations intensification (clustered by the author).

The main requirement for the existence and sustainability of e-democracy is the availability of appropriate technical infrastructure, that is access to digital media and the Internet. In this light, it is crucial to find whether filtering and blocking by an independent agency or regulatory body is in place or whether it is absent. Regarding electronic participation, it is necessary to distinguish between two dimensions: "top down" and "bottom up". Unlike e-participation, e-government is limited by top-down mechanisms that offer online tools to citizens with a focus on providing effective public services. In the context of expressing the will, e-government can be seen as a tool to support and discuss the principles of good governance.

The experience of the European Union in the vector of digitalization of public participation in EU activities is noteworthy. In this sense, after the Maastricht Treaty has come into effect, EU citizens and residents can submit petitions to the European Parliament, and their content falls within the scope of the European Union.

Petitions are considered by a special parliamentary committee on petitions. The applicable procedure is based on the articles of the Treaty on the Functioning of the European Union (TFEU) and the Charter of Fundamental Rights of the European Union. Besides, petitions can also be considered by the European Ombudsman. In addition, an important component of the review process is the European Citizens' Initiatives (ECI).

In 2020, almost 80% of petitions were submitted through the petition's web portal and 20% of petitions were sent by mail (Committee on Petitions, 2021). As of 2020, the number of petitions submitted through the petitions web portal increased by 25% as compared to 2019. It also increased by 45.3% compared to 2018, when 863 petitions were submitted through the portal.

Thus, it can be said that the petitions web portal has become the most frequently used channel for petitions of citizens to the European Parliament. Overall, the most popular topics of petitions in 2020 concerned fundamental rights, health, environment, justice, education and culture, internal market issues, transport, employment, social issues, as well as property and restitution. Trends in the growing interest in submitting electronic petitions as compared to conventional mail are presented in Figure 3.

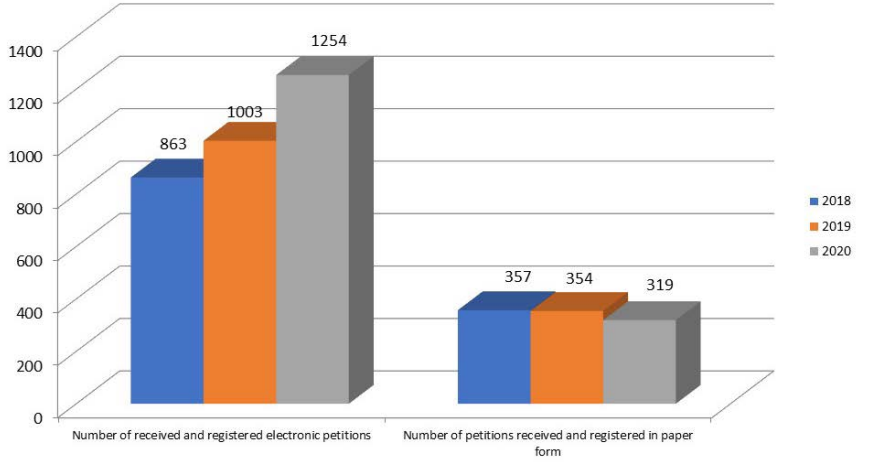

Figure 3. The gaining demand for e-petitions in the EU for the period of 2018-2020 (summarized by the authors based on statistics).

What should be stressed here is that *e-voting* is an electronic system that allows users to make joint decisions or cast their votes for candidates in elections. This process includes voter registration, entry and encryption of votes, transfer of ballots to the server, storage and counting of votes, tabulation of election results.

The electronic voting system is basically used in punch cards, smart cards, direct recording electronic voting systems (DRE), optical scanning systems and computers connected to the Internet. Such a system aims to obtain more accurate results of various votes, faster counting, maximum elimination of human errors. Undeniably, an essential important component of these tasks is the intention to create maximum comfort for people with disabilities.

Challenges include assuring a sustainable and cost-effective use of technology, relatively high costs for machine maintenance, software upgrades. Different approaches include e-voting based on a mixed network, blind signature, blockchain, homomorphic, post-quantum and hybrid e-voting.

As of 2022, according to the International Institute for Democracy and Election Assistance (International IDEA, 2022), 35 out of 178 countries use electronic voting in elections. Percentage broken down by 178 countries: e-voting is not currently used - 143 countries (80.3%), used in politically compulsory national elections (e.g., public office elections or

direct democracy initiatives) - 28 (15.7%)), in politically compulsory local elections (e.g., elections to regional legislative or executive bodies, etc.) - 17 (9.6%), in other elections (e.g., elections of trade union leaders, non-compulsory referendums) - 4 (2,2%). Globally, this process is characterized by the opposite phenomena: some countries (the United Kingdom, the Netherlands and Norway) have abandoned electronic voting, whereas Jordan, the Philippines and India have begun to use it during elections.

A number of countries have faced great difficulties due to the introduction of relevant information technologies. These include the difficulty of planning election cycles, the impact of potential failures of digital decisions on the fairness of elections. What is more, due to increased election costs, the number of contracts with private sector firms, including international ones, is on the increase. We maintain that this situation entails possible dependence on private sector decisions.

Of the 27 countries that are members of the European Union, electronic voting appears to be the case at the legislative level in Belgium, Bulgaria, France and Estonia (Table 1).

Table 1. Sectoral implementation of electronic voting in the territory of EU member states (clustered by authors)

	The use of electronic voting during politically compulsory national elections (elections to public office or direct democracy initiatives)	The use of electronic voting during politically compulsory local elections (elections to regional legislatures or executive bodies, etc.)	The use of electronic voting during other elections (elections of trade union leaders, non-obligatory referendums)	Electronic voting is not used in the country
Austria	-	-	-	+
Belgium	+	+	-	-
Bulgaria	+	+	-	-
Hungary	-	-	-	+
Germany	-	-	-	+
Greece	-	-	-	+
Denmark	-	-	-	+
Ireland	-	-	-	+
Spain	-	-	-	+
Italy	-	-	-	+
Cyprus	-	-	-	+
Latvia	-	-	-	+
Lithuania	-	-	-	+
Luxembourg	-	-	-	+
Malta	-	-	-	+
Netherlands	-	-	-	+
Poland	-	-	-	+
Portugal	-	-	-	+
Romania	-	-	-	+
Slovakia	-	-	-	+
Slovenia	-	-	-	+
Finland	-	-	-	+

France	+	-	+	-
Croatia	-	-	-	+
Czech Republic	-	-	-	+
Sweden	-	-	-	+
Estonia	+	+	-	-

The legal problems of e-voting in the EU are related to the fact that this process should be conceptualized in the broader framework of European electoral law and national legislation (Council of Europe Committee of Ministers, 2004). Council of Europe Recommendation CM/Rec (2017)5 dated 2017 (Council of Europe Committee of Ministers, 2017) and the corresponding Explanatory Memorandum concern the most essential part of electoral technology for electronic voting and include systems such as electronic direct voting machines (DRE), ballot scanners, digital pens and online voting systems. With all the mentioned aspects, it cannot be denied that currently the optimal solution is a decentralized approach, in which EU Member States operate within the restrictive framework of comprehensive European law.

In this sense, an example illustrating the successful use of e-voting is Estonia (Riigi Teataja, 2002), where relevant information technologies are permitted in politically compulsory national elections (elections to public office or direct democratic initiatives) as well as in politically obligatory local elections (elections to regional legislative or executive bodies, etc.). The Estonian government launched a project called Tiigrihüpe (Tiger Leap) in 1997, which aimed to develop and expand Internet networks and computer literacy.

Within a year of its launch, almost all (97%) Estonian schools had access to the Internet. Estonia's e-government initiatives are frequently maintained to set an example to be followed in other countries. The country's society has undergone a major digitalization, which includes taxation, health care and other public services.

In 2012, Estonia became the first country to use blockchain distribution technology to control cyberattacks. The use of blockchain technology also gives Estonians the edge of filling in a great number of various forms with the same personal information when gaining access to public services. In Estonia, citizens enter their personal information only once: the blockchain system allows them to immediately access the relevant data in the applicable department. It can be noted that Estonian digital identity model saves the country about two percent of its annual GDP (Biometric Update, 2022).

In this light, it is safe to mention that at the heart of the Estonian online i-Voting system is an e-government policy. In fact, the goal of i-Voting to some extent was to increase public participation in the political process.

At that, the emphasis was on attracting young people. The country introduced online voting in the 2005 local elections, and shortly thereafter, in 2007, electronic voting was introduced in the national parliamentary elections. Likewise, as with personal voting or mail, Estonia has an online identification method.

The appeal of i-Voting to the population in Estonia owes much to its simplicity and convenience, as voters simply need a computer with an Internet connection and an ID card. It should be stressed here that 91.6% of Estonian adults regularly use the Internet, and 98% have an ID card. That said, the ability to vote online does not replace the more traditional paper version of voting, but rather provides an additional opportunity.

Since gaining its independence in August 1991, Estonia has held in total 19 local, national or European elections. Of these, in 11 elections, citizens could cast a legally binding vote by electronic voting. Thus, the share of e-voters in the first elections with e-support in 2005 was 1.9%, in the elections to the European Parliament in 2019 - 46.7% of votes were cast online (Valimised, 2019). With the above mentioned aspects, the availability of innovative platforms for online political participation has led to greater use of online voting in the last five elections, with statistics clustered in Table 2 (Table 2).

Table 2. Step-by-step growth trends in the demand for online voting in Estonia (summarized by the authors)

	The total number of voters who participated (went to the polls)	I-voters who participated in the election	% of I-voters from the total number of voters who participated (went to the polls)
European Parliament elections in 2019	332859	155521	46.7
Parliamentary elections in 2019	565045	247232	43.8
Local elections in 2017	586519	186034	31.7
Parliamentary elections in 2015	577910	176491	30.5
European Parliament elections in 2014	329766	103151	31.3
Local elections in 2013	630050	133808	21.2
Parliamentary elections in 2011	580264	140846	24.3
Local elections in 2009	662813	104413	15.8
European Parliament elections in 2009	399181	58669	14.7

Parliamentary elections in 2007	555463	30275	5.5
Local elections in 2005	502504	9317	1.9

In turn, in Ukraine the issues of e-democracy and e-voting implementation are still under discussion, the relevant concept of e-voting has been developing since 2011 (Liga:zakon, 2011). Later, the concept of 2017 (Cabinet of Ministers of Ukraine, 2017) provided for the foundations to establish various forms of e-democracy in Ukraine in two stages. By 2018, it was necessary to introduce an appropriate regulatory framework, to create tools of e-democracy accessible to all citizens.

Particular attention should be paid to creating a legal mechanism for electronic appeals of citizens, electronic election process, electronic referendums and plebiscites, as well as relevant identification of natural persons and legal entities. The second stage (2019-2020) provided for the introduction of appropriate network services in the field of e-democracy and the creation of conditions for their proper provision (Cabinet of Ministers of Ukraine, 2019c).

The introduction of e-democracy tools such as e-petitions, consultations and appeals is very important in Ukraine, and each of these tools is used at both the local and national levels. The legal mechanism, for example, the implementation of electronic petitions is reflected in such regulations as follows: Decree of the President of Ukraine "On the Procedure for consideration of electronic petitions addressed to the President of Ukraine", Resolution of the Cabinet of Ministers of Ukraine "On approval of the Procedure for consideration of electronic petitions addressed to the Cabinet of Ministers of Ukraine". Relevant petitions should be considered if at least 25,000 signatures have been collected in three months.

Currently, the work with petitions addressed to the Parliament is regulated by the order of the Chairman of the Verkhovna Rada of Ukraine "On some issues of ensuring document circulation in the Verkhovna Rada of Ukraine in electronic and paper forms". During 2021, citizens in the system "Electronic Petitions" on the official website of the Verkhovna Rada of Ukraine initiated 783 electronic messages (Office for Citizens' Appeals of the Verkhovna Rada of Ukraine, 2022a).

Thus, it can be said that 236 e-mails met the requirements of Ukrainian legislation. However, none of these petitions received the required number of votes in support in due time, they were considered by the committees of the Verkhovna Rada of Ukraine as electronic appeals. Largely, these were issues of ensuring the rule of law and protection of law and order, realization of the rights and freedoms of citizens, prevention of discrimination, social policy and social protection, financial, tax, customs policy.

The legal mechanism for the implementation of electronic appeals is provided through the adoption of appropriate amendments to the legislation (Verkhovna Rada of Ukraine, 2015). For example, in 2021, the Office for Citizens' Appeals of the Verkhovna Rada of Ukraine received 242,308 thousand appeals, which is 2.5 times more than in 2020. Overall, 117,727 thousand proposals, applications and complaints were received by electronic means, which is 2.4 times more than in 2020 (Office for Citizens' Appeals of the Verkhovna Rada of Ukraine, 2022b).

To ensure the observance of law and protection of law and order, realization of rights and freedoms of citizens, prevention of discrimination, 76,679 thousand appeals were received, and 55,686 thousand appeals related to health care. Furthermore, issues of social policy, social protection of the population were the most pressing, comprising 9,124 thousand.

In percentage terms, electronic appeals were received as follows: ensuring observance of law and protection of law and order, realization of rights and freedoms of citizens, prevention of discrimination - 34.7%; health care - 25.2%; social policy, social protection of the population - 4.1%; activity of central executive bodies - 3.3%; activity of enterprises and institutions - 2.7%; activity of the Verkhovna Rada of Ukraine, the President of Ukraine and the Cabinet of Ministers of Ukraine - 2.6%; utilities - 2.4%; financial, tax, customs policy - 2.3%; agricultural policy and land relations - 2.3%; state building, administrative and territorial structure - 2.1%; defense capability, sovereignty, interstate and interethnic relations - 1.9%; activity of local self-government bodies - 1.9%; activity of local executive bodies - 1.8%; housing policy - 1.6%.

With all the mentioned aspects, it cannot be denied that partly one of the positive results of the action plan was the introduction of the Action Portal (Cabinet of Ministers of Ukraine, 2019a) as a service through which the idea of "country in a smartphone" is showcased. In this light, particular attention is paid to the introduction of electronic services and applications. The Action portal is also used as a digital wallet, where users carry digital versions of their official identity documents, such as passports and driving licenses.

The application also allows users to change their registered address, which is an important feature in view of the millions of internally displaced persons during the period of Russian military aggression. Also, important was the normative introduction in Ukraine of the functioning of the electronic identification system (Cabinet of Ministers of Ukraine, 2019b), the legal development of the principles of cybersecurity of Ukraine (Verkhovna Rada of Ukraine, 2017). The process of forming electronic voting was also influenced by the adoption in 2019 of the Electoral Code of Ukraine (Verkhovna Rada of Ukraine, 2019), which made it possible to decide on the introduction of innovative technologies, hardware and

software in organizing and conducting elections in the form of experiment or pilot project.

Yet, insufficient development of security tools, including the storage of information on servers, made it impossible to implement the above plan to the full extent. In Ukraine, there is still significant distrust on part of the voters as well as politicians in online voting. This mistrust can jeopardize the public's willingness to accept election results through this system, especially if those who lose the election accuse the system of fraud or manipulation.

This suggests that security, as well as the perception of security, should be a key factor preceding the introduction of online voting. There is a high risk of compromising e-voting technology (International Foundation for Electoral Systems, 2020), particularly given the ongoing military conflict between Ukraine and Russia. This study shows a high level of actualizing innovative technologies to ensure the current implementation of will expression in European countries.

4. Discussion

The legal definition of the e-democracy model, the type of application, the technological specification and the precise objectives of the proposed system are fundamental aspects of the success of e-democracy. Academia, government, the private sector and citizens involved in e-democracy must collaborate in order to lead society to future progress in terms of decision-making, as well as public awareness and participation (Keramidis and Charalabidis, 2021). By giving citizens the opportunity to express their will through direct interaction with public authorities, policies can be better adapted to their needs.

The rethinking of government as a digital platform is aimed at achieving horizontal forms of civic cooperation for the undistorted realization of the common good (Berg and Hoffmann, 2021). Citizens are no longer perceived as voters or observers of democratic governance. Researchers emphasize that instead, citizens should take an active part in consultations as well as in decision-making processes.

Distance is important when it comes to e-democracy, and the level at which it is concentrated must be taken into account (Kneuer and Datts, 2020). E-democracy projects at the local level, as opposed to projects at the national or transnational level, are more likely to mobilize a relatively higher proportion of citizens. Moreover, local governments are more open to citizen participation than at the regional and national levels.

Legitimacy, simplicity, speed, convenience, affordability, security of citizens act as an advantage towards electronic voting, without which it is difficult to imagine the process of expression of will in the near future (Hrynov and Zakomorna, 2021). Muñoz maintains that a holistic technocratic approach should be used, utilizing the hybrid technology to exercise people's voting rights and giving them more opportunities to participate in governance (Muñoz, 2022).

The availability of powerful equipment and a well-developed IT industry is arguably not a sufficient factor for conducting electronic voting. Proper design should not only guarantee the fairness and confidentiality of voting; it is also important in order to gain the trust of users in this area, which is not at the proper level (Tejedor-Romero *et al*., 2021). Confidence in e-voting results will increase if they coincide with election results using traditional paper technologies (Hratsiotova *et al*., 2020).

Existing methods of electronic voting are associated with the danger of excessive authority and manipulation of details, which limits the fundamental justice, confidentiality, secrecy, anonymity and transparency of the voting process (Jafar *et al*., 2021). The study explored that the majority of procedures are currently centralized, licensed by a relevant body, monitored and measured in an electronic voting system, which in itself is a challenge for a transparent voting process.

The situation probably requires more caution regarding the security features that are declared for voting systems, in particular when they are offered for use in public elections (Pereira, 2021). According to the scholar, proper safety definitions, evidence and scrutiny remain the best strategy for Estonia.

It cannot be denied that the creation of a web portal for petitions in the European Parliament was an important and necessary event, which became the major method of submitting petitions. There are broader institutional reasons that prevent the Committee on Petitions from making a greater contribution to the EU's decision-making process and gaining the trust of citizens as an effective means of participation (Vogiatzis, 2021).

The Committee on Petitions of the European Parliament should focus on areas that are not covered by either the European Ombudsman or the initiative of European citizens. According to the scholar, the Committee's focus should be gradually shifted to the implementation of EU legislation by member states and to broader policy areas at the EU level, which do not necessarily entail specific legislative actions.

Weak development of the basic elements of e-democracy, such as the e-government system, e-parliament, as well as the statement of the presence of technological risks slow down the process of implementation of e-voting in Ukraine (Son, 2021). Another important topic concerning e-voting is

that it is essential to clarify the issue of fundamental legal regulation of the introducing in Ukraine of the electoral mechanism of electronic online voting and the means of protection (Lomzhets *et al*., 2021). What should be stressed here, with the aim of enhancing digital awareness of all categories of society, it is critically important to implement relevant informatization measures.

Conclusions

It can be concluded that direct communication between government and citizens through the components of e-democracy, drawing on their social experience and knowledge, can lead to improved policies and legislation. The new type of communication relies on the study and exchange of ideas, generalization and assessment of public confidence in democratic institutions and government legitimacy.

Many countries around the world currently have a digital divide in terms of accessibility, as well as in terms of geographic areas, Internet access, health, social status, policy innovation, software applications and operating systems. The technological backwardness and insufficient implementation of the current process of citizens' will expression is due to the presence of obstacles to access the system successfully.

The introduction of e-petition systems and citizens' initiatives in the European Union helps to enhance the potential for citizens' participation and discussion. In the European Union, the implementation of electronic voting in elections requires further legal and technical improvement due to difficulties in planning election cycles, potential downsides of digital solutions. It is becoming increasingly clear that due to the need to conclude a number of technical contracts, there is a problem of probable dependence on private sector decisions related to information technology.

The most important result of the current study, emphasized by the vast majority of researchers is that in Ukraine, significant progress has been made over the last decade in improving the procedure for implementing expression of will through information technology.

By way of providing an example of this can be the activity of the web portal "Diia (Action)" and the current state of implementing the procedure for submitting and receiving citizens' electronic appeals and electronic petitions. At the legislative level, considerable progress has also been achieved in the area of elections management in Ukraine and safeguarding their fairness.

Further thorough legal and technical training in the implementation of online voting in Ukraine will help to avoid wrong steps in this area and

mitigate the situation, which could potentially question the foundations of democracy in Ukraine and jeopardize the progress attained.

The success of the implementation of the expression of citizens' will through e-voting is largely determined by the digital infrastructure, high level of citizens' access to the Internet, which is clearly demonstrated by Estonia at the current stage of information technology development and Ukraine is presented only occasionally. Estonia's experience in the field of realizing the expression of will by way of information technologies can be realistically implemented in legal initiatives of Ukraine and will become a promising perspective of scientific research.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 246-267
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Intercultural Communication and Community Participation in Local Governance: the EU Experience

DOI: https://doi.org/10.46398/cuestpol.4074.13

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Abstract

Interaction based on equality is a determining factor in an intercultural approach to mutual cross-border integration. States direct their policy vectors towards creating provisions for positive and constructive cooperation between people of different backgrounds and lifestyles with government institutions. The recognition and testing of policies and practices that promote intercultural interaction and inclusion by local governments are of particular importance in this context. The aim of the article was to identify and reveal current problems and the current state of regulation of intercultural communication and community participation in local governance in the European Union and Ukraine. Observation, analysis and survey methods were the main methodological tools. The study showed that the effective development of intercultural communication and community participation in local governance requires progress in the implementation of the overall strategies declared by the European Union. The adequacy and prospects of the intercultural cities network (ICC) are presented. Analysis of the survey of

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Recibido el 14/06/2022 Aceptado el 03/08/2022

cities surveyed in the Intercultural Cities Index showed a high level of local government transformation and public participation in regional decision-making.

Keywords: interculturality; multivariate nations; intercultural communication; social inclusion; cross-border mobility.

Comunicación intercultural y participación comunitaria en la gobernanza local: la experiencia de la UE

Resumen

La interacción basada en la igualdad es un factor determinante de un enfoque intercultural para la integración mutua transfronteriza. Los estados dirigen sus vectores políticos hacia la creación de disposiciones para la cooperación positiva y constructiva entre personas de diferentes orígenes con las instituciones gubernamentales. El reconocimiento de políticas y prácticas que promuevan la interacción intercultural y la inclusión por parte de los gobiernos locales son de particular importancia en este contexto. El objetivo del artículo fue identificar y revelar los problemas actuales y el estado actual de la regulación de la comunicación intercultural y la participación comunitaria en la gobernanza local en la Unión Europea y Ucrania. Los métodos de observación, análisis y encuesta fueron las principales herramientas metodológicas. El estudio mostró que el desarrollo efectivo de la comunicación intercultural y la participación comunitaria en la gobernanza local requiere avanzar en la implementación de las estrategias globales declaradas por la Unión Europea. Se exponen la adecuación y las perspectivas de la red de ciudades interculturales (ICC). El análisis de la encuesta de ciudades encuestadas en el Índice de Ciudades Interculturales mostró un alto nivel de transformación de los gobiernos locales en la toma de decisiones a nivel regional.

Palabras clave: interculturalidad; naciones multivariadas; comunicación intercultural; inclusión social; movilidad transfronteriza.

Introduction

Modern society, values and identity are facing an increasing number of internal and external challenges. The complexity and uncertainty of geopolitical relations, economic and social crises, difficult coexistence with

new cultures, the gradual erosion of traditional know-how and increased competition are the main risk factors (Gustafsson and Lazzaro, 2021). The COVID-19 pandemic has also forced the world community to revise sustainable concepts of intercultural communication.

Moreover, ethnic groups differ in terms of cultural norms or perceptions of what appropriate behaviour in a particular context is. This produces barriers that reduce cultural recognition, including stereotypes and prejudices, and unreasonable assumptions about similarities, differences, and culture shock (Trenholm, 2020). In aggregate, these factors hinder the citizens' ability to respond effectively to transformed legal relationships.

Countries are exerting efforts to establish the most consistent legal background and conditions for law enforcement for all population segments and cultural groups. A peculiar feature of the processes that are currently taking place in the European Union is slow evolution of migration concepts. The issues related to cultural identity, gender, sexual orientation, gender identity, age, disability status, religion, etc. are on the agenda in the European Union. Cultural diversity is considered as a value, and efforts are being exerted to make everyone interested in the life of the local community, identify with it and does not feel excluded (Ferran Vila *et al*., 2021).

Besides, an assimilationist is being replaced by an intercultural approach, which provides for greater inclusiveness of cities and regions and their taking advantage of diversity. Accordingly, multiculturalism multiplies the value of diversity for society, as well as the importance of culture and identity in the course of integration, especially of minority groups. The updated approach is the basis for cultural practice and the encouragement of equality and non-discrimination (Tian-Fang Ye and Buchtel, 2021). The new term "interculturalism" is being widely introduced into the legal field. This concept is interpreted as a complex set of common values, regardless of whether they are jointly developed through the interaction of communities or rely on generally accepted universal values (Lähdesmäki *et al*., 2020).

Theorists maintain that intercultural communication is a form of global communication (Jumaev, 2020). Researchers further argued that such communication refers to intercultural interactions between different cultures that emerge in a social group with different religious, ethnic, cultural, and social backgrounds (Vejseli and Kamberi, 2021). Intercultural integration as a political approach contends against all forms of discrimination and intolerance in the EU. The leading vectors of the struggle are still raising awareness and education of the population and promoting the benefits of multiculturalism remain (Akaliyski *et al*., 2021).

The cities are becoming increasingly important participants in migration and integration policy, both in terms of policy development and implementation, and due to the participation of cities in major

international networks (White, 2021). European cities are important centres of intercultural exchange, providing housing for people from different communities. They offer unique intercultural opportunities and can be an example of encouraging multiculturalism and better integration. At the same time, we can talk about the relationship between the effective development of local governance through the prism of the influence of intercultural social groups in the region.

Many countries are currently putting efforts to implement EU practice at the national level. Ukraine is trying to develop intercultural competence, which is the ability to recognize, respect and effectively use the differences in the perception, thinking and behaviour of their own and other people's culture in intercultural contacts (Rezunova, 2021). This is why local governments should take prudent action to prevent tensions between culturally diverse communities. At the same time, interaction of people and cultures in this state have already been extended as a result of the civilizational development, scientific achievements, innovative technologies, requirements of public life, the priority of foreign policy (Biletska *et al*., 2021).

Despite significant achievements on the research topic, Ukraine has a frozen archaic inherited doctrine, which is just beginning to transform towards European intercultural integration.

In view of the foregoing, the aim of the article was to conduct a comprehensive analysis of the relationship and interdependence of intercultural communication and innovative integration of local governance in the EU. This aim involved the following objectives:

1. establish the legal background for the development of intercultural communication and participation of social groups in local governance in the European Union;
2. reveal the current innovations of the European Union in the field of intercultural communication and community participation in local governance for further possible implementation of relevant achievements in the associated states.

1. Literature Review

The selected research topic correlates with modern vectors of scientific research of theorists in different countries. The work of White (2021) was the main tool and basis for the article. The author quite accurately revealed the network of inclusion based on cities in a multicultural world. The work of Malović and Vujica (2021) entitled Multicultural Society as a Challenge for Coexistence in Europe also had a decisive influence on the formation of the author's position on the research topic.

The achievements of scholars allowed outlining the vector of research on the transformation of EU strategies and policies in the field of intercultural communication and local governance. In turn, the author found about a multi-vector approach to interculturalism: from globalized politics to localized politics and practice through the article by Zapata-Barrero and Mansouri (2021).

The study took account of the achievements of Akaliyski *et al.* (2021) in the field of analysis of multicultural integration in the EU in the context of common values. The study by US Jumaev (2020), used in the article, emphasizes the importance of self-identification and national identity, national culture in the context of interaction with government institutions. This work helped to follow the way of the transformation of cooperation theories both between different social groups, and society with the state.

The findings of the team of authors — Afanasieva *et al.* (2020) — were also reflected in this article. Among other things, the author takes into account the viewpoints of researchers in the comparative analysis of multicultural EU cities in the context of the rule of a polyethnic community. The findings of Cappiali (2021) supplemented the abovementioned achievements by taking into account the transformations of regional urban management in the context of increasing migration flows.

The findings of a comparative legal study by Vejseli and Kamberi (2021) for Northern Macedonia and Kosovo were analysed when studying the results of intercultural communication and their impact on local governments. Scientific positions of Trenholm (2020) were taken into account in the analysis of intercultural communication issues.

The article also covers the results of intercultural dialogue in the EU member states from the perspective of the implementation of intercultural principles and creative initiatives. Those results were summarized in a collective article by Hlebova *et al.* (2021). The authors also focused on the changes in social groups and their interests entailed by the COVID-19 pandemic.

The end of the last century was marked by active research on the intercultural communication issues. This is why modern theory and practice of jurisprudence repletes with fundamental works, research and publications on issues related to heterogeneity of society, as well as transformations of cultural rights and consciousness of the population. The current challenges of globalization have, however, had a qualitative impact and continue to have a corresponding reformational effect on legal relations between social groups and local governments, thus making it urgent to carry out a study with regard to new criteria of scientific research.

2. Methods

The research topic determined the choice of variable empirical material in order to form a comprehensive author's view of the subject of research. Figure 1 details the research procedure. A total of forty-five references were reviewed and analyzed in the article.

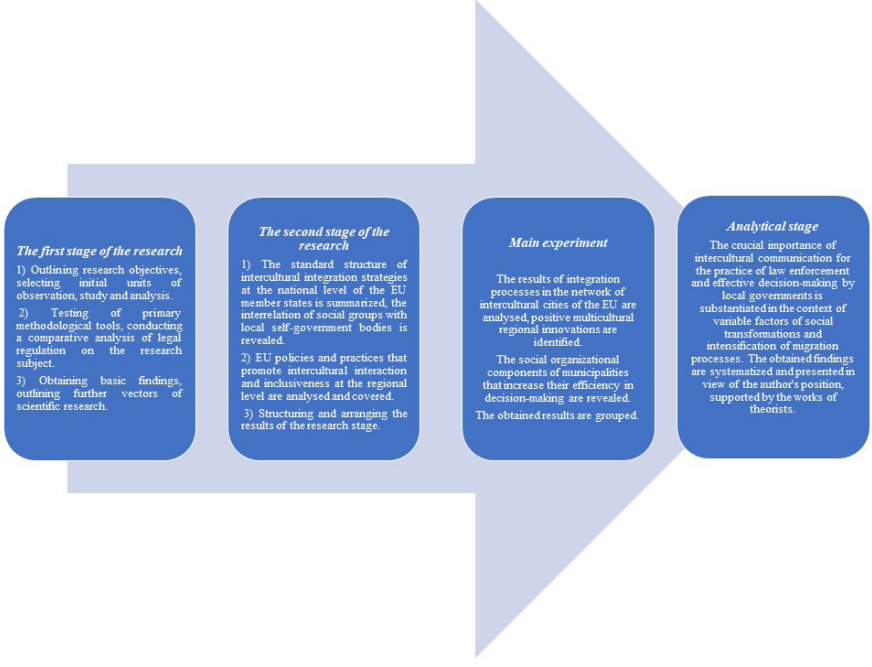

Figure 1. Stage research architecture.

The nature of the object of study, the specifics of the sample and the available resources determined a set of methods of scientific research. It is worth noting that the authors who partially addressed the subject of author's research, also used the methods of analysis and observation in their studies.

The method of analysis of the selected sample was used to select the article-specific methods for further research. In turn, socio-cultural analysis based on historical-analytical, sociological, socio-legal approaches, revealed the interdisciplinary aspect of complex processes of society life at the local level. This aspect was also detailed by using the results of the cities survey — Intercultural Cities Index 2021 (Council of Europe, n.d.). This methodology also identified the positive multicultural regional innovations in the area under research.

The author's position on the strategy of intercultural integration at the national level of EU member states was formed through the practical method of observation. This method was also used to consider the conditions that necessitated the creation of comprehensive maps of reforms in the field of intercultural communication of social groups and local governments of the EU. The observation method also helped to draw well-grounded conclusions on reforming the legal regulation of intercultural communication in a cross-border context.

The comparative analysis revealed the reasons that promote constant changes in legal relations between social groups and government institutions. This issue was also revealed from the standpoint of historicism. The process of building legal relations between the variable cultures of one region with local governments is described by systematization of disparate materials, generalization and analysis of data from different sources.

3. Results

Cultural integration policies must comply with the European human rights standards, including those relating to social cohesion, equality and non-discrimination. It covers a number of policy areas and levels of government. Besides, their development is a complex process that requires consistent consultation and coordination between all relevant stakeholders. The ability to achieve effective inclusion by promoting the accountability and active participation of government institutions, regional, local authorities and civil society determines the success of innovation.

At the international level, the requirements of international law determine effective testing of planned reforms. It is safe to say that the following documents are the key to effective intercultural discourse and reform of the legal relations: 1) the European Social Charter; 2) Convention on the Participation of Foreigners in Public Life at the Local Level; 3) White Paper on Intercultural Dialogue; 4) Intercultural Integration Model; 5) Framework Convention for the Protection of National Minorities; 6) European Charter for Regional or Minority Languages and others. At the same time, modern realities transform the sustainable legal order and require a qualitative update of the doctrinal and legislative fundamental principles of the existence of a multicultural society.

In today's world, the effects of the COVID-19 pandemic, economic and political crises continue to spread around the world, disproportionately affecting the most vulnerable population groups. In 2021, the number of displaced persons worldwide reached a record 82.4 million (Rescue Committee, 2021). The EU territory is no exception. In 2019, 2.7 million immigrants came to the EU from non-member countries. As of January 1,

2021, 23 million people (5.1%) out of 447.3 million permanently residing in the EU were not EU citizens.

In 2019, EU Member States granted citizenship to 706,400 people permanently residing in the EU, which is 5% more than in 2018 (Eurostat, 2021). These migrations of the population were the reason to revise both the general policy of the member states and the internal (regional) postulates of the organization of interaction of the population. The EU Action Plan on Integration and Inclusion (European Commission, 2020a) is currently a roadmap for enhancing the integration of asylum seekers, refugees and others with a migrant background in Europe over the next six years.

Much attention is paid to local governments in the EU, as well as public participation in decision-making. Local democracy in the EU countries develops in an ever-evolving environment. In general, European systems of local governance have the following attributes:

1. the status of local authorities is enshrined in national constitutions, which guarantee their powers;
2. a very wide range of functions of local government;
3. integration of local authorities into national government institutions, interdependence and mutual understanding between different levels of social governance;
4. the possibility of political influence of local authorities on government agencies through their associations and other integration institutions of local governance.

The European Charter of Local Self-Government indicates that local authorities acting under the law must be able to regulate and manage public affairs under their responsibility for the benefit of the local population. Recommendation 262 (2009) of the Congress of Local and Regional Authorities of the Council of Europe on equality and diversity in local authority employment and service provision and Recommendation of the Committee of Ministers of the Council of Europe on citizen participation in public life promoted equality and diversity in employment, including employment in the context of employment and the provision of services by local authorities. These documents help to effectively involve the public in plans for intercultural integration in the Member States.

The 11th Principle of the Strategy of Innovation and Good Governance at Local Level (Council of Europe, 2008) indicates to the respect, protection and realization of human rights in the field of local government, and combating discrimination on any grounds. A comparative analysis of the 12 principles of innovation and good democratic governance identified municipalities that are closest to all (or most) principles compared to the Council of Europe standard (Council of Europe, 2021), and therefore have the right to obtain ELoGE — European Label of Governance Excellence.

In June 2021, the Council of Europe's Steering Committee on Anti-Discrimination, Diversity and Inclusion (CDADI) adopted Intercultural Integration Strategies at the National Level (Council of Europe, 2021b). This document is developed through multilevel dialogue as a basis for national strategies for intercultural integration that are integrated, based on human rights standards, supported by a realistic understanding of cross-border mobility and its impact, the one that takes into account human, social and economic costs of non-integration.

It also relies on the positive results of local authorities and Member States, which have applied an intercultural integration approach as a tool to achieve real integration at the local level. The principles of the Strategy include ensuring equality, valuing diversity, promoting meaningful interaction and active citizenship. In turn, the structure of the intercultural integration strategy contains 10 main points (Council of Europe, 2021b).

Practical measures are being taken to implement the declared strategies. The Council of Europe takes a number of steps to protect minorities, including Europe's largest minority — the Roma. According to the estimates, 10-12 million Roma living in Europe, approximately 6 million are EU citizens or residents (European Commission, 2020). Many EU Roma are still victims of prejudice and social exclusion, despite the prohibition of discrimination in EU member states.

The EU Roma Strategic Framework (European Commission, 2020) sets out a comprehensive three-component approach. This approach complements the socio-economic integration of marginalized Roma by promoting equality and encouraging participation in political, social, economic and cultural life. On March 12, 2021, the Council of the European Union adopted the Recommendation on Roma equality, integration and participation in all Member States.

The EU Roma Strategic Framework focuses more on Roma diversity to ensure that national strategies meet the specific needs of different groups, such as women, youth, children, mobile EU citizens, stateless persons, LGBTI and elderly Roma, as well as people with disabilities. Starting in 2023, Member States will report every two years on the implementation of the national Roma Strategic Frameworks, including measures to promote equality, inclusiveness and participation, as well as the full use of the indicator portfolio.

Figure 2. Summarized standard structure of the intercultural integration strategy at the national level of EU member states.

Policies and practices that promote intercultural interaction and inclusiveness play an important role in enabling cities and regions to positively manage diversity. Various tools and methodologies, as well as a mutual learning environment for cities have been developed within the framework of the Intercultural Cities Network (ICC), bringing together more than 150 cities in Europe and beyond. Since 2015, it has become a pan-European standard, which is being adapted to national and multilevel governments.

The EU countries currently consider the Intercultural City (ICC) as a place where they are actively trying to achieve real equality, preventing discrimination and adapting urban governance, institutions and services to the needs of diverse populations. Equality, diversity and interaction are three interrelated values that are essential for the development and maintenance of an intercultural city.

Data are collected through a questionnaire consisting of 90 questions on the following items (ICC-Index 2019, Council of Europe Program 2019): local conditions and demographic context (1-2); intercultural policy, structures and actions (3-12); areas of governance/policies that promote intercultural integration (13-86); additional information that may

be provided by the respondent city (87-90). Each policy vector is briefly explained from an intercultural perspective. According to the general information provided about cities within the framework of the Intercultural Cities Index (Council of Europe, 2020a), the population of ICC cities was as follows: <500 thousand — 24%, 200–500 thousand — 23%, <100 thousand — 23%, 100–200 thousand — 30%.

The ICC Index is analyzed on the basis of answers to 83 questions (questions 3–86), grouped into 12 indices. These are commitment, intercultural prism, education, good-unneighborly relations, civil service, business and work, cultural life, public place, mediation and conflict resolution, language, media and communication, international cooperation, intelligence/competence, newcomer welcome policy, governance.

The completion of the questionnaire is followed by data verification and processing by BAK Economics, a Swiss research institute specializing in measuring the effectiveness of regional and local policies. The respondent cities can score a maximum of 100 points for each index. The data are also analysed from a political perspective and summarized in a report by Council of Europe experts.

Their report includes: the city's performance in various areas of governance/policy; charts that clearly illustrate the scores that the city obtained for each indicator, and their comparison with the average for a city or group of cities with similar characteristics; information on the city's best practices that can inspire other cities; recommendations based on examples of best practices provided by other cities that the respondent city may consider in order to improve its score in one or more areas of governance/policy.

Most responses should be fact-based and can be confirmed by real examples, details, explanations, relevant documents or references. It is recommended for the cities to evaluate the Index every 3-4 years in order to track their progress. A working group chaired by the mayor or another official from high-ranking officials of various municipal administrations is established to monitor the data collection for completing the questionnaire.

According to the Intercultural Cities (ICC) Annual Report (Council of Europe, 2021a), in 2021 only, 11 new members joined the initiative; a new regional network was established in Quebec; 9 evaluation reports were prepared on the basis of the ICC Index; 14 subject webinars or knowledge sharing webinars were held; 108 news, 5 issues of the bulletin was published; 86 best practices were collected and disseminated; 5 intercity projects were implemented; 4 new online courses were created; 3 joint actions dedicated to the Programme-related international days were organized. The results of the latest survey of respondent cities are presented in Figure 3.

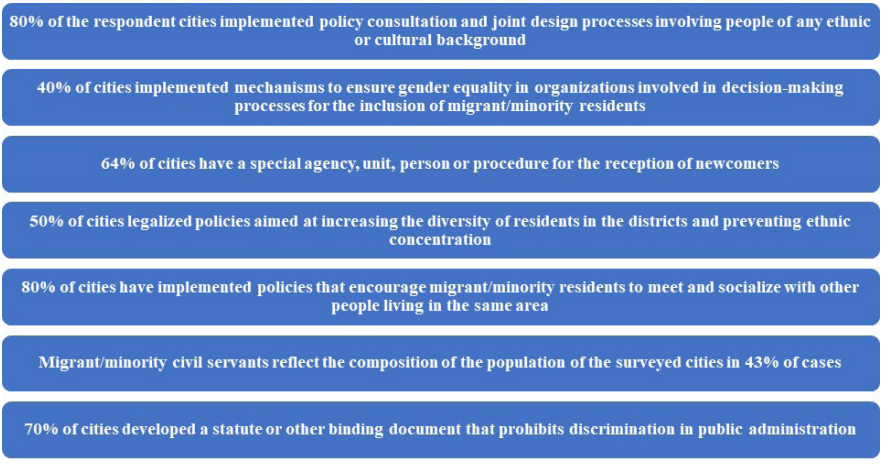

Figure 3. Positive multicultural regional innovations identified through the Intercultural Cities Index in 2021 (grouped by the author).

The study of implementing strategies and concepts of multiculturalism on the basis of the ICC Index allowed identifying positive features of this tool (Table 1).

Table 1. Positive features of testing the results of Intercultural Cities Index (based on the results of the author's own observation).

Intercultural Cities Index allows the cities to:
➢ initiate a discussion with local authorities on what intercultural integration means in practice;
➢ raise awareness of the need for horizontal work between different departments and services that promote intercultural issues;
➢ conduct a thorough review of different areas of governance/policy that promote intercultural integration;
➢ assess the city's status in various areas of governance/policy that promote intercultural integration;
➢ identify strengths and weaknesses and identify areas of governance/policy to focus future efforts at;
➢ compare the achievements of the city with the achievements of other cities; identify and study the best practices of intercultural integration in other cities;
➢ cooperate in national intercultural city networks or in international city educational clusters;

➢ assess progress over time and report on achievements and difficulties encountered;
➢ verify different hypotheses about the relationship between intercultural policy and particular policy outcomes, such as economic performance, trust in public institutions, quality of life and a sense of security

We can state that the EU countries are doing everything possible to fulfil the aforesaid objectives. For example, about a million Roma live in Spain today (Madrid no frills, 2021). Seventy percent of Roma over the age of 16 cannot read, and high elimination rates at various levels of education is still a serious problem to be addressed. The percentage of Roma children quitting school is 65%. Only 5% graduate from secondary school. The average age at which Roma children quit studies is about 12 years.

The percentage of unsuccessful students among Roma children is five times higher than among children from other families. Almost 70% of adult Spanish Roma are illiterate. The life expectancy of Roma is 10 years lower than in the majority of the population, and infant mortality is three times higher (Madrid no frills, 2021). In this regard, an example of best practice of the cities is the School Promotion Programmed with the Roma community in Barcelona.

The Programmed intends to encourage the full schooling of Roma students through prevention, diagnosis and early intervention into the cases of quitting studies, as well as to promote achieving academic success. It also aims at promoting the socio-economic integration of Roma students and promoting the values of Roma culture in the school curriculum. The main figure of this project is the "school promoter" — a professional who belongs to the Roma community and who coordinates his actions with schools, families and students to implement the program. This arrangement was organized by the private foundation Pere Closa in collaboration with the City Council of Barcelona.

The Social Organization of the Municipality of Patras (KODIP) established special units to provide support services to all vulnerable groups in Patras, being funded by the Western Greece Operational Programmed through the European Social Fund (ESF) (Council of Europe, 2021). KODIP has opened the Essentials Department, as well as Shelter, Open Day and Community Centre with the aim of respecting fundamental human rights. The main beneficiaries are migrants, refugees and asylum seekers, both Roma and the local population. A Roma Branch has recently been established as part of the Community Centre, which will focus on the provision of field services in camps in the surrounding areas of the city of Patras through a mobile unit.

The ICC network has inspired the creation of the Intercultural Regions Network chaired by the Council of Europe and the Assembly of European Regions. This Network is established to provide knowledge, resource and experience sharing platform in the regions to promote intercultural integration at the regional level on the basis of equal opportunities, recognition of diversity and positive interaction between people of different backgrounds. The Intercultural Dialogue Index (ICDI), which measures the level of intercultural dialogue at the national level, is currently being developed to determine the impact that social and structural conditions may have on the diversity management and intercultural relations.

The proposed ICDI is designed as a tool for understanding how different countries monitor diversity management and intercultural harmony, as well as the interaction of social groups with local governments. This country-level analysis can also prognostically identify possible intercultural conflicts and tensions through empirical analysis of combined data in key sectors of society development.

Speaking about Ukraine, the representatives of more than 130 nationalities and ethnic groups lived in the country according to the All-Ukrainian Population Census (State Statistics Committee of Ukraine, 2001). In addition to Ukrainians, who make up 77.8%, the country is home to Russians, Belarusians, Moldovans, Crimean Tatars and Karaites, Bulgarians, Romanians, Hungarians, Poles, Jews, Greeks and others (Population and composition of Ukraine (State Statistics Committee of Ukraine, 2001). But the situation has changed dramatically. The census has not been updated because of the escalation of the military conflict in eastern Ukraine, so this is a significant gap in showing real statistics in the country.

The adoption of the Law of Ukraine "On National Minorities" has given new impetus to the legislative framework of Ukraine on interethnic relations in connection with the integration of the state into European and Euro-Atlantic entities. Ukraine's accession to the Council of Europe in 1995 became especially important. Among other instruments in this field, Ukraine has ratified the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages. The rules and standards for the protection of the rights of national minorities, enshrined in the CSCE Final Act, the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and other international instruments were also applied in Ukrainian law.

At the same time, the state has shown a certain self-exclusion from the settlement of ethno-national processes in Ukraine at the state level for decades. This resulted in Ukraine's failure to adopt a concept or strategy of state ethno-national policy. This entailed the lag of political and legal enshrinement of state ethnopolitics from existing ethnopolitical processes.

In 2021, the Verkhovna Rada passed the Law "On the Indigenous Peoples of Ukraine" (Verkhovna Rada of Ukraine, 2021). The concept of "indigenous peoples of Ukraine" is defined as an autochthonous ethnic community that has formed on the territory of Ukraine. They are carriers of original language and culture, have traditional, social, cultural or representative bodies, identify themselves itself as the indigenous people of Ukraine, are an ethnic minority in its population, and have no state establishments outside Ukraine.

According to this definition, the Crimean Tatars, Karaites, Crimean Tatars are enshrined in the Law as the indigenous peoples of Ukraine. On March 24, 2021, the Decree of the President of Ukraine approved the updated National Human Rights Strategy (Office of The President of Ukraine, 2021). The Strategy is being implemented in strategic areas, including the prevention of and combating discrimination.

Between 200,000 and 400,000 Roma currently live in Ukraine. According to Council of Europe experts, 60 percent of Roma do not have a job, 40 percent have no documents, and only 1 percent have a university degree (US Department of State, 2021). About 90% of them inform against being persecuted on the grounds of their nationality (Ukrinform, 2021). The imposition of anti-pandemic measures has increased discrimination against Roma. On May 22, 2020, Mayor of Ivano-Frankivsk called at a weekly meeting of the City Council for the eviction of all Roma from the city, stating that the Roma violate COVID-19 quarantine restrictions. Later, police forcibly relocated 10 Roma from the city.

The Minister of Internal Affairs instructed that the police initiated a criminal case against Mayor on charges of discrimination (US State Department, 2021). In 2021, the 2030 Strategy for Promoting the Realization of the Rights and Opportunities of Persons belonging to the Roma National Minority was adopted. The implementation of this Strategy will provide documents, legal protection, education, health services, employment to Roma and will improve their social protection.

The fact that that on June 15, 2021 O. Bohdan — Chairman of the State Service of Ukraine for Ethno-Politics and Freedom of Conscience was elected Vice-Chairman of the Steering Committee of the Council of Europe on Anti-Discrimination, Diversity and Inclusion (CDADI) is worth noting (State Service of Ukraine for Ethnopolitics and Freedom of Conscience, 2021). The areas of work of the Steering Committee included: development of a new comprehensive legal instrument to combat animosity on language grounds; research on the political participation of youth that belongs to national minorities; promoting the implementation of the strategic policy of the Council of Europe on inclusion of Roma and nomads.

Ukraine has also joined the Intercultural Cities Programme. The national ICC-UA network was established in 2015 at the All-Ukrainian Forum held in Melitopol, and includes Melitopol, Lutsk, Odesa, Pavlohrad, Sumy, Vinnytsia. Among all Ukrainian cities, only Melitopol is a full member of the international ICC network with privileged access to all international events and special expert support. Melitopol led the ranking of the Intercultural Cities Index in 2020 among the ICC member states. In 2020, the overall score was 88 points (Intercultural Cities Index Charts).

This assessment consisted of the following scores: Commitment 95, Intercultural Prism 95, Education 95, Good-Neighbourly Relations 100, Civil Service 88, Business and Labour 100, Cultural Life 100, Public Place 87, Mediation and Conflict Resolution 93, Language 49, Media and Communications 100, International Cooperation 100, Intelligence/ Competence 100, Newcomers Welcome Policy 100, Governance 33.

The city is currently working on the implementation of the Comprehensive Intercultural Cooperation Programme of the City of Melitopol for 2021-2023 (Municipal Site of Melitopol City, 2021). The city administrations of the ICC-UA member cities have been working to identify the problems caused by the COVID-19 crisis. One of the examples is the two-week meeting held by the Civic Engagement Club, a local NGO in Sumy, with migrant communities on the availability and reliability of information (Council of Europe, 2020).

4. Discussion

The research found the versatile approaches of the states to testing the declared postulates of ensuring the opportunities of multicultural social groups and their participation in state-building processes. It was established that special attention is currently paid to ensuring the balance of rights and interests of citizens of EU member states and migrants. Researchers also support the author's view that in the current context ethnic groups in the EU with different cultural beliefs and value systems require equal opportunities to exercise their rights as permanent members of society (Cappiali, 2021).

The author's substantiation for the intensification of the development of the multiculturalism concepts has found support in the scientific community. Bunce (2021) observed that cultural diversity is a defining feature of humanity and a framework for the development of the external designation of group identity for reducing the likelihood of miscoordination.

Interculturalism is increasingly being used as a probable background for policy strategies designed to manage migratory diversity in ethno-cultural-pluralistic societies, especially at the local level (Zapata-Barrero and Mansouri, 2021). But interculturalism still needs to clearly formulate

its position in the context of a sustained multicultural narrative that has dominated different variations of public administration (Mansouri and Modood, 2021). The foregoing seems well-grounded even though multiculturalism has recently lost some of its benefits as a key paradigm of diversity policy (Zapata-Barrero, 2019).

The strategies and concepts the author analyzed have been tested at the level of local governance and showed a high level of involvement of different population groups in decision-making by the government agencies. In this context, the objective of policy is to create basic values that are acceptable to all parties, but they must have sufficient potential for quality coexistence (Malović and Vujica, 2021). The low participation of local communities in public policy is a poor reflection of general democracy and a signal that local authorities need to pay more attention to local communities so that they can restore trust in them, and develop an active citizen with democratic values (Vejseli and Kamberi, 2021).

The urged intercultural interaction has qualitatively increased the significance of intercultural communication. It is currently a key factor in the development and liberation of local communities, and policy is another vector of cooperation between local authorities and local communities. Cultural literacy also remains a leading competence in the balance between cultural global characteristics and the development of one's own identity (Maine *et al*., 2019).

The growing diversity of European societies normalizes intercultural dialogue as a practice, but also creates problems for political discourse. Politicians need to be more careful about the difficulties and variability of the current diversity. The conceptual language used in their policy documentation should reflect this position (Lähdesmäki *et al*., 2020). Therefore, we can argue that it is necessary to approach both individual and collective identity as multiple, multi-layered, procedural and transformed.

It can also be stated that the Council of Europe's Intercultural Cities Programme (ICC) has evolved over its long history not only in terms of membership and geographical coverage, but also in terms of its attempts to respond to changes in global political consciousness (White, 2021). During the COVID-19 pandemic, the communities of ICC intercultural cities obtained valuable experience in implementing intercultural principles and creative initiatives required for establishing effective intercultural dialogue and consolidating society (Hlebova *et al*., 2021).

So, Melitopol can offer the world unique methods of developing a new type of community (Afanasieva *et al*., 2020). Researchers indicate the need to expand the range of sociological research on the phenomenon of the modern city, because its existence creates the conditions being formed under the influence of urban environment, while affecting the citizens themselves.

Conclusion

Globalization challenges and continuous migration require qualitatively new management decisions. The EU countries, like other countries, has faced serious challenges in intensifying the individualization of public interaction, which have been also produced by the latest scenarios of the COVID-19 pandemic. Modern intercultural integration is a policy approach that encourages citizens to consider their diversity as a resource for quality cooperation with local governments, rather than as a problem.

Intercultural dialogue is one of the main conceptual innovations closely related to interculturalism. It is considered as a political strategy or tool to promote cultural diversity in order to strengthen social cohesion at the local level. The dialogue requires certain social actions and conditions to transform ideas and problems in the field of local self-government into innovative processes and new forms of managerial response.

The EU strategies Union provide the ground for the interconnection and effective interaction of different social groups and public authorities in order to ensure a multilateral balance of interests. Intercultural cities, where local governments publicly advocate for respect for diversity and a pluralistic urban identity, are the main sources of good practice in intercultural integration in the European Union.

Cities are actively coping with deep-rooted discrimination in order to provide equal opportunities for all by adapting their government agencies, institutions and services to the needs of the population without compromising the principles of human rights, democracy and the rule of law. A high level of trust and social cohesion is conductive to the prevention of conflict and violence, making policy more effective, and makes the city attractive to both people and investors.

According to the research results, the success of local multicultural policy is also determined by the balance of national concepts, funding of mechanisms that ensure equal opportunities, and ensuring the implementation of regional solutions. All these elements make up the intercultural integration model promoted by the Council of Europe. This model was successfully tested in regions and cities across Europe and beyond, and proved to have a direct impact on public policy.

The analysis of the implementation of strategies declared by the leading EU cities, as well as the survey of the population on the results of the transformations will be the areas of further research. This vector of analysis will enable reflecting the real state of the involvement of a multicultural society in the regional development of cities.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 268-292
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Transformation of civil society in the context of political radicalism in eastern Europe

DOI: https://doi.org/10.46398/cuestpol.4074.14

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Abstract

The aim of the article was to identify the current state of the process of civil society transformation in the context of political radicalism in Eastern Europe. Comparative law and statistical analysis were the main methodological tools. The research showed that the development of political radicalism in Eastern Europe leads to the transformation of civil society. A more persistent and contentious public makes new demands on the political process. It also creates multidimensional tensions and conflicts. Representatives of radicalism gain strong positions in the political environment of society by supporting illiberalism, ethno-nationalism, culture wars and alternative knowledge. The process of merging militant and violent radicalism with family ethnonationalism is ongoing in the countries of Eastern Europe. It is concluded that this phenomenon requires constant implementation of political, legal and security strategies to prevent manifestations of political radicalism. The appropriateness and prospects of the activities of the Radicalization Awareness Network, developed by the European Union, were established.

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Recibido el 16/06/2022 Aceptado el 12/09/2022

Keywords: nationalism; xenophobia; extremism; critical level of radicalization; protest culture.

Transformación de la sociedad civil en el contexto del radicalismo político en Europa del Este

Resumen

El objetivo del artículo fue identificar el estado actual del proceso de transformación de la sociedad civil en el contexto del radicalismo político en Europa del Este. El derecho comparado y el análisis estadístico fueron las principales herramientas metodológicas. La investigación mostró que el desarrollo del radicalismo político en Europa del Este conduce a la transformación de la sociedad civil. Un público más persistente y contencioso plantea nuevas demandas al proceso político. También crea tensiones y conflictos multidimensionales. Los representantes del radicalismo ganan posiciones fuertes en el entorno político de la sociedad al apoyar el antiliberalismo, el etnonacionalismo, las guerras culturales y el conocimiento alternativo. El proceso de fusión del radicalismo militante y violento con el etnonacionalismo familiar está en curso en los países de Europa del Este. Se concluye que este fenómeno requiere la implementación constante de estrategias políticas, legales y de seguridad para prevenir manifestaciones de radicalismo político. Se establecieron la idoneidad y las perspectivas de las actividades de la Red de Sensibilización sobre la Radicalización, desarrollada por la Unión Europea.

Palabras clave: nacionalismo; xenofobia; extremismo; nivel crítico de radicalización; cultura de protesta.

Introduction

In modern democracies, protest is promoted by the difficulties currently facing political representation, and manifests itself within direct rather than representative democracy. The spread of protest attitudes and behaviour observed in many countries around the world is related to the current climate of widespread distrust of institutionalized and representative mediation in politics.

Recently, there has been a gradual growth of more critical forms of civic consciousness to the detriment of institutional forms of civic and political participation. A more demanding and protest political culture has led to

greater familiarity with a repertoire of protest thoughts and/or actions, as well as increased tendencies toward extremism and radicalization.

In today's world, the use of social media for news has often produced a potentially harmful effect on citizens' understanding of public policy. Social media platforms began to shape public discourse and contribute to a less informed and increasingly fragmented society. Various websites have contributed to a gradual increase in the level of radicalization of users due to the self-organizing nature of online digital content. Besides, there are also trends of decreasing interest in citizen participation, which are characterized by a decreased voter turnout and the eroded activity of civil society.

Civil society acts as a positive mechanism that works within the state and contributes to its development. It becomes politicized amongst a variety of new connections between traditional and non-traditional politics. But instead of working to strengthen and complement liberal political institutions only, civil society is being transformed to spread right-wing populism, radicalism, and xenophobia (Cossa *et al*., 2021). The studies on civil disobedience emphasize the fragility of the border for the transition to radicalization.

Besides, the crisis caused by the pandemic has affected the citizens-government relationship, raising the ethical question of the privacy compromise in order to effectively restrain and track COVID-19 (Della Croce and Nicole-Berva, 2021). The borders of radicalization have also become more transparent, in particular at the polling stations. Protest voting and disposition to radical parties have become more common among young people than among the older generation.

Socio-psychological features of youth, their superficial and uncritical perception of social life determine the inclination of the representatives of the younger generation to protest-activist methods of raising their own life status (Mukhitov *et al*., 2022). Confrontation and violence began to be used as a subversive force and affect at least the social system, if not the political one.

In view of the foregoing, the aim of the article is to consider the transformation of civil society in the context of political radicalism in Eastern Europe. The aim involved the following research objectives:

1. summarize the main directions of the development of political radicalism in Eastern Europe;
2. reveal the current state of civil society transformation in the context of political radicalism in Eastern Europe on the example of Ukraine and Poland;

3. consider the state of implementation of political, legal and security strategies to prevent political radicalism.

1. Literature review

In the current realities, Central and Eastern Europe is characterized by retreat from democracy, Euroscepticism, the rise of right-wing radical populism and a general authoritarian negative reaction in the entire post-communist space, which pose an open threat to democratic values (Mörner, 2022). The tone of more or less the entire political agenda began to shift toward a more isolationist or protectionist nationalism.

The socio-economic status is the main defining feature of party identity in developed democratic countries. In contrast to Central Europe, relevant cultural factors are dominant in ethnically and religiously heterogeneous societies, which is characteristic of many Eastern European countries (Bushtikova, 2018). Nationalism also plays an important historical role in the eastern region as the motivation of the opposition in the struggle against communist regimes.

Radical tendencies characterize both individual and group attitudes and behaviour, create a whole complex of values and actions, which are expressed in a wide variety of ways. Radical views are realized in the form of values and beliefs, and radical actions imply specific actions in a legal context. These include, in particular, participating in a demonstration or joining a radical organization.

The transformation of civil society under the impact of political radicalism can lead to the emergence of an illegal context, for example, committing acts of violence, causing damage to public or private property, and, as a result, can lead to terrorism (Burchett *et al*., 2022). It is currently urgent to develop and implement political, legal and security strategies aimed at preventing manifestations of political radicalism remain relevant today.

The choice of the research topic correlates with the modern vectors of the theoretical research in different states. The work (Prislan *et al*., 2020) became the background and the main tool for the article. In the course of research, the researchers summarized the grounds for defining the concept of civil society, and proposed their own definition. The work (Mörner, 2022) also had an influence on the author's position on the subject under research. The researcher's achievements allowed outlining the research vector of civil society transformations in the context of political radicalism in Eastern Europe.

In turn, the article (Umland, 2020) revealed the essence of the transition from the politics of right-wing parties to an "uncivil" society for the author. The findings (Muxel, 2020) on the dynamics of the development of political radicalism among the younger generation were taken into account during the research. The studies (Mukhitov *et al*., 2022) on the analysis of the main structural measures to prevent radicalism among young people, as well as on the features underlying violence, communication, and civil disobedience deserve special attention.

The studies of Suraya and Mulyana (2020) used in the article emphasize the influence of digital media on the development of political radicalism among young people. The research (Burchett *et al*., 2022) that focuses on the need to introduce innovative means of legislative prevention and combating criminal radicalism is worth noting. These works helped to trace the transformation of the main directions of the innovative approach to the processes of counter-radicalism politics.

The authors outline such relevant vectors as innovativeness (novelty), objectivity, subjectivity, purposefulness, demand, implementation in practice, efficiency. An active study of the problem confirms that the process of transformation of civil society in the context of political radicalism require special attention. It is necessary to continue to improve regulatory and legal initiatives aimed at preventing the development of political radicalism in order to ensure the well-being of civil society.

Therefore, it is urgent to conduct research with due regard to new research criteria.

2. Methods

A qualitative research design of the study with the introduction of a set of practical and theoretical tools contributed to obtaining balanced research results (Figure 1).

The conducted research was based on the research design referred to above and the author's selection of the sample according to the subject of the article. In particular, forty-eight sources were surveyed and covered in the article.

The authors obtained the research results through the use of particular methodological tools. The research methodology is based on a set of principles, where the principle of the unity of theory and practice is the main one. The research methodology is also based on the principles of historicism and objectivity, a combination of political history and comparative historical approaches. A comprehensive approach was used in the course of the research, and became the methodological background of the research and allowed to comprehensively review the selected issues.

Statistical analysis and comparative law were the main practical methods. These methods were applied to reveal the main indicators of the civil society transformation process. The comparative law allowed forming the author's position on the relationship between the political elite and representatives of political radicalism. This method was used to find common and distinctive features of radical political movements on the territory of Ukraine and Poland. Qualitative and quantitative analysis of statistical data became particularly important in the study for outlining the main vectors of the further development of political radicalism in the context of existing social trends.

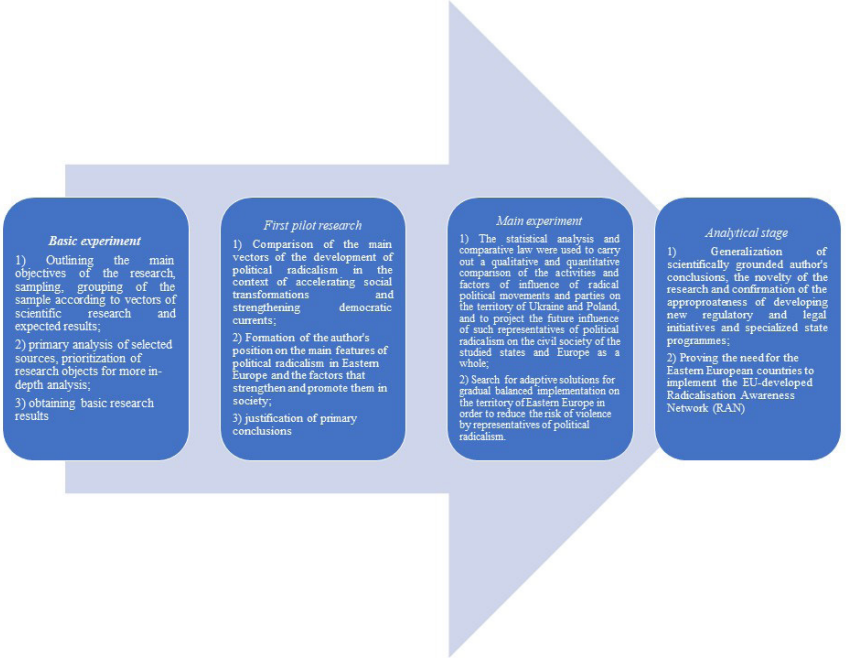

Figure 1: Research design

The historical genetic method was used to fulfil the research objectives and reveal the specifics of the development of political radicalism in the territory of Eastern Europe. The methodological tools referred to above also allowed tracing the dynamics of the development of political radicalism in relation to the changing internal political situation. The method of comparative politics turned out to be useful for considering different approaches of representatives of variable types of political radicalism to transformational social processes. A universal model of political risk

management in the activities of representatives of political radicalism was built by applying modelling of political processes.

3. Results

Political radicalism conveys a message about certain deviations in the socio-political environment and ensures the removal of social tension due to the release of accumulated discontent. It also exerts pressure on existing political institutions, the processes of preparation, adoption and implementation of political decisions, adjusts the political course. Violence can be part of a political strategy aimed at radical change in society or the destruction of its institutions (revolution, terrorism). The political radicalism is characterized by many-sided dispositions, forms of expression and action, the interpretation of which depends on the socio-historical and political context.

The political radicalism is institutionalized as a result of the emergence and spread of the influence of groups, movements, parties, and individual politically active individuals in a society. Left-wing and right-wing radicalism can be called the main types of radicalism (Figure 2).

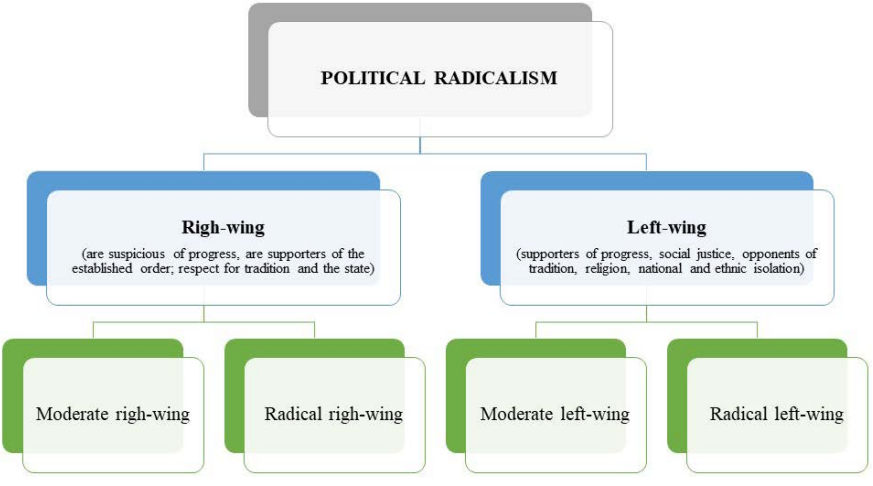

Figure 2: Typology of political radicalism in modern realities

The subject of political radicals' aggression are particular politicians and statesmen with whom social deformations are associated. Radical social

changes necessitated by the respective communities must take place by the redistribution of power through the legal or violent removal of political opponents. While the far right is inherently anti-democratic and, in some cases, legitimizes the use of violence to achieve its political goals, the radical right opposes liberal aspects of democracy (such as minority rights) and does not encourage the use of violence.

Radical right-wing parties declare against cultural values, social equality and socio-political structures of modern Western democracies, in addition to destroying their basis; advocate ethnic homogeneity in society. Their activity is also characterized by an orientation towards neoliberal economy, protection of every citizen of society from corruption and arbitrariness of state institutions. Such parties are usually headed by a charismatic leader. Centralized and hierarchically organized associations are a fundamental characteristic, which often use populism as a way of obtaining votes.

The far-right parties of Eastern Europe reflect this trend in view of the diversity of Eastern European countries in terms of ethnic heterogeneity, economic performance, and cultural heritage. Ethnicity and language create divisions that structure far-right politics in some countries, such as Slovakia, Romania, Ukraine, Bulgaria, Estonia and Latvia. At the same time, ethnic divisions are less pronounced and right-wing radical politics focus either on anti-Roma mobilization or on social and religious issues linked to specific party systems in more ethnically homogenous countries, such as Hungary, the Czech Republic and Poland.

The division of parties into left-wing, centrist, and radical right-wing parties in Ukraine is characterized by political distribution based on language and culture. In 2019, a chronic deficit of trust in power institutions, current political parties and politicians facilitated the rise of the activity of political radicalism in Ukraine. More than 80% of respondents did not trust the President, the Verkhovna Rada, the Government and the political machinery. At the same time, only about 10% of respondents trusted political parties, while 80% did not (Razumkov Center Project, 2020). The radicalization of public attitudes in Ukraine is reflected in electoral preferences. The result of the elections of the respective parties is the implementation of a particular state policy and legislative regulation.

All Ukrainian radical nationalists are characterized by an ethnic interpretation of the nation, the desire to create a mono-ethnic Ukrainian state, a negative attitude towards Russia and Russians, and anti-communism.

Figure 3: Ultra-right radical parties of Ukraine

After the 2014 Ukrainian Euromaidan revolution and subsequent Russian aggression, nationalist views and groups gained considerable legitimacy in society at large. However, they never (except for the parliamentary elections of 2012) achieve significant success in the elections to the Verkhovna Rada. The parties National Corps, Svoboda (Freedom), Pravyi Sector, veterans and public organizations took part in the extraordinary parliamentary elections of 2019 as part of the United Nationalist Bloc.

In the 2019 parliamentary elections, the All-Ukrainian Union "Svoboda" received only 2.15% of the votes, thereby failing to pass the threshold. However, in November 2020, according to surveys of respondents, 2.5% of voters would vote for this party (Razumkov Center Project, 2020).

The rating of the All-Ukrainian Union "Svoboda" in the elections to the Verkhovna Rada of Ukraine among the age groups of the population was the following: 18-29 years — 1.6%, 30-39 years — 1.5%, 40-49 years — 2.1%, 50-59 years — 2.1%, 60 years and older — 2.5% (Ilko Kucheriv Democratic Initiatives Foundation, 2019). According to the results of regular elections for 2010-2020, the representation of the All-Ukrainian Union "Svoboda" in

local councils of all levels was: 2010 — 1.01%, 2015 — 1.32%, 2020 — 2.11% (Razumkov Center Project, 2020). According to sociological research, the national-radical trend most corresponded to the beliefs of citizens in 2020 in the following regions of Ukraine: west — 3.8%, centre — 3.8%, south — 0.8%, east — 1.7% (Razumkov Center Project, 2020). The main problem of Ukrainian right-wing radicals is the absence of the dominant need of the majority of Ukrainian citizens for extremely nationalist ideology, rhetoric and politics.

Pravyi Sector was initially an informal association of activists of a number of Ukrainian nationalist far-right organizations, which was formed during the protest actions in Kyiv (December 2013 - February 2014). In 2014, Pravyi Sector was transformed into a political party based on the legal and personnel background of the (the Ukrainian National Assembly — UNA) and a paramilitary wing (Ukrainian People's Self-Defence — UNSO) party.

The military wing of the movement is the Ukrainian Volunteer Corps (leader O. Stempitkyi), the political wing is Pravyi Sector party (O. Tarasenko). There is also a certain youth movement — Prava Youth. The party primarily adheres to "street politics", while parliamentary politics is secondary. Cooperation with Ukrainian communities occupies a special place in its struggle. For the national liberation movement, Pravyi Sector is a means of carrying out nationalist revolutionary transformations both in society and in the state in general.

The Azov unit was originally formed as a volunteer group in May 2014 from the ultra-nationalist association Patriot of Ukraine and the neo-Nazi group Social National Assembly (SNA). The unit was headed by A. Biletskyi, who managed both Patriot of Ukraine (founded in 2005) and SNA (founded in 2008). After recapturing the strategically important port city of Mariupol from pro-Russian separatists on November 12, 2014, this unit was officially included in the National Guard of Ukraine and received high praise from the then President of Ukraine P. Poroshenko.

In 2016, A. Biletsky created the far-right National Corps party, with the core made up by Azov veterans. The unit received support from Ukraine's Interior Minister in 2014, as the government recognized that its own armed forces were too weak to fight pro-Russian separatists and relied on militarized volunteer units. A significant part of the population associates them with the struggle for independence, not with a radical ethnocentric or xenophobic ideology.

In 2016, the Azov Regiment was accused of violating international humanitarian law (United Nations, 2016). The UN report described incidents between November 2015 and February 2016 in which Azov used its weapons and forces and evicted residents from buildings after pillage of civilian property.

The unit was also accused of raping and torturing citizens detained in Donbas. In January 2018, Azov deployed its street patrol called the National Guard to "bring order" in Kyiv. Instead, the unit organized pogroms against the Roma community and attacked representatives of the LGBT community.

In 2018, the Israeli government's annual report on anti-Semitism (Liphshiz, 2018) covered Ukraine extensively as having more incidents than all post-Soviet states combined. According to the Facebook's policy on dangerous individuals and organizations, Azov was banned from its platforms in 2019. Facebook classified this group as a Tier 1 category, which includes groups such as the Ku Klux Klan and ISIS. Users glorifying, supporting or representing Tier 1 groups were also banned (Cacciatore *et al*., 2018).

The National Corps platform advocates the political system of naciocracy, which defines nationalism as the main goal of the state. The wing supports a number of far-right and ultra-nationalist political positions, and also supports Ukraine's return of nuclear weapons. Outside of Ukraine, Azov plays a central role in a network of extremist groups from California through Europe to New Zealand. More than 17,000 foreign fighters from 50 countries have arrived in Ukraine over the past six years.

On February 24, 2022, Russian troops invaded Ukraine. Demilitarization and de-Nazification of Ukraine, protecting people from Nazism and genocide by the Ukrainian government was declared by the Russian Federation as the purpose of the so-called "special operation". Combat units clashed with fighters of the Azov Regiment in Mariupol, Kyiv, Kharkiv and other settlements. On February 24, 2022, after Russia began its invasion, Facebook lifted its ban, saying it would allow expressing oneself about Azov, supporting their role in the defence of Ukraine, or service in the Ukrainian National Guard.

In Ukraine, one can observe the presence of a number of "non-civilian" organizations — far-right radical movements and groups. The representatives of informal groups are politicized due to the rapprochement with the associations of political radicals and the gradual saturation of the consciousness of informal youth with politicized ideas. The activities of such organizations began to be based on radical fragments of various political and ideological doctrines. Their composition varies from several dozen to several hundred participants.

For the most part, they are not interested in the electoral political process, but are known for aggressive statements and illegal activities. The examples include: Bratstvo (Brotherhood), S-14, Karpatska Sich, Tradition and Order, National Resistance, Edelweiss, Municipal Guard, Centuria, Freikorps, Unknown Patriot, Demsokyra, Sokil, Ukrainskyi Stiah, etc. The period of 2020-2021 was characterized by a decentralized but organized

rise in political street violence in Ukraine (Marker, 2021; Marker, 2022). Statistics are provided in Table 1.

Table 1. Recorded cases of political street violence in Ukraine for 2020-2021

	2020	2021
Illegal activities of far-right radical movements and groups (including unidentified ones) — total number	119	177
Including cases of confrontation	38	89
Including the total number of cases of violence	81	88
Including are cases of violence against people	66 (106 people were injured, including 18 law enforcement officers)	58 (83 people were injured, including 29 law enforcement officers)

In turn, Table 2 shows the participation of the most prominent far-right parties, organizations, groups or their individual representatives in illegal activities committed in 2020 (Marker, 2021).

Table 2. Recorded cases of involvement of far-right parties, organizations, groups or their individual representatives in illegal activities in 2020 on the territory of Ukraine

	The total number of recorded cases	Including violent illegal acts	Including violent illegal acts with victims
National Corps	23	16	15
Tradition and Order	17	10	9
Azov	4	4	4
National Resistance	4	4	3
Pravyi Sector	4	3	3
Edelweiss	4	2	2
S-14	4	2	2

In 2021, the following far-right parties, organizations, groups or their individual representatives were detected in illegal activities the most — National Corps, S-14, Tradition and Order, National Resistance, Brotherhood, Ukrainskyi Stiah (Marker, 2022). After 2014, far-right radicals in Ukraine maintained or partially expanded their contacts with relevant groups in Eastern and Central Europe (Poland, the Baltic states, Hungary, Croatia, Slovakia, the Czech Republic, Romania, Bulgaria, Belarus, Slovenia, Macedonia).

This activity evidences the transnational nature of their activities. The main branch of Azov engaged in international affairs is a branch of the movement called Intermarium Support Group. This group became a means of communication between the Ukrainian right-wing and radical nationalists from the Eastern European countries. Current Eastern European far-right discourses seek to establish a separate civilizational predominance in Eastern and Central Europe that will differ from both the liberal EU and authoritarian Russia.

A new concept of a multinational economic and defence bloc between the Baltic, Black, and Adriatic seas is being proposed, which will challenge both the pluralistic West and imperial Eurasia. In recent years, Intermarium conferences have gathered representatives and participants from 13 countries of Central and Eastern Europe.

Prevention of political radicalization of civil society, which can lead to extremism, is one of the main directions of state policy on ensuring national security of Ukraine (Verkhovna Rada of Ukraine, 2018). According to the results of a representative sociological study "Youth of Ukraine — 2018» (Resolution of the Cabinet of Ministers of Ukraine No. 579, 2021), 56% of youth in Ukraine do not know, are not interested, and do not show a desire and interest in participating in public life.

A total of 27.3% of young people were informed about certain forms of participation, know about various participation tools, hesitate and do not use them; 16.7% of young people participate in social life in one way or another. As of 2018, 71% of young people believed that the country needs radical changes (Sociological Group Rating, 2018).

The elimination of the causes for various forms of deviant behaviour should be the priority direction of preventing manifestations of political radicalism. In this sense, 2021 became a turning point in the formation and implementation of youth policy (Verkhovna Rada of Ukraine, 2021). The goal, tasks, basic principles, directions and mechanisms of implementing youth policy in Ukraine were determined. Figure 4 outlines the main priorities of the 2030 National Youth Strategy (Ministry of Youth and Sports of Ukraine, 2021).

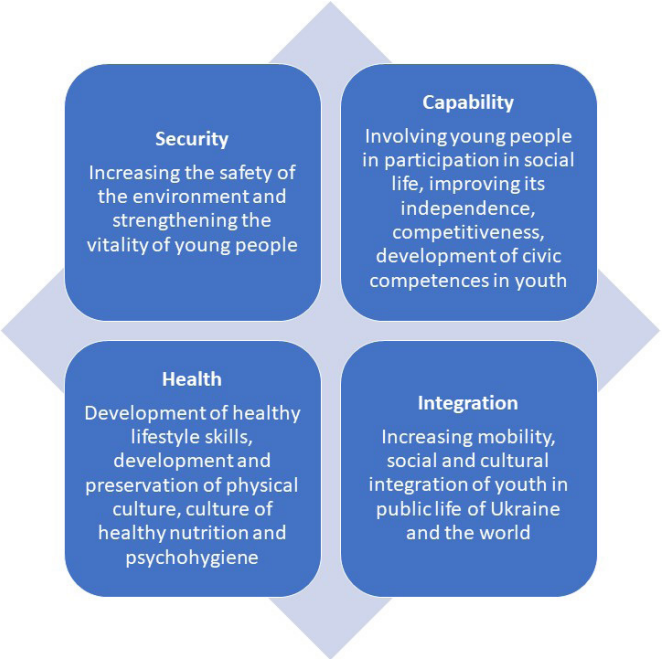

Figure 4: The main vectors of the 2030 National Youth Strategy of Ukraine

The State Target Social Programme "Youth of Ukraine" for 2021–2025 (CMU Resolution No. 579, 2021) provides for the use of conceptually updated approaches and the use of a wide range of innovative mechanisms and tools for working with young people. The implementation of this programme is based on the implementation of the recommendations of Ukrainian and international experts, the youth sector of the Council of Europe, the use of the experience of youth work in the EU countries, and the UN recommendations on supporting young citizens in all spheres of life.

Joint networks and practices involving the integration of civil society organizations and government programmes are considered the most effective in countering political radicalization. The active participation of youth in building youth policy and the implementation of youth work is ensured through various forms of their involvement, in particular through the development of youth councils and associations (Verkhovna Rada of Ukraine, 2021a). At the regional level, for example, in the Zaporizhzhia region in 2021, young people took an active part in the preparation of the main document of youth policy — the Youth of the Zaporizhzhia Region Programme for 2022-2026.

The Eastern European democratic system is regressing towards illiberal authoritarianism. Far-right parties are the main reason for this phenomenon. Far-right parties mainly participate in the political process, promoting nationalism and rejection of European integration as their prerogative. From Slovenia to Estonia, the far-right parties that exist in all the countries of Eastern Europe, are directing their efforts to achieve partnerships in ruling coalitions. The radical right-wing parties of Eastern Europe are primarily supporters of ethnic nationalism and xenophobia.

The nationalist profile emphasizes the interests of the indigenous population, the racial and cultural homogeneity of the country, opposing cultural minorities. All of them without exception usually represent policies aimed at combating migration and refugees. Besides, they also often adhere to authoritarian values that promote the existing social order while opposing progressive cultural changes such as feminism and LGBT rights. Euroscepticism is another ideology. Most of the radical right-wing parties are considered Europhobes who simply disregard European integration in general.

The sources that allowed right-wing radical parties to expand their dominance in Poland were an unstable system of political parties and a pessimistic view of socio-economic factors. The Prawo i Sprawiedliwość (Law and Justice) party, which became the first far-right ruling party in Eastern Europe, reorganized the domestic political process into an illiberal authoritarian system after coming to power. The Prawo i Sprawiedliwość party strongly advocates a restrictive immigration policy and supports the religious principles of Catholicism in politics without separation from the state.

Konfederacja Wolność i Niepodległość, known as Konfederacja, which is a radical right-wing political party, won 6.81% of votes in the 2019parliamentary elections in Poland. The Konfederacja's supporters routinely blame Jews in the online media for allegedly creating and spreading the COVID-19 pandemic. Konfederacja uses various conspiracy theories, social and economic fears of the people in its propaganda. At the same time, it positions itself as a respectable and "caring" political party that protects the interests of Polish families and Polish youth.

Many right-wing nationalist and right-wing radical organizations and parties appeared in Poland in the 1990's. All of them advocated the priority of Polish national interests and Polish sovereignty and denied pan-European unification. A number of right-wing radical formations were neo-fascist and neo-Nazi organizations.

They included, for example, the Nationalist Party (Stronnictwo Narodowe, SN), the All-Polish Youth (Młodzież Wszechpolska, MW), the National Revival of Poland (Narodowe Odrodzenie Polski, NOP), and the

National Party (Szczerbiec). They gradually built up their social bases and networks at the local, regional, national and international levels over a long period of time. They have reached a wider circle of young people by focusing on new Internet communications and social networks.

For example, the All-Polish Youth (Młodzież Wszechpolska, MW) is a nationalist youth organization known for its radicalism in the form of anti-Semitism, opposition to abortion, feminism, LGBT rights, and the EU. It belongs to two interconnected Polish far-right ultra-nationalist youth organizations with a Catholic-nationalist philosophy.

Their agenda shows that the goal is to educate Polish youth in a Catholic and patriotic spirit. The Polish National Radical Camp (Obóz Narodowo-Radykalny, ONR) refers to at least three groups that are fascist, far-right, and ultra-nationalist Polish organizations with doctrines derived from World War II nationalist ideology. The current manifestation, revived in 1993, is a far-right movement in Poland, very similar to its historical predecessors.

It is often called fascist, sometimes neo-Nazi. Since 2012, the organization has been registered as an association of common interests. The ONR considers itself an ideological descendant of the National Radical Camp of the 1930's, an ultra-nationalist, patriotic and anti-Semitic political movement that existed in the Second Polish Republic before World War II. ONR regularly participates in the festive march in honour of Independence Day, which is organized by ONR together with Młodzież Wszechpolska.

In June 2021, more than 160 public figures supported an open letter to the Minister of Culture of Poland calling for an "end to the funding of fascism" after far-right groups received more than PLN 3 million (€660,000) in grants from the state-run Patriotic Fund. The organizers of Marsz Niepodległości (the March for Independence), an annual event started by the ONR, and Straż Narodowa (the National Guard), which aims to revolutionize the fight against far-left activists will receive the money. In 2022, Polish Prosecutor's rejected requests to ban ONR after a four-year investigation. It was stated that there was no evidence of gross or systematic violations of the law by the organization.

The events that took place in Poland after the Archbishop of Krakow, M. Jędraszewski, delivered a sermon on August 1, 2019 strongly condemning the activities of the LGBT community can be an example of the transformation of civil society. A 15-year-old Pole, J. Baryła, blocked an LGBT parade in August of the same year in the city of Płock, standing in the street with a crucifix wrapped in a rosary above his head (Nussman, 2019).

The teenager became a hero in radical Catholic, ethno-nationalist circles for trying to stop the LGBT march. The actions of J. Baryła became the focus of the struggle that is taking place both in Poland and in the Catholic

Church, between LGBT ideology and the Catholic faith. Later, in an interview on the YouTube channel, J. Baryła accused the left-wing parties of spreading LGBT ideology, Jews — of brainwashing children in Polish schools, Marshal J. Piłsudski — of killing hundreds of thousands of Poles.

This interview was viewed by 48,802 thousand people in a short period of time. This example demonstrates how the symbols and values of specific radical far-right groups in one national context move geographically in the global Internet space and receive support in another far-right national context.

Preventing radicalization is a core component of the EU's holistic approach to counter-terrorism. Figure 5 illustrates preventive actions that offer a wide range of solutions to different aspects of this problem.

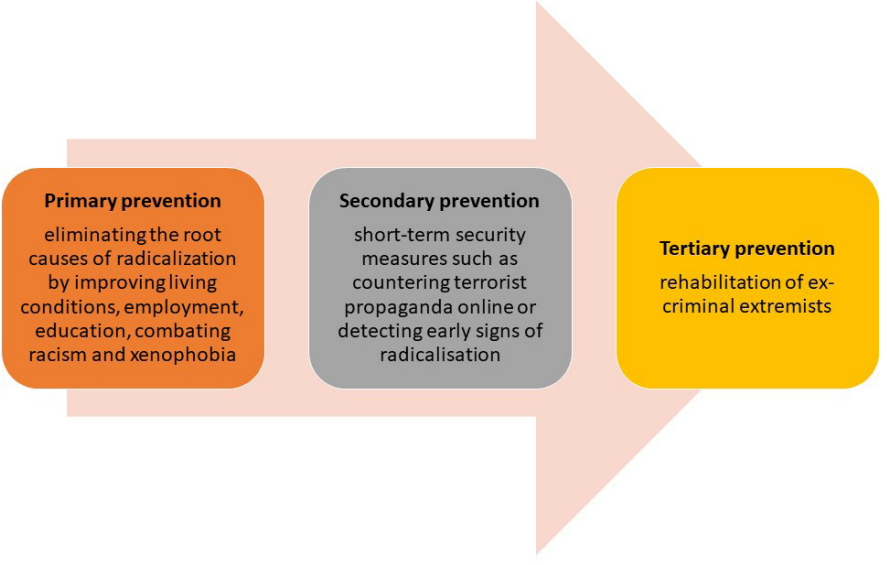

Figure 5: Preventive measures against terrorism on the territory of the EU in the context of political radicalism

The Radicalization Awareness Network (RAN) is one of the EU's flagship initiatives. The purpose of this transnational network is to bring together practitioners from all member states and beyond, such as prison guards, teachers, social workers, psychologists or communication specialists, to share experiences and knowledge. Activities organized through RAN are based on the provision of specific resources/guides such as handbooks,

toolkits. The structure of the organization comprises nine thematic working groups: Communications and Narratives (RAN C&N), Youth and Education (RAN Y&E), Rehabilitation (RAN Rehabilitation), Local Authorities (RAN Local), Prisons (RAN) Prisons), Police and Law Enforcement (RAN POL), Victims/Survivors of Terrorism (RAN VoT), Mental Health (RAN Health), Families, Communities and Social Care (RAN FC&S).

On December 4, 2018, the Council of Europe adopted a resolution on a new Youth Strategy (European Commision, 2018). It identifies the needs and respond to the challenges that young Europeans face. The goals set for 2019-2027 include supporting the personal development of young people and developing the life skills they need to cope with a changing world. Particular attention is paid to encouraging young people to be active supporters of solidarity and change, inspired by European values and identity. One of the main goals is also the elimination of poverty and all forms of discrimination against young people, promotion of the policy of social integration of young people.

In 2013, Poland adopted the National Strategy of Regional Development 2030 with the aim, in particular, of stimulating the mechanisms of youth participation in social and political life and stimulating civic activity. An example of the development of the civic activity of the young generation can be the effective cooperation of the youth of 50 member states of the European Cultural Convention (including Ukraine and Poland) in the joint management of the Council of Europe, which includes the European Steering Committee for Youth as the governing element.

4. Discussion

Representative democracy is in crisis, and support for illiberal options for democracy and authoritarianism has become more popular than ever (Casal Bértoa and Rama, 2021). The transformation of civil society towards civil disobedience in the context of political radicalism always entails a deliberate violation of the law (Smaznova, 2021). The relevant actions are taken in order to convey the need for any legal or political changes to a wide audience, in particular, public authorities and the general public.

The reason for this behaviour is the desire to achieve the necessary changes in the shortest possible period (Baluta, 2018). Although violent protests are outside the scope of institutionalized politics, they originate in the actors' political consciousness (Muxel, 2020). The researcher notes that the growth of protest attitudes and behaviour in many countries (especially among the younger generation) is related to the existing climate of widespread distrust of institutionalized and representative mediation in politics.

The accountability mechanism through which citizen input can influence government actions is a strength of democracy. Otherwise, the problems of failure of the principal and agent, rent-seeking, outright corruption, etc. reduce effective management to meeting the needs of not all citizens (Desrues and Gobe, 2021). Citizens cannot be passive under such circumstances, and increased citizen participation in activities that challenge elites can improve the functioning of government, which can be a boon for modern democracies.

However, citizen participation in protests is more typical of rich democracies than of developing ones (Sadovskava *et al*., 2019). Scholars emphasize that the authorities may seek to suppress protests as a threat to the new regime in countries with developing democracies, as a result some protests may have an anti-systemic purpose.

It is necessary to continuously implement measures to prevent manifestations of social radicalization in order to combat them. Special attention should be paid to the principle of democracy, openness and broad public participation. The future success of civil society and community engagement in counter-radicalization depends to a large extent on governments and law enforcement agencies and their willingness to change their attitudes and working methods, as well as to take into account the proposals of non-government actors and respond to their needs. This should be achieved through a change in mentality, work methods and adequate support (Prislan *et al*., 2020).

Political knowledge is a powerful antidote for mitigating uncivilized behaviour in public discussion of collective grievances. Researchers emphasize that a clear understanding of the consequences of the spread of news in social networks is necessary in the context of the growth of global political polarization and radicalization — the illegal protest behaviour of citizens.

The process of preventing youth radicalism will be effective in case the process of youth socialization is managed (Mukhitov *et al*., 2022). The educational institutions should continuously raise awareness of digital media literacy, especially Internet safety literacy, in adolescents and youth aged 12 to 20 years in order to prevent manifestations of radicalism (Suraya and Mulyana, 2020).

The ideological and political influence of Ukrainian far-right nationalists is more significant than one might assume, relying on their electoral support only (Rabotyazhev, 2020). The Azov movement managed to create a multidimensional and distinctly modern identity, which is attractive to part of the Ukrainian youth and has no regional limitations, unlike the predominantly Western Ukrainian support for Svoboda (Umland, 2020).

According to the researcher, the political and "non-civilian" branches of the Azov Regiment can become the most long-term right-wing extremist threat to the Ukrainian state. The development and application of a set of preventive measures of educational, socio-cultural, informational and psychological influence on the youth environment of Ukraine remains an urgent problem in the field of preventing and countering manifestations of radicalism (Vasilchuk, 2016).

Conclusions

Radical right-wing parties maintain their power in Eastern European politics by taking advantage of the current political, economic and social disorder. They propose an idea based on traditional values such as family, Christianity and nation. The focus of representatives of right-wing radicalism is a person, not a group. Motivation is most often related to general discontent, and ideology is related to key issues of electoral politics.

The right-wing radical parties of Eastern Europe declared a course for a cultural counter-revolution aimed at the permanent marginalization of liberal-democratic elites, their civil society and their pluralistic, liberal democratic values. Right-wing radical Ukrainian political organizations such as Svoboda, Pravyi Sector and the National Corps, the Polish Nationalist Party, the All-Polish Youth (Młodzież Wszechpolska), and the National Revival of Poland (Narodowe Odrodzenie Polski) are also considered extremist political entities, which follows from their ideology and activities. This indicates a departure from democracy in Eastern Europe.

The gradual transformation of associations of political radicals into special politicized subcultures with their own aesthetic preferences, values, internal ethics, logic and principles of relationships within their own communities are a characteristic feature of the development of political radicalism in Eastern Europe.

The right-wing radical symbols and discourses in the political, social and cultural life of citizens is a source of misinformation at all levels, including formal and informal organizations. This can contribute to a false cognitive and moral perception of reality by representatives of civil society. The transnational ties of the far right in Eastern Europe are directly dependent on social media. In this case, the use of the Internet contributes to the change and development of the necessary public opinion. Radical right-wing parties and organizations carefully adjust their communication strategies in order to expand their own influence, relying on the interest of the younger generation.

Radical political demands become a convenient excuse for representatives of criminal groups to commit various crimes, including seizing property, putting pressure on competitors, settling scores with them through the use of violence, etc. This is why the spread of political radicalism in civil society in Eastern Europe is caused by the difficult social situation of the population.

The crisis of the established mechanisms of socialization, adaptation and upbringing, the weakness of civil society institutions entail legal and cultural deformation of value attitudes and orientations of citizens. Moreover, young people are especially disposed to these changes. The result is a significant increase in the risk of involvement of citizens in illegal activities.

Radicalization is becoming a more serious threat, especially in view of the development of new technologies and the growing use of the Internet and social media. Therefore, overcoming radicalism has a cross-border dimension. However, the fight against radicalization is also strongly decentralized and must rely on the involvement of a wide range of local actors (local authorities, social services, security services, etc.).

The developed relevant regulatory and legal initiatives, as well as specialized state programmes facilitate the prevention of the growth of the radicalization of society in the Eastern European countries. The EU-developed Radicalisation Awareness Network (RAN) is an example of prevention of radicalization. Relevant experience can be initiated in all Eastern European countries and will require additional study of further adaptive practices.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 293-308
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

The role of the media as a parallel tool of justice for crimes against a civilian population

DOI: https://doi.org/10.46398/cuestpol.4074.15

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Abstract

The objective of the study was to determine the forms of media involvement in justice for crimes against the civilian population. The research was conducted using the methods of systems approach, descriptive analysis, forecasting, systematic sampling and comparative method. The mass media as an institution of civil society have ample opportunities for active participation in justice, in particular, in the detection and documentation of crimes, social support to victims, coordination of efforts of governmental and non-governmental entities. The media is an active subject in justice for crimes against the civilian population. However, their functions are not of a legal nature; they are aimed at establishing the completeness and objectivity of the facts. It is concluded that the prospects for the development of media activities envisage the model, which focuses on the detection and documentation of crimes, in particular through the latest technologies; provision of social support and opportunities for victims to express their position while facilitating the coordination of efforts between governmental and non-governmental entities interested in justice for crimes against civilians.

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Recibido el 15/06/2022 Aceptado el 26/09/2022

Keywords: human rights; international crimes; justice system; mass media; social networks.

El papel de los medios de comunicación como herramienta paralela de justicia para los delitos contra la población civil

Resumen

El objetivo del estudio fue determinar las formas de involucramiento de los medios de comunicación en la justicia por los crímenes contra la población civil. La investigación se realizó con el uso de los métodos de enfoque de sistemas, análisis descriptivo, pronóstico, muestreo sistemático y método comparativo. Los medios de comunicación social como institución de la sociedad civil tienen amplias oportunidades de participación activa en la justicia, en particular, en la detección y documentación de delitos, apoyo social a las víctimas, coordinación de esfuerzos de entidades gubernamentales y no gubernamentales. Los medios de comunicación son un sujeto activo en la justicia por los delitos contra la población civil. Sin embargo, sus funciones no tienen naturaleza jurídica, están encaminadas a establecer la exhaustividad y objetividad de los hechos. Se concluye que las perspectivas de desarrollo de las actividades de los medios de comunicación prevén el modelo, que se centra en la detección y documentación de delitos, en particular a través de las últimas tecnologías; provisión de apoyo social y oportunidades para que las víctimas expresen su posición al tiempo que se propicia la coordinación de esfuerzos entre entidades gubernamentales y no gubernamentales interesadas en la justicia por delitos contra civiles.

Palabras clave: derechos humanos; crímenes internacionales; sistema de justicia; medios de comunicación; redes sociales

Introduction

One of the most important challenges for the world community is violation of the principles and mechanisms of global and regional security systems. National and international armed conflicts entail large-scale violations of human rights through the mass commission of crimes against the civilian population. The objectives of national and international justice in this context are diverse, as it is necessary to bring the perpetrators to justice, promote restitution and compensation for the victims of crimes.

Fulfilment of these objectives directly depends on the quality of pre-trial procedures, first of all, the identification, collection, storage of the evidence for the purpose of its further use in court proceedings. Back in 1996, the Report on Impunity for Human Rights Violations prepared for the UN emphasized the "right to the truth." It provides that information about a crime is not only a personal right of the victim or his/her relatives, but also a collective right aimed at preventing recurrence of criminal violations of human rights (Rolston, 2020).

However, the involvement of civil society institutions in interaction with all elements of the criminal justice system is extremely urgent because of the duration and scale of armed conflicts, the number of crimes committed, and partly the limitation on the work of national law enforcement agencies in documenting them. This became possible primarily due to the position of researchers and human rights defenders, which was supported by influential mass media in the global movement for human rights and the rule of law (Lohne, 2020).

Mass media (both traditional and modern) occupy the main place among such institutions. They have a wide range of organizational, financial, and technical capabilities to be present at the scenes of crimes against the civilian population, communicate with victims and parties to conflicts.

Initiatives of traditional mass media to call to account those guilty of crimes against the civilian population can be of different scales – from special courts to the organization of public efforts to collect testimonies and other evidence. However, these practices draw attention to individual crimes (Orjuela, 2020). As regards social networks, these platforms are obviously valuable in collection, storage and presentation of the testimonies of victims and witnesses of crimes (Goldschmidt-Gjerløw and Remkes, 2019).

This corresponds with the adoption of new rules by the Council of the European Union on 25 May 2022 that will allow Eurojust to store and analyse evidence relating to international crimes against civilian population. This is especially important in combat situations, when the environment does not allow safe storage of evidence, including photos, videos, audio recordings (EU Neighbours, 2022).

At the same time, the analysis of the role of mass media in justice for crimes against the civilian population faces a number of conceptual problems.

The researchers discuss the understanding of crimes against civilian population. The current traditional approach covers war crimes, crimes against humanity and genocide (United Nations, 2003). At the same time, while the legal qualification of the vast majority of such acts required a connection with an international armed conflict before, now they are an autonomous concept based on human rights.

This allows criminalizing large-scale crimes both in wartime and in peacetime (Akhavan, 2008). Along with this approach, a broad one is proposed. Its supporters believe that crimes against the civilian population can also be understood as general criminal offences because of the particular severity and condemnation by the international community (Eskauriatza, 2021).

The question of involving the media in justice for crimes against the civilian population, in particular, the possibility of creating a "parallel" system of such justice, is studied from different angles. In general, such a context is connected with the fact that, in the modern understanding, criminal processes act as a form of communication and interaction between the state, victims of crimes and wider sections of the population. This is especially characteristic of international criminal justice, which generally does not appeal to harsh sanctions, is not aimed at the rehabilitation of convicts.

This is a humanitarian form of justice, where the victim occupies a central place. However, in relation to internal conflicts, traditional forms of justice are sometimes not effective in detecting and proving crimes against the civilian population. Crimes against civilians often go unpunished during non-international (internal) armed conflict. This is due to the fact that the state authorities are unable to ensure compliance with the law, although each commander must punish his subordinates in case of such crimes.

The issue of involving the media in justice for crimes against the civilian population, in particular, the possibility of creating a "parallel" system of justice, is studied from different perspectives. In general, this context is connected with the modern understanding that criminal processes act as a form of communication and interaction between the state, victims of crimes and wider population groups (Eskauriatza, 2021). This is especially characteristic of international criminal justice, which generally does not appeal to harsh sanctions, is not aimed at the rehabilitation of convicts.

This is a humanitarian form of justice, which focuses on the victim (Lohne, 2020). However, traditional forms of justice are sometimes not effective in detecting and proving crimes against the civilian population in relation to internal conflicts (Gilmartin, 2021). Crimes against civilian population often go unpunished during non-international (internal) armed conflict. The reason is the inability of public authorities to ensure compliance with the law, although commanders must punish their subordinates in case, they commit such crimes (Jöbstl, 2020).

That is why initiatives in the field of transitional justice are being advanced. The media intend to create a context in which conflicts and related crimes are discussed (Orjuela, 2020). In general, "media justice" as a parallel approach can be considered as an indicator that the legal system does not meet the needs and expectations of victims (Rae, 2020).

However, the framework in which the mass media can play a role in justice for crimes against the civilian population has not been clearly determined. The reason is the ambivalence of the social perception of their activities. On the one hand, mass media sometimes manipulate public consciousness and are even used to provoke violence (Carlsvärd, 2019). It is noted that researchers and specialists in the field of justice must play an active role in making ideas of criminal justice in order to neutralize or counterbalance the influence of the media (Kania and Walsh, 2010).

On the other hand, the national or local media, whether free or tightly controlled, can be an important source of information about a large number of crimes. The experience of recent conflicts has shown that data presented in the mass media turned out to be important evidence in court (CENSS, 2019). Criminal procedure standards are much more serious than those used by journalists. Therefore, media materials must be collected, stored and analysed in accordance with these standards. Non-digital evidence should also be actively used (D'Alessandra and Sutherland, 2021).

All the foregoing urges the issues of determining the role of mass media in justice for crimes against the civilian population in the modern period. The main problem is to determine the real possibilities of mass media involvement in justice regarding crimes against the civilian population, as well as to identify the main prospects for the development of mass media involvement in justice.

1. Aim

In view of the above, the aim of this study is to compare the existing practices of involving mass media in justice for crimes against the civilian population and identify the main risks for achieving the goals of justice. This aim provided for identifying the main prospects for the development of the most effective model of media involvement in this area.

2. Methodology and methods

This study was carried out in stages according to the logic of presentation of the material in order to achieve the aim and fulfil the objectives of the research. The research involved the following stages: selection of literature; analysis of the material presented in the selected literature and evaluation of the results of these studies; identification of the current state and conceptual problems of media justice for crimes against the civilian population; determining the aim of the article; drawing of conclusions and providing practical recommendations for the development of mass media

activities in the field of justice for this category of crimes; outlining the prospects for further research in this area.

This study involved international legal standards on the features of crimes that can be classified as crimes against the civilian population, as well as a generalization of the practice of media involvement in justice for this category of crimes in the context of the paradigm of media influence on criminality. This allowed determining the main prospects for the development of the most effective model of mass media involvement in justice for crimes against the civilian population.

The following methods were used in this research in order to achieve the aim and fulfil the objectives: systems approach was used to study the mass media involvement in crime control as a complete system of interaction between the state, society and criminality at the current stage; descriptive analysis was used to identify and consider the main features of different types of mass media and their role in the prevention of crimes against the civilian population depending on the type of conflicts; generalization and forecasting were used to determine the prospects for the development of the most effective model of mass media involvement in this activity; systematic sampling and the comparative method were used to select and compare the main features of widespread practices of mass media involvement in justice for crimes against the civilian population.

3. Results

The analysis of the role of mass media in justice for crimes against the civilian population provides for determining the conceptual framework of the analysis. This is why it is important to determine: a) the scope of understanding crimes against the civilian population; b) understanding mass media as a civil society institution.

It should be noted that there are no crimes against the civilian population in international criminal law. For example, Articles 6-8 of the Rome Statute of the International Criminal Court apply to genocide, crimes against humanity and war crimes. These actions have certain common features of the elements of crime, including: a) criminal liability is cause by a deliberate and conscious action, which is committed “inhumanly”, “cruelly”; b) such an executor’s assessment of his/her actions is not mandatory; c) the term “executor” is neutral regarding the guilt/innocence of a person, it only means a person who fully or partially performs actions; d) actions must mean one or more crimes, that is actions that contradict the Rome Statute or other international legal norms.

Accordingly, from this point of view, crimes against the civilian population can include genocide, crimes against humanity, and war crimes, where the victims are civilians. They are serious violations of international humanitarian law and do not require mandatory criminalization in national criminal law, which would hinder the modernization of international crimes (International Criminal Court, 2013).

This excludes the category of "illegal combatants" from the list of victims of crimes against the civilian population, which includes, in particular, members of armed groups who lose the protected status of civilians by taking an active part in hostilities (Hathaway *et al*., 2019). This is why not all crimes under the Rome Statute are crimes against civilian population. However, the crimes against civilian population are the core of international crimes (see Figure 1).

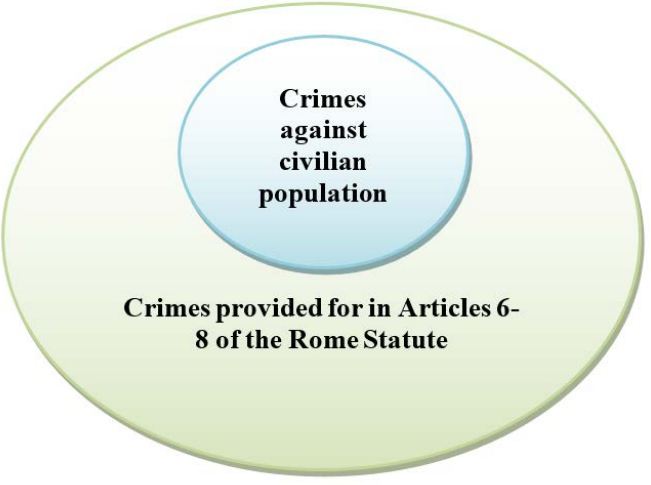

Figure 1: Correlation between crimes provided by the Rome Statute and crimes against the civilian population.

The prospects for the development of international humanitarian law as the background of international justice are an important aspect of understanding crimes against the civilian population. However, crimes against civilian population are recognized by both approaches despite the existence of broad and narrow approaches to this issue. Their inherent feature is the violation of human rights (see Figure 2).

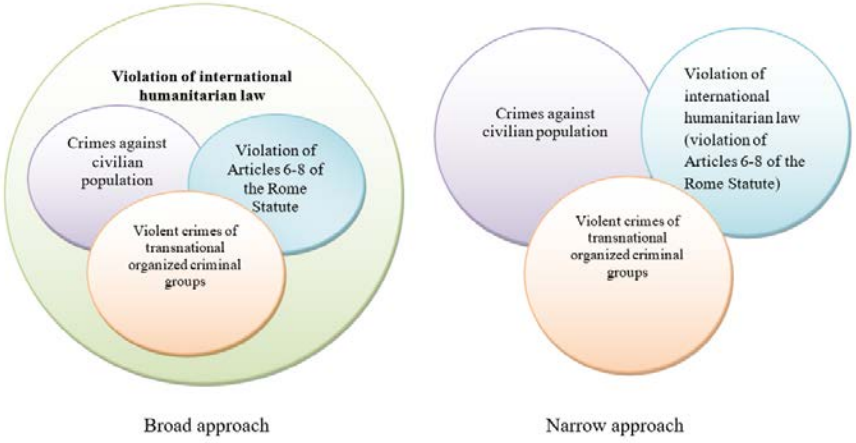

Figure 2: Crimes against civilian population in the context of broad and narrow approaches to the development of international humanitarian law. Source: (Eskauriatza, 2021; Carlsvärd, 2019).

At the same time, further research is required on the types of media that can play a role in justice for crimes against civilian population. In general, mass media are diversified media technologies intended to reach a wide audience through mass communication. Mass media comprise both technical and institutional methods of communication, production and distribution of news and information. The audience is offered a wide range of content and media platforms for verification of the information. Mass media is one of the most important drivers in modern culture. They reflect all the ongoing processes in society. However, another trend is also important, because they influence society on a wide range of issues — from everyday life to socio-political issues. At the same time, mass media have common tasks in justice for crimes against the civilian population regardless of whether these are traditional (newspaper, television) or new (Internet platform, social network) media (see Figure 3).

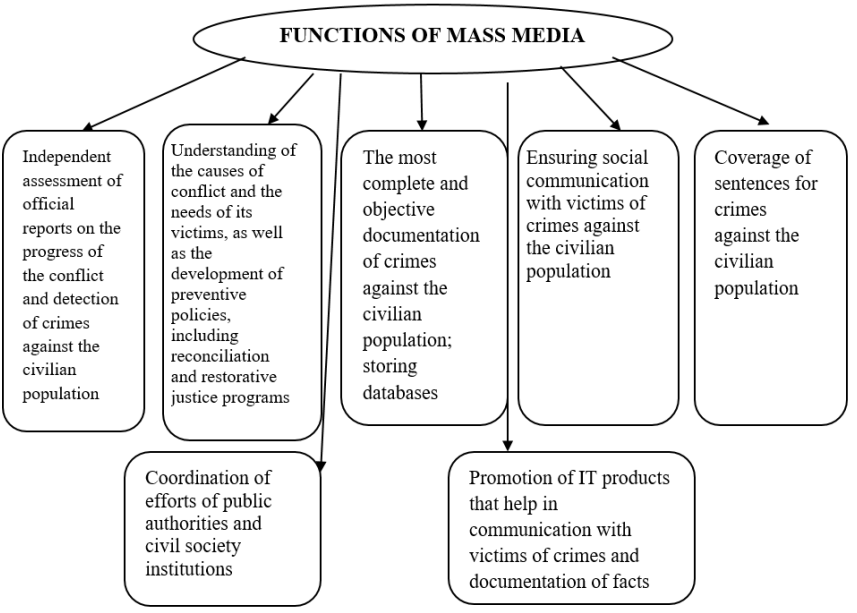

Figure 3: Functions of the mass media in justice for crimes against the civilian population. Source: (D'Alessandra and Sutherland, 2021; Gilmartin, 2021; Greer, 2017; Goldschmidt-Gjerløw and Remkes, 2019).

So, the mass media try to humanize international and national justice as much as possible and objectively cover the needs of victims of crimes in view of the nature of crimes against the civilian population as a violation of human rights.

At the current stage, there is a significant potential for the development of mass media efforts in the field of justice for crimes against the civilian population, which include the implementation of the latest technologies (Freeman, 2021; D'Alessandra and Sutherland, 2021), identification of vulnerable population groups — potential victims of crimes (Parrin *et al.*, 2022), collaboration with other subjects in the field of justice (Crimea SOS, 2022; NISS, 2022; Bachmann *et al.*, 2019) (see Figure 4).

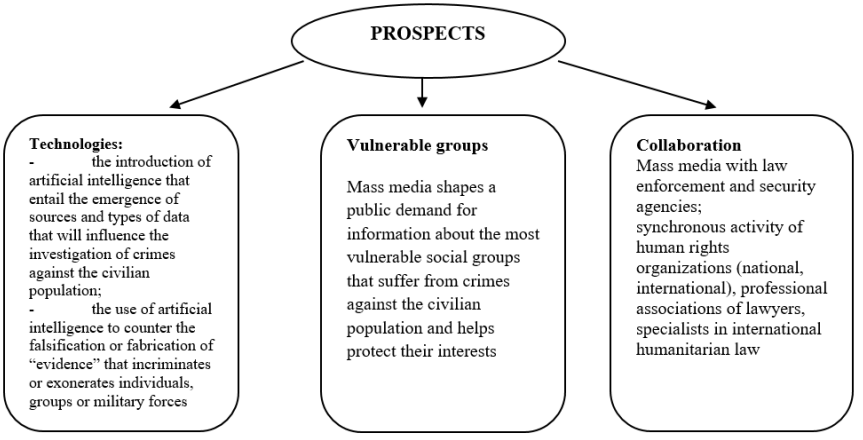

Figure 4: Prospects for the development of mass media involvement in justice for crimes against the civilian population.

In view of the foregoing, it is considered appropriate to identify the prospects of developing a model of mass media involvement in justice for crimes against the civilian population, taking into account the growth of international and domestic armed conflicts. It should be based on a broad approach to the role of mass media, which may include such blocks as: detection and documentation of crimes, in particular through the latest technologies; providing social support and opportunities for victims to express their position; coordination of efforts between government and non-government entities interested in justice for crimes against civilians.

4. Discussion

The conceptual vision of the role of mass media as a parallel tool of "justice" for crimes against the civilian population is part of the general discourse on the place of mass media in crime control and the specifics of their influence on the most socially dangerous types of behaviour. In general, the position that the mass media shape the understanding of crime and countermeasures is confirmed (Baranauskas and Drakulich, 2018).

However, such coverage does not really reflect the real state of the criminal situation. This is characteristic of all types of mass media, although traditional media distort the criminal response in general by paying a disproportionate attention to it, and social networks cover crime relatively rarely, unless it is about violent acts (Prieto Curiel *et al*., 2020).

In general, it is emphasized that mass media translate cultural and communication contexts that promote fear of crime on the one hand, while justifying the illegal actions of the state in fighting crime, in particular terrorizing the civilian population, on the other hand (Altheide, 2006). It is emphasized that modern governments depend on public opinion, which, in turn, depends on the mass media.

This gives the mass media extremely powerful leverage, because the very fact of discussing its application at the government level will depend on their position, not only the specific measure (Carlsvärd, 2019). The thesis that the mass media play a central role in shaping cultural ideas about crime and measures to combat it can be considered a general conclusion (Wattis, 2021). Therefore, the study of the role of mass media should be at the centre of criminological studies dealing with the problems of crime control and social order (Greer, 2017), policies in the field of justice (Baranauskas and Drakulich, 2018).

In this context, the understanding of the role of the mass media in justice for crimes against civilians remains controversial. The reason is a significant difference between the mass media in countries that have become direct victims of crimes against the civilian population to be investigated in the course of international judicial proceedings, and the mass media in other countries (Simons, 2009).

At the same time, the media are blamed for having a double standard regarding which cases should be prosecuted. As a rule, the agents of the regime deny the commission of crimes against the civilian population. If violence is recognized, it is assessed as purely defensive (Jones, 2019). This causes some scepticism in the human rights community (Simons, 2009). Moreover, the mass media appeals to the lack of interest of general public in the legal aspects of judicial proceedings (Simons, 2009).

Besides, mass media usually assess a small fragment of the conflict, sometimes only one incident, a particular crime committed during a military campaign (Bachmann *et al*., 2019). Therefore, it is proposed to carry out a careful assessment of the use of the mass media as a parallel forum of justice, as it is appropriate to reduce the role of the mass media to the establishment of an accountability mechanism that can draw attention to the shortcomings of official institutions, measures and processes (Rae, 2020).

At the same time, it is considered more appropriate to recognize the essential role of mass media in promoting justice for crimes against the civilian population, which can be divided into limited and broad approaches.

The emphasis on the main task that the mass media should perform is positive in the limited approach. For example, researchers correctly draw attention to the algorithms for the correct documentation of crimes against

the civilian population as the main professional opportunity of journalists in the context of providing evidence for further judicial proceedings (Prostir. UA, 2022). This involves the work with a list of documents that can be used in the practice of international and national courts (CENSS, 2019).

It is also considered important to promote the use of programmes for documenting crimes against the civilian population, which, for example, automatically transmit information to the International Criminal Court, which investigates the events (Prostir.UA, 2022). This vision is confirmed by the modern idea of international justice as a complex information system, where data flows from civil society reported by the media are processed and provided to law enforcement and judicial authorities (D'Alessandra and Sutherland, 2021).

It is also possible to support those researchers who emphasize the role of mass media in providing comprehensive information to the society and the world community about crimes against the civilian population (NISS, 2022).

This opens up the opportunity for mobilizing efforts to recognize crimes against the civilian population and restitution to victims, the communication of potential crimes is destroyed by organizing international campaigns in the mass media (Jones, 2019). Supporting victims of crimes against the civilian population is considered an equally important task of mass media. It implies uniting them and covering their problems (Goldschmidt-Gjerløw and Remkes, 2019) reminding society about crimes against the civilian population.

However, this is possible provided that the mass media go beyond the legitimacy of the armed conflict (Bachmann *et al*., 2019), when their main task is to restore justice (Prostir.UA, 2022).

However, a broad approach is considered more promising, as it is based on the legitimization of justice through the recognition of the results of the work of judicial bodies as legitimate and rendering of this assessment to the society (Rosen, 2021). This is especially important for resolving issues of bringing officials of foreign states to criminal responsibility, which is extremely difficult in view of international legal customs and political considerations (Epik, 2021). The mass media involvement in justice for crimes against the civilian population allows achieving common goals for justice and civil society such as establishing justice, accountability and compensation for victims of crimes (D'Alessandra and Sutherland, 2021).

The findings of this study evidence that the media's role in shaping and providing public space for activists and victims increases when criminal justice mechanisms are considered limited. In this regard, mass media has the potential to simulate parallel justice. They determine the agenda, shape public opinion, and mobilize society for action in support of preventing

human rights violations and reparation of damages to victims. The media can also influence law enforcement agencies to make them respond to criminal activity (Rae, 2020).

Conclusions

This research allows drawing a number of conclusions on the importance and directions of mass media involvement in justice for crimes against the civilian population. It was found that these crimes are one of the most dangerous international crimes that violate human rights. The mass media can fulfil a number of non-legal functions aimed at establishing justice for the victims and strict punishment for the perpetrators. At the same time, they have common tasks in justice for crimes against the civilian population regardless of whether the mass media is traditional or new.

It is proposed to develop a model of mass media involvement in justice for crimes against the civilian population with due regard to the extension of international and domestic armed conflicts. It should be based on a broad approach to the mass media role, which may include the following blocks: detection and documentation of crimes, in particular through the latest technologies; providing social support and opportunities for victims to express their position; coordination of efforts between government and non-government actors interested in justice for crimes against civilian population.

This study paves the path for developing standards for working with data covered in the mass media for their further use in international legal proceedings. Another promising area is the development of criminological studies, which deal with the mass media as subjects of the prevention of crimes against the civilian population.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 309-327
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Experience of legal support in electoral processes in Denmark, New Zealand and USA: possibility of use in Ukraine

DOI: https://doi.org/10.46398/cuestpol.4074.16

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Abstract

The aim of the article was to discuss conceptual ideas on the state of legal support of the electoral process in Denmark, New Zealand and the United States, as well as to identify opportunities to use the positive experience of these countries in Ukraine. The article uses such methods as dialectical, comparative law, system-structural, formal-dogmatic, modelling and forecasting. It should be noted that, despite the ability of EU countries to introduce their own electoral legislation and choose the electoral system, the exercise of the right of everyone to vote or be elected is ensured by compliance with international standards of organization and conduct of elections. It is concluded that the countries studied: Denmark, New Zealand and the United States generally adhere to the rule of law and the electoral process is well organized. It is stated that the due legal support of the electoral process is a tool for the formation of legitimate representative bodies of state power and local self-government. In addition, it is proposed to implement in the Ukrainian

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Recibido el 06/06/2022 Aceptado el 08/09/2022

electoral legislation the positive experience of some countries, as well as to identify possible ways to improve it.

Keywords: legal guaranteeing; elections; electoral legislation; election system; electoral process.

Experiencia de soporte legal en procesos electorales en Dinamarca, Nueva Zelanda y EE. UU: posibilidad de uso en Ucrania

Resumen

El objetivo del artículo fue discutir ideas conceptuales sobre el estado del soporte legal del proceso electoral en Dinamarca, Nueva Zelanda y los Estados Unidos, así como identificar oportunidades para utilizar la experiencia positiva de estos países en Ucrania. El artículo utiliza métodos tales como el dialéctico, derecho comparado, sistema-estructural, formal-dogmático, modelado y pronóstico. Cabe señalar que, a pesar de la capacidad de los países de la UE para introducir su propia legislación electoral y elegir el sistema electoral, el ejercicio del derecho de toda persona a votar o ser elegido está garantizado mediante el cumplimiento de las normas internacionales de organización y celebración de elecciones. Se concluye que los países estudiados: Dinamarca, Nueva Zelanda y los Estados Unidos generalmente se adhieren al estado de derecho y el proceso electoral está bien organizado. Se afirma que el debido sustento legal del proceso electoral es una herramienta para la formación de legítimos órganos representativos del poder estatal y de autogobierno local. Además, se propone implementar en la legislación electoral de Ucrania la experiencia positiva de algunos países, así como identificar posibles formas de mejorarla.

Palabras clave: apoyo legal; elecciones; legislación electoral; sistema electoral; proceso electoral.

Introduction

It is well known that elections are the foundation of a democratic society. Elections give the opportunity for voters to participate in governing the state, elect leaders; strengthen the stability and legitimacy of the political community (Teremetskyi and Chudyk, 2021). Elections provide political education for citizens, promote social and political integration.

Election systems have a profound effect on the future political life of the corresponding country. Therefore, the choice of the election system is one of the most important institutional decisions for any democratic state.

An important role along with the choice of the election system belongs to the extent of the formation of the relevant legal guaranteeing of the electoral process. Nevertheless we have to agree with the statement that: "Today, there is a large discrepancy (inconsistency) between the actual system and structure of activities in the field of organizing and holding elections to government bodies and those enshrined in the current legislation" (Keshikova and Demeshko, 2021: 483). This thesis is also proved by the provisions of the Art. 21 of the Universal Declaration of Human Rights which states that:

> The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedure (Universal Declaration of Human Rights, 1948).

Besides, the UN Member States have agreed to abide by a number of commitments regarding the organization and conduction of elections and the protection of suffrage of their citizens (International Covenant on Civil and Political Rights, 1966, Art. 25). According to the Art. 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, States Parties undertake:

> To guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law... notably in the enjoyment of political rights, in particular the right to participate in elections –to vote and to stand for election – on the basis of universal and equal suffrage (International Convention on the Elimination of All Forms of Racial Discrimination, 1965).

Thus, despite the fact that each country has the sovereign right to choose how to act in elections, most of the developed world countries pay considerable attention to improving national electoral legislation and bringing it in line with international norms and standards. Thus, international and legal standards of the countries that have common values and fundamental legal principle snare the crucial mean to achieve the legal unity (Chudyk *et al*., 2021).

1. Methodology of the study

The materials for identifying specific features of legal regulation of the electoral process in Denmark, New Zealand and the United States were

the laws of those countries in the field of guaranteeing people suffrage, the practice of its application, analytical, statistical and financial reports, reference books, political and legal journalism, results of the polls and online resource.

The methodological basis of this research is a set of general and special scientific methods of scientific cognition. Thus, the dialectical method was used to clarify the current status of legal guaranteeing of the electoral process in some foreign countries, the comparative and legal method – to determine the perspectives for the application of positive foreign experience in Ukraine. The use of the systematic and structural method allowed us to clarify the characteristic features of the electoral process in those countries. Modeling and forecasting methods were used while developing and formulating directions for the improvement of the electoral legislation of Ukraine.

2. Results and Discussion

2.1. Legal regulation of the electoral process in EU countries

The Article 3 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms enshrines the right to free elections, including the obligation of EU countries to "to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature" (Convention for the Protection of Human Rights and Fundamental Freedoms, 1950).

The Parliamentary Assembly of the Council of Europe has adopted a number of Resolutions on elections and referendums in EU Member States. In particular, the Resolution 1353 (2003) "On the Future of Democracy: Strengthening Democratic Institutions" addresses the possibility of making democratic decision-making processes more accessible and transparent by "introducing or facilitating remote voting at national and regional levels..." (Resolution of Parliamentary Assembly, 2003).

The Parliamentary Assembly of the Council of Europe called on Member States in its Resolution 2390 (2021) "Transparency and regulation of donations to political parties and electoral campaigns from foreign donors" to "review their rules regulating financial contributions to political parties and financial campaigns from foreign countries in order to prevent risks related to non-compliance or illegal foreign financial interference..." (Resolution of Parliamentary Assembly, 2021).

There is currently no single rating in the world that reflects information on the countries with the best electoral system, as well as the best legal guaranteeing for the organization and conduction of elections. At the same time, the international human rights non-governmental organization "Freedom House" annually analyzes existing problems of the electoral process, political pluralism and participation in the electoral process, functioning of government in 195 countries.

In particular, the annual report "Freedom in the World 2020" analyzes and evaluates people's access to political rights and civil liberties in the world countries (Annual Freedom in the World report, 2020). According to this report, the best countries in 2020 with the highest permissible score (40 points), which promote sustainable democracy and pay great attention to supporting efficient and sustainable electoral processes by ensuring free and fair elections, are such countries as: Australia, Canada, Denmark, Netherlands, New Zealand, Norway, USA (32 points) (Annual Freedom in the World report, 2020).

Countries definitely use various electoral systems, which differ from one another, differing in the legal instruments and traditions, which are the basis of the electoral system. However, the existence of adequate legal guaranteeing of the electoral process in any country should be considered as the guarantee for the implementation of fair and just elections, the organization and conduction of the electoral process. Therefore, we want to consider the state of legal guaranteeing of such foreign countries as Denmark, New Zealand and the United States.

2.2. The current status of legal guaranteeing of the electoral process in Denmark, New Zealand and the United States

Elections to the national parliament ("folketinget"), local elections (to municipal and regional councils) and elections to the European Parliament are held in **Denmark**. Referendums may also be convened along with elections in order to consult with citizens directly on matters of national interest.

Elections in Denmark are held on the basis of the Law "On Folketinget (Parliamentary) Elections" of 27 August 2020, No. 1260 (Folketing (Parliamentary) Elections Act, 2020), the Law "On Local and Regional Elections" of 7 February 2019, No. 138 (Local and Regional Government Elections Act, 2019), the Law "On Elections to the European Parliament" of 7 February 2019, No. 140 (Lov om valg af danske medlemmer til Europa-Parlamentet, 2019).

Parliamentary elections are called by the monarch on the advice of the Prime Minister, usually after four years, although pre-term election may take place. 179 people are elected to the Danish parliament, who must be

exclusively members of the party. The peculiarity of the parliamentary elections in Denmark is that the parties that hold seats in the parliament automatically have the right to participate in the next elections. Parties that received signatures from 1/175 of the valid votes during the last elections (about 20,000 signatures) and registered in the Ministry of the Interior and Housing at least 15 days before the election date are also eligible to take part in the parliamentary elections (Folketing (Parliamentary) Elections Act, 2020).

Elections to local councils (municipal or regional) and to the European Parliament are held on fixed dates. The proportional system of representation on party lists is used on such elections.

Persons eligible for suffrage are automatically included in the electoral roll on the basis of temporary or permanent residence. People without a permanent place of residence, such as the homeless, can also vote. As a general rule, such persons are included in the voter list in the municipality, where they last had their registered address. Voter lists are prepared on the basis of information contained in the civil status registration system. Voters receive a ballot card by mail 5 days before the poll (Folketing (Parliamentary) Elections Act, 2020).

Voters, who due to disability, bad health conditions or other similar reasons, are unable to vote in the prescribed manner may apply for the assistance required to vote. Voting assistance may be given in the form of personal assistance and assistance to be provided during voting. Personal assistance in voting is provided by two observers or appointed voters. Instead of one of the observers or appointed voters, such a person may request assistance in voting from a person of his or her choice. Assistance in crossing out the ballot paper may be provided only if the voter can directly and unambiguously indicate to those who provide assistance the list of candidates or the candidate for whom he / she wishes to vote (Folketing (Parliamentary) Elections Act, 2020).

Individuals in Denmark can vote early at any citizen service center starting from Tuesday six weeks before the election day and no later than the Friday before the election day. Persons abroad may cast their ballots in advance at the Danish diplomatic mission or consular agency.

We should note the high legal culture of Danish citizens regarding their attitude to the elections. Those who do not wish to vote for any of the candidates or parties running in the elections may not tick and cast a blank ballot. Formally, this ballot is invalid and will not be included in the results. However, invalid ballots are included in the total number of votes and thus affect the turnout. So, unlike citizens who stay at home and do not exercise their right to come and vote, many Danish citizens return a blank ballot to show that democracy is important to them.

For example, the overall turnout in the elections on September 15, 2011 was 87.74%, with 3,579,675 casted votes, where 34,307 were invalid and 22,815 were empty (The Us Congress, 2011). In addition, a voter has the right to replace the ballot if he / she has crossed out incorrectly or has become invalid due to negligence (Folketing (Parliamentary) Elections Act, 2020).

There is a ban in Denmark on political campaigning on television. According to the Art. 76 of the Danish Radio and Television Act, television cannot broadcast advertisements for political parties, political movements or elected members or candidates for elections, or advertise political announcements from the time of the announcement of the elections or referendum till the elections or referendum day. However, if the date of the elections or voting is announced earlier than 3 months before they start, the period without advertising begins no earlier than 3 months before the elections or voting (Lov om offentlige veje m.v. LOV, 2014). Besides, Danish law restricts the placement of election posters on public roads (Bekendtgørelse af lov om radio- og fjernsynsvirksomhed LBK, 2019).

The name, address and telephone number of the individual or legal entity who initiated the display of the election poster must be indicated on the posted election poster. Information about the legal entity must be supplemented by the name, address and telephone number of the individual representing the legal entity.

Election posters that pose an immediate and specific threat to security must be removed by the Highway Administration or the police immediately after the issued order and no later than 24 hours. In this case, the individual or legal entity that hung them pay the costs spent by the Highway Administration and the police, the cost of repairing damage to the road tree and equipment. If the election poster does not contain information about the person who hung it, then these costs may pay the individual or legal entity campaigning on the election poster (Bekendtgørelse af lov om radio- og fjernsynsvirksomhed LBK, 2019).

According to the Danish Constitution, there are 5 circumstances when a referendum can or should be held and the result of which is binding (Danmarks Riges Grundlov (Grundloven), 1953). Members of the Danish Parliament, as well as regional and municipal councils may also decide to hold a consultative referendum (Lov om afholdelse af vejledende folkeafstemning om Danmarks tiltrædelse af EF-pakken (Europæisk Fælles Akt), 1986).

The main agency of state power that organizes the election process is the Ministry of the Interior and Housing. The main responsibilities of this agency in the field of electoral process include: organizing the conduction of the parliamentary elections, referendums, local and regional council

elections, as well as elections of Danish deputies to the European Parliament, establishing detailed rules for inclusion in the electoral roll, preparation of election reports for elected candidates if the elections are approved by the Parliament, etc. (Ministry of the Interior and Housing, 2022).

The election commission is independent of the political process and cannot receive instructions from the government or parliament. Decisions of the election commission are not subject to appeal to any other administrative agency (Vaalirahoitus).

New Zeland is a parliamentary democracy, which has historically held free and fair elections, guaranteeing the realization of political rights and civil liberties.

Legal guaranteeing of elections in New Zealand is based on: the Electoral Act 1993, which introduced proportional electoral system in New Zealand (The Electoral Act, 1993); Local Electoral Act 2001, which regulates local elections and voting.

This provides sufficient flexibility in legislation to easily adapt new technologies and processes as they are developed (Local Electoral Act, 2001); Election Access Fund Act 2020, which established the fund to remove or reduce barriers to voting in general and local elections, when people may face due to their disability (Election Access Fund Act, 2020); The Citizens Initiated Referenda Act 1993, which provides for referendums initiated by citizens, which will indicate the views of the people on specific questions but will not be binding on the New Zealand Government (The Citizens Initiated Referenda Act, 1993).

New Zealand has mandatory voter registration, but voting is not mandatory. A person entitled to vote must be registered as a voter in any constituency by submitting an application to the election commission for being registered as a voter. Otherwise, he / she will be prosecuted.

Individuals must be registered under certain conditions in order to vote in the New Zealand elections. The application for voter registration may be submitted to the election commission in writing by filling in the appropriate form or online (The Electoral Act, 1993).

Only after registration the person will be included in the publicly published voter list. The election commission must deliver to this person in person or send by mail a written notice of registration no later than 14 days after the registration of a person as a voter. In case of changing the residence, a person must notify the election commission about the change of residence address within two months. Having received the notification, the election commission must: make changes to the list of changes in the voter's place of residence and provide confirmation to the voter of this amendment. A person is subject to prosecution for the failure to notify of a change of the place of residence (The Electoral Act, 1993).

In addition to voting in person New Zealand provides dictation voting services for people abroad, as well as for people in remote locations, for the visually impaired or for people who cannot mark the ballot without assistance. A person may be prosecuted with a fine not exceeding $ 1,000 for disclosing information that became known to a person during assistance (The Electoral Act, 1993).

The Covid-19 pandemic, which has become an international public health problem, has both demonstrated weaknesses in many of the world's health systems in 2020, and has affected all aspects of vital activity of the state (Teremetskyi *et al*., 2021). That is why the clearance of election procedures, the provisiov of the election in force majeure (as quarantine and COVID-19) is of prime importance (Perezhniak *et al*., 2020). In terms of preparing for the elections, New Zealand's electoral legislation was temporarily amended acting from 5 October 2020 until the end of voting day (until December 1, 2020) and granted special voting right to all persons in isolation or quarantine (Electoral Amendment Regulations, 2020).

Referendums have been used in New Zealand for more than a century as a tool for public policy decision-making. Throughout the history of New Zealand, the country has held 5 referendums initiated by citizens. However, the results of those referendums were largely ignored by the government (Roberts, n/y). The New Zealand parliament uses consultative referendums to find out what voters think about a certain usually controversial issue. Thus, consultative referendums were held in 1992 and 2011 to ask: whether the electoral system should be changed (Roberts, n/y).

The New Zealand election commission is responsible for holding parliamentary elections and referendums in the country, for constantly updating voter lists, promotes the compliance with electoral legislation, and provides education to the public on electoral matters. The election commission registers political parties and their logos, guides people to comply with election legislation, helps the public to understand how to register and to vote, allocates funding to parties to broadcast elections, accomplishes vote tabulation and processing and timely publishes accurate election results.

The election commission's tasks are to manage the electoral system impartially, efficiently and in such a way as to promote participation in parliamentary democracy, understanding of the electoral system and related issues; to maintain trust in the administration of the electoral system, to promote public awareness of electoral issues through educational and information programs (New Zealand Election Commission). The election commission develops and conducts an informational and educational campaign for the public during every election.

Advertising in New Zealand can be placed both on television and on social networks. Such an awareness-raising campaign includes the development of easy-to-read voting manuals for people with disabilities, audio files, Braille files, New Zealand sign language videos, information about registration and voting in 27 languages.

Such measures have led to an increase in general awareness of the electoral process in the country. For example, the overall awareness of the 2020 election process rose in 2017 from 52% to 72%, and information campaigns helped to attract more than 11 million page views on the election commission's website (Report of the Electoral Commission on the 2020 General Election and referendums, 2020).

New Zealand is constantly reviewing electoral legislation, introducing a number of "target-oriented amendments", including addressing political party funding issues and the three-year term of the Parliament, transparency of political donations and the ability for Maori to switch between Maori and general voter lists.

The United States has a complex electoral system that is well regulated at the federal level. At the same time, the US Constitution and federal laws gave states wide freedom to organize and conduct elections (U.S. Code).

Federal laws help to protect the right for Americans to vote and make it easier for citizens to exercise that right. One of the major laws in the United States is the Voting Rights Act of 1965, which prohibited discrimination of voters on the grounds of race, color of the skin or language minority, and provided the election materials in languages other than English (The Voting Rights Act, 1965).

No one is required by law to vote in local, state or presidential elections in the United States. Voting is a right in accordance with the US Constitution (USC Ch. 205: National Voter Registration, 2015). According to the National Voter Registration Act of 1993, there are various ways to voting registration, in particular: while applying for the right to drive a vehicle, while applying to all offices that provide state aid or implement state programs by using letters (USC Ch. 205: National Voter Registration, 2015).

Each U.S. state maintains voter registration lists for federal elections, and the law requires states to keep voter registration lists accurate and up-to-date. The law provides additional guarantees that registered voters will be able to vote despite a change of address in certain circumstances. For example, voters moving within a constituency or polling station will retain the right to vote, even if they have not re-registered at a new address.

The Uniformed and Overseas Citizens Absentee Voting Act of 1986 improved access to voting for U.S. military personnel and their families, and U.S. citizens living abroad by allowing them to register and vote by mail (USC 20310, 2014).

Election laws of the United States ensures that people with disabilities or conditional barriers have the opportunity to vote. Several federal laws protect the voting right of Americans with disabilities, including:

1. The Americans with Disabilities Act (42 USC Ch. 126, 2010). This law is applied to all aspects of voting, including voter registration, choice of location and ballot stuffing on election day or early voting (42 USC Ch. 126, 2010).
2. Voting Accessibility for the Elderly and Handicapped Act of 1984 (52 USC Ch. 201, 2015). This Act requires the introduction of accessible polling stations for the elderly and people with disabilities or the creation of alternative voting methods. For example, voters with disabilities have the right to vote privately without outside help, to have a polling station available for voters with disabilities.

   To this end, polling stations are equipped with wheelchair-accessible voting booths, handrails on all stairs, voting equipment for the blind or visually impaired, etc. If a person is handicapped, he / she can seek help from a polling officer or bring in someone to help him to vote. In some states offer "voting on the sidelines", when a polling station officer brings everything needed to vote in a car or voting is accomplished by mail (52 USC Ch. 201, 2015).
3. The Help America Vote Act of 2002, which contains minimum standards for voters' education, registration, and ballots, allows the formation of federal funds for the elections. This Act established the US Election Promotion Commission (hereinafter – the Commission), which is the national center for the exchange of information on the administration of elections. The Commission develops recommendations on the implementation of election legislation, adopts recommendations on the voluntary voting system, accredits testing laboratories and certifies voting systems and maintains the national form of voters' registration by mail.

The Commission is also responsible for maintaining the national voter registration form, for conducting research and managing the National Electoral Information Exchange Center, which includes common practices, voter information and other resources to improve the elections (Office of the Law Revision Counsel, 2015). The Commission submits an annual report to the Congress, holds public meetings and hearings to inform the public about its activities (Federal Election Commission).

US citizens have the right to elect candidates directly by popular vote. However, the President and Vice-President are not directly elected by the citizens. They are elected by the Electoral Board in accordance with the US Constitution. Thus, residents of the respective states vote for the presidential candidate, choosing the list of voters of this candidate. After the citizens of a state has elected a list of voters, those voters formally elect the President and Vice-President, casting their votes (U.S. Constitution, 1787). Each state receives as many voters as it has members of the Congress (House of Representatives and Senate). Each state's political parties choose their own list of potential voters.

The Office of the Federal Register coordinates the work of the Electoral Board. The total number of votes, consisting of 538 voters, is equal to the total number of representatives and senators currently constituting the Congress. The number of voters on the state's list is equal to the number of US representatives plus two.

The number of state representatives is determined by considering the population of every state in proportion to all other states. Accordingly, each state receives a proportional number of representatives. The Government conducts the national census every ten years to determine the population of each state. When this happens, the state could potentially gain or lose congressmen, affecting the number of voters known as the votes the state will have in the Electoral Board (The Office of the Federal Registe).

There is a "winner gets everything" system in 48 out of the 50 US states. This system assigns the entire list of voters in that state to the candidate who won the popular vote, regardless of how close the voting was in that state. A presidential candidate who has won a constituency receives the votes of that constituency. After each state has cast its votes, the votes are tabulated and the President and Vice-President are appointed.

The Federal Election Campaigns Act of 1971 restricts campaign contributions to presidential and congressional candidates and requires candidates to report all money received and spent on their campaigns (Type of contributions; 52 USC Ch. 201, 2015).

The Federal Election Commission (FEC) monitors the compliance with campaign finance laws. It protects the integrity of the federal campaign finance process by ensuring transparency and fair implementation and administration of federal campaign finance laws (The Federal Election Commission (FEC)). Thus, a person may donate $ 2,900 to the elections per one candidate during the 2021-2022 elections. Goods (tools, equipment) are also considered as contributions. For example, if someone donates a personal computer to a campaign, the contribution is equal to the normal market price of the computer at the time of contribution. Services (e.g. advertising, printing or consulting services) are valued at the commercial

rate in effect at the time the services are provided (The Federal Election Commission (FEC)).

Each US state determines the documents it accepts as proof of identity. Most US states allow people to vote when presenting photo documents (driver's license, military ID, passport). In the absence of a valid document with a photo, they offer to make a free voter ID with a photo. Some states accept non-photographic IDs, in particular by providing birth certificates, social security cards, bank statements and utility bills. Any registered voter in the United States can vote by mail after receiving a ballot.

The Electoral Performance Index is the primary tool for assessing election administration in the United States. This Index helps politicians, election administrators and citizens to evaluate elections based on data, to compare election results across states, to define potential issues to be addressed, to measure the impact of policy and practice changes, to identify tendencies, to use data to determine resource needs and to implement education of voter on the elections administration (Election Performance Index, 2020).

Thus, the analysis of legal guaranteeing of the electoral process in Denmark, New Zealand and the United States allows us to conclude that despite the use of various electoral systems, the existence of different regulatory legal acts regulating the electoral process, those countries adhere to international standards for organizing and conducting elections, respect the fundamental freedoms and are characterized by equality, universality, political pluralism, trust, transparency and accountability of elections. At the same time the main guarantee for ensuring free and fair elections in those countries is to ensure the functioning of the effective judicial system to protect the suffrage (Chudyk *et al*., 2022).

Conclusions

The study of specific features of legal guaranteeing of the electoral process in Denmark, New Zealand and the United States allows us to make the following conclusions:

1. It has been concluded that the realization of the right to vote or to be elected by everyone is ensured through the existence and observance of international standards for the organization and conduction of elections. At the same time, the sovereign right of each state to introduce its own electoral legislation and choose the electoral system is respected.

   The indicated international electoral standards are mainly sectoral principles of objective suffrage and contain both a statement of the

mandatory content of the relevant fundamental requirements and recommendations for their implementation. Such standards are the system of minimum requirements for national electoral law and law-enforcement practices for conducting elections. One cannot speak about the existence of democratic elections without adherence to these standards.

2. A comparison of data from different world rankings (in particular, "Freedom in the World in 2020", "Rule of Law in 2020", "Global Open Database Index") allowed us to conclude that Denmark, New Zealand and the United States generally adhere to rule of law, and the electoral process is organized at the appropriate level. The stability and reliability of election legislation is the key factor.

3. The authors of the article have focused on specific features for the formation of voter registers in Denmark, New Zealand and the United States, the use of information systems, conducting election campaigns under strict supervision and control, possibility of early voting, letter voting and technology voting (in particular, through the use of telephone dictation for people abroad or with visual impairments and during quarantine), conducting informational and educational activities, continuous improvement of election legislation.

4. Analysis of legal regulation of the electoral process in Denmark, New Zealand and the United States has led to the conclusion that proper legal guaranteeing of the electoral process is a tool for the formation of legitimate representative agencies of state power and local self-governments.

On this basis and in order to improve the current electoral legislation of Ukraine, we suggest to implement those innovative provisions into Ukrainian legislation that have already proven themselves in those countries, namely: assigning an important role to local authorities during the elections, establishing their proper cooperation with public authorities; supervision and control over the financing of election campaigns; ensuring equality of all voters, including persons with disabilities; early voting; voting by mail, as well as voting using the telephone dictation service for people being abroad or with visual impairments and during quarantine; existence of a developed information election system, conducting an educational campaign for the public; banning political campaigns on television and imposing restrictions on the placement of public election posters on the roads; accelerating the development of information systems, as well as information and analytical services of elections, concluding agreements on technical cooperation with leading private IT companies under the supervision of the Ministry of Justice.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 328-346
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Military administrations as an element of national security under international and Ukrainian legislation

DOI: https://doi.org/10.46398/cuestpol.4074.17

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Abstract

The article discusses some problems of military and civilian administrations operating in Ukraine with the aim of maintaining the national security regime. In particular, the authors investigate the social and political reasons behind the decision to create special government agencies, in the form of civil military administrations. In addition to the comprehensive analysis of the relevant legislative framework, reference has been made to the practical functions of these administrations. The study methodology includes a variety of research tools aimed at improving the analysis and a problem-oriented approach. The conclusions are focused on improving the legislative as well as organizational frameworks of civil-military administrations in the Donbass region. In particular, based on the basic principles within the civil society, including the supremacy of civil society over the armed forces, the discussed Law should be effectively renamed as the Law "On civil-military administrations" with a continuous approach, potentially within a specially drafted project. It is suggested to include a chapter of the Law, on military support of civilian authorities and official efforts of reconstruction of public order in certain areas of Donetsk and Lugansk regions.

Keywords: military-civil administration; national security; military conflict; government functions; Donbass region.

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Recibido el 02/02/2022 Aceptado el 25/06/2022

Las administraciones militares como elemento de seguridad nacional en virtud de la legislación internacional y ucraniana

Resumen

El artículo aborda algunos problemas de las administraciones militares y civiles que funcionan en Ucrania con el objetivo de mantener el régimen de seguridad nacional. En particular, los autores investigan las razones sociales y políticas detrás de la decisión de crear agencias gubernamentales especiales, en la forma de administraciones civiles militares. Además del análisis exhaustivo del marco legislativo pertinente, se ha hecho referencia a las funciones prácticas de estas administraciones. La metodología de estudio incluye una variedad de herramientas de investigación destinadas a mejores el análisis y un enfoque orientado a la solución de problemas. Las conclusiones se centran en mejorar los marcos legislativos como organizativos de las administraciones civiles-militares en la región de Donbass. En particular, sobre la base de los principios básicos dentro de la sociedad civil, incluida la supremacía de la sociedad civil sobre las fuerzas armadas, la Ley discutida debería ser renombrada efectivamente como Ley "Sobre las administraciones cívico-militares" con un enfoque continuo, potencialmente dentro de un proyecto especialmente redactado. Se sugiere incluir un capítulo de la Ley, sobre el apoyo militar de las autoridades civiles y los esfuerzos oficiales de reconstrucción del orden público en ciertas áreas de las regiones de Donetsk y Luhansk.

Palabras clave: administración militar-civil; seguridad nacional; conflicto militar; funciones de gobierno; región de Donbass.

Introduction

Globally, different models of administrative management exist on the territories adjacent to and on the territories where military action, anti-terrorist operations, are active. Based on some aspects of foreign experience, including historical, it is worth mentioning that under conditions of armed confrontation, even in the form of a hybrid military conflict, the traditional model of civilian governance does not work, but new forms of state and regional power have to be introduced. That is, the creation and current functioning of the military-civil administrations in some districts of Donetsk and Luhansk regions is an atypical, but reasonable step taken by the political leadership of Ukraine.

For example, Israel has chosen a model for managing civilian military administrations (their conditional counterpart) directly by its own armed forces, agreeing to divide the West Bank into three zones according to the level of local interference. At the same time, within zone "C" the local military-civil administration of Israel is completely autonomous in its affairs and is responsible for its own activities.

At one historical point, the United States temporary military government in Okinawa, under the full control of its own local administration (which in its status and authority was in fact military-civilian), gave local residents the right to establish local executive and self-governing bodies to deal with a wide range of issues. At the same time, the head of the American administration and his deputy were given the right to suspend any decision of the local (Japanese) government, and the most important officials of the local administration were also appointed only with the consent of the Americans. Thus, there is a pragmatic two-pronged approach: on the one hand, giving local residents the right to build their own system of regional governance, while the Americans prevented any separatist, anti-American actions by local authorities (Kuzmenko, 2020).

Today, Croatia can serve as yet another successful example of reintegration of the territory and construction of a temporary administration for such purposes. According to the intergovernmental agreement (Croatia and Serbia through the UN and the US), a temporary transitional UN administration in the form of a local model of military-civilian administration had been envisaged for a period of two years. Such organization combined in its competence military, security and civilian aspects, which allowed to quickly and harmoniously integrate Slavonia into Croatia (Kuzmenko, 2020).

Thus, even based on some aspects of foreign experience, including historical, it should be noted: under conditions of armed confrontation, even in the form of a hybrid military conflict, the traditional model of civilian governance does not work. Thus, new forms of state and regional power must be introduced. That is, the creation and current functioning of the military-civil administrations (hereinafter – MCA) in some districts of Donetsk and Luhansk regions is an atypical, though reasonable step by the leadership of Ukraine.

Mechanisms of interaction between the state and civil society institutions are considered by researchers in several aspects. From the legal science point of view, civil society, as a constituent state, is such a model of social development that offers balanced inter-control and inter-limitation of state bodies and non-governmental entities (civil society institutions) so that the activity of state bodies is always within the sphere of monitoring by non-state structures (Triukhan *et al.*, 2019).

Public administration as a specific type of public-political relations in the process of exercising power-administrative powers has the task of streamlining all social processes in order to achieve sustainable development of the nation and the country. Economic well-being and social stability are important criteria for state institutions to perform their functions. However, their achievement is not always linked to external stability, and government action is often aimed at overcoming natural, social, and less often political and military risks. Public administration as a qualitatively new form of management of state and public affairs aims to streamline social processes to ensure sustainable development of the nation and the state, which is realized through the activities of public authorities in economic, social, cultural, political and other spheres (Maslova, 2021).

The current crisis in some parts of eastern Ukraine is complicated by the fact that the military conflict has not received proper legally recognition, it is not defined as an international legal conflict with the status of war.

With such background, civil-military relations create dialectical unity of society and military organization of the state, that is, the civil and military spheres, subordinate in the interests of stable functioning of the national security system of the given state (Dulger, 2019).

1. Theoretical Framework

The theoretical framework of this paper is grounded on normative basis as well as on legal literature related the topic. Relevant provisions of the Constitution of Ukraine as well as of the basic Law of Ukraine "On military-civil administrations" have been discussed within the paper as well. A set of academic literature, primarily research papers, on various issues of the legal status of military-civil administrations and their functioning has been researched with the focus on the goals of such institutions aimed at preserving the national security in Ukraine.

Finally, information from both official and investigative websites related to the topic of military-civil administrations functioning has been analyzed and integrated within this research.

2. Methodology

The article employs a set of research methods, namely: terminological, structural, formal-logical, historical.

The structural method has been used to describe the meaning and structure of legal provisions related to the issues around military-civil

administrations functioning. Also, reference systemic method has allowed characterizing current limits of permissible behavior in the area of public service in their relationship with the norms of other legal bodies, including constitutional law.

The terminological method, in turn, has revealed a separate body of legal terms and concepts related to the military-civil administrations functioning and responding to various military threats. Integration of such terms and definitions into the legal system of Ukraine allows to better understand the meaning and goals of official military-civil management.

The historical method of research has allowed to look into some previous attempts to officially introduce government agencies combining both civil and military functions.

Finally, turning to the formal-legal method has enabled the authors to properly analyze legal substance of the national legislation covering various issues of military-civil administrations functioning.

3. Results and Discussion

On May 1, 2018 the Joint Forces Operation (hereinafter – JFO), as a special military venture, was announced in Donetsk and Luhansk regions, which has replaced the previously launched anti-terrorist operation (ATO). The system of public administration under the circumstances of anti-terrorist operation, and later the JFO, has revealed a number of issues previously unknown in Ukraine.

Obviously, Ukraine was not ready for external military aggression and management of its own territories in a situation where hostilities are taking place.

The ongoing military aggression against Ukraine and the exercise of the "hybrid warfare" strategy have become a new reality at the present stage of development of geopolitical processes.

Under the circumstances, it has become clear that existing models of territorial organization of power and local self-government, created during more than twenty years of independence, did not meet the challenges of escalating such military confrontation. Just as one example, Ukraine's Security Service has accused Russia of thousands of cyber-attacks against Ukrainian infrastructure and institutions, including 6,500 incidents within the last two months of 2016 only (Sullivan *et al.*, 2017).

The lack of an effective system of popularization and information about the activities of the AFU and aggressive anti-Ukrainian propaganda by the Russian Federation has created preconditions for distrust and, in some

cases, opposition from the local population in some districts of Donetsk and Luhansk regions (Lutsenko *et al.,* 2021).

Unfortunately preventive diplomacy as a progressive legal and political tool for conflict prevention has largely failed in the conflict between the Russian Federation and Ukraine. The Organization for Security and Co-operation in Europe (OSCE) also could not prevent or mitigate the ongoing military conflict. While the use of preventive technologies has had positive results on the European continent, particularly in Macedonia, Albania, Latvia, and Estonia, etc., at the same time the conflict in the East of Ukraine has enabled preventive diplomacy to achieved only partial success, mainly because these conflicts do not have a large scale and numerous victims. The OSCE is often blamed with this regard, for it does not conflict with the Russian Federation, denies that Russia is a party of these conflicts and does not fully perform the functions assigned to it as an international security organization (Habro *et al.,* 2021).

Carrying out ATO and JFO in Ukraine necessitated solution of a number of tasks in order to ensure normal functioning of administrative-territorial units of Donetsk and Luhansk regions, in which local governments did not perform their functions. Therefore, there was a challenge of finding a new mechanism for managing given territories during the military conflict. Under such conditions, an obvious question has risen: who exactly should exercise the powers of local executive bodies, local self-government bodies in the respective territories?

Therefore, creation and proper functioning of MCAs becomes relevant, which should create necessary conditions for the development of territories and help overcome negative consequences and military threat. This underlines the urgency of the issue of determining functional parameters of military-civil administrations in Ukraine, as well as comparing these functions with the tasks of units of the Armed Forces of Ukraine and other state bodies within the territories of Donetsk and Luhansk regions adjacent to the demarcation line.

Any given state exercises its powers through the relevant state bodies and their officials, as well as through various non-governmental organizations and representative bodies. The system of military-civil administrations as governmental bodies with special status and powers in the East of Ukraine is no exception here.

Despite many difficulties of the political, social and economic situation in Ukraine caused by the military aggression of a hybrid nature, all tasks, goals, functions and principles of any government must primarily coincide with the political goals of government.

At the same time, under the current circumstances in Ukraine, the main objective is to achieve and consolidate successful results of military

operations, as well as to restore the functioning of state power in the crisis area. As the general background to this, the military sphere reflects the real state of affairs of a certain social system, which highlights a wide range of state strategic issues, including social relations related to the protection of human rights and legitimate interests of the society and the state at large from the foreign armed forces by ensuring proper functioning and creating necessary conditions for their normal development (Lutsenko, 2020).

The key piece of legislation in the area of MCA regulation is the Law of Ukraine of February 3, 2015 № 141-VIII "On military-civil administrations" (Law No. 141-VIII, 2015). Under paragraph 15 of Art. 3 of this Law Verkhovna Rada of Ukraine (the national parliament) exercises parliamentary control over the activities of the MCA. Usually, activities of the MCA are also subject to other Laws of Ukraine, which apply to the entire territory of Ukraine, in the part relating to the activities of the MCA: security, economic development, education, medicine, culture, social protection etc.

MCA is also subordinated to the President of Ukraine, who actually forms and reorganizes the MCA by his decrees, appoints the heads of the MCA, determines the list of positions, makes a decision on the liquidation of such administrations).

As followed directly from the name of the administrative body researched in this paper, MCA combines both military and civil components. Both are important for operational purposes. As rightly put by one American commentator, the administrative military's origins can be found in the Constitution, statutes, and military doctrine. Its functions include personnel management, staffing, recruiting, testing, training, health care, equipping and hardware acquisition (Nevitt, 2018).

MCAs are partially subordinated to the Cabinet of Ministers of Ukraine, since they are also responsible for exercising the powers of the executive branch. Therefore, the MCA must comply with the resolutions and orders of the Cabinet of Ministers in the part related to current routine activities of the MCA.

It is obvious that activity of the MCA is also subject to the normative documents of the Joint Operational Staff of the Armed Forces of Ukraine in the relevant part.

Thus, legal framework governing activities of the MCA is quite complex and also multilevel: laws of Ukraine, decrees of the President of Ukraine, resolutions of the Cabinet of Ministers, regulations of ministries and other central executive bodies in Ukraine. Also, on a routine, day-to-day basis, MCA is guided in its activities by its own regulations of local legal force – the orders of the head of the given MCA (Svitlodar, 2022).

Before further proceeding to the analysis of the key provisions of the central document for this study, the Law on the MCA of 2015, it is necessary to briefly refer to the genesis of an unprecedented legal step for Ukraine to establish the MCA against the background of military confrontation in Donbas region.

In an explanatory note to the draft Law of Ukraine "On Military-Civil Administrations", the authors of the bill have underlined that the anti-terrorist operation in Donetsk and Luhansk regions had revealed a number of issues caused by the failure of local governments to implement the Constitution, in particular as a result of their actual self-removal from the exercise of their powers. This had an extremely negative impact on the security and livelihoods of the population in the area of the anti-terrorist operation.

At the same time, experts of the Main Scientific and Expert Department of the Verkhovna Rada of Ukraine have expressed a number of critical remarks on this document, which unfortunately have not been addressed within the text of the final version of the Law. Among the key remarks, in the opinion of the parliamentary experts, are the following four blocks of issues.

1. Based on Part 1 of Art. 3 of the Bill (now the law), it follows that the MCA should be formed by the decision of the President of Ukraine.

However, in accordance with Part 2 of Article 19 of the Constitution of Ukraine, public 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 powers (rights and responsibilities) of the President of Ukraine are established exclusively by the Constitution of Ukraine, which is directly indicated by the provisions of paragraph 31 of Part 1 of Art. 106 of the Basic Law. The Constitutional Court of Ukraine has repeatedly drawn attention to this fact in its decisions.

Similar remarks address the novelties regarding the powers of the President of Ukraine to approve the list of positions in the MCA (Part 6 of Article 3 of the draft Law), appointment and dismissal of the head of the MCA (Part 1 of Article 6 of the draft).

Such novelties violate basic provisions of the constitutional order regarding the rule of law, the highest legal force of the Constitution of Ukraine, requirements of compliance of laws and other regulations with the requirements of the Basic Law of Ukraine (Article 8).

2. Powers of the MCA, proposed in the draft law, include the powers granted to local self-government bodies by the Law of Ukraine "On Local Self-Government in Ukraine", in particular, the powers provided for in Art. 26 (exclusive competence of village, settlement,

city councils), Art. 36 (powers of executive bodies of village, settlement, city councils in the course of defense activities), Art. 43 (issues that are decided by district and regional councils exclusively at their plenary sessions) of this Law. However, some of these powers of local governments follow from the constitutional requirements of Art. 143 of the Constitution of Ukraine and by their nature may not be transferred at all to any other permanent or temporary bodies. Similarly, powers delegated to local state administrations by Article 119 of the Constitution of Ukraine may not be transferred to any other bodies.

3. Proposals in paragraphs 7, 8 of Art. 6 of the draft Law have been a violation of the rights of local self-government on concluding agreements *on behalf of the territorial community*, giving orders and instructions of the head of the MCA the legal force of decisions of the relevant council, which are usually taken collectively.

4. Analysis of the proposed novelties in the draft Law has revealed the need to harmonize them not only with the provisions of the Constitution of Ukraine, but also with the provisions of the laws of Ukraine "On Local Self-Government in Ukraine", "On Local State Administrations", "On Security Service of Ukraine".

5. Parliamentary experts have also drawn attention to the fact that at that time the Parliament had already registered a draft Law of Ukraine "On the special procedure for exercising certain powers of local governments for the anti-terrorist operation in Donetsk and Luhansk regions" № 1529 of 26.01.2015, the subject of legal regulation of which intersects with the submitted bill. In essence, the submitted draft and the bill № 1529 offer different approaches to resolving the issue of exercising the powers of local governments in the ATO zone. In particular, the bill № 1529 is based on the idea of transferring powers of local self-government bodies in case of their non-implementation by the relevant bodies to *local state administrations* within the relevant administrative-territorial unit.

This approach was justifiably viewed as more acceptable given the fact that legal nature of local governments and local executive bodies has many common features, objectives and orientations. Both operate at the local level within a defined territory, in particular to ensure the livelihood of its territorial communities. The closeness of the legal essence of the activities of these bodies in content and partly in form allowed to consider it more appropriate to address the issue raised by the draft by clarifying powers, staffing, logistics of local executive bodies in relevant territories with enhanced cooperation with Security Service of Ukraine, Armed Forces of Ukraine, military formations operating in accordance with the current legislation of Ukraine.

However, constructive and well-argued remarks by the parliamentary experts have not been taken into account when voting for the current version of the Law on MCA. According to the Law "On Military-Civil Administrations" of 2015, this legal act defines organization, powers and procedures of military-civil administrations, which are formed as a temporary coercive measure with elements of military management to ensure security and normalize the population in the area, repulse the armed aggression of the Russian Federation, in particular in the area of the anti-terrorist operation, which is not aimed at changing and / or abolishing the constitutionally enshrined right of territorial communities to local self-government.

The 2015 Law (Article 1) defines military-civil administrations as temporary state bodies in villages, settlements, cities, districts and regions operating within the Anti-Terrorist Center of the Security Service of Ukraine (if formed to fulfill the powers of relevant bodies) in the area of the anti-terrorist operation) or as part of the Joint Operational Headquarters of the Armed Forces of Ukraine (in case of their formation to fulfill the powers of relevant bodies in the area of national security and defense, repel and deter armed aggression in Donetsk and Luhansk regions) and are designed to ensure the Constitution and laws of Ukraine, security and normalization of life, law and order, participation in combating acts of armed aggression, acts of sabotage and terrorism, prevention of humanitarian catastrophe in the area of repulse of armed aggression by the Russian Federation, including anti-terrorist operations.

MCA of the regional level	District	MCA level of settlements
Donetsk region - Donetsk MCA	Bakhmut	Svitlodar city MCA
		Toretsk city MCA
	Volnovasky	Volnovakha city MCA
		Vuhledar city MCA
		Myrne village MCA
		Olgin village MCA
	Mariupol	Sartan village MCA
	Pokrovsky	Avdiivka City MCA
		Marjinka City MCA
		Ocheretyn village MCA
	Kramatorsk	Slovyansk city MCA
Luhansk region – Luhansk MCA	Severodonetsk	Hirska city MCA
		Lysychansk City MCA
		Popasna City MCA
		Severodonetsk city MCA

	Shchastynsky	Shchastyn city MCA
		Stanychno-Luhanska village MCA
		Nizhnoteplivska rural MCA
		Shirokivska village MCA

Figure 1 – Structure of Military-Civil Administrations in Some Parts of Donetsk and Luhansk Regions. Source: Decree of the President of Ukraine № 61/2021 "On the formation and reorganization of military-civil administrations in the Donetsk region"

An important detail should be underlined here: in accordance with this provision of the MCA Law, state institutions may, if needed, be established in any region of Ukraine – in case of official introduction of the anti-terrorist operation regime. At the same time, these state bodies will operate as part of the Anti-Terrorist Center of the Security Service of Ukraine. And a separate "branch" (type) of the MCA – those that are currently established and operate as part of the Joint Operational Headquarters of the Armed Forces of Ukraine to perform the powers of relevant bodies in the field of national security and defense, repel and deter armed aggression of the Russian Federation in Donetsk and Luhansk regions.

Thus, the Law on the MCA seems to set an administrative precedent for the future – the ability to create and further spread the experience of the MCA to any locality in Ukraine in case of launching the anti-terrorist operation regime.

Military-civil administrations of a district or a region are temporary state bodies that exercise the powers of rayon, oblast councils, state administrations and other powers defined by this Law in the respective territory.

Military-civil administrations of settlements are temporary state bodies that exercise in the territories of the respective territorial communities approved by the Cabinet of Ministers of Ukraine the powers of village, settlement, city, district councils in cities (in case of their creation), executive bodies of village, settlement, city, district councils in cities (in case of their creation), village, settlement, city mayors and other powers defined by this Law.

At the same time, this study has revealed that currently there are only MCAs of the regional level (Luhansk and Donetsk regions) in Ukraine, as well as MCA of the level of settlements – urban and rural. However, no district MCAs and district MCAs in cities exist, despite the legislative possibility of their creation.

It is important to pay attention to the fact that MCAs of settlements must be headed by persons from among the personnel of military units formed in accordance with the laws of Ukraine, members of the rank and file and chiefs of law enforcement agencies (Shutova *et al.*, 2020). This requirement follows from the Decree of the President of Ukraine of April 23, 2015 № 237 "On some issues of military-civil administrations" (as amended). The document states that within such MCAs only persons from enlisted members of military formations, members of the rank and file and chiefs of law enforcement agencies, can be appointed to the following positions:

1) City (town) Military-Civil Administration – Head, First Deputy Head, Deputy Head of Security and Public Order, Chief Specialist of the Information Policy Department (Sector);
2) Village Military-Civil Administration – Head, Deputy Head for Security and Public Order, Chief Specialist of the Information Policy Department (Sector);
3) Small village Military-Civil Administration – Head, Deputy Head of Security and Public Order, Chief Specialist of the Information Policy Department (Sector).

Instead, at the level of regional and district MCA leadership positions can be replaced by persons from among the personnel of military formations created in accordance with the laws of Ukraine, members of the rank and file and senior law enforcement officers. That is, there is a significant difference between the obligation and the possibility of appointing persons to appropriate positions in different MCAs.

Position	Number of positions
City Military-Civil Administration	
Head	1
First Deputy Head	1
Deputy Head of Security and Public Order	1
Chief Specialist of the Information Policy Department (Sector)	1
Village military-civil administration	
Head	1
Deputy Head of Security and Public Order	1
Chief Specialist of the Information Policy Department (Sector)	1

Rural military-civil administration	
Head	1
Deputy Head of Security and Public Order	1
Chief Specialist of the Information Policy Department (Sector)	1

Figure 2 – List of positions in the military-civil administrations of settlements to which persons from among the servicemen of military formations formed in accordance with the laws of Ukraine, persons of the rank and file and commanding staff of law enforcement agencies are appointed. Source: Decree of the President of Ukraine № 237/2015 "On some issues of military-civil administrations"

Military-civil administrations are legal entities under public law and are endowed with powers under this and other laws, within which they act independently and are responsible for their activities under the law.

It is worth noting that MCAs have a fairly complex organizational structure, due to the specifics of their powers in a wide range of powers and areas of responsibility – from security and public order to the development of education, health care and etc. MCA is simultaneously subordinated to the President of Ukraine (who actually forms and reorganizes the MCA by his decrees, appoints the heads of the MCA, determines the list of positions, decides on the liquidation of such administrations). MCA are also partially subordinated to the Cabinet of Ministers of Ukraine, as they are also responsible for exercising the powers of the executive branch. Finally, the Parliament of Ukraine (the Verkhovna Rada), within legal authority based on paragraph 15 of Art. 3 of the Law on MCA exercises parliamentary control over the MCA activities.

MCA officials act, to a certain degree, as a liaison between regular armed forces and law enforcement agencies, as well as civilians in the conflict zone, and are primarily responsible for the information component of cooperation between the two sides. MCA staff coordinates activities of military, governmental, non-governmental, international, charitable, religious and other organizations in the direct provision of assistance and care to the conflict-affected population.

The routine activities by the MCA are open and public, except for the consideration of issues, which are classified information or belong to the List of information that constitutes classified official information ("For official use only"). Public and transparent overage of MCA activities is done in the manner prescribed by law.

As previously noted, the concept of military-civil administration is defined at the legislative level. In accordance with the Law of Ukraine "On Military-Civil Administrations" of 2015. MCA is defined as a special, important element of the mechanism of public administration that ensures the performance of state functions, while endowed with power, acts based on the principle of responsibility to the local community and the state, legal entities and individuals for their activities.

The final section of this article will cover some of the key security-related functions (responsibilities) carried out by the MCAs according to the MCA Law. It is obvious that MCA has a list of its unique functions and powers that derive directly from the MCA Law provisions.

Legal literature highlights the following key features inherent in the military-civil administration structure: 1) MCAs are state bodies; 2) MCAs are temporary; 3) MCAs are established in villages, settlements, cities, districts and oblasts; 4) MCAs have a special purpose, which is to ensure the Constitution of Ukraine and laws of Ukraine, security and normalization of life, participation in combating sabotage and terrorist acts, prevention of humanitarian catastrophe in the area of anti-terrorist operation (Zhuravel, 2021: 68-69).

Generally speaking, the competence of MCAs can be represented as a set of activities that will include competence in the areas of planning and socio-economic development; budget and finance; property management; urban planning, housing and communal services, trade, consumer services, transport, communications and telecommunications; education, health, culture, physical education and sports and social protection; regulation of land relations, environmental protection and historical or cultural monuments; defense, national security and civil protection; ensuring law and order, protection of rights, freedoms and legitimate interests of citizens; resolution of organizational and representative issues and in the field of administrative-territorial organization. Consolidation of this competence in acts of administrative legislation is characterized by certain contradictions and gaps, which could be eliminated by supplementing the Law of Ukraine "On Military-Civil Administrations" with a number of flexible provisions that refer to the laws of Ukraine "On Local Self-Government" and "On local state administrations" (Svirina, 2019: 109).

Art. 5 of the Law on MCA, which regulates certain rights of administrations, provides in particular for a number of powers related to protecting civilians and providing for their basic rights. These include the powers to:

1. establish procedure for the use of storage facilities, structures and other facilities to protect the population, as well as to meet security needs;

2. organize evacuation of the population from places and areas dangerous to living, as well as evacuation of enterprises, institutions, organizations and property of important state, economic and cultural importance;
3. organize, if necessary, the standardized provision of the population with drinking water, food, basic necessities, medical supplies.

When we discuss the most effective (desired) mode of the MCA operation in any given territory, it is necessary to emphasize the following functions:

1) normalization of the living conditions of the civilian population, namely – the organization of food supply, medical care, construction and arrangement of temporary camps for displaced persons;
2) restoration of the functioning of public authorities in crisis areas;
3) restoration of destroyed or non-functioning infrastructure in the entrusted territory;
4) assistance or monitoring of humanitarian aid missions;
5) disarmament of all illegal military formations;
6) solving the problem of possessing a significant number of illegal firearms by the population;
7) assistance in the demining process;
8) providing opportunities for the movement of civilians in the territory of the relevant competence;
9) active struggle, first of all by means and resources of law enforcement bodies, with mass riots, banditry and crime in general;
10) professional training of personnel who can work effectively and interact in the conditions of JFO;
11) organization and holding of local elections in crisis areas;
12) conducting active informational and propaganda and patriotic-educational work among the local population.

As an example, dealing with illegal firearms possession by the population (clause 6 in the list) can correspond to the issue of smuggling from the temporary uncontrolled areas of Luhansk and Donetsk regions (Movchan *et al.*, 2021). This is especially relevant in view of the wide discussion in Ukrainian society regarding the need for the criminalization of commodity smuggling (Pidgorodynskyi *et al.*, 2021).

Thus, local and regional bodies of military-civilian legal regime really represent the state in the territories of military operations, exercise its

power, political will and protect the population, territorial integrity and sovereignty of the state through the outlined tasks. This is the most effective way to create most favorable conditions for the population living in the crisis area.

Officials of military-civilian administration units act on regularly basis as a link between the regular armed forces (law enforcement agencies) and civilians of the conflict zone and are primarily responsible for the information component of cooperation between the two sides. Public service professionals coordinate activities of military, governmental, non-governmental, international, charitable, religious and other organizations regarding provision of direct assistance and support to the affected population (Shevchenko, 2016).

Administrative functions of the MCA are primarily intended to support defense and security status on the territories affected by the hostilities (without violating military objectives of the Armed Forces in any given area), maintain public order, conduct educational work, organize and implement measures for mobilization training and civil defense, take necessary measures for the organization and protection of the state border; create appropriate conditions for the functioning of entry-exit checkpoints in the temporarily occupied territory of Ukraine; carry out systematic measures on military-patriotic education of the population. These and other related functions are prescribed in Art. 4 of the Law on MCAs.

Thus, MCA is endowed with a special purpose in order to determine main direction of its powers and does not perform the functions of local state administration and local governments only. The rather unique status of this institution is explained by the fact that it is a complex administrative structure, which combines both managerial and law enforcement functions. The key goal of such hybrid mode of functioning is providing or at least contributing to the regime of national security on any given territory of Ukraine.

Conclusions

Military-civil administration as a special type of state institution of a conditionally hybrid nature (according to its status and powers), responds to the current threats facing Ukraine in connection with the hybrid military conflict in eastern Ukraine.

Based on data from open sources, we can summarize: the current regulatory framework is very superficial, without proper detail, describes the relationship between the bodies (units) of the MCA and other governmental agencies. In practice, the level of intensity of such interaction differs in each given area of Luhansk and Donetsk regions.

The Law of Ukraine "On military-civil administrations", discussed within this paper, though expected by its title to be one of the most important legislative pieces on CIMIC issues, does not effectively address the topic of civil-military cooperation. Under this Law, military-civil administrations basically represent a hybrid model of military-civil governance within specific Ukrainian territories directly or indirectly affected by the foreign military aggression.

Based on the key principle of the supremacy of civil society over the military, the discussed 2015 Law should be effectively renamed into the Law "On civil-military administrations" with a continued focus, potentially within a specially drafted chapter of the Law, on the military support of civil authorities and official public order rebuilding efforts in certain areas of Donetsk and Luhansk regions.

Preferably, amendments to the Law should reflect expansion of the powers of *civil-military administrations* towards closer operational and tactical cooperation with locally stationed military units. The new model should be based on the regular tripartite contact between the military, local community and regional (local) authorities.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 347-362
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Influence of state financial control on state authorities functioning

DOI: https://doi.org/10.46398/cuestpol.4074.18

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Abstract

The purpose of the study is to characterize the impact of state financial control on the functioning of public authorities and to highlight the directions for the development of state financial control in Ukraine. The methodological basis of the article is a system of general and special scientific methods (dialectical, formal-logical, comparative legal, analytical, etc.). It is proved that in most countries there are formal systems of state financial control, the subjects of such control and their powers are clearly defined. It has been established that in Ukraine there is a centralized model of activity of state financial control bodies, which does not meet the current challenges. It is concluded that the presence of unified and clearly defined tasks, methods and principles, taking into account the specifics of the national legislation and the socio-economic situation that ensures the effective work of state financial control bodies and improves financial and budgetary discipline. It is based on the priority of three vectors of development of the state control system: formation of a clear structure of state control subjects; development of a legislative framework and unified methodology and, finally, introduction of modern information and innovative technologies.

Keywords: state financial control; regulatory agencies; subjects of financial control; financial discipline; fiscal decentralization.

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Recibido el 23/07/2022 Aceptado el 18/09/2022

El impacto del control financiero estatal en el funcionamiento de las autoridades públicas

Resumen

El propósito del estudio es caracterizar el impacto del control financiero estatal en el funcionamiento de las autoridades públicas y resaltar las direcciones para el desarrollo del control financiero estatal en Ucrania. La base metodológica del artículo es un sistema de métodos científicos generales y especiales (dialécticos, lógicos formales, jurídicos comparados, analíticos, etc.). Está comprobado que en la mayoría de los países existen sistemas formales de control financiero estatal, los sujetos de dicho control y sus poderes están claramente definidos. Se ha establecido que en Ucrania existe un modelo centralizado de actividad de los organismos estatales de control financiero, que no responde a los desafíos actuales. Se concluye que la presencia de tareas, métodos y principios unificados y claramente definidos, teniendo en cuenta las especificidades de la legislación nacional y la situación socioeconómica que asegura el trabajo efectivo de los órganos estatales de control financiero y mejora la disciplina financiera y presupuestaria. Se fundamenta la prioridad de tres vectores de desarrollo del sistema de control estatal: la formación de una estructura clara de sujetos de control estatal; desarrollo de un marco legislativo y una metodología unificada y, por último, la introducción de información moderna y tecnologías innovadoras.

Palabras clave: control financiero estatal; autoridades reguladoras; sujetos de control financiero; disciplina financiera; descentralización fiscal.

Introduction

Control is an important factor in making effective management decisions that is one of the necessary conditions for the existence of a legal and democratic state. It allows identifying deficiencies in the functioning of state institutions, organizations, economic entities; it determines the causes of their occurrence and directions for optimization of activities. Control increases the discipline of employees of the management apparatus, making it possible to objectively determine the level of their awareness and responsibility. Therefore, taking into account the current state of development of economic relations in Ukraine and the state of war, reforming the state financial control and budgetary relations, bringing them into line with the requirements of the European Union, is of priority.

State financial control in the developed foreign countries is based on the main principles of the Lima Declaration (Lima Declaration of Guiding Principles of Control, 1977), the International Organization of Supreme Audit Institutions (INTOSAI), the European Organization of Supreme Audit Institutions (EUROSAI), which include Ukraine. Thus, the Lima Declaration notes that each state has to create the highet agency of financial control in order to achieve effective and rational management of state financial resources, whose independence should be enshrined at the legislative level. The process of financial decentralization has been taking place in Ukraine since 2014. In this process country's economic development level is an important factor when introducing reform of fiscal decentralization (Slavinskaitė, 2017).

A component of fiscal decentralization reform is to increase the financial capacity of local authorities. This financial capacity of local authorities is based on the ability to attract existing and potential financial resources from this territory to finance economic, social and environmental needs, to establish rational and effective directions for their distribution and use. Fiscal decentralization is aimed at increasing the financial capacity of local authorities. This financial capacity of local authorities is based on the ability to attract existing and potential financial resources from this territory to finance economic, social and environmental needs, establish rational and efficient directions for their distribution and use (Teremetskyi *et al*, 2021a). Achievement of those tasks is possible only in the presence of effective financial control. In this regard, it is worth considering the positive experience of the developed countries havig an effective system of financial control.

The scientific literature does not provide clear and unified approach to the assessment of state financial control in foreign countries. However, scholars agree that control over distributed public financial flows is a key task in ensuring financial security (Avdeev, 2021).

O. Z. Seleznov distinguishes the following systems of financial control depending on their consolidation in the constitutions of different states: parliamentary (Russia), judicial (Turkey, Greece), specialized (Ireland, Poland, Brazil) and presidential (Uzbekistan, Portugal) systems. However, the development models of financial institutions in foreign countries are usually mixed and contain characteristic features of all the listed systems. As an example, we can mention the financial control systems of the Czech Republic, Austria, and China, where features of parliamentary and specialized systems are combined, or France and Italy, where parliamentary, judicial and presidential systems are mixed at the same time (Seleznov, 2010).

Ukraine also has a mixed system of financial control, which combines elements of parliamentary and specialized systems, because the greatest

attention in the system of state financial control of the state is given to external control, which is carried out by the Accounting Chamber of Ukraine on behalf of the Verkhovna Rada. We can currently talk about two main agencies, whose competence includes the implementation of state financial control in Ukraine – these are the Accounting Chamber of Ukraine and the State Audit Service of Ukraine, which are the basis for further reforming the system of state financial control of the European model. At the same time, the Accounting Chamber offers to transfer all financial and control activities to itself, leaving only internal control to the State Audit Service, whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine (Dikan, 2019).

There are other approaches in the scientific literature to delimiting the powers of the specified agencies. Thus, S.P. Yaroshenko believes that the State Audit Service, like the Accounting Chamber, should carry out external control, leaving the issue of internal control to internal control agencies (Yaroshenko, 2007). V.K. Symomenko notes that the system of state financial control should effectively combine state internal and external control, which will allow coordinating the work of all regulatory agencies and contribute to the improvement of legal support and methodological potential of control activities (Symonenko, 2006).

The above allows us to conclude that there is no unity in approaches among scholars to defining the system of financial control agencies in Ukraine.

Analysis of the legislative framework of foreign countries regarding the activities of state financial control agencies indicates the need to improve the system of state financial control in Ukraine. The experience of using this type of audit by regulatory agencies, such as an efficiency audit, contributes to the fact that the public sector of the economy is transparent and manageable (Pihotskyi, 2016).

Germany, the USA, France, Great Britain are those countries that have significant experience in the formation and effective implementation of the system of state financial control. Each of those countries ensures an increase in the responsibility and importance of state financial control agencies in its own way by providing them with sufficient logistical base, powers, separating them from the objects of control. At the same time, most countries have a formed and stable market economy, where financial control is built on the principle of delimiting the areas of control agencies' subordination and the absence of a single criterion for their classification.

Despite the need to stabilize the state's economy during martial law, Ukraine continues to reform the system of state financial control in the country. However, the specifics of the influence of state financial control on the effectiveness of the functioning of state authorities, as well as the

directions of its development in Ukraine, are still not scientifically studied. The purpose of this article is to study this issue.

1. Methodology

The following research methods were used in this article:

- *the dialectical method* of scientific cognition of ideas about the impact of state financial control on the functioning of state authorities allowed us to consider them within their relationship and development with a number of related definitions in administrative and financial law, to identify established patterns and directions of their implementation;
- *the formal and logical* method contributed to clarifying the essence and main tasks of state financial control, analysis of the concepts of "state financial control", "state power";
- *the logical and semantic* method was applied to define conceptual structures regarding state financial control, powers of regulatory agencies;
- *the structural and functional* method was applied to find out the characteristic features of the activity of state financial control agencies and their impact on state authorities' functioning;
- *the comparative and legal* method consists in comparing the systems of state financial control of different countries in order to identify their similar or distinctive features;
- *the analytical method* became the basis for studying the legal principles for regulating the impact of state financial control on state authorities' functioning and the analysis of normative and legal regulation in the relevant sphere of relations.

2. Results and Discussion

2.1. International experience of ensuring state financial control

According to the liberal intergovernmental approach, while maintaining state "diversity", control over the society life processes should remain in hands of state, within which civil society exist and develop (Gryshchenko *et al.*, 2021).

Taking into account the previously defined tasks, we believe it expedient to determine the priority areas of state financial control and, accordingly, its model – centralized or decentralized.

Let's start with the analysis of the experience of using the centralized model, which is implemented in France and has a stable socio-economic development. State financial control in this country is centralized and has vertical interdepartmental relations. A positive point of such an organization is that the regulatory agencies have considerable experience in the field of control over the expenditure of budget funds, the appropriate staff and the status of civil servants assigned to the employees.

The General Inspectorate of Administration and the General Inspectorate of Finance are financial control agencies. These agencies are directly subordinated to the Minister of Economy and Finance. The General Inspectorate of Finance performs control functions over the activities of the local departments of the Ministry of Economy and Finance. It supervises the activities of all accountants who are appointed to public positions and administrative accounting offices of managers of secondary loans, state enterprises, as well as those state agencies and enterprises that are under the financial control of the state. The General Inspectorate of Finance commissioned by state ministries and departments, as well as on its own initiative conducts and organizes research on economic and financial results (Aleksandrovych, 2014).

State financial control is also managed by the Accounting Chamber, which primarily monitors that economic reporting meets the criteria defined in legislation. It is entrusted with the task of identifying and preventing violations in the budgetary and financial sphere, facilitating parliamentary and governmental control of activities aimed at implementing laws in the sphere of finance. An important role in the management of centralized financial resources belongs to specialized state entities, such as the Banking Control Commission, the National Credit Council, the Commission for Economic and Regional Development of the country. State financial control is aimed at evaluating both the effectiveness of the use of budget funds and the effectiveness of the work of various state organizations (Stefaniuk, 2005).

At the same time, this model of activity of state financial control agencies is mostly characterized by a lack of both mobility and flexibility, as well as mutual control of agencies resulted to a risk of internal corruption.

The current system of state financial control in the USA is built on the basis of the principle of separation of powers without the creation of a special agency that performs administrative control and financial functions. That is, there is a diverse system of state financial control agencies in this country functioning on the basis of independence and ensuring the balance of powers of both the legislative and executive branches of power.

The executive branch of government is represented by the Administrative and Budgetary Department, whose sphere of activity includes issues of

financial control, which also evaluates the effectiveness of management and organizational structures and ensures the coordination of their activities. The agency of state financial control is the Main Control Department of the Congress. It has significant oversight powers over all government contracts and programs, and conducts research to evaluate the effectiveness of the suggested programs. Inspectors of this Department also verify the activities of auditors of the executive power. In some cases, it is possible to coordinate actions with the investigative units of the Ministry of Justice and other agencies endowed with relevant powers for verification (Malyshev, 2003).

We believe that such organization of the activity of financial agencies system assists to achieve the most effective financial policy, since the indicated system is sufficiently flexible (all agencies have a high degree of specialization and mutual control; financial management agencies in the USA are independent and autonomous while implementing tax and financial policy).

There is also an advisory agency within the financial management system along with the federal agencies, which are represented by the Main Control and Audit Department and the Administrative and Budgetary Department. This agency is entrusted with the responsibilities of forming the foundations of the economic and financial policy of the country (Szostakowski, 2016).

The construction of the system of state financial control in Sweden is carried out on the basis of a socially oriented economy. There is a three-level system of state financial control over the use of budget funds in this country: district, municipal and national. The main body in matters of state accounting and control is the State Audit Office, whose activity is characterized by two areas: the audit of the effectiveness of public procurement and the annual audit of the financial and economic activities of enterprises and institutions at the national level.

Its task is to achieve high-quality management of financial activities. Unlike other European countries, Swedish central executive authorities are not empowered to manage government departments. Therefore, the Basic Law of Sweden enables the government and parliament to have their own control units in the public sphere (Hubanova, 2012).

The beginning of a new method of control was laid in Sweden. It was "performance control", which was the basis of the activities of most world countries. In the process of efficiency control, special attention is focused on the assessment of the consequences of the decisions taken by the authorities in the financial and budgetary sphere. A successful evaluation of the effectiveness of the authorities' activities contributes to the effective socio-economic effect of the spending of budget funds. The results of performing audit and the financial audit are reflected in detailed reports, which are sent to one of the responsible Auditors General, whose competence is to

make decisions, which of them are subject to submission to the Parliament. Subsequently, such reports are published in open sources for general perusal (Polishchuk, 2014).

The given examples show that special financial control agencies play the leading role in the financial control system in the developed foreign countries. We also can see their clear hierarchical structure headed by the Supreme Control Board with broad rights and powers. Other agencies are subordinated to it or their work is coordinated and verified for effectiveness.

The unifying element in the legal status of modern highest control institutions is their established accountability to the parliament within constitutions, institutional independence from the executive authorities and independence in planning the audit and its implementation. Such independence is built on the principles of accessibility and openness of audit results, as well as independence in the coverage of audit results (Dmytrenko, 2010).

The autonomy of regulatory agencies in the professional and political aspect consists in the procedural features of the appointment and dismissal of their members, as well as the specified stay in the position of the head of a particular agency (Pozhar, 2012).

One of the main conditions for rational, efficient and effective provision of financial and control activities in the vast majority of countries is the presence of local divisions. Usually those divisions, depending on the form of the country's government, are partially or completely subordinated to the Supreme Accounting Office. At the same time, they retain their independence in performing their functions and focus on auditing local budgets regarding their fund's expenses. If necessary, they promptly perform the tasks of the central control institution. Similar regional offices of the supreme budget control agency operate in France. It is believed that the presence of such agencies in Ukraine will increase the effectiveness of budget control at the local level in the future.

2.2. Specifics of carrying out state financial control in Ukraine

Centralized model of the activities of state financial control agencies currently operates in Ukraine. It consists of the following governing bodies: the Accounting Chamber and the State Audit Service of Ukraine. The Constitution of Ukraine established the status of the Accounting Chamber as a constitutional agency acting on behalf of the Verkhovna Rada of Ukraine and exercising control over the use of funds from the State Budget of Ukraine. At the same time, the powers defined by the Constitution and the list of functions of the Accounting Chamber can be supplemented and changed based on the provisions of the Law of Ukraine "On the Accounting Chamber" (2015), the Budget Code of Ukraine and other regulatory legal acts (Constitution of Ukraine, 1996, Article 98).

The activities of the Accounting Chamber were reformed towards the introduction of parliamentary control over its activities in 2015. Thus, this agency according to the Art. 1 of the Law of Ukraine "On the Accounting Chamber" is a state collegial body accountable to the Verkhovna Rada of Ukraine and informs it about the results of its activities (Law of Ukraine "On the Accounting Chamber", 2015). Similar provisions are enshrined in the Art. 98 of the Constitution, the Art. 109 of the Budget Code of Ukraine and the Regulations of the Accounting Chamber. Besides, this agency is organizationally, functionally and financially independent, and also independently plans its activities. It means that the activity of the Accounting Chamber does not depend on the activity of other regulatory agencies.

Regarding innovations in the activities of the Accounting Chamber, it should be noted that the Accounting Chamber has been applying the main principles of the International Organization of Supreme Audit Institutions (INTOSAI), the International Standards of Supreme Audit Institutions (ISSAI) in its activities since 2015, in part that does not contradict the Constitution and laws of Ukraine. An external audit and assessment of the Accounting Chamber's activities has become mandatory, as well as the cooperation with the legislative agency has been improved.

We should note that those provisions are included in the Association Agreement between Ukraine and the European Union, as well as in the Agenda of the Association between Ukraine and the European Union for the preparation and promotion of the Association Agreement's implementation.

In addition, the Group of States against Corruption of the Council of Europe (GRECO) provided recommendations on expanding the powers of the Accounting Chamber in the Evaluation Report on Ukraine to conduct an external independent audit of local self-government agencies in order to cover all types of their activities.

The Article 4 of the Law of Ukraine "On the Accounting Chamber" states that the powers assigned to the Accounting Chamber by the Constitution are exercised through the implementation of measures of state external control, which is ensured by the Accounting Chamber through defining two types of audits – financial and audit efficiency. However, the Inspire and Support of Supreme Audit Institutions (ISSAI) defines the presence of three types of audit, to be more precise an additional audit of the compliance with the aforementioned types of audit. The indicated types of international standards are different in their specific implementation, tasks and purpose. Therefore, it is necessary to officially translate them into Ukrainian for their implementation in accordance with the Art. 7 of the Law of Ukraine "On Standardization" and INTOSAI.

It is important, because the Department of Strategic Development of Analytics and Standards of the Accounting Chamber has developed Methodical Guidelines for conducting financial audit, where it is noted that they are prepared taking into account the provisions and requirements of the Inspire and Support of Supreme Audit Institutions (ISSAI). However, due to the lack of an official translation, it is impossible to verify the compliance of the specified Methodological Recommendations with International Standards. It is interesting that there are no Methodological Recommendations for conducting an efficiency audit on the official website of the Accounting Chamber.

Therefore, the Accounting Chamber is the highest agency of external state financial control in Ukraine, independent of any state agencies. The powers of the Accounting Chamber are derived from the powers of the Verkhovna Rada of Ukraine and it cannot go beyond their limits in its activities in accordance with the Art. 19 of the Constitution of Ukraine (Constitution of Ukraine, 1996).

It is worth noting that the economic development of Ukraine based on decentralization and increasing the role of local budgets and local councils in managing funds will improve the economic situation in territorial communities. But in this case, there is a problem of state control over the use of funds of territorial communities due to their significant amount. Therefore, means of monitoring and control should be implemented, which should ensure smooth execution of tasks, as well as should increase the productivity and efficiency (Teremetskyi *et al*, 2021b). At the same time, it is necessary to strengthen the responsibility of local self-government agencies to the community.

Decentralization contributes to corruption, if political competition at the local level is limited, minimizes the effectiveness of central government control over the budgetary process at the local level, deepens the differentiation in the levels of regional development. (Teremetskyi *et al*, 2021a). Kenya's experience of decentralization is a vivid example of innovation in economic development, because the local authorities created a significant number of financial control agencies in order to overcome corruption problems. Those agencies supervise certain economic spheres, while simultaneously granting additional powers to local governments (Zavalko, 2017).

The regulatory and legal provision for the activities of the Accounting Chamber is difficult at the current stage both from the point of view of its insufficient compliance with international standards and from the point of view of its limitations. As a result, the Accounting Chamber is not efficient enough in its control measures, because it uses outdated methods to conduct them. Given that the Art. 15 of the Law of Ukraine "On the Accounting Chamber" establishes new powers regarding local budgets, the primary

task for the Accounting Chamber is to take into account the development of a strategy for the development of measures and tasks to regulate the mechanisms of external audit of budgets at the local level.

International experience of the highest financial control agencies proves that the basis of their functionality is not so much the fight against crimes in the financial sphere, but methodical activities aimed at improving the efficiency of budget financing. It is achieved not only through the implementation of specific budgets, but also through legislative activity.

We believe that the Accounting Chamber of Ukraine should not be a state agency, which is reflected in the relevant law, but a state power agency that has the right to exercise its powers in relation to agencies and officials under its control. In order to improve the overall effectiveness of the Accounting Chamber, it is necessary to grant it the right to suspend the implementation of those decisions regarding which it has initiated one or another investigation until the relevant agency provides a reasoned response. However, such decisions of the Accounting Chamber should be subject to appeal in court.

The State Audit Service of Ukraine is the central agency of the executive power, whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine and which ensures the formation and implementation of state policy in the field of state financial control. The agencies of the State Audit Service of Ukraine include the central apparatus and its interregional territorial agencies. Normative and legal acts that regulate the activities of the State Audit Service of Ukraine are the Law of Ukraine "On the Basic Principles of State Financial Control in Ukraine", the Budget Code and the Regulations on the State Audit Service of Ukraine.

The main tasks of the State Audit Service of Ukraine are reflected in the Art. 2 of the Law of Ukraine "On the Basic Principles of State Financial Control in Ukraine" and are realized by implementing state financial control over the use and preservation of state financial resources, non-current and other assets, the correctness of determining the need for budget funds and making commitments, effective use of funds and property, compliance with procurement legislation, etc. (Law of Ukraine "On the Basic Principles of State Financial Control in Ukraine", 1993).

The distribution of inspection and audit functions is carried out with the help of an organizational change in the structure of the divisions of the State Audit Service of Ukraine, that is, through the creation of audit departments according to the relevant sectoral orientation. Nowadays, the agencies of the State Audit Service of Ukraine conduct audits of state target-oriented programs, activities of business entities, implementation of budget programs, investment projects, local budgets, the Pension Fund of Ukraine, and mandatory state social insurance funds. Each of these types of audits is combined and does not meet international standards.

It is due to the fact that the audit service replaced the previously existing State Financial Inspection without the necessary amendments in the legislation. Amendments were made only in the new Regulations on the State Audit Service of Ukraine, which established its subordination to the Cabinet of Ministers of Ukraine. However, it would be more logical to subordinate the Audit Service to the Ministry of Finance of Ukraine.

We believe that the existence of two main agencies in the field of state financial control leads to a conflict between those agencies and a decrease in the effectiveness of financial control measures. Herewith, the functions of the State Audit Service are duplicated with the functions of the Ministry of Finance in the field of formation and implementation of state policy and the functions of the Accounting Chamber in the field of state financial audit.

At the same time, there is no coordination of actions of the specified agencies. A similar model exists in Argentina, where internal and external financial control is carried out by two institutions – the Main Audit Agency and the Main Control Agency. Therefore, we consider it expedient to create local agencies of the State Audit Service of Ukraine with the special status and broad powers in the field of supervision over budgets at different levels.

Pakistan's experience is also important for the issue under consideration. Since 2000 this country has had a specially authorized official – a financial advisor belonging to the system of state financial control agencies. The main powers of that official are consultative functions, which are manifested in providing advice not only to financial control authorities, but also to other authorities and ministries (Government of Pakistan, 2006).

Considering that fact, a significant part of the reforms oriented towards the European vector of the development should be implemented by the end of 2022, it is necessary to make appropriate amendments to the Ukrainian legislation on state financial control as soon as possible.

Conclusion

Therefore, the current situation that has developed in the field of state financial control cannot allow the state financial control agencies of Ukraine to effectively perform their functions due to the existence of a model, where there are two main regulatory agencies, which do not have a common vector of development and an appropriate legislative framework regulating their activities.

International experience in the outlined topic shows that the following steps must be taken for state financial control agencies' effective work:

- to clearly define the control functions of responsible agencies in the financial sphere and to enshrine them in the Constitution of Ukraine and special legislation by ensuring the absence of duplication of their powers;
- to develop and implement uniform generally accepted standards and methods, as well as terminology in the researched field;
- to ensure the introduction of effective mechanisms for the implementation of various types of state financial control and to eliminate conflicts in the current legislation;
- to consider all current standards of the International Organization of Supreme Audit Institutions (INTOSAI), the International Standards of Supreme Audit Institutions (ISSAI) and to develop national implementation strategy requirements of the specified acts, taking into account the positive international experience.

It has been concluded that the presence of unified and clearly defined tasks, methods and principles, taking into account the specifics of national legislation and the socio-economic situation ensures the effective work of state financial control agencies and improves financial and budgetary discipline.

The authors have proved the expediency of forming a system of state financial control in Ukraine with an orientation towards a mixed model, which combines elements of parliamentary and specialized systems. Such a model will contribute to increasing the effectiveness of state financial control agencies, will eliminate the features of chaos and will make it possible to implement preventive measures both at the state and local levels for the proper use of the country's financial resources.

The authors have substantiated the priority of three vectors of the development of the system of state financial control: development of the legislative framework and unified methodology of state financial control, its standards; formation of a clear structure of subjects of state control; introduction of modern information and innovative technologies in the field of state financial control, which will contain uniform criteria for control activity.

Further research of the possibilities of implementing better international experience in the functioning of the state financial control system is perspective. It will allow the proper implementation of control activities and create an effective tool for providing society and the state with objective, high-quality indicators necessary for improving the efficiency of public administration.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 363-382
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Narratives vs Ideology: new Dimensions of the Formation of National Unity in Ukraine

DOI: https://doi.org/10.46398/cuestpol.4074.19

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Abstract

The aim of the article is to justify innovative approaches for ensuring the self-sufficiency of the social system and the integrity of society. The article is based on the interdisciplinary approach and such general and special scientific methods: analysis, synthesis, functional, axiological, comparative, generalization, system analysis, modelling. It has been concluded that a narrative approach has to be used to ensure the consolidation of the nation and the establishment of consensus between institutionally different subjects of public administration. The types of narratives have been singled out: meta-narrative, strategic narrative, narrative, counter-narrative; and the structure of the narrative has been offered: process from the object's position, from the subject's position and as a synthetic narrative. The authors have substantiated strategic communications as technologies of narrative dissemination and have developed their concept. The authors of the article have proved that strategic communications ensure the synchronization of

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Recibido el 26/06/2022 Aceptado el 12/09/2022

narratives and their coordination with the national idea and government actions in the process of information and communication activities of the state.

Keywords: ideology of the state; narrative; consolidation of society; ideological management; strategic management.

Narrativas versus ideología: nuevas dimensiones de la formación de la unidad nacional en Ucrania

Resumen

El objetivo del artículo es justificar enfoques innovadores para garantizar la autosuficiencia del sistema social y la integridad de la sociedad. El artículo se basa en el enfoque interdisciplinario y en tales métodos científicos generales y especiales: análisis, síntesis, funcional, axiológico, comparativo, generalización, análisis de sistemas, modelización. Se ha llegado a la conclusión de que hay que utilizar un enfoque narrativo para garantizar la consolidación de la nación y el establecimiento de un consenso entre sujetos institucionalmente diferentes de la administración pública. Se han señalado los tipos de narrativas: metanarrativa, narrativa estratégica, narrativa, contranarrativa; y se ha revelado la estructura de la narrativa: proceso desde la posición del objeto, desde la posición del sujeto y como narrativa sintética. Los autores han fundamentado las comunicaciones estratégicas como tecnologías de difusión narrativa y han desarrollado su concepto. Los autores del artículo han demostrado que las comunicaciones estratégicas garantizan la sincronización de las narrativas y su coordinación con la idea nacional y las acciones gubernamentales en el proceso de las actividades de información y comunicación del Estado.

Palabras clave: ideología del estado; narrativa política; consolidación de la sociedad; gestión ideológica; dirección estratégica.

Introduction

The problem of consolidation of society is current for all countries of the world. In Ukraine it has been actualized during the last years, although it permanently emerges and manifests itself in the most radical and revolutionary way, which forms certain historical milestones and stages of development of the state. National unity. Because the state, as a universal political form of organization of society, is defined by the presence of

sovereign power, the ability to implement its powers on a certain territory through a system of specially created governing bodies.

The state carries out political, economic and ideological leadership of society, and also the management of public affairs. It is ideology that serves as the connecting link that contributes to the consolidation of the nation, its socio-economic and cultural development, and only the state can provide a good ideological management through the development and implementation of national strategy.

However, according to Article 15 of the Constitution of Ukraine, no ideology can be recognized by the state as obligatory and, conversely, public life is based on ideological diversity (The Constitution of Ukraine, 1996). Therefore, occurs a dilemma: how to ensure the proper level of ideological governance in Ukraine in the absence or even abandonment of state ideology. An analogue or substitute for the state ideology must be found that would ensure the formation and implementation of the national ideology and consolidation of the society around this process. Some steps in this direction are laid down in the same Constitution of Ukraine.

According to the amendments made in 2019 (law Ukraine No. 2680-VII, 2019) to the Constitution of Ukraine, including Article 112, the President of Ukraine is the guarantor of the implementation of the strategic course of the state to obtain full membership of Ukraine in the European Union and the Organization of the Euro-Atlantic Treaty, which is a priority at the current stage of the country's development.

Thus, the aim of the article is to justify innovative approaches and new measures for ensuring the self-sufficiency of the social system, which is Ukrainian society, and its unity for the formation and implementation of strategic goals of the state, which can become a theoretical basis for the improvement of ideological governance in Ukraine.

1. Methodology of the study

In the process of writing the scientific article a number of general and special scientific methods of research was used. The article is based on the interdisciplinary approach, in particular the results of scientific research on the theory of state and law, linguistics, philosophy, ideology, narratology, communicative science and public administration. In order to investigate and clarify the common and distinctive figures between ideology and narratives and their modern understanding, the methods of analysis and synthesis were used.

With the help of the functional method and system analysis we were able to examine the philosophical and ideological value of the narratives in

the state-making process, as well as to identify their place and role in the process of achieving the strategic goals of the state. The axiological method made it possible to justify the importance of the ideological management of the state as a valuable core that consolidates the society and ensures the non-conflictual dissemination of the basic ideas for corriguing and constructing the social behavior of the society.

The comparative method and the method of analogy made it possible to reveal the peculiarities of the use of narratives in the sphere of security and defense and to adapt them to the ideological management of the state. Methods of generalization and modeling were used to develop the concept of strategic communications as a technological component of the support for the narratives.

2. Results and discussion

2.1. Ideology vs. Narratives: general and distinguishing in the context of the maintenance of ideological state management

During the period of its existence every society produces, develops and maintains its own system of spiritual values - philosophical (attitudinal, religious), ideological, ethical, artistic, etc., which the state must regard as objective factors and direct state, especially ideological management at their preservation and multiplication. When the state does not take into account general spiritual values, which the society shares, it can lead to opposition or conflict and strengthen the confrontation between the society and the state. To avoid such conflicts, as well as to ensure cooperation between the state apparatus and the society, the ideological component must be intensively developed.

The state ideology is a whole systematic totality of ideas, values and beliefs that are the basis for the consensus formation of society by uniting individual groups of the population, the basis for notification and assessment of people's attitude to reality and state, the basis for determining the goals of socio-cultural development at a particular historical stage (Public administration, 2018). Ideology plays a leading role in state creation, because in this process it is defined as a totality, a set of theoretically grounded ideas, principles, norms, regulations, ideals, goals, which are however perceived by both citizens and the state apparatus.

Ideology in the state-making process is a combination of ideas, beliefs, a system of views shared by the majority of society to unite around a common goal, aimed at the consolidation of sovereignty and economic independence, national security, territorial integrity of the country, etc. (Public administration, 2018).

Ideology as a whole is: a mental construct generated by national, collective, individual consciousness; an intellectual product produced by ideocracy, which is "materialized" in political programs, scientific, publicist works, mass media, and in verbal rhetoric, etc; a public integrator and coordinator in the centrally aimed consciousness of certain social groups. As the state is the integrator and coordinator of social being, so ideology is the coordinator and integrator of the conscious and worldview fields, which interact and interdepend on the needs, interests and values of human life (Muzychenko, 2012).

The main task of ideology is to explain how these or other phenomena became what they are; to determine the directions of development of these phenomena (a guide to action) to achieve the determined strategic goals. Therefore, the state ideology should be based on national values that define objects, phenomena and their properties that satisfy the needs of an individual, the society and the state in safe existence and progressive development (Horbulin, 2016). National values are conceptual, ideological foundations, consoling factors and important living principles in the process of ensuring efficient social development.

It should also be noted that the existence of the state and the nation must be viewed through the prism of its valuable core, which consolidate society: national security, spiritual welfare, virtue, the system of international relations, patriotism and social justice (Horbulin and Kachynskyi, 2005), morality, religion, mutual tolerance, peacefulness, goodwill, charity, family (Hai-Nyzhnyk and Chuprii, 2014), human rights and freedoms, social justice, material welfare of the Ukrainian people, national security, natural resources, etc. (Syvak, 2019). These values must fulfil the consolidating role of the society and be the basis for the formulation of national goals and in the process of developing a national development strategy.

National goals are key tasks set by the state for the creation of a model of a better state of every person, society and country. Ideology is formed in different ways, determined by the political regime of the state. This determines the tools and technologies used to achieve strategic goals, mechanisms of influence on society, etc. Thus, democratic and totalitarian political regimes use different information and communication technologies, mechanisms and methods of influence on society.

The totalitarian state achieves the implementation of its ideology through the mechanisms of state pressure, fear, violence and propaganda, while the ideology of a democratic state takes into account the multi-layered and multi-syllable relations between society and the state and is implemented through social and state mechanisms of consensus building, reconciliation and harmony (Karlova, 2013).

The essence of ideology is the commonality of goals aimed at preservation, multiplication and development of national values and interests, as well as purposeful activity for their implementation. In view of the fact that the Constitution of Ukraine forbids state ideology, we can consider another approach

to the formation of a national idea, namely the use of a narrative approach in the ideological management of the state.

The narrative in scientific discourse has appeared recently, its emergence is connected with the rapid development of instruments and technologies of influence on society and mass consciousness. The term "narrative" resembles (lat. narrare – story, narrative) from literary studies as a new methodology and theory of literary creation (intertextuality, neorhetoric, receptive aesthetics), are focused on the artistic discourse as an exceptional mega-system with author-reader code, metatextual potential, national and cultural constants (Rymar, 2014).

It is considered as a manner of narration, presentation of facts and events in the author's work depicted in a certain informational product. In the world science happens "narrative turn", which characterizes the infiltration of narratology into other disciplines - psychology, politology, sociology, theology, public administration, etc.

It was most widespread in the context of the development of the concept of strategic communication during the last two decades. The narrative is an ideological component of strategic communications. After all, strategic communication is a way of implementing the strategic goals of a social subject (state) through the transfer of non-material resources of influence on the object (society) through the distribution (reorientation) of resources of influence, which is achieved by means of narratives.

The goal of strategic communication is to influence the motivational structures of target audiences (targeting groups of society), and the result: subconsciousness – consciousness – behavior of certain groups of society (Syvak, 2019). The function of strategic communications lies in the distribution of benefits in the physical space at the expense of the conversion of resources of influence. They are closely connected with the mission, insight (vision) and value of a social subject and contribute to strategic positioning (DOD Dictionary, 2017; Paul, 2011; Steyn and Butschi, 2006).

This concept should be understood as a way of reassuring and persuading target audiences to understand and accept the stated goals, policies, or lines of development: allies and supporters – to act together; neutral audiences – to accept the new "rules of the game," or to remain neutral; opponents and supervisors – to convince them that there is the possibility and power to win them. That is to say, it is a tool for public politicizing the policy and goals of the subject of strategic communication, namely the state.

The so-called meta-narratives (grand-narratives) are important for the state as a narrator. A meta-narrative is a construction, a scheme, a set of understandings, ideas, symbols, it is not a specific text, but a coordinate system in which communication between the state and the society is carried out, although there are always separate texts in which the grand-narrative reveals the earliest and fullest. The meta-narrative is not only a way of organizing available information from the past, but also a way

of determining what is important in history and what is not, the actual content of the historical narrative (Kazakov, 2015). For the state such a grand-narrative is the vision of the future and the national development strategy, which contain global strategic goals, time parameters, ways and resources to achieve them.

The term "narrative" in modern scientific journals is interpreted as:

- an analytical construct used to summarize a group of events into a single history (Stevenson, 2003);
- a distinctive national gene, in view of the similarity of their function, as genes transfer information through generations with a high degree of probability, so the nativities have similar features (Wilson, 2005);
- meta-speech, for approval of which in target audiences the whole purposeful activity of the state with the help of strategic communications is directed (Horbulin, 2016);
- the axial content element of all the information activity of the state and its approval in the target audiences (internal and external), on which the activity of all communication capabilities of the state is headed (Dubov, 2017);
- the means to which political actors are given to construct the meaning and significance of "great politics" – both internal and external, both governmental and corporate, community, etc. (Ozhevan, 2016);
- a short, comprehensive written presentation of the situation and the goals of the state, which can act by itself as the main context of strategic planning directives or be used to support the creation of specific culturally shaped histories, which will be perceived by individual audiences and contribute to their unification (NATO Strategic Communications handbook, 2015).

Fundamental principles of narrative, as the subject of narratology, determine its ability to impart knowledge and influence human consciousness, as well as to effectively explain its "history" in a language accessible for perception and comprehension by the target audiences.

On the basis of the above-mentioned characteristics and for the purpose of their separation, we can point out their essential differences. The principal difference between the nativity and the ideology lies in: purposefulness of the sphere of influence on society, particularly on target groups of society (depending on the goal of the campaign); its implementation mainly in the format of dialogue with the aim of forming common values; Close communication with official strategic documents of state institutions and transmitting information through open official communication channels.

The requirement of mandatory synchronization of communications with the actions of the subject of influence (the state); in the use of official, transparent, understandable to the subject of influence (the public) means and tools to achieve the specified goals.

We can also identify the joint features of ideology and narratives, in particular: content – a set of ideas formed on the basis of the consolidation of national values, which is aimed at the consolidation of society; process – the impact on society and the ideological basis: narrative, persuation, and encouraging; aim – influence on the motivational structures of the society to achieve its own strategic goals. This gives grounds to consider ideology and narrative equally important in the context of ensuring ideological governance of the state.

2.2. A Directive Approach to Ensuring Consolidation of Society

The steady development of the state can only be ensured if individual social groups are consolidated around the achievement of vital state goals. Consolidation is a crucial factor in the self-preservation and development of the nation, which integrates the state and the society. However, national consolidation is not static, its maintenance is a dynamic process that requires the use of appropriate technologies, tools and methods of interaction between institutions of the civil society and the state (Petukhova, 2015).

Integration of social processes among individual groups, communities, institutions, power and the state is aimed at shifting positions and ideologies, improving the social and economic state and properties of the system of interrelations and interactions in society, the nation and the state, as well as, most importantly, focusing on long-term goals. It is worth paying attention to the need for the formation of long-term strategic goals of state development, which certainly, has the most important importance in the process of ensuring consolidation. Because in practice, the consolidation of society is not possible without joint interest, a common goal and the unity of actions.

It is advisable to look in detail at the narrative and its varieties. Formulation of long-term strategic goals can be ensured by a meta-narrative that will enable us to formulate a long-term vision of the state's development, perhaps, for a 30-year perspective. The strategic narrative, as a lower-order narrative, is the basis for working out a strategy for the development of the state in the 10-15-year perspective, which must have specific strategic goals. It is the narratives that are necessary for the indirect provision of cooperation and understanding between the narrator (state) and the society in achieving specific strategic goals.

Regardless of the affiliation to a certain culture, people learn the ideas and meanings of this culture and make sense in the form of assimilation

of various narratives and stories, which are retold by various narrators (Ozhevan, 2016). A significant number of such histories became myths and the basis of religions, ideologies and related folk beliefs and, accordingly, meta-narratives, pan-narratives or grand-narratives. The special positioning of meta-narratives, in relation to which the other narratives are derivative subnarratives, related in that they are central elements of a "global cultural narrative schema capable of guiding and explaining knowledge or experience" (Olcott, 2011).

Thus, the difference between different types of narratives lies in their functional composition, i.e. the role they play in the implementation of the national idea and their place in the so-called narrative scheme. For a global, conceptual explanation of ideology we use meta-narratives (grand-narratives), which are static within certain time limits and clearly associate with the vision and strategic goal of development of the state, society and the nation. Strategic narratives are tools of the strategic level, which, first of all, have to explain how to achieve the global goal, interpret various situations through certain ideological ideas. Narratives are tactical level tools, the purpose of which is to explain certain situations of the modern (everyday) level, the interpretation of events and circumstances that occur daily in society.

For a detailed understanding of the essence of narratives in the process of achieving strategic goals, it is worth referring to the experience of those institutions that actively use this approach, in particular NATO. In "White Paper. Narrative development in coalition operations" (White paper, 2014), the narratives are characterized through the so-called "narrative arc", which is explained by the diversity of theories about the forms and structures of different types of narratives.

The trajectory of the arc is composed of participants (society and power authorities), actions (activity of power authorities), and communications, which run in one direction until the result is obtained, which characterizes the end of the narrative. The narrative trajectory involves the use of the narrative landscape, a metaphor for describing complex narratives that prevail in a particular social, political and economic environment at a particular historical stage of development. These statements must complement one another, and not oppose or contradict, respond to the expectations of interested parties and take into account their cultural, personal, role, religious and medical-structural specificities.

The subject of narratology is the fundamental principles of narrative, which determine its ability to impart knowledge and influence human consciousness. It is based on four basic approaches: from the position of the process the narrator (the narrator is the state and the public authorities); from the position of the object, that is, the events about which the story is told; and from the synthetic position, which combines the previous two:

the narrator and the events. The main value of narratives is their ability to disseminate the main ideas without conflicts, to organize, corrigue, construct the behavior of actors on the basis of commitment to certain integral systems that form the basis of ideology.

For the state, the narrative is a method, technology and tool for "imposing" on the public an officially sealed set of norms, rules and behavior patterns that are documented in the relevant officially sealed document - the state development strategy. That is, the narratios are the tools by which the state articulates its interests and values. Therefore, the narrative is the semantic core of the state communications for ensuring national consolation, which is based on good beliefs, reality and communicating actions.

The state's narratives are aimed at forming a "picture of the world", i.e., its intellectual (virtual) copy, which is formed according to the laws of human consciousness activity; it has different forms of existence depending on the needs of reality awareness (Lipkan and Popova, 2016). "The picture of the world" as a global image is formed in the process of people's contact with the natural environment and other members of society, is realized in language, art, music, rituals and various social and cultural stereotypes of behavior.

The conceptual picture is a system of concepts (special units of mentality), which are important psycho-mental coordinates that define the limits of collective national consciousness and collective unawareness, the concept sphere of the nation. We can include axiological principles that determine the priorities of the spiritual life of the nation among the main factors that create the integrity of the concept sphere of the nation.

For determining the methodological basis of the narratives, it is important to define the structure and approaches to its creation. It should be noted that the use of narratives is a controlled process, which must be carried out by the state and its institutions to achieve the specified strategic and ideological goals in the form of grand-narratives and specific goals in the form of narratives and messages, etc.

2.3. Structure of the narrative

Narratives of all levels have a certain structure, which has several approaches. For all of them, in comparison with other types of narrative and text, there is a common feature - they do not show the exact course of events and facts with chronological accuracy. Their main purpose is to make the real picture easier to understand, giving them the properties of a fascinating, understandable narrative for the appropriate target audience.

At the time of broadcasting/spreading of narratives, their comprehensibility by a target audience is important. Narratives

consolidate their meaning behind the objects and connect it with reality and understanding (Terebkov, 2011), as well as denote perceptions and attitudes, create expectations, interests and form and correlate the behaviour of certain groups of society.

Narratives require a certain algorithm for its construction, the purpose of which is ambivalent in the ideological management of the state. On the one hand, it allows you to formulate a narrative depending on the sphere of its use (a certain field), target audiences (groups of society on which the informational influence is exerted), the goal of the narrative process, etc, and on the other hand - to identify the functions of those or other statements, publications, messages, to analyze the convictions of the narrator (state), clearly establishing its goal.

There are several approaches to the creation of the narrative in the scientific literature (Zhenett, 1998; Mandziuk, 2017; Bhatt, 2000; Labov, 1972; Ochs and Capps, 2001), the range of interpretations of which is mainly centered on the narrative texts. Generally, we can consider the narrative for achieving the strategic goals of the state in four aspects: as a process – the narration (communication process of the state), from the position of the interests of the object – the recipient of the narration, the recipient (targeting groups of individuals), from the position of the subject – the narrator (the authority or the state as a whole), synthetic narrative:

1. As a process, the narrative (narration) assumes that the story (informing) deals with one selected strategic goal, topic, problem, and has the form of logically connected chains of a certain coordinate system, which have no contradictions between the causes and effects and no inequalities between the specified task and the result obtained. Under such conditions, it is not the content that is important, but the form and process of creation.

2. The narrative from the position of the object (recipient, addressee of the narration) is defined by such features: a detailed study, research of target audiences, by targeting of objects of information influence: social, value, educational, intellectual and cultural awareness, ability to absorb, comprehend, perceive the message. Under such conditions, the development of the algorithm depends not only on the purpose of the narrator, but also on the capacity of perception of its appropriate target audience with a possible assessment of the impact on her, her perception and understanding.

3. The narrative from the subject point of view (the narrator) - it is mediated indirectly by the narrator himself/herself. Under such conditions, the emphasis is placed indirectly on the image of the narrator, who can be a politician, the head of an institution, an organization, a government body, etc., and who has the right to

know the terminology, understand the essence of changes, have a comprehensive view of the situation, problems or the state, which characterizes his image, determines the way to achieve results.

4. The synthetic/synergetic narrative is the most effective and is based on modeling the dynamic, hierarchical, and adaptive structure of all existing initiatives. Its adequacy and efficiency lie in the fact that within its limits a unique form for a specific situation and target is constructed, an idea is formed, a meaning is given, a new meaning, the so-called narrative landscape is created.

The peculiarities of forming the image of the narrator, the process of narration, the recipient of the influence and the links between them that create the corresponding narrative matrix are of great importance in the process of creating the narrative. The designated steps and compositions of the algorithm for creating the narrative will contribute to a smooth choice of the thematic interval by the recipient and identification of the numerous conventions used in the messages.

The state's narratives are basic constructions, which are defined by higher-order narratives (strategic, meta-narratives, visions), define the dynamics of strategic and tactical narrative, establish the initial and desired situation and problem, and the process of transition from the problem to its solution, i.e. achievement of the goal; cognitive (ideological) structure, which allows to form a new "picture of the world" of the society and understand the status and vectors of development; forms of communication understandable for the perception of different groups of society information about the causes and desired results, ways of explaining the complex social, economic, political processes, problems and goals in order to facilitate their solutions and involvement in this process.

Describing the peculiarities of the use of narratives in the context of the improvement of ideological governance of the state, it is worth mentioning another peculiarity. In particular, about the use of counter-narratives to deconstruct the concepts of opponents. It is important for Ukraine in the process of conducting hybrid war and opposing the ruinous narratives and informational interventions of the Russian Federation as the aggressor country. The process of information war, in which Ukraine is, clearly demonstrates the activity of the narratives and counter-narratives in the virtual and informational space.

This indicates the usefulness of their use in informational, virtual and cognitive wars, where a war of narratives - opposition to views - takes place. The goal of such wars is to influence mass awareness. Thus, the goal of information warfare is to form an informational "picture of the world" of the current year, which is formed with the help of news (newspapers, television, Internet).

The goal of virtual war - the formation of a virtual "picture of the world" that has a longer lasting effect and influences the understanding of the world as a whole - is realized in books, movies, serials, monumental, symbolic art, etc. (Pocheptsov, 2019a). The difference between the informational and the virtual space lies in the implementation of tactical and strategic influences, because the virtual space is a cognitive sphere: religion and ideology, i.e., certain sacred values that unite groups of society, generations, etc.

The greatest danger is represented by cognitive wars, which also takes place in the informational space and is aimed at controlling mentality to influence decision making. Cognitive war is an influence on the higher level of mentality of the society (people), its thoughts, values that determine its behavior. Changing them, as well as interpreting physical events, results in a different type of social behavior (Pocheptsov, 2019b).

Cognitive (ideological) wars take place at the highest civilizational and religious levels, which are based on the non-conformity of basic values and become the reason of civilizational conflicts. Therefore, cognitive wars are an important part of the so-called hybrid wars. On the whole, we can define the narrative of the war as a humanizing mechanism of implementing the national idea, which contributes to its openness, constant improvement and development, taking into account the peculiarities of individual and group interests.

2.4. The initiative and state strategies: maintenance technologies

Narrative is the basis of communication between the state and the society, which contributes to the formation of national consensus and consolidation of the society in achieving strategic goals. Therefore, it is worth examining the specifics of their implementation at the level of the state, including the use of such technologies as strategic communications.

After all, strategic communications have an indirect connection with the vision of development and state strategies and should be an indispensable component at the highest level of management and the early stage of their development, for example, during crisis response or other measures, and must become an organic part of the process of developing state policy (Communication for Strategic Change, 2011) with the mandatory use of forecasting technology during the formation of national strategies (Tully *et al.*, 2017).

This is the process of synchronization and coordination of narratives, ideas, images, individual activities and actions within the framework of all related communicative activities (DOD Dictionary, 2017) of the state. They are also defined as technology, i.e. a certain totality of actions and activities that must be carried out in sequence, in an appropriate manner using specific tools and techniques, by the subject of public administration

in the information space to achieve the strategic objectives (Syvak, 2019).

In general, strategic communications, as a technology for delivering relevant messages to target groups of society, can bring regime, institutional, macrostructural changes in the state and change the public atmosphere and social attitudes. They have these characteristics and are aimed at:

- achievement of planned strategic effects, strategic branding - creation of new symbols and meanings;
- consolidation behavioural patterns (stereotypical behavioural reactions), i.e., controlling the behaviour of target audiences;
- implementation of a long-term development strategy;
- integration of stakeholders, i.e., involvement of all parties interested in the planned changes;
- coherence and synergy of stakeholders, i.e., synchronization of actions and narratives in the space and time of all subjects of the communication process. Strategic communications create a "conceptual umbrella" that allows various subjects in various spheres of activity to realize coherent activities;
- integration with actions, i.e., strategic communication transmits information not only as a message, but also by actions, i.e., communication by actions or inactivity takes place.

The principal difference between strategic communications in ideological management and other types of communications is in the planned involvement by the state of a large number of subjects in the interaction with society with the aim of influencing their behaviour. Therefore, strategic communication can be defined as a formative influence on the appropriate objects, on which the narrative is directed.

The place of the narratives in the process of strategic communications by the state can be visualized in the form of a concept (fig. 1). The concept of strategic communications was developed on the basis of "Understanding NATO Strategic Communications" (Understanding NATO Strategic Communications, 2014).

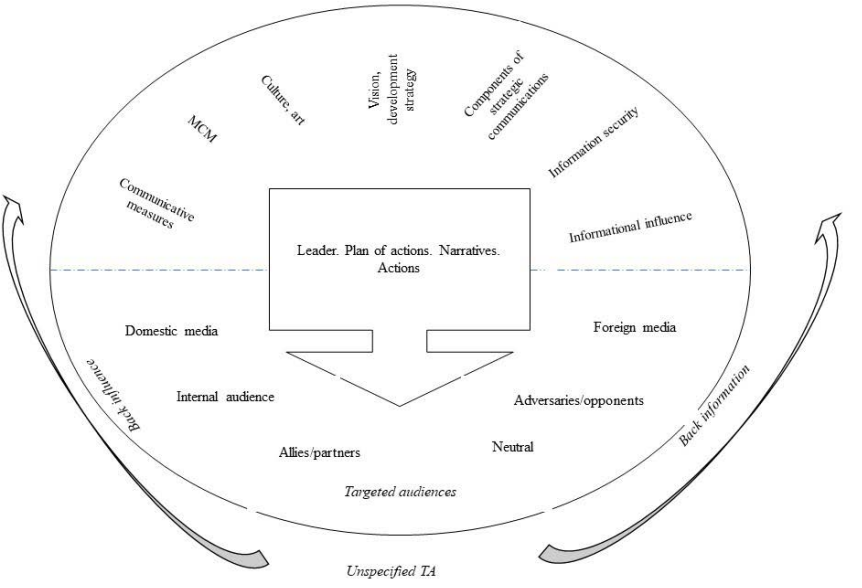

Fig. 1. The concept of strategic communications. Source: author's elaboration

The state, through rational use of its communication potential, i.e., through selection of the appropriate channel, device, method or component of strategic communication under the leadership of the national leader, ensures broadcasting of messages to target groups of society. The objects of influence are characterized by the diversity of society, which requires their targeting and identification in order to ensure the most favourable effect.

This model implies that the subject of strategic communications must be present in the field of vision of all the audiences, both identified and unidentified, because it is their reaction to the relevant information that can create both favourable and conflicting situations and conditions for achieving the strategic objectives. The synchronization of narratives and actions is necessary to create cooperative meanings and ensure the participation of all parties concerned. It ensures the coordination and ordering of spatially dispersed activities, even those that at first glance are not mutually interconnected and belong to different systems.

This approach will contribute to: improvement of the ideological component of the public administration process and information and

communication activities of the authorities; establishment of dialogue and consensus between institutionally different subjects of public administration (the state, authorities and society); achievement of national strategic goals; ensuring purposeful communication and coordination of activities in the system of power authorities. Thus, with the help of strategic communications the state functions as a single integral mechanism in cooperation with both the own society and other states and their citizens.

Conclusion

The lack and even the prohibition of ideology in Ukraine became a favourable ground for the strengthening of polar attitudes, ideas and values in the society. Developing and maintaining a state ideology shared by the majority of people is essential not only for solving conflicts and ideological oppositions, but also for achieving strategic goals. The valuable core of the existence of the state and the nation, which consolidates the society, is the adherence to, preservation and multiplication of national values, on the basis of which the strategic goals can be formulated in the form of a vision of state development and a national strategy.

The peculiar analogue of the state ideology is the narrative, which has the same methodological basis, namely a mental construct (a set of ideas, beliefs, a system of views) that forms a coordinate system, within the framework of which there is communication between the state and society for the purpose of uniting around a common goal aimed at reconciliation of sovereignty, national security, territorial integrity, etc. On the basis of the analysis of similar and different features between ideology and narrative it is established that they are equally important in the process of ensuring ideological governance of the state.

The narrative approach in ensuring the consolidation of society is manifested in the support of a dynamic process by the integration of individual groups, communities, institutions, power and the state in achieving long-term strategic goals. All types of narratives: meta-narrative, strategic narrative, narrative (story), counter-narrative, can be used to achieve strategic and tactical goals of the state and its institutions through the formation of a "national picture of the world".

It is proposed the structure of the state's narrative: process (narration), from the point of view of the object, the subject and as a synthetic narrative. This approach gives the possibility to differentiate the directions of use of the narratives for achieving strategic priorities of development, in particular during the conduct of information and cognitive wars using the information and virtual space.

The technological component of the narratives are strategic communications, which ensure their synchronization and coordination with the national idea and actions of the authorities within the framework of all related information and communication activities of the state. This enables the state, as a narrator, to make regime, institutional, macrostructural changes in the country and change the public atmosphere and social attitudes.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 383-392
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Protection of human rights and freedoms as a component of the preventive function of the police force

DOI: https://doi.org/10.46398/cuestpol.4074.20

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Abstract

The purpose of the research is to provide theoretical generalization and implementation of a complex scientific and applied task on the formation of a concept of the content of the protection of human rights and freedoms as a component of the preventive function of police forces, providing the development of proposals and recommendations aimed at improving legislation and law enforcement practice. The details of police officers' activities aimed at protecting human rights and freedoms were investigated. The methodological basis of the research was the dialectical method of scientific cognition used to visualize the legal, functional, organizational and procedural aspects of the protection of human rights and freedoms in the activities of law enforcement agencies. It is concluded that the effective performance of the task of enforcing human rights and freedoms, at least by the National Police of Ukraine, to some extent depends on the mechanism of adequate legal regulation of these activities by means of consistent laws and other normative legal acts.

Keywords: human rights; human freedom; protection; security; preventive function.

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Recibido el 09/07/2022 Aceptado 17/09/2022

La protección de los derechos humanos y las libertades como componente de la función preventiva de los cuerpos de policía

Resumen

El propósito de la investigación es brindar la generalización teórica y la implementación de una compleja tarea científica y aplicada en torno a la formación de un concepto sobre el contenido de la protección de los derechos humanos y las libertades como componente de la función preventiva de los cuerpos policiales, proporcionando el desarrollo de propuestas y recomendaciones encaminadas a mejorar la legislación y la práctica de aplicación de la ley. Se investigaron los detalles de las actividades de los agentes de policía destinadas a proteger los derechos humanos y las libertades. La base metodológica de la investigación fue el método dialéctico de cognición científica utilizado para visualizar los aspectos jurídicos, funcionales, organizativos y procesales de la protección de los derechos humanos y libertades en las actividades de los organismos encargados de hacer cumplir la ley. Se concluye que el desempeño efectivo de la tarea de hacer cumplir los derechos humanos y las libertades, al menos por parte de la Policía Nacional de Ucrania, depende en cierta medida del mecanismo de regulación legal adecuada de estas actividades por medio de leyes coherentes y otros actos jurídicos normativos.

Palabras clave: derechos humanos; libertad humana; protección; seguridad; función preventiva.

Introduction

Proclamation of Ukraine as a state governed by the rule of law places increased demands both on the power structures regarding clear legal regulation, its quality and efficiency, and on implementation of this regulation. At the same time, in the conditions of intensive rule-making and law-enforcement activities inherent in modern Ukraine, the problem of legal and technical perfection of legal acts is primarily actualized.

It is strengthened in connection with implementation of legal policy in our country, since domestic legal science has the task of developing a modern concept of defining the general principles, scope, methods, methodology of researching legal concepts and their interpretation. Effectiveness of implementation of legal acts of Ukraine depends on performance of these tasks, since the domestic legal framework was formed on the basis of properly Ukrainian legal acts, as well as laws and other legal acts adopted before the proclamation of Ukrainian independence, and therefore calked

in the Ukrainian language - in this case terms are preserved but not always in their true meaning.

Ukraine has joined a number of international organizations, which makes it necessary to harmonize national legislation with the international law, in particular the law of the European Union. One of the requirements set by the majority of international organizations, whose membership Ukraine already has or is seeking to gain, is the harmonization of its legal acts with the legal norms and standards of these organizations, which will affect the meaningful conceptual unity of Ukrainian regulatory acts and other legal acts and legislation of the European Union.

The purpose of this article is to provide theoretical generalization and implementation of a complex scientific and applied task concerning formation of a theoretical concept about content **of protection of human rights and freedoms as a component of the preventive function of the national police bodies** providing development of proposals and recommendations aimed at improving legislation and law enforcement practice.

1. Literature review

In the theory of law, the mechanism of legal regulation, the mechanism of implementation of rights and freedoms and the mechanism of ensuring implementation of human rights and freedoms are distinguished. In addition to the mechanism of implementation of constitutional subjective rights and freedoms, the mechanism of ensuring implementation of these rights is of great importance. It is a component of the mechanism of implementation of subjective human rights and freedoms.

The need for such a mechanism arises when implementation of a constitutional subjective right does not require intervention of the state, its bodies and officials as a mandatory party in the process of implementation of this subjective right (Onishchenko, 2010). On the part of the state, only actions are needed regarding guarantee of rights and restoration of the violated right. The specified mechanism contains elements that contribute to creating conditions for exercising of freedoms, protection and defense against offenses, participation in reproduction of violated human rights.

Specifics of the mechanism concerning implementation of the function of protecting human and citizen rights by representatives of the NPU depends on their performing their functions and tasks, as well as on the principles of the law enforcement system. Law enforcement and human rights protection functions are a component of the multi-functional activity of the NPU. As an executive-administrative body of the state, the NPU has

the state-authority necessary to fulfill its duties and realize its humanistic purpose - namely protection of human and citizen rights in accordance with the current legislation and its own competence (Law of Ukraine, 2015).

Researcher Negodchenko believes that the mechanism of ensuring (enforcement of) human rights and freedoms in activities of the NPU includes the following elements: legal norms and legal acts as forms of their presentation; individual legal documents; legal facts; legal relations; subjective rights and legal obligations; forms and methods used to organize exercising of subjective rights and legal obligations (*Nehodchenko,* 2003).

According to Husariev, the phenomenon of the legal status of an individual determines relationship between this individual and the law used by the state to outline limits of possible activities for the subject, his/her position in relation to other subjects and, taking into account individual or typical characteristics of the subject the law reflects the full legal position of this individual, his/her certain unification or limitation *(Husariev*, 2005).

The concept of "mechanism of protection of human rights" and the concept of "mechanism of legal regulation" partially coincide. The latter covers legal norms - official rules with the model of human behavior; legal facts ensuring the validity of the rule of law; legal relations - specific models of behavior for subjects based on norms and legal facts; acts of realization of subjective rights and legal obligations in the form of observance, execution and use of the right; acts of application of legal norms; elements of legal awareness and legal culture (*Nehodchenko,* 2003).

However, the mechanism of human rights protection, unlike the legal enforcement mechanism, integrates all this in organization and actions of the police, it goes beyond legal regulation and it is also implemented in legal protection and defense. The following elements are integrated in the structure of the mechanism of enforcement of human rights: a) law-regulatory and law-enforcement mechanisms; b) conflict resolution mechanisms; c) identification, informational, organizational, promotional elements combined for procedural and legal regulation of behavior and legal education of individuals with the aim of satisfying legal rights and interests of people. This is manifested in the actions of citizens, their involvement in public associations, human rights non-governmental organizations, elections and other types of influence on state and local self-government bodies.

At the same time, during the period of the state sovereignty of Ukraine the subject of independent research in the national legal science was presented as only some organizational and legal principles of the mechanism of enforcement of fundamental rights and freedoms in activities of law-enforcement bodies. In view of this, relevance of the research is primarily due to the need to highlight content **of protection of human rights**

and freedoms as a component of the preventive function of the national police bodies.

2. Materials and methods

The research is based on works of foreign and Ukrainian researchers concerning **protection of human rights and freedoms as a component of the preventive function of the national police bodies.**

The role of the National Police of Ukraine in the system of enforcement of human rights was clarified with the help of the epistemological method; the conceptual apparatus was deepened thanks to the logical-semantic method, and the essence of the concepts "protection" and "defense" was defined. Components of such a mechanism of protection were investigated by using a system-based structural method. Structural-logical method was used to define the main directions for optimization of protection of human rights and freedoms in activities of the National Police of Ukraine.

3. Results and discussion

The legislation on human and citizen rights and freedoms in Ukraine meets high international legal standards; a democratic concept of the relationship between a person and the state has been established, according to this concept a person in Ukraine is recognized as the highest social value; the ratio and role of structural elements of a citizen legal status of a citizen are changing, since the priority belongs not his/her duties, but to his/her rights and freedoms.

At the same time, the current legal status of Ukrainian citizens is characterized by weak social and legal protection, insufficient guarantee of rights and freedoms, and the absence of the necessary security mechanisms. In Ukraine, the issue of not only the declaration, but also the possibility of exercising and protecting human and citizen rights is being addressed and updated. Human life requires real implementation of declared rights and freedoms, i.e. development of a legal mechanism for their enforcement, which should guarantee efficiency of rights, freedoms and duties determined by the Constitution.

Effectiveness of the principle of the rule of law established by Art.8 of the Constitution of Ukraine (Law of Ukraine, 1996) is conditioned by legal laws, the exercise of the state power on the basis of its division into legislative, executive and judicial ones, as well as by the equality of legal entities before the law and the court, the responsibility of the state to a person, and not

only that of a person to the state , recognition of personality, his/her life and health, honor and dignity, inviolability and security.

In the context of implementing the conceptual idea of the rule of law and international standards of human rights in Ukraine, actualized is the problem of filling with real content the rights and freedoms of a person and citizen established by the Constitution of Ukraine, giving them a real declarative status. Since the "reality of rights and freedoms of citizens" (its essence) is highlighted with the help of a system of interconnected material and procedural aspects of the mechanism of providing this reality (implementation, protection, defense) (Leheza *et al*., 2021).

Also actualized is the problem of determining the role of the state, its bodies, in particular the National Police of Ukraine (hereinafter referred to as the NPU), in the provision of human rights and freedoms, as well as the limits of their interference and responsibility. The NPU, which is the central body of executive power that serves society by means of ensuring protection of human rights and freedoms, counteracting crime, maintaining public safety and order (Law of Ukraine, 2015) is the closest to the population in terms of their competences. Activities of NPU representatives are subject to the requirement of legality which is within the limits of the rule of law and consists in preventing arbitrariness in relation to a person. According to the type of legal regulation, the NPU should adhere to the principle of prohibition: "anything not directly permitted by the law is prohibited." Therefore, procedures (processes) of implementing prescriptions of legal norms concerning protection and defense of human rights and freedoms are significant, which requires clarifying the specifics of professional activities of each unit in these processes (Leheza *et al*., 2021).

The NPU faces important tasks in the context of Ukraine's orientation towards joining the European Union, the leading one of these tasks consists in strengthening the authority of its employees among the population, transforming them into real servants of people, ready to provide timely assistance and guarantee protection of rights and freedoms to citizens of Ukraine.

Nowadays, every person increasingly understands that the essence of his/her rights and freedoms consists not so much in their declarative proclamation but faster in ensuring their implementation as well as in material, legal and other guarantees provided by the state and its bodies for their consistent and comprehensive implementation. Special law enforcement means play an important role among these guarantees.

Along with other legal institutions and law enforcement agencies the NPU belongs to the general system of guaranteeing rights and freedoms of individuals by the Ukrainian state. Effectiveness of activities in this direction is conditioned through broad powers provided by the Constitution

of Ukraine (Law of Ukraine,1996), the Law of Ukraine "On the National Police" (Law of Ukraine, 2015) and other legislative acts in order to ensure legality and observance of human rights and freedoms by means of initiative (proactiveness), authority among the country' s population as well as by means of accessibility.

Observance of human rights and freedoms, formation of a proper and effective national system of judicial protection is one of the urgent tasks of the state. From now on, the main activity of our state is human rights and freedoms, and guarantees of their implementation. The Constitution of Ukraine entrusts the state with affirmation and provision of these rights and freedoms as its main duty. No wonder, in contrast to the previous appeal "A person for the state", the Constitution of Ukraine in 1996 proclaimed a new one "The state for a person".

The state is responsible to the people for its activity. Affirmation and provision of human rights and freedoms is the main duty of the state (Article 3). Philosophical development of the problems of human rights and freedoms (from liberal-humanistic positions) is associated with the name of I. Kant. The philosopher noted:

If there is a science that is really needed by a person it is the one that I teach, - and specifically, the one that properly shows a person his/her place in the world, that teaches what one must be in order to be a person (Bilous, 2019: 35).

The Constitution of Ukraine and the current legislation assign the function of protecting the rights and freedoms of citizens of Ukraine to the state represented by competent state bodies; and the state shall guarantee everyone the right to apply for protection of his/her violated rights (Leheza *et al*., 2022).

One of the main tasks of the law-enforcement activities of the NPU is to ensure rights and freedoms and, above all, safety of people. The police (along with other law-enforcement bodies) is called to ensure operation of the mechanism of legal protection and defense of human rights and freedoms, its functions are various: from creating safe conditions for implementation of human rights and freedoms in public places to protection against criminal violations and encroachments on human rights and freedoms with the adoption of legal coercive measures (Skuratovskaia, 2016).

The basis of the mechanism of protecting rights and freedoms of a person and citizen is formed by legal principles, norms (legal guarantees), as well as conditions and requirements to the NPU activities, activities of its officials, citizens who collectively ensure compliance, implementation and protection of rights and freedoms of citizens.

The most important element of the mechanism for enforcement of rights and freedoms, (one that largely determines effectiveness of other elements) is the guarantee of enforcement of rights and freedoms. The main purpose of this element is to create necessary conditions for immediate, effective and reliable protection and defense as well as or provision of legal assistance. Up to date, there is an urgent need for further research of guarantees concerning enforcement of rights and freedoms and finding ways to increase their effectiveness (Leheza *et al*., 2020).

Guarantees of enforcement of human rights and freedoms as a general concept are the main means to provide each individual with effective protection and defense of human rights. One of the types of legal guarantees is legal responsibility as a specific legal means of ensuring realization, protection and defense of human rights and freedoms as well as fulfillment of legal obligations (Leheza *et al*., 2018).

Legal liability is a compulsory restriction or deprivation of certain benefits provided by the law and applied by the state authorities. It is always accompanied by moral condemnation of offenders. There are the following main types of legal liability disciplinary one, civil one, administrative one and criminal one (Leheza *et al*., 2022).

Legal liability is applied only under certain circumstances stipulated by the law, which are specified by the cause of liability. Such a cause is the fact of committing an offense.

In contrast to other types of liabilities (moral one, public one, family one), legal liability shall be applied only to those who have committed an offense, i.e., violated the rule of law, the law, as far as legal responsibility of a person is individual (Art. 61 of the Constitution of Ukraine) (Law of Ukraine,1996). Offenses (violations) are reflected in certain actions, mostly active ones, in particular, in behavior that contradicts legal norms, that is, illegal behavior. At the same time, such behavior always harms someone: other people, organizations, society or the state. As far as such behavior causes negative social consequences it is prohibited by the law (*Husariev*, 2005).

Legal guarantees of rights and freedoms are a set of conditions, special legal methods and means used for unhindered implementation of these rights and freedoms, their protection and assurance. Such guarantees, recorded in the Constitution and legal acts, form the legal mechanism for implementation of laws. Since the system of legal guarantees of human rights and freedoms is a normative-legal means, they should be considered as a complex of mutually connected and mutually interacting normative-legal and institutional-organizational guarantees (Leheza *et al*., 2022).

Conclusions

So, effective performance of the task of enforcement of human rights and freedoms by the NPU depends to some extent on the mechanism of proper legal regulation of these activities by means of laws and other normative legal acts. The purpose of such legal regulation should be as follows: determining the range of social relations that need to be ensured by the NPU (the content, scope of implementation, list of entities using certain opportunities are specified in the normative acts); highlighting the powers (rights and duties) of the NPU services, their officials during implementation of rights and freedoms of citizens, state bodies and their representatives, public organizations, as well as the legal regulation of preventive measures, means of persuasion and coercion, grounds, conditions, order of their application; determining types and measures of liability of NPU employees for non-fulfillment or improper fulfillment of powers concerning enforcement of rights and freedoms of citizens (ensuring the principle of legality in activities performed by police officers).

The mechanism of organizational and legal enforcement of human rights and freedoms by the NPU is a single, integrally and qualitatively independent phenomenon of the legal system, which is a complex of interconnected and interacting prerequisites, means and conditions that create appropriate legal and factual opportunities for everyone to fully exercise his/her rights and freedoms.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 393-409
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Specific features of the legal regulation of prosecution for contempt of court: judicial rules established in different countries

DOI: https://doi.org/10.46398/cuestpol.4074.21

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Abstract

The purpose of the article is to reveal the specific features of prosecution for contempt of court in different countries. The methodological basis of this research is a set of general scientific methods (dialectics, abstraction, generalization, analysis, modelling) and special methods of scientific cognition (comparative and legal method, etc.). The existing types of responsibility and penalties for committing contempt of court in different countries of the world have been characterized. The authors have carried out the analysis of the experience of legal liability for manifestation of contempt of court rules established in the United States, Canada, France, Australia, Belgium, Poland, Great Britain, New Zealand, Ireland and India, which allowed to highlight the positive provisions for improvement of legislation in this area. It has been concluded that the purpose of establishing the aforementioned responsibility is to guarantee the administration of justice and the rule of law, maintain and strengthen public confidence in the judicial system,

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Recibido el 29/06/2022 Aceptado el 28/08/2022

safeguarding the continuity of the judicial process. Based on the analysis of regulatory legal acts and the jurisprudence of several countries in the world, the authors have made the classification by categories of actions that qualify as contempt.

Keywords: legal liability; contempt of court; administrative violation; court hearing; case review.

Características específicas de la regulación legal del enjuiciamiento por manifestación de desacato a los tribunales: normas judiciales establecidas en diferentes países

Resumen

El propósito del artículo es revelar las características específicas del enjuiciamiento por desacato al tribunal en diferentes países. La base metodológica de esta investigación es un conjunto de métodos científicos generales (dialéctica, abstracción, generalización, análisis, modelado) y métodos especiales de cognición científica (método comparativo y legal, etc.). Se han caracterizado los tipos de responsabilidad y penas existentes por cometer desacato al tribunal en diferentes países del mundo. Los autores han realizado el análisis de la experiencia de responsabilidad legal por manifestación de desacato o reglas judiciales establecidas en los Estados Unidos, Canadá, Francia, Australia, Bélgica, Polonia, Gran Bretaña, Nueva Zelanda, Irlanda e India, lo que permitió destacar las disposiciones positivas para mejorar la legislación en este ámbito. Se ha concluido que la finalidad de establecer la responsabilidad señalada es garantizar la administración de justicia y el estado de derecho, mantener y fortalecer la confianza ciudadana en el sistema judicial, resguardando la continuidad del proceso judicial. Con base en el análisis de los actos jurídicos reglamentarios y la jurisprudencia de varios países del mundo, los autores han realizado la clasificación por categorías de las acciones que se califican como desacato.

Palabras clave: responsabilidad legal; desacato al tribunal; infracción administrativa; audiencia del tribunal; revisión del caso.

Introduction

Judges in every national legal system have the right to authorize contempt of court in order to ensure the administration of justice and the rule of law, to maintain and strengthen public confidence in the judicial system. Therefore, prosecuting a person for contempt of court is an important element in maintaining the rule of law in a democratic country (Teremetskyi *et al.*, 2021b).

Unfortunately, threats and insults against judges, forward behaviour of participants in the proceedings or those present during court hearings are common phenomena in many countries. It is primarily due to the low legal culture of the citizens of such countries, as well as the lack of understanding of court significance and its importance in ensuring the rule of law. The problem of interfering in the normal functioning of the judicial system, which is often manifested in contempt of court is relevant under such conditions (Starovoitova, 2021).

Prosecuting a person for contempt of court is currently used in the world as the way where the justice system protects the smooth running of the legal trial and the administration of justice (Teremetskyi *et al.*, 2021a). Prosecution for contempt of court is used to protect the court's activities and to prevent interference into the legal trial by the way of illegal dissemination of information about the progress of its implementation or disrupting the work of the court during hearings. It should be noted that in resolving the issue of prosecution for contempt of court, the court does not protect its own dignity from insult or harm, but protects and upholds the rights of litigants so that the administration of justice is not distorted or biased.

1. Methodology

The scientific and theoretical basis of this research was the works of experts in the field of administrative law, administrative proceedings, theory of state and law, criminal proceedings, civil proceedings and other disciplines. The normative basis of the research is the current international legal acts, as well as regulatory legal acts of certain countries that regulate legal relations in the field of justice. The informational and empirical basis of the article is a generalization of the practice of judges as subjects that impose administrative liability for contempt of court, reference books, statistics, political and legal journalism.

The methodological basis of this research is a set of general and special scientific methods of scientific cognition, the use of which allowed us to obtain scientifically sound conclusions and recommendations. Thus, the dialectical method has been used for the general characteristic of

administrative liability for contempt of court. Methods of abstraction and generalization have been used to clarify specific features of legal corpus delicti of an administrative offense under the Art. 185-3 of the Code of Ukraine on Administrative Offenses.

The method of documentary analysis has been used to characterize the legal principles of administrative liability for contempt of court. Modelling and forecasting methods are aimed at finding out the ways to improve administrative liability for contempt of court. The comparative and legal method has been used to generalize international experience of administrative liability for manifesting contempt of court or established court rules.

2. Results and Discussion

Bringing a person to liability for contempt of court stems from the law and practice of Great Britain, where disobedience to court orders was regarded as the contempt to the king himself (Goldfarb, 1961). There is no legal definition of "contempt of court" in many countries. It is due to the fact that legal relations are constantly changing, and therefore it is impossible to predict all the actions that can be qualified as a manifestation of such disrespect.

Contempt of court is generally understood as any behaviour that interferes with the administration of justice. Contempt of court covers a variety of behaviors, which can be divided into the following categories:

1. disrespect for a judge in a courtroom or court premises (misconduct in court, interruption of a judge, commenting on a trial, taking photos in a courtroom, insulting a judge), court scandals (behavior leading to disrespect of judges or court, undermines public confidence to the administration of justice);
2. contempt of court, which is expressed in the violation of court orders (refusal to comply with court orders or obligations to the court);
3. contempt of court associated to the breach of official duties by a person related to court proceedings (lawyers, witnesses, jurors). Such disrespect occurs when persons having special responsibilities before the court or play a special role in the trial, fail to perform their duties before the court;
4. contempt of court related to abuse of the process (preparation and submission of court documents for misleading, dishonest or otherwise inappropriate purposes) (Teremetskyi *et al.*, 2021b).

Refusal to appear on a summons, to testify, to comply with a juror's obligation, or to provide certain information may in some countries (particularly Australia, Canada) also be contempt of court and may result in liability.

Publications and public speeches have been recently included to the acts of contempt of court. The growing use of the Internet and social networks has led to new challenges for the justice system. The media is currently a part of everyday life, and the coverage of information about events in society has increased due to the availability of such information. Therefore, the publication, statement or interview about a case during a trial is not allowed in many countries.

The balance between the protection of the administration of justice and the right to freedom of expression is important when covering information. In this regard, the Art. 40.6.i of the Constitution of Ireland states that:

> The State guarantees liberty for the exercise of the following rights, subject to public order and morality. However, ...the State seeks to ensure that... radio, press, and cinema, while preserving their legitimate freedom of expression... are not used to undermine public order, morals or the authority of state power. *The publication or utterance of the seditious or indecent matter is an offence which shall be punishable in accordance with law (Constitution of Ireland, 1937).*

There is a discretionary ban in Canada on the publication of any information that may identify a victim or a witness in all criminal investigations at the request of state authorities, a victim or a witness. Besides, prohibitions on publications include the publication of evidence or other information obtained as a result of a bail hearing (Article 517 of the Canadian Criminal Code), a preliminary investigation (Article 539 of the Canadian Criminal Code) or a jury trial (Article 648 of the Canadian Criminal Code) (Government Of Canada, 1985). All juvenile courts in Canada also have a mandatory ban on publishing information about a juvenile (name or any other identifiable information) (S.C., 2002).

Contempt of court in Poland is also the filing of a statement or other document in writing that violates respect, peace or order of court actions (Ustawa z dnia 27 lipca, 2001).

Thus, contempt of court in many countries (USA, New Zealand, Australia, India, Ireland) can be considered as a publication that contains truthful information about the case or trial, but published before the court decision; as publication of biased materials in a case pending in court; a publication containing unfounded allegations against the judicial power; a publication containing information about the accused that may affect the jurors. However, fair criticism of a court decision after its pronouncement, as well as contemptuous comments about a judge as an individual and

not as an official, is not considered contempt of court (Teremetskyi *et al.*, 2021b).

Legal regulation of contempt of court varies in different states: contempt of court in some countries is referred to in the Constitution (India), in other cases is regulated by caselaw (Canada, Australia, Ireland, Great Britain), special laws on contempt of court (UK, New Zealand, India) or other laws, which are partly state about contempt of court (USA, Canada, Australia, Poland, France).

The Article 129 of the Constitution of India states that the Supreme Court is the highest court within the judicial system and has all the powers of such a court, including the right to punish for contempt of court (Constitution of India, 1950). Law norms related to contempt of court in Ireland are set out in caselaw to ensure the effective functioning of the judicial system. At the same time, the Law on Final Jurisdiction (1871) enshrines contempt of court. However, the provisions of this law are applied only in Dublin (Summary Jurisdiction (Ireland) Amendment Act, 1871).

Contempt of court is partly regulated in the United Kingdom by caselaw and partly by the Contempt of Court Act of 1981. The main purpose of this law is to protect the integrity of court proceedings, so that any conduct that interferes with the administration of justice can be considered as contempt of court, even if there is no intention to interfere with the court activities, for example, publication as a form of communication addressed to the public (Contempt of Court Act, 1981).

Actions recognized as contempt of court have been established, and procedures for bringing perpetrators to justice have been regulated in India at the legislative level (The Contempt of Courts Act, 1971). Similar provisions are enshrined in the Contempt of Court Act 2019 in New Zeland (Contempt of Court Act, 2019).

There are also countries where there is no special law counteracting contempt of court. However, some provisions on contempt of court are contained in various laws.

The first US federal law concerning to disrespect the judicial power was the Judiciary Act (1789). The Article 17 of this law gave the federal courts "the power to fine or imprison at the discretion of those courts all manifestations of contempt of power in any case or during the proceedings" (Judiciary Act, 1789). Pennsylvania was the first U.S. state to pass a law defining contempt of court, which could be manifested in any misconduct against court officials, disobedience during court proceedings and misconduct in the presence of a court (Goldfarb, 1961).

Manifestation of contempt of court in the United States at the federal level is currently determined by the U.S. Crimes and Criminal Procedure

Code (U.S. Code: Title 18, 1948) and the Federal Rules of Civil Procedure (Federal Rules of Civil Procedure, 1938). At the same time, different states have their own laws that determine what actions are contempt of court and the procedure for bringing a person to justice. For example, the Section 18.2 of the Code of Virginia contains the Article providing an exhaustive list of cases, when judges of Virginia may decide to prosecute a person for contempt of court as soon as possible (Code of Virginia, 1950).

Courts in New York state have the power to punish promptly any manifestation of contempt committed in the presence of a court in exceptional circumstances and under certain conditions (New York Codes, 2011).

The power of judges in Australia to prosecute a person for contempt of court is provided by the "Supreme Court Act" (Supreme Court Act, 1933), "District Court Act" (District Court Act, 1973), "Children's Court Act" (Children's Court Act, 1987). Similar powers of the court are provided by the Polish Law "On the System of General Courts" (Ustawa z dnia 27 lipca, 2001).

Analysis of caselaw and laws of different countries on contempt of court allows us to distinguish two types of liability, when a person may be prosecuted for committing actions that will indicate the manifested contempt of court: civil and criminal liability.

The difference between civil and criminal liability is that the purpose of civil liability is not to punish a person, but to force him / her to comply with a court decision. When bringing a person to civil liability, the court seeks to re-educate the person and force him / her to do what the person did not want to do, i.e. it is to force the execution of a previously violated mandatory court order in the future. Civil liability for contempt of court most often arises for non-compliance with a court order and is used to coerce a party to take action. For example, a party who fails to comply with a court decision may be charged with contempt of court under Rule 70 of the Federal Rules of Civil Procedure (Federal Rules of Civil Procedure, 1938).

The purpose of criminal liability is to punish a person and uphold the authority of the courts, i.e., punishment for violating a court order, which prohibited the commission of certain actions or to refraine from committing them (Teremetskyi *et al*., 2021b).

A person who has committed actions that indicate a conscious desire to disrupt a trial, to create a scandal in court, to spread false statements about a court or a judge, to publish biased materials about a court case is brought to criminal liability for contempt of court. For example, in Robertson and Gough case (Scotland), the court ruled that contempt of court is behavior that "means intentional disobedience or contempt of court, or deliberate challenge or opposition to the authority of the court or the rule of law. It is

this behavior that threatens the administration of justice, which requires punishment from a public point of view" (Robertson and Gough V. Her Majesty's Advocate, 2007).

Contempt of court defined as a crime is the only criminal offense in Canada that is an exception to the general principle that all criminal offenses are set out in the Criminal Code (Government Of Canada, 1985).

There is direct and indirect contempt of court. For example, if an action in the form of contempt occurs in the presence of a court, it is a direct one, if an action of contempt occurs outside the court, then it is an indirect one (Criminal Resource Manual, 2020).

In general, the countries, where contempt of court is regulated at the legislative level, have a clear definition what actions are contempt of court, which offenses committed by a person are prosecuted by civil or criminal norms, as well as there is a clear definition of the range of persons who may be subject to contempt of court, the procedure for hearing the case and bringing to liability. Let's consider this in details.

The United States Court has the right to punish individuals for contempt of court in the form of fines or imprisonment, or to apply both punishments at its discretion only if there are three reasons:

1) the misconduct was committed in the presence of a judge or certain actions were committed in order to obstruct the administration of justice; 2) the misconduct was committed by any official of the court while exercising their powers; 3) there was disobedience or resistance to a lawful order during the process or in execution of a decision or ruling (Crimes and Criminal Procedure: Title 18, 1948).

Courts at all levels in Canada have the power to prosecute individuals for contempt of court occurred in the court, but only higher courts have the right to prosecute individuals for contempt of court committed elsewhere (The Canadian Justice System and the Media, 2007).

The Supreme Court in Australia can prosecute for contempt of court, which is disrespect to court either during a hearing, disobedience to a judge's decision or order or breach of court obligations. In addition, the Supreme Court has the power to consider both disrespect for itself and disrespect for any lower court (Supreme Court Act, 1970). At the same time, lower courts also have the right to prosecute for contempt (District Court Act, 1973).

Higher courts in India according to the Art. 10 of the Law "On contempt of court" (1971) are empowered to prosecute subordinate courts for contempt of court. The Article 15 of this Law states that even in case of contempt of court, which imposes criminal liability, contempt proceedings must be initiated by a higher court at the request of a subordinate court or at the request of the Advocate General (Legal Adviser to the State Government) (The Contempt of Courts Act, 1971).

Judges in the United Kingdom have broad powers to hear cases against those who have shown contempt of court. There are minimum requirements to ensure a fair trial: the court provides information about the action of contempt of court and explains what has been done wrong by a person against whom the decision of contempt of court will be made; the court provides an opportunity to get acquainted with the available protections; the court gives a person the opportunity to apologize for own actions. The case is heard on the day of contempt of court or the next day (Contempt of Court Act, 1981).

Bringing a person to liability for contempt of court in Australia stipulates that judges comply with a certain procedure consisting of four rules: 1) identifying a person whose case is heard; 2) bringing a person to a court; 3) informing the parties in the case; 4) granting permission to the court to make a decision on taking a person into custody or his / her release pending the indictment for contempt of court, which may include bail.

A judge who believes that a person is guilty of contempt of court may verbally punish the offender or issue an arrest and detention warrant until the person is brought to court to answer the charges. A judge presiding over the relevant proceedings may not be obliged to testify in the proceedings for contempt of court. However, an official transcript or official audio or video recording of the proceedings in the court may be admissible evidence (Supreme Court Act, 1970).

The court in Canada cannot prosecute a person until it is established that his or her behavior has seriously impeded or obstructed the administration of justice or posed a serious risk of interference or obstruction of the administration of justice (R. v. Glasner, 1994 CanLII 3444 (ON CA). Besides, the Code of Civil Procedure of Quebec (Canada) states that courts may impose a penalty on any person found guilty of contempt of court, which took place inside or outside the court. However, if contempt of court is committed against the Court of Appeal, but out of the premises, the case is referred to the High Court (Code de Procédure Civile, 2014).

Prosecution of a person for contempt of court in Ireland is subject to the following conditions:

1. a case on the commission of any action that indicates on contempt of court during the trial shall be considered by a judge as soon as possible;
2. a case of contempt in regard to a judge's personality (statements against a judge) is considered by another judge;
3. a judge has the right to detain a person and detain him / her for no more than 24 hours;

4. a person must be informed of the time and date of the hearing about the case of contempt of court, which is conducted as soon as possible from the moment of the offense;
5. a person who has committed contempt of court is given the opportunity to defend oneself or get legal representation, including legal assistance;
6. if contempt of court was expressed in statements against a judge, the judge shall not be summoned as a witness, and a copy of the digital audio recording of the trial where the offense occurred shall be attached to the case file (Donal O'Donnell, 2002).

If a judge or another court employee in New Zealand considers that any person intentionally violates the behavior in the courtroom or intentionally and without legal grounds disobeys any order of a judge or another court employee during the hearing, then the judge or another court employee may take one or more of the following actions: remove the person from the courtroom and order that the person be taken into custody. During the detention, a person accused of violating public order will be given the opportunity to get legal representation, as well as the opportunity to apologize to the court.

The judge or another court employee must consider detention issue before the announcement of the time and place of the hearing, and, if an additional sentence is to be imposed, the judge or another court employee must provide a person with a written statement describing the action, which is the basis for bringing a person to liability for contempt of court. If contempt of court has been recorded by a judge, then the judge must consider the circumstances of transferring the case to another judge. Consideration of the case from the moment of the action's commission, which indicates on contempt of court, begins within 7 days (Contempt of Court Act, 2019).

The presiding judge in Poland may remove a person from the courtroom who commits certain actions indicating on contempt of court (violates respect for the court, peace or order of court actions) only after repeated remarks about misconduct and in the absence of response to those remarks, as well as after prior notice of the legal consequences of such conduct in the courtroom (Ustawa z dnia 27 lipca, 2001).

The court's authorities in Canada to consider contempt of court as a criminal offense does not follow from the Canadian Criminal Code. However, judges generally use common criminal law practices and procedures to sentence on contempt of court. Such a sentence on contempt of court will be aimed at deterring others from committing such actions that undermine the rule of law (Ziegel, 1960).

It should be noted that some world countries may prosecute both individuals and legal entities for contempt of court (New Zealand, India). For example, if a person in India found guilty of contempt of court in respect of any obligations given to the court is a legal entity, then any person of that legal entity who was liable for the legal entity or for certain actions on behalf of such legal entity at the time of committing contempt of court, is guilty of contempt and the measure of responsibility may be imposed by the court on each person (The Contempt of Courts Act, 1971).

There are various types of penalties for contempt of court in different countries. The most severe punishment is imposed in Great Britain and Scotland. Thus, a person can be sentenced to up of two years in prison or a fine of £ 2,500 under the Contempt of Court Act. (Contempt of Court Act, 1981). The type of punishment for contempt of court is imposed in accordance with the general principles of sentencing, taking into account the nature of the committed offense, as well as the offender's personality. The UK courts focus on the fact that a fine is an alternative to imprisonment, and a fine may be the appropriate punishment for those who committed contempt of court for the first time.

An individual in New Zealand is punished with imprisonment for up to six months with a fine of up to 25,000 dollars for committing such actions as the intentional publication of any information about criminal proceedings, information relevant to any trial of a person, information, if there is a real threat that it may prejudice the rights of the individual to a fair trial. A legal entity is punished with a fine of not more than 100,000 dollars. A judge prosecutes a person in the form of a fine of not more than 10,000 dollars or community services not exceeding 200 hours, and may issue a warrant for imprisonment for the term not more than 3 months for intentional refractoriness to a judge's order during the hearing, which had no legal grounds. For disclosing jury discussions an individual is subject to imprisonment for a term not exceeding 3 months or a fine of not more than $ 10,000, a legal entity – for a fine of not more than $ 40,000. An individual is liable to imprisonment for a term not exceeding 6 months or a fine of up to $ 25,000, a legal entity – to a fine not exceeding $ 100,000 for the publication that contains false information about a court or a judge (Contempt of Court Act, 2019).

District courts in Australia can impose a fine of up to 20 penalty units or up to 28 days in prison for contempt of court (District Court Act, 1973). A person in India can be imprisoned for a term not exceeding six months, or receive a fine of up to two thousand rupees, or even imprisonment and a fine.

In Canada, a person who fails to appear in court as a witness and, if there are no valid reasons for not appearing, is found to have committed contempt of court and may be prosecuted for a fine not exceeding 100

dollars or imprisonment for a term not exceeding 90 days or these two penalties together, and may be obliged to pay the costs associated with the maintenance of this process or costs for the detention, if applicable (Government of Canada, 1985).

A fine of up to $ 10,000 may be imposed on an individual for contempt of court within civil proceedings in Quebec (Canada), and a legal entity may be fined $ 100,000. If a person refuses to comply with an order or prohibition, the court, in this case, may impose a penalty of imprisonment for a certain period in addition to the imposed penalty until the person obeys. Besides, this person will be periodically summoned to explain own behavior. However, such imprisonment may not exceed one year period (Code de Procédure Civil).

Belgium does not provide any specific sanctions for "contempt of court". However, in certain cases, if a person during a court hearing behaves particularly aggressively and abusively, clings to a judge or other participants in the hearing, interrupts or performs other actions that impede the process, the judge classifying these actions as contempt of court has the right to complete a report, to hear the accused and witnesses and immediately impose a penalty in the form of a fine provided by law (Strafprozessgesetzbuch, 1808).

Contempt of court in France results in a double penalty: imprisonment combined with a fine provided by the Criminal Code. In particular, insults with words, gestures or threats, letters or images of any nature that have not been made public, or sending any subject to a judge, juror or any person from a judicial agency exercising his or her powers or in regard to this activity, which may lead to humiliation or disrespect for the position, is punishable by one year of imprisonment and a fine of € 15,000. If contempt of court occurs during a court hearing or in a judicial panel, the penalty is increased to two years of imprisonment and a fine of € 30,000 (Article 434-24). For attempting to discredit a court decision under conditions that may undermine the authority or independence of government, a person is liable to imprisonment for 6 months and a fine of 7,500 euros (Article 434-25) (Code pénal, 2002).

In case of contempt of court in Poland, the court may impose a fine of up to 3,000 PLN or imprisonment for up to 14 days. If the fine is not paid, this type of penalty is replaced by imprisonment for up to 7 days taking into account the type of offense, the personal characteristics of the convict, the degree of the guilt (Ustawa z dnia 27 lipca, 2001).

The peculiarity of bringing to civil liability for contempt of court in India is the fact that if the court considers that the imposition of a fine as a measure of civil liability does not achieve the goal of justice and that it is necessary to apply an imprisonment, such imprisonment may be applied for a period not exceeding six months.

The peculiarity of prosecuting for contempt of court in some world countries is that a person can apologize for the offense in court, which can be considered as a ground for releasing from liability. For example, a person in India, who has committed contempt of court and has already been the subject of a criminal decision, may be released from punishment because of an apology to a court, which should be accepted by a court.

One of the relevant issues in many countries around the world (Ireland, Australia) is the review of caselaw in regard to contempt of court and amendments to the legislation by resolving contempt of court at the legislative level. For example, the Irish Legislative Reform Commission, whose duties are to review laws by conducting expert examinations and research to reform Irish legislation (Law Reform Commission Act, 1975), studied the issue of contempt of court in the country in 1994.

The Commission in its report on contempt of court noted that criminal and civil contempt of court are difficult to distinguish, since there is a blurred line and a lack of legal norms to address the issue. This leads to various difficulties for a person sentenced to imprisonment for contempt of court, as well as for judges who apply this punishment, which gives the latter a large scope of discretion.

Based on the results of the conducted study, the Commission made recommendations on reforming the legislation in this area, in particular on the need to consolidate contempt of court at the legislative level instead of the existing norms of common law. However, those recommendations have not been implemented for more than 15 years, although the attempts have been made. All issues related to the need to regulate contempt of court manifestationsat the legislative level, in particular clarifying the procedure for bringing a person to justice, as well as penalties for contempt, which can guarantee fair trial are being currently discussed in Australia (Contempt of Court: Report, 2020).

Thus, bringing to justice for contempt of court in the world is used as the way for the justice system to protect the smooth running of the trial and the administration of justice, non-interference in the trial by illegally disclosing information about the process.

Conclusion

The authors of the article have studied specific features of the prosecution for contempt of court or established court rules in the United States, Canada, France, Australia, Belgium, Poland, Great Britain, New Zealand, Ireland, India. It has been established that legal regulation of contempt of court differs between countries: some countries refer contempt of court in the

Constitution (India), in other countries it is regulated by caselaw (Canada, Australia, Ireland), by laws on contempt of court (UK, New Zealand, India), by other laws (USA, Australia, Poland, Belgium, Canada).

At the same time, prosecution for contempt of court in various countries around the world is used to ensure the administration of justice and the rule of law, to maintain and strengthen public confidence in the judicial system, to protect the continuity of the legal trial.

The analysis of regulatory legal acts and caselaw of the world countries made it possible to single out actions that are classified as contempt of court and to divide them into categories: contempt to a judge, which takes place in a courtroom or court premises; contempt of court, which is expressed in violation of court orders; contempt of court, which is expressed in the form of breaking official duties by a person that are related to court proceedings; contempt of court, which is related to abuse of proceedings; contempt of court, which consists in publishing materials or covering information about the legal trial or its participants.

There are two main types of liability for contempt of court in the world: civil and criminal. The purpose of civil liability is not to punish a person, but to force him / her to comply with a court decision. The purpose of criminal liability is to punish a person and to uphold the authority of judges.

The accomplished analysis of international experience in prosecuting a person for contempt of court or established court rules has assisted to distinguish the following positive provisions for improving legislation in this area: the need to legislative consolidation of the procedure for bringing to administrative liability (New Zealand); to consider publications, statements and interviews during the legal trial before the final decision as contempt of court (USA, New Zealand, Canada); the case of insulting a judge must be heard by another judge (Ireland); a person has the right to legal aid, so cases cannot be heard without giving a person the opportunity to exercise that right (Ireland, New Zealand); the possibility of prosecuting legal entities for contempt of court (New Zealand, India).

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 410-424
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Measures for countering drug trafficking in Russia and Germany

DOI: https://doi.org/10.46398/cuestpol.4074.22

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Abstract

The aim of this research was to develop a coherent theoretical proposal for counteracting drug trafficking in Russia and Germany. The methodological basis of the research is the dialectical and worldview approach. The latter determined the application of the general principles of cognition to study the current situation of drug abuse in Russia and Germany. Among the results stands out the fact that, previously tested forms of preventive work require careful restructuring and adjustment on the example of the implementation of the Strategy of the State Anti-Drug Policy of the Russian Federation until 2030, which implies the involvement of various actors in the organization of preventive work. In addition, the scientific results of the research include a critical analysis of the legislation on drug trafficking, trends in the drug situation and criminological study of persons involved in drug trafficking. In conclusion, the authors provided a legal formulation of certain areas of the fight against drug trafficking in the Russian Federation and Germany.

Keywords: drug use prevention; narcotics trafficking; psychotropic substances; illicit trafficking; comparative legislation.

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Recibido el 15/02/2022 Aceptado el 25/07/2022

Medidas para combatir el narcotráfico en Rusia y Alemania

Resumen

El objetivo de esta investigación fue desarrollar una propuesta teórica coherente para contrarrestar el tráfico de drogas en Rusia y Alemania. La base metodológica de la investigación es el enfoque dialéctico y de cosmovisión. Este último determinó la aplicación de los principios generales de la cognición para estudiar la situación actual del abuso de drogas en Rusia y Alemania. Entre los resultados destaca el hecho que, las formas de trabajo preventivo previamente probadas requieren una reestructuración y ajuste cuidadosos en el ejemplo de la implementación de la Estrategia de la Política Estatal Antidrogas de la Federación Rusa hasta 2030, lo que implica la participación de varios actores en la organización del trabajo preventivo. Además, los resultados científicos de la investigación incluyen un análisis crítico de la legislación sobre narcotráfico, las tendencias en la situación de las drogas y el estudio criminológico de las personas involucradas en el narcotráfico. En conclusión, los autores proporcionaron una formulación legal de ciertas áreas de lucha contra el narcotráfico en la Federación Rusa y Alemania.

Palabras clave: prevención del consumo de drogas; tráfico de estupefacientes; sustancias psicotrópicas; tráfico ilícito; legislación comparada.

Introduction

The current drug situation should be understood as the situation in the field of drug trafficking, as well as countering illegal trafficking, preventing non-medical drug use, treatment and medical and social rehabilitation of drug addicts. The dynamically changing situation of the growing availability of drug use creates new challenges for scientists and practitioners of preventive work.

The total number of officially registered drug addicts is, according to statistics, about 600 thousand people. This figure has not changed significantly over the past five years. According to sociological surveys, about seven and a half million people use drugs. Illicit trafficking in synthetic drugs and new psychoactive substances is on the rise.

The number of people using drugs worldwide will increase by 11% by 2030. From 2010 to 2019, the number of people using drugs increased by 22%, partly due to global population growth, and last year stood at approximately 275 million people. Last year, about 5.5% of the population aged 15 to 64 took drugs at least once.

Preventive anti-drug measures should be adjusted, and researchers should develop a complex systematic approach to transforming the forms and methods of drug use prevention. To introduce the best innovative practices in this field, experts should propose a new algorithm for interdepartmental interaction of all official bodies and change the current criminal legislation.

The measures aimed at countering drug addiction are part of the preventive programs that are introduced without prior analysis of their impact on the psyche, values, and mentality of the Russian youth. As a result, young people lose their virtues and become tolerant to drug use.

Imitation substitutes real preventive measures, and the formal indicators of the growing number and range of preventive measures replace the real effectiveness of their implementation.

The specificity of the German criminal law is that the criminal law establishing liability for illegal drug trafficking is not contained in the Special Part of the Criminal Code of the Federal Republic of Germany. Instead, it is contained in the federal law on drug trafficking as of 28 July 1981 as amended by the publication as of 01 March 1994, which refers to the so-called additional criminal law, implying a number of novels.

Considering the critical importance and global nature of this problem, Russia similarly to Germany, has been part of the international system of combating illicit drug trafficking for a long time. The importance of conducting this study stems from the fact that the counteraction to drug abuse is in the center of attention not only of scientists, but also of the public, and the recent publications note that this area requires further research. Accounting for the German experience will help develop and implement an anti-drug policy more competently and effectively, taking into account national, socio-cultural, economic-geographical and other features.

1. Literature review

Many international researchers (Kamradt-Scott and McInnes, 2012; Legleye *et al.*, 2014; Linklater, 2011; MacNicol, 2017) have been exploring the problem of drug trafficking. MacNicol (2017) focused on the neurobiological mechanisms underlying psychoactive substance abuse and dependence, with particular emphasis on mechanisms that promote continued use and repeated offence. Ahmed *et al.*, (2020) examined non-drug determinants of drug use and dependence. Golubovskiy *et al.*, (2021) studied the issues of international cooperation of countries aimed at the prevention of drug trafficking. Kleimenov (2021) examined various social and legal issues determined by future threats, including those associated

with economic crime and drug situation.

In Russian science, leading legal scholars Luneev (1999) and Kleimenov (2005) analyzed various aspects of counteraction to illicit trafficking in narcotic drugs and psychotropic substances, including criminal policy and counteraction improvement. Modern legal scholars Golubovsky (2019), Zhbankov *et al.,* (2016) investigated the link between drug addiction and organized crime.

Russian scientists Kunts and Golubovskiy (2015, 2017) considered the modern drug situation abroad from the perspective of interethnic and religious relations. In her dissertation, Shchurova (2017) investigated illicit trafficking in narcotic drugs and their analogues using computer technologies (the Internet). The interdisciplinary aspect of this problem was studied by Golubovskiy and Kunts (2019), Burlakov and Matveeva (2017), Antonov *et al.,* (2017).

Given that this problem is transnational, we would like to mention some recent publications by Weinstein (2017), Sutherland *et al.,* (2017), Tam *et al.,* (2018), Vaz Ferreira and Costa Morosini (2013), Chevtaeva *et al.,* (2017) Chevtaeva *et al., (*2018).

All over the world, the number of drug addicts will increase by 11% by 2030. From 2010 to 2019, the number of drug addicts increased by 22%, partially due to global population growth, and estimated approximately 275 million in 2020. About 5.5% of the total population, aged 15 to 64, took drugs at least once. An estimated 36.3 million of people (13.3% of all drug users) suffer from drug use diseases and disorders. Opioids are still responsible for most of these diseases.

At the same time, dynamic changes in the social environment and illicit drug trafficking lead to an increasing discrepancy between criminal reality and the reactions to it from society and the state, which is confirmed by the lack of special studies on this problem.

2. Materials and methods

The methodological basis of the research includes the dialectical approach, a set of general scientific methods of cognition, and specific sociological methods of studying social phenomena and processes. We used the method of statistical analysis to examine the state, structure, and dynamics of illicit trafficking in narcotic drugs and psychotropic substances and to identify its development trends. We applied the historical method to establish patterns of response to drug trafficking over different periods.

The methods of systemic, structural, and comparative legal analysis allowed us to identify gaps in the legislation on combating illicit drug trafficking and to determine the directions of its improvement. We used specific sociological methods such as studying documents (criminal cases, sentences, and reports) to explore empirical material and to identify the shortcomings of preventive measures. The wide variety and great range of the methods used allowed us to conduct interdisciplinary research, which helped us overcome the conventions of each particular method and its limitations. This approach to research methodology ensured the most efficient achievement of the research goal.

3. Results

Having carried out the study, we established that the number of drug addicts has been decreasing over the last few years. The number of registered and newly diagnosed persons increased in 2005-2008. However, there was a decrease after 2008, which accelerated after 2015. At the same time, according to the federal statistical data, the number of patients with mental disorders connected with drug use registered by the addiction treatment service decreased by 25% since 2010. In 2020, this figure amounted to 505,600 people, or 344.5 per 100,000 people.[4]At the beginning of 2020, the number of people who used drugs by injection decreased by 31.8% and estimated 229,900 people.

The number of patients with opium addiction is also decreasing (192,400 people at the beginning 2020 compared to 223,700 a year before). In contrast, the number of people with addiction to new psychoactive substances, mainly synthetic drugs, is growing (63,400 people at the beginning of 2020 compared to 48,900 people at the beginning of 2016 and 26,400 people at the beginning of 2011). The number of people dying from drug abuse is also gradually decreasing (4,100 people in 2020;4,200 people in 2019;4,500 people in 2018;4,800 people in 2017, and 3,750 people in 2011).[5]

Experts have given a general description of drug users in Russia. A sharp increase in the use of narcotic drugs began after 1991, with the opening of borders, the development of the Northern Route of drug trafficking, and an increase in the production and procurement of narcotic drugs in the CIS countries. The most significant growth occurred after 2000, when Russians got access to drugs sold on the world market due to an increase in their

4 Statistics of drug addiction in Russia for 2020-2021. (2021). Retrieved from https://narcorehab.com/articles/statistika-narkomanii-v-rossii-2020-2021/#2 Consultation date: December 26, 2021).

5 Report of the State Anti-Drug Committee of the Russian Federation "On the drug situation in the Russian Federation in 2019". Moscow: StateAnti-DrugCommittee, 2020.

income. Out of 144.5 million Russians, 13 million people (9%) occasionally take these substances and 5 million people (3.5%) – systematically.

Considering the age structure of drug addicts, about 20% of them are young people under 14 years old, 60% – 16-24 years old, and 20% are 25 years old and older. People are most likely to try drugs for the first time at the age of 15-17 (about 50%). Of those who died from drug poisoning, 30% were 18-24 years old, 25% were 25-29 years old, and 45% were 30-49 years old. The average lifespan of drug addicts is 15-20 years after the moment they started taking drugs, which is due to the harm to the body, its vital functions, and the risks of death from an overdose. Overdose is the main cause of death for drug addicts. A large number of HIV-positive people (about 60% in Russia) are addicts who inject drugs.

The increasing use of synthetic drugs has become a pressing issue over the last few years. These types of drugs tend to be more addictive than weak herbal drugs. Their price is lower than that of the weak drugs of the opium group, hashish, or cocaine. However, their effect is much stronger, as well as the damage to health for those who take such drugs.

As far as the criminal policy is concerned, experts note that a larger volume of criminal cases are considered by the courts under Article 228 of the Criminal Code of the Russian Federation compared to Article 228 of the Criminal Code of the Russian Federation. The courts tend to give more lenient sentences under Article 228 of the Criminal Code of the Russian Federation (only 22.3% receive real imprisonment, and this percentage has decreased since 2016), and more severe punishment under Article 228 of the Criminal Code of the Russian Federation (91.8% of convicts receive a real jail time).

Table 1. Consideration by courts of criminal cases related to drug trafficking (Articles 228 and 2281 of the Criminal Code of the Russian Federation), thousand people

Articles of the Criminal Code of the Russian Federation	Convicted	Justified	Imprisonment	Probation	Other punishments
2016					
Art. 228 of the CC of the RF	79.6	0.0	23.7	34.0	21.8
Art. 228.1 of the CC of the RF	21.3	0.0	19.5	1.8	0.1

2020					
Art. 228 of the CC of the RF	53.0	0.0	11.8	22.3	18.9
Art. 228.1 of the CC of the RF	14.0	0.0	12.8	1.1	0.0

Source: Judicial statistics data (Judicial Department at The Supreme Court Of The Russian Federation, 2022).

In the first half of 2021, 37,375 people were sentenced to imprisonment for committing crimes under Art. 228-2341 of the Criminal Code of the Russian Federation.

The approach to planning, organizing, and conducting preventive anti-drug activities is often formal. This leads to disregard of official propaganda and unwillingness of young people to participate in the anti-drug activities conducted. In addition, various organizations demonstrate poor coordination of preventive activities. They cannot set the common criteria for effective anti-drug measures or actively and consistently apply best practices when organizing preventive work.

Considering their public danger, crimes related to illicit trafficking of drugs and psychotropic substances are much more serious than the gravest crimes. For example, terrorist acts cause harm once, whereas the illegal use of narcotic drugs and psychotropic substances harms the life and health of not only those their consumers, but also entails negative consequences for their children, that is, creates a threat to national security.

Anti-drug policy in Germany is comprehensive. It includes prevention, counselling, treatment, harm reduction and measures aimed at reducing the supply of narcotic drugs. Prevention activities target the school environment, including innovative drug prevention projects in the form of Internet consultations, telephone consultations, and projects that specifically target ethnic minorities. According to the German law, unauthorized possession of drugs is a criminal offence. However, if drug use is not related to sale, is not burdened with aggravating circumstances, then instead of initiating criminal prosecution and sentencing the person involved to imprisonment, preference is given to measures related to administrative, medical and social impact.

The court may not impose a sentence of imprisonment if the perpetrators keep drugs in small quantities only for personal consumption; or the execution of the punishment may be postponed for the guilty person for up to 2 years, if the crime committed is punishable by deprivation of liberty for

up to 2 years. Such a rule applies only on the condition that the expected term of imprisonment for the crime committed does not exceed two years. Also, in the German legislation in the 1990-2000s, additions were made that relate to the fight against the "laundering" of funds that were obtained because of drug crimes. The so-called "light proof rule" was introduced, which expanded the possibilities for law enforcement to confiscate property that was obtained by criminal means.

Discussion

Having studied the materials of current judicial practice on criminal cases related to illicit trafficking of narcotic drugs and psychotropic substances, we established that Russian criminal legislation contains a number of crimes with criminal liability provided. Consequently, the very characteristics of drug offenders may vary depending on a particular crime. However, the crimes themselves have common features. Therefore, people who commit such crimes must have some common features.

For instance, about 91% of drug offenders are men. It is also known that in a group of persons that committed a crime related to drug trafficking by prior conspiracy, 86% are men and 14% are women; as part of an organized group: 86% are men and 14% are women; as part of criminal gangs: 83% are men and 17% –women. Having analyzed criminals' age, we established that minors make up 2% of the total number of drug offenders. At the same time, the age of most people ranges from 18 to 29 (42%). The statistics for older persons are as follows: 30–34 years old make up 20%; 35–39 years old – 16%; and 40 years and older – 20%. We also grouped these people based on their citizenship. The citizens of the Russian Federation commit 96.8% of drug-related crimes. As for the level of education, 9.8% of people convicted of drug crimes have higher professional education, 36.8% – secondary vocational education, 37.5% – secondary general, and 15.9% – basic general, primary, or no education. In illicit drug trafficking, women are more likely to commit crimes in a group.

As for the age of drug offenders, it correlates with the statistics on the number of people who take drugs. Most drug users are young people. In addition, most people committing crimes related to drug trafficking have secondary education.

The age structure of drug offenders varies depending on the crime they committed. Drug trafficking crimes involving the use of the Internet are committed mainly by persons aged from 18 to 30 (80%). As for the age and gender structure of the Internet users in Russia, according to research data, in 2016, there were slightly more male Internet users than female ones: according to various research companies, males make up about 51% of the total number of Internet users.

According to statistics, drug offenders using the Internet are of the same age as the average Internet user. This may be because at this age young people do not have their own family and have more free time to regularly use the Internet. The larger share of males can be explained by the fact that, in general, there are more males among drug offenders than females. As for their educational level, the majority of drug offenders (including those who use the Internet to commit drug crimes) have secondary or specialized secondary education.

The features of a drug offender may vary depending on their function in drug trafficking. For instance, according to the function performed, we can identify the following categories: 1) organizers and leaders of criminal groups and criminal communities; 2) drug sellers; 3) producers and manufacturers; 4) drug thieves; 5) drug runners; 6) organizers and keepers of drug-involved premises; 7) drug users.

Most drug addicts are males, although the number of female drug addicts is also increasing. As practice shows, neglected children and troubled adolescents tend to become drug addicts. Children from disadvantaged families are also susceptible to the negative influence of the environment: they are left to their own devices, live in an unfavorable environment, which negatively affects the formation of their personality. In addition, drug addicts are often those living in poverty, unemployed, or those who suffered from a mental trauma or overprotection in their families.

The main features of a drug addict are selfishness, weak will, negative attitude towards their relatives and people around, deceitfulness, and secrecy. The systematic use of drugs contributes to the formation of reasonless aggression, anger, anxiety, and various fears. Drug addicts seldom have a permanent job, and they often suffer from such chronic diseases as hepatitis or HIV infection. These people often commit thefts, robberies, and other crimes in order to get money for drugs. If one commits a crime while intoxicated, the court may consider this as an aggravating circumstance.

Therefore, drug offenders have both common features typical of this category and specific characteristics of a particular type of a drug offender. For instance, approximately 85-90% of all drug offenders are men. At the same time, in drug trafficking, women are more likely to commit crimes in a group. The age of drug offenders correlates with the statistics on the number of drug addicts. What is more, the overwhelming number of persons committing crimes related to drug trafficking have secondary or secondary vocational education.

Considering specific features, we should focus on the function a person performs in drug trafficking. For example, the leaders of organized drug trafficking groups have the same traits as other criminal leaders.

Having analyzed the features of drug manufacturers and producers, we concluded that the latter are more professional due to their profound knowledge of chemistry. This requires higher education in this field. At the same time, this knowledge is helpful not only for drug manufacture, but also for the arrangement of the laboratories.

We share the position of Eliseeva (2019) that the practice of criminal prosecution under Article 228[1] of the Criminal Code of the Russian Federation of those stashing drugs should be revised, since it does not ensure efficient counteraction to drug crimes. It punishes people representing the lowest level of organized criminal communities, whose guilt is much smaller than that of wholesale dealers and drug lords. At the same time, criminal liability begins from the age of 16, which is quite early. Obviously, considering this fact, it is necessary to change the criminal policy regarding the lowest level of such crimes, especially involving minors, and to apply suspended sentences.

In addition, it is possible to apply Part 1 of Article 64 of the Criminal Code of the Russian Federation, which states that "if a member of a crime group actively participates in solving this crime, the punishment may be below the lowest limit provided for by the relevant article of the Special Part of this Code, or the court may impose a milder type of punishment than provided for by this article." This also should refer to Paragraph i) of Part 1 of Article 61 of the Criminal Code of the Russian Federation ("actively contributing to solving and investigating a crime and assisting in finding and prosecuting other accomplices in the crime). In other words, if during the investigation the person who worked for a drug dealer and stashed drugs, assists in finding the drug dealer, their contacts, or other concealed information, the count should apply the most mitigating circumstances to them.

This will both contribute to the spread of drugs and increase the risks for drug dealers in involving young people, including minors, in this criminal business. That is, justice should not aim to punish harshly those who committed their first crime, stashing drugs and working at the lowest level of the criminal network. These people, hoping for a mitigation of punishment, will be interested in helping to identify, arrest, and persecute their employers.

Effective preventive measures imply working with people who do not use drugs yet. This implies effective interaction between government agencies and public associations in the field of countering drug abuse, which will help reduce the number of prospective drug addicts. In addition, it is necessary to find gaps in interdepartmental interaction and communication with public associations, as well as to identify and disseminate innovative forms of preventive anti-drug measures among the public.

In the process of analyzing German legislation, it was found that the list of acts related to illegal drug trafficking, which are recognized as criminal, has been expanded. Despite the proposals of German jurists and the points of view actively discussed in the media on the need to decriminalize the consumption of so-called "soft" drugs (for example, cannabis), this position was not supported by the German legislator.

The penitentiary authorities were given the opportunity, with the consent of the court, instead of executing a sentence of imprisonment for a term of not more than two years in cases related to the conviction of drug addicts, to rehabilitate such a person by placing him in a special medical and therapeutic institution (Art. 35, 36 of the Law).

In the case of a conviction of a person with drug addiction, if it is only in connection with this addiction that he has committed a criminal act and if a sentence of imprisonment for a term of not more than two years can be imposed for its commission, the prosecution authorities, with the consent of the relevant court, may generally refuse to maintain state prosecution.

This is possible only if the circumstances of the case indicate that it is more expedient for the accused, taking into account his drug addiction, to appoint a stay in a special medical and therapeutic institution. In practice, the application of these legislative requirements often encounters certain difficulties. The problem lies, first, in the fact that in the German penitentiary system there are not enough special medical and therapeutic institutions to accommodate people suffering from drug addiction and having committed criminal acts in connection with this. This leads to the fact that persons wishing to undergo such treatment are often not placed in such institutions in a timely manner or cannot be placed there at all due to the lack of a sufficient number of such institutions.

Conclusion

Having examined the complex nature of the problem of illicit trafficking in narcotic drugs and psychotropic substances and the resulting need for a comprehensive systematic response to it, we drew some conclusions that have theoretical and practical significance.

In Russia, drug trafficking began to increase in the 1990s with the opening of the external market and borders, after the collapse of the USSR and the worsening crime situation, which included the production of narcotic drugs in the CIS countries and intensified drug trade.

To improve the situation, researchers and bodies responsible for anti-drug measures should systematically transform the forms and methods of drug use prevention.

The main development directions of the criminal policy regarding the counteraction to illicit drug trafficking should include changing the sentencing practice. This implies giving milder punishment including suspended sentences, if there was no repeated offence under Article 2281 of the Criminal Code of the Russian Federation to persons detained while stashing drugs and who do not own these drugs, but only help to sell them. This should be done if they help to investigate and solve a group crime, as well as to arrest a drug dealer or the leader of a criminal organization. In addition, police investigators should be able to use open information published by criminals more actively.

The German law on the circulation of narcotic drugs defines the elements of criminal acts related to the illegal circulation of narcotic drugs in Germany. The law establishes a wide range of criminal offenses related to drug trafficking. A feature of the application of this Law is, first, that actions related to the illegal possession of narcotic drugs de facto often do not entail the imposition of punishment. This can be explained by the fact that the German legislator has established wide limits of judicial discretion in imposing punishment for criminal acts related to drug trafficking. These legislative provisions make it possible to prosecute not those persons who store narcotic drugs in small amounts for their own consumption, but members of organized criminal groups involved in the drug business. This approach is contrary to Russian experience.

The research results, conclusions, and proposals expand the theory of criminology and criminal law. They can act as the methodological and theoretical basis for further research of the drug situation, improving the counteraction to it, both in Russia, and in Germany. The practical significance of the study includes the possibility of using its results for law making and law enforcement.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 425-439
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Gender policy within social and labor relations: international and legal aspect

DOI: https://doi.org/10.46398/cuestpol.4074.23

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Abstract

The article aims to define the sectoral legal tools that can be incorporated into the legislations of the countries of the world for the development of gender policies in social and labor relations. The research methodology included methods of general and special scientific character, which aim to ensure the unity of approaches. Attention has been paid to the justification of subjective differentiation of working conditions in the acts of the International Labor Organization. Legal conditions for the introduction of gender equality in legal systems were proposed in order to ensure the social and economic development of society. It is concluded that international standards of social and labor relations make it possible to implement gender equality policy in various variable models. Finally, among the special sectoral tools for solving gender problems, it is worth applying: subjective and social differentiation of working conditions; gender-neutral legislation; local acts as a method of raising the level of moral and ethical standards in professional groups, and; gender quotas and gender parity with differentiation in various spheres of economic activity.

Keywords: gender; gender policy; gender neutral legislation; social and labor relations; differentiation of working conditions.

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Recibido el 13/07/22 Aceptado el 25/08/22

Política de género en las relaciones sociales y laborales: aspecto internacional y legal

Resumen

El artículo tiene por objeto definir las herramientas jurídicas sectoriales que pueden incorporarse a las legislaciones de los países del mundo para el desarrollo de políticas de género en las relaciones sociales y laborales. La metodología de la investigación incluyó *métodos de carácter científico general y especial, que tienen como objetivo asegurar la unidad de los enfoques. Se ha prestó* atención a la justificación de la diferenciación subjetiva de las condiciones de trabajo en los actos de la Organización Internacional del Trabajo. Se propusieron condiciones legales para la introducción de la igualdad de género en los ordenamientos jurídicos a fin de garantizar el desarrollo social y económico de la sociedad. Se concluye que los estándares internacionales de relaciones sociales y laborales permiten implementar la política de igualdad de género en diversos modelos variables. Finalmente, entre las herramientas sectoriales especiales para resolver los problemas de género, vale la pena aplicar: la diferenciación subjetiva y social de las condiciones de trabajo; legislación neutra en cuanto al género; los actos locales como método para elevar el nivel de los estándares morales y éticos en los grupos profesionales, y; cuotas de género y paridad de género con diferenciación en varias esferas de actividad económica.

Palabras clave: género; política de género; legislación neutra en cuanto al género; relaciones sociales y laborales; diferenciación de las condiciones de trabajo.

Introduction

Social and labor relations are the main way for citizens to realize the right to work all over the world and, accordingly, the right to social security in case of specific social risks. At the same time, there is still a certain gap between the real opportunities of women and men in the social and labor sphere. Since the level of social security services for citizens mainly depends on the quality and duration of labor relations, then the policy of legal levelling-off the position of women and men in social and labor relations was and remains one of the practical tasks for the international community and national authorities of the world countries.

The construction and development of democratic, legal, social states is impossible without the implementation of gender policy, which requires coordinated actions and systemic approaches at the level of international legal acts, in particular those that define international labor and social

standards. The relevance of gender aspects for the realization of social rights must be considered not as means of material or financial support of citizens, but as a set of rights that establish, guarantee, implement and protect a decent standard of a person's living.

Therefore, gender policy is one of the means of preventing and combating poverty and social exclusion of people based on gender. The fact that gender issues are the subject matter of legal regulation in international legal acts of the United Nations (UN), the International Labour Organization (ILO), the Council of Europe and the European Union (EU) indicates that the sphere of social and labor relations is topical in the social area of human existence.

The purpose of this article is to define the sectoral legal tools that can be included into national legislation of the world countries for the development of gender policy within social and labor relations.

1. Methodology of the study

The research was conducted on the basis of the latest scientific publications on gender issues and international legal acts covering the legal mechanisms for the implementation of gender policy. The methodology of this research includes methods of general and special scientific nature, which are aimed at ensuring the unity of epistemological, ontological and axiological approaches.

The dialectical method was used to determine the essence of subjectival and social differentiation of working conditions in the acts of the International Labour Organization. System analysis was used to determine the relationship between the possibilities of realizing the right to work and the right to social security services for women and men. Theoretical and prognostic method was used in the process of formulating approaches to the improvement of the national gender policy with the application of sectoral legal tools.

Suggestions for improving social and labor legislation based on the principle of equality between women and men in their rights, differentiation of working conditions and the application of gender-neutral legislation are methodologically built on the categories and methods of formal logic: definition, proof, judgment, analysis, synthesis, analogy, comparison, generalization, etc.

2. Analysis of recent research

Scientific studies demonstrate that the following relevant manifestations of gender inequality are currently observed:

1. Differences in the duration of working hours, i.e., "Women are less likely than men to be in full-time employment" (Mathieu Boniol *et al*., 2019: 1);
2. "Occupational differentiation between men and women as well as a set of other factors related to underestimation of women holding management positions" (Kostiuchenko *et al*., 2020: 2813);
3. Women report experiencing widespread discrimination across many areas of their lives with public, private, or governmental institutions – including in health care, the workplace, and higher education, as well as in personal interactions through gender slurs, microaggressions, and harassment (Fisher *et al.*, 2019);
4. "The gender pay gap may be increased and this may reduce the participation of women in the labor force" (Sauré *et al*., 2014: 17);
5. "Gender occupational and industrial segregation leads to a widening of the gender gap in employment" (Mansour *et al*., 2022: 102149).

It is also scientifically sound to conclude that with a higher impact of trade liberalization, the simple gender wage gap is reduced and the final wage gap is increased. Scholars substantiate that:

> The reduction in the gender labor force participation gap was driven by higher entry of women, in particular more educated women, and exit of the less educated men. This results in intrahousehold adjustments in work dynamics, with women entering the labor force to offset the lost income of male partners who left the labor force... trade liberalization increased female workers' unemployment rate and reliance on part-time jobs (Besedeš *et al*., 2021: 574).

3. Results and Discussion

3.1. Model approach to gender policy

Socially useful work is one of the main sources of ensuring human life. At the same time, various approaches to ensuring equal rights of women and men in the sphere of labor and social security are implemented in the context of social and labor relations in democratic states at the national level. Taking into account the fact that the female part of the population in some places, on the background of gender inequality, needs additional support from the state, democratic states have been implemented specific concepts of gender policy at the state level for a long time, which are also reflected in the legislation regulating social and labor relations.

It is inherent in a democratic society to choose the directions and vectors of its development, and therefore, the models of gender policy in various

countries differ. The variability of gender policy in the world community demonstrates that the modeling of the national model of gender policy allows taking into account specific features of national development and national traditions. At the same time, the construction of a national gender policy based on fundamental world models allows ensuring the implementation of a general international policy focused on preventing manifestations of any discrimination, particularly based on gender, etc.

Scholars distinguish four main approaches to gender equality. The first is the so-called formally egalitarian model inherent in the United States. Obligations regarding gender equality are legally enshrined within its framework, where the state is only partially sponsoring projects in this area. The second is a real egalitarian model introduced, for example, in the Scandinavian countries, where activities in this direction are institutionally and financially ensured at the state level. The third is a model of economic development, which includes an extensive system of assistance to working women. It exists in a number of Eastern European countries, for example, in Hungary. The fourth is a model of traditional family values, for example, like in Japan (Kormych, 2011).

Therefore, gender rights are not only a part of gender policy, but also a tool to ensure the levelling-off the position of women and men, in particular with the aim of ensuring a sufficient standard of living. Model approaches to defining the gender policy of the world countries take into account national traditions.

For example, the state minimally interferes in relations between employers and employees in the USA. At the same time, the employee's social security results from the quality and duration of his / her employment relationship, but not from the level of state financial support. The provision of gender equality in legislation is proclaimed in the USA in order to overcome the real gender gaps in social and labor relations, but such equality for women requires certain restrictions from them, which are sometimes contradictory in the context of career growth and motherhood.

Gender equality in the Scandinavian countries is achieved by state support for women, which is ensured by state paternalism. State intervention in the regulation of social and labor relations in this model also has a paternalistic character. At the same time, the implementation of a real egalitarian model is quite often accompanied by the professional segregation of women.

Despite the originality and difference in ways to ensure gender equality, the model approach to gender policy allows improving the national legislation of states taking into account national traditions and providing different ways of levelling-off the legal position of women and men in the labor and social spheres.

It is important to note that the gender policy of the democracies of the world embrace gender planning as an active approach to planning, where the gender principle is used as the main variable or main criterion, which seeks to integrate a direct gender dimension into the policy or activities. The basic conditions for the development and implementation of a gender policy are also ensured through gender inspections, which are subjected to any policy suggestions in order to ensure the avoidance of all possible gender-discriminatory effects arising from this policy, as well as with the purpose to promote gender equality (Glossary of labor law and social and labor relations (with reference to the experience of the European Union), International Labour Organization, 2006: 89, 87).

So, we can state that gender policy is one of the tools of civilizational development of society. This policy is aimed at forming the main dominant in society regarding the free disposal of a person's own abilities and the awareness that different behavior and different aspirations of women and men are supported equally. But the policy alone is not enough for the implementation of gender equality.

The state must establish specific rules of conduct for the participants in social relations at the level of legislation in order its implementation. And the sphere of social and labor relations is no exception. At the same time, the specifics of the national legislation of various states of the world require certain uniform standards for regulatory provisions in matters of ensuring gender equality. International and legal acts can be currently considered as such standards, and these unified approaches are established in the system of social and labor relations by the ILO acts.

3.2. Basic international standards of gender equality

The UN was the primer initiator of the development and implementation of the principle of gender equality. It was this international organization that contributed to the full involvement of women in economic activity on a par with men. The preamble of the UN Charter states:

> We the peoples of the United Nations determined... to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equality of men and women... to establish the conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained... (United Nations Charter, 1945: preamble).

Articles 1 and 2 of the Universal Declaration of Human Rights state that all people are born free and equal in dignity and rights. Everyone should have all rights and all freedoms, in particular regardless of sex (Universal Declaration of Human Rights, 1948: Articles 1, 2).

The obligations of states regarding non-discrimination of people, in particular on the basis of gender, are also enshrined in the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights. The UN Convention on the Elimination of All Forms of Discrimination Against Women establishes key international standards for the implementation of the principle of equality and respect for the human dignity of women on an equal basis with men in political, social, economic and cultural life.

It should be also noted that the Council of Europe and the European Community at their territorial level implement gender policy enshrined in their regulatory legal acts.

Given that European law is a special legal system that exists alongside the national legal systems of the EU Member States and international law, then it can be said to some extent that gender rights are the component of basic international standards. In particular, the Declaration of the Committee of Ministers of the Council of Europe "On the equality of women and men" declares the continuation and development of the policy, which is aimed at achieving true equality of women and men in all spheres of life.

The European Charter for the Equality of Women and Men in the Life of Local Communities stipulates that the equality of women and men is a fundamental right. The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence emphasizes that "the realization of *de jure and de facto* equality between women and men is a key element in preventing violence against women" (The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, 2011: preamble).

In general, these regulatory acts are only part of the legal system, which enshrines the principle of equality between women and men. International fundamental legal acts generally demonstrate the formation and development of gender policy in a civilized, democratic world. The analysis of international acts establishing gender equality makes it possible to currently highlight the following basic standards in this area:

- The equal right for men and women to use all civil, political, economic, social and cultural rights for the growth of the well-being of society and the family.
- The ban of any discrimination against women with the regulatory establishment of anti-discrimination measures, including appropriate sanctions.
- Improvement of national legislation, in particular by repealing existing laws, regulations, customs and practices that constitute discrimination against women.

- Gender equality as a legal phenomenon covers not only the anatomical and physiological differences of females and males, but also the social characteristics of men and women in the context of family upbringing and maternity as a social function. In this regard, special measures aimed at protecting maternity are not discrimination, but act as a mean of subject differentiation in order to levelling-off the legal position of men and women.
- Equality of women and men in the field of professional orientation, obtaining education and all types of professional training, in particular, regarding scholarships and other financial assistance during studies. Equality of rights of persons of both sexes in the field of employment, work, social security, health care, etc., in order to realize personal abilities and opportunities to provide a decent life for themselves and their family members.
- The same legal personality of men and women with the same opportunities for its implementation both while concluding contracts and managing property, and when applying to state and non-state institutions for the protection of their rights, in particular courts and tribunals.
- Protection of women from all forms of violence as a manifestation of violation of their rights and forms of discrimination, which results or may result in physical, sexual, psychological or economic harm or suffering to women, including threats of such actions, coercion or arbitrary deprivation of liberty, regardless of whether it happens in public or private life.

The given basic standards of gender equality are not exhaustive. They form the basis for the development and improvement of the national legislation of the world democratic states for detailing and expanding the principle of gender equality.

At the same time, special international institutions and organizations in various spheres of social life form appropriate standards in the sphere of their influence on the basis of selected basic standards. For example, the ILO is the leading international institution that takes care of establishing standards in the field of labor and social security, whose acts have internationally defined the equality of men and women in the field of work since 1919.

3.3. Gender equality and subjectival social differentiation in the acts of the International Labour Organization

The principle of gender equality in social and labor relations compared to international standards in the field of labor is a relatively new

phenomenon. However, even when society did not implement a policy of gender equality, the ILO already declared legal means of levelling-off the legal position of women and men in the field of labor. At the current stage of the development of civilization, it is safe to say that gender equality was first of all actualized at the level of socio-economic human rights, the rights of the second generation, which are related to the improvement of the socio-economic status of women.

A number of the ILO Conventions are focused on levelling-off the legal status of women and men. Such ILO Conventions include: Maternity Protection Convention, 1919 (No. 3); Night Work (Women) Convention, 1919 (No. 4); Night Work (Women) Convention (Revised), 1934 (No. 41); Night Work (Women) Convention (Revised), 1946 (No. 89); Equal Remuneration Convention, 1951 (No. 100); Social Security (Minimum Standards) Convention, 1952 (No. 102); Maternity Protection Convention (Revised), 1952 (No. 103); Discrimination (Employment and Occupation) Convention, 1958 (No. 111); Convention concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities, 1981 (No. 156); Night Work Convention, 1990 (No. 171) and others.

It is worth noting that gender equality of women and men in social and labor relations is mainly ensured by the operation of the principle of "unity and differentiation of legal regulation", which allows levelling-off the legal position of women and men in accordance with the grounds of differentiation of legal labor regulation: 1) objective; 2) subjective; 3) social.

For example, the ILO Maternity Protection Convention, 1919 (No. 3) established the working conditions of women in industrial enterprises, in particular regarding the right not to work and to leave work with the payment of benefits before and after childbirth, as well as the right to an additional break during working hours days for breastfeeding (the ILO Maternity Protection Convention, 1919 (No. 3).

Granting such rights to a woman is primarily due to the objective physiological functions of the female body. Further consolidation of international standards regarding the working conditions of women at industrial enterprises, such as: mines, quarries, construction enterprises, processing enterprises, etc., took place with the consolidation of the differentiation of the level of work of women and men, primarily with the aim of preserving the reproductive functions of women and the ability to perform her social function – maternity.

Maternity, as a key social role of a woman in society, serves as the basis for social differentiation of woman's working conditions and her social security, in particular for the period before and after childbirth. Maternity at the international level is recognized as requiring additional protection,

and in this regard, a number of social and labor rights are provided for women employed in industrial and non-industrial enterprises, engaged in agricultural work, as well as housewives, which act as means of levelling-off the position of women compared to men in the process of performing a mother's function. At the same time, maternity care covers:

1. restrictions for the employer regarding the use of the labor of mothers in certain jobs, the granting of leave in connection with pregnancy and childbirth;
2. medical care, including care and observation before, during and after childbirth, provided by qualified medical personnel;
3. financial and material support of a woman in connection with pregnancy and childbirth. The international standard in the field of labor regarding the mentioned monetary and material assistance enshrines a woman's right to such material support. At the same time, the ILO does not indicate to its Member States the specific sources of financing such payments, noting that monetary and material assistance is provided either from the funds of the mandatory social insurance system or from state funds (The ILO Maternity Protection Convention (No. 103), 1952).

The problem of gender equality for women is mainly present in professional activities and in family and domestic relations (Bass *et al.*, 2021). At the same time, the development of gender policy in democratic states also influenced the improvement of international standards in the field of social and labor relations.

In order to overcome gender problems in the field of work, neutrality in the conceptual apparatus is increasingly used when formulating the provisions of international acts. Gender-neutral legislation is being formed, where the employee's gender is maximally leveled as a condition for access to one or another right. A bright example of such gender-neutral legislation in the social and labor sphere is the right of employees with family responsibilities.

Gender-neutral legislation in the social and labor sphere does not replace legislation with the conditions of subjectival and social differentiation of the work of men and women. It gives men and women equal opportunities to fulfill their family responsibilities in those parts of social and labor relations, where it is possible. For example, both a woman (the child's mother, grandmother) and a man (the child's father, grandfather) can take care leave in Ukraine before the child reaches the age of three.

In fact, when talking about gender rights and political ways of their implementation, it is necessary to proceed not from the position of equality or identity of the rights and duties of women and men, but from the fact

that these are tools for levelling-off the legal position of people of both genders. The policy in this context acts as a kind of tool for introducing the leading ideas of modernity, which embody justice, freedom, democracy and equality. It is worth emphasizing that international standards in the field of labor and social security convince that gender equality as an embodiment of justice and counteracting manifestations of discrimination based on gender includes:

- equality of men and women in the realization of rights and responsibilities, in particular in social and labor relations;
- differentiation for realizing the rights and obligations on the basis of: 1) objectively physiological differences between the male and female body; 2) social differentiation caused by a woman's performance of her social role in society – maternity;
- gender-neutral legislation, which creates legal conditions for the realization of a number of social and labor rights regardless of gender, in particular for employees with family responsibilities.

This approach allows accomplishing the levelling-off the legal position of men and women, which in its essence is a manifestation of justice. For example, if the right to take care of a child before reaching a certain age can be used by both a man and a woman, social leave in connection with pregnancy and childbirth can be granted only to a woman for objective physiological reasons. At the same time, the right to free choice of occupation and profession is exercised on the basis of equality.

3.4. Legal conditions for the introduction of gender equality into national legal systems to ensure social and economic development of society

Based on the fact that socially useful work is the basis of the socio-economic development of society, each state tries to create such a legal regulation of labor to ensure the competitive advantages of its labor market over the labor market of other states.

Therefore, the globalization of the labor market does not prevent the development of national legislation to attract competitive employees. But, developing the national labor market and legislation, states should proceed from the fact that: "The state, declaring human rights as the highest social value ... must define the gender equality as an integral part of its state policy. Only a balanced combination of men and women in one team provides a competitive advantage" (Samilyk *et al.*, 2021: 7).

According to the analysis of international standards of gender equality, the national gender policy is based on the choice of a model of gender equality. At the same time, equal rights of men and women in social and

labor relations is more difficult task, because people in the process of socially useful work realize both their abilities to work and their physiological characters and social roles. In this regard, there is a need to find a balance between the equality of men and women and the subjectival differentiation of working conditions. Finally, gender-neutral legislation also acts as a specific legal mean of levelling-off the legal position of men and women in social and labor relations.

We believe that there are all the necessary legal tools to overcome modern manifestations of gender inequality in social and labor relations. Those tools are capable to improve the national legislation of states regarding gender equality in social and labor relations.

Thus, in order to minimize the differences in the duration of working hours of women and men, it is necessary to implement and develop gender-neutral rules for determining the duration of working hours, where the specific number of working hours should be calculated not because of the employee's gender, but because of the conditions of production and work at the workplace.

If we talk about the creation of equal opportunities for men and women in terms of spending specific time for professional activities with the fulfillment of family responsibilities, then in order of levelling-off the legal position of men and women, such compensatory mechanisms can be used as: social benefits, social holidays, rules for transferring the next certification of an employee, state quotas of workplaces at employers, state monetary compensation to the employer for the costs of professional development or retraining of a woman after being on maternity leave.

Regarding the professional differentiation of men and women in the context of the underestimation of women's work in managerial positions, this problem can be solved through direct state intervention in the legal regulation of labor relations at the legislative level, where it is necessary to establish gender quotas and gender parity in labor relations. We should also note that direct state intervention in the social and labor sphere by establishing gender quotas and gender parity in not all spheres of economic activity is appropriate, and therefore, the application of these tools should be applied differently both in relation to subjects obliged to comply with such quotas, as well as regarding spheres of economic activity.

That is, if it is possible to talk about gender parity or gender quotas in the field of education and science or in state or local authorities, then, for example, it would not be correct to dictate to the owner of the enterprise a parity procedure for the formation of management boards in the private sector of the economy. It is also necessary to assume that gender quotas or gender parity are not necessarily equal shares of women and men in specific positions.

Gender quota or gender parity can be determined by a specific ratio, for example, at least 10% or a third of the total number of the board members. It is also necessary to remember that a number of management positions are elective positions. Therefore, it is impossible to force people to choose their representatives, leaders or managers based on gender.

Regarding the problem of persecution of women and their discrimination, this problem, in our opinion, requires the construction of an ideological base of legal education and an increase in the level of moral and ethical norms in public life. The authorities are the main actors that can directly influence the dynamics of gender-based violence by addressing the factors that increase the incidence of violence against women and girls (Havronska *et al*., 2021).

At the same time, eradicating discrimination against women, as well as the problem of violence against women, is a practical task not only of the state, but also of non-state institutions and society in the whole. Moral and ethical standards of public life regarding non-discrimination on the basis of gender should be raised in society and supported, in particular, by state programs and regulatory consolidation for professional groups at the level of local acts.

Overcoming the problem of gender payment gaps is primarily determined by the division of labor both in the sectoral context and by the division of job categories, and therefore, the gender payment policy should be based on regulatory provisions of the ILO Equal Remuneration Convention, 1951 (No. 100), where the rule of equal remuneration of men and women for work of equal value is clearly established (the ILO Equal Remuneration Convention, 1951 (No. 100): 1). Levelling-off the position of men and women, according to the issue of gender inequality in employment, depending on professional segregation by professional groups in various spheres of economic activity and job hierarchy, should probably take place through financial support of women employed in less profitable spheres of activity.

At the same time, financial support should correspond to the general model of social security in the state. It is also worth separately studying the social compensatory factors of work in non-profit economic spheres, in particular: establishing a lower work rate due to increased rest time; establishment of flexible work schedules; increasing the social package at by state support programs, etc.

Conclusion

International standards of social and labor relations allow implementing the policy of gender equality in various variable models. The tools of labor

law and social security law used in regulating social and labor relations can be used to improve the national gender policy of the state.

Among special sectoral tools for solving gender problems, it is worth applying: subjectival and social differentiation of working conditions; gender neutral legislation; local acts as a way to raise the level of moral and ethical standards in professional groups; gender quotas and gender parity with differentiation in various spheres of economic activity; the application of financial and socially significant compensatory mechanisms for levelling-off the position of men and women in labor relations, for example, establishing a lower work rate due to increased rest time; establishing flexible work schedules; expansion of the social package at the expense of state support programs, etc.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 440-455
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Institutional support for the development of eco-industrial parks in the conditions of the circular economy formation taking into account world experience

DOI: https://doi.org/10.46398/cuestpol.4074.24

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Abstract

The article aims to substantiate the principles of institutional support for the development of eco-industrial parks in the conditions of formation of circular economy taking into account, the world experience. The methodological basis of the study is a systematic approach. It is based on the fact that the institutional support for the development of eco-industrial parks orients the actions of the authorities at different levels to establish certain norms, rules, restrictions, the order of their establishment and fulfillment in terms of achieving the goals of sustainable development, with interaction with the subjects of territorial communities. It is concluded that institutional support, should provide effective assistance in the development of public policies that underpin the eco-industrial parks, ensuring compliance with the rights and freedoms of business entities. In addition, the basis of institutional support for park

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Recibido el 07/07/22 Aceptado el 12/09/22

development is based on a systemic approach, which is proposed in the form of a recurrent functional relationship. Measures aimed at ensuring institutional support for these parks are highlighted.

Keywords: pre-industrial park; institutional support; industrial park; sustainable development; circular economy.

Apoyo institucional para el desarrollo de parques ecoindustriales en las condiciones de formación de una economía circular teniendo en cuenta la experiencia mundial

Resumen

El artículo tiene por objeto fundamentar los principios de apoyo institucional para el desarrollo de parques eco-industriales en las condiciones de formación de la economía circular teniendo en cuenta, la experiencia mundial. La base metodológica del estudio es un enfoque sistemático. Se fundamenta que el apoyo institucional para el desarrollo de parques eco-industriales orienta el accionar de las autoridades en los diferentes niveles a establecer ciertas normas, reglas, restricciones, el orden de su establecimiento y cumplimiento en cuanto al logro de las metas del desarrollo sostenible, con interacción con los sujetos de las comunidades territoriales. Se concluye que el apoyo institucional, debe proporcionar una asistencia eficaz en el desarrollo de políticas públicas que apuntalen los parques eco-industriales, asegurando el cumplimiento de los derechos y libertades de las entidades comerciales. Además, la base del apoyo institucional para el desarrollo de parques se fundamenta mediante un enfoque sistémico, que se propone en forma de relación funcional recurrente. Se destacan las medidas destinadas a garantizar el apoyo institucional de estos parques.

Palabras clave: parque preindustrial; apoyo institucional; parque industrial; desarrollo sostenible; economía circular.

Introduction

Modern globalization challenges determine the formulation of the question regarding the further directions of development of the economies of the countries of the world, taking into account the principles of the circular economy. The principles of the circular economy formation

actualize the issue of industrial development on an innovative basis with the involvement of "green" technologies and a careful attitude to resources using creative approaches to management, the use of a sustainable development approach, etc.

The global concept of industrial development consists in ensuring competitive industrial production that would satisfy demand, taking into account the environmental friendliness of production and the principles of the circular economy.

This paradigm of industrial development corresponds to the direction of development of eco-industrial parks, which at the same time provide an opportunity for industrial enterprises to develop, attract investment resources, introduce innovations, ensure environmental sustainability of production, maximize the use of resources, implement waste-free production and increase the competitiveness of products. At the same time, the activation of the development of eco-industrial parks actualizes the issue of their institutional support and regulatory support for functioning and development in the conditions of the circular economy formation.

The topic of institutional support for the development of eco-industrial parks is becoming especially relevant for Ukraine, which will contribute to its post-war renewal. The development of eco-industrial parks in Ukraine will provide an opportunity to revitalize industrial enterprises, a large number of which have already suffered significant losses today, to increase resource efficiency, zero waste and environmental friendliness of production.

The purpose of the presented research is to justify the principles of institutional support for the development of eco-industrial parks in the conditions of the circular economy formation taking into account world experience. To achieve it, the following tasks were set and solved for the authors:

- The relevance of the research is substantiated, taking into account the existing globalization challenges of the development of the economies of the countries of the world, taking into account the principles of the circular economy.
- The advantages of the development of eco-industrial parks for the economic, ecological and social spheres are highlighted.
- Current regulatory and legislative acts regarding the development of industrial parks in Ukraine are defined.
- The essential difference between industrial and eco-industrial parks is singled out.
- The principles of institutional support of eco-industrial parks are clarified;

- The value of incentives and tax benefits for the development of eco-industrial parks, as well as their application in different countries of the world, is highlighted.
- To substantiate the foundations of institutional support for the development of eco-industrial parks in the conditions of the formation of a circular economy, a recurrent functional relationship is proposed.
- Measures to ensure institutional support of eco-industrial parks in the conditions of the formation of a circular economy taking into account world experience are substantiated.

The methodological basis of this research is a systematic approach, which makes it possible to comprehensively approach the issues of institutional support for the development of eco-industrial parks and take into account the multi-vector nature of this process in the conditions of the circular economy formation, which is possible if the principles of the systemic approach are followed.

1. Literature Review

The relevance of research topics is confirmed by numerous articles by leading scientists of the domestic and foreign level. Among the scientists who studied the peculiarities of the development of eco-industrial parks in the context of the circular economy and taking into account the modern trends of sustainable development of territories, the following should be noted: Abraham (2021); Butko (2020); Chin (2021); Cruz-Avilés (2021); Derhaliuk (2021); Maryam (2022); Negesa (2022); Nuhu (2021); Petrushenko (2021); Pohrebniak (2021); Popelo (2021); Revko (2021); Shevchuk (2021); Shkarlet (2020); Song (2021); Tseng (2021); Tulchynska (2015); Vovk (2021); Zhang (2021) and other.

The scientists' article (Nuhu *et al.*, 2021) is devoted to the evaluation and features of the application of tools of the geoinformation system and multi-criteria decision-making in determining and designing the locations of eco-industrial parks. Researchers (Maryam *et al.*, 2022) set out to identify the existing condition of the batik village area in Louvain Surakarta in order to transform it into an ecological industrial park.

The study found that medium-sized micro-enterprises in the Laweyan Batik Village area of Surakarta produce hazardous liquid, gaseous and solid waste. According to scientists, the creation of an eco-industrial park will have ecological, economic and social efficiency, in particular by transitioning from a linear industrial system to a circular system.

The article (Abraham *et al.*, 2021) analyzes the role of the circular economy in minimizing the consumption of fresh resources and maximizing the reuse of materials. As a result of the study, it was proved that an eco-industrial park can be profitable under the condition of strict restrictions on emissions and materials.

The practical significance of the research results (Chin *et al*., 2021) is a proposal for the creation of an eco-industrial park on an industrial site, which will be aimed at solving the problem of reducing the consumption of fresh water or pollutants. The paper (Negesa *et al*., 2022) is based on a study of the transition process and results of a typical African industrial park, the Hawassa Industrial Park (HIP) in Ethiopia. The authors took into account the international framework for eco-industrial parks and applied the framework of strategic management of the niche in order to reveal the efficiency and the transition process.

The authors of the article (Cruz-Avilés *et al*., 2021) prove that eco-industrial parks are a relevant alternative for reducing and optimizing water consumption through reuse and recycling networks. The result of the study is a proposal for optimal design of water supply networks in eco-industrial parks. Scientists (Petrushenko *et al*., 2021) are investigating the possibilities and directions of creating eco-industrial parks in the conditions of a transitional economy. The authors are convinced that one of the conditions for anticipatory sustainable development in Ukraine is the creation of a national program to support the transformation of innovation parks into their ecological versions, as well as investment in greenfield eco-industrial parks.

The authors prove (Tseng *et al*., 2021) that their research will contribute to the creation of attributes for the transition to hierarchical eco-industrial parks with qualitative information. Scientists have proven that the policy and regulatory framework contribute to the cooperation of firms in the model of transition to an eco-industrial park.

The scientific work (Song *et al*., 2021) demonstrated that the creation of a national eco-industrial park contributes to the reduction of industrial emissions. In the study (Zhang *et al*., 2021), scientists analyze the advantages of applying the industrial symbiosis approach in agriculture and horticulture. As a result of the research, a project of an eco-industrial park combining dairy farming, greenhouse vegetable growing and mushroom cultivation is proposed.

Despite a number of studies on the peculiarities of the development of eco-industrial parks, the issue of institutional support for their development requires further study and analysis.

2. Results

Innovative infrastructure plays an important role in innovative development. Innovative infrastructure is represented by a wide range of diverse participants, including business incubators, innovation centers, industrial and eco-industrial parks, etc.

Industrial and eco-industrial parks are one of the powerful drivers of innovative development and the establishment of a circular economy. Regardless of the different legislative features of different countries of the world, the unifying factor for industrial and eco-industrial parks is that it is not only a certain plot of land on which industrial production is located, but it is a center of innovatively oriented enterprises for which a special regime of economic activity is extended for the further activation of innovative the direction of their activities. The development of eco-industrial parks has great advantages for ensuring the development of the economy and the formation of a circular economy, since they:

- intensify investment activity in innovative development, as a result of the fact that the unification of enterprises provides greater attractiveness and opportunities for diversification of sources of attraction of investment resources;
- provide subsidies for priority, high-tech areas of industrial production and their innovative orientation, including through preferential taxation;
- have an ecological orientation of production activities and apply the principles of the circular economy;
- activate employment and consumption of specific territories near which they are located;
- increase the self-sufficiency of territorial communities due to the payment of local taxes, etc.

The formation of industrial parks is not something new, since the first experience of such an association took place in Manchester back in 1896. Over time, the development of industrial parks became widespread. Today, the idea of industrial parks has transformed into eco-industrial parks. In Ukraine, the law "On Industrial Parks" currently operates, which defines that it is:

> The territory designated by the initiator of the creation of the industrial park in accordance with the urban planning documentation, equipped with the appropriate infrastructure, within which the participants of the industrial park can carry out economic activities in various spheres (Shevchuk, 2021: 59).

In general, such a legally established definition reflects the general essence of an industrial park, which consists in the union of various production enterprises that may belong to different spheres of economic activity with the aim of attracting investment resources, reducing production costs, and producing innovative, competitive, environmentally friendly products with taking into account the principles of the circular economy.

The main difference between eco-industrial parks and industrial parks is the construction of a production model aimed at increasing resource efficiency and increasing not so much economic, but more ecological and social indicators of industrial production.

The development of eco-industrial parks in the conditions of the circular economy formation requires institutional support. Institutional support for the development of eco-industrial parks directs the actions of authorities at different levels to establish certain norms, rules, restrictions, the procedure for their establishment and compliance with the achievement of sustainable development goals with interaction with the subjects of territorial communities and eco-industrial parks.

Institutional support for the development of eco-industrial parks should provide effective support for the development of institutions supporting eco-industrial parks, ensuring compliance with the rights and freedoms of business entities, which can be provided directly or indirectly.

In turn, institutional support for the development of eco-industrial parks involves the work of relevant institutions and organizations in the direction of the development of legal regulations, as well as direct and indirect support of state and local authorities, corporate and entrepreneurial structures, specialized institutions in the field of industry, innovative development, direction in the direction of the establishment of a circular economy, etc.

A special place in institutional support is played by regulatory policy, which reflects the needs of society and acts as an activator of entrepreneurial activity in the direction of the creation and functioning of eco-industrial parks.

At this time, a number of important documents have been adopted in Ukraine, which, in addition to the Law of Ukraine "On Industrial Parks", includes the "National Economic Development Strategy of Ukraine for the period until 2030", which outlines the directions and principles of directing industrial parks in the direction of their reformation into eco-industrial parks. The problems of industrial parks are taken care of by the Ministry of Economy of Ukraine, which is entrusted with the responsibilities of ensuring and implementing state policy, the register, monitoring and control over compliance with the requirements for the functioning of Industrial Parks, providing informational and advisory support and activating the involvement of participants.

The main driver of the development of industrial and eco-industrial parks in the world is the consolidation of tax incentives and benefits (Fig. 1).

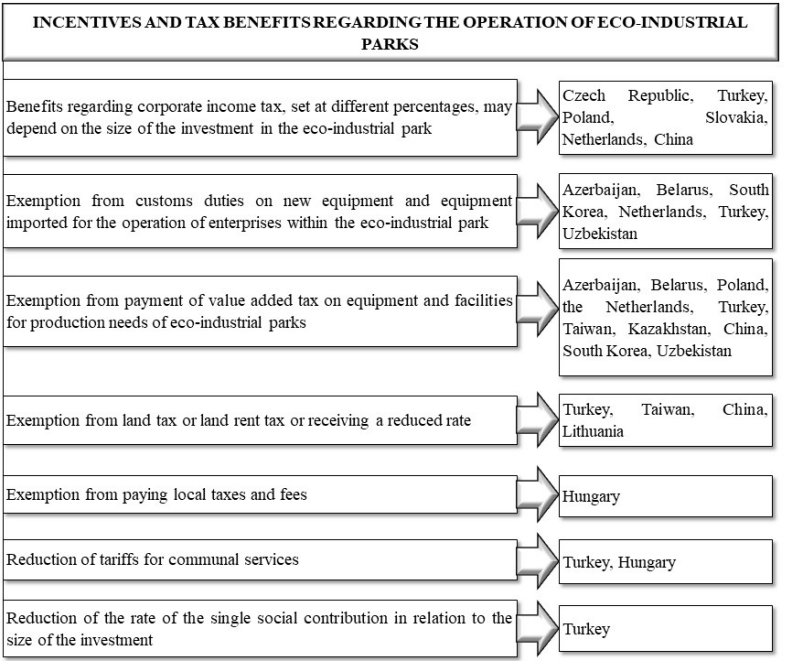

Fig. 1. Incentives and tax benefits for the operation of eco-industrial parks in the world. Source: generated by the authors

It should be noted that despite the uniformity of the concept of the development of eco-industrial parks in different countries, there are different vector directions of benefits for their activities. Among the most common and, as evidenced by experience, effective benefits are:

- Benefits in relation to corporate income tax, which are set at different percentages. This is the most widespread benefit for the activities of eco-industrial parks. It is used in such countries as the Czech Republic, Turkey, Poland, Slovakia, the Netherlands, China, etc. The reduction of corporate income tax often depends on the size of investments in the eco-industrial park:
- Exemption from customs duties on new equipment and equipment imported for the operation of enterprises within the eco-industrial park. Regarding the exemption from import duties, deadlines may be set for the start of the park. This benefit is used in Azerbaijan, Belarus, South Korea, the Netherlands, Turkey, Uzbekistan, etc.

- Exemption from payment of value added tax on equipment and equipment for new equipment. Such benefits are provided in Azerbaijan, Belarus, Poland, the Netherlands, Turkey, Taiwan, Kazakhstan, China, South Korea, Uzbekistan.
- Exemption from land tax or land rent tax or receiving a reduced rate. Such benefits are used in Turkey, Taiwan, China, and Lithuania. In Turkey, plots of land are provided free of charge for the production needs of eco-industrial and industrial parks.
- Exemption from paying local taxes and fees. This benefit applies in Hungary.
- Reduction of tariffs for communal services is used as a benefit in Turkey and Hungary.
- A reduction in the rate of the single social contribution in relation to the size of the investment during the first ten years of operation of the eco-industrial park is applied in Turkey.

Also, different countries use a different approach to obtaining tax incentives and discounts for paying taxes. Most often, the size and calculation of preferential rates depends on the size of the investment in the eco-industrial park. Such a system of their calculation is used in Slovakia, Turkey, South Korea, Poland, and the Czech Republic. In South Korea and China, the calculation of tax discounts depends on the volume of exports of products of eco-industrial parks, issued.

To justify the principles of institutional support for the development of eco-industrial parks in Ukraine (EIP) in the conditions of the formation of a circular economy, we suggest using a systemic approach. Its visualization can be offered in the form of a recurrent functional relationship, which has the following form:

$$EIP = f\begin{cases} G(d, ep, me, er, i, sb), \\ BE, \\ NR(i, iec, tc, iip), \\ R, \\ A \end{cases} \quad (1)$$

where G – the goals of the development of eco-industrial parks in the conditions of the formation of a circular economy (development of the industrial sector of the economy, its revitalization (d), increasing the employment of the population (ep), ensuring the environmental friendliness of production (me), increasing the efficiency of the use of resources (er), attracting investments (i), activating small business (sb) etc.). Specifications and other goals that are planned to be achieved during the development of eco-industrial parks must have certain economic, social and environmental

indicators that illustrate the positive effect of their development;

BE – business entities subject to institutional and regulatory changes, including the application of preferential taxation and other incentives;

NR – norms and rules necessary for institutional support for the development of eco-industrial parks in the conditions of the formation of a circular economy. It includes spreading awareness of business entities and the population about the benefits and significance of eco-industrial parks (i), increasing innovative and ecological culture of the population (iec), activation of territorial communities regarding the creation of eco-industrial parks (tc), development of education and science capable of increasing intellectual and innovative potential (iip), etc;

R – resources that must be provided during the development of eco-industrial parks. Such resources include the possibility of allocating necessary land plots, providing them with the necessary infrastructure, attracting investment resources, including through public-private partnerships, etc.;

A – regulation that must be used in the formation of institutional support for the development of eco-industrial parks, which involves changes in the regulatory and legislative framework, the implementation of appropriate policies for the development of eco-industrial parks.

Thus, this recurrent functional relationship will make it possible to take into account the various directions of institutional support of eco-industrial parks in the conditions of the circular economy formation and to determine the effectiveness of such support.

Institutional support for the development of eco-industrial parks in the conditions of the circular economy formation, taking into account world experience, should include the following measures (Fig. 2):

- A study of the world experience in the development of industrial eco-industrial parks, as well as the transformation of industrial into eco-industrial parks.
- Determination of requirements for eco-industrial parks, taking into account the current situation in the country and its regions, as well as the principles of the circular economy.
- Substantiating the need and importance of institutional support for eco-industrial parks in the conditions of the formation of a circular economy.
- Introduction of changes in the regulatory and legislative field in the direction of the development of eco-industrial parks.

- Substantiation of the principles of institutional support for the development of eco-industrial parks, including with the help of a recurrent functional relationship.
- Assessment of the possibility of obtaining an effect in the economic, social and ecological spheres as a result of institutional support and development of eco-industrial parks in the conditions of the formation of a circular economy.
- Substantiating the benefits of incentive and preferential measures to encourage the development of eco-industrial parks, which are related to regulatory changes.
- Determining the effectiveness of the developed measures of institutional support for the development of eco-industrial parks in the conditions of the formation of a circular economy.
- Monitoring of changes in the institutional sphere in relation to the activation of the development of eco-industrial parks in the conditions of the formation of a circular economy.
- Analysis of macroeconomic indicators and determination of the impact on their changes as a result of institutional support for the development of eco-industrial parks in the conditions of the formation of a circular economy.

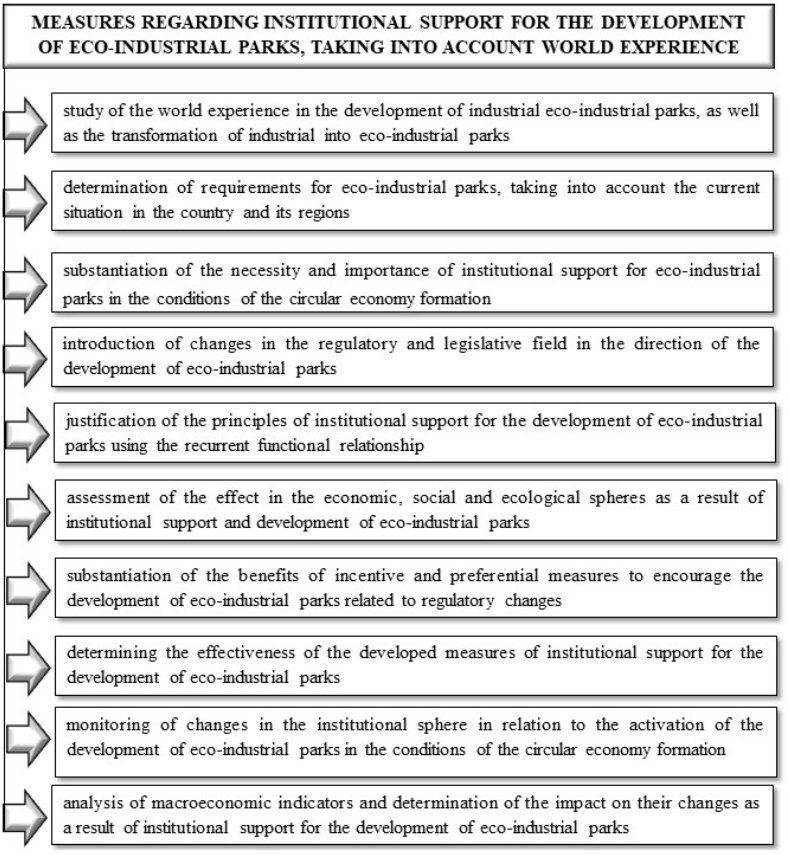

Fig. 2. Measures regarding institutional support for the development of eco-industrial parks in the conditions of the circular economy formation, taking into account world experience. Source: generated by the authors based on Industrial Parks, Law of Ukraine on June 21, 2012 № 5018-VI, National Economic Strategy 2030. Cabinet of Ministers of Ukraine. https://nes2030.org.ua.

Direct support for the development of eco-industrial parks can be provided from state and local budgets. Management companies can receive financing for equipping eco-industrial parks, developing infrastructure, preparing project documentation, setting aside land plots, etc.

Decision-making regarding institutional support for the development of eco-industrial parks in the conditions of the circular economy formation should take into account the national culture, political conditions, resource

opportunities and foresee the directions of the country's further economic development, taking into account the existing crisis phenomena.

Conclusion

The scientific novelty of this study is the substantiation of the principles of institutional support for the development of eco-industrial parks in the conditions of the circular economy formation using a systemic approach, which is proposed in the form of a recurrent functional relationship and includes taking into account the goals of the development of eco-industrial parks, the identification of business entities involved in the work of eco-industrial parks, norms and rules necessary for the institutional support of development in the conditions of the circular economy formation, resources for the development of eco-industrial parks in the country and regulatory measures necessary for directing economic policy to their development.

The practical significance of this update is that this functional recurrent relationship will make it possible to apply a conceptual and methodological approach to the assessment of efforts to institutional support the development of eco-industrial parks and will contribute to the achievement of the goals of the circular economy.

Institutional support for the development of eco-industrial parks in the conditions of the circular economy formation will contribute to obtaining such positive results for the post-war economy of Ukraine and will contribute to:

- revitalization of the industrial sphere of Ukraine's economy;
- activation of attraction of investment resources, including foreign investments;
- increasing the environmental friendliness of industrial production and its zero waste;
- use of "green" technologies, careful use of non-renewable resources;
- reduction of waste due to the implementation of circular economy principles;
- ensuring the improvement of the efficiency of the use of resources;
- ensuring increased self-sufficiency of territorial communities in the locations of eco-industrial parks;
- promote the interaction of the territorial community with business;
- increasing the employment of the population and the development of small businesses;

- obtaining a production symbiosis for the participants of the eco-industrial park, etc.

Issues related to the development of effective state management mechanisms for the activation of the attraction of investment resources for the development of eco-industrial parks, as well as the determination of the principles of transformation of existing industrial parks into eco-industrial parks, require further research.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 456-473
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Guarantees of an independent tribunal in administrative proceedings in the context of the implementation of the human right to a fair trial

DOI: https://doi.org/10.46398/cuestpol.4074.25

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Abstract

The purpose of the article was to identify problem areas to ensure an independent court in administrative proceedings in the context of the implementation of the human right to a fair trial. The research was conducted using general scientific (induction, analysis, synthesis) and special legal (formal-logical, dogmatic, comparative-legal) methods. The authors have determined relevant areas of court staffing, such as: providing judicial power; providing administrative positions for the court and judicial staffing. It is stated that the improvement of legislation in the judicial sphere must be carried out from the inadmissibility of its exclusively positivist interpretation. It is concluded that, in order to guarantee the immunity of a judge in a broad context, it is important to prevent cases of unjustified disciplinary proceedings against judges. An important guarantee of the legality of the disciplinary liability of a judge is the observance by the subject of disciplinary liability of the due process established by law. It is emphasized that this is an assessment by the administrative court of the circumstances on which the plaintiff bases his claims in cases of appeal against these acts of the High Council of Justice.

Keywords: human rights; right to a fair trial; administrative proceedings; independent tribunal; immunity.

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Recibido 22/07/22 Aceptado el 12/09/22

Garantías de un tribunal independiente en los procedimientos administrativos en el contexto de la implementación del derecho humano a un juicio justo

Resumen

El propósito del artículo fue identificar áreas problemáticas para garantizar un tribunal independiente en procedimientos administrativos en el contexto de la implementación del derecho humano a un juicio justo. La investigación se llevó a cabo utilizando métodos científicos generales (inducción, análisis, síntesis) y jurídicos especiales (lógico-formal, dogmático, jurídico-comparativo). Los autores han determinado áreas relevantes de dotación de personal de los tribunales, tales como: proporcionar el poder judicial; proveer puestos administrativos para la corte y dotación de personal judicial. Se afirma que el perfeccionamiento de la legislación en el ámbito judicial debe realizarse desde la inadmisibilidad de su interpretación exclusivamente positivista. Se concluye que, para garantizar la inmunidad de un juez en un contexto amplio, es importante prevenir casos de procesos disciplinarios injustificados contra jueces. Una garantía importante de la legalidad de la responsabilidad disciplinaria de un juez es la observancia por parte del sujeto de la responsabilidad disciplinaria de los debidos procedimientos establecidos por la ley. Se destaca que se trata de una apreciación por parte del tribunal administrativo de las circunstancias en que el actor fundamenta sus pretensiones en los casos de apelación contra estos actos del Consejo Superior de Justicia.

Palabras clave: derechos humanos; derecho a un juicio justo; procedimiento administrativo; tribunal independiente; inmunidad.

Introduction

Ensuring an independent court is a necessary condition for exercising the right to a fair trial in accordance with paragraph 1 of Art. 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 04.11.1950 ETS No 005 (European Convention on Human Rights, 1950: 6). The peculiarities of the current stage of development of the national justice system dictate the specifics of the measures needed to ensure an independent judiciary.

Therefore, the selection of relevant areas of an independent judiciary in administrative proceedings in the context of the implementation of the human right to a fair trial in view of the legal status of judges as a subject of the judicial power, as well as its functions, is the scientific task of this article.

The results of this study correlate with the areas of improvement of the justice system, defined in the Strategy for the Development of Judiciary and Constitutional Justice for 2021-2023: "ensuring the independence of the judiciary through the development of guarantees of legality and validity of judicial acts; development of provisions on the immunity of a judge in the context of bringing him to justice and some other areas".

As a result of this study, both the categories of the general part of administrative law and process (administrative procedure, subject of public administration) and individual institutions of the special part (staffing of public authorities, public administration in the field of justice) are developed. Therefore, this study develops the conceptual and categorical apparatus of the theory of administrative law and process, as well as strengthens the links between the institutions of administrative law and administrative process.

In the science of administrative law and procedure, the following issues remain unresolved: staffing of the court in a broad sense (training, placement, etc.), features of staffing certain categories of administrative court positions (e.g., court clerk, judicial protection staff), immunity ratio and immunity of a judge. These problems are related to the subject.

1. Methodology of the study

The normative-legal regulation of legal relations in the field of the judicial system on ensuring an independent court in the context of the implementation of the human right to a fair trial has been worked out. The research was performed using both general scientific and special legal methods of scientific knowledge, as well as in accordance with the requirements of scientific objectivity.

The application of a systematic approach in the study allowed to study of the administrative-legal relations regarding the subject of research as a system, which in turn became the basis for establishing its elements and links between them (immunity of the judge, court staff, etc.). Using the formal-logical method, the key concepts of work were developed and applied: "immunity of a judge", "staffing", "an administrative procedure", etc.

At the same time, the application of the synthesis method allowed to generalize the current issues of ensuring an independent court and to create a basis for determining measures to address them. The application of the formal-dogmatic method made it possible to strictly adhere to the terminological meaning of the developed and obtained categories and concepts. The application of the dialectical method allowed to take into

account the general principles of construction and development of the judicial system.

The normative basis of this study is the regulations in the field of the judiciary. Materials of judicial practice of consideration of disputes arising from administrative-legal relations in the field of ensuring an independent court have been worked out. A survey of 15 respondents was conducted among employees of the Territorial Departments of the State Judicial Administration of Ukraine (Kyiv, Chernivtsi, Khmelnytskyi regions) and employees of some other subjects of plenary power whose competence includes administrative-legal relations on the organization of the judiciary.

2. Results and Discussion

2.1. Ensuring an independent court in administrative proceedings and Ukraine's international obligations

Global political, economic, social, and legal transformations that are taking place in Ukraine against the background of numerous reforms in all spheres of the society, directly affect the entire national legal system (Denysyuk, *et al*., 2021). At the same time, the legal issues are often embedded in a cluster of other problems that can affect many areas of life, including housing, employment, education, health and access to justice. This makes it very important to address these problems as early as possible (Teremetskyi *et al*., 2021). Besides, the European integration aspirations of state development chosen by Ukraine requiring the introduction and application of European values into various spheres of human activities, in particular in the sphere of justice, also facilitate this (Teremetskyi *et al*., 2020).

The development of legal means of regulating the judiciary is one of the main activities of the judiciary in cooperation with other branches of public authority. The activities of the judiciary are directly related to all processes of public administration. Therefore, ensuring the sustainable development of the state in a democratic direction is impossible without the effective operation of the judiciary.

Disclosing the content of the right to a competent, independent, and impartial tribunal established by law, the Office for Democratic Institutions and Human Rights notes that "competence" usually presupposes compliance with the following three requirements: the competence of individual judges; jurisdiction of the court to make legally binding decisions and jurisdictional jurisdiction of the court (Kovalchuk *et al.,* 2021: 961).

International standards for the organization of the judiciary indicate the importance of staffing not only for judges but also for support staff represented by administrative positions, as well as positions of the judiciary. In particular, in the Supplementary Agreement No 1 between the Government of Ukraine and the European Commission, acting on behalf of the European Union, on amendments to the Financing Agreement for the program "Support to Reforms in the Rule of Law in Ukraine (LAW)" (ENI / 2016 / 039-835 & ENI / 2020 / 042-827) dated 02.09.2020, training of court staff is recognized as an important area of budget allocations to ensure the efficiency of the judiciary, as well as their independence and efficiency (Official Gazette Of Ukraine, 2021).

In the context of judicial reform in the formation of the judiciary, important changes have been made to the Constitution of Ukraine on the procedure for appointment (election) to the position of a judge. Previously, the first appointment to the position of professional judge for a term of 5 years was made by the President of Ukraine. All other judges, except for judges of the Constitutional Court of Ukraine, were elected by the Verkhovna Rada of Ukraine indefinitely, in accordance with the procedure established by law (Article 128 of the Constitution of Ukraine).

Now the procedure for appointing a judge has been significantly simplified and brought closer to European standards. According to Art. 128 of the Constitution, the appointment of a judge is made by the President of Ukraine on the proposal of the Supreme Council of Justice in the manner prescribed by law. Such an appointment is made by competition. As for the Head of the Supreme Court, he is still elected and dismissed by secret ballot by the Plenum of the Supreme Court in the manner prescribed by the law.

Thus, in the context of judicial reform, the Decree of the President of Ukraine "On the Strategy for Reforming the Judiciary, Judiciary and Related Legal Institutions for 2015-2020" an action plan to reform the judiciary was approved. This Strategy identifies priorities for reforming the judicial system, judicial proceedings, and related legal institutions in order to implement the rule of law and ensure the functioning of the judiciary in line with public expectations of an independent and fair judiciary and European values and human rights standards.

Undoubtedly, the partial deprivation of political influence on the formation of the judiciary should be considered a positive development in the reform of the justice system. The outlined priorities were implemented in the further reform of the judiciary, which was reflected in the provisions of the Strategy for the Development of Judiciary and Constitutional Justice for 2021-2023.

However, the catastrophic shortage of judges remains a problematic issue today. Thus, in the Kharkiv Court of Appeal with 60 full-time judges,

only 14 judges actually work, and this court is the largest among the appellate general courts in terms of workload (Judicial and Legal Newspaper, 2021).

The shortage of staff is currently due to factors of both general and specific nature. Thus, a general factor is the presence of gaps in the legislative regulation of the principles of staffing the courts. This is largely due to the lack of elaboration on this topic in the scientific literature, and insufficient consideration of the international experience in determining the principles of staffing courts in national research.

In particular, A.V. Shevchenko, based on the results of foreign experience of personnel work in the field of justice, evaluates the advantages and disadvantages of the electoral model of forming the judicial corps. As for the principles of staffing the courts, the coverage is only the principle of independence of the judiciary as a starting point for the development of labor legislation in the field of personnel work in court (Shevchenko, 2020: 84-85).

2.2. The administrative-legal content of ensuring an independent court in administrative proceedings

Taking into account Ukraine's international obligations in rule-making work today is axiomatic. However, the mentioned above position of S.P. Holovatyi on the prevalence of positivist principles of legal understanding in the science of administrative law, which creates a limited perception of the values of the rule of law, developed by the world community, continues to be relevant.

This, in turn, creates significant gaps and conflicts in the administrative-legal regulation of legal procedures for staffing courts. Therefore, the provisions set out by the Venice Commission on the criteria of the rule of law, in particular on the rule of law, have to be recognized as system-forming for the further development of the rule of law as a principle of staffing the courts.

Factors such as the re-launch of the HCJC of Ukraine, which is still closed, the "ceremonial function of the President in appointing judges" should be identified, as there are cases of unjustified failure to issue decrees by the President for a long time, unjustified and unexplained return from the Presidential Administration of Ukraine submits materials of the High Council of Justice on the appointment of judges.

Another category of positions in the court, without which it is impossible to imagine the administration of justice, are administrative positions: a chairman of the court, a deputy chairman of the court, and a secretary of the court chamber. The administrative-legal principles of the relevant activities have not received much attention in the pages of scientific literature.

One of the most detailed studies that reveal this issue is the work of O.V. Ul'ianovska, devoted to the development of administrative-legal bases for the implementation of the right to judicial protection in the national legal system. Within the subject of the research, the scientist deals in particular with the issue of the essence of staffing the courts in the context of ensuring the exercise of the right to judicial protection.

Especially, the author's concept of state-service relations in the field of justice, the definition of administrative position in court, and its features. Thus, state-service relations in the field of the judiciary are defined as internal organizational relations by nature, arising in connection with their parties' professional activities in accordance with the law and aimed at implementing the tasks and functions of the state in the field of justice. Such relations are governed by the rules of administrative law, both substantive and procedural (Ul'ianovska, 2019: 230-231).

This position of the author is based on the development of an established understanding of state-service relations in administrative law as those that are part of the regulation of administrative law, both substantive and procedural, can be regulated by acts of both legislative and bylaw and arise in connection with public service (public) officers. The value of the scientific position of O.V. Ul'ianovska is in proving the expediency of extending the general principles of state-service relations to internal organizational relations arising in connection with the activities of the judiciary.

An administrative position in a court is defined as a structural unit of a specific judicial body, determined by its staff list, which according to the law is entrusted with a certain area of administrative (organizational-administrative and advisory) powers. A person appointed to such a position receives remuneration exclusively from the state budget.

Signs of an administrative position are:

> A type of public service; functions of consulting and advisory and organizational and administrative nature; the procedure for holding a position provides for the election procedure, but the basis for holding an administrative position is the issuance of an administrative act of an individual nature; may be combined with the functions of the administration of justice by an official; is marked by the state-authoritative nature of powers and their focus on the organization of justice; the official receives a salary exclusively at the expense of the State budget (Ul'ianovska, 2019: 230-231).

Outlined conclusions O.V. Ul'ianovska (2019) are consistent with current national legislation in the field of justice, the practice of its application, as well as current international standards for the organization and operation of the judiciary. In addition, the Strategy for the Development of Judiciary and Constitutional Justice for 2021-2023 states the expediency of

introducing an alternative procedure for staffing these positions, if due to various circumstances the usual procedure (election by the relevant court) is not effective.

Especially, the subject of appointment to such positions should be the High Council of Justice, which will make appointments from among the candidates considered at the meeting of judges of the relevant court (paragraph 4.2.1).

The outlined provisions are consistent with the provisions expressed by O.V. Ul'ianovska (2019). In particular, limiting the number of candidates from which the High Council of Justice will appoint only judges who have been elected corresponds to the organizational-administrative nature of the position, as the chairman of the court must be able to effectively manage the work of a particular court.

On the positive side, the definition of both the subject of appointment and the additional nature of the relevant procedure, in general, should be noted. Therefore, the scientific positions expressed by O.V. Ul'ianovska (2019) lays the foundations for further improvement of the administrative-legal status of officials in administrative positions of the court.

Staffing of courts in a broad sense involves the implementation of a significant number of functions of personnel work: recruitment; analytical work on preservation, strengthening, placement, selection of personnel; personnel needs planning; formation of the structure of a particular judicial institution; monitoring the implementation of personnel decisions.

Attributes of the functions of personnel work within the judiciary are: objective (dependence on the needs of society as a system of higher-order and the judiciary in particular); managerial nature, as carried out in the order of implementation of management activities; subjective, as the subjects of execution are public officers; targeted, as they are aimed exclusively at fulfilling the tasks of the judiciary; continuous nature.

The role of personnel work in the judiciary is reflected in the broad limits of its legal regulation: from the Constitution of Ukraine as an act of direct action to bylaws, including acts of judicial self-government and local regulations. This view is defended by A.V. Shevchenko based on the results of a study of administrative-legal guarantees of the quality of court staff as an element of personnel work.

At the same time, the scientist proceeds from the established concept of function as a combination of the external form of manifestation of a certain phenomenon and its target orientation, consistently exploring the categorical series of "judicial power functions", "public administration personnel functions" (Shevchenko, 2020: 107-143-144).

This scientific approach deserves to be supported. Acquisition of positions in courts, appointments, and dismissals are the key to the proper functioning of courts in particular and the judiciary in general. Therefore, the scientific approach of A.V. Shevchenko, despite the fact that it does not refer to the staffing of courts, but to the staffing of the judiciary as a complex phenomenon, should be used as a basis for this work to reveal ways to optimize current legislation in the field of staffing of courts.

A broad understanding of the staffing of the courts involves the performance of such a function as staffing: the distribution of available staff according to the functions that can be performed most effectively by specific employees. In this context, the position expressed in Recommendation No. R (86) 12 of the Committee of Ministers of the Council of Europe to member states on measures to prevent and reduce excessive workload in the courts remains relevant.

This position concerns the need to avoid, if possible, the performance of functions not related to the judiciary by judges: holding wedding ceremonies; concluding agreements related to family property; resolving issues related to the promulgation of prohibitions imposed on marriage, and some others. In particular, non-judicial functions include the collection of court fees (Supreme Economic Court of Ukraine, 2014).

Analysis of the provisions of the current legislation, both in the field of justice and procedural law shows that these requirements are generally implemented in national law and implemented in practice. At the same time, the approach to the collection of court fees by judges is well-established.

In accordance with Art. 8, 9 of the Law of Ukraine "On Judicial Fee" of 08.07.2011 No 3674-VI (Law of Ukraine, 2011) can be distinguished the following functions of a judge to pay court fees: postponement or installment payment of the court fee, reduction of its amount or release from the obligation to pay it, taking into account the property status of the party; verification of the fact of crediting the paid court fee to the special fund of the State Budget of Ukraine before opening (initiating) proceedings in the case.

Resolving issues of postponement, installment, reduction of the amount, and exemption from the obligation to pay court fees involves a comprehensive assessment of the circumstances of the case according to the evaluation criteria, which can be performed only by the court. But verifying the fact of crediting the amount of court fees paid by appointment is a technical action that is not directly related to the administration of justice in the case. Given the current workload on judges, it is important to transfer this power to the competence of other court officials.

A broad understanding of the staffing of courts involves the performance of such functions as training, motivation of public officers, and some others.

Therefore, an important condition for proper staffing of the court staff is the financial support of its activity.

2.3. Judges' disciplinary liability institute development as a direction of ensuring an independent court in administrative proceedings

Judicial disciplinary liability is understood as a type of legal liability, which is manifested in the imposition of disciplinary sanctions on a judge in connection with his violation of the law, including the Code of Judicial Ethics (The Great Ukrainian Legal Encyclopedia, 2016). Nowadays, there is a significant practice of bringing judges to disciplinary responsibility in general and with the application of this type of disciplinary action in particular. Moreover, in 2020 there is a significant decrease in the number of judges subject to such disciplinary liability as to the application for dismissal of a judge (53 judges in 2019 and 14 judges in 2020) (Information and analytical report, 2021).

The specifics of a judge's disciplinary liability are determined by: the field in which the judge operates; the special status of a judge as a subject of disciplinary liability.

The disciplinary responsibility of a judge is aimed at ensuring that judges perform their duties properly, thus ensuring the right to a court. Disciplinary proceedings are the only form in which the issue of bringing a judge to disciplinary liability is resolved. Disciplinary proceedings are defined as a procedure for consideration by an authorized body of an appeal that contains data on a judge's violation of requirements due to his status; his job responsibilities; the oath of a judge.

At the same time, the immanent features of disciplinary proceedings should be considered: confidential (at the initial stage) consideration of a disciplinary complaint; the right of a judge to independently review a decision in a disciplinary case; special procedure for forming a board of persons who will make decisions on the merits in a disciplinary case; availability of appeals on the initiation of disciplinary proceedings for each person (Marochkin *et al.*, 2013).

The essence of disciplinary liability is "the obligation of the offender to provide a report on their own wrongdoing and, at the same time, the authority of the authorized entity to require such a report, to enforce their duties" (Minka *et al.*, 2017: 212). On the other hand, one of the principles of independence of a judge is the provisions of Part 3 of Art. 48 of the Law "On the Judiciary and the Status of Judges", according to which a judge is not obliged to provide explanations on the merits of cases that are in his proceedings. "A judge is not obliged to give explanations in the cases already considered" (Marochkin *et al.*, 2013: 54).

In view of the above, the decisions made by the judge on the merits of the case cannot be a direct basis for disciplinary liability of the judge. The grounds for disciplinary liability of judges may be, in accordance with Part 1 of Art. Of the Law "On the Judiciary and the Status of Judges" only certain acts of a procedural nature, or failure of a judge to perform duties related to his status.

In this case, the application of disciplinary liability in the form of a petition for dismissal of a judge may take place only in those specified in Part 8 of Art. Of the Law "On the Judiciary and the Status of Judges" in the following cases: 1) materiality of disciplinary misconduct, rudeness, or systematic neglect of duties, provided that this is incompatible with the status of a judge or inconsistent with the judge's position; 2) violation of the obligation to confirm the legality of the source of property.

The procedure for conducting disciplinary proceedings against a judge is characterized by certain specifics because the stage of initiation (opening) of disciplinary proceedings is preceded by the stage of verification of data on the existence of factual grounds for bringing a judge to disciplinary responsibility. This view is defended by A.V. Shevchenko on the basis of a study conducted in 2013 on the implementation of disciplinary liability of judges (Shevchenko, 2013).

An analysis of the current provisions on the procedure of disciplinary proceedings against a judge (Chapter 4, Article 2 of the Law on the High Council of Justice) shows, in general, the preservation of the relevance of such a staged division, with one exception. Thus, two more must be added to these stages: appeal against the decision of the Disciplinary Chamber to the High Council of Justice (Part 1 of Article 51 of this Law); appeal against the decision of the High Council of Justice, adopted as a result of the complaint, to the court (parts 1, 2 of Article 52 of this Law).

Guarantees against unjustified prosecution of judges are an important element of the system of guarantees of judicial independence. Under current national law, bringing a judge to disciplinary responsibility is not covered by the notion of the immunity of a judge.

At the same time, the category of a judge's immunity can be considered in a broader context, as unjustified disciplinary action against a judge directly affects his or her legal status, which can worsen the quality of a judge's administration of justice. An important guarantee of the legality of bringing a judge to disciplinary liability is the subject's disciplinary compliance with the procedures established by the legislation.

Jurisdictional administrative procedures for ensuring the immunity of a judge (consideration of complaints and other appeals of a judge) are characterized by all general principles of administrative procedures, such as: legality; equality of subjects of the administrative procedure before the law; the proper purpose of the exercise of authority and others.

At the same time, certain specific features of individual procedures make it possible to highlight the specifics of the composition and content of the principles of such procedures. For example, the formal nature of the grounds for revoking the High Councils of Justice decision to temporarily remove a judge from justice or the decision to extend the judge's temporary suspension from the administration of justice in connection with criminal prosecution (Article 65 of the Law on the High Council of Justice) that the presence of the judge in respect of whom the relevant issue is being considered is not mandatory.

On the other hand, the principle of the rule of law in disciplinary proceedings against a judge is particularly relevant for further research, given both the special status of judges as subjects of these proceedings and the lack of a clear definition in the Law on the Judiciary and the Status of Judges of certain grounds of disciplinary liability for the judge.

Detailed regulation of administrative and judicial forms of protection of the rights of judges in the legislation, and many years of experience in their application cannot protect against the unequal practice in this area, which is the subject of discussion. Thus, in the Annual Report for 2020 "On the state of ensuring the independence of judges in Ukraine" the High Council of Justice states the existence of case law when in order to resolve a lawsuit to appeal the High Council of Justice decision to dismiss a judge for violating the oath of a judge, the court determines the presence or absence of disciplinary misconduct in the actions of judges, contrary to the provisions of the legislation (Annual Report, 2020: 101).

At the same time, in such cases, there are other approaches of the administrative court that are the assessment of the disputed decision of the High Council of Justice only within the limits provided for in Part 1 of Art. 52 of the Law "On the High Council of Justice": the powers of the High Council of Justice; signing of the decision by all the High Council of Justice staff; notification of the judge about the High Council of Justice meeting; the existence of references to the statutory grounds for disciplinary liability of judges and the reasons on which the High Council of Justice reached the relevant conclusions.

In this case, the court assumed that the assessment of the legality of the decision of the High Council of Justice Disciplinary Chamber in the material context was already provided during the resolution of the plaintiff's complaints, pre-trial, and therefore the court cannot assess it a second time and is limited to assessing the to satisfy the claim (Supreme Court: Decision of 13.09.2021 No 9901/79/21, 2021).

Thus, in the first case, the judicial review includes both substantive and procedural aspects of the contested decision, and in the second it includes only procedural ones. In accordance with Part 2 of Art. 124 of the

Constitution of Ukraine, "the jurisdiction of the courts extends to any legal dispute". The element of public law dispute as a subject of the jurisdiction of the administrative court is its ground as a set of legal facts that indicate, in particular, the existence of reasonable claims of one of the parties to the dispute (Kataieva, 2016: 15). Therefore, the subject of consideration of the administrative court inherently includes the assessment of the circumstances in which the plaintiff substantiates his claims.

In accordance with paragraph 3 of Part 2 of Art. 2 of the Code of Administrative Proceedings of Ukraine one of the principles of administrative proceedings in cases of appeal against acts of subjects of power is the assessment of the administrative court, in particular, the validity of these acts, id Est their implementation taking into account all important circumstances for the adoption of the act. According to the Venice Commission, "judges should have the opportunity to appeal disciplinary action to an independent court" (Venice Commission, 2015: 40).

In view of the mentioned above, the option of full judicial control over the High Council of Justice decisions on the application of disciplinary sanctions in the form of dismissal of a judge appears promising.

As a general rule, the decision of the subject of power enters into force immediately after its adoption (Halunko *et al.,* 2020). However, in some cases, this situation may cause unjustified complications for both the complainant and the authorities. We believe that one such case is the exceptional significance of the final decision for the complainant. It is an unacceptable situation when a decision has been made, has entered into force, and has already been implemented, but after all these stages it is revoked.

One cannot disagree with O.M. Ovcharenko, who considers the disciplinary liability of a judge as an element of his legal status, which reflects his position as a holder of judicial power. The scholar distinguishes two types of disciplinary liability of a judge according to the criterion of grounds and consequences: "ordinary (a judge continues to perform his duties, he is a subject to only certain restrictions); incompatible with the high rank of the judge, which makes it impossible for him to submit to the post" (The Great Ukrainian Legal Encyclopedia, 2016: 171-173).

Norms of Part 1 of Art. 35, part 2 of Art. 52 of the Law "On the High Council of Justice" establishes the right of a judge to appeal the court decisions of the High Council of Justice. In this case, in accordance with Part 3 of Art. 35 of the said Law, an appeal against the High Councils of Justice decision does not suspend its execution, except in cases specified by law.

Analysis of the practice of application of these norms shows that the High Council of Justice has decided to refuse to satisfy the judge's

complaint against the decision of the Disciplinary Chamber to bring him to disciplinary responsibility, and dismisses the judge without clarifying whether its decision is appealed to the Grand Chamber of the Supreme Court and what decision would be made by it. And this is despite the fact that there are repeated cases of cancellation of the High Council of Justice decisions by the Grand Chamber of the Supreme Court.

Thus, according to the results of the analysis of the activity of the Grand Chamber of the Supreme Court in 2020, out of 66 complaints against the High Council of Justice decisions in terms of its disciplinary powers, 4 decisions were revoked (Judiciary of Ukraine, 2020).

In addition, there is another problem that is a long time of consideration of these complaints in the Grand Chamber of the Supreme Court. Thus, the decision of the High Council of Justice on July 4, 2019, to leave the judge's complaint against the decision of the Disciplinary Chamber of the High Council of Justice was rejected without satisfaction by the Grand Chamber of the Supreme Court only on November 21, 2019 (Supreme Court: Decision of 24.06.2021, No 11-777sap19, 2021).

In another case, the complaint was filed on March 3, 2021, and the decision was made on September 9, 2021 (Grand Chamber of the Supreme Court: Decree of 09.09.2021. No 11-85sap21, 2021). This does not contribute to the certainty of the legal status of the judge.

In accordance with the provisions of Part 2 of Art. 35, part 1 of Art. 52 of the Law "On the High Council of Justice" the Grand Chamber of the Supreme Court cannot assess the circumstances of a disciplinary misdemeanor, and the subject of revision is only the High Council of Justice's compliance with certain procedural requirements: consideration of the judge's time and place, proper composition of the High Council of Justice references to the statutory grounds for disciplinary action against a judge and the reasons for applying these grounds, the High Council of Justice decision was signed by all the High Council of Justice members. Therefore, we consider the actual deadlines for consideration of complaints of judges of the Grand Chamber of the Supreme Court to be unreasonably long.

The key nature of the legal status of judges of these decisions of the High Council of Justice and Grand Chamber of the Supreme Court, the real possibility of ensuring prompt consideration of the Supreme Court's complaints of judges against the High Councils of Justice decisions in disciplinary cases determine the relevance of changes to current legislation to increase the immunity of judges in disciplinary proceedings dismissal of him from office, consisting in the suspension of the High Councils of Justice decision until the relevant complaint of Grand Chamber of the Supreme Court.

To this end, it is necessary to amend Article 52 of the Law "On the High Council of Justice", supplementing it with part 2-1 of the following content: "Appealing the decision of the High Council of Justice stops its execution". It is also necessary to take measures to actually reduce the time for consideration of relevant complaints by the Grand Chamber of the Supreme Court.

Conclusions

Nowadays, the following are problematic areas of ensuring an independent court in administrative proceedings in the context of the implementation of the human right to a fair trial: staffing of courts; ensuring the immunity of a judge in a broad context.

Current areas of staffing of courts in its administrative-legal dimension are: providing the judiciary; providing administrative positions for the court; staffing the court staff. Staffing of courts in modern conditions can be considered in a broad sense: recruitment; analytical work on preservation, strengthening, placement, and selection of personnel; personnel needs planning; formation of the structure of a particular judicial institution; monitoring of the implementation of personnel decisions, etc.

In the context of providing the judiciary, it is urgent to fill vacant positions of judges in courts of all specializations. At the same time, the improvement of national legislation in the field of the judiciary should be carried out taking into account the position of S.P. Holovatyi about the inadmissibility of his exclusively positivist interpretation, the need to develop the principles of the rule of law in this area.

In the context of providing administrative positions for the court, it is worth mentioning the need to increase the role of the High Council of Justice in staffing such positions, in particular, in the appointment to these positions.

An important condition for the proper staffing of the court staff is the financial support of its activity.

To ensure the immunity of a judge in a broad context, it is important to prevent cases of unjustified disciplinary action against judges. An important guarantee of the legality of bringing a judge to disciplinary liability is the observance by the subject of disciplinary action of the proper procedures established by the law.

In order to ensure the stability of the legal status of judges in matters of disciplinary action, it is necessary to: reduce the time of consideration of judges' complaints against relevant acts of the High Council of Justice,

prevent the entry into force of relevant acts until the decision on complaints against them.

The introduction of full judicial control over the High Council of Justice decisions on the application of disciplinary sanctions in the form of dismissal of a judge is promising. This involves an assessment by the administrative court of the circumstances in which the plaintiff substantiates his claims in cases of appeal against these acts of the High Council of Justice.

Prospects for further research are the development of specific measures necessary for the implementation of these areas.

The results of this paper are of scientific interest (development of the theoretical basis for ensuring an independent court in administrative proceedings in the context of the implementation of the human right to a fair trial). Some results are of interest to practitioners (officials responsible for the administrative relations that are the object of this study).

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 474-496
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Characteristics of a school in the political context of what a learning organization means

DOI: https://doi.org/10.46398/cuestpol.4074.26

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Abstract

The main objective of this article was to identify the characteristics of a school that effectively becomes a learning organization and the need to improve it in the political context of the learning organization. To reveal the theoretical and empirical bases of the article, methods of analysis, synthesis, quantitative research and results processing were applied. The results presuppose that school administration, peer support and favorable infrastructure have a positive impact on the development of personal skills of community members. In this sense, the improvement of learning competence and innovation is identified with openness to the environment, to other communities and a high level of internal communication culture. It is concluded that, schools as fundamental learning organizations to identify themselves and their environment as a team, to develop an intuitive systematic sense (part of the system; we-system), need to drive a clear and effective communication structure, in coherence with the strategic and systemic processes of adequate response to the needs of the community, all of which legitimizes it with social approval and more internal and external supports.

Keywords: school; learning organization; political context; communication; political meanings.

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Recibido el 01/07/22 Aceptado el 15/09/22

Características de una escuela en el contexto político de lo que significa una organización de aprendizaje

Resumen

El objetivo principal de este artículo fue identificar las características de una escuela que se convierte, efectivamente, en una organización de aprendizaje y la necesidad de mejorarla en el contexto político de la organización de aprendizaje. Para revelar las bases teóricas y empíricas del artículo, se aplicaron métodos de análisis, síntesis, investigación cuantitativa y procesamiento de resultados. Los resultados presuponen que la administración de la escuela, el apoyo de los compañeros y la infraestructura favorable tienen un impacto positivo en el desarrollo de las habilidades personales de los miembros de la comunidad. En este sentido, la mejora de la competencia de aprendizaje y la innovación se identifica con la apertura al medio ambiente, a otras comunidades y un alto nivel de cultura de comunicación interna. Se concluye que, las escuelas como organizaciones fundamentales de aprendizaje para identificarse a sí mismas y a su entorno como un equipo, para desarrollar un sentido sistemático intuitivo (parte del sistema; nosotros-sistema), necesitan impulsar una estructura de comunicación comunicación clara y efectiva, en coherencia con los procesos estratégicos y sistémicos de respuesta adecuada a las necesidades de la comunidad, todo lo cual la legitima con aprobación social y más apoyos internos y externos.

Palabras clave: escuela; organización de aprendizaje; contexto político; comunicación; significados políticos.

Introduction

The creation and development of an information and knowledge-based society and knowledge economy are perceived as one of the most important priorities for the multifaceted development and progress of modern society (Melnikas *et al.*, 2017; Lau *et al.*, 2018; Švagždienė *et al.*, 2020). This change has intensified as the world moves into the knowledge and information society (Kvedaraitė, 2009).

Inevitably, educational institutions face the need for competencies in the formulation and implementation of competition policy, the meaning of learning and skills to influence the organization as new opportunities, which in itself requires knowledge based on innovative approaches (Sabaitytė, 2017; Šneiderienė *et al.*, 2020).

According to Kudokiene and Juodaitytė (2005), the Lithuanian general education school needs new competencies and resources, therefore the

education strategy becomes inseparable from the perspectives of economic and social development. In this case, it is no longer enough for the school, in a broad sense, to follow traditional norms of activity organization or classical models (Peleckienė, 2014; Garbenis and Palujanskiene, 2021). There is a great responsibility in choosing the diverse, interdisciplinary knowledge required for performance improvement (Kvedaraitė, 2009).

Another equally important stage is the creative use of this knowledge in designing and modeling the activities of the organization. This requires the continuous improvement of the school as an organization and it is becoming different, qualitatively new, i. y. a learning organization that justifies the expectations that define the ability to effectively organize improvement processes, the development of a systemic approach, the concentration of knowledge, skills, human resources for individual and teamwork (Valuckienė *et al.,* 2015; Joyce and Paorella, 2016; Tortorella *et al.,* 2020).

The functioning of the school as a learning organization, the analysis of the current situation, the case studies of which are lacking, can presuppose the conditions for more efficient processing of this knowledge and its practical application.

The work aims to determine the features of a school that becomes a learning organization and the need for their improvement in the political context of the learning organization.

Problematic questions:

- What are the features of a school becoming a learning organization?
- What is the need to improve the features of a school that becomes a learning organization?

1. Material and methods

Research methods. The analysis of scientific literature and document content is applied to reveal the theoretical basis of the work to define the possible behavior of the school as a learning organization on a theoretical and practical basis during the measurement of current results and seeing its perspectives.

The main advantages of document content analysis, which determined the choice for analysis, are that this method allows working with a large amount of text, allows broad and diverse interpretation of data while distinguishing strict, clear, and standardized analysis rules, which increases the objectivity of results. Also, for the empirical part, the method of quantitative survey (questionnaire prepared according to Senge (1990) conceptual models) was used, grouping the answers of the questions according to the Likert scale.

The study was conducted in 2020 June - September 22 teachers and administration representatives from 5 different schools were interviewed. The research was organized following the provisions of research ethics.

2. Theoretical aspects of a school learning organization in a political context

In the European education area, as well as in Lithuanian general education, the economic, cultural, and social context of the country is important in the process of constant dynamic processes, initiating and planning changes in the education system, discussing the scenarios of general education development. The creation and development of an information and knowledge-based society and knowledge economy are perceived as one of the most important priorities of the multifaceted development and progress of modern society (Melnikas *et al.*, 2017).

All these aspects are based on information and knowledge, so there are many identical concepts, explanations, and descriptions in the scientific literature, but which cannot always be considered synonymous: information society, knowledge society, knowledge-based society, knowledge management, knowledge economy, learning organization, etc. (Melnikas *et al.*, 2017; Švagždienė *et al.*, 2020).

Analyzing the meaning of learning and its impact on both the organization and the individual, its professional and personal development, it is emphasized that learning is a way of survival, capacity building, enabling it to change, i. y. to cope with changes and take advantage of new opportunities (Garbenis and Palujanskiene, 2021; Šneiderienė *et al.*, 2020).

Many authors in the scientific literature have described the concept of the information society, knowledge society, learning organization (Örtenblad, 2018). The difference between the definitions of a learning organization developed by these authors is highlighted by the presentation and development of different ways of learning.

Analyzing the concept of the information society, following the chain principle presented by Jucevičienė (2007), which reflects the cause-and-effect relationship, such a formulation is usable in studying models of how technical-technological development preconditions are created in society, knowledge society the practical possibilities of the learning organization are realized in the society and the learning company. According to Atkočiūnienė and Petronytė (2018), the knowledge society is a continuation of the information society, a higher stage of the development of the information society, covering social, cultural, economic, and political aspects of transformation.

It should be emphasized that the concept of realization of lifelong learning is reflected in the learning society. Peleckienė (2014) notes that all descriptions of the concept of a learning organization refer to the acquisition of knowledge, its updating, interpretation, transfer, transformation. Other researchers (Kuşcua, 2015; Örtenblad, 2018) have found that a learning organization can be described as an institution with specific responsibilities that are constantly concerned with proper decision-making.

It is mostly based on the provision to focus more resources and resources on its activities. An organization, as a service organization, is a learner when its employees act in a consensual manner, sharing information properly, acting in a planned manner, clearly developing their foundations, pursuing operational policies, and making decisions. The formation of a learning organization in Lithuania in the context of lifelong learning remains a challenge.

The learning organization must act according to what employees need to know about the organization itself when making decisions, i. y. according to its operational objectives, goals, environmental factors, and structures or culture (Kuşcua, 2015; Shao *et al*., 2017), a learning organization is a learning process in which managers try to increase the ability of members to better manage the organization and its environment.

Learning organizations are those organizations where people are constantly increasing their competence to achieve results, where team aspirations are freely expanding, and where people are constantly learning to see the whole (Skrickienė *et al.*, 2018). Golmoradi and Ardabili (2016) note that learning organizations are constantly renewed, and the knowledge and value base of the organization changes during the learning process. These changes lead to better problem-solving skills (Garbenis and Palujanskiene, 2021).

It should be noted that members of society who lose or do not have a real opportunity to initiate the creation of new knowledge and innovation, do not have real conditions and abilities to disseminate and effectively use new knowledge and ideas, in principle become mere executors. They have very limited powers and perform exclusively executive functions, even in areas where significant innovative changes are taking place (Melnikas *et al.*, 2017).

Tortorella *et al.* (2020) notes that organizational learning can be seen as a process of improvement based on a clearer understanding and deeper knowledge directly related to the organizational culture and environment. Therefore, in defining the characteristics of a learning organization.

Learning is linked to organizational strategy; employees are actively involved in creating a learning organization; encouraging cooperation, creating a favorable climate; flexible remuneration; inter-organizational

learning; self-education opportunities for all; encouraging managers to constantly learn, improve, take an interest in new things, respond to the suggestions of other employees (Atkočiūnienė and Petronytė, 2018; Švagždienė *et al*., 2020). Senge (1990) argues that only a comprehensive holistic approach to an organization, assessing various aspects of its development, can bring the efforts of the members of the organization the closest to the result.

Analyzing the content of scholars who interpret the content of the Learning Organization Theory differently (Örtenblad, 2018), the pioneer Senge (1990) stands out. According to this author, the overall quality of the whole is determined not by the individual parts, which consist of a common vision of the organization, thinking patterns, personal mastery, teamwork, and systemic thinking, individual performance, but by the qualitative compatibility and close connection of all these parts. It is this action that presupposes synergy and, consequently, the expected result.

Knowledge, learning, and innovation are the foundation of a modern organization's success, as acquiring information and learning new ways to do things are essential to improving an organization's performance (Pea and Cole, 2019). Putrienė and Vaičekauskienė (2014) state that after analyzing various social parameters, it can be predicted that in Lithuania and the future it will not be possible to distance oneself from unique cultural experiences and essential values.

In addition, in the light of current trends in Europe, it must be emphasized that the social environment will become increasingly important, with living and working conditions, income levels, education, and the choice of values and subcultures in the communities to which they belong, the behavior of individual groups (and thus of society as a whole) is formed. As information and communication technologies penetrate more and more rapidly into everyday life, the nature of learning will change, lifelong learning and lifelong learning will expand.

3. Analysis of learning organization theories

When analyzing the topic of the work, it is important to follow the rationale of the relevant theories. This work was based on the theories of the Learning Organization (Senge, 1990; Peleckienė, 2014), Self-taught, and Social Constructivism (Vygotsky, 1978). It is important to give a brief overview of each of them when discussing the applicability of this article.

The theory of the learning organization is based on the experience of the learning organizations. It is stated that only a comprehensive, holistic approach to the organization - considering various aspects of its

development, can bring the efforts of the members of the organization the closest to the result.

The pioneer Senge (1990) criticized the fragmentation of the modern world, the fragmentation, and the view that the improvement of individual elements of the system will determine its successful operation. It is important to mention that many other scholars explain the content of the Learning Organization Theory in their way, but this could be explored more widely and in more detail in future scientific works.

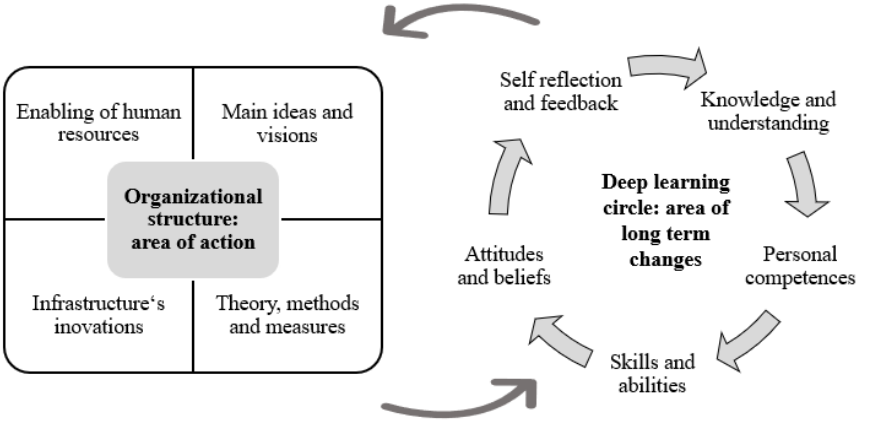

Figure 1. Systematic image of a learning organization

Source: Palujanskiene and Svagzdiene (2020) based on Senge (1990); Valuckienė *et. al.* (2015)

When analyzing the systematic representation of a learning organization by researchers (Senge, 1990; Valuckienė *et al.,* 2015), it is important to identify the circumstances and components of the functioning of the learning system (see Figure 1). A space of learning and change, depicted as a constantly rotating circle of organizational structure (area of action) and deep learning cycle (area of long-term change).

It reveals how new experiences improve existing competencies (professional and personal). The (expected) result is not individual skills that have been improved or acquired, but that all of them are relevant competencies.

It has a positive effect on the formation of a positive, trust-based relationship between the individual and the organization, promotes motivation, conscious responsibility, and fosters together, the transformation

of self-identification from "them" to "we". Over time, the goals set by the organization and its community members no longer become higher goals-aspirations, but the strategy is recognized by the entire organization, in which the processes of learning and change are implemented organically.

This stage is characterized by a change in the understanding of the relationship between personality self-perception and the surrounding environment, being able to observe and objectively assess not only the consequences of processes or phenomena but also to substantiate and explain the reasons for it. Jucevičienė (2007) states that a learning organization is created over a long time, although individual changes can occur quickly.

The "learning circle" rotates in interaction with the activity space (Valuckienė *et. al.,* 2015) defines the term activity space as the social environment surrounding the individual in the organization and its formation process, which is depicted as a rectangle in the systematic learning organization model, emphasizing that all these schematic parts are equally important and closely related to each other. It is important to recognize that essential ideas do not arise by themselves in an organization.

The added value of an organization is created by the people who work in it, so it is important to focus not only on infrastructural innovations, search for operating methods or tools, refinement of key ideas or vision, but also full empowerment of human resources. It must be acknowledged that, in many cases, professional competencies can be acquired or improved as needed over time - they are acquired. In contrast to personal ones, they are often not acquired but only improved.

The internal vision of the members of the organizational community must coincide with the vision of the organization. Decision-making and sharing of responsibilities is also a joint process of the organization and its members. However, for the effective assumption of such responsibilities, adequate and wide-ranging understanding of organizational situations, rational decision-making, members of the organization's community must be ready - "mature" in terms of awareness and rationality.

According to Zakarevičius (2012), when objective conditions requiring change are created, only organizations with the so-called internal critical potential that can ensure the increase of business opportunities can develop. The main factor in this formation is the increase of staff qualifications to a level that can influence positive changes.

Thus, the preconditions for the development of a fundamental organization do not lie in the changes in its external environment, but the "critical mass" of internal potential (staff of appropriate maturity). If this "critical mass" is too small, the organization cannot move to a higher quality state, it cannot even adequately assess and respond to changes in the environment.

Thus, an organization that has not examined the "maturity" of its employees before the start of organizational-change processes risks encountering difficulties in the process. This in turn will slow down, disorganize activities, require unplanned financial, time, and energy investments, reduce concentration and work ethic, and possible employee rotation in the middle of a process-change can negatively affect overall motivation or even the microclimate. The way to avoid this, or at least to prepare for it, is to implement a multifaceted self-audit of human resources, which would allow community members to be directed to work in areas where their competencies would be most effective, thus minimizing the risk of risk.

An equally important element is the self-reflection and feedback of the members of the organization's community, which allows individuals and the organization to monitor and record progress, identify difficulties, solve and improve them, refine the most effective methods and tools.

Self-education researchers emphasize theories of social learning, experiential learning, and action, which reveal the transformation of the educational paradigm from the traditional (teaching paradigm) to the modern (learning paradigm) and justify a new approach to human learning through continuous observation and reflective study of the environment. experience, knowledge, activities, both individually and in partnership.

The theory of social constructivism emphasizes learning not as an autonomous activity of social life, especially in an educational institution, but as an interaction between cognitive behavior and environmental determinants, when the learner and the environment interact. As the boundaries between education, leisure, work, and learning activities disappear, the organization of education becomes only one of the many environments in which individual learning takes place (Linkaitytė and Žilinskaitė, 2007).

According to Lithuanian researchers (Žydžiūnaitė *et al.*, 2012; Garbenis and Palujanskiene, 2021), it can be stated that an individual learner is characterized by the following competencies and abilities: the ability to, identify learning needs; meta-learning competence (learning planning; selection of the necessary learning strategy; realization of learning feedback; adjustment of the learning plan and its implementation in a managerial sense); ability to learn in social interaction processes (to recognize and use educational and learning environments); lifelong learning competence (motivation for continuous improvement and learning); reflection competence (learning from experience and learning in and out of activity); the ability to take responsibility for learning, the need to be independent.

4. The schematization of features in the context of a school learning organization

According to researchers (Örtenblad, 2018; Peleckienė, 2014; Valuckienė *et al.,* 2015), today's schools undoubtedly face the challenges of a dynamic environment. Naming the causality of this, it should be mentioned that the change of the society, becoming more and more a knowledge and information society, had a decisive influence on this, and the school had to reconsider its direction from its organizational point of view.

As the world moves into the knowledge and information society, the Lithuanian general education school operates in a changing and constantly evolving environment, where it faces the ability to act in dynamic conditions, problems and challenges, and the need for new competencies and resources. The school has to select the diverse or interdisciplinary knowledge needed to improve its activities and use it creatively in designing and modeling these activities, new strategies.

This requires the continuous development of the school as an organization and it is becoming a different - qualitatively new - learning organization, guided by the features of a modern organization. Senge (1990), the pioneer of learning organization research, in his book The Fifth Discipline, outlines five disciplines (see Figure 2) that are specific to a learning organization.

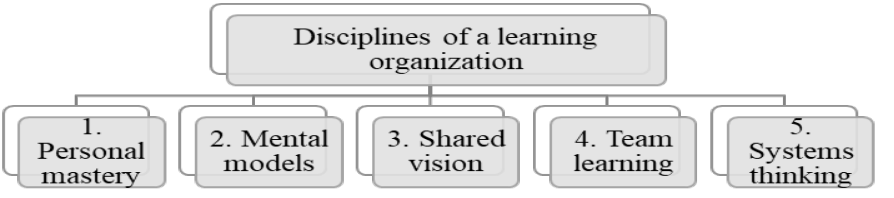

Figure 2. Five disciplines of a learning organization according to P. Senge

Source: Senge, 1990.

Disciplines include the importance of personal excellence as members of an organization name and deepen their visions, concentrating their energy on knowing reality. The significance of thinking patterns, when to change the quality of the result, it is necessary to change the actions as well, and for the actions to change, the decisions influencing them, which are determined by the changed thinking, must change.

Peculiarities of shared vision in an organization are also defined when according to Senge (1990) it is not the exact wording that is important in this process, but the fact that all participants in future activities would have

the opportunity to actively participate in developing the organization's overall vision.

Equally important is team learning, where the work team is considered the most important unit of the learning organization, and when the team focuses on learning, the competencies of each of its members increase. And all-encompassing System thinking. This discipline unites all the previously mentioned disciplines and their activities. Systematic thinking helps members of an organization understand that both the world and the organization are made up of different individual parts, and allows them to see the big picture.

However, the methodologies of a learning organization according to Senge (1990) are not the only tools to guide an organization towards becoming a learner. Other authors (Pedler *et al.*, 1991; Jucevičienė, 2007) identify 11 managerial characteristics of a learning organization that the organization must follow and distinguish, as well as the Invest model (Pearn *et al.*, 1995). It can be observed that Senge's (1990) model is more focused on highlighting the learner than on enabling him to learn.

The characteristics identified by Pedler *et al.* (1991) are intended to enable learning but do not emphasize learning itself and the questionable reality of applying such a list remains questionable. The INVEST model takes an intermediate position, emphasizing both learning and empowerment.

After analyzing and summarizing the information of these researchers, it is possible to define the general features of the school-learning organization (see Figure 3).

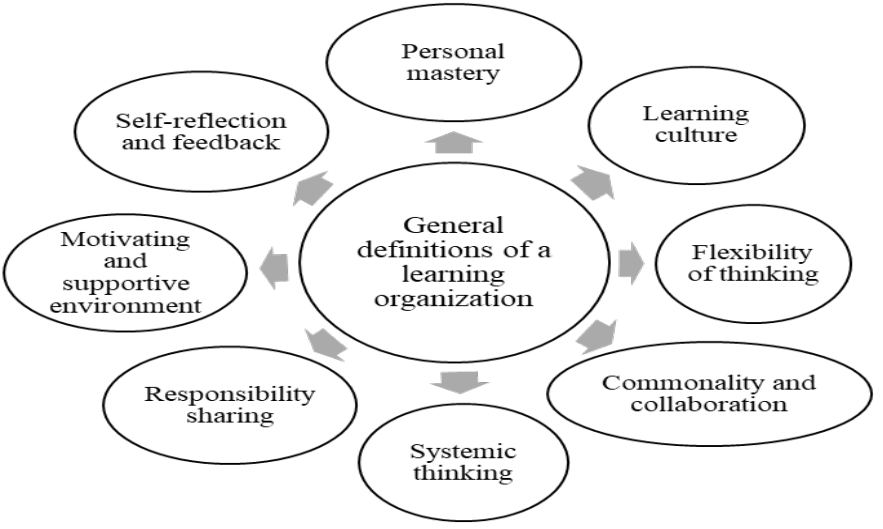

Figure 3. General features of a school-learning organization

Source: Palujanskiene and Svagzdiene (2020) based on Senge (1990); Pedler *et al.* (1991); Pearn *et al.* (1995).

It is important to emphasize that an organization seeking to answer whether it is a learning organization and how it can become a learner should answer five questions (Senge, 1990; Jucevičienė, 2007; Peleckienė, 2014) about whether the organization has a defined learning agenda. whether it is open to conflicting information, or avoids repetitive mistakes, or loses essential knowledge when key people leave or act based on what it knows.

Depending on the results, raise them as your organization's aspirations until they become incorporated features of the organization. To determine the duration, how long it may take an organization to become a learner of others Jucevičienė (2007), in the opinion of a learner organization is not created in a short time, although some changes can occur quickly.

A comprehensive assessment of the school's self-creation dispute suggests that the impact of societal change is inevitable. The most effective strategy for becoming a learning organization depends on the situation of the individual organization. The best methodologies for every organization are not available today. However, organizations and their communities are taking a crucial step in becoming learners by agreeing that learning can be managed and directed towards streamlining, achieving, and sustaining organizational performance, rather than a process in itself. As stated earlier, school research exclusively as learning organizations is still lacking.

Analyzing the theoretical material in terms of the processes and structures of the learning organization and assessing the positive changes in schools in recent decades, hypothetical considerations emerge that a school characterized by the characteristics of a learning organization strengthens the range of services provided. It does this by developing inter-institutional cooperation, developing the dissemination of good practice to create a wider choice of services, improve their quality, increase students' involvement and motivation in the services offered, which has a positive effect on their success, more productive prospects, and more.

5. Results

Analyzing the research data from the point of view of personal mastery discipline, managers 'attention to teachers' learning is positively assessed and accepted (86% of respondents fully agree with the statement), other members of the community favor each other, noticing and emphasizing another member's progress (68% agree partially, 23% - fully agree), developed infrastructure and accessibility to ensure learning conditions (86% of respondents are in favor). There is a desire to improve and encourage the relevant areas in the organization to be highlighted as an improved provision, regardless of how favorably the area is viewed at the moment.

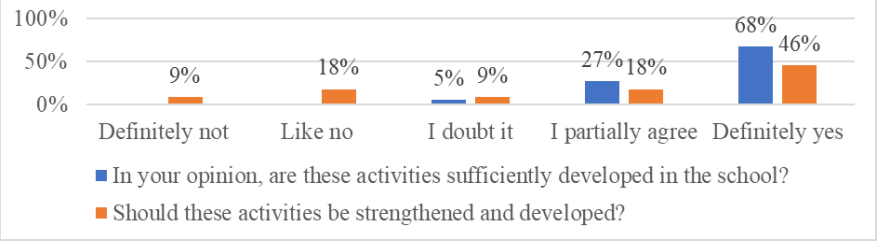

Figure 4. Percentage of the statement "The individual ability of each member of the community to learn is assessed at school"

Source: composed by the author

According to the respondents, the work of organizations is positively correlated with the personal goals and expectations of community members. The position on improvement, support of learning coincides. As can be seen in Figure 4. as many as 68% of respondents say that the individual ability of each member of the community to learn is assessed at school, 27% - partially, but in terms of perspective development, opinions differed:

64% agree with the statement partially or completely agree that this area should be continuous, constantly is being developed and maintained, with 36% believing that the assessment level is currently sufficient and there is no need to invest additional time or energy costs.

Personal mastery, according to Senge (1990), discipline emphasizes the importance of personal mastery as members of an organization name and deepen their visions, concentrating their energy on cognition of reality. Employees, realizing that they are part of the organization, constantly develop their creativity, fill in their knowledge gaps, and want to become more motivated, so the developed personal mastery makes it easier for the employee to take on challenges. in terms of the ability to reasonably assess the situation and express a position, individually according to the needs of each member of the community, which are undoubtedly different.

It can be said that the support of the administration, colleagues, and favorable infrastructure has a positive impact on the development of personal mastery in a community member organization. Learning learners develop a broader attitude, critical thinking, set high professional goals, are demanding of themselves and the surrounding environment, community participants.

Analyzing the research data from the disciplinary point of view of thinking models, a responsible approach and real initiation of actions are observed (59% of respondents say so) concerning the community's conscious and consistent relations with the external school environment (community, other schools, social partners, etc.). Demonstration of support and awareness that these relationships need to be continuously developed is demonstrated (73% welcome this).

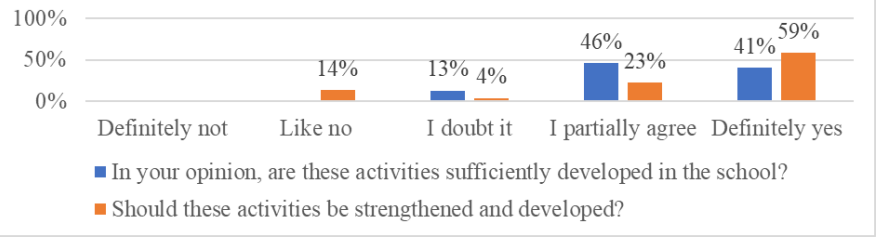

Figure 5. Percentage of the statement "School and its community are prone to innovation?"

Source: composed by the author

It is noticeable (see Figure 5) that there is a predominant community expectation in terms of organizational innovation to be improved. 41% of

respondents say that the school and its community are prone to innovation, but 59% of respondents believe that they are skeptical or completely unsure about this statement. Moreover, 82% of respondents believe that this area should be strengthened. One can see the links between the answers to this statement in terms of need:

- Monitor, collect, analyze and respond to information on changes in the external school environment (41% say that these processes are running smoothly, 78% think that this area should be strengthened).
- To strengthen the level of tolerance of community members to other members, their opinions or feelings (46% of respondents state that there is no need for development in this area, while 32% doubt it and 73% indicate that it should be strengthened).

According to Senge (1990), the activity of thinking models is especially significant, when changing the quality of the result it is necessary to change the actions, and to change the actions, the decisions influencing them, which are determined by the changed thinking. In other words, the following sequence of actions is necessary: Changed thinking → Influencing decisions → Changed actions → Changed the quality of the result.

Analyzing the obtained results, it is noticeable that the direction of the organizations' processes is appropriate, but the expectations of the community members for innovation or the speed of process implementation differ slightly. It is difficult to answer the personal contribution of community members to its development, as the organization may not always have a significant influence on individual thinking (tolerance towards others), but deepening work on analyzing problem areas is necessary as it directly correlates with (expected) outcomes in others.

Analyzing the obtained research data from the point of view of Shared Vision discipline, it is noticeable that 91% of respondents are positive that all members of their community: teachers, students, and their parents can participate in school management processes or general strategy development, relevant decisions, rules, initiating agreements, forming customs or traditions and resolving problematic situations, etc.

Assessing the perspective of the situation, it should be noted that almost all respondents believe that work in this area should still be developed because community involvement is an ongoing, never-ending process. 50% of the respondents' state that the strategy developed by the school is real, relevant, and close to the personal goals of the employees.

It should be emphasized that the school strategy is directly correlated with national and regional education policy documents, therefore such a result shows that according to the respondents, the school community sets high professional goals, is not far from current issues in education,

innovative and dynamic. Undoubtedly, a great deal of work is required to achieve such a result.

The possible result of this is reflected in the respondents' answers about the equal partnership prevailing in the school, fostering personal respect and creating an atmosphere of trust - 46% of respondents say that it is undoubtedly so, the rest (36%) see strong positive signs. However, both in terms of the relevance of the strategy to the community (46%) and in terms of fostering respect in the community (36%), there is a significant share of those who say that this is not the expected result (maybe even more) attention than it currently is.

It also suggests that community trust is one of the aspirations and priorities of a successful organization. This is a permanent job: 64% of respondents say that seeking advice or help is seen naturally, but 55% agree that this activity needs to be constantly strengthened and developed.

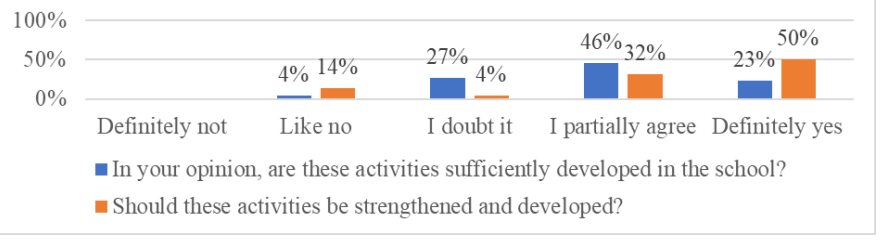

Figure 6. Percentage of the statement "Community members prefer to work and study in a group than individually?"

Source: composed by the author

No less interesting aspect is teamwork in the community (see Figure 6). Analyzing the data, it can be seen that, on average, one in five (23%) survey responses indicate that community members prefer to work and learn in a group. It can be said that individual work predominates, as 46% of the respondents indicate a rather insecure position regarding the prevalence of teamwork in the community. According to Senge (1990), Shared vision is a vision and perspective of activity that is acceptable to everyone and every person involved in that activity, i. real vision. What is important in this process is not the precise wording, but the fact that all participants in future activities should have the opportunity to take an active part in the development of the common vision and in considering its wording.

The organizers of such deliberations need special skills so that their participants can feel important and needed. It should be noted that 82% of respondents welcome the statement that this competence should be

strengthened because the importance of teamwork from a synergistic point of view is visible and valued.

Analyzing the obtained research data from the point of view of the team learning discipline, it is noticeable that 91% of the respondents positively assess the opinion that teamwork and learning are constantly promoted at school. Accordingly, 59% of respondents fully agree with the statement that the school has a system that allows learning from the practice of other members of the community by observing lessons, sharing good practice, consulting, etc., and 37% agree.

However, from both perspectives, respondents see the desire and need to strengthen and develop these activities (an average of 38% of respondents said positive), which shows the community members' insight into the theoretical, practical, and systematic processes of teamwork and the ability to see opportunities in these areas. more efficient.

It was also found that 50% of respondents fully agree and 32% partially agree - 32% with the statement that teamwork and learning is an important element not only of work but also of everyday life. Respondents' responses also express the view that, whatever the instantaneous results, this area needs to be continuously improved and strengthened.

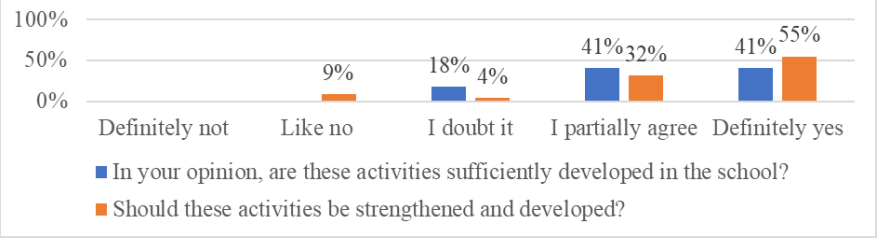

Figure 7. Percentage of the statement "Teachers and school administration can call their colleagues a team"

Source: composed by the author

It can be seen in Figure 7 that communities lack a strong and clear position in stating that teachers and administration can call their colleagues a team. A significant proportion of respondents agree with this in full (41%), in part (also 41%), but 18% of respondents are skeptical. Also, there is a clear insight into strengthening this area in the future (87% agree). According to Senge (1990), the work team is considered to be the most important unit of a learning organization. When a team focuses on learning, the competencies of each of its members increase.

Employees 'energy, thinking, and knowledge are combined, creating team-based learning that results in greater synergies for the organization. It can be argued that it is important for organizations to identify themselves and their environment as teams. The potential is great, but there is a need for clarity within the organization, formed teamwork, and a position that clearly defines the concept of team, processes, teamwork, and the formation of the identity of team members.

Analyzing the obtained research data from the point of view of systemic thinking discipline, it is noticeable that a significant part of the respondents agrees with the statements that state:

- creation of school work and activity perspective, taking into account both internal and external elements of one's system (55% of respondents fully agree; 41% partially agree);
- constant cooperation of school leaders and problem-solving with other members of the community or representatives of other organizations (64% of respondents fully agree; 27% partially agree).

Although there is a strong positive attitude of the respondents towards these statements in the current assessment and 41% agree with the need to further develop these areas. It should be emphasized that according to Senge (1990) the system thinking discipline unites all the previously named disciplines and their activities.

Systematic thinking helps members of an organization understand that both the world and the organization are made up of different individual parts, and allows them to see the big picture. It is beginning to realize that the actions performed by employees are not isolated, they create a common organization.

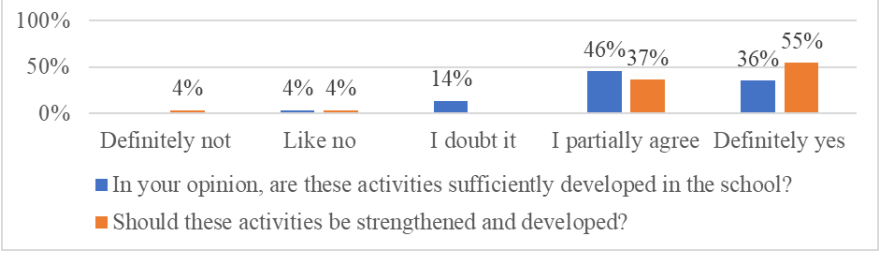

Figure 8. Percentage of the statement "Community members perceive the school as a system"

Source: composed by the author

Notably, 36% of respondents fully agree with the statement that members of their community perceive school as a system (see Figure 8), but 46% agree that it is not entirely certain ("I partially agree"), and 14% doubt it, thus noting the conscious efforts of community members to "search and possibly find" systemic features of the organization when these features fail to be performed and without hesitation to name. Also, a large proportion of respondents (55% in full; 37% in part) believe that this area is not completely clear to members of the community and would still need to be developed and improved.

Accordingly, when analyzing the statement that describes whether the school staff perceives the connection of school goals with the issues of education policy and social development, the results show that the respondents are not sure about this (50% - partially agree; 9% - doubts that). While a significant proportion (41%) say they are certain about this, 32% say they are also sure about the need to strengthen and develop the area.

The discipline of systemic thinking emphasizes integrated systemic thinking, which is described as the human understanding that everything is interconnected and that changing something in one area affects all the parts involved. Kline and Saunders (1993) argue that this discipline is the most important of the five. Therefore, analyzing the obtained results, it is noticeable that the activities of organizations are potential, but the internal culture of agreements, information dissemination, and smooth communication still needs to be strengthened.

Conclusions

The support of the school administration, colleagues, and favorable infrastructure has a positive impact on the development of personal mastery in the community member's organization, and the improvement of learning competence. Learning learners develop a broader attitude, critical thinking, set high professional goals, are demanding of themselves and the surrounding environment, community participants.

The innovativeness of the school as a learning organization is identified with the openness to the surrounding environment, other communities, and a high level of internal communication culture. Continuous and effective communication in the community, mutual (organization-employee) contribution to respect, and trust-based communication can have a significant impact on the formation of community members and, consequently, organizational thinking patterns, as it directly correlates with (expected) outcomes in other organizational areas.

At the stage of forming the overall vision of the school as a learning organization, community members not only value the relevance of the strategy from a personal point of view, identifying interests, personal involvement, but also respect and trust in the community, teamwork skills, and their development, recognizing its synergistic importance.

Schools as learning organizations need to identify themselves and their environment as teams, therefore clarity within the organization is essential, teamwork and the organization's position, processes, continuous formation of teamwork, and team members' identity are clearly defined. Clear and acceptable teamwork opportunities (choice), an understandable teamwork system that meets the attitudes and needs of community members - a circumstance of effective teamwork.

Community members, when perceiving a school as a system, must clearly understand the systematic signs or feelings of it, confidently identify them, without trying to consciously "find" them. In this case, the theoretical and practical understanding of systemic thinking of community members, natural self-identification as a part and participant of the system is very important, therefore clear and effective communication, coherence of strategic and systemic processes and proper response, internal acceptance, and support.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 497-514
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Strategic directions of the national policy in the context of the asymmetry of the regional development

DOI: https://doi.org/10.46398/cuestpol.4074.27

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Abstract

The purpose of the study was to substantiate strategic directions to overcome the asymmetry of regional development. The methodological basis involved a systemic approach that allowed, in turn, a holistic approach to clarify the linkages and patterns of regional development asymmetry and justify strategic measures to overcome it. In the results, it was found that the region's development strategy is a set of interrelated measures aimed at ensuring the principles of sustainable development, improving the quality of life, creating conditions for economic growth, ensuring the efficient use of resources, improving regional self-sufficiency, economic security and competitiveness of the region. It is argued that the region's development strategies should be based on: a) associative approach to the formation of goals and tools to achieve them; b) efficiency in the use of resources; c) participation of a wide range of stakeholders in the substantiation of strategic development directions; d) overall coordination of planning and control processes for the achievement of the set objectives. It is concluded that it is proven that the strategic directions of overcoming the asymmetry of regional development must be led by strategic thinking.

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Recibido el 13/06/22 Aceptado 25/08/22

Keywords: regional policy; asymmetry of development; strategic directions of development; strategic policy; regional development.

Direcciones estratégicas de la política nacional en el contexto de la asimetría del desarrollo regional

Resumen

El propósito del estudio fue fundamentar las direcciones estratégicas para superar la asimetría del desarrollo regional. La base metodológica implicó un enfoque sistémico que permitió, a su vez, un enfoque holístico para esclarecer los vínculos y patrones de asimetría del desarrollo regional y justificar medidas estratégicas para superarlo. En los resultados, se encontró que la estrategia de desarrollo de la región es un conjunto de medidas interrelacionadas, encaminadas a asegurar los principios del desarrollo sostenible, mejorar la calidad de vida, crear condiciones para el crecimiento económico, asegurar el uso eficiente de los recursos, mejorar la autosuficiencia regional, la seguridad económica y competitividad de la región. Se fundamenta que las estrategias de desarrollo de la región deben basarse en: a) enfoque asociativo para la formación de metas y herramientas para alcanzarlas; b) eficiencia en el uso de los recursos; c) participación de una amplia gama de partes interesadas en la sustanciación de las direcciones del desarrollo estratégico; d) coordinación general de los procesos de planificación y control para el logro de los objetivos fijados. Se concluye que está comprobado que las direcciones estratégicas de superación de la asimetría del desarrollo regional deben estar dirigidas por el pensamiento estratégico.

Palabras clave: política regional; asimetría del desarrollo; direcciones estratégicas del desarrollo; política estretegica; desarrollo regional.

Introduction

It is generally accepted that the system acquires a certain «ideal» state in the absence of discrepancies in the indicators of the state of its components. That is, considering the national economy as a system consisting of a set of regional economic systems, the smaller the discrepancy between the economic condition of its regions, the better the system itself and goes to a certain «ideal» state of its development. However, it should be noted

that the divergence and increasing asymmetry between regional economic systems has been progressing recently.

It is impossible to achieve full equality, because there are always differences between regions in resource opportunities, potentials, territorial features, and so on. Issues of asymmetry of regional development are faced by government officials, as their growth can lead to socio-political upheavals, general dissatisfaction and their manifestations among the population of backward areas, threaten economic security and disrupt the consolidation of socio-economic space of the national economy.

The issues of asymmetry of regional development of the business structure are not left out. Because, in some regions there are greater opportunities to attract the population in the form of labor for production, but in regions where more unemployed there is less demand for products. Also, the issue of asymmetry of regional development is acute for the population, which affects the differentiation of income and ensuring living conditions and quality.

The problem of asymmetry in territorial development is also facing the member states of the European Community, as the new EU members have much lower GNI per capita than the old EU members. Resolving differences in regional development, convergence of regions are among the leading goals of regional policy and strategies for regional development.

This and other causes the actualization of the issues of strategic direction of overcoming the asymmetry of regional development, leveling imbalances in the social, economic and environmental spheres.

The purpose of this study is to substantiate the strategic directions of overcoming the asymmetry of regional development. To achieve this goal, the authors set and achieved the following goals: substantiated the feasibility of scientific research in this area in order to justify strategic directions to overcome the asymmetry of regional development; the bases of the strategy of regional development taking into account the processes of decentralization are substantiated; the asymmetry of the development of the regions of Ukraine in terms of GRP values per capita and the share of GRP in general; the consequences and reasons for the growing asymmetry of regional development are identified, as well as possible threats to the spread of regional development differentiation; the strategic directions of overcoming the asymmetry of regional development and the vectors of their direction are substantiated.

The methodological basis for substantiating the directions of overcoming the asymmetry of regional development is a systematic approach, which is an instrument of scientific knowledge, which allows to combine into a single system different methods of research to prove the validity and effectiveness of strategic directions to overcome the asymmetry of regional development.

A systematic approach provides an opportunity to take a holistic approach to clarifying the links, processes and patterns of asymmetry of regional development and justify strategic measures to overcome it.

The system approach makes it possible to agree on the goals, objectives of state and regional governance, to direct the methods and tools of strategic governance to overcome the asymmetry of regional development. The use of such an approach makes it possible to consider the regions as a whole organism, a certain system with inherent specific features and capabilities and at the same time as a subsystem of a higher order, namely a component of the national economy.

1. Literature Review

The scientific directions of the following scientists are devoted to the strategic directions of regional development: Borbasova (2021); Burgos (2019); Cao (2006); Derhaliuk (2021); Giedrė (2021); Grigoraş-Ichim (2018); Grosu (2021); Herspergera (2019); Kholiavko (2021); Krasnostanova (2021); Kristensen (2018); Mukhametzhan (2020); Nurse (2017); Paniyaz (2021); Popelo (2021, 2022); Revko (2020); Righettini (2021); Samiilenko (2021); Samoilovych (2021); Shevchuk (2021); Tulchynska (2022) and other.

The authors of the article (Mukhametzhan *et al.*, 2020) developed an econometric model for estimating the impact of asymmetries in the development of the urban economy on regional socio-economic development. Scientists have assessed the asymmetry of regional development using the coefficient of variation of the relevant indicators of socio-economic development of cities and regions, taking into account lag variables.

According to scientists, the proposed model allows to determine the convergence model of regional development, the nature of the impact of asymmetries of urban development on regional economic development in conditions of economic growth and decline, as well as identify key factors of asymmetry of regional development. development.

Scholars (Cao *et al*., 2006) consider the way in which regional asymmetry emerged and how it was reproduced at different stages of Argentina's history. The authors consider a number of hypotheses about its main features at the present stage.

The aim of the article (Giedrė, 2021) is to study the impact of economic specialization on regional economic development and analysis of the definition of promising areas of regional economy. The authors argue that neither economic specialization nor economic diversity is a clear solution

to economic growth. Research has shown that specialization measures, in particular the allocation ratio, cannot fully reflect the dynamics of the sectoral structure, which may be important for shaping regional development strategy.

The scientific article (Paniyaz *et al.*, 2021) is based on the definition of strategic priorities of regional development and verification of the connection between regional development within the country and world geopolitics. The authors analyze the main problems and opportunities of economic development in different regions of Kazakhstan and propose measures to modernize the labor market as a key priority of effective economic development.

The authors (Borbasova *et al.*, 2021) proved that the effectiveness of the implementation of strategic plans is the most important condition for the implementation of strategic planning systems, in particular at the level of the territory as the closest to the population. The study concludes that due to the development of strategic management and planning, the relationship of strategic priorities of regional and industrial development, the pace of socio-economic development of territories is increasing.

Scientific research (Krasnostanova *et al.,* 2021) proves that the main priority of regional policy aimed at increasing the competitiveness of regions should be the development of their scientific, technical and innovative potential. The authors have developed recommendations for managing the innovative development of the region.

Researchers have identified priority areas for improving the tools for managing the innovative development of the region, including: the development of public consciousness, innovation and entrepreneurial culture; motivation of the population and entrepreneurship to active innovation; improving the content of specialized training of managerial staff for innovative development; algorithmization of the activity of regional leaders in the management of innovative development of the region. Researchers claim that the implementation of these areas will promote innovative development, increase the efficiency of the regional economy, improve living standards.

The paper (Righettini, 2021) examines the theory of joint governance to determine how it can support the analysis of new participatory practices at the local level and to assess the impact of these processes on the formation of sustainable development policy strategies. Researchers focus on analyzing the reframing process - in particular, it notes that the study uses a top-down system to promote civil society participation in strategic regional development planning.

The article (Herspergera *et al.,* 2019) argues that strategic spatial planning is increasingly being practiced around the world to develop a

coordinated vision to guide the medium- and long-term development of regions. The analytical framework proposed by the authors reflects current planning practices and intends to help consolidate the European understanding of strategic spatial planning, while providing a basis for dialogue with broader discourses on sustainable development in a global context.

The scientific work (Burgos, 2019) analyzes the articulation of mechanisms of economic development in the framework of territorial planning, supported by the transversal nature of this civil service and in the interests of achieving one of its goals: balanced socio-economic development.

The authors (Kristensen *et al.*, 2018) investigated that the existence and preservation of regional disparities between European regions requires special policies to promote structural change. The research focuses on disadvantaged regions and the use of smart specialization - a strategic approach to regional development based on innovation.

Researchers (Nurse *et al.*, 2017) are exploring the extent to which funds such as the European Regional Development Fund can be used effectively to focus on issues that are considered important at the local level. The authors analyze how successfully the European Regional Development Fund-funded schemes are developed, using the experience of key stakeholders working at each level of the funding process.

However, despite numerous studies on this topic, the issues of strategic directions to overcome the asymmetry of regional development need to become increasingly relevant and require further research.

2. Results

It should be noted that in Ukraine there is an increase in the asymmetry of economic development between regions. Such inequality quickly increased and led to the concentration of financial, human, material and intellectual resources in the leading regions, which further aggravated the economic and social situation in the outsider regions.

The implementation of reforms in the direction of decentralization of power has not only expanded the capacity of regional and local authorities to overcome existing problems, but also increased resources for strategic measures to improve the effectiveness of regional development policy. Decentralization provides an opportunity to use an individual approach to specific areas in order to overcome the existing pressing problems of socio-economic development.

Such reform provides a specific territorial orientation in the application of regional policy tools that are more effective than the implementation of strategic measures in general for all territories. Outlined and other, it is possible to note that strategic measures for the economic development of specific areas are more effective in applying an individual approach to solving existing problems.

The region's development strategy is a set of interrelated measures aimed at ensuring the principles of sustainable development, improving the quality of life, creating conditions for sustainable economic growth, ensuring efficient use of resources, increasing regional self-sufficiency, economic security and competitiveness.

Regional development strategies should be based on:

- partnership approach to the formation of goals and tools to achieve them, which involves mutual understanding between government, public and business representatives;
- efficiency in the use of resources to achieve goals;
- involvement in substantiating the directions of strategic development of a wide range of stakeholders and relevant analytical tools on the possibilities of achieving the set goals;
- general coordination of planning and control processes to achieve the set goals.

In the Table 1 presents the value of GRP per capita and the share of GRP in total to the country by region in 2015 and 2020, as well as the value of the rank of the region by these indicators.

Table 1. GRP indicators in 2015 and 2020

Region	2015				2020			
	GRP per capita (in actual prices, UAH)	Rank of the region	The share of GRP in total,%	Rank of the region	GRP per capita (in actual prices, UAH)	Rank of the region	The share of GRP in total,%	Rank of the region
Ukraine	**46413**	**-**	**100**	**-**	**94661**	**-**	**100**	**-**
Vinnytsia	37270	12	3,0	10	83175	9	3,3	10

Volyn	30387	18	1,6	20	73215	14	1,9	17
Dnipropetrovsk	65897	3	10,8	2	122379	4	9,8	2
Donetsk	26864	21	5,8	4	49422	22	5,2	6
Zhytomyr	30698	17	1,9	16	70247	1	2,1	14
Transcarpathian	22989	23	1,5	22	48861	23	1,5	22
Zaporizhzhia	50609	5	4,5	9	91498	6	3,9	9
Ivano-Frankivsk	33170	15	2,3	13	63254	18	2,2	13
Kyiv	60109	4	5,2	5	123367	3	5,5	4
Kirovohrad	39356	10	1,9	17	77816	13	1,8	19
Luhansk	10778	25	1,2	24	18798	25	1,0	24
Lviv	37338	11	4,8	7	85198	8	5,4	5
Mykolaiv	41501	8	2,4	12	82149	11	2,3	12
Odesa	41682	7	5,0	6	82903	10	5,0	7
Poltava	66390	2	4,8	8	134449	2	4,7	8
Rivne	30350	19	1,8	19	58332	20	1,7	20
Sumy	37170	13	2,1	14	70576	15	1,9	18
Ternopil	24963	22	1,3	23	54833	21	1,4	23
Kharkiv	45816	6	6,3	3	92864	5	6,2	3
Kherson	30246	20	1,6	21	59987	19	1,6	21
Khmelnytsky	31660	16	2,1	15	65916	617	2,1	15
Cherkasy	40759	9	2,6	11	86319	7	2,6	11
Chernivtsi	20338	24	0,9	25	46136	24	1,0	25
Chernihiv	35196	14	1,9	18	78118	12	2,0	16
Kiev city	155904	1	22,7	1	320885	1	23,9	1

Source: compiled according to statistics.

According to Table 1, it can be noted that the difference in the rank of regions on such indicators as GRP per capita and the share of GRP in general often do not differ much and often fluctuate within 1-2 steps. The biggest discrepancy is observed in the Donetsk region, which in 2020 ranks 22nd in terms of GRP per capita, but ranks 6th in terms of GRP share in the overall distribution of the country. This situation is primarily due to hostilities that began in Ukraine in 2014 and led to significant displacement of the population from the occupied part of the territory.

In 2015, the GRP per capita in Kyiv was 155,904 UAH, and in Luhansk region 10,778 UAH, ie the differentiation is 14.47 times. At the same time, the city of Kyiv in 2015 accounted for 22.7% of the total national product, and the Luhansk region 0.9%.

In 2020, the largest value of GRP per capita also falls on the city of Kyiv and is 320885 UAH, and the smallest amount of GRP per capita is 18798 UAH, the differentiation is 17.07 times. In total, the share of GRP in Kyiv in 2020 was 23.9%, which is 1.2% more than in 2015, and the share of GRP in Luhansk region decreased from 1.2% in 2015 to 1.0% in 2020. That is, in five years the asymmetry in terms of GRP per capita has deepened by 3.07 times.

Even greater asymmetry is found in the shares of GRP in the total gross product. Thus, in 2015, Kyiv produced 22.7%, and the share of Chernivtsi region was 0.9% of the total. That is, the differentiation was in 2015 - 25.2 times. In 2020, the share of Kyiv in the total GRP increased to 23.9%, and the smallest share fell on Chernivtsi and Luhansk regions 1% each. Differentiation in 2020 was 23.9 times.

In regions with low GRP per capita values, general unfavorable trends are observed, including:

- predominant raw material orientation of production;
- low share of final products in GNP;
- insufficient development of production infrastructure;
- low rates of introduction of innovative technologies in production and its general modernization;
- low competitiveness of products in both domestic and foreign markets.

These and other common shortcomings inherent in depressed, backward regions prove the ineffectiveness of regional policy and require the development of new strategic directions aimed at maximizing the available and unleashing the latent potential of territories to boost economic development through their own resources.

From the point of view of regional reproduction, the difference between regions lies in the inherent specific features that characterize the set of regional proportions and affect reproduction. At the same time, despite the significant differences, all regions are part of the overall system of national and economic complex of the country, ensuring the achievement of strategic interests of the country as a whole. It can be noted that the root causes of asymmetry of development are (Fig. 1):

- significant differences in the natural resource potential of the regions;
- location of the region;
- imperfection of development of production and social infrastructure;
- level and composition of the population, etc.

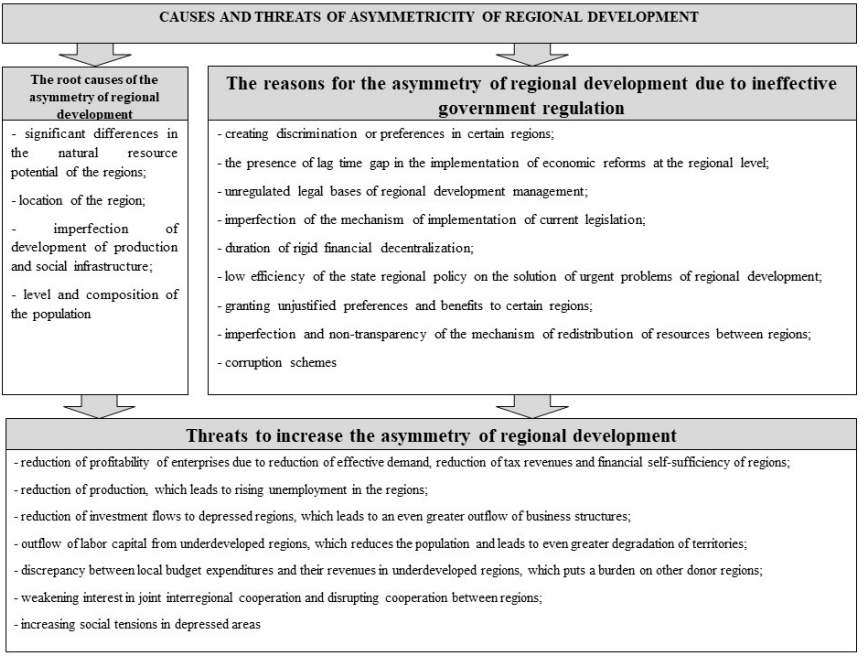

Fig. 1. Causes and threats of asymmetry of regional development. Source: built by the authors

However, the growing disproportion of regional development is due to ineffective regional policies to address specific problems of development of specific areas. Ineffective state regional policy may consist of:

- creating discrimination or preferences in certain regions;
- the presence of lag time gap in the implementation of economic reforms at the regional level;
- unregulated legal bases of regional development management;

- imperfection of the mechanism of implementation of current legislation;
- duration of rigid financial decentralization;
- low efficiency of the state regional policy on the solution of urgent problems of regional development;
- granting unjustified preferences and benefits to certain regions;
- imperfection and non-transparency of the mechanism of redistribution of resources between regions;
- corruption schemes and the influence of business elites on the redistribution of financial support for regional development projects, etc.
- In turn, increasing the asymmetry of regional development exacerbates the problems of economic development of regions and the country as a whole, consisting in:
- reduction of profitability of enterprises of backward regions as a result of reduction of effective demand, and as a consequence of reduction of regional tax revenues and financial self-sufficiency of regions;
- reduction of production, which leads to rising unemployment in the regions;
- reduction of investment flows to depressed regions, which leads to an even greater outflow of business structures;
- outflow of labor capital from underdeveloped regions, which reduces the population and leads to even greater degradation of territories;
- discrepancy between local budget expenditures and their revenues in underdeveloped regions, which puts a burden on other donor regions;
- weakening interest in joint interregional cooperation and disrupting cooperation between regions;
- increasing social tensions in depressed areas.

These and niche factors that arise under the influence of disparities can, in turn, be the causes of disintegration trends in the regions, the growing threat of economic alienation of territories and the formation of closed economic spaces. Formation of two polar groups of regions on the one hand, those who are not interested in supporting other donor regions and depressed underdeveloped regions that are recipients of grants. This leads to the lack of interest of the regions in the consolidation of spatial

development. This and others require the formation of strategic directions to overcome the asymmetry of regional development.

Directions for overcoming the asymmetry of regional development should be aimed at:

- overcoming structural imbalances in the development of regions by increasing the adaptability of regions with different regional structures to modern challenges of economic development;
- strengthening the export orientation of the regions, especially in relation to innovative products that are new and competitive in the world market;
- introduction of post-industrial economy on the basis of smart specialization;
- attracting investment in innovative development of regions;
- identification of regional growth points and multipliers of regional development, taking into account the specific potential of the regions;
- focusing and directing the regions to self-development based on their own resources and capabilities, use of latent potential, diversification of economic spheres of activity;
- reducing the importance of subsidized instruments to support the regions and overcoming the paternalistic expectations of the regions regarding state support;
- weakening decentralization to regulate regional development processes, etc.

At the same time, the main aspect of using strategic measures of the state regional administration to overcome the asymmetry of regional development should be aimed at using more flexible methods and tools of influence, which would ensure the interest of regional and local authorities in enhancing the potential of territories. self-sufficiency.

Strategic directions for overcoming the asymmetry of regional development should be aimed at (Fig. 2):

- development and adoption of institutional support for the regulation of regional policy in the context of decentralization p
- development and control over the implementation of regional development programs taking into account the existing potential and latent opportunities;
- ensuring an effective system of territorial organization, which helps

to increase the efficiency of local budgets in the direction of their filling and use;

- creating conditions for the placement of production and intensification of small business development in economically backward regions;
- implementation of incentive measures for full and rational use of existing potential in accordance with the principles of sustainable development;
- elimination of differences in the socio-economic security of the inhabitants of the regions, as well as differentiation between rural and urban populations, which will help stabilize migration processes;
- strengthening the regional awareness of residents about the possibility of realizing their potential at the place of residence;
- increasing the innovative culture of the population and the perception of digitalization of economic processes.

Fig. 2. Strategic directions of overcoming the asymmetry of regional development. Source: built by the authors

The main feature of the strategic direction of overcoming the asymmetry of regional development should be a policy aimed at comprehensively stimulating the development of regions in order to overcome the most critical and urgent development problems.

Conclusion

The study allows us to note that the asymmetry of regional development tends to increase, it requires the use of strategic regulatory tools aimed at overcoming the disparities in regional development. Strategic regulation directs the activities of the authorities in the vector of activating the business environment of the regions to influence the overcoming of the asymmetry of the development of regional economic systems.

The need for state strategic regulation of regional development is due to the impact on the shortcomings of regional development processes, which include the asymmetry and repression of certain areas. Strategic regulation should be based not on policy levers of influence, but on the possibility of choosing various tools for managing and activating local authorities in the direction of development and self-sufficiency of territories. The levers of regional development regulation are an effective tool for complex disproportion systems, which make it possible to achieve ordering of system components and reduce the asymmetry of their measurability.

Further research is needed to develop regional development strategies based on their economic development indicators in order to enhance the use of existing opportunities to ensure sustainable economic growth and increase self-sufficiency, which will help overcome the general asymmetry of economic development between regions.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 515-530
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Regulatory policy of the foreign economic activity of the state

DOI: https://doi.org/10.46398/cuestpol.4074.28

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Abstract

The subject of the article was the analysis of the state regulatory policy in the field of securing foreign economic activity and the development of relevant directions for its adaptation in the conditions of martial law. In the study, the regulatory and legal support for the implementation of foreign economic activity in Ukraine was formed. Peculiarities of implementation of international trade activities in the conditions of martial law are determined. The losses of Ukraine's industrial potential during military operations are analyzed. The rates of decline of export and import operations during the period of martial law are estimated. Regulatory activity of the authorities with respect to stabilization of foreign economic activity and directions with respect to support of business entities have been studied. The conclusions highlight areas related to the support and activation of economic activity, which are aimed at creating the necessary conditions for the formation of a positive climate of innovation and investment, efficient and safe logistic flows, and a regulatory and legal field that is adapted to the standards of European countries.

Keywords: regulatory policy; foreign economic activity; international trade activity; innovation; investment climate.

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Recibido el 04/12/2022 Aceptado el 06/06/2022

Política reguladora de las actividades económicas exteriores del Estado

Resumen

El objeto del artículo fue el análisis de la política regulatoria del Estado en materia de aseguramiento de la actividad económica exterior y el desarrollo de las orientaciones pertinentes para su adecuación en las condiciones de la ley marcial. En el estudio, se formó el soporte regulatorio y legal para la implementación de la actividad económica extranjera en Ucrania. Se determinan las peculiaridades de la implementación de actividades de comercio internacional en las condiciones de la ley marcial. Se analizan las pérdidas del potencial industrial de Ucrania durante las operaciones militares. Se estiman las tasas de disminución de las operaciones de exportación e importación durante el período de la ley marcial. Se ha estudiado la actividad regulatoria de las autoridades con respecto a la estabilización de la actividad económica exterior y las direcciones con respecto al apoyo de las entidades comerciales. En las conclusiones se destacan áreas relacionadas con el apoyo y activación de la actividad económica, las cuales están orientadas a crear las condiciones necesarias para la formación de un clima positivo de innovación e inversión, flujos logísticos eficientes y seguros, y un campo normativo y legal que sea adaptado a las normas de los países europeos.

Palabras clave: política regulatoria; actividad económica exterior; actividad comercial internacional; innovación; clima de inversión.

Introduction

The armed conflict in Ukraine led to the complication of conducting foreign economic activities of the state and contributed to the search for new mechanisms for adapting the conduct of foreign economic activities at all levels. One of these directions is the formation of a new mechanism of state regulation of foreign economic activity, which will contribute to the support of international cooperation, the provision of effective measures to ensure the income of the state and enterprises, and the search for new forms of interaction in the business environment for the sale of domestic products and services on international markets.

The regulatory policy of foreign economic activity should be considered as a set of measures aimed at introducing the domestic economic system into the global economy, while it is important to preserve and protect domestic interests and the economic security of the state. However, Russia's

military aggression led to significant restrictions on the functioning of foreign economic activity in the country, which requires new approaches to the organization of international cooperation, taking into account the relevant risks and threats.

In the conditions of military restrictions, the main tasks are to ensure the export of quality goods to replenish the state budget, on the other hand, it is important to support the import of goods of primary necessity to ensure the life of society. The researched issues are currently relevant and complex for the state, which requires a thorough study of both theoretical and practical activities, which will allow the formation of an appropriate mechanism for ensuring the regulation and development of foreign economic activity in Ukraine.

The purpose of the article is the analysis of the regulatory policy of the state in matters of ensuring foreign economic activity and the development of relevant directions for its adaptation in the conditions of martial law.

To achieve the set goal, the following tasks were formed and solved in the work:

- The regulatory policy of the state in matters of its foreign economic activity was investigated.
- Changes in indicators of foreign economic activity in the pre-war and war period were analyzed;
- Developed directions for the development of a mechanism for regulating foreign economic activity, taking into account modern challenges and threats.

The difficult conditions of the pandemic and military aggression led to a significant decrease in foreign economic activity in Ukraine due to the destruction of many enterprises that were strategic for export activities in Ukraine. The destruction of industrial giants that exported products to various countries led to a decrease in the export potential of the state. Such industrial enterprises as the Azovstal Metallurgical Plant, the Mariupol Metallurgical Plant named after Ilyich, the Branch of the State Enterprise ANTK named after O. K. Antonova, Kremenchug Oil Refinery, PJSC Avdiiv Coke Chemical Plant, State Enterprise "Zorya - Mashproekt Scientific-Production Gas Turbo Construction Complex" and others, which provided 50% of the state's industrial exports.

The agricultural sector suffered a great loss due to the loss and damage of grain crops, which affected the world food market. In such conditions, one of the main tasks of the state is to create proper safe ways of import substitution of necessary goods and services in the regional section, regardless of hostilities.

Today, in Ukraine, the issue of regulation of foreign economic activity is controlled by such authorities as the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, the National Bank of Ukraine, the Ministry of Economy, regional and local foreign economic activity management bodies. As for the regulatory and legal support for the implementation of foreign economic activity in Ukraine, it is regulated by the following basic legislative acts in the conditions of martial law:

Law of Ukraine "On Foreign Economic Activity" No. 959-XII, dated August 1, 2021 (as amended), which regulates the main provisions on conducting foreign economic activity in Ukraine;

Law of Ukraine "On the Nationwide Program for the Adaptation of the Legislation of Ukraine to the Legislation of the European Union" No. 1629-IV dated 04.11.2018 in which the purpose and directions of adaptation of the regulatory and legal system of Ukraine to European standards are established.

The implementation of foreign economic activity is regulated on the basis of such methods as:

- licensing and quotas of goods and services, registration of foreign economic activity subjects, conclusion of international contracts, restriction of export and import of certain types of goods and services; currency control;
- customs and administrative registration of operations related to foreign economic activity; granting of licenses for alcohol and tobacco products; certification of goods imported into the territory of Ukraine;
- implementation of control in sanitary-epidemiological, veterinary, phytosanitary, ecological areas; registration of medicinal products and those used in non-traditional medicine.

Starting from the period of martial law, the state introduced a number of resolutions and legislative acts that regulate the implementation of foreign economic activity in Ukraine under such conditions.

One of these directions was the closure of some checkpoints on the borders with the aggressor country to ensure the security of the state. These measures are controlled by the Decree of the Cabinet of Ministers of Ukraine No. 188 dated February 26, 2022 "On the temporary closure of some checkpoints across the state border and checkpoints". The negative consequence is the termination of all foreign economic relations with Russia, since the majority of industrial exports and imports of goods and energy were carried out with this country.

Establishing new ties and logistics chains requires time and money, development of appropriate regulatory support for operations with EU countries. To support foreign economic activity and its regulation in the new conditions, the state adopted a number of resolutions that will contribute to this.

Thus, Resolution of the Cabinet of Ministers of Ukraine No. 314-220 dated 11.05.2022 "Some issues of ensuring the conduct of economic activity in conditions of martial law" is designed to simplify the procedure for obtaining permits for the implementation of foreign economic activity for those economic entities that implement it in their activities.

Resolution of the Cabinet of Ministers of Ukraine No. 153-2022 dated 14.06.2022 "On the list of goods of critical import" and Resolution of the Cabinet of Ministers of Ukraine No. 289 of 16.03.2022 "Some issues of goods of critical import". The above documents regulate the issue of defining critical import and export of goods, the list of such goods, and the identification of sectors that are critical for ensuring the livelihood of the country and the population. The definition of such goods and services allows to maximize the work of enterprises and organizations in the existing conditions to ensure the livelihood of the population and contribute to the filling of the country's budget.

The regulation of issues related to the export of agricultural goods from the country, the allocation of quotas, licenses and the export of a number of goods (wheat, meat, flour, other meat by-products) are regulated by Resolution of the Cabinet of Ministers of Ukraine No. 1031 dated 16.09.2022 "On making changes to Appendices 1 and 5 to the Resolution of the Cabinet of Ministers of Ukraine dated December 29, 2021 No. 1424", Resolution of the Cabinet of Ministers of Ukraine No. 422 dated 04.09.2022 "On making changes to Appendices 1 and 5 to the Resolution of the Cabinet of Ministers of Ukraine dated December 29, 2021 No. 1424".

As one of the ways to support the consumer market during martial law, the government banned the export of such products as buckwheat, salt, rye, and oats. Restrictions also apply to a number of mineral and chemical fertilizers.

During the martial law, the National Bank of Ukraine introduced a number of rules regarding settlements with transactions related to foreign economic activity, in particular the establishment of deadlines of 90 calendar days for the relevant settlements, which is regulated by the Resolution of the Board of the National Bank of Ukraine dated 24.02.2022 No. 18 "On the operation of the banking system during the introduction of martial law".

The difficult conditions in which Ukraine found itself contributed to a significant transformation of the national legislation in matters of regulation

of foreign economic activity. The process of adapting domestic legislation to new requirements is carried out on the basis of the introduction of a structured system of legal regulation of the processes of foreign economic activity, the development of the appropriate toolkit (normative framework, compliance with the norms of international law and the conclusion of intergovernmental agreements).

For the effective participation of Ukraine in the international market and the implementation of foreign economic activities with the EU countries, it is necessary to develop and bring into compliance the legal framework that will contribute to the acceleration of the country's integration into the EU.

The Covid-19 pandemic and hostilities have had a negative impact on Ukraine's economy and international cooperation. The slowdown in production and the subsequent destruction of strategic enterprises and infrastructure led to a sharp decline in the country's socio-economic development. Negative consequences are also observed in the field of human capital, as many professionals and young people have left abroad in search of security. After the end of hostilities, not all citizens will return to Ukraine, so the state must already take into account the shortage of personnel in many professions.

Also, a negative consequence is the demographic crisis, which is caused by the departure of the population from the country due to military aggression, which affected the safety of working conditions, the level of financial security of labor, and the increase in the death rate of citizens during hostilities. Such negative phenomena have a global character for the country, which disincentivizes development and the possibility of the country carrying out foreign economic activities in full.

1. Literature Review

Scientific research by leading scientists is devoted to the peculiarities of the development of the economic potential of the regions and the country as a whole, including aspects of foreign economic activity, namely: Arefieva (2021); Balatskyi (2021); Derhaliuk (2021); Havlovska (2019); Havlovska (2020); Khrushch (2022); Kniaz (2021); Nazarova (2021); Nesterova (2020); Popelo (2021); Prokopenko (2014); Rudnichenko (2020); Rudnichenko (2021); Shkarlet (2020); Shymanska (2014); Solodovnik (2021); Tulchynska (2021) and other.

Within the study (Rudnichenko *et al.,* 2020) the authors developed an economic and mathematical model for optimizing the interaction of industrial enterprises with potential partners based on risk minimization. Scientists are convinced of the practical value of the model, namely that

it will facilitate the adoption of rational strategic decisions in the field of foreign economic activity. The purpose of the article (Prokopenko *et al*., 2014) is to outline the mechanism of economic security management of foreign economic activity of machine-building enterprises. Scientists have developed ways to improve the management of economic security of foreign economic activity of machine-building enterprises.

This approach will contribute to comprehensive economic security. The purpose of the article of scientists (Havlovska *et al*., 2019) is to substantiate the practical need to introduce a mechanism of economic security of foreign economic activity of enterprises. According to researchers, through the components of the management system, the mechanism will help to identify and detail the parametric characteristics of economic security of foreign economic activity.

The authors (Solodovnik *et al.,* 2021) substantiate the practical feasibility of the developed recommendations concerning the processes of modeling the innovative development of foreign economic activity. The author's method is aimed at monitoring the work of the department of foreign economic activity and the algorithm of programmed selection of directions of innovative development is offered.

The purpose of the article (Rudnichenko *et al*., 2021) is to analyze the features of strategic management of interaction between government agencies and enterprises in the field of foreign economic activity. The authors of the study claim that the results of the study found ways to increase the effectiveness of cooperation, which largely depend on government institutions.

The authors (Shymanska, 2014) study the processes of risk management in the enterprise as the dominants of its foreign economic activity. Within the study, scientists propose a model of risk management in the role of the functional structure of the enterprise.

The article (Nesterova *et al*., 2020) reveals the features of identifying and assessing external risks of foreign economic activity of the enterprise. The algorithm of detection and sequence of risk management offered by scientists has practical value. The authors (Balatskyi *et al*., 2021) proposed an organizational and economic mechanism for managing economic security in foreign economic activity of the enterprise.

Scientists systematized and grouped the principles, methods and stages of economic security management in the foreign economic activity of the enterprise. The authors have developed an integrated structure of the mechanism of economic security management in foreign economic activity.

The study (Kniaz *et al*., 2021) proposed a method for assessing the level of economic efficiency of foreign economic activity. The authors argue the

need to strengthen the specification of information and analytical support for the development of foreign economic activity of enterprises through the use of developed methods for selecting indicators. The practical value of the authors' research (Nazarova *et al*., 2021) lies in the developed approach, which describes the process of forming the principles of accounting, analysis and audit of foreign economic activity of the enterprise.

According to the results of research, scientists have proposed ways to improve the organizational and methodological provisions of the audit of foreign economic activity of enterprises, taking into account modern challenges and intensification of competition.

Practically useful is the study of scientists (Havlovska *et al*., 2020), which is based on strategic choice and analysis of markets in terms of potential benefits for the subject of foreign economic activity. The approach proposed by the authors will be useful for enterprises engaged in foreign economic activity, namely through the presentation of management information, which will facilitate the adoption of sound management decisions.

Despite of many studies by domestic and foreign scholars, the issue of regulatory policy of foreign economic activity needs further research and analysis.

2. Results

The modern practice of conducting foreign economic activity proves that the internationalization of economic ties is a stimulating factor for the growth of the state's economy and, as a result, contributes to the development of the global economic space. An important role in this is played by the development of foreign economic activity, since it represents the inclusion of each country in the system of the world economy, and as a result, in the processes of international division of labor and international cooperation.

On the basis of which it can be argued that the process of foreign economic activity is the main factor in the development of every country in the world. Therefore, it is an important aspect for Ukraine to establish international ties that will help strengthen the economy and partnership relations, promote business activity and increase the state's competitiveness in the international arena. The main task of regulating foreign economic activity is to create appropriate conditions for the activation of export-import activities of enterprises and the state as a whole. The development of the export-import potential of Ukraine for the period 2012-2021 is shown in (Fig. 1).

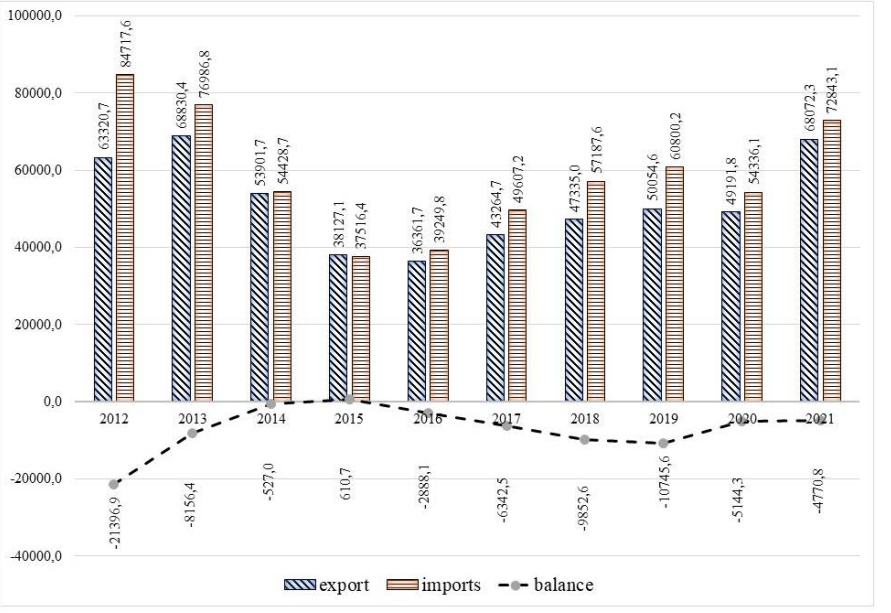

Fig. 1. Dynamics of foreign trade in goods in 2012-2021 (million USD). Source: generated by the authors

It can be seen from the given data that for a period of 10 years, the import of goods exceeded the export. However, in 2021, the export of goods increased significantly compared to similar periods (2012-2020). Thus, in 2021, compared to 2020, exports increased by 18,880.5 million USD, and compared to 2019 by 18,017.7 million USD. This indicates the stabilization of the situation of foreign economic activities compared to 2019, when the pandemic spread throughout the world. Import of goods increased similarly to export, but in 2021, compared to 2019, it increased by 12,042.9 million USD, and compared to 2020 by 18,507 million USD. The indicator of the balance of foreign economic activity in 2021 compared to 2020 is characterized by an improvement of 373.5 million USD.

The analysis of the export of goods for the period 2021-2022 is characterized by a significant decrease in indicators in 2022 due to military actions on the territory of Ukraine. Thus, in 4 months, the rate of export of goods decreased by 31% compared to the same period of 2021 (Fig. 2). The export-import coverage ratio in 2021 was 0.94, and in 4 months of 2022 it was 1.0.

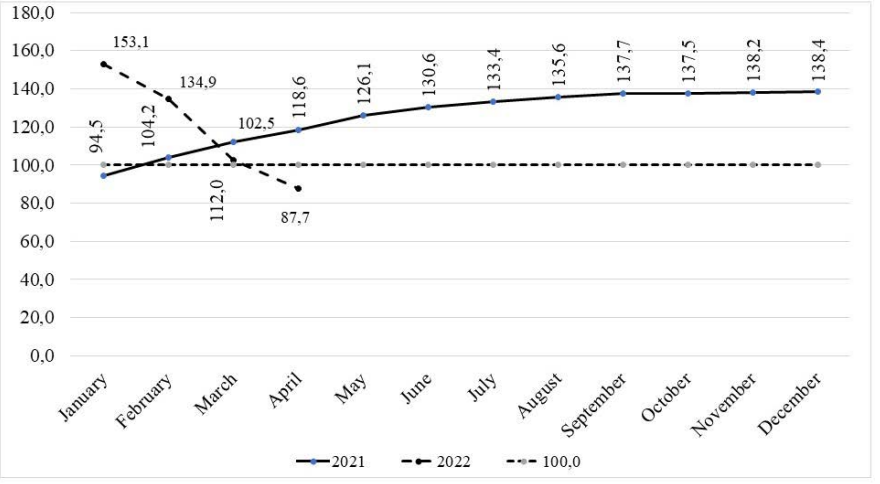

Fig. 2. The rate of growth (decrease) in the export of goods (in % compared to the corresponding period of the previous year, cumulatively). Source: generated by the authors.

The analysis of the import of goods for the period of 2021-2022 was characterized by a decrease in the import of goods to 82.5 against 119.7 for the same period of 2021 (Fig. 3). From January to April 2022, the growth rate of goods imports decreased by 65%. The decrease in the rate of import and export of goods is associated with military actions on the territory of Ukraine, which led to a decrease in the rate of foreign economic activity with the regions that are the most dangerous. However, some manufacturers and countries during the war generally stopped or significantly reduced trade activities due to the threat.

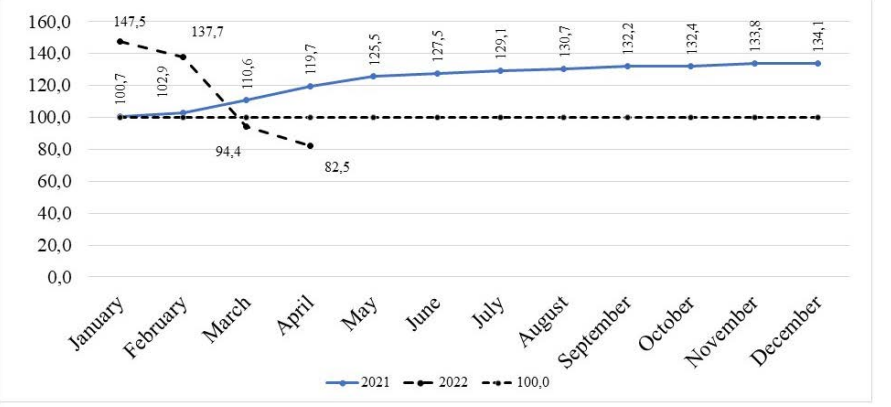

Fig. 3. The rate of growth (decrease) in the import of goods (in % compared to the corresponding period of the previous year, cumulatively). Source: generated by the authors.

In this way, it can be determined that during the period of hostilities, Ukraine significantly reduced the potential of foreign economic activity, which requires the development and implementation of appropriate directions on the part of the state in matters of regulation of these processes in order to stabilize the situation. However, such challenges allow business entities to more quickly adapt to new conditions and increase their competitiveness on the international market.

For the implementation of such measures, it is expedient to improve the mechanism of regulation of foreign economic activities of the state taking into account European integration, since such adaptation requires appropriate regulatory and legal support taking into account international norms and standards. Therefore, the primary task is the development and adaptation of Ukrainian legislation to European norms and standards of conducting business and international trade.

The system of ensuring the regulation of foreign economic activity includes goals, tools, tasks that contribute to the development of foreign economic activity based on the introduction of the appropriate mechanism (Fig. 4).

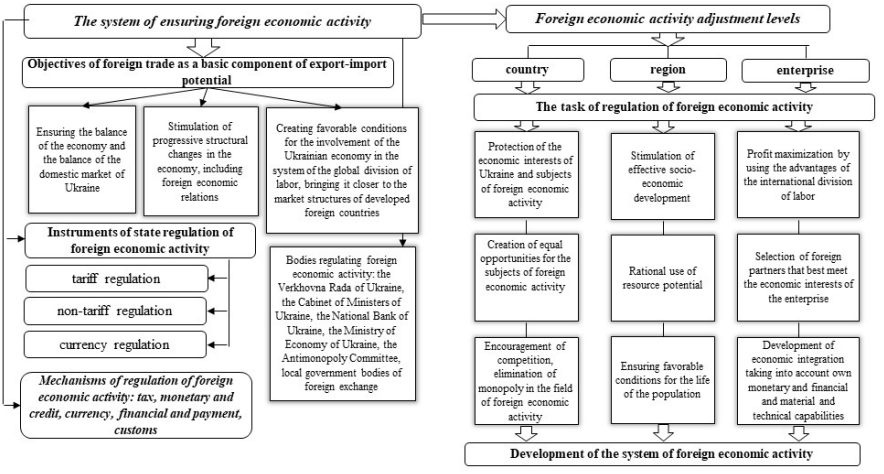

Fig. 4. Regulation of foreign economic activity in the conditions of European integration
Source: generated by the authors

Depending on the level of implementation of the regulation of foreign economic activity, the tasks will differ, but in aggregate they should contribute to the development of foreign economic activity. At each level, conditions are created for the functioning of international activities of enterprises and organizations in the form of directions for regulating these processes.

Conclusion

The conducted research made it possible to outline the following conclusions. From the practice of conducting foreign economic activity by business entities, it should be noted that for its success, enterprises must adapt their activities to the norms of international legislation. The processes of regulation of foreign economic activity take place during the period of transformations and changes in both the internal and external environment. Under the conditions of a decrease in the development of international trade, questions arise for the state regarding the development of appropriate instruments for regulating the influence on its activation, taking into account the state of the external and internal environment.

For the development of foreign economic activity in the country, the Export Strategy was adopted in 2017, which provided directions for

ensuring the export of goods and services, but its activities did not achieve the desired effect for the state. Therefore, for the effective implementation of directions regarding the regulation of foreign economic activity in the post-war period, it is necessary to focus on the strengths of Ukraine's export potential, namely, the emphasis on high-tech goods and services, the achievement of innovative and intellectual developments in various fields.

It is the prioritization of the commodity rather than raw material segment that will contribute to increasing the export potential of the state and strengthening its competitive positions. To achieve this goal, it is necessary to solve the following tasks in the sphere of regulation of foreign economic activities:

- Creating the necessary conditions for stimulating the innovative activity of enterprises and the development of foreign trade, taking into account the diversification of the export of goods and services.
- Development of consulting and support services for international cooperation and foreign economic activity by business entities.
- Regulation and improvement of financial markets, which will contribute to the increase of investment flows.
- Reducing the level of corruption in the country based on the introduction of methods of detecting violations and bringing to justice for corrupt acts, which will ensure the transparency of investment operations and increase the country's rating in the international environment.
- Adaptation of the domestic trade system to the needs of exporters in the provision of various types of services in financing, insurance, product certification, logistic transportation, assistance in drawing up relevant documentation taking into account EU requirements.
- Development and implementation of a road map for the regulation and development of foreign economic activity in the country.
- Simplification of financial and credit mechanisms for obtaining funds for business entities engaged in foreign economic activity.
- Institutional support and coordination of actions between different levels of state administration in matters of ensuring effective export-import activity.
- Balancing in compliance with requirements regarding technical regulations and standards of partner countries.
- Such measures will contribute to the expansion of international cooperation of the state in matters of export-import relations in the long term.

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Cuestiones Políticas Vol. 40, Nº 74 (2021), 531-542
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

International festival "music without limits" as a reflection of new political forms of intercultural dialogue

DOI: https://doi.org/10.46398/cuestpol.4074.29

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Abstract

Using the comparative historical method, the purpose of this article was to detect the new political forms of intercultural dialogue at the time of the classical music festival. The international festival "Music without limits" has not been the subject of scientific research since the moment of its foundation twelve years ago, festival which has an annual presentation at the Dnipropetrovsk academy named after M. Glinka. The authors of this paper have discovered the series of new forms relating to intercultural dialogue in time, one of the most famous classical music festivals in the central region of Ukraine, in particular discrete (separate) form in connection with the celebration of holiday music, denotes a different presentation in time, concerts of general thematic or compositional-artistic features; repertoire-region form of festive movement, which concentrates the predominance of musical compositions of a certain region or country; permanent form of performance in terms of the presentation of masterpieces of the cycle of academic musical art, which is stipulated by the performance at a single concert of all compositions of the musical cycle. It is concluded that music, under certain political conditions, can represent a space for intercultural dialogue.

Keywords: music festival; intercultural dialogue; cultural policies; cultural identities; art and politics.

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Recibido el 15/07/22 Aceptado el 07/09/22

Festival internacional «música sin límites» como reflejo de las nuevas formas políticas del diálogo intercultural

Resumen

Mediante el método histórico comparativo el propósito de este artículo fue detectar las nuevas formas políticas del diálogo intercultural en la época del festival de música clásica. El festival internacional «Música sin límites» no ha sido objeto de investigación científica desde el momento de su fundación hace doce años, festival que tiene una presentación anual en la academia de Dnipropetrovsk que lleva el nombre de M. Glinka. Los autores de este trabajo han descubierto la serie de nuevas formas relativas al diálogo intercultural en el tiempo, uno de los festivales de música clásica más famosos en la región central de Ucrania, en particular la forma discreta (separada) en relación con la celebración de música de festividad, denota una presentación diferente en el tiempo, conciertos de temática general o características compositivas-artísticas; forma repertorio-región de movimiento festivo, que concentra el predominio de composiciones musicales de determinada región o país; forma de ejecución permanente en cuanto a la presentación de obras maestras del ciclo del arte musical académico, que se estipula mediante la ejecución en un solo concierto de todas las composiciones del ciclo musical. Se concluye que la música, en determinadas condiciones políticas, puede representar un espacio para el diálogo intercultural.

Palabras clave: festival de música; diálogo intercultural; políticas culturales; identidades culturales; arte y política.

Introduction

The musical festival evolved as a large cultural phenomenon from antiquity, specifically from the period of Ancient Greece's flourishing, when the programs of Pythian and Olympic games included many musical performances. As a result, the agonal nature of public musically performing activity concerning ancient Greek games was accepted as a phenomenon of competition, as a competitive, creatively rival process. artistically performed act, without marks of competition, rivalry, and determination of musicians' professional level, has got affirmation as the phenomenon of musical festival.

It is important to note that, since the Middle Ages, public musical performance without competition (festival) has been an integral part of many fairs. Music had escorted the diverse conversation of people

in during the demonstration of the musical, theatrical, and circus arts' accomplishments as utilitarian nature and artistically aesthetic content. Many creators had met people who had their own creative achievements, particularly artistic achievements, which had been founded, in general, on the synthesis of various arts types.

In the 17th and 18th centuries, people's celebrations crystallized in reference to specific artistic types. As a result, the musical festival was taking place at the time. Herewith, the most essential traits of the festival movement have been kept, in particular the ability of the festival's participants to learn from each other, to communicate creatively with artists, while at the same time bypassing any intention regarding musically performing rivalry or competition of musicians.

As a result, festival movement has crystallized into distinct types of public celebration, denoted by educational, cultural, lighting, and advertising vectors (Luchaninova *et al*., 2019). In addition, the types of festival marathons purchase the specific determination.

The process of acquiring the greatest diversity in structurally content representation in one or more festival movements produces, on the one hand, its unique artistic feature and generates the greatest amount of listening interest in the festival events, but it also produces the problem of constant search for new forms of creative dialog, founded on the artistic scale of intercultural communication for representatives of the contemporary art community.

But questions remain about researching the processes of innovation and creativity in festival organizations and ways to encourage new ideas and creative solutions (Parwita *et al*., 2021; Arsawan *et al*., 2022), as well as intercultural communication and as an important component of the new educational paradigm (Kyrpychenko *et al*., 2021).

1. Literature Review

The theme of festival movements in Europe, particularly in Ukraine, is scientifically developed by many researchers at a high professional level. Fedorova1 (2017) is deeply studying the artistic aspects of the concept of «festival»; Zubenko (2011) is deeply studying the thematic pallet of contemporary festival dynamics; Ighnatjjeva (2018) is investigating the phenomenon of festival movement in foreign and Ukrainian musical art into the vector for upbringing of musically aesthetic culture and its participants; Bermes (2015) is explaining the fundamental organizational bases of the musical festival movement, and scientists-economists are

Among of the many foreign researches we are emphasizing scientific explorations in particular investigations by Lawendowski and Besta (2020), which are detecting the features of self-development at the context of musical festival movement; scientific research by Fernandez (2019), which is discovering economic and social results of musical festivals; collective scientific article by Pavlukovic *et al.,* (2020) which are opening the peculiarities of social influence from contemporary musical festivals; analytical disquisition by Klara (2020), where the phenomenon of social community is disclosed in the context of modern musical festival movement.

Highlight, that wide thematic field of investigations concerning the phenomenon of festival movement, unfortunately, bypasses the separation and statement of new forms regarding intercultural communication in the light contemporary international festivals of classical music. Herewith, the international musical festival «Music without limits» (c. Dnipro, Ukraine) is staying without attention as Ukrainian and foreign scientific community.

The purpose of submitted article is detecting of new forms in relation to intercultural dialog in time the festival of classical music, in particular international festival of classical musical art «Music without limits».

2. Methods

The necessity of this scientific investigation is conditioned by the need to reveal new forms of festival movement that have been grounded in international intercultural dialogue. The importance of analyzing the international festival of classical musical art «Music without limits», which has not been the subject of scientific investigation since its inception, and this is a period of twelve years of its annual representation at the Dnipropetrovsk music academy named after M. Glinka (c. Dnipro, Ukraine).

The main research method was the comparative-historical method, which allowed for a systematic study of intercultural dialogue as a modern means of intercultural communication and as an artistically performed act, without marks of competition, rivalry, and determination of musicians' professional level, has got affirmation as the phenomenon of music festival.

It should be noted that the author collectivity of the submitted research is a direct participant of the organizational committee for the international festival «Music without Limits», as it has had practical experience in the generation of new forms in relation to intercultural dialog in the international festival movement in one of the largest cities in Ukraine, namely Dnipro.

3. Results

The «Music without limits» is a contemporary international festival of classical musical art, which had been founded in 2009 at the Dnipropetrovsk music academy named after M. Glinka (c. Dnipro, Ukraine). Rector of academy music in Dnipro, famous pianist and teacher Novikov (2009) was idea man-inspiration for this scale Ukrainian musical event.

The first festival «Music without limits» had been devoted to performers-pianists. Three days a row, a namely in the period 25 – 27 February 2009, at the main concert hall of academy music named after M. Glinka, the representatives of the three celebrated piano school, in particular Ukrainian – honored art worker of Ukraine, rector of academy music named after M. Glinka, pianist Novikov (2009). The piano masterpieces of diver's genres and culturally historical periods had been sounding at the concert hall of academy. Those were renowned piano compositions by W. Mozart, L. Beethoven, F. Liszt, E. Grieg and others celebrated European composers.

The festival has the idea of unity: we are all children of the Earth, the children of the European culture, and through cultural space that does not know limits, sooner or later we must come to common space of the European home, to the united European family (Novikov, 2009).

Among the tasks of international festival marathon, Novikov (2009) has focused the attentions of listeners and festivity participants on the next artistically creative, cultural and educational vectors, a namely «propaganda of piano performing art, raising the professional level of professors and students, support for young artists, as well as assistance of active promotion for integration process of the Ukrainian culture to the world culture».

The second international festival of piano art «Music without limits» had held in 22 – 25 December 2009. The increasing of participants for festival movement was conditioned the holding of creative event in the period four days, consequently, it had expanded the palette for artistically creative forms concerning intercultural communication.

Emphasize, that first festivals «Music without limits» had been generating in itself, today very well known, the forms of intercultural dialog. Those were concerts by famous masters of musically performing art, the master-classes by renowned musicians of international professional level, the scientifically practical conferences with participation of celebrated musicologists, the creative meetings with distinguished musicians-conductors, composers, teachers, as well as concerts by young talented performers, which had been presenting the different academic performing schools11,12.

The festival relay in 2010 had been taken over by musicians-vocalists. The peculiar artistically creative synthesis of vocal and instrumental art

was accomplished in the chamber music genre. People's artist of Ukraine, professor of Odessa national music academy named after A.V. Nezhdanova, laureate a lot of international musical competitions V. Navrotskiy (basso) had been gifting to many music lovers the unsurpassed culture of academic singing at the refined expressive ensemble with a pianist Ju. Novikov.

Accentuate that the scientifically investigative work had received the essential activation at the festival movement. The international scientifically practical pedagogical conference «History and myth in the national musical culture» had been held in the period 4 – 5 November 2010 at the framework festival **«**Music without limits**»**.

IV International festival of musical art «Music without limits», which had been held 9 – 11 much 2011 in Dnipropetrovsk music academy named after M. Glinka, had collected of well-known performers on string instruments. The J.S. Bach's, F. Mandelson's, P. Tchaikovsky's compositions had been sounding by professor of Geneva Conservatory and Bern high music school, cellist D. Severin (Switzerland); laureate of international competitions, concerting performer, violinist B. Brovtsin (Great Britain) as well as Dnipropetrovsk chamber orchestra «The seasons» (governed by conductor, people artist of Ukraine D. Logvin).

The international festival movement in 2012 had been importantly significant for representatives of wood and brass wind instruments and also string academic instruments. Musical masterpiece by W.A. Mozart a namely Concert D-dur for flute and symphonic orchestra performed by professor Dresden High music school named after K. Weber, flutist-virtuous S. Reti solemnly had opened creative marathon. Contrast of musical imaginations with emotional, romantic expression was being emphasized by professor Geneva High music school D. Severin into the Concert a-moll for cello with orchestra by R. Shuman.

Celebrated musician-trombonist, professor Geneva Conservatory had performed Concertino for trombone and chamber orchestra by E. Larson. Masterpiece of violin musical compositions – Concert for violin with symphonic orchestra by P.I. Tchaikovsky, which had been inspired sounded by professor Geneva Conservatory, violinist S. Ostrovsky, had become brilliant culmination for celebrative evening of the first festival day.

The presentation of creative project by laureate of many international competitions, famous concert pianist V. Kholodenko «32 Sonatas for piano by L. Beethoven» had been the magistral feature of festival marathon in 2012. Underline, that students and teachers of Dnipropetrovsk music academy named after M. Glinka as well as many connoisseurs, admirers of academic musical art had had possibility for comprehension the one of the most fundamental strata for development of piano performing, practically understanding of dynamic concerning establishment and enlargement of

piano musically performing art, emphasize, into the seven concerts during academic educational year.

Thereby, it is this series of single concert performing by only one performer into distinctly denoted creative project had claimed the new artistically organizational structure of festival movement, in particular *discrete (separate) form of festival holding*, so to speak, the peculiar step by step artistically aesthetic presentation of classical music celebration.

The festival events in 2013 had been designated by holding of artistically creative meetings on the stage of Dnipropetrovsk academic theater of Russian dram named after M. Gorky. World-renowned pianist O. Romanovskiy with the youth academic symphonic orchestra «Festival» had been performing Concert № 2 for piano with orchestra by S. Prokofiev.

Accentuate, the forum of folk instruments performers, which was being held 4 – 6 much 2014 at the many concert halls of Dnipropetrovsk academy music named after M. Glinka, had become the original innovation into the structurally thematic program of international festival «Music without limits».

The beginning of that forum had been designated by solo concert of honor artist of Ukraine, cymbalist A. Voychuk. Cymbalo had been sounding as the solo instrument at the main concert hall of academy for the first time. Program of the concert had concluded the compositions of different composers, masterpieces of various epochs, genres and styles. The second day from the forum of folk instruments performers had been a present culturally artistic celebration. There was concert of main folk instrument orchestra of academy music named after M. Glinka (creative director and conductor S. Karlov), performances of bright soloist-virtuous on different academic folk instruments.

Evolutional movement of music academic festival «Music without limits» in 2015 had launched the new vision of intercultural creative communication, in particular repertoire-region format of festival holding. The renovation was directed, in the first time, to the features of repertoire filling in reference to concert events. Identified approach to the musical masterpieces of different countries had been put into the foundation for designation of festival musical program.

Whereby, the new round of international musical celebration had been begun by classical masterpieces of Germen music, a namely «The Germen's musical days» on the international music festival «Music without limits». Famous musical instrumental compositions by L. Beethoven, K. Weber had been sounding from the main concert stage of music academy M. Glinka.

The first performance Concert cis-moll for piano and symphonic orchestra by F. Poulenc in Ukraine had been took place during «The

French's musical days» into interpretation by pianist Ju. Novikov and youth symphonic orchestra «Festival» (artistic leader and conductor D. Logvin). We underline, that score of this piano concert, wrote by F. Poulenc in 1949, had not been printed. Concert's notes were kept at the handwritten form in the library of Paris Conservatory. By means of cooperation between Ukrainian musicians and representatives of Switzerland musical groups the notes of piano concert had been sent to the Dnipropetrovsk music academy, where the premier presentation this piano concert by celebrated French composer had been occurred.

«The Italy's musical days» on the international festival of musical art «Music without limits», which had been held 23 – 25 February 2015, had gifted to listeners, among other amazingly masterpieces by romanticist G. Verdi and famous contemporary composer N. Roto, the cycle 24 caprices for violin solo by N. Paganini (Shhuryk and Brynzej, 2015). It is this cycle solo had been performed by professor Moscow Conservatory named after P.I. Tchaikovsky, world well-known violinist O. Trostiansky into permanent presentation, that is all caprices into the single concert at the solo performing form. Consequently, the form of intercultural communication had been denoted, in particular permanently performing form concerning presentation of cycle masterpieces of academic musical art.

Necessarily accentuate, that master-class as the one of the most remarkable artistically creative and educationally training form of musical pedagogy as well as intercultural dialog, during holding of traditional festival marathon, had been foundation for appearance of new form regarding intercultural communication a namely «The celebrated representatives' schools of academic musical art». Therefore, «Otto Saunter's school», world famous trumpeter-virtuous, professor High school of arts in Bremen (Germen), three days in a row (11 – 13 November 2015), had been disclosing the secrets of trumpet art playing for many students from the High musical educational institutions from cities such as Kyiv, Kharkiv, Lviv, Kryvyi Rig, Kamyansky, Khmelnytsky, Ternopil.

The uniqueness of this form concerning festival movement in Dnipropetrovsk music academy has been approved by the next factors of this new form regarding intercultural communication between representatives of German and Ukrainian academic wind performing schools, namely the absence of time frames; the large quantity of participants for open lectures; the synthesis of theoretical, methodological, and practical experience (Weis, 2021).

The form of «The celebrated representatives' schools of academic musical art» for specifically selected musical specialization had been prolonged in the time next festival «Music without limits». There was professional scientific communication with candidate of art, professor of Moscow Conservatory named after P.I. Tchaikovsky G. Lyzhov on the theme

«The school of style harmony» (23 – 27 November 2015), as well as with world famous opera singer from Germen, soloist of Stuttgart opera house, renowned concert vocalist-performer Yutta-Maria Bionert – the practical topic «The school of academic vocal art from singer Yutta-Maria Bionert» (26 – 29 October 2015) (Korolchuk, 2021).

International festivals of classical musical art «Music without limits», which had held in the period 2016 – 2019 at the concert halls of Dnipropetrovsk academy music named after M. Glinka, distinguished by approving of instrumentally-specialized holding form of international artiste event. 11 – 13 April 2016 students and teachers of academy music, as well as multitudinous music-lovers from Dnipro and others cities of Ukraine, had been eyewitnesses of compositionally creative renovation concerning the form of well-known musical marathon «Music without limits».

The festival has maximally focused attention on the individualization of instrumental priority, in particular on the cello masterpieces of different genres from the world classical music. Certainly, the star cast of guests for festival movement had been presented by cellists, a namely professor of Paris Conservatory Jerome Pernod (France), professor High music school in Geneva and High music school in Bern D. Severin (Switzerland), as well as professor of Dnipropetrovsk academy music named after M. Glinka, laureate of multitudinous international competitions among performers on academic string instruments O. Lutsenko (Ukraine).

Period 15 – 19 December 2016 had been denoted by festival «Music without limits» into brightly signified the instrumentally specialized form. The title of international event – «Dnipro-Brass-Fest» had been displaying the new form of musical celebration. Specialized vector of academic instrumental music, which had been representing only wind brass instruments (trumpet, horn and trombone), had maximally concentrated attention of multitudinous admirers, connoisseurs and direct representatives of contemporary solo wind professional academic performing art.

The star cast of participants for instrumentally specialized festival marathon had been represented by professor of the High school of art in Bremen Otto Saunter (trumpeter, Germen), soloist of the Florentine Opera Luca Benucci (horn, Italy), Head of orchestral mastery faculty at the Western University in Canada Alain Trudel (trombone), the honored artist of Ukraine Andrey Ilkiv (trumpet, Ukraine).

Clarinet and saxophone had taken magisterial place into artistic horizon of international festival «Music without limits» at the period 27 February – 1 March 2017. Celebrated Israel clarinetists-soloists twin brothers Alexander and Daniel Gurfinkel had been brilliant artistic decoration for first two days

of creative movement named «Musical carnival» on international festival «Music without limits».

Certainly, this type concentration on the determined instrument solo during the festival marathon is making peculiar musical communities, which are quickly popularizing the definite festival among connoisseurs of one or another professional academic musical solo instrument. The psychological sense of a brand community has a direct effect on commitment and on word-of-mouth, concerning them artistically creative vocational activity (Klara, 2020).

Highlight, the famous celebration of classical musical art «Music without limits» has claimed as the not commercial event, at the period of twelve years festival movement. The festival is spending, first of all, the intercultural, socially cultural, as well as educationally training missions at the Dnipropetrovsk region. Festivals foster the social and cultural development of the area, creating social identity, generating civic pride, contributing to the formation of audiences, encouraging cultural enrichment and physically transforming the area (Fernandez, 2019).

Conclusion

The above-mentioned analysis of the international musical art festival «Music without limits», which operates on the basis of the Dnipropetrovsk music academy named after M. Glinka (c. Dnipro, Ukraine), allows us to identify a number of new forms of intercultural dialogue during the largest celebration of classical music in Ukraine's central region.

There are discrete (separate) forms of holding musical festivity, denoted by representation of various at-the-time concert events or compositionally artistic features of concerts; the repertoire-region form of the festival movement, which concentrates the dominance of musical compositions written in a specific region or country; and the permanently-performance form, which represents cycle masterpieces of academic professional musically-performing art.

The analysis of another's traditional international festivals of classical music art, which have gained popularity not only in Ukraine but in other countries, will be a contemporary foundation for the designated scientific theme.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 543-5
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

The Impact of Russia's Military Aggression on Ukraine's Accession to the Single European Transport Area

DOI: https://doi.org/10.46398/cuestpol.4074.30

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Abstract

The events of recent years and the direct aggression of the Russian Federation have forced Ukraine to reformat the transport system on a large scale and intensify the accession to the Single European Transport Area (SETA). The aim of this study was to substantiate the thesis that the integration of Ukraine's transport system under the influence of Russia's military aggression is in line with its national interests. The study involved the methods of systems analysis, epistemological, dialectical and statistical methods, comparative law and the method of legal modeling. Definitely, SETA is based on the principles of unity, environmental friendliness, safety, economy, energy saving, branching and digital modernization. It is concluded that the legal framework for Ukraine's accession to SETA was established with the signing of the Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and its member states, on the other hand, in 2014. However, Russia's military aggression against Ukraine has significantly delayed the implementation of the SETA accession plan due to the destruction of many transport infrastructure facilities and economic recession, among other factors.

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Recibido el 12/06/22 Aceptado el 22/08/22

Keywords: military aggression; single transport space; Russian Federation; Ukraine; European Union.

El impacto de la agresión militar de Rusia en la adhesión de Ucrania al área única europea de transporte

Resumen

Los acontecimientos de los últimos años y la agresión directa de la Federación Rusa han obligado a Ucrania a reformatear a gran escala el sistema de transporte e intensificar la adhesión al Área Única Europea de Transporte (SETA). El objetivo de este estudio fue fundamentar la tesis de que la integración del sistema de transporte de Ucrania bajo la influencia de la agresión militar de Rusia está en línea con sus intereses nacionales. El estudio involucró los métodos de análisis de sistemas, métodos epistemológicos, dialécticos y estadísticos, derecho comparado y el método de modelado legal. Definitivamente, el SETA se basa en los principios de unidad, respeto al medio ambiente, seguridad, economía, ahorro energético, ramificación y modernización digital. Se concluye que el marco jurídico para la adhesión de Ucrania a SETA se estableció con la firma del Acuerdo entre Ucrania, por una parte, y la Unión Europea, la Comunidad Europea de la Energía Atómica y sus Estados miembros, por otra parte, en 2014. Sin embargo, la agresión militar de Rusia a Ucrania ha retrasado significativamente la implementación del plan de adhesión de SETA debido a la destrucción de muchas instalaciones de infraestructura de transporte y la recesión económica, entre otros factores.

Palabras clave: agresión militar; espacio único de transporte; Federación rusa; Ucrania; Unión Europea.

Introduction

Since 2014, Russian aggression on the territory of Ukraine has entered in its active phase. The occupier has taken control of airports and other transport infrastructure of the Autonomous Republic of Crimea (ARC), much of Donbas (Hai-Nyzhnyk *et al*., 2016). In February 2022, Russia's hybrid war escalated into open military aggression and led to radical transformations in Europe and the world (OSCE, 2022).

Strengthening of the national consciousness of Ukrainian citizens and the identification of the Ukrainian state as part of the European community

was one of the implications of the military aggression of the Russian Federation in Ukraine. This entailed signing of the Association Agreement with the EU in 2014. The cooperation between the EU and Ukraine in the field of international maritime transport (Article 135), road, rail and inland waterway transport (Article 136), air transport (Article 137) were important areas of this Agreement. The Association Agreement with the EU was actually the starting point for Ukraine's accession to the SETA. The latter was established in July 1996 with the adoption of the Decision No. 1692/96/EC of the European Parliament and the Council of Europe on Community guidelines for the development of the trans-European transport network (1996).

The 2030 National Transport Strategy of Ukraine was approved by the Cabinet of Ministers of Ukraine No. 430-r of May 30, 2018 in order to implement the provisions of the Association Agreement with the EU in the field of transport (Verkhovna Rada of Ukraine, 2018). Signing and ratification of the Common Aviation Area Agreement between Ukraine and the European Union was an important achievement of Ukraine after the approval of the said Strategy (Verkhovna Rada of Ukraine, 2022).

However, there are two factors that simultaneously influence Ukraine's accession to the SETA after the beginning of Russia's military aggression. On the one hand, the significant destruction of transport infrastructure as a result of direct Russian aggression is slowing down the pace of implementation of Ukraine's SETA accession plan. In particular, 24 thousand km of public roads were destroyed; 273 structures (bridges, overpasses, etc.) were damaged and destroyed, 6.3 thousand km of main tracks and 41 railway bridges were destroyed as of the end of May 2022 (Minfin, 2022). On the other hand, there is an urgent need for the organization of common transport corridors to unblock the supply of some strategically important products from Ukraine.

So, Ukraine's accession to the SETA is a mutually beneficial area of Ukraine - EU cooperation. This is why certain conditions must be met in the legislative, economic, technical, administrative spheres, both on the part of Ukraine and the EU, in order to achieve all strategic goals on this path.

Many researchers dealt with the issues of military conflict between Russia and Ukraine. In particular, Hai-Nyzhnyk *et al*. (2016) outlined the prehistory of the military conflict, identified areas of joint infrastructure projects of Russia and Ukraine, including the transport projects. A number of authors (Trofymowycz, 2016; Karpachova, 2021) studied the geopolitical and economic background and implications of the Russia's military aggression on the territory of Ukraine.

A large number of studies provide the analysis of certain issues of development of the SETA and the transport system of Ukraine. In particular,

Fediay (2018) studied the features of the integration of Ukrainian transport infrastructure into the Trans-European Transport Network (TEN-T). Other researchers (Derkach, 2017; Żurawski vel Grajewski, 2021; Ihnatova, 2018) studied the common transport policy of the EU, outlined the interaction of the SETA with the transport systems of third countries. These researchers especially focused on the ways of the SETA development.

A separate group of researchers worked on the improvement of safety, environmental friendliness and other performance indicators of the SETA, as well as transport systems of individual countries, including Ukraine to meet EU requirements (Stroiko and Bondar, 2017; Gamero *et al.*, 2018; Shah *et al.*, 2018; Chervinchuk *et al.*, 2021).

The literature review give grounds to make a conclusion that the issues of adapting the SETA development plans and Ukraine's accession to the SETA in view of the implications of Russia's military aggression for Ukraine and the world are poorly studied. In view of the foregoing, the assessment of the impact of the Russian military aggression on Ukraine's accession to the SETA and the development of ways to adapt the plan of Ukraine's accession to the SETA is an important area of research.

1. Aim

Considering all the above, the aim of this study is to substantiate the idea that the integration of Ukraine's transport system into the SETA under the influence of Russian military aggression is in line with the national interests of Ukraine. This aim involved the following research objectives: 1) it was argued that the SETA meets the basic effectiveness criteria; 2) the international acts that regulate SETA's activities, to which Ukraine has acceded and those to be ratified, were determined; those acts were arranged by the types of transport; 3) outlines the steps that Ukraine must take to bring its legislation and transport infrastructure facilities to match the appropriate requirements in order to join Ukraine's transport system to the SETA with due regard to the adjustments caused by Russia's military aggression; 4) international agreements between Ukraine and Russia to be denunciated were identified; 5) the implications of Russia's military aggression for Ukraine's accession to the SETA were summarized.

2. Methodology and methods

The methodological background of this research was a system of methods of epistemological, dialectical and statistical analysis, methods of generalization and grouping, system selection, comparative legal methods

and legal modelling. These methods helped to identify the main issues of the impact of Russia's military aggression on Ukraine's accession to the SETA.

The theoretical background of this research is studies that delt with the causes and implications of Russia's military aggression on the territory of Ukraine, as well as the ways of Ukraine's European integration and its accession to the SETA.

The empirical background of this study are domestic and international legal acts that regulate the transport system of Ukraine and the SETA, international agreements with Russia to be denunciated, official statistics on the destructions of transport infrastructure in Ukraine caused by the military aggression, approximate investment for the restoration and modernization of Ukraine's transport infrastructure, data on the level of transport safety in Europe and the EU.

The methodology of this research is based on dividing the research into three interrelated stages.

The first stage involved the collection and arrangement of the theoretical background of the research, its fundamental study in order to further search for unresolved issues in the research topic, scientific and theoretical justification of the topicality of the research. This stage of writing a research paper also provided for determining research methodology, identification a system of methods that will best reveal the topic, analysing the problem of the impact of Russian military aggression on Ukraine's accession to the SETA. The correct setting of the aim of the research and its objectives in accordance with this aim was the key issue at this stage.

The next stage involved sampling for empirical research. The sample was formed using official statistics. In particular, the following criteria were used to justify the effectiveness of the SETA: traffic safety, mortality rate in accidents by mode of transport. Traffic safety was measured using data on the number of road accidents and the number of victims in the EU — Belgium, Greece, Italy, Cyprus, Germany, Poland, France and Sweden. Relevant data on Ukraine were also presented for comparison.

The second stage of the research provided for an assessment of the destructions of Ukraine's transport infrastructure caused by the Russian military aggression based on official data from the Ministry of Economy of Ukraine. The volume of freight and passenger traffic in the EU and Ukraine in the pre-war period was estimated by modes of transport. Based on the comparison of these indicators, a conclusion was made about the impact of destructions, the absence of air traffic on the traffic volume and increased load on the railway transport.

This stage also provided for the arrangement of the international transport-related acts involving the Russian Federation which are denounced or need to be denounced. International acts that regulate SETA's activities are grouped and their status for Ukraine is determined. The steps necessary for Ukraine's accession to the SETA were identified.

The last stage of the research involved systematization of the results of the analysis, which allowed to achieve the aim and fulfil the objectives of the study. The generalization of the obtained research results gave grounds for the practical recommendations on the ways of adaptation of the Ukraine's accession plan to the SETA. The practical significance of the research results is the possibility of their use in the adaptation of Ukraine's accession plan to the SETA.

3. Results

The efficiency of the SETA is based on the following interrelated indicators (criteria) of efficiency: traffic safety, environmental friendliness, innovation, energy saving, infrastructure development (comfort), branching. The EU White Paper on Transport (Publications Office Of The European Union, 2011) is the most important of them. Table 1 is built on the basis of these data on the EU countries in comparison with the corresponding indicators of Ukraine. The period of 2019-2021 is taken as a basis of measurement.

Table 1. Transport safety indicators in the EU and Ukraine

State / Years	The total number of accidents on all modes of transport that resulted in casualties			Mortality rate as a result of accidents on all modes of transport		
	2019	*2020*	*2021*	*2019*	*2020*	*2021*
Belgium	37,699	36,355	34,217	646	499	341
Greece	10,712	9,083	10,712	618	518	413
Italy	172,183	118,298	115,101	3,173	2,395	1,982
Cyprus	727	706	893	52	48	43
Germany	308,721	327,550	331,615	3,046	2,719	2,114
Poland	30,288	23,540	21,065	2,909	2,491	2 117
France	56,006	45,117	39,074	3,237	2,538	1,871
Sweden	14,951	14,735	13,076	221	204	198
Ukraine	160,675	168,107	173,012	3,454	3,541	2,560

Based on references: Bast (2022); Hellenic Statistical Authority (2022); Eurostat (n.d.); National Police (2022).

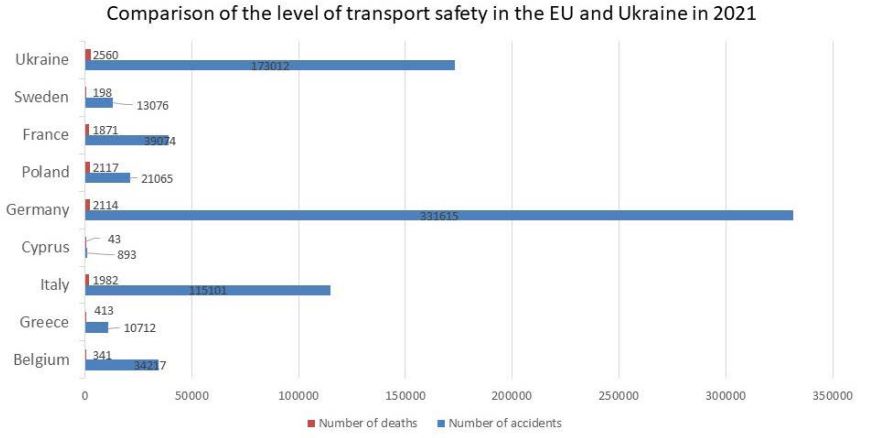

Figure 1: Comparison of the level of transport safety in the EU and Ukraine in 2021.

So, among the EU countries listed in Table 1, Germany (308,721 — 331,615), Italy (172,183 — 115,101), France (56,006 — 39,074), Belgium (37,699 — 34,217) had the largest number of traffic accidents during 2019-2021. At the same time, in all European countries, except Germany, there is a tendency towards the reduction of the number of accidents. Ukraine ranks second among these countries. However, in contrast to European countries, Ukraine has a tendency towards a slight increase the number of accidents. In particular, in 2021 the number of accidents in Ukraine compared to 2019 increased by 7% (National Police, 2022).

The highest mortality rate from traffic accidents was recorded in Poland — 10% of the total number of accidents. Ukraine has a relatively low mortality rate. In 2021, it was 1.5%, which is the average for the EU. That is, in the pre-war period, Ukraine corresponded to the appropriate level of European states in terms of the level of transport safety.

Table 2 provides data on the volume of transportation in selected EU countries and Ukraine in the pre-war period.

Table 2. The volume of transportation by mode of transport in the EU and Ukraine in 2019-2021

Mode of transport /transportations Passengers thousand people	**2019**		**2020**		**2021**	
	Cargoes thousand t	Passengers thousand people	Cargoes thousand t	Passengers thousand people	Cargoes thousand t	
GREECE						
Road	-	354,081	-	289,246	-	-
Air	54,258,826	105,403	17,341,192	72,990	32,245,559	108,580
River	-	-	-	-	-	-
Marine	-	194,468	-	178,339	-	-
Railway	19,599	98,804	10,220	90,902	12,115	92,025
ITALY						
Road	-	978,883	-	933,601	-	-
Air	160,667,939	1,021,941	40,405,355	776,205	59,546,376	1,015,988
River	-	-	-	-	-	-
Marine	-	508,074	-	469,635	-	-
Railway	898,472	94,295	389,883	90,529	391,098	91,678
GERMANY						
Road	996,500	3,208,232	-	3,119,646	-	-
Air	226,764,086	46,845,523	57,795,978	4,497,805	73,597,370	5,273,263
River	-	205,066	-	188,022	-	-
Marine	-	294,533	-	188,022	-	-
Railway	2,938,023	364,120	1,752,198	325,303	1,755,995	357,564
POLAND						
Road	-	1,506,450	-	1,500,104	-	-
Air	46,942,771	143,109	13,825,783	111,278	18,854,783	143,471
River	-	2,870	-	2,517	-	-
Marine	-	93,864	-	88,520	-	-
Railway	19,827	233,744	13,100	218,381	13,354	221,178
FRANCE						
Road	859,367	1,634,946	-	1,508,016	-	-
Air	168,726,788	2,371,614	50,724,011	1,938,349	66,030,409	2,275,093
River	-	64,207	-	55,979	-	-
Marine	-	302,288	-	274,511	-	-
Railway	1,265,330	91,997	723,852	69,805	725,147	71,802

SWEDEN						
Road	-	449,362	-	475,232	-	-
Air	37,614,763	162,743	9,317,677	132,083	10,793,224	146,590
River	-	-	-	-	-	-
Marine	-	170,557	-	168,970	-	-
Railway	264,603	68,220	169,163	69,805	172,361	71,173
UKRAINE						
Road	1,804,929.3	1,147,049.6	1,083,872.7	1,232,391.9	109,089.7	180,029.5
Air	13,705.8	92.6	4,797.5	88.3	930	100
River	589.9	9,990.2	256.5	3,788.4	500	3481.8
Marine	79.4	2120.3	52.6	1,812.2		1,818.2
Railway	154,811.8	312,938.9	68,332.5	305,480.4	91,499.6	314,300.1

Based on references: Statistics Sweden (n.d.); Eurostat (n.d); Insee (n.d.); Ukrstat (2022).

Germany has the highest volume of traffic among the selected EU countries. This may partly explain the higher level of accidents compared to other EU countries. By modes of transport, air transport takes the largest passenger and freight traffic in all EU countries. The coronavirus pandemic has caused the reduction in passenger traffic in 2020 compared to 2019 in all countries. However, in 2021 there was a tendency towards an increase again.

In contrast to the EU countries, in Ukraine pre-war passenger and freight transportation was carried out mainly by road and railway. This is influenced by such factors as pricing and the branching of the network of relevant modes of transport.

At the same time, according to experts (EVA, 2021), air transport in Ukraine received the highest score — 3.15 points out of 5 possible. All other modes of transport received negative marks: road — 2.96 points, water transport — 2.75 points, sea transport — 2.47 points, and rail transport — 2.45 points.

So, air transport is the most promising area of development in the context of the accession of the Ukrainian transport system to the SETA. That is why the Common Aviation Area Agreement was one of the first agreements signed between Ukraine with the EU (Verkhovna Rada of Ukraine, 2022).

However, air transport has completely ceased its activities since the beginning of the active phase of military aggression against Ukraine. The volume of water transport has also decreased significantly because of the constant threat of shelling by the Russian Federation. Table 3 below shows

the indicators of the destruction of Ukraine's transport infrastructure since the beginning of the active phase of Russia's military aggression.

Table 3. Assessment of the destruction of transport infrastructure in Ukraine as a result of military aggression by the Russian Federation as of the end of May 2022

Transport infrastructure object	Destruction scope, km/pcs	Cost of losses, million US dollars
Roads, thousand km	23.8	29,879
Civil airports, pcs	11	6,817
Railway infrastructure, thousand tracks	6,3	3 676
Railway bridges, pcs	41	
Road bridges and crossings, km	295	1,646
Military airfields, pcs	12	468
Mriia AN 225 aircraft	1	300

Based on references: Minfin UA (2022).

The damage to the transport infrastructure, which slows down the rate of economic growth in Ukraine because of the military aggression of the Russian Federation more than twice, should have stopped the process of joining the SETA. It has launched a process of severing transport cooperation between Ukraine and Russia and a complete reorientation to the EU market. Now, Ukraine is interested in attracting international aid and investment to rebuild transport infrastructure and bring it in line with EU standards. Besides, Ukraine's application for EU membership will also accelerate Ukraine's accession to the SETA. Besides, the sanctions imposed by the EU on Russia are forcing most European countries to reconsider their prospects and reformat modes of transport to more environmentally friendly.

The severance of old transport links between Ukraine and Russia requires a revision of bilateral agreements between these countries (Table 4).

Table 4. Bilateral transport agreements between Ukraine and Russia.

Name	Date and ground for ratification	Summary	Status for Ukraine

Agreement between the Government of Ukraine and the Council of Ministers — the Government of the Russian Federation on coordination of railway transport	14.05.1993 by signing by governments	Transportation of passengers and cargos between railway stations of both states is carried out on the basis of regulations in force at the time of signing this Agreement.	Valid
Agreement between the Government of Ukraine and the Government of the Russian Federation on the principles of cooperation and terms of relationship in the field of transport	26.05.1993 by signing by governments	The parties determined the principles of reciprocity, favourable conditions for the functioning of all modes of transport. The parties agreed to maintain the current procedure for international transportations established by the intergovernmental agreements previously concluded by the USSR with other countries, as well as the Conventions and other agreements in the field of transport, to which the USSR was a party.	Valid
Agreement on interstate transportation of dangerous and label cargo	23.12.1993 by signing by governments	For the period before the adoption of international regulations on the transportation of dangerous and label cargo or development of new ones, the parties agreed to maintain the procedure of transportation of such cargo previously existing in the territory of the former USSR, including in international traffic, by rail, road, air, river and marine transport.	Valid
Agreement between the Government of Ukraine and the Government of the Russian Federation on air services and cooperation in the field of air transport	12.01.1994 by signing by governments	Determines the activities of airlines designated by each Party for operation of contract lines on established routes.	Valid
Agreement between the Government of Ukraine and the Government of the Russian Federation on commercial shipping	08.02.1995 by signing by governments	Agreement on full promotion of the freedom of commercial shipping and refraining from any action that could harm the normal development of international shipping.	Valid
Agreement between the Government of Ukraine and the Government of the Russian Federation on international road transport	Ratified by Law of Ukraine No. 275-XIV of 20.11.98	Determines the conditions and procedure for the passage of vehicles (buses, trucks with or without trailers and semi-trailers, cars) that carry passengers and goods between the two countries and in transit through their territories, as well as mutual coordination of activities that is associated with the development and operation of road transport.	Valid

Agreement between the Cabinet of Ministers of Ukraine and the Government of the Russian Federation on issues of environmental safety and environmental control in the sites of basing of the Black Sea Fleet of the Russian Federation on the territory of Ukraine	18.12.1998 by signing by governments	Ensures compliance of the Black Sea Fleet of the Russian Federation with the requirements of the current legislation of Ukraine in the field of environmental protection, radiation safety and rational use of natural resources.	Valid
Agreement between Ukraine and Russia on the status and conditions of stay of the Black Sea Fleet of the Russian Federation on the territory of Ukraine	Ratified by Law of Ukraine No. 547-XIV of 24.03.99	Military units carry out their activities in places of deployment in accordance with the legislation of the Russian Federation, respect the sovereignty of Ukraine, abide by its laws and do not interfere with the internal affairs of Ukraine.	Valid
Agreement between the Cabinet of Ministers of Ukraine and the Government of the Russian Federation on measures to ensure the safety of navigation in the Sea of Azov and the Kerch Strait	Approved by Resolution of the Cabinet of Ministers of Ukraine No. 694 of 01.08.2012	Each Party shall ensure the provision of data from the coastal AIS stations of that Party in the Region to the other Party. The exchange of AIS data under this Agreement shall be free of charge.	Valid
Agreement between the Cabinet of Ministers of Ukraine and the Government of the Russian Federation on cooperation in the prevention of emergencies, fires and response in the settlements where the Black Sea Fleet objects of the Russian Federation are located in the territory of Ukraine	Ratified by Law of Ukraine No. 25-VII of 11.01.2013	Cooperation under this Agreement shall be carried out in the following areas: prompt exchange of information on the threat or occurrence of emergencies, fires in the settlements where the Black Sea Fleet objects of the Russian Federation are located on the territory of Ukraine, etc.	Valid
Agreement between the Cabinet of Ministers of Ukraine and the Government of the Russian Federation on joint actions for the construction of a transport crossing through the Kerch Strait	Approved by Resolution of the Cabinet of Ministers of Ukraine No. 34 of 29.01.2014	Establishment of approaches to the transport crossing of each of the Parties, which should not change the direction and volume of the water flow within the Kerch Strait or change its course, as well as harm the safety of navigation, environmental and other safety in the area.	Denounced by Resolution of the Cabinet of Ministers of Ukraine No. 493 of 01.10.2014

So, most transport-related agreements between Ukraine and Russia are still in force and require denunciation. These agreements are obsolete and are not fulfilled by the parties.

Table 5 arranges EU international regulations by mode of transport.

Table 5. International regulations of the EU in the field of transport

Name	Requirements	Status for Ukraine
Road transport		
The Convention on Road Traffic	Determines consolidated traffic rules	Ratified with reservations and statements by Decree of the Presidium of the Verkhovna Rada of the USSR No. 2614-VIII of 25.04.74
European Agreement concerning the work of crews of vehicles engaged in international road transport (AETR)	Minimum age of drivers engaged in the carriage of goods (18 and 21 years) The driving period between any two periods of daily rest or between the daily rest period and the weekly rest period, hereinafter referred to as the daily driving period, shall not exceed nine hours.	Ratified by Law No. 2819-IV of 07.09.2005
Agreement concerning the Adoption of Harmonized Technical United Nations Regulations for Wheeled Vehicles, Equipment and Parts which can be Fitted	Establishes rules for wheeled vehicles, equipment and parts that can be fitted and/or used on wheeled vehicles.	Ratified by Law No. 1448-III of 10.02.2000
The international occasional carriage of passengers by coach and bus (INTERBUS Agreement)	Determines terms of reference relating to vehicles; market access; customs and fiscal regulations, social conditions, etc.	Ratified with reservations by Law No. 5444-VI of 16.10.2012
Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities	Establishes minimum requirements for the organization of working time in order to improve the protection of health and safety of persons engaged in mobile road transport activities, improve the level of road safety and level the competitive environment.	To be ratified (mandatory for EU member states)
Regulation (EU) No. 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No. 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport	Defines the obligations and requirements for the design, installation, use, testing and inspection of tachographs used in road transport.	To be ratified (mandatory for EU member states)
Railway transport		
Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings	Provides certain rights to access to international rail transport of railway undertakings and international associations of railway undertakings.	To be ratified (mandatory for EU member states)

Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification	Restores the opportunities of European railways of expanding access for international rail freight transportation to the Trans-European Rail network, determines the requirements for the relevant tariffs for railway infrastructure.	To be ratified (mandatory for EU member states)
Regulation (EU) No. 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No. 661/2010/EU (Eur-Lex, 2013)	Provides for the uninterrupted, safe and sustainable transportation of people and cargos, ensuring the accessibility and structural interconnection of all regions of the EU and promoting further economic growth and competitiveness in the global perspective; creation of resource-efficient and sustainable interconnection, as well as interoperability of different national transport networks.	To be ratified (mandatory for EU member states)
Water transport		
The Convention on the Facilitation of International Maritime Traffic, 1965	Establishes commitments in the field of cooperation to maximize the unification of formalities, necessary documentation and procedures on all matters for which the unification will facilitate and improve international shipping.	Adopted by Resolution of the Cabinet of Ministers of Ukraine No. 775 of 21.09.93
Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974	Establishes some rules for the carriage of passengers and their luggage by sea.	Ratified by Law No. 115/94-VR of 15.07.94
Convention regarding the regime of navigation on the Danube	It extends to the navigable part of the Danube from Kelheim to the Black Sea through the Sulina estuary with access to the sea through the Sulina canal.	Ratified as part of the USSR on 12.12.1946
Council Directive 96/75/EC of 19 November 1996 on the systems of chartering and pricing in national and international inland waterway transport in the Community	Determines the requirements for the chartering and pricing system for international and domestic water transport.	To be ratified (mandatory for EU member states)
Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway (CMNI)	Establishes some uniform rules concerning the contract of carriage of goods by inland waterways.	Ratified by Law No. 1229-VII of 17.04.2014
Regulation (EU) No. 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No. 922/72, (EEC) No. 234/79, (EC) No. 1037/2001 and (EC) No. 1234/2007	Determines the requirements for any contract of carriage under which the port of loading or the place of acceptance of the goods and the port of unloading or the port of delivery are located in two different states, at least one of which is a State Party to this Convention.	To be ratified (mandatory for EU member states)
Air transport		

Convention on International Civil Aviation, 1944	Established principles and measures for the safe and orderly development of international civil aviation, for the establishment of international air services on equal grounds rationally and efficiently.	Ratified on 10.08.1992
The Convention on Offences and Certain Other Acts Committed on Board Aircraft	Determines the rights and obligations of Member States to counter to offenses on board aircraft.	Decree of the Presidium of the Verkhovna Rada of the USSR No. 5049-XI of 21.12.87
Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation	Establishes types of violations against the safety of civil aviation and the jurisdiction of states in the field of investigations.	Ratified on 23.09.71
Convention for the Unification of Certain Rules for International Carriage by Air	Sets the rules for the international carriage of passengers, baggage or cargo by an aircraft for a fee or free of charge.	Ratified by Law No. 685-VI of 17.12.2008
European Common Aviation Area Agreement (Verkhovna Rada of Ukraine, 2022)	The aim of this Agreement is the gradual establishment of a CAA between Ukraine and the EU and its Member States, based, in particular, on identical rules in the field of flight safety, aviation security, air traffic management, environmental protection, consumer protection, electronic booking systems, as well as on identical rules on social aspects.	Ratified by law No. 2067-IX of 17.02.2022

The survey of the EU international regulations listed in Table 5 shows that their requirements are mainly aimed at improving the environmental friendliness, safety and cost-saving of the transport system. EU institutions are developing measures (COM (2011) 144) aimed at improving the competitiveness of transport, reducing transport-related greenhouse gas emissions by at least 60% by 2050 (European Commission, 2020).

As Table 5 shows, most of the agreements not ratified by Ukraine related to rail transport. The primary reason is the non-compliance of technical parameters of Ukrainian tracks and trains with European standards. The infrastructure of the Ukrainian railway requires significant modernization.

Figure 2 provides the summary of the problems related to Ukraine's accession to the SETS and ways to solve them in view of the impact of military aggression by the Russian Federation.

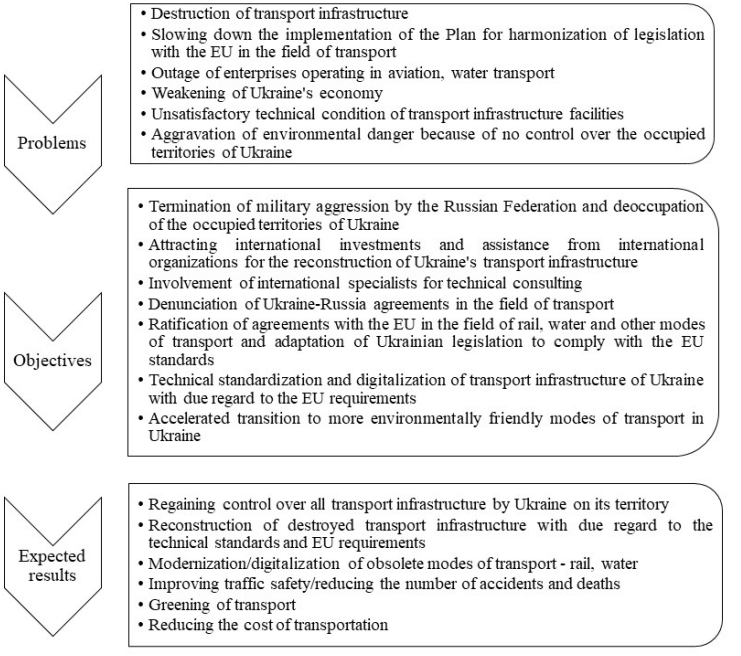

Figure 2: Scheme for determining the impact of Russian military aggression on Ukraine's accession to the SETA

4. Discussion

There are no studies in the academic literature which assess the impact of the Russian military conflict on Ukraine's accession to the SETA. However, the analysis of research papers shows that some scholars (Trofymowycz, 2016) argue that Russia's military aggression accelerated the process of strengthening Ukrainian statehood, improving Ukraine's defence capabilities, eliminating the ideology of brotherhood of Ukrainians and Russians, became a catalyst for orientation of the Ukrainians to freedom and independence. We can support this view, as Russia's military aggression has accelerated Ukraine's European integration.

An important area of research is the substantiation of key areas of cooperation between Ukraine and the EU in the context of developing Ukraine's transport infrastructure. The researchers point to the need to improve the efficiency and effectiveness of the legal framework of Ukraine and its integration into EU legislation; intensification of putting the E-Customs system into operation; increasing capital investment in the

transport system of Ukraine through the development of public-private partnerships with the EU companies (Ihnatova, 2018).

Other researchers hold that the creation of hubs in Ukraine and the adoption of relevant legislation on their operation are promising areas of Ukrainian legislation on the integration into the SETA (Derkach, 2017). Other researchers (Stroiko and Bondar, 2017) propose to carry out sectoral reforms in accordance with European standards; reduce greenhouse gas emissions; increase transport safety to reduce the number of road accidents in order to bring the transport sector of Ukraine closer to the EU transport system. These suggestions require some adjustments with regard to the effects of Russia's military aggression.

A significant number of studies (Finger and Serafimova, 2020) deal with the development of the SETA itself. Some researchers point to the need to urgently address the problem of road congestion by encouraging the use of private vehicles and the transition to more environmentally friendly modes of transport. The work of other researchers (Wiesenthal *e al.*, 2015) cover innovations in rail and water transport.

They argue that this requires a very complex process — homologation, which is the production of new modes of transport and improvement of transport management systems. Some researchers set an example of Poland to improve transport infrastructure. This state carried out the transformation of the property of passenger carriers with the transfer of shares to the regional authorities (Zbigniew and Ciechański, 2018). However, the latter opinion requires a very careful approach. Unreasonable change of ownership from state to communal or even private in the field of transport can have negative implications such as lack of competition, overestimated transportation costs, etc.

It is necessary to point out the important practical importance of research on increasing the level of safety of the SETA. Some authors (Punev, 2020) consider the need to introduce new rules for the use of transport registrars. It is proposed to integrate them into the car system to collect data with subsequent use in the event of an accident. The need to emend EU legislation in this area is emphasized.

Further automation, mobility, uninterrupted transport, electrification, distribution of high-speed land and underground transport are recognized as key trends for the transport sector (Papadopoulos *et al.*, 2018).

A number of authors (Gamero *et al.*, 2018) believe that it is important to take not only regulatory and technical measures, but also organizational and managerial ones in order to ensure safety in transport. The latter include (Shah *et al*., 2018) infrastructure improvements (safer road design, sidewalk and traffic light regulation, introduction of safe bike lanes), updating standards on motor vehicles, improving law enforcement agencies

and training law enforcement officers with the purpose of increasing the use of seat belts and wearing helmets, etc.

Some authors (Chervinchuk *et al.*, 2021) proposed to introduce a pan-European system for monitoring accident statistics and information, which can be used not only in litigation, but also as a background for analysing the conclusions required for the development of transport safety improvement programmes. Other researchers (Heldeweg and Broos, 2019) considered improving the system of civil liability insurance for drivers.

The above achievements remain relevant. However, given the fact that not only Ukraine but also most European countries are severing economic, transport and other ties with Russia, quick reorientation to alternative, more environmentally friendly modes of transport using alternative types of fuel an important task in the development of the SETA in the current situation.

Conclusions

This research and practical work gives grounds to draw the following conclusions.

Russia's armed aggression had a significant impact on Ukraine's accession to the SETA. This impact involves the following items: 1) raising the national self-consciousness of the Ukrainian people, reorientation of the majority to European self-identification; 2) actual termination of cooperation between Ukraine and Russia in the field of transport, severance of transport links between these states; 3) destruction of significant volumes of transport infrastructure of Ukraine and control over some infrastructure facilities by the occupiers; 4) drawing significant attention of the world, in particular, the European community to the importance of Ukraine as a political player; 4) accelerating the process of granting Ukraine the candidate status for EU membership.

The main SETA efficiency indicators are traffic safety, environmental friendliness, energy saving, economy and comfort of different types of transportation. The study showed that according to these indicators, the SETA has a high level of efficiency, and Ukraine's accession to the SETA is in line with the national interests of Ukraine. In the pre-war period, Ukraine lagged behind in terms of branching of air transport, but did not lag behind in terms of the level of safety in transport.

Ukraine must take the following steps with an extended support of the EU in order to join the SETA, taking into account the adjustments caused by the Russian military aggression: 1) stop the Russian military aggression and de-occupy the occupied territories; 2) attract international investment

and assistance from international organizations for the reconstruction of Ukraine's transport infrastructure; 3) involve international specialists for technical consulting; 4) denounce Ukraine-Russia agreements in the field of transport; 5) obtain Ukraine's candidate status for EU membership; 6) ratify a number of agreements with the EU in the field of rail, water and other modes of transport, adapt Ukrainian legislation to EU requirements; 7) develop medium-term and short-term plans for technical standardization and digitalization of Ukraine's transport infrastructure with due regard to the EU requirements.

These research findings can be used for the purpose of the substantiated adjustment of the plan of Ukraine's accession to the SETA. In particular, it is important to focus on rebuilding transport infrastructure in line with EU standards. It is also important for Ukraine to become a candidate for EU membership.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 565-584
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

The role of the international institutions in the protection of human rights and freedoms in the sphere of national security

DOI: https://doi.org/10.46398/cuestpol.4074.31

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Abstract

The need for qualitative changes in the field of national security also requires the transformation of international institutions responsible for the protection of human rights and freedoms. Therefore, the aim of the article was to identify the role of international institutions in the protection of human rights and freedoms in the field of national security. The main methodological tools were the observational method and the comparative legal method. There is currently a dynamic increase in the number of international treaties ratified in the field of human rights. International institutions are making many efforts to achieve the highest level of efficiency of adequate protection mechanisms. The authorization of an illegal war exposes states to prosecution in international courts. Everything leads to the conclusion that the competence capacity of institutions seems to be limited in the face of increasing violations of human rights in many regions of the world, which leads to the need to reform international legal instruments and relevant procedures for the protection of human rights and freedoms in the field of national security.

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Recibido el 15/07/22 Aceptado el 26/08/22

Keywords: security ecosystem; supranational bodies; security crisis; cross-border threats; political consensus.

El papel de las instituciones internacionales en la protección de los derechos humanos y las libertades en el ámbito de la seguridad nacional

Resumen

La necesidad de cambios cualitativos en el ámbito de la seguridad nacional exige también la transformación de las instituciones internacionales encargadas de la protección de los derechos humanos y las libertades. Por tanto, el objetivo del artículo fue identificar el papel de las instituciones internacionales en la protección de los derechos humanos y las libertades en el ámbito de la seguridad nacional. Las principales herramientas metodológicas fueron el método de observación y el método jurídico comparado. Actualmente existe un aumento dinámico en el número de tratados internacionales ratificados en el ámbito de los derechos humanos. Las instituciones internacionales están haciendo muchos esfuerzos para lograr el más alto nivel de eficiencia de los mecanismos de protección adecuados. La autorización de una guerra ilegal expone a los Estados a ser procesados en tribunales internacionales. Todo permite concluir que la capacidad competencial de las instituciones parece estar limitada ante el aumento de las violaciones de los derechos humanos en muchas regiones del mundo, lo que lleva a la necesidad de reformar los instrumentos jurídicos internacionales y los procedimientos pertinentes para la protección de los derechos humanos y las libertades en el ámbito de la seguridad nacional.

Palabras clave: ecosistema de seguridad; organismos supranacionales; crisis de seguridad; amenazas transfronterizas; consenso político.

Introduction

In the last decade, there has been an increase in geopolitical disagreements around the world, conflicts are becoming global in nature with the involvement of regional and world "participating countries". Tensions and social unrest are increasing, as well as the threat of militarized conflicts, extremism, and terrorism. A new type of terrorism – cyberterrorism – is spreading, which is the convergence of terrorism and cyberspace. The fears of bioterrorism and the risks of mutating pathogens have increased due to

international mobility, which leads to the need to introduce the necessary national and supranational means of prevention/limitation of the spread of diseases with pandemic potential and other cross-border threats to health (Bengtsson and Rhinard, 2019).

Global geopolitical transformations also produce an increase in the number of information threats. The development of information and communication technologies has exacerbated the problems of national security for the states. Disinformation has become more widespread, according to which unfriendly countries use military and diplomatic means in combination with activities in the information space to achieve the desired results. For example, the COVID-19 pandemic has come to be seen as an infodemic, where a lot of credible but misleading information spread rapidly over the Internet (Sługocki and Sowa, 2021). As a result, maintaining global security has become a top priority for all countries (UN. Secretary-General, 2022a).

Modern international threats require states to strengthen their national security policy aimed at the protection of the individual, society, and the state against internal and external threats, which ensure the realization of the constitutional rights and freedoms of citizens, decent quality and standard of living, sovereignty, independence, state, and territorial integrity (Alwan, 2020). Governments around the world have adopted national security policies to address a growing range of risks and vulnerabilities, including climate change, cybercrime, terrorism, and threats to infrastructure, industry, and the media (Heath, 2020).

However, to preserve national security, it is necessary not to deviate from the universal values of human rights and fundamental freedoms (Hill, 2020). In the modern world, the opposite trends have become characteristic of the international protection of human rights and freedoms (Peters and Askin, 2020). There is an increase in the number of ratifications of human rights treaties, international legal instruments, and relevant procedures. There is also an increase in human rights violations around the world. The space for the exercise of basic freedoms is significantly narrowing. In 2021, only 3.1% of the world's population lived in countries with "open" civic space (CIVICUS Monitor, 2021).

In democratic countries, national law is based on international laws. This testifies to the international legal basis of national security, which determines the regulation and protection of state and national values and interests. However, at the international level, there is no universal single document that could establish standards for the protection of human rights and freedoms in the sphere of national security (Chizhov, 2022). Also, the effective implementation of the decisions of international human rights bodies remains a serious problem (Sandoval *et al.*, 2020).

Considering the above, the purpose of the article is to examine the current role of international institutions in the protection of human rights and freedoms in the sphere of national security. Considering the outlined goal, the following research tasks were set: 1) to summarize the main types of international institutions and the corresponding mechanisms for the protection of human rights and freedoms in the sphere of national security; 2) to reveal the current effectiveness of the mechanism for the protection of human rights and freedoms in the sphere of national security in Ukraine given the activities of international institutions.

1. Literature Review

The work of Mantu (2019), dedicated to the overview of key international and regional human rights institutions, global and regional treaties, as well as political agreements and documents that do not have binding force, became the basis for the article. The work of Chizhov (2022) also influenced the formation of the author's position on the researched topic, as the scholar conducted a comprehensive analysis of the theoretical and legal foundations of the implementation of international standards for ensuring human rights in the sphere of national security.

The article by Morris (2020) established the relationship between national security and human rights by considering some practical implications of public policy. The study has considered the works of Morton and Maeselin (2020), dedicated to the main principles of modern international law aimed at strengthening international security regimes and scientific works of Alwan (2020) on the systematization of scientific approaches to the concept of "national security" and Gilder (2021) on the conceptual basis of human security, the possibility of responding to a changing world, and the corresponding reorientation of international rights.

The scientific works of Hill (2020), Drobotov (2020) emphasize the need to balance civil liberties and national security with the help of international institutions.

Particularly noteworthy are the scientific studies by Sandoval *et al.* (2020), Peters and Askin (2020), which emphasize the need to introduce innovative means of monitoring and promotion of dialogue by supranational human rights bodies.

An active study of the relevant problem confirms the fact that special attention should be paid to the current state and further development of international institutions in the mechanism of protection of human rights and freedoms in the sphere of national security. Therefore, conducting the research according to these new criteria is state-of-the-art and relevant.

2. Methods

As shown in Figure 1, the article used such modern methods of cognition, as formal-logical, historical, systemic, comparative, analytical, statistical, and concrete-sociological (research documents). It should be emphasized that 40 sources were reflected in the work.

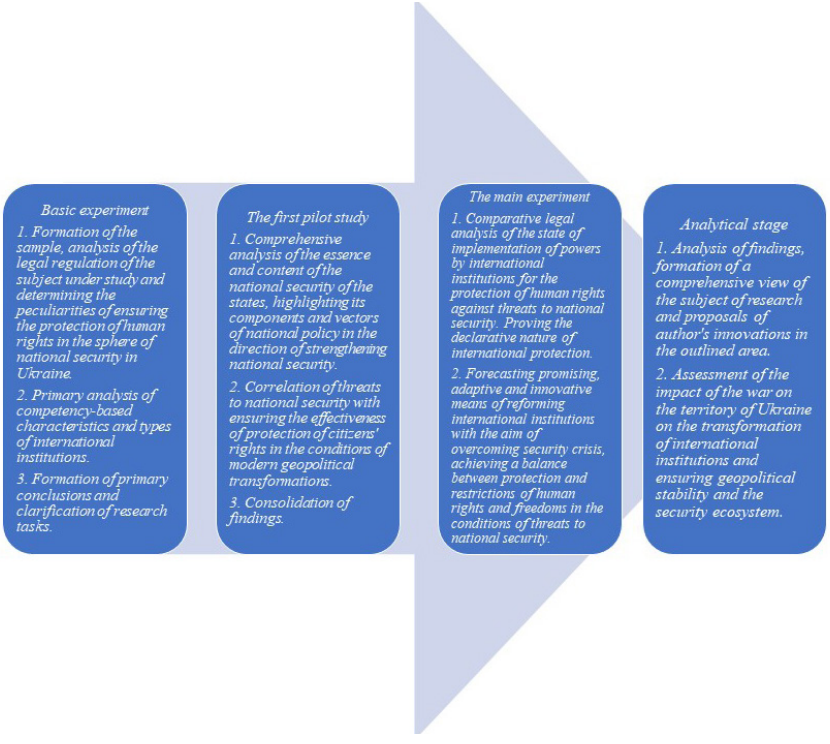

Figure 1. The structure of the phased research. Source: Own elaboration.

The methodological base of the study is represented by the dialectical method, which allowed comprehensive and objective consideration of the problems of legal relations of international institutions and states regarding the protection of the citizens' rights from threats to national security.

The main research method, used in the study, was the observation method, which helped to reveal the author's perception of the essence and content of legal relations between the studied international institutions and to analyses the protection of citizens' rights in the sphere of national security in Ukraine. The comparative legal method made it possible to

reveal the inability of international institutions to influence the protection of human rights and freedoms in the sphere of national security and to confirm the need to reform the entire ecosystem of international security and protection against armed aggression.

The following methods were also used: legal modeling (modeling the development of legal relations of states and international institutions), observation (study of modern trends in the development of current international and national legislation in the sphere of national security, and the activities of legal entities), formal logic (different theories and hypotheses of the further building relationships between states, international institutions, and their partnerships were singled out), hypothetical-deductive (can be seen throughout the article and in the conclusions), etc.

3. Results

The protection of human rights was recognized as the goal and task of the United Nations in the UN Charter of 1945 (United Nations, 1945). In December 1948, the Universal Declaration of Human Rights (UDHR) was adopted by the UN General Assembly resolution (UN General Assembly, 1948). In December 1966, the UN General Assembly adopted the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966) and the International Covenant on Civil and Political Rights (ICCPR, 1966). At the same time, the UDHR and these two Covenants became known as the International Bill of Human Rights.

The UN human rights mechanism consists of many components, the purpose of which is to protect human rights around the world. There are relevant contractual and statutory mechanisms. Statutory bodies assess compliance by all UN member states with their obligations in the sphere of human rights by the UN Charter. Treaty bodies monitor the implementation of the core international human rights treaties by the State parties. The composition of treaty committees on human rights includes independent experts who monitor compliance with the obligations imposed by the main international treaties on human rights.

These committees include Committee on the Elimination of Racial Discrimination, Committee on Economic, Social and Cultural rights, Human Rights Committee, Committee on the Elimination of Discrimination against Women, Committee against Torture, Committee on the Rights of the Child, Committee on Migrant Workers, Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Committee on the Rights of Persons with Disabilities, Committee on Enforced Disappearances.

All committees carry out periodic inspections of states' compliance with the provisions by the procedure based on the periodic submission by the State parties of a report with a detailed description of all measures taken during the reporting period to fulfill the obligations contained in the treaty. After reviewing the report, the relevant committee issues its "Concluding Observations": a set of recommendations aimed at improving the implementation of these obligations.

Confidential investigations, which can only be conducted concerning State parties that have recognized the competence of the relevant committee in this regard, should be initiated upon receipt of reliable information on any serious or systematic violation of the rights guaranteed by the treaties they are monitoring. General comments or recommendations are interpretations by committees of provisions of human rights treaties, specific topics, or methods of their work.

Regarding the statutory mechanisms, the UN adopts resolutions on various issues related to this goal, as well as establishes and monitors the work of various auxiliary mechanisms. These include the Universal Periodic Review (UPR) process and special procedures of the UN Human Rights Council. The UPR is a mechanism through which human rights provisions in all UN member states are reviewed every five years.

Special procedures may have thematic or geographic mandates. Mandate holders are special rapporteurs, independent experts, or working groups consisting of five members appointed by the Human Rights Council. They can receive information about specific claims of human rights violations and send urgent appeals or letters of accusation. The Office of the UN High Commissioner for Human Rights (OHCHR) is responsible for coordinating efforts to promote and protect human rights. It provides research, technical expertise, and logistical support to facilitate the work of the Human Rights Council and other statutory bodies.

This universal human rights system coexists with regional systems: African, Inter-American, and European human rights protection systems. Relevant judicial bodies (for example, the African Court on Human and Peoples' Rights, the Inter-American Court of Human Rights, the European Court of Human Rights (2022) are constantly operating in specific regions. Although the same rights are often protected by one or more universal treaties and regional treaties, the victims cannot simultaneously or sequentially seek protection from more than one mechanism concerning the same human rights violation.

An example of this is Article 35.2. (b) of the ECHR (European Court of human rights, 1950), according to which an application, which is essentially the same as a case that has already been referred to another procedure of international investigation or settlement procedure and does not contain

new information, will be considered inadmissible by the European Court of Human Rights.

The international documents on security, developed under the leadership of the European Union, the Council of Europe, the OSCE, the United Nations, and the IAEA contain relevant standards. Control over their implementation is carried out by the Committee of Ministers of the Council of Europe, which monitors the implementation of the decisions of the European Court of Human Rights under the provisions of the European Convention on Human Rights (Article 46(2) of the Convention) (European Court of human rights, 1950).

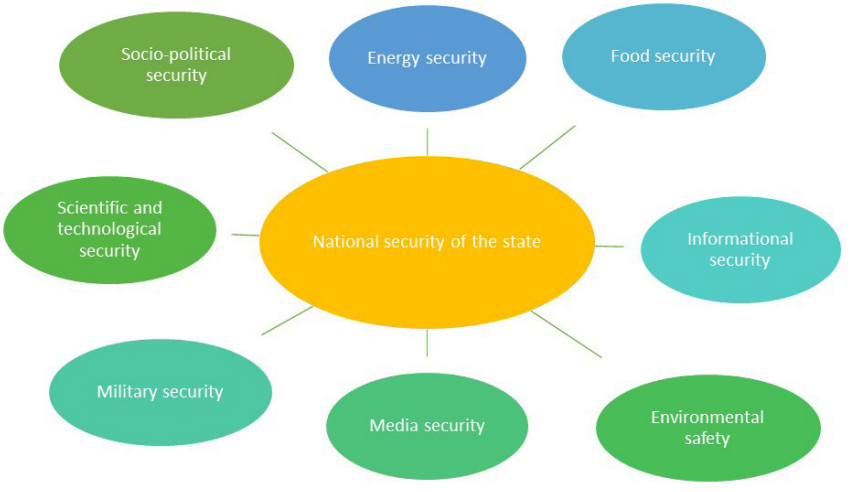

Figure 2. Components of the national security of the state (developed by the authors as a result of observation).

Currently, we can talk about variable components of national security (Figure 2) and, accordingly, variable threats (Figure 3).

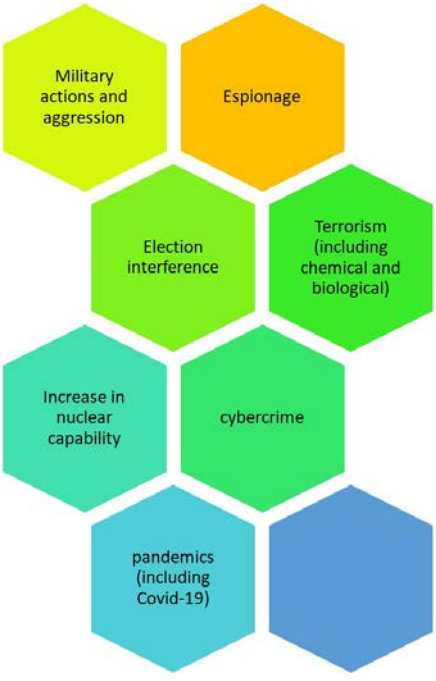

Figure 3. The main threats to national security in the context of globalization (in the authors' point of view).

Threats to national security can come from foreign governments with hostile intentions, such as direct military actions and aggression, espionage, and election interference. Countries may also face the threat of terrorism, including biological terrorism. Activities of an "enemy State" to accumulate chemical weapons stockpiles, develop nuclear potential, or otherwise increase its destructive capabilities are qualified as a threat to national security. In modern conditions, cybercrime is especially dangerous for national security, as it is aimed at hacking the websites of economic institutions, and governmental or energy infrastructures. For example, in Ukraine, as of June 30, 2022, 796 cyber-attacks were carried out (Government portal of Ukraine, 2022a).

The main sectors, targeted by hackers, are Government and local authorities – 179, the security and defense sector – 104, the financial sector – 55, commercial organizations – 54, the energy sector – 54, and others – 350. The most common methods include collecting information by the attacker, malware code, and intervention. An important threat to national security is a transnational crime, uncontrolled migration, ethnic

and religious conflicts, pandemics, and climate change (it can also be considered a threat to national security, as the corresponding long-term effects can lead to environmental disasters).

In turn, a universal system of collective security was created within the framework of the United Nations. The UN Security Council is currently responsible for maintaining international peace and security and takes all appropriate actions for both protection of human rights and the prevention of their violation (Figure 4).

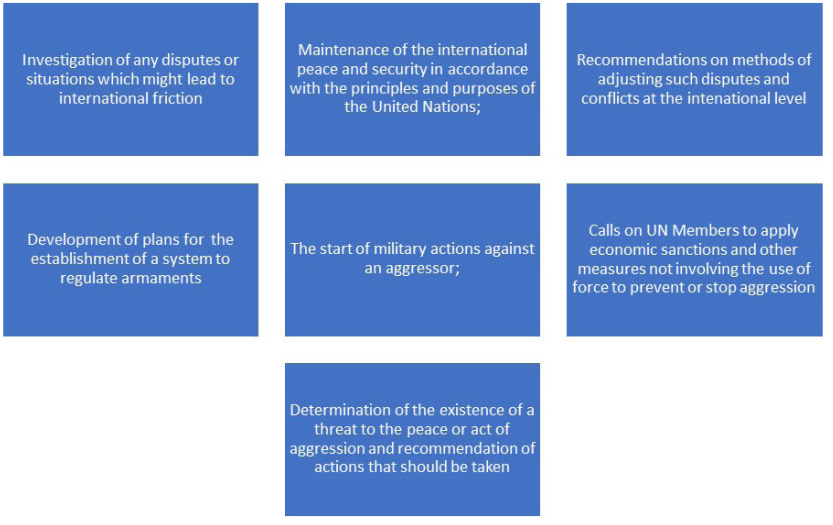

Figure 4. Functions and powers of the UN Security Council regarding the protection of human rights in the sphere of national security.

An example is the developed recommendations on international behaviour related to international and national security, namely the resolutions on the Threats to International Peace and Security Caused by Terrorist Acts, Non-proliferation of nuclear weapons and Nuclear Disarmament, Crimes of Piracy and Armed Robbery Against Ships, Human Rights and Preventing and Countering Violent Extremism.

The UN General Assembly has developed 15 draft resolutions and decisions in the field of disarmament, including 2 decisions on cyberspace security (UN. First Committee, 2020). The COVID-19 pandemic revealed the need for intensification of work in the field of economic, social, and cultural rights to effectively assist all countries in their promotion and protection and to address inequalities in the recovery from the COVID-19 pandemic (UN Secretary-General, 2022).

International standards for the protection of human rights in the sphere of national security consist of mandatory and recommendatory components. Mandatory standards are enshrined in ratified universal international treaties and take precedence over the norms of national legislation and must be applied by state courts in case of contradictions between them. Based on the resolutions, countries have developed appropriate national plans for national security. Thus, in 2020, the European Commission developed the EU Security Union Strategy (European Commission, 2020) to protect EU citizens and promote the European way of life.

The strategy covers the period from 2020 to 2025 and focuses on four strategic priorities and key actions in which the EU can help member states to strengthen security by adhering to European values and principles: a future-proof security environment, tackling evolving threats, protecting Europeans from terrorism and organized crime and a strong European security ecosystem. The NATO military-political bloc remains the guarantor of national sovereignty and the power of EU member states to resist external threats.

Currently, the national security of Ukraine, legally established at the national level (Verkhovna Rada of Ukraine, 2018), has acquired a special significance. Modern state policy in the sphere of national security and defense is aimed at protecting the people and citizens, their life and dignity, constitutional rights and freedoms, and safe living conditions. The main principles determining the formation of state policy in the sphere of national security and defense include the rule of law, accountability, legality, transparency, and compliance with the principles of democratic civilian control over the security and defense sector, compliance with the norms of international law, participation in international efforts to support peace and security, etc. The priority of the security policy and the foreign policy of Ukraine now is integration into the European Union in the context of entering the established security system in the region.

On June 23, 2022, the leaders of 27 EU member states decided to grant Ukraine EU candidate status (Government Portal of Ukraine, 2022b). Further preparation for membership will involve the completion of transformation in the country, which will adjust living conditions in Ukraine according to the principles of the EU and its laws aimed at the protection of the rights and freedoms of every citizen (Official journal of the European Union, 2012).

Representatives of international institutions, to ensure the mechanism of protection of human rights and freedoms in the sphere of national security, monitor the situation in the states that have signed and ratified them. The main purpose of such actions is the observance of rights and freedoms, the provision of consultative, organizational, and judicial protection of human rights and freedoms. The situation in Ukraine can serve as an example of

law enforcement practice: on February 25, 2022, the UN Security Council failed to adopt a draft resolution on ending the Ukraine crisis, as Russia vetoed the resolution.

On March 2, 2022, the UN General Assembly overwhelmingly adopted a resolution demanding that the Russian Federation immediately end its invasion of Ukraine and withdraw all troops (UN. General Assembly, 2022). The text contains a call for an immediate peaceful settlement of the conflict through political dialogue, negotiations, mediation, and other peaceful means. At the same time, such a resolution turned out to be declarative and confirmed the urgent need to revise the concepts of international security protection.

The UN Human Rights Monitoring Mission in Ukraine (HRMMU) has been active since 2014 at the invitation of the government of Ukraine. Special attention was paid to the situation in the conflict zone with the Russian Federation in the east of Ukraine and the Autonomous Republic of Crimea. On February 24, 2022, the Russian Federation announced the start of a military special operation in Ukraine, despite the actual waging of the aggressive war. The HRMMU continues to monitor the impact of this situation on human rights throughout the country. As of 24:00 00:00 on July 3, 2022 (local time), the Office of the United Nations High Commissioner for Human Rights (OHCHR) recorded 11,152 civilian casualties in the country: 4,889 killed and 6,263 wounded (OHCHR, 2022).

Most recorded civilian casualties resulted from the use of explosive weapons with wide area effects, including heavy artillery shelling and MLRS raids, as well as missile and air strikes. Heavy fighting and large-scale hostilities led to mass displacement of the civilian population, which had serious consequences for the exercise of their rights, particularly economic and social ones. The Office of the United Nations High Commissioner for Refugees reported that more than 4.81 million people had left the country by June 10, and the International Organization for Migration indicated that more than 7 million people had been internally displaced (IOM, 2022).

The OSCE launched its special monitoring mission for Ukraine in March 2014 at the request of the Ukrainian government and by consensus decision of all 57 OSCE participating States. The mandate of the OSCE Special Monitoring Mission expired on March 31, 2022, and consensus regarding its extension was not reached due to the position of the Russian Federation.

Four nuclear power plants in Ukraine (Zaporizhzhya NPP, Rivne NPP, South-Ukraine NPP, and Khmelnytska NPP) have 15 operating reactors. Accordingly, the IAEA has developed a comprehensive assistance program to reduce the risk of a major nuclear accident (IAEA, 2022) and sent to Ukraine three integrated missions on security, physical security, and safeguards data. The IAEA continues technical attempts to resume the

transmission of remote safeguards data to the IAEA headquarters from the Zaporizhzhya NPP, which ceased on May 30, 2022.

On February 28, 2022, the ECtHR received a request from the government of Ukraine to take protective measures regarding the inter-state complaint. As a result, the Court instructed the Government of the Russian Federation to refrain from military attacks on the civilian population and civilian objects, including with the use of any types of prohibited weapons, to immediately ensure the safety of medical institutions and emergency rescue services within the territories attacked or surrounded by Russian troops.

Also, by its obligations under the Convention, especially concerning Articles 2, 3, and 8 (European Court of human rights, 1950), the Russian Federation must ensure unhindered access of the civilian population to safe evacuation routes, medical assistance, food, and other basic needs, quick and unhindered passage of humanitarian aid. The Russian Federation ignores completely ECtHR decisions.

On March 16, 2022, the UN International Court of Justice issued a ruling on taking temporary measures in the case Ukraine v. Russia (International Court of Justice, 2022). In filing the case, Ukraine stated that the Russian invasion of Ukraine is based on a false claim of genocide. Given the lack of evidence of Russia's accusations of genocide and the principle that any action to prevent genocide must be taken in good faith and under international law, the Court ordered Russia to immediately cease hostilities.

The question of Russia's participation in the proceedings is still open. The International Court of Justice has set the following deadlines for the submission of written documents: September 23, 2022, for Ukraine's memorial; March 23, 2023, for the counter-memorial of the Russian Federation (UN. Secretary-General, 2022b).

On March 16, 2022, the Council of Europe decided to exclude Russia from the Council of Europe with immediate entry into force (Council of Europe, 2022). The Russian Federation will cease to be a High Contracting Party to the ECHR on September 16, 2022 (ECtHR Decision, March 22, 2022). In turn, the ECtHR is considering the Interstate Case "Ukraine v. Russia" (X) (application No. 11055/22) (ECtHR, 2022), which concerns the statements of the Government of Ukraine about massive and gross violations of human rights committed by the Russian Federation during armed aggression on the territory of Ukraine from February 24, 2022.

On June 23, 2022, the ECtHR received a completed complaint form in the case. The case alleges that the Russian Federation illegally invaded Ukraine and that its invasion and occupation of Ukraine continues. According to the Ukrainian government, the Russian Federation is responsible for numerous violations of the ECHR (European Court of human rights, 1950) and

carried out targeted, non-selective and groundless attacks on civilians and their property throughout the territory of Ukraine, violating all norms of international law. Currently, the ECtHR is considering five more interstate complaints of Ukraine against the Russian Federation and about 8,500 individual complaints related to the events in Crimea, eastern Ukraine, and the Sea of Azov.

The given examples of the implementation of mechanisms for the protection of human rights and freedoms in the sphere of national security in the example of Ukraine testify to the declarative nature of the international institutions. The described situation requires an urgent reform of both international institutions themselves and approaches to ensuring the national security of States.

4. Discussion

The growth of international communication between countries remains the key to the development of international institutions governed by laws and rules (Mantu, 2019). The institutional structure of supranational human rights bodies and the characteristics of the respondent states are key variables influencing the results (Hillebrecht, 2017). In the conditions of the gradual weakening of the regulatory hegemony of the State, international judicial institutions go beyond their limited function of a simple dispute settlement mechanism and become law-making bodies (Torbisco-Casals, 2022).

The right to national security confirms its social value as a regulator of social relations, and strategic communications for the protection of national interests while fulfilling the State's international obligations, ensuring the protection of human rights and fundamental freedoms (Bogutsky, 2020). However, there must be a compromise between human rights and legitimate collective goals, such as the survival of the community and its security from external or internal threats (Torbisco-Casals, 2022).

Interference with human rights and freedoms must be provided for by law, pursue a legitimate goal, and be necessary for society (Binder, 2018). But where national security intersects with human rights abuses at the national level, international human rights law is weak (Morris, 2020). Human rights and freedoms are the highest priority for the development of a democratic state, but they can be limited in the interests of national security (Drobotov, 2020).

Cross-border threats of violence, encroachment on health, and environmental crises are challenges to national security, which can affect people's daily lives (Gilder, 2021). National legal systems of different

nature led to differences in the actual results of the implementation of the same international requirements, as a result of which the international platform for responding to security challenges has not been implemented yet (Chizhov, 2022).

There are many shortcomings in the work of international institutions in the mechanism of protection of human rights and freedoms (Sandoval *et al*., 2020). First, some monitoring tools (such as questions during status reports) are used inconsistently in practice. Secondly, there is constant non-compliance by states with various procedures. Treaty bodies often require the State concerned to provide a written report on the implementation of the recommendations within a specified period – usually within six months of notification of the recommendations by the treaty body.

However, States do not always adhere to these agreements. Third, supranational bodies are not provided with sufficient human and financial resources to monitor and facilitate the implementation of their decisions (Sandoval *et al*., 2020). Also, international institutions should act more actively than react to the protection of human rights. There must be a well-thought-out and sound policy for the prevention of human rights violations (Mantu, 2019).

The willingness of some states to use force indicates that the legal prohibition on the use of force may be weakening which makes it necessary to develop more supranational provisions on human rights in the sphere of national security, as well as to expand the opportunities to bring violators to justice (Morton and Maeselin, 2020). However, the search for an alternative to the UN Security Council will not take place shortly (Subramanian, 2022).

Conclusion

The doctrines of human rights and freedoms influenced international law and became an impetus for the creation of global and regional institutions. The development of new technologies and communication networks removes barriers, but it also leads to the emergence of new problems, risks, and threats. By helping to improve the international system of human rights, the relevant international institutions act as multi-level and complex structures. Regional systems are the main elements of international protection of human rights.

One of the most important principles of national security in every modern democratic state is the rule of law. The main vector should be aimed at balancing the guarantees of observance of human and citizen rights and freedoms in the national security system in general.

As a result of the invasion of the Russian Federation on February 24, 2022, millions of Ukrainians were deprived of their basic rights and freedoms: the right to decide their fate, freely choose their political status, and engage in their economic, social, and cultural development. International organizations make a lot of efforts to protect human rights and freedoms in the sphere of national security, but the readiness of some states to use force against other states indicates a weakening of the legal prohibition of the use of force.

The implementation of international mechanisms for the protection of human rights and freedoms in the sphere of national security by international institutions is hindered by the sovereignty of the modern state, which makes international law advisory, not mandatory. Increasingly, the decisions of international institutions are becoming declarative, which confirms the lack of effective protection of rights and requires further reform of the global security ecosystem of states with the consolidation of effective mechanisms for the protection of human rights and freedoms.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 585-606
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Peculiarities of personal data protection according to European and Ukrainian legislation

DOI: https://doi.org/10.46398/cuestpol.4074.32

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Abstract

The article analyzes the peculiarities of the development of legal regulation of personal data protection in the EU countries and Ukraine. It analyzes how the European legislator's approach to personal data protection has changed. The need for changes was due to the development of information technologies and, as a result, increased risk of their use to interfere in private life. As a result, European legislation on personal data protection has been strengthened, which has become particularly noticeable after the adoption of the General Data Protection Regulation (hereinafter - GDPR). Special attention is paid to the principles of lawful, fair and transparent processing of personal data concerning: limiting the target; data minimization; accurate and up-to-date processing; limiting the storage of personal data in a form that allows identification; confidentiality and security of data storage; accountability and responsibility. The current Ukrainian legislation on personal data protection is analyzed. Finally, the correlation between the categories "right to privacy" and "personal data protection" was studied.

Keywords: personal data; information; private life; GDPR; right to privacy.

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Recibido el 09/07/22 Aprobado el 09/09/22

Peculiaridades de la protección de datos personales según la legislación europea y ucraniana

Resumen

El artículo analiza las peculiaridades del desarrollo de la regulación legal de la protección de datos personales en los países de la UE y Ucrania. Se analiza cómo ha cambiado el enfoque del legislador europeo en materia de protección de datos personales. La necesidad de cambios se debió al desarrollo de las tecnologías de la información y, como resultado, a un mayor riesgo de su uso para interferir en la vida privada. Por ello, se ha reforzado la legislación europea en materia de protección de datos personales, lo que se ha hecho especialmente notorio tras la adopción del Reglamento General de Protección de Datos (en adelante – RGPD). Se presta especial atención a los principios de tratamiento lícito, leal y transparente de los datos personales en lo concerniente a: limitar la meta; de minimización de datos; de procesamiento preciso y actualizado; de limitar el almacenamiento de datos personales en una forma que permita la identificación; de confidencialidad y seguridad del almacenamiento de datos; de rendición de cuentas y responsabilidad. Se analiza la legislación ucraniana vigente en materia de protección de datos personales. Finalmente, se estudió la correlación entre las categorías «derecho a la privacidad» y «protección de datos personales».

Palabras clave: datos personales; información; vida privada; RGPD; derecho a la privacidad.

Introduction

Increasing globalization and the development of the information society lead to the need to protect the private sphere of human life. The ability of a particular state to ensure the personal data protection determines its ability to be a guarantor of the relevant human rights and freedoms. However, human progress is increasingly identifying issues that need to be addressed. Therefore, the regulatory framework must be constantly updated, adapted to the latest technologies, especially if they put at risk interests of the whole society.

European Union law stipulates that the protection of individuals with regard to the processing of personal data is a fundamental right.

The issue of personal data protection from unauthorized processing is regulated, first of all, by the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. Ukraine joined it in 2006. Since then, the Verkhovna Rada has adopted the Law on Personal Data

Protection, given the relevant powers to the Verkhovna Rada Commissioner for Human Rights, and established measures of responsibility for violating legislative prohibitions. However, the right to privacy enshrined in the Constitution of Ukraine is still not fully guaranteed.

Economic and social integration as a result of the functioning of the internal market has led to a significant increase in cross-border flows of personal data. The exchange of personal data between public and private entities, including individuals, associations and businesses at the level of the EU, has increased.

Rapid technological development and globalization are creating new challenges for the protection of personal data. The scale of the collecting and sharing of personal data has increased significantly. Technology allows both private companies and public authorities to use personal data on an unprecedented scale in order to carry out their activities. Individuals are increasingly providing access to personal information to the public. Technology has changed both the economy and public life and should further promote the free movement of personal data within the the EU and their transfer to third countries and international organizations, while ensuring a high level of personal data protection.

Due to the emergence of the phenomenon of cross-border flows of personal data, there is an urgent need not only for legal regulation of personal data protection, but also for an effective mechanism of strict coercion for violations of personal rights. For this purpose, on April 26, 2016, the EU Regulation on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General data protection regulation) was approved, which came into force on May 25, 2018.

Despite the fact that Ukraine does not have the status of a full member of the EU, according to the Regulation, the GDPR also applies to Ukraine in specific cases. This means, in turn, that European market-oriented businesses in Ukraine must adjust in detail their policy and process of processing and collecting personal data in accordance with the GDPR, and keep in mind that temporary difficulties in establishing a way to bring them to justice under the Regulation are not a reason to ignore the relevant rules.

One way or another, violators will face adverse consequences in the form of fines, termination of cost contracts with EU entities, and so on. In addition, given the granting of Ukraine the status of a candidate for EU membership, there is an urgent need to adapt Ukrainian legislation to European requirements, including in the field of personal data protection.

1. European Union legislation on personal data protection

Legislation on confidentiality and protection of personal data in the EU has changed significantly over the last two decades. The high-network world we live in today began to take shape in the mid-1990s. The Internet was still a fairly new concept for many people. Most companies had no websites. Concepts such as online platforms or online media did not exist and no one considered the issue of regulating the activities of such resources.

Smartphones, the latest technology and artificial intelligence have made a huge step in the development of mankind over the last 20 years due to new ways of obtaining and processing data. Accordingly, when something new appears in our society, the question immediately arises as to how this concept is enshrined in law, what risks can be predicted, whether fundamental human rights are violated, who is responsible for the violation, and so on.

As a result, courts and regulators have increasingly had to adapt old data protection laws to meet the ever-changing world.

Although basic international regulations already enshrine the basic principles of personal data protection and privacy, a clear mechanism for protecting the infringed right is always needed. Accordingly, for the EU states, the legislation should be uniform in the first place.

On January 28, 1981, Convention of the Council of Europe for the Protection of Individuals with regard to Automatic Processing of Personal Data was adopted. This document set out the key principles of personal data processing, the rights of the individual in connection with the processing of personal data, the basic rules for cross-border data transfer. In 2001, the Additional Protocol to this international agreement was adopted, which detailed the provisions of the Convention on cross-border data transfer and contained new provisions on the need for the Parties to establish a supervisory body to monitor compliance with personal data protection legislation (Bem and Horodyskyi, 2018).

According to EU law, the right to protection of personal data is defined as one of the fundamental rights. This is confirmed in Article 16 of the Treaty on the Functioning of the EU (EU Member States, 1957), as well as in Art. 8 of the EU Charter of Fundamental Rights (European Commission, 2000).

Previously, the main legal act on personal data protection was the Data Protection Directive 95/46/EC adopted in 1995.

The provisions of Directive 95/46/EC did not provide for a strong data protection mechanism, and given the rapid technological development, it is necessary to create legislation that would be flexible even in the event of unforeseen technological changes. Accordingly, new legislation was

adopted in 2016 to adapt data protection rules to the digital age.

The General Data Protection Regulation (Regulation (EU) 2016/679) is a regulation within the framework of European Union legislation on the protection of personal data of all persons within the European Union and the European Economic Area. It also applies to the export of personal data outside the EU and the EEA. The GDPR is primarily intended to give EU citizens and residents control over their personal data. The Regulation replaced the 1995 Data Protection Directive and contains provisions and requirements for the processing of personal information of data subjects within the European Union (Presidency of the Council of the EU, 2015).

The GDPR is a regulation, not a directive, it does not require national governments to enact laws that make it effective, and it is directly binding and enforceable (Blackmer, 2016).

The EU's General Data Protection Regulation (GDPR) is the most important change in the regulation of data confidentiality over the last 20 years. The regulation allowed to fundamentally change the way data is processed in each sector - from healthcare to banking and beyond.

The regulation provides for clarifications and updates that will facilitate the operation of EU data protection law in the next decade. There have also been major changes in the burden of liability for violations of EU law. The regulation provides for significant fines of up to € 20 million, or 4% of annual global turnover, for enterprises in the previous financial year, whichever is higher.

In addition to the GDPR, the EU adopted other regulations that affect confidentiality and data protection. The first of these documents is Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union (European Parliament and the Council of the EU, 2016). The NIS Directive is the first adopted at the level of the European Union on the protection of network and information systems (European Parliament and of the Council of Europe, 2016).

The adopted Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services (European Parliament and the Council of the EU, 2019) may be revolutionary in understanding the nature of personal data.

EU Directive 2019/770 aims to strengthen consumer protection online and amends EU legislation on consumer protection in the digital single market and the New Consumer Policy package. The Directive covers agreements between traders and users in which a trader supplies or undertakes to supply digital content or a digital service in exchange for a price or the provision of personal data.

The directive should apply in cases where the consumer opens an account on a social network and provides a name and e-mail address. It should also apply where the consumer consents to the processing for marketing purposes of any material constituting personal data, such as photographs or publications uploaded by the consumer. Some scholars tend to consider say that the Directive actually recognizes personal data as a "currency" in the digital world (Nekit, 2020; Nekit, 2020).

There is a special body in the EU for proper compliance with personal data protection legislation - the European Data Protection Board (EDPB). The Council is an independent European body that promotes the consistent application of data protection rules throughout the European Union and promotes cooperation between EU data protection authorities.

The European Data Protection Board consists of representatives of national data protection authorities and the European Data Protection Supervisor (EDPS). The Council aims to ensure the consistent application of the general data protection provisions in the European Union.

According to the reports of the European Data Protection Board, the greatest threat to individual freedom and dignity stems from the excessive information capacity of certain companies or controllers and the ecosystem of trackers and targets who are able to collect and use personal information (Kalitenko *et al.*, 2021). Just three months before the GDPR became completely coercive, the misuse of personal data became the main news and the subject of official investigations not only in the European Parliament but also internationally.

2. Principles and rules of personal data protection under the GDPR

Since in the Big Data era, legal relations arise at the intersection of jurisdictions, the personal data of any person, including a citizen of Ukraine, may be processed by economic entities of the EU, USA, etc. in accordance with the rules of these countries. Similarly, individuals and legal entities of Ukraine may process personal data of such persons by providing services via the Internet to personal data subjects from EU Member States.

Analysis of the provisions of the Regulation allows us to conclude that although Ukraine is not a member state of the EU, but the rules enshrined in the GDPR may directly affect the subjects of its jurisdiction (Kovinko, 2019).

The emergence of "Big Data" is attributed to Clifford Lynch, editor of the journal Nature, after the publication in September 2008 of a special issue. "Big Data" originated by analogy with the common concepts in the

business environment Big Oil and Big Ore. The emergence of "Big Data" indicates that the view of business has shifted from the extraction of natural resources to the extraction of information that has become a more valuable resource than natural raw materials (Oleksin, 2017).

The term "Big Data" is understood to mean a more powerful form of data mining based on huge amounts of information, high-speed computers and the latest analytical methods that can detect hidden and sometimes even unexpected correlations between facts and phenomena of reality (Kardash, 2019).

The provisions of the GDPR came into force on May 25, 2018. On the eve of the entry into force of the GDPR (April 2018), there was an interesting trend in Ukraine: a large number of companies providing services or selling goods to people in the EU suddenly mentioned that the GDPR was adopted two years ago. That made Ukrainian companies to panick and begin the process of bringing their activities in line with the requirements of the Regulation.

It should be agreed that the GDPR is a progressive normative document that significantly increased the level of personal data protection both in the EU and abroad. The Regulation restores the trust of the user, which allows businesses to quickly use the opportunities in the single European market of goods and services, in particular, in the field of information technology (Vanberg, 2021).

According to Art. 4 of the Regulation, "personal data" means "any data relating to an identified or identifiable individual (data subject); an identifiable natural person is an identifiable person, directly or indirectly, in particular by identifiers such as name, identification number, location data, online identifier or one or more factors that determine physical, physiological, genetic, mental, economic, cultural or social essence of such an individual.

Regarding the processing of personal data, it covers any operation or series of operations with personal data or sets of personal data with or without automated means, such as collection, registration, organization, structuring, storing, adapting or modifying, searching, reviewing, using, disclosing through transmission, distribution or otherwise, arranging or combining, restricting, erasing or destroying. Restriction of processing means the designation of stored personal data in order to limit their processing in the future.

The regulations introduced new concepts to the subject composition and processing of personal data, like controller, operator, processor, Data Protection Officer. In order to clearly distinguish between the concepts of controller and processor, it is necessary to start from the purpose of personal data processing. If an individual, company or institution sets the

purpose and means of personal data processing, it is the controller (data owner). If it processes data on behalf of the controller, it is the operator (data controller). The GDPR requires the appointment of Data Protection Officers (Hoofnagle *et al.*, 2019).

The processing of personal data is based on a number of principles that determine the legal basis for its implementation. These principles are set out in Art. 5 of Convention 108, Art. 6 of Directive 95/46/EC and Art. 5 of the Regulations. In fact, the principles are the rules that must be followed (with minor exceptions) by any owner in the course of any processing to which these documents apply (Vynogradova, 2006).

The principles of personal data processing are set in Art. 5 of GDPR, according to which personal data:

1. Must be processed in a lawful and transparent manner in relation to the data subject (legality, legitimacy and transparency).
2. Must be collected for specified, clear and legitimate purposes and not further elaborate in a manner incompatible with such purposes; further elaboration to achieve the objectives of the public interest, the objectives of scientific or historical research or statistical objectives cannot be considered incompatible with the primary objectives (target restriction).
3. Must be considered sufficient and appropriate and limited to only necessary, taking into account the objectives of the processing (data minimization).
4. Must be accurate and, if necessary, updated; all appropriate measures must be taken to ensure that inaccurate personal data, in view of the purposes of their processing, are erased or corrected without delay (accuracy).
5. Must be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes of their processing; personal data may be stored for longer periods as long as they are processed solely for public interest, scientific or historical research or statistical purposes, subject to appropriate technical and organizational measures provided by the Regulation to guarantee the rights and freedoms of the data subject (storage restrictions).
6. Must be processed in a manner that ensures adequate security of personal data, including protection against unauthorized or unlawful processing and against unintentional loss, destruction or damage, using appropriate technical and organizational tools (integrity and confidentiality).

To these principles the principle of accountability is added: the controller is responsible for adhering to the above principles and must be able to prove it (accountability).

It is important to pay attention to each of the principles of data processing. Thus, the essence of the principle of lawful, fair and transparent processing of personal data is that the person who collects personal data must have a clear explanation of the purpose for which he or she collects this data and how the data will be used. In addition, at the request of the data subject, details concerning the processing of one's data must be provided. For example, if the subject asks what kind of his or her personal data is stored at a certain enterprise or who holds the position of personal data protection officer in this structure, such information should be available.

It is reflected in details in the case law of the European Court of Human Rights. Thus, according to Art. 8 of Convention 108, interference with the rights guaranteed by it (this is the right to respect for privacy, which includes, inter alia, the right to protection of personal data) is possible only if it is exercised "according to the law". Such a provision not only requires that the relevant measures have a basis, but also requires the quality of such a "law", requiring that it be available to the person concerned and predictable in terms of the consequences of its application (Yesimov, 2013).

The accessibility requirement is usually met if one or another legal act has been made public. With regard to the requirement of predictability, the ECtHR found that a rule is "predictable" if it is worded with sufficient clarity to enable a person to regulate his or her behavior with appropriate assistance (Rotaru v. Romania, 2000).

The principle of goal limitation implies that the processing of information should always have its legitimate purpose. For example, when hiring, the prospective employee usually fills out a questionnaire, which consists of a number of items, but in reality the employer in most cases only needs the name, phone, e-mail and possibly the address to deliver postal items. Thus, this principle states that organizations should not collect any piece of data that does not have a specific purpose.

Clarity of purpose formulation is the main step in ensuring the legality of processing. Thus, any action taken on personal data must meet the specific purpose of their processing. Therefore, it is the goal that sets the basic limits of processing necessary to give the data subject a picture of how the data will be processed, and thus the ability to control their processing.

The purpose of personal data processing cannot be the fact of processing. There are often situations when the goal is "the need to keep records", "accumulation of as much information as possible" and others. In such case, there is a situation where accounting is conducted for the sake of accounting (Bem and Horodyskyi, 2018).

In M.K. v. France (2013) the applicant was detained for theft and fingerprints were taken. Later the case was closed. The applicant asked the prosecutor to remove his fingerprints, but was refused. The courts upheld the prosecutor's decision, given the need to accumulate as many samples as possible to compare and facilitate investigations.

The ECtHR stated that the purpose of the fingerprint processing in that database was so broad that it effectively authorized the collection of fingerprints of the entire population, which was clearly disproportionate. Thus, the State, in the Court's view, went beyond its discretion and did not balance the interests of the individual with the public, which led to violation of Art. 8 of the Convention.

In accordance with the principle of data minimization, organizations must ensure that the data they store and process is adequate, relevant and limited. Today, companies collect a lot of personal information for various reasons, such as understanding consumer demand for certain groups of goods. Based on this principle, organizations should be confident that they retain only the minimum amount of data required for their use (Bhaimia, 2018).

Only data that need to be processed to achieve the goal should be processed and, even if certain data are used to achieve the goal, their processing will be illegal if it can be achieved without processing the data. Moreover, the principle of proportionality should cover the entire process of any processing of personal data.

The processing of personal data must not take longer than is necessary for the lawful purposes for which they were collected or further processed. Also, the level of organizational and technical protection of personal data should be proportional to the nature and volume of personal data processed (Tsekoura and Panagopoulou, 2020).

The principle of accurate and up-to-date processing requires data controllers to constantly verify that the information being processed remains accurate, valid and fit for its purposes. Personal data processed by the owner must be accurate and reliable. This obligation of the owner implies that reasonable steps will be taken by the owner to keep the personal data of the subject up to date, and the personal data subject has the right to ask the owner to correct his personal data. At the same time, certain deviations from this principle are allowed depending on the sphere of activity in question (medical information, information on a person's involvement in the commission of a crime, etc.).

The principle of limiting the storage of personal data in a form that allows identification prevents unnecessary redundancy and data replication. It limits the movement and duration of data storage and requires an understanding of how the subject will be identified if data records are

compromised. In addition, this principle includes the implementation of a special data retention policy, which, inter alia, contains restrictions on the storage of data simultaneously in several places. For example, companies should prohibit their employees from storing copies of the customer list on a local laptop or transferring data to external devices such as USB. That is, having several illegal copies of the same data in several places will be considered a serious violation of the GDPR.

The principle of confidentiality and security of data storage protects the integrity and confidentiality of data by ensuring the reliability of its storage (which applies to IT systems, paper records and physical security). The data collection and processing organization is currently fully responsible for implementing security measures that are commensurate with the risks of individual data subjects. Negligence is no longer an excuse under the GDPR, so companies must spend considerable resources to prevent both intentional and unintentional data breaches.

The principle of accountability and responsibility supposes that organizations should be able to demonstrate at all times to public authorities that they have taken all necessary measures commensurate with the risks faced by data subjects. The level of compliance may be different for each company. It all depends on how big the company is, how many people have access to personal data, how high is the risk of data leakage, etc. (Tikkinen-Piri *et al.,* 2018).

The provisions of the Regulation apply to the processing of personal data, which is carried out for persons who are in the EU at the time of processing, or persons who directly process the personal data of others and are in the EU. The provisions of the Regulation also apply to companies that provide only the possibility of providing services or selling goods to persons located in the EU. In addition, it should be noted that according to the Regulations, belonging to a certain citizenship does not matter. Only the physical presence of individuals or businesses (their representative offices) in the EU matters.

3. Legal regulation of personal data protection in Ukraine

Ukrainian legislation is characterized by the implementation of international standards into the system of principles of data protection, which constitute personal information. The Constitution of Ukraine provides for the right to secrecy of correspondence, telephone conversations, telegraph and other correspondence (Article 31), information privacy (Article 32). A ban on interfering in personal and family life has been established, restrictions on the processing of confidential information have been imposed, and access to personal information and protection of

one's rights have been guaranteed. These instructions are reflected in other legislative acts and are interpreted in the decisions of the Constitutional Court of Ukraine (Baranov *et al.*, 2000).

The decision of the Constitutional Court of Ukraine of January 1, 2012 № 2-rp / 2012 provided an official interpretation of the provisions of Part 2 of Art. 32 of the Constitution of Ukraine, in particular: it is impossible to define absolutely all types of behavior of individuals in the spheres of personal and family life, as personal and family rights are part of natural human rights that are not exhaustive and are implemented in various dynamic property and non-property relations phenomena, events, etc.

The right to privacy and family life is a fundamental value necessary for the full prosperity of a person in a democratic society, and is seen as the right of an individual to independence from the state, local governments, legal entities and individuals. Collection, storage, use and dissemination of confidential information about a person without consent by the state, local governments, legal entities or individuals is an interference in one's personal and family life. Such interference is permitted only in cases specified by law and only in the interests of national security, economic prosperity and human rights (Constitutional Court of Ukraine, 2012).

In view of the above, the Constitutional Court of Ukraine in fact equates personal and private life. Providing clarification of parts 1 and 2 of Art. 32 of the Constitution of Ukraine, the Constitutional Court of Ukraine uses the terms "private life" and "personal life" as synonyms. This decision is a formal source of legal provisions on personal data protection under Ukrainian legislation.

In addition, the Civil Code of Ukraine according to Art. 301, 303, 304, 306, 307, 308 provides for the possibility to protect private rights by all available means, including self-defense (Verkhovna Rada of Ukraine, 2003). The Criminal Code of Ukraine establishes liability for violation of privacy (Art. 182 of the Criminal Code of Ukraine). In this regard, the Criminal Code of Ukraine is more progressive in terms of terminology than even the Constitution of Ukraine, as it uses term "private", not "personal" (Verkhovna Rada of Ukraine, 2001).

By the Law of Ukraine of July 6, 2010, Ukraine ratified the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and its Additional Protocol. Thus, Ukraine has undertaken to ensure respect for human rights and freedoms, in particular, the right to privacy under Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

In order to specify the human rights guaranteed by the Constitution of Ukraine and determine the mechanisms of its implementation the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Personal Data

Protection" which entered into force on January 1, 2011. This Law regulates legal relations on personal data protection and processing and aims to protect the fundamental human rights and, including the right to privacy in connection with the processing of personal data (Verkhovna Rada of Ukraine, 2010).

The definition of personal data is given in Art. 2 of the Law "On Personal Data Protection", according to which personal data is information or a set of information about an individual who is identified or can be specifically identified.

In fact, this definition echoes the one, enshrined in Convention 108 on the Protection of Individuals with regard to Automatic Processing of Personal Data, which states that it is information relating to a specific or identifiable person. In the GDPR, the concept of "personal data" is expanded, which is determined by current practice, including ECtHR decisions.

Taking into account the experience of the personal data protection system in Ukraine, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Improving the Personal Data Protection System", which entered into force on January 1, 2014. This Law, in order to ensure the independence of the Personal Data Protection Authority, as required by the Council of Europe, empowers the Commissioner for Human Rights to monitor compliance with personal data protection legislation.

There are also bylaws approved by the Order of the Commissioner for Human Rights of the Verkhovna Rada of Ukraine:

- Standard procedure for personal data processing, which regulates the basic requirements for the organization of personal data processing by owners, as well as the Clarification approved by the Commissioner of the Verkhovna Rada of Ukraine for Human Rights;
- The procedure for the Commissioner of the Verkhovna Rada to monitor compliance with the legislation on personal data protection, which contains, inter alia, provisions on the procedure for verification by the supervisory authority of persons processing personal data;
- The procedure for notifying the Verkhovna Rada Commissioner for Human Rights about the processing of personal data, which poses a special risk to the rights and freedoms of personal data subjects, about the structural unit or responsible person organizing work related to the protection of personal data during their processing, and also disclosure of the specified information;
- On approval of the Procedure for processing personal data in the information automated system "Accounting for the transfer and

receipt of data from Eurojust", adopted pursuant to the Primary Act "On Ratification of the Cooperation Agreement between Ukraine and the European Organization of Justice" from February 8, 2017, and the International Act "Agreement on Cooperation between Ukraine and the European Organization of Justice" of July 26, 2016.

The Law of Ukraine "On Personal Data Protection" is the main among the whole set of acts aimed at personal data protection in Ukraine. Previous bylaws were adopted for its implementation. The Law of Ukraine "On Personal Data Protection" contains the concept of personal data, their processing, defines the subjects of these legal relations. It establishes the rules of any operations with personal data (automated or non-automated), provides for the powers of regulatory authorities, the possibility of bringing offenders to justice, and so on.

The Law does not apply to the creation of personal databases for personal, creative and journalistic purposes. With regard to journalistic activity, it is worth mentioning the exception when there is a clear and gross violation of the right to respect for the private life of others, because in this case the sanctions provided by law may be applied. There is a fine line between public and private life, between the protection of personal data and freedom of expression. The decision of the European Court of Human Rights in *Von Hannover v. Germany* distinguished between facts that can contribute to the development of a democratic society and those that constitute the sphere of privacy.

Regarding the essence of information protection, another act is also applicable in Ukraine, it's the Law of Ukraine "On Information", according to which information protection is a set of legal, administrative, organizational, technical and other measures to ensure the preservation, integrity of information and proper access to it (Verkhovna Rada, 1992).

Talking about data protection under Ukrainian legislation, the concept of "processing" is of particular importance. After all, it includes the collection, registration, accumulation, storage, adaptation, modification, renewal, use and distribution, depersonalization, destruction of personal data. That is, any transactions with personal data, both in Ukraine and abroad, are automatically recognized as processing personal data.

There is a debate among Ukrainian scholars about the definition of the term "personal data". Thus, V. Bryzhko notes that it is a set or individual information about an individual who is identified or can be identified (Bryzhko, 2004). G. Vynogradova, believes that personal data is a set of documented or publicly announced information about an individual (Vynogradova, 2006).

At the same time, A. Marushchak, in defining the concept of "personal data", uses the term "confidential personal information". However, personal

data may only be considered confidential on the basis of law or at the request of a person. Thus, information concerning the exercise of official authority by a person holding a public office is not confidential. Therefore, personal data should not be equated with confidential. It should also be noted that not all information can be classified as confidential. There are many cases when different laws provide for the openness of certain information, such as information about the position and work contacts, disposal of budget funds, information from open registers, etc. (Marushchak, 2007).

In general, Ukrainian legislation includes more than 3,000 of legal acts, the scope of which covers the processing of information about an individual. However, as a rule, they specify the content of personal data in accordance with the type of legal relations that fall within the scope of their regulation (civil, labor, administrative, criminal procedure, etc.). Therefore, the list of such data differs depending on the scope of the act. The Law of Ukraine "On Personal Data Protection" also does not establish the exact set of information that needs protection, so any information about a person can be perceived as such.

The right to privacy in Ukraine is not just about information privacy. In addition to information privacy, the Constitution of Ukraine also guarantees the inviolability of housing, secrecy of correspondence, telephone conversations, telegraph and other correspondence, and the prohibition of subjecting a person to medical, scientific, and other experiments without his or her free consent. Thus, the most important aspects of privacy protection are reflected in many articles of the Constitution of Ukraine (Kardash, 2019).

Ukraine is on a long way to create a system of personal data protection on the Internet. There is already a need to clarify the provisions of the law on consent to data processing and to strengthen the responsibility of online resources for violations. The first steps in this direction should be the establishment of an independent regulatory body and the implementation of the standards set out in the General Data Protection Regulation into national law.

In November 2018, the two-year Twinning Ombudsman project, funded by the European Union for one and a half million euros, was completed in Ukraine. One of the directions of the project was the reform of personal data protection in Ukraine, and the result of their work was the draft of a new Law on Personal Data Protection, aligned with the regulation of personal data protection in the EU, conclusions and methodologies for effective reform. Unfortunately, as of early 2022, it has not been adopted yet.

Since September 2017, the EU-Ukraine Association Agreement has been in force, the purpose of which is to open the markets of Ukraine and the European Union and to establish cooperation between them. Among

other requirements, Art. 15 of the Agreement requires that the protection of personal data in Ukraine be brought into line with European and international standards.

4. Problems and prospects for improving personal data protection in Ukraine

Personal data, protection is significantly relevant in terms of the development of the information society and the spread of new information and communication technologies that provide real opportunities for total control over human privacy (Kardash, 2019). Considering that, the current model of personal data protection in Ukraine needs to be improved.

Ukraine, which is gradually integrating into the EU, already has the relevant basic provisions aimed at creating a quality system of personal data protection. None the less, Ukraine still needs to do a lot of work, and this applies not only to the actions of the state, but also to the private sector. It is necessary to start with the adoption of a new law or amendments to the existing Law "On Personal Data Protection". These include detailing the "right to forget" and the prohibition of information processing, the addition of the right to temporarily restrict processing and the right to "mobility" of data, as well as the system for filing complaints, individual and collective lawsuits. It is important to introduce the extraterritoriality of the Ukrainian data protection system, i.e. for the law to apply to foreign companies. And for Ukrainian companies, internal information security rules should be developed.

The powers of a specialized body on personal data protection in Ukraine should also be reviewed. Institutionally, it is worthwhile to create a specialized information commissioner (separate from the Verkhovna Rada Commissioner for Human Rights), which would have the appropriate independence.

In addition to conducting inspections and imposing fines, such a commissioner should have a more effective arsenal of legal remedies for supervision in the relevant field. It is necessary to provide for the right to address the court the demand to stop violation of the right to privacy in the field of personal data, the ability to block Internet resources in court. It is also necessary to improve the procedure for notification of the processing of personal data - the notification must be carried out before the start of the relevant actions.

To protect the infringed right, the right to lodge a complaint with the supervisory authority should be provided for. Such a body should be authorized to consider complaints and make appropriate decisions based on the results of investigations.

In order for the data protection provisions to be effective and enforced, the GDPR provided for severe coercion and sanctions for breaches. The smallest amount of the fine according to GDPR is 20 million euros or 4% of the gross income of the controller and / or operator, while in accordance with the legislation of Ukraine, the maximum amount of the fine in the field of personal data protection is 34000 UAH (Kovinko, 2019).

Currently, Ukraine does not have a clear mechanism for imposing fines in accordance with EU legislation. However, it can be predicted that violations of the GDPR by Ukrainian controllers / operators may lead to the following scenarios: refusal to open a foreign bank account if the database contains information about violations of GDPR by individuals or legal entities of Ukraine; prohibition of the subject of EU law to continue the flow or transfer of data in Ukraine (in fact - this is actually the termination of contractual relations); those controllers / operators of Ukraine who comply with the provisions of the Regulation will be more competitive in the market, as they will be more trusted by users and contractors from the EU.

Ukrainian legislation requires, among other things, the adoption of a new Law of Ukraine "On Personal Data Protection", developed taking into account the provisions and practices of the GDPR and EU legislation in the field of ePrivacy. Updated legislation should also provide for:

- increasing the requirements for the security of personal data processing;
- granting individuals, a greater number of rights in relation to their personal data;
- ensuring transparency of personal data processing: individuals should be informed about who, when and how will process their personal data;
- increasing the requirements for the procedure for obtaining the consent of an individual to the collection, use and transfer of personal data;
- marketing mailings (including email, SMS and messengers), calls and other contacts will be allowed only with the consent of the individual (with some exceptions);
- introduction of general rules for the use of cookies, which can be collected only with the prior consent of the individual.

The obligation to maintain a register of personal data processing and, in certain cases, to give a more significant role to the person responsible for compliance with data protection legislation in the company (a position similar to the Data Protection Officer in the EU).

Conclusions

The world practice in the legislative regulation of the private sphere and personal data protection is developing differently, but the necessity to pay attention to data protection and security is constantly growing. As a result of recognition of such necessity the General Data Protection Regulation was adopted in the EU. Over the past years, a number of countries have passed special laws that establish rules for the protection of private data of individuals, the possibility of their circulation and processing.

By adopting stricter regulation of personal data relations, EU Member States have ensured security not only among themselves but also when cooperating with individuals outside the European Union.

Ukraine, which is gradually integrating into the EU, already has the relevant basic provisions aimed at creating a quality system of legal protection of personal data. The Law on Personal Data Protection is the main one for Ukraine. Personal data according to Ukrainian legislation is any information about an individual that allows you to identify a person, and processing is any operation performed with such information.

However, the current model of personal data protection in Ukraine needs to be improved. First of all, it is about the powers of a specialized body that need to be reviewed. Institutionally, it is worthwhile to create a specialized information commissioner, which requires appropriate amendments to the Constitution of Ukraine.

The highlighted results of the study of some theoretical and practical problems of personal data protection related to the adoption of the GDPR help to identify key legal requirements directly related to Ukraine and identify basic aspects needed to adapt Ukrainian legislation to new EU legislation on personal data protection. In particular, it is necessary to take into account the principles of personal data processing defined by the Regulations. Among the principles provided for in the Regulations: the principle of lawful, fair and transparent processing of personal data; the principle of limiting the goal; the principle of data minimization; the principle of accurate and up-to-date processing; the principle of limiting the storage of personal data in a form that allows identification; the principle of confidentiality and security of data storage; the principle of accountability and responsibility.

Therefore, taking into account the experience of the EU, Ukraine must soon bring the legislation in the field of personal data protection in line with the GDPR. In turn, organizations, companies, bodies and institutions should be responsible for any breach in the field of data protection.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 607-630
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Los trasplantados en Venezuela. Un caso de vulneración de derechos humanos

DOI: https://doi.org/10.46398/cuestpol.4074.33

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Resumen

El propósito de este trabajo es examinar la situación en la que se encuentran las personas que requieren un trasplante de órganos, tejidos y células o han sido trasplantadas, en Venezuela, a los efectos de saber si sus derechos humanos están siendo vulnerados. Para cumplir con este objetivo se hizo una revisión exhaustiva de las declaraciones, tratados y pactos Internacionales más significativos en materia de Derechos Humanos y del derecho interno venezolano. Adicionalmente, se revisaron documentos emanados de las Naciones Unidas y de organizaciones no gubernamentales venezolanas que permitieron una aproximación a la realidad. Los resultados muestran que el Estado venezolano viola sistemáticamente el derecho a la vida y la salud de quienes necesitan un trasplante o han sido trasplantados.

Palabras clave: Trasplante de órganos; tejidos y células; derechos humanos; derecho a la salud; Venezuela.

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Recibido el 03/03/2022 Aceptado el 25/05/2022

The transplanted in Venezuela. A case of violation of human rights

Abstract

The purpose of this paper is to examine the situation of people who require a transplant of organs, tissues and cells or who have been transplanted, in Venezuela, in order to know if their human rights are being violated. To achieve this objective, a comprehensive review was carried out of the most significant international declarations, treaties and covenants in the field of human rights and Venezuelan domestic law. *Furthermore documents* emanating from the United Nations and Venezuelan non-governmental organizations *were checked* to provide objective evidence of reality. The results show that the Venezuelan State systematically violates the right to the health and to the life, of those who need a transplant or have been transplanted.

Keywords: Transplantation organ; tissue and cell transplantation; human rights, right to the health; Venezuela.

A manera de introito

Este trabajo se propone examinar la situación en la que se encuentran las personas que requieren un trasplante de órganos, tejidos y células o han sido trasplantadas, en Venezuela, a los efectos de saber si sus derechos humanos están siendo vulnerados.

En la medida en que la sociedad ha evolucionado las esperanzas de prolongar la vida han ido aumentado de forma progresiva; de igual manera, la visión de la salud, requisito básico para la vida, ha ido mutando hasta romper con el paradigma biologicista. Hoy día, toda conceptualización de la salud compromete a la sociedad de manera integral al conjugar conceptos como mínimos vitales, bienestar, calidad, justicia, equidad, libertad, responsabilidad, derechos y oportunidades.

Proteger la vida y la salud de las personas pasa por garantizarles acceso oportuno a servicios públicos sanitarios de calidad y oportunidades sociales e institucionales, a lo largo de su ciclo de vida y en los diferentes grados de complejidad, que se desprenden de las contingencias (enfermedad, discapacidad, invalidez, maternidad) que acontecen, desde el nacimiento hasta la muerte, y que hacen la diferencia entre conservarse saludable, recuperar la salud o morir.

La pérdida de la salud puede sobrevenir por diferentes causas, derivadas de situaciones límites que comprometen la vida de la persona o su calidad.

Una, entre tantas, ocurre cuando hay falla o insuficiencia irreversible en un órgano. En estos casos se requiere de políticas públicas, estrategias, estudios anatómicos, investigaciones, protocolos y tratamientos cuyas implicaciones y consecuencias trascienden lo sanitario y se adentran en el ámbito jurídico, filosófico, sociológico e incluso ético y religioso teniendo siempre como norte el respeto de la dignidad humana, de donantes y receptores.

La extracción, trasplante o implantación de órganos y tejidos trasciende aspectos técnicos o médicos e involucra la garantía de derechos inalienables como la vida, integridad física y psíquica, salud, libertad y dignidad humana; de allí la necesidad de involucrar a la sociedad en general, y muy especialmente, al Estado, para velar porque esos tratamientos terapéuticos se realicen en óptimas condiciones de respeto a la persona.

Cuando los trasplantes quirúrgicos de órganos, tejidos y células humanas, de donantes fallecidos o vivos a personas enfermas, son la única alternativa de tratamiento que tiene una persona para recuperar su salud, corresponde al Estado, a través de un sistema sanitario público, ser el garante de algunos aspectos básicos, como: a) procedimientos y tratamientos necesarios de alta calidad, seguros, eficaces y oportunos, para que no se ponga en riesgo de infecciones graves o muerte ni al donante ni al receptor, con personal suficiente, con una elevada formación técnica y humana; b) disponibilidad de los medicamentos que garanticen la continuidad de la vida; c) marco legal que regule los diferentes eventos del proceso; d) cuidados de por vida hasta el término natural de ésta a donantes y receptores, por razones derivadas o relacionadas con el trasplante, teniendo siempre como norte la dignidad humana.

Cuando una persona ve amenazada su vida porque no tiene acceso a un trasplante, o habiendo sido trasplantado, no recibe los medicamentos que garanticen que su organismo no rechazará el órgano, lo que en realidad se le niega, más allá del de la salud, es el derecho a la vida; lo que constituye una grave violación a sus derechos humanos. La salud es una condición habilitante para el ejercicio de derechos como la vida, la libertad, igualdad e integridad física, por lo resulta imprescindible contar con un sistema público que provea servicios sociales que contribuyan a su logro.

Desde mediados del siglo pasado el avance en materia de trasplantes quirúrgicos de órganos humanos de donantes fallecidos o vivos a personas enfermas o moribundas se han venido realizando con notable éxito, en el mundo, en la medida en que se superaron diferentes escollos. América Latina y, muy particularmente, Venezuela se incorporaron con éxito a la realización de estas prácticas terapéuticas desde los años sesenta.

En la actualidad, en medio de la crisis humanitaria que padece el país, la realización de esta terapéutica se ha visto restringida al mínimo y numerosas personas trasplantadas no tienen acceso a los medicamentos y tratamientos que ameritan, lo que ha causado una gran pérdida de vidas humanas.

Para cumplir con el objetivo *ut supra* propuesto, el análisis a realizar se ha estructurado en tres partes; en la primera, se expone la relación entre los trasplantes de órganos y los derechos humanos; luego se revisa la situación sanitaria venezolana, para de seguidas exponer los avances y retrocesos de los trasplantes en Venezuela.

Cabe destacar que la falta de disponibilidad de estadísticas gubernamentales impide aproximarse al tema, a través de fuentes oficiales. Para superar este obstáculo se han utilizado documentos emanados de organismos del sistema de las Naciones Unidas y organizaciones gubernamentales, nacionales e internacionales, ampliamente reconocidas.

1. Trasplantes de órganos y derechos humanos

La donación, extracción y trasplante de órganos es un complejo proceso terapéutico, al que se acude cuando no hay alternativas para salvar la vida de la persona afectada o mejorar sustancialmente su calidad de vida. *Grosso modo* consiste en implantar un órgano (riñón, hígado, pulmones, páncreas, córnea, corazón, hueso, tubo digestivo, intestino) o tejido (médula ósea, células endocrinas, córneas, huesos y piel) extraído del cuerpo de un donante a otra persona, para salvar su vida, recuperarse de una enfermedad grave o de una discapacidad con el objetivo de sustituir la función del órgano afectado.

La Organización Mundial de la Salud define los trasplantes como la transferencia (injerto) de células, tejidos u órganos humanos de un donante a un receptor con el objetivo de restaurar la función en el cuerpo. Puede darse en quienes están sometidos a tratamientos como la diálisis o padecen de enfermedades terminales; también, de una persona fallecida o una viva, caso en el cual se dona fluido, tejido renovable, células o un órgano, en su totalidad, caso de un riñón o una parte susceptible de regenerarse, el hígado, por ejemplo (Who, 2009; Portillo, 2019).

El desarrollo de los trasplantes quirúrgicos de órganos humanos, de donantes fallecidos o vivos a personas enfermas o moribundas, está unido al siglo XX. De ello dan cuenta tanto los fracasos iniciales, derivados de los rechazos de los sistemas inmunológicos; como sus esperanzadores éxitos, producto del hallazgo de medios adecuados para reducir el peligro de esos rechazos.

Las pioneras investigaciones de Alexis Carrel en anastamosis vascular, que le llevarían a ganar el Nobel de Medicina en 1912, le abrieron un lugar en la historia por sus trabajos de sutura vascular, trasplante de vasos sanguíneos y de órganos. Más tarde, introduciría, con Mathew-Jaboulay, técnicas en cirugía vascular imprescindibles para el avance del trasplante de órganos; en 1933 vendría el primer trasplante renal de cadáver, realizado

en Ucrania, por Voronoy, quien demostró que era posible sustituir órganos (Incortrd, s/f).

Los avances en materia de trasplantes alcanzaron su clímax luego de la Segunda Guerra Mundial. El 24 de diciembre de 1952, en el Hospital Necker de París, tuvo lugar el primer trasplante de riñón entre familiares consanguíneos; el 23 de diciembre de 1954, en el hospital Peter Bent- 12 - Brighan de Boston, los doctores Murray, Merrill y Harrison lograron el primer trasplante renal con éxito total al trasplantar a un paciente, un riñón procedente de su gemelo idéntico, sin que hubiera rechazo. En 1958, también en Boston, se realizó por primera vez un trasplante, utilizando medicamentos inmunosupresores, lo que evitó el rechazo; en 1959 se hizo el primer trasplante exitoso de riñón entre gemelos fraternos (Incortrd, s/f).

En la década de los sesenta continuaron los progresos. En 1960 se trasplantó con éxito un hígado entre hermanos, no gemelos; en 1962 se trasplantó por vez primera, y con satisfacción, un riñón de cadáver; en marzo de 1963, en Denver, Colorado, el Dr. Thomas Starlz hizo el primer trasplante hepático; luego, en 1967, también en Colorado, tuvo lugar el primer trasplante con supervivencia prolongada a una niña de un año y medio de edad. En 1963, en Jackson, Mississippi, D. Hardy hizo el primer trasplante clínico de pulmón; en diciembre de 1966, en la Universidad de Minnesota, se hizo el primer trasplante de páncreas de la historia. Más tarde, Lillehei y Kelly trasplantaron un riñón y un páncreas, a una paciente diabética en diálisis, consiguiendo función de ambos órganos. (Rachen, 2021**;** Portillo, 2019; Brena, 2002; PM, s/f).

Los trasplantes de otros órganos no se hicieron esperar. En 1967, en Ciudad del Cabo, Sudáfrica, Cristian Barnard hizo el primer trasplante cardíaco. En 1968, se llevó a cabo el primer trasplante de médula ósea y, en 1971, el de ovarios; más tarde, en 1977, el de testículos. En el presente siglo, el de útero hasta llegar a los trasplantes de rostro (Rachen, 2021**;** Portillo, 2019; Brena, 2002; PM, s/f).

América Latina se incorporó a esos adelantos terapéuticos en 1957, cuando se realizó el primer trasplante renal en Argentina. Seguirían México, en 1963; Brasil, en 1964; Perú y Colombia, en 1966. Para 1968 se hicieron trasplantes de corazón en Chile, Brasil, Argentina y Venezuela; de hígado, páncreas e intestino en Brasil. En la actualidad, en casi todos los países de la región se hacen trasplantes de riñón, hígado, páncreas, pulmón e incluso de corazón. El de intestino ha sido practicado en Brasil, Argentina y México (Duro, 2004).

La obtención de órganos y tejidos y su posterior inserción o injerto en una persona implica aspectos logísticos, jurídicos y políticos. En lo logístico el sistema sanitario ha de cumplir con protocolos médicos, que incluyan técnicas quirúrgicas y clasificación de tejidos, seguimiento y tratamiento post

trasplantes, a receptor y donante; hasta llegar a la garantía de la existencia y adquisición de los medicamentos inmunodepresivos, asignación y administración de recursos financieros (adecuados y suficientes) y humanos (con conocimientos, capacidades y sensibilidad).

En lo jurídico ha de contarse con una legislación que establezca principios, derechos y obligaciones de todas las partes involucradas. Entre otros aspectos se incluyen la regulación de la expresión del consentimiento y las formalidades que ha de tener el registro de donantes y receptores. En lo político, el sistema debe garantizar un acceso equitativo, justo y apropiado a la atención médica, oportuna y de calidad, que se necesita.

La donación, extracción y trasplante de un órgano para salvar una vida, o devolverle la salud a un ser humano está intrínsecamente vinculada al respeto de su dignidad. Tanto donante como receptor son personas y su cuidado trasciende una visión instrumental del cuerpo u órgano a trasplantar. Esa dignidad es la razón y marco rector que orienta los principios que orientan los derechos humanos, desde la Declaración Universal de los Derechos Humanos, los pactos internacionales de derechos, convenciones, cartas, protocolos, observaciones generales, resoluciones, recomendaciones, lineamientos, planes de acción y otras iniciativas emanadas del sistema de protección de los derechos humanos de la Organización de las Naciones Unidas (ONU).

La Declaración de los Derechos del Hombre, aprobada por la Asamblea General de Naciones Unidas el 10 de diciembre de 1948, deja claro en su artículo 1 que todos los seres humanos han de gozar de todas las libertades y derechos civiles, políticos, sociales, económicos y culturales sin discriminación alguna. El derecho humano por antonomasia es el derecho a la vida, que no se limita a la idea de exorcizar el peligro de muerte, sino que abarca la posibilidad concreta de que una persona pueda recuperar y mejorar sus condiciones de salud, en lo físico y lo psíquico. De allí el sentido que tiene un trasplante para una persona cuyas funciones vitales se encuentran amenazadas o perturbadas (ONU, 1848; Bermúdez, 2018).

El derecho a la vida no puede entenderse sin el de la salud y la integridad física. La definición de salud ha ido variando hasta concitar acuerdos mínimos, sobre una concepción, que apela al mayor bienestar posible del que pueda gozar la persona. Esto es así, porque las libertades y posibilidades con las que puede contar un ser humano, en general, como ha señalado Amartya Sen, dependen de los logros en salud: "No podemos hacer muchas cosas si estamos discapacitados o incesantemente abrumados por la enfermedad y son muy pocas cosas las que podemos hacer si no estamos vivos" (Sen, 2002:306).

Así como el concepto de salud ha venido mutando, el del derecho que la garantiza también lo ha hecho, para alcanzar un contenido mínimo esencial

y un mayor alcance en cuanto a las obligaciones de los Estados, como se establece en el Pacto Internacional de Derechos Económicos Sociales y Culturales (PIDESC) y la Observación General N° 14, formulada en el año 2000, por el Comité de Derechos Económicos, Sociales y Culturales de las Naciones Unidas. Esta última lo define "como un derecho al disfrute de toda una gama de facilidades, bienes, servicios y condiciones necesarios para alcanzar el más alto nivel posible de salud".

El artículo 12 del PIDESC tiene un significativo alcance. De un lado, establece el compromiso y obligación de los Estados partes para prevenir y tratar las enfermedades epidémicas, endémicas, profesionales y de otra índole, y la lucha contra ellas. Del otro, les insta a crear condiciones que aseguren asistencia y servicio médico a todos, en caso de enfermedad (ONU, 1966).

Con la firma y ratificación del tratado, los Estados partes se obligaron a desarrollar un sistema de protección a la salud, que brinde a las personas la igualdad de oportunidades para su disfrute. Así como el adoptar medidas complementarias que van desde el reconocimiento jurídico del derecho, pasando por la formulación de políticas públicas, hasta llegar a la aplicación de programas en la materia (ONU, 1966).

La Observación General Nº 14 alude a la efectiva realización del derecho a la salud, a través de una atención oportuna y apropiada. Para hacerlo propone dos mecanismos complementarios, en aras de garantizar la atención. En primer lugar, la creación de condiciones para reducir los casos de enfermedad y, en segundo término, instituye la asistencia médica cuando hubiere lugar (ONU, 2000).

En las América, la Declaración Americana de los Derechos y Deberes del Hombre, la Convención Americana de Derechos Humanos y el Protocolo Adicional a la Convención Americana de Derechos Humanos en materia de Derechos Económicos, Sociales y Culturales (Protocolo de San Salvador), entre otros, han hecho suyos los principios de derechos humanos universales, otorgando primacía al derecho a la vida, la integridad física, la salud. También ha fijado criterios de progresividad y de no regresividad que respeten la libertad, igualdad y dignidad de la persona humana.

El contenido del derecho a la salud fue establecido en el artículo 10 del Protocolo Adicional a la Convención Americana de Derechos Humanos de Derechos Económicos, Sociales y Culturales (Protocolo de San Salvador). Comprende la atención primaria de la salud universal, total inmunización contra las principales enfermedades infecciosas; la prevención y el tratamiento de las enfermedades endémicas, profesionales y de otra índole. Todo ello con el fin de lograr, la satisfacción de las necesidades de salud de los grupos de más alto riesgo, que por sus condiciones de pobreza sean más vulnerables

En materia de derechos sociales, y la salud es uno de ellos, los instrumentos jurídicos, doctrina y jurisprudencia internacional han dividido las obligaciones del Estado en positivas y negativas. Las positivas o prestacionales son entendidas como la instrumentación las acciones necesarias para que las personas accedan a los derechos, a través de legislación, políticas públicas y programas.

Las obligaciones negativas se dividen a su vez en respeto y protección. La obligación de respetar implica que el Estado ha de abstenerse de efectuar actos, que puedan menoscabar un derecho. La obligación de proteger pasa por evitar que terceros vulneren los derechos, imponiendo sanciones a quienes atenten contra estos o estableciendo mecanismos judiciales adecuados, para exigir su respeto.

La Corte Interamericana de Derechos Humanos es el ente competente para conocer sobre la interpretación y aplicación de las disposiciones de la Declaración Americana de los Derechos y Deberes del Hombre. Este tribunal ha reconocido que el derecho a la vida comprende no solo el derecho a no ser privado de ella arbitrariamente, "sino también el derecho a que no se le impida el acceso a condiciones que le garanticen una existencia digna" (CorteIDH, 2015).

Para cumplir con su obligación de garantizar el derecho a la vida, los Estados miembros de la comunidad de naciones tienen una doble obligación. Por una parte deben abstenerse de privar de la vida a una persona (deber de respeto); por la otra, deben tomar todas las medidas necesarias para proteger y preservar el derecho a la vida, de los ataques de terceros (deber de protección). En este sentido la Corte Interamericana de Derechos Humanos ha determinado la que la afectación a la salud tiene un impacto en su derecho a la vida, y, en diferentes sentencias ha ordenado a los Estado brindar asistencia médica gratuita e incluso psicológica (CorteIDH, 2015).

En 2005, en el *Caso* comunidad indígena Yakye Axa vs. Paraguay la Corte consideró que el Estado tiene el deber de adoptar medidas positivas orientadas a la satisfacción de una vida digna, en especial cuando se trata de personas en situación de vulnerabilidad y riesgo cuya atención se vuelve prioritaria. En esta sentencia la corte señaló que un Estado es responsable por la falta de accesibilidad física y geográfica de establecimientos de salud, para los miembros de la comunidad. Ha determinado, igualmente, la responsabilidad de las autoridades judiciales por las falencias y la demora en el proceso, al no garantizar a una víctima la reparación que le hubiera permitido acceder al tratamiento médico necesario para su problema de salud (Corte IDH, 2005 y 2013).

La sociedad, y particularmente, los Estados deben crear facilidades, bienes, servicios y condiciones que hagan posible prolongar la vida, mejorar su calidad y recuperar la salud de las personas, cuando esta se ha perdido.

También deben impedir que sus agentes, o particulares, atenten contra el derecho. Cuando se producen violaciones del derecho, deben instrumentar mecanismos dirigidos a obtener las reparaciones inmediatas y subsanar el daño u omisión. En materia de salud, sostiene Sen (2002), pocas cosas revisten de tanta importancia como la provisión de servicios médicos y asistencia sanitaria.

El trasplante de órganos es una vía terapéutica que tienen pacientes con insuficiencias orgánicas, para recuperar la salud y alcanzar el bienestar (Bermúdez, 2018). Debido a su complejidad se requiere de políticas públicas, programas e instrumentos jurídicos dirigidos a garantizar que, esa opción terapéutica obedece a las exigencias del caso y se realiza en óptimas condiciones de respeto a la persona, donante y receptor. También, debe proveer de establecimientos de salud adecuados, con personal, técnico y profesional, altamente capacitado; así como de los equipos, instrumental e insumos médicos necesarios.

Conforme señala Sánchez Caro (1994), en el caso de los trasplantes, el derecho a la vida adquiere tres ámbitos. El primero abarca al donante, ya que la extracción ha de ser compatible con su vida y no disminuir gravemente su capacidad funcional; el segundo, incluye la donación post-mortem, que no debe ser, *per se*, el factor que decida cuándo una persona ha fallecido. El tercero tiene que ver con el receptor, su derecho a la vida o integridad física es lo que garantiza la realización del trasplante y que no haya rechazo en el tiempo.

La Organización Mundial de la Salud, al dictar los Principios rectores sobre trasplante de células, tejidos y órganos humanos, puso de relieve "la importancia de adoptar las medidas jurídicas y logísticas necesarias para crear programas de donantes fallecidos, donde no existan". De igual manera, señaló "que los programas existentes sean lo más eficaces y eficientes posible", en función de que se trata de una práctica que alarga y mejora la calidad de "cientos de miles de vidas" (WHO, 2010, Principio rector 3).

En 2005, los Estados que integran a Red/Consejo Iberoamericano de Donación y Trasplantes, firmaron la Declaración de Mar del Plata. Allí se comprometieron a: a) proporcionar a sus ciudadanos servicios de trasplante de calidad, con criterios de universalidad, accesibilidad y equidad; b) crear en su derecho interno, tanto normas regulatorias consensuadas y aceptadas por organismos Internacionales que regulen la donación y trasplante de órganos y tejidos, como un organismo oficial nacional que coordine la actividad de obtención, donación y trasplante de órganos o tejidos; y c) establecer un registro nacional con la lista de personas en espera, registro de donantes y registro de trasplantes (RCIDT, 2005).

Los derechos de las personas pueden ser vulnerados o amenazados por la acción u omisión del Estado, cuando no crea condiciones ni medidas

positivas para mejorar el sistema de salud pública, toma medidas regresivas o excluye de manera deliberada de ciertos grupos del acceso a los servicios de salud.

Los estudios sugieren que las personas de pocos recursos y sin protección social, en salud, que requieren un trasplante o ya han sido trasplantadas, suelen enfrentar una merma de sus ingresos, debido a los costes de las terapias y medicamentos; todo lo cual incide en que dejen los tratamientos, abandonen los protocolos, no asistan a controles *médic*os e incluso no puedan asumir los costos de su alimentación (Mercado-Martínez et al, 2014).

El tener derecho a un tratamiento médico confiere a una persona la titularidad de una expectativa y crea en la sociedad, la obligación correlativa de activar los mecanismos para proporcionarle ese tratamiento. Cada vez que una persona requiere un trasplante y se le niega esa posibilidad; o cuando habiendo sido trasplantado, no tiene a su disposición los medicamentos, para evitar el rechazo del órgano, hay una negación del derecho a la salud.

También hay violación del derecho a la vida y a la no discriminación, porque estas personas mueren al no poder asumir los costos derivados de esa enfermedad o condición. Todo lo cual constituye una vulneración de sus derechos humanos, que deben ser garantizados de manera efectiva por los Estados.

El Estado venezolano forma parte de la comunidad de naciones firmantes de los principales pactos e instrumentos internacionales, en materia de derechos humanos, de allí que valga la pena revisar la forma en que cumple con esas obligaciones, en materia de trasplantes.

2. Situación sanitaria venezolana

A partir de 1935, con el auge de la explotación petrolera y la decadencia de la agricultura exportadora, se empezó a desarrollar en Venezuela una red de servicios públicos y obras de infraestructura. Los diversos gobiernos enfatizaron en una política de distribución popular de la renta, con el objetivo de mejorar el capital humano del país y crear un mercado nacional con un alto poder de compra (Baptista y Mommer, 1987).

En esa construcción de progreso social se le atribuyó a la salud un rol esencial. A partir de 1943 y hasta finales de la década de los 60 se adoptó una concepción integral de la sanidad, se privilegió lo preventivo y el saneamiento ambiental. Se construyeron grandes hospitales generales, se desarrollaron programas de puericultura, atención prenatal, lucha antivenérea, antituberculosa, antileprosa y otras (Lacruz, 2006; Méndez C., 1992; Cartaya y D'Elia, 1991; España, 1989; Kornblith y Maingon, 1985; Castellanos, 1982).

Durante esos primeros años se logró una mejoría de los indicadores de salud, en especial, los de mortalidad infantil, neonatal y materna; se alcanzó una cobertura promedio de vacunaciones mayor del 90%; se erradicaron enfermedades como la malaria, la difteria, la poliomielitis y, en general, hubo un aumento en la expectativa de vida (Velásquez et al, 2019).

Para los ochenta, con más del 80% de su población en el área urbana y con signos explícitos de agotamiento del modelo de desarrollo, al atenuarse el excedente rentístico, la acción social del Estado empezó a declinar hasta derivar en una grave crisis social y política. En ese contexto, bajo promesas de una transformacional social que abarcara a todos los venezolanos, en 1999, se firmó un nuevo pacto social y se promulgó otra Constitución.

Venezuela es, en términos de la Constitución de la República de Venezuela, un Estado democrático y social de Derecho y de Justicia, cuyo ordenamiento jurídico está regido por valores como la igualdad, la justicia, la solidaridad, la responsabilidad social y la preminencia de los derechos humanos.

Los tratados, pactos y convenciones en materia de derechos humanos, que hayan sido suscritos y ratificados por la República, tienen jerarquía constitucional, prevalecen en el orden interno y son de aplicación inmediata y directa por los poderes públicos (arts. 2 y 23). Una vez que un tratado internacional sobre derechos humanos es ratificado pasa a formar parte del acervo legislativo del país, lo que amplía el espectro de garantía de los derechos civiles, políticos, económicos, sociales y culturales.

Entre los derechos sociales, la salud tiene carácter fundamental y es obligación del Estado garantizarla, de forma universal, como parte del derecho a la vida. Para darle sentido a esa garantía debe promover y desarrollar políticas públicas, orientadas a elevar la calidad de vida, el bienestar colectivo y el acceso a los servicios, a través de un sistema público nacional de salud.

El contenido del derecho a la salud, en Venezuela, abarca la promoción de la salud, la prevención de enfermedades, su tratamiento oportuno y rehabilitación, cuando fuere el caso. Se desprende del artículo 83 de la Constitución vigente que se trata de un derecho universal, dirigido a todas las personas, tengan bienes de fortuna o no. Es responsabilidad del Estado satisfacer ese objetivo y proveer los medios para lograrlo.

Una vez promulgada la Constitución del 1999 las autoridades instrumentaron un Modelo de Atención Integral de Salud, para fortalecer la red ambulatoria, encargada de la atención primaria en salud, la cual se fue debilitando progresivamente hasta limitarse a lo médico-curativo.

Hoy día, el país, con una población que oscila entre 28,7 y 33 360 238millones de habitantes (INE, 2022; Encovi, 2021) padece una crisis que

conjuga múltiples dimensiones (política, económica, social y humanitaria) y factores: inestabilidad política, conflictos sociales, indicadores económicos y fiscales negativos, desplazamiento interno y externo de la población, escasez de alimentos, desmantelamiento de su infraestructura, deficiencias de servicios públicos, altas tasas de criminalidad, pobreza y servicios sanitarios deficientes, entre otros.

Entre 2018 y 2019 diversos órganos de las Naciones Unidas dieron cuenta de la situación que se vive en Venezuela. El primero de ellos fue un informe de la Oficina del Alto Comisionado de Derechos Humanos en el que se señalaban las violaciones de los derechos humanos del Estado venezolano y se dejó al descubierto el grave impacto de la crisis económica y social instalada en el país, en materia de derecho a la alimentación y a la salud (ONU, 2018).

Tres meses después el Consejo de Derechos Humanos de Naciones, previa solicitud de los países miembros del Grupo de Lima y con el voto favorable del 49% de los integrantes del Consejo de Derechos Humanos, adoptó una resolución en la que se exhortó al gobierno venezolano a aceptar la asistencia humanitaria, para hacerle frente a la escasez de alimentos, medicamentos y suministros médicos, entre otras carencias señaladas (ONU, 2019; ONU, 2018).

Producto de la solicitud hecha en la Resolución arriba citada, la Alta Comisionada de los Derechos Humanos abrió una investigación y presentó un informe. Allí señaló que los ingresos de la población son "dramáticamente bajos e insuficientes para garantizar un nivel de vida adecuado" (ACNUDH, 2018).

Para diciembre de 2021, una familia venezolana de cinco miembros requería mensualmente de 289,24 salarios mínimos para cubrir sus necesidades básicas en alimentos, bienes y servicios esenciales. El Salario Mínimo Mensual era de 1 dólar con 71 centavos mensuales, lo que equivalía a 0,057 centavos de dólar diarios, aproximadamente. El precio de la canasta alimentaria, que corresponde a 60 productos de consumo básico, equivalía a 232 dólares con 80 centavos, con lo que su adquisición presentaba un déficit del 99,27%. Los exiguos ingresos además de impedir la adquisición de bienes y servicios de primer orden impactan negativamente en la obtención de medicamentos e insumos sanitarios (Cendas, 2021).

Pese a los resultados exitosos que se dieron en el campo de la salud durante buena parte del siglo XX, en la actualidad, organizaciones no gubernamentales, expertos y agencias internacionales han venido reportando las limitaciones existentes en el país para el ejercicio efectivo del derecho a la salud. Se ha denunciado "una falta generalizada" de disponibilidad de acceso a fármacos y tratamientos esenciales, deterioro de infraestructura y equipos en hospitales, clínicas y maternidades; falta de

factores subyacentes determinantes de la salud y "fallas en el suministro de servicios públicos como agua y luz" (ACNUDH, 2019:5).

La desmejora del sistema público de salud, las bajas remuneraciones y más allá, la crisis multidimensional y multifactorial que sufre el país, han incidido en una migración forzada, interna y externa, de personal sanitario calificado, en búsqueda de mejores condiciones de vida. Para el segundo semestre de 2021, según declaración del presidente de la Federación Médica venezolana, al menos 30 000 profesionales de salud habían emigrado, 53%, eran médicos de hospitales, y 50% trabajaban en clínicas y centros de salud privados. Hasta diciembre de 2020 este éxodo superaba el 60% en el caso del personal de bioanálisis y enfermería (El impulso, 2019, ScL, 2020; Swissinfo, 2021).

Al déficit de personal sanitario se le agregan las pérdidas de vidas de personal sanitario ocurridas, entre 2020 y 2021, en el marco de la pandemia de covid-19. Según las fuentes consultadas, esas muertes alcanzan los 549 sanitarios (143 médicos y 29 enfermeros en los primeros seis meses), cifra que resulta muy alta cuando se compara con los datos oficiales de muertos por covid-19 en el país: 2 428 (El impulso, 2019, ScL, 2020; Swissinfo, 2021).

Las limitaciones y carencias arriba referidas han incidido en un retroceso de las condiciones sanitarias. Esto se expresa en la reaparición de enfermedades como la difteria y el sarampión, que han derivado en epidemias, debido al descenso de las coberturas de vacunación; el incremento de enfermedades erradicadas como la malaria y la tuberculosis, asociada a la pobreza, y; el aumento de la morbilidad y mortalidad de los pacientes con enfermedades crónicas como hipertensión arterial y diabetes, por la falta de medicamentos cardiovasculares e insulina, entre otros (Codevida, 2018).

Una coalición de organizaciones no gubernamentales informó, en 2018, sobre las dificultades que tenían los pacientes diagnosticados con cáncer para conseguir sus tratamientos de quimioterapia, medicamentos biológicos y terapias. El cierre de la mayoría de los centros oncológicos públicos y la eliminación, desde 2016, de las listas de compras, por parte del gobierno venezolano, de los medicamentos para pacientes que padecen cáncer, VIH, trasplantes, hemofilia, lupus, problemas reumáticos, Parkinson, inflamación intestinal, esclerosis múltiple e hipertensión pulmonar, entre otras afecciones graves, explica que los médicos no puedan ofrecer esperanza de sobrevivencia a estos pacientes (Codevida, 2018).

3. Florecimiento y ocaso de los trasplantes en Venezuela

Venezuela no se quedó atrás ante los avances médicos y tecnocientíficos ligados a los trasplantes de órganos; hacia finales de los sesenta se inició en el país esta terapéutica. De acuerdo con los registros llevados por Fundahígado (2018) en 1967, se realizó en el Hospital Universitario de Maracaibo, al occidente del país, el primer trasplante de riñón con donante cadavérico, por parte del Dr. Bernardo Rodríguez Iturbe; en 1968, en el Hospital Universitario de Caracas se trasplantó el primer riñón con donante vivo. En 1987, en Valencia, se realizó un trasplante de médula ósea y, en 1989, también en Maracaibo, se inició el programa de trasplantes cardíacos.

Siguiendo con la fuente que se viene citando, en 1992 se iniciaron los trasplantes de hígado en Caracas, en el Hospital Vargas; en febrero de 1990, el Hospital Militar Dr. Carlos Arvelo de Caracas comenzó el programa de trasplantes de riñón. Para el año siguiente, el Hospital Universitario Dr. J. M. Casal Ramos, ubicado en el estado Portuguesa, incorporó su servicio de Nefrología, a la actividad de trasplantes. En 2005, se realizó el primer trasplante pediátrico de hígado con donante vivo, en un centro privado, la Clínica Metropolitana de Caracas.

Los esfuerzos institucionales en materia de donación y trasplantes de órganos incluyeron lo legislativo. En 1972 se promulgó una ley para regular el proceso de trasplantes, derogada veinte años después, el 3 de diciembre de 1992, por la Ley sobre Trasplantes de Órganos y materiales anatómicos en seres humanos; la cual, buscaba adaptarse a las tendencias jurídicas y éticas del momento.

Desde 2012 se encuentra en vigencia la Ley sobre Donación y trasplantes de órganos, tejidos y células en seres humanos. En este cuerpo legislativo. Además de establecerse la donación presunta, se define al trasplante como: "La sustitución, con fines terapéuticos, de órganos, tejidos, derivados o materiales anatómicos por otros, provenientes de un ser humano donante, vivo o muerto" (Art. 3, numeral 18).

En 2001, el Estado venezolano delegó la procura y obtención de órganos en la Organización Nacional de Trasplantes de Venezuela (ONTV). Una fundación privada que venía impulsando la procura de órganos y tejidos para trasplantes; reservándose para sí, la supervisión y financiamiento del sistema de procura de órganos y tejidos (Cardoza y Mora, 2013).

En 2003 funcionaban en el país ocho centros de Trasplante públicos. Cuatro en Caracas, en los hospitales: Universitario de Caracas, Miguel Pérez Carreño, J.M. de los Ríos (de niños), Carlos J. Arvelo (militar). El resto estaba en ciudades del interior del país: Valencia; Acarigua-Araure, Mérida y Maracaibo. La actividad de trasplantes en centros privados se limitaba a cinco, cuatro en Caracas (Policlínica Metropolitana, Clínica Santa Sofía,

Instituto Médico la Floresta y Clínica Ávila) y uno en el estado Carabobo, en el Instituto Docente de Urología (Calvanese et al, 2007).

Desde el año 2000 y hasta julio de 2014 se realizaron 4 170 trasplantes, de donantes fallecidos, en Venezuela. De ellos, 2 257 fueron renales. Entre 2004 y 2007, de los 350 pacientes que se encontraban en lista de espera para un riñón, solamente 195 lograron ser trasplantados; 90, con donaciones de cadáver y 105 de donantes vivos. En el año 2011 hubo un promedio de 10,4 personas trasplantadas; en 2012, fueron 134, de donantes fallecidos, a través de 41 hospitales, en todo el país y 107 entre personas vivas. Para 2013 habían 3120 personas esperando algún órgano o tejido, discriminadas de la siguiente manera: 1500 pacientes en lista de espera por riñón, 1500 por cornea, 50 por hígado, 70 por medula ósea (Calvanese et al, 2007; Cardoza y Mora, 2013**)**.

En 2014, el Ministerio del Poder Popular para la Salud creó la Fundación Venezolana de Donaciones y Trasplantes de Órganos, Tejidos y Células para que asumiera las atribuciones que tenía la ONTV. Desde ese momento y hasta 2017 solo realizaron 130 trasplantes renales con este tipo de donantes. Este último año el gobierno suspendió el programa de donante cadáver en todo el país y limitó los trasplantes, solo a los de vivos (AS, 2020).

Entre 2007 y 2016, gracias a un convenio entre una fundación de la empresa petrolera estatal y algunos hospitales extranjeros, ubicados en Italia y España, algunos pacientes venezolanos viajaron a Europa a recibir un trasplante de médula. Con la caída de la producción petrolera y la disminución de los ingresos de la renta petrolera, este programa fue declinando progresivamente hasta su suspensión en 2015. Momento en el cual dejó una deuda de más de 11 millones de euros. En 2019, el Gobierno venezolano atribuyó esta paralización a las sanciones internacionales y la toma de activos de la petrolera en el extranjero por parte del entonces presidente de la Asamblea Nacional, Juan Guaidó (TV, 2020).

Entre 2017 y 2019 murieron cerca de 5.000 pacientes renales al no poder continuar con sus tratamientos, debido a la falta de inmunosupresores como Rapamune y Prednisona. En 2018 ocurrieron 121 rechazos de órganos y la Sociedad Venezolana de Nefrología alertó que, durante el primer trimestre de 2019, hubo 10 rechazos (Crónica uno, 2019; Rotondaro, 2019).

Un porcentaje elevado de los decesos, arriba mencionados, correspondió a pacientes pediátricos. Entre mediados de 2017 y hasta los primeros seis meses de 2021, de sesenta y tres niños que esperaban un trasplante en el Hospital J.M. de los Ríos, en Caracas, fallecieron treinta y cinco. De los veinticinco que dependían de esos trasplantes, quince lo necesitaban con urgencia (Codevida, 2018; TV, 2020).

Durante los primeros seis meses de 2019, en el servicio de Hematología de ese mismo hospital murieron 6 niños que esperaban por trasplante de

médula; para septiembre de ese año, en Nefrología, fallecieron otros 9 pacientes. Entre el 21 de abril y el 1º de mayo de 2021, fallecieron cinco pacientes infantiles con fallas renales que esperaban ser trasplantados (TV, 2020).

La Unidad de Hemodiálisis, que se encuentra ubicada en la Sala de Nefrología, del J.M. de los Ríos la única unidad del país que presta servicio para niños que pesan menos de 10 kilos, solo cuenta con quince máquinas; debido a fallas mecánicas y falta de mantenimiento solo funcionan 10 de ellas, lo que afecta el número de horas y días que los niños deben recibir en la hemodiálisis (TV, 2020).

En febrero de 2018, luego del fallecimiento de 12 niños, la Comisión Interamericana de Derechos Humanos dictó medidas cautelares para el servicio de Nefrología del J.M. de los Ríos; el 21 de agosto de 2019, esas recomendaciones fueron extendidas a 13 servicios más. Para el 30 de abril de 2020, treinta y ocho niños, sin donantes no compatibles, esperaban por la oportunidad de salir del país a realizarse el trasplante de médula ósea, mediante el programa de apoyo de organizaciones internacionales (TV, 2020; CIDH, 2018 y 2019).

El 31 de junio de 2021 un grupo de doce 12 niños y adolescentes, pacientes de diferentes patologías, acompañados por diversas organizaciones de la sociedad civil, relataron su situación ante la Comisión Interamericana de Derechos Humanos, en el marco del 180 Período de Sesiones Virtuales. Insistieron en la necesidad de reactivar el Programa de Procura de Órganos y Trasplantes en Venezuela. Algo más de un mes después, el 4 de agosto, Niurka Camacho, una adolescente de 15 años, paciente renal en diálisis en el J. M. de los Ríos, quien había tomado la palabra, ese día, ante la Comisión, falleció por insuficiencia renal crónica, sin haber tenido la oportunidad de hacerse una replantación (Tal Cual, 2021; El Diario 2021; Redhnna, 2021).

Ante este hecho, un día después de su muerte, la Comisión urgió al Estado venezolano a reactivar los programas de donación y trasplante de órganos, para garantizar la vida de la población infantil afectada, haciendo uso de la cooperación internacional y todos los recursos necesarios para ello (Tal Cual, 2021; El Diario 2021).

Para 2020, se estimaba que, al menos 960 personas esperaban ser trasplantadas; de ellos, 150 eran niños y adolescentes. También había niños con cáncer en espera para un trasplante de médula ósea. De acuerdo con organizaciones no gubernamentales alrededor de 3 000 personas trasplantadas no reciben medicamentos inmunosupresores y no tienen acceso a reactivos para el apropiado control de su salud, bien por desabastecimiento o fallas en su distribución, lo que tiene consecuencias negativas en la sobrevida del injerto, la calidad de vida de las personas trasplantadas (TV, 2020; ONTV et al, 2018).

En la actualidad solo se hacen trasplantes en tres establecimientos sanitarios. Dos privados, la Clínica Santa Sofía y la Policlínica Metropolitana; y, uno, público, el Hospital Militar Carlos Arvelo, todos ubicados en Caracas. En los dos primeros, el trasplante puede costar casi 90 000 dólares; en el último por ser una institución pública de salud el procedimiento no tiene costo alguno; sin embargo, el paciente debe pagar todos los exámenes médicos, comprar los medicamentos e insumos e incluso los inmunosupresores para evitar un rechazo temprano del órgano (PF, 2021; AS, 2020).

A manera de cierre

El marco internacional que regula los derechos humanos coincide en señalar que el goce del grado máximo de salud que se pueda lograr es uno de los derechos fundamentales de todo ser humano sin distinción alguna, en cuanto a raza, religión, ideología política o condición económica o social.

El derecho a la salud requiere de oportunidades de acceso universal y oportuno a establecimientos sanitarios de calidad. Obligación que recae de manera central en los Estados, los cuales son responsables de garantizar el derecho, a través de políticas, programas y servicios adecuados.

El Estado venezolano cuenta con un ordenamiento interno de avanzada en materia de derechos humanos y es signatario de los principales instrumentos y pactos internacionales en la materia. Conforme a su orden constitucional, el derecho a la salud es el derecho social por antonomasia, por lo que debe garantizarlo mediante la adopción de medidas positivas, suficientes y oportunas.

Una manera de atender los mandatos expresos en la Constitución de 1999, en materia sanitaria, es mediante la creación de condiciones que aseguren el acceso a la asistencia sanitaria ante un evento que comprometa la vida, la salud y el bienestar de la persona. La falla de un órgano y su remplazo por otro sano constituye uno de esos sucesos.

El daño irreversible de algún órgano o tejido es un problema de salud pública en Venezuela; no obstante, el Estado no ha adoptado medidas suficientes ni oportunas, para hacerles frente y mejorar la calidad de vida de los pacientes, que requieren un trasplante o han sido trasplantados.

En las últimas décadas, el país ha venido asistiendo al desmoronamiento del sistema de salud, que se construyó, de manera progresiva, a partir del segundo tercio del siglo XX.

Las precarias condiciones de infraestructura y servicios básicos como agua y electricidad, en los centros hospitalarios; el desabastecimiento de

medicamentos, la carencia de recursos materiales y humanos, han incidido negativamente en los programas de donación y trasplantes de órganos, como se evidencia de la suspensión del programa de donaciones de cadáver.

En materia de trasplantes el Estado venezolano no garantiza: a) procedimientos y tratamientos necesarios de alta calidad, seguros, eficaces y oportunos, para que no se ponga en riesgo de infecciones graves o muerte ni al donante ni al receptor; b) acceso a medicamentos que garanticen la continuidad de la vida, como los inmunosupresores necesarios para evitar el rechazo a los órganos; c) abastecimiento de los insumos necesarios; d) programas y servicios sanitarios suficientes, con personal calificado; y, d) cuidados de por vida, hasta el término natural de ésta, a donantes y receptores, por razones derivadas o relacionadas con el trasplante.

Esa ausencia de respuestas efectivas se expresa en la exclusión de un gran número de la población del acceso a los servicios de salud, básicos y especializados. Esto constituye una regresión a sus derechos ciudadanos, una flagrante violación de derechos humanos como la vida, la salud y la integridad; y en su conjunto, significativas pérdidas de vidas humanas.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 631-647
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Conceptual understanding of the relationship between political and administrative processes in the context of social systems security

DOI: https://doi.org/10.46398/cuestpol.4074.34

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Abstract

The purpose of the article is to conceptually understand the relationship between political and managerial processes in the context of social systems security. The bibliographical method, content analysis, structural-functional method, comparative-historical method, comparative-political method, cognitive map, comparative method and abstract-logical method have been used in the research. The scientific novelty is the realization of a systematic analysis of the factors, which revealed the essence of the relationship between political and managerial processes in the context of the security of social systems. It is corroborated that political and managerial processes in social systems and their interrelation should be considered, in content and form, as phenomena of the vital activity of these systems. It is concluded that, the analysis of peculiarities and intensity of this interrelation and functional tasks of political and administrative subjects should be carried out in the context of the modes (stages) of the existence of systems and their security; all this, due to the management of the probability of a crisis situation and the management of the level of protection of man, society and state institutions.

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Recibido el 24/06/22 Aceptado el 14/09/22

Keywords: political processes; administrative processes; public management; security of social systems; conceptual understanding.

Comprensión conceptual de la relación entre los procesos políticos y administrativos en el contexto de la seguridad de los sistemas sociales

Resumen

El propósito del artículo es comprender conceptualmente la relación entre los procesos políticos y de gestión en el contexto de la seguridad de los sistemas sociales. En la investigación se ha utilizado el método bibliográfico, el análisis de contenido, el método estructural-funcional, el método comparativo-histórico, el método comparativo-político, el mapa cognitivo, el método comparativo y el método abstracto-lógico. La novedad científica es la realización de un análisis sistemático de los factores, que reveló la esencia de la relación entre los procesos políticos y de gestión en el contexto de la seguridad de los sistemas sociales. Se corrobora que los procesos políticos y de gestión en los sistemas sociales y su interrelación deben ser considerados, en contenido y forma, como fenómenos de la actividad vital de estos sistemas. Se concluye que, el análisis de las peculiaridades e intensidad de esta interrelación y las tareas funcionales de los sujetos políticos y administrativos debe llevarse a cabo en el contexto de los modos (etapas) de la existencia de los sistemas y su seguridad; todo ello, debido a la gestión de la probabilidad de una situación de crisis y la gestión del nivel de protección del hombre, la sociedad y las instituciones estatales.

Palabras clave: procesos políticos; procesos administrativos; gestión pública; seguridad de los sistemas sociales; comprensión conceptual.

Introduction

Political processes and public administration are important components of human existence (individual), society and state institutions. They reflect social interactions as an objective basis, which are the interests of individuals and social groups. These interests are formed under the influence of internal and external factors, and the result of interactionis either unanimity or disagreement in understanding the situation, a certain degree of either solidarity or conflict, and so on.

Therefore, the effectiveness and efficiency of the relationship between political processes and public administration depend on the national characteristics of state-building and the external environment. At the same time, the mission of political processes and public administration is to ensure national security (Sytnyk and Orel, 2020; Orel, 2019). Therefore, the systematic study of the factors on which the effectiveness, efficiency and interrelation of political processes and public management depends is constantly in the center of attention of domestic scholars.

In this case, we are talking primarily about those that have an impact on: institutionalization of public administration (Bilynska and Petroie, 2019); modernization of political and administrative institutions (Bozhko, 2019); conceptual foundations of management and theory of public administration (Nelipa *et al.*, 2020; Vlasenko *et al.*, 2019; Bobrovska *et al.*, 2020); transformation of public administration in post-industrial society (Osipov, 2020); innovative development in the context of modernization of Ukrainian society and introduction of innovative approaches in the activities of local government (Petrushyna, 2020; Zhorniak and Podplota, 2021). Significant attention to the study of the relationship of political processes with public administration in the context of the current stage of civilization, and foreign researchers, including. Kondratenko (2020), Schwab and Mallere (2020), Willmott (2019), Salvador and Pano (2018), Osorio (2018), Phillips (2019), Othman and Yusoff (2020), Cnossen (2019).

The results of these studies show thatthe fundamental pecularity ofpolitical processes is thattheyareinterrelated with public administrationprocesses,i.e. public management and administration, there are significant changes in forming and exercising political and state power in the modern era, and thus effectiveness , efficiency and quality of interrelation of political processes with public administration has a decisive influence on the course of socio-political and socio-economic processes in the state.

These and other researchers have developed a thorough scientific study of the factors that determine the relationship of political processes with public management.

At the same time, the systematic study of these factors in the context of ensuring the safety of social systems continues to be an urgent problem. For example, even in a very fundamental monograph by Hierro (2020), examining the theoretical and methodological foundations and practices of modern public policy and Drobotov (2020) monograph on the constitutional and legal foundations of the formation and formation of Ukraine's national security system, and also in a comprehensive study of issues in the field of state policy to ensure national security, performed by

Kryshtanovych (2019), this problem has remained out of the attention of scientists. The same can be said about the scientific research on the analysis of possible changes in the constitutional status of public authorities and legal mechanisms of public administration in Ukraine Stepanenko (2021) and the development of a very promising method of information and time support of global, local socio-political and other processes in modern security environment (Bohdanovych, 2020).

As a result, the relationship between political processes and public administration in the context of security of life of social systems is hardly considered in educational publications intended for higher education and postgraduate students in the field of knowledge (Administration, 2020; Liu *et al*., 2019; Portugal, 2022).

This is the purpose of the study, which is to conceptually understand the relationship between political and managerial processes in the context of security of social systems. In accordance with the goal, the following tasks were formulated: to analyze social phenomena, which denote the concepts of «political process» and «management process», their possible forms, dynamics and conceptual outlines of their mutual influence; to find out the nature, features and intensity of the relationship of political and managerial processes in social systems under different modes of their life (functioning, development and decline) and on this basis.

The imperatives in the activities of the subjects of these processes; identify methodological differences in the goal-setting of the subjects of political processes and governance in the context of non-linear development of social systems, as well as the main objectives of these actors in these conditions to ensure the security of these systems; to reveal the impact of changes in the political system on the evolution of the relationship between political processes and public administration; to separate in the structure of the system of public administration and administration the political and administrative blocks and the content of the functional tasks assigned to them.

1. Materials and methods

The complexity and specificity of the study of factors determining the relationship of political processes with public administration in the context of ensuring the safety of social systems have led to using interdisciplinary and systems approaches, as well as a number of general and special methods used insociology, political science,theories of public management and administration, as well as in the field of knowledge: «military sciences, national security, state border security».

Each of them in the process of analytical analysis of scientific works allowed tohighlight the problem in a certain perspective.At the same time, the dialectical method of cognition was taken as a basis, namely the research was conducted inductively (by collecting and analyzing qualitative data) and deductively (through generalization of theoretical issues based on a systematic approach). This led to the appropriate stages of work and the choice of methods and techniques for obtaining new scientific results.

At the first stage of the research the bibliographicmethod and content analysis were used. They have identified a number of primary sources that analyze the factors determining certain aspects of the relationship of political processes with public management and administration in the context of social systems. At the same stage, cognitive mapping was used to study concepts and categories in the field of political and public management and administration and establish cause and effect between them.

The second stage used structural-functional and systemic methods for revealing the nature, role, structure, dynamics and direction of interaction of political processes and public management and administration in the context of the interests of the individual (human), social groups and state institutions. social system)and the subject of study(politicalandmanagerial processes in the social system) in their unity and integrity.

The same methods were used for clarifying the nature and characteristics of the interdependence between the political and administrative components of public administration and administration as a holistic, integrated social phenomenon resulting from legal, organizational, informational, political, socio-economic and other processes that determine modes (stages)of life of social systems (functioning, development, decline).

At the same time, the systematic approach allowed us to imagine the interaction of political processes, public administration, the process of ensuring the safety of social systems as a system with its own logic and dynamics of development, a system where each element interacts functionally ensures its existence. For example, at all levels of government, state institutions can simultaneously act as: the initiator of the problem; its implementer (through legislative activity); executor (organizational and administrative activities), and the functional relationship of these institutions indicates the general interdependence of their actions in the context of national security. Structural-functional and systemic methods were also used to identify the peculiarities of making and implementing political and managerial decisions in these regimes.

At the same stage of the study, the use of comparative-historical and comparative-political methods revealed common features of the influence of political processes on the formation of public administration and

administration in the modern era, as well as identify factors that determine major trends in the interaction of political actors. systems in the context of ensuring the safety of social systems.

The comparative method allowed to single out the factors that hinder the formation of a democratic system of public administration in Ukraine in modern conditions. At the third stage the abstract-logical method was used to generalize the processed materials in order to formulate conclusions and recommendations based on the results of the study. At the same time, analyzing the relevant scientific literature and political processes taking place in our country and the world, as well as initiated socio-political reforms in Ukraine, the authors realize that quantifying the impact of these processes and reforms on the safety of social systems requires some sociological research.

2. Results and discussion

The system of public administration implies a set ofpublic administration and local governmentexerting an organizational influence on public relations throughimplementing management functions within a certain competence on the basis of legislation, as well as the relationship between these bodies (Kuibida *et al*., 2018). One of the factors of influence are the consequences of political processes, the genesis of which is determined by the evolution of the political system. Therefore, the disclosure of the essence of the relationship of these processes with public administration and administration involves the analysis of the conceptual framework of their interaction.

As you know, theessence of any interaction is the reverse effect of one object on another, their mutual conditionality, i.e. the generation of one object of the future state of another. In political science and knowledge, «public administration» is often used. It is usually used for determining the form of communication between people (individuals) and social communities, when, for example, their intentions are realized and consensus is reached in terms of their joint actions and understanding of the situation.

Therefore, in the political area and in this field of knowledge, the essence of this interaction should be revealed through a systematic analysis of a set of interconnected and interdependent political and managerial phenomena resulting from the activities of policy and management actors aimed at realizing their intentions. Thus, in the study of «political process» and «management process» should be considered as complex in structure, content and form phenomena of social systems.

On the other hand, the basis of the functioning of any political system is the interaction of political actors. Therefore, the «political process» and the «political system» as phenomena are also closely interrelated. Therefore, the political process, the main content of which is determined by the totality and direction of social interactions of political actors evolves with the political system, ie depends on the factors that determine this system. This interaction can be manifested through the activities of: political institutions (formal form) or individuals or social groups (informal form). It is fundamentally important that individual and group subjects of the political process take part in it taking into account the conditions of the social environment.

These conditions create a social context of political interactions in which the influence of man (individual) and social groups on public policy and public administration, and therefore there is a reverse effect of governance on politics. Obviously, the effectiveness and efficiency of interaction between the subjects of the political process, if assessed in the context of achieving their intentions will depend on many factors: power and financial capabilities of these entities, the quality of legal mechanisms of interaction and so on (Zlyvko *et al*., 2021).

Therefore, the political process accumulates, in particular, the consequences of the genesis of political institutions and political relations between them. It is also important that political processes involve different ways of involving the social strata in relations with public authorities, including those that are important in national decision-making and those that do not affect the exercise of state power, such as the dynamics of political parties.

In general, the content of the political process depends on many factors, including the level of political culture, models that reflect the general idea of world processes, the priorities of the elite in the political sphere. It should also be noted that political processes can take place explicitly or implicitly.

In the first case, the interests of individuals and social groups are manifested in their public claims to public authorities, and in the second - at the heart of the political process is the activities of publicly registered political institutions and centers of power, citizens' demands that are not officially expressed. Ultimately, political processes are due to the need of their subjects to influence management decisions madeby institutions of state power.

These institutions are the main tools for taking into account these requirements and developing strategic goals for socio-politicaldevelopment. Therefore, the degree of centralization and decentralization of power and the distribution of powers between social groups depend on the results of their activities.

At the heart of any social system can be divided into two main trends: functioning as a support of life, preservation of functions that determine the integrity, quality and content of the system and development, as a process of permanent and irreversible change of the system to acquire new quality, which has a significant character, a certain form and positive consequences for its viability. Functioning hinders development, but at the same time is its prerequisite. Development destroys certain processes of functioning, creates instability in the system, but creates conditions for their more sustainable implementation in the future. Therefore, there is a tendency for crisis situations both in the political process and in public administration.

It is the result of the accumulation of contradictions within the regime of «functioning» and the need to move to the regime of «development». Since the preservation or change of the social system involves the definition of certain goals, it is important to clarify the content of the political process and public administration related to ensuring the viability of this system in the mode of «functioning» and in the mode of «development».

In the operating mode, a relatively stable state in the system is characteristic. Traditions, established norms, procedures, etc. usually dominate attempts to make innovative changes in the political system and the system of public administration. Therefore, political and administrative processes in this regime are dominated by relations that are periodically repeated according to standard procedures, such as between the pro-government elite, political parties, local governments.

This leads to the dominance of the methods and technologies typical of public administration in the activities of management entities. As shown in (Sytnyk, 2019), it is fundamentally important for the functioning of the social system in a stable state is the preservation of its functions, the implementation of which ensures its integrity, qualitative certainty and meaningful features.

This circumstance determines the main motives and goals of the system of public administration and society, and hence the choice of mechanisms for their implementation, which determines the imperative in the activities of the subjects of this system: executive and administrative activities. It has regulated functions aimed at implementing current legislation through the adoption and implementation of appropriate administrative decisions and the provision of administrative services. The main methods of performing functions are organizational-stabilizing, administrative, disciplinary, ie - administrative methods.

Therefore, in this case we can talk about public administration as a social function in the social system, aimed at ensuring the effective functioning of the system in its stable state. The components of the functions are: forecasting and planning, i.e. finding the optimum action plan of the

subjects of management to ensure the stability of the system in «normal» conditions; coordination and regulation – coordinating social processes inimplementing tasks defined in the context of ensuring the sustainability of the system; exercising control over the activities of public management bodies in relation to their influence on the course of processes in the social system.

Based on the mentioned above, we conclude that public administration hinders the acquisition of new qualitative and quantitative characteristics of the social system, but is a condition for its existence and further development. This circumstance explains why administration is considered as a lower level in relation to management and leadership (higher level of management).

Therefore, it is surprising that some scholars claim that at the present stage of development the role of the state and government is to gradually move from public administration to public administration (Bozhko, 2019). At the same time, they claim (and, not without reason) that «Bureaucracy demonstrates its effectiveness in routine matters..., but their willingness to act more: flexibly in the face of new economic and social challenges remains a significant problem» (Bozhko, 2019: 40).

The development of the social system is due to the complex influence of various factors. It generates a state of instability in it, which destroys the established processes of its functioning, but at the same time creates conditions for more sustainable and high-quality implementation in the future. Therefore, the objective reality is the emergence of a crisis situation of a social nature, as a turning point in the life of the social system. It is characterized by the aggravation of political, social and other contradictions in the system and requires the adoption of adequate decisions by the subjects of the political and managerial process.

For performing functions specific topolitical and public administration, must be taken into account. Therefore, the differences in the methodological basis of strategic planning, which is carried out by the subjects of political processes and management at the stage of instability of the social system (mode - «development») and in its stable state («functioning regime») deserve special attention.

Peculiarities of planning in the conditions of instability of the social system are, first of all, a high degree of uncertainty in the conditions in which political and managerial decisions are made. Therefore, the probability of making an inadequate decision-making situation increases. There is also considerable variability in the ability of actors to choose policy alternatives, which necessitates their focus on the quality of strategic analysis and synthesis, the application of systemic and situational approaches, the use of political and strategic forecasting. It is also important that the issues

of ensuring national security, ranging from ensuring human rights and freedoms to protecting territorial integrity and state sovereignty, become significantly more difficult.

At the same time, there is an interdependence between the development of the social system and its security. For example, the lack of progressive development of the political system can lead to political destabilization, socio-political tensions, etc. and, conversely, security is a prerequisite for the development of this system. There are also differences in the goal-setting of the subjects of management in the strategic planning of the development of social systems and ensuring their security.

To set a goal for the security process, it is important to identify the factors that cause hazards, and when planning the development of the system - objectively existing needs for its development (Orel, 2019). At the same time, the presence of goals aimed at the development of the system is of fundamental importance, as it is obvious that their absence transforms public administration into public administration, the purpose of which is to maintain it in «working order».

The peculiarity of goal-setting of subjects of management at the stage of existence of the system, which is characterized by instability of social processes that take place in it, determines significant features of the content and mechanisms of other management functions: organization, coordination, motivation, control.

In particular, an important role in the formation and implementation of these goals belongs to the leaders, they have strategic thinking and vision of the optimal direction of the system. Therefore, public administration in the conditions of instability of the social system involves taking into account political, economic and other social processes, interaction with civil society institutions and international actors, involving society in solving important security problems.

Thus, the course of political and managerial processes in the conditions of stability and instability of the social system have significant differences that determine the nature, features and intensity of the relationship of these processes. This explains to some extent why the current period of development of management theory is characterized by attempts to create an integrated concept of crisis and why existing crisis management strategies, suggest that the crisis must identify certain stages and identify appropriate management tasks to resolve it (Porfiriev, 2007).

Prominent representative of postmodernism U. Beck trying to comprehend the fact why in modern conditions of civilization these strategies have become ineffective figuratively christened modernity as a «crisis society» (Risk Society..., 2019) were among the first to emphasize that features and causes of crisis situations of a social nature are, in

particular: the growing role of mass communications in the process of crisis development; increasing the role of new political and managerial technologies in generating crisis situations while reducing the capacity of state institutions to resolve them; forming new forms of crises due to a combination of crisis elements and their transformation (Painter-Morland, 2013; Skakalska and Semenets-Orlova, 2019).

These circumstances include developing and implementing ofnon-standardpolitical and managerial decisions to ensure thesecurity of social systems.

This should be taken into account when determining the priorities of the subjects of political and administrative processes, especially when there is a possibility of rapid, non-linear transition of the social system to another state. However, this transition always presupposes the objective need for a radical change in the content and form of the social system, and hence the activities of the subjects of political and administrative processes.

The peculiarity of these processes in crisis situations is, in particular, the high level of uncertainty and low predictabilityoftransforming the crisis situation into an emergency (social explosion, riots, etc.). Therefore, it is important to distinguish between two groups of goals of these entities. The first is due to the need to manage the likelihood of a crisis situation, and the second - the level of protection of man (individual), society and institutions of the state.

As for the peculiarity of the existence of social systems in decline, in these conditions it often disintegrates, because political or managerial decisions are usually ineffective in regulating social relations, i.e. declared or implemented changes do not ensure the integrity of systems and its proper functioning, which indicates the need for a radical overhaul of the system.

The described features of the existence of social systems in the mode of functioning and development also allow us to conclude that a systematic approach is needed in the study of the relationship between political and managerial processes. At the same time, attention should be focused on understanding the needs of man (individual), social groups, state institutions and identifying factors that take into account these needs, including internal and external actors, possible directions and ways to interact with them.

Indeed, since the social system is both a whole and a component of a larger system, in it the individual is both a whole system formation and an element of the system that serves as the environment of his existence. In social systems, the boundaries between its elements are determined by the characteristics of their identity. They determine the difference between the elements from each other.

Therefore, in social systems there is a constant conflict between the elements for which the priority is to ensure the integrity (goals) of the system and those that give priority to autonomy. Because of this, the system simultaneously processes the convergence of the goals of its elements and the formation of relationships between them (cooperation) and the processes that lead to their weakening (rivalry). It is obvious that in the processes dominated by the struggle for power and for its maintenance, there are always elements of cooperation and rivalry.

This determines the importance of thorough analysis in ensuring the security of the system of qualitative and quantitative composition of the subjects of political processes that favor cooperation or competition (Kosach *et al.,* 2022). Thus, the evolution of the relationship between political and managerial processes should be considered in the context of changes in the existence of social systems.

These changes are usually the result of compromises between the subjects of the political process or the victory of a particular political force, and the objects and forms of realization of their intentions can be public authorities, NGOs, political and legal norms, business management systems, etc. Within the framework of the political process, they carry out other measures aimed at ensuring the development of society and its manageability.

Therefore, these entities determine the principles of formation of structures of public administration and administration systems, the relationship of its elements at all hierarchical levels, their powers and responsibilities. At the same time, changes in the political process generate different in nature, scale and direction of action of political actors. However, the principle for them is always the choice of technologies for the exercise of power and the adoption of regulations that guarantee the realization of their interests by government agencies, ie the system of public administration and administration.

The above also allows us to conclude that the organizational and functional structure of the system of public administration and administration is formed by the subjects of political and administrative components. The main functions of the former are the development and adoption of political decisions, justification of public policy, organization of public discussion and communication with the public and more.

The main function of the subjects of the administrative component is the implementation of political decisions, which is implemented in the administrative process. This activity is related to theimplementating directive functions for the management of certain objects of management, regulated by regulations and provided by relevant administrative documents issued by governing bodies, institutions and organizations (Sytnyk, 2019).

Unfortunately, in Ukraine the organizational and legal basis for the formation of political and administrative components of the system of public administration and administration, as well as the organization of their interaction often change. This negatively affects the effectiveness of their activities and interaction. In general, Ukraine has not solved the problem of finding the optimal balance in the formation of political and administrative components of the system of public administration. One of the reasons is the fascination with Western political and managerial approaches.

However, for example, the implementation of the priority of neutrality of public administration as a way of separating political and administrative positions may, in the absence of adequate institutional control, lead to the strengthening of political leadership, rather than limiting it. There may also be negative consequences of pressure from external forces seeking their benefits in Ukraine, which creates serious problems for modernizing of national models of political and public governance.For example, introducing new management procedures and practices in the new EU member states is accompanied by strong pressure from its institutions.

In view of this, we cannot agree with those who claim that a promising model of public administration for Ukraine is "the network management model, according to which the efforts of public authorities should be aimed at coordinating the actions of various public actors. interacts with the creation of hybrid and mobile networks, which combine state, non-state, national and global elements» (Bilynska and Petroie, 2019: 41). Obviously, the involvementofnon-state(non-national)and global elementsinforming the system of public management andadministration in Ukraine is a real threat to national security, especially given the institutional weakness of this system, which is a reality today.

Conclusions

Theinstitutional imbalance of political and administrativecomponents of the system of public administrationalways negatively affects its effectiveness and efficiency, and thus the security of individuals, social groups and state institutions. Therefore, it still remains a priority to ensure the balance between thesecomponents,taking into account the potential of the Western political and managerial approachesadaptedto national realities to address it.

1. Political and managerial processes in social systems and their relationship should be considered in content and form as phenomena of life of these systems. Thus the analysis of pecularities and intensity of the specified interrelation and functional tasks of subjects of policy and management it is expedient to carry out in the context of modes (stages)

of existence of systems and their safety. Thus, dominant, for the subjects mentioned is, in particular, preserving the functions determining the qualitative certainty and content of the social system, and the mode of «development» (unstable state) - supporting the process of permanent change in the system, for it to acquire a new quality.

2. The interdependence between the development of the social system and the security of its life causes methodological differences in the goals of political processes and management, rather than the linearity of the dynamics of crisis situations, determines the peculiarities of its transformation, which creates two groups of goalsthe likelihood of a crisis situation and the management of the level of protection of man, society and state institutions, so the evolution of the relationship between political and managerial processes should be considered in the context of social security and changes in the political system and public administrationa systematic approach to identifying and assessing the factors that influence and the likelihood of a crisis situation and national security.

3. The evolution of the relationship between political and managerial processes should be considered in the context of changes in the political system. At the same time, the organizational and functional structure of the system of public administration and administration always contains political and administrative blocks. The first of them is the creator of public policy, and the second is responsible for outlining ways to achieve the goals of this policy and manages the resources needed for this. Therefore, the institutional and functional imbalance between these blocs has a negative impact on the effectiveness of the relationship between political and managerial processes in social systems, and thus on ensuring the security of their lives.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 648-661
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

The Russian-Ukrainian War of 2014–2022: A Historical Retrospective

DOI: https://doi.org/10.46398/cuestpol.4074.35

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Abstract

The article analyzes the origins and development of the Russian-Ukrainian war through the prism of the study of the historical background of the conflict. The purpose of the article is a historical and retrospective analysis of the Russian-Ukrainian war of 2014-2022. The historical-comparative method was important for the research. Using the method of historical analogy, the methods of the war between Russia and Nazi Germany are compared. Structural-functional, retrospective, synchronic and diachronic research methods are also used in the work. The results show that the origins of the Russian-Ukrainian war have a certain civilizational basis. Only the conquest of Ukrainian lands by the Russian Empire and the domination of the USSR "silenced" the previous wars. In recent years, V. Putin initiated an aggressive revival of Russia's influence in the post-Soviet space. In its policy, Russia has relied on easy-to-manage enclaves, which have become preparatory bases for further expansion of Russian influence in the region. The conclusions show that Russia is losing the war. Russia is gradually becoming a terrorist state, while Ukraine is receiving strong comprehensive international support.

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Recibido el 07/07/22 Aceptado el 23/08/22

Keywords: Ukraine; conflicts in Eastern Europe; contemporary wars; political forecasting; historical retrospective.

La guerra ruso-ucraniana de 2014-2022: una retrospectiva histórica

Resumen

El artículo analiza los orígenes y el desarrollo de la guerra ruso-ucraniana a través del prisma del estudio de los antecedentes históricos del conflicto. El propósito del artículo es un análisis histórico y retrospectivo de la guerra ruso-ucraniana de 2014-2022. El método histórico-comparativo fue importante para la investigación. Utilizando el método de la analogía histórica se comparan los métodos de la guerra entre Rusia y la Alemania nazi. En el trabajo también se utilizan los métodos de investigación estructural-funcional, retrospectivo, sincrónico y diacrónico. Los resultados muestran que los orígenes de la guerra ruso-ucraniana tienen una cierta base civilizacional. Sólo la conquista de las tierras ucranianas por el Imperio ruso y la dominación de la URSS "silenciaron" las guerras anteriores. En los últimos años, V. Putin inició un agresivo resurgimiento de la influencia de Rusia en el espacio postsoviético. En su política, Rusia se ha apoyado en enclaves fáciles de gestionar, que se han convertido en bases preparatorias para una mayor expansión de la influencia rusa en la región. Las conclusiones muestran que Rusia está perdiendo la guerra. Rusia se está convirtiendo poco a poco en un Estado terrorista, mientras que Ucrania está recibiendo un fuerte apoyo internacional integral.

Palabras clave: Ucrania; conflictos en Europa del este; guerras contemporáneas; pronóstico político; retrospectiva histórica.

Introduction

From a historical point of view, wars have always acted as companions to the development of human civilization. Obviously, in the XXI century, despite all the features of globalization, digitalization will not be an exception to the rules, and periodic wars will accompany Europe in the coming years. Russia's military aggression against Ukraine is special. It is the first powerful engagement in the post-Soviet space where regular armies and auxiliary volunteer units on both sides are fully engaged.

The Russian federation's aggression defines the counter-arms, so it is of global significance, that is, the authoritarian aspirations of the former imperial center and the unproblematic democratic Ukrainian society have converged in Ukraine. Bypassing the military aspects of the confrontation, we will note its political overtones and direct comparisons with World War III. So, the events in Ukraine affect the development of the general world geopolitics.

Note that at this point events are still unfolding, so the consequences of the Russian-Ukrainian war in 2022 can only be predictions. However, to consider the development of the situation, which led to the deployment of the largest-scale European conflict in the new millennium, is quite realistic. The relevance of this issue is indisputable because we are talking about the resumption of a hidden conflict, which, in fact, has lasted for more than a century. Russian-Ukrainian relations are "overshadowed" by the imperial past of Russia, in which there is simply no place for free Ukraine, the richest "colony" of the Romanov Empire.

Although the fall of the Soviet Union (the Bolshevik empire) and the economic decline of the 1990s postponed the "solution of the Ukrainian question" for a while, the Kremlin elite, led by V. Putin used all possible financial, human and diplomatic resources to try to restore former Russian possessions. Thus, the purpose of the article is to conduct a historical and retrospective analysis of the Russian-Ukrainian war.

1. Materials and methods

In the paper are used logical research methods: analysis, synthesis, induction, and deduction. At the same time, the study is built on the use of special historical research methods. In particular, the historical and comparative method is important for the study. Based on the latter, it was possible to compare the historical origins of the policy of Russia and Ukraine. By means of the method of historical analogy comparative methods of war of Russia and Nazi Germany.

At the same time, the work also used other historical research methods, in particular, structural-functional, retrospective, synchronic, and diachronic methods of research, which serve as auxiliary methods of revealing significant temporal transformations in the historical reality. The study is built on the use of general scientific methods. Based on the axiological method, it was possible to move from general considerations to specific conclusions and recommendations.

Using the predictive method, an attempt has been made to establish approximate results of the Russian-Ukrainian war, which is currently

ongoing. It should be noted that these forecasts are used in the discussion because it is impossible to collect authentic information about the subsequent stages of the unfolding of the conflict.

2. Literature Review

The study of the peculiarities of the development of the Russo-Ukrainian war is a relevant topic for contemporary historical research. In particular, Kuzio (2021) investigated the peculiarities of the Russian-Ukrainian war through the prism of Ukrainian political discourse. The researcher paid special attention to the definition of the main prerequisites of this war. Kulyk (2019) analyzed the problem of the Russian-speaking population in post-Soviet countries. In his study, the author characterized the transformation of the identity of Russian speakers in independent Ukraine.

In particular, based on a survey and public discourse data, he analyzed the hierarchy of identities of those people who use predominantly Russian in their everyday life. In his article, he concludes that in independent Ukraine, Russian-speakers were completely "transformed" from Soviet people into Ukrainians (Kulyk, 2019). Bînă and Dragomir (2020) investigated the development of the Russian-Ukrainian information war and analyzed the specifics of its conduct and ways of possible promotion.

These experts also highlighted the main propaganda mechanisms used by the media (Bînă and Dragomir, 2020). Note that many foreign historians and political scientists have studied the peculiarities of hybrid warfare. At the same time, they focused on characterizing the concept of "hybrid warfare" and highlighting its main components. For example, Almäng (2019) in his article attempts to illuminate the hybrid concept in terms of analyzing philosophical debates regarding the uncertainty of the concept.

On the other hand, Manolea (2021) analyzed key aspects of the hybrid warfare that the Russian federation wages to retain and strengthen its zones of influence. Separate attention is given to the tools and means used by the Russians in the current hybrid warfare (Manolea, 2021). At the same time, Martz (2022) explored the crimes of the Russian Federation against Ukraine.

Consequently, the topic of the Russian-Ukrainian war is now quite popular. However, the problems of establishing detailed military strictures and intentions (of both the Russian and Ukrainian sides), the real consequences of the end of the war, which we believe, nominally, can be determined based on historical and retrospective analysis, remain little-studied.

3. Results

The traditions of modern Russian statehood are directly linked to the Ulus Dzhuchi (Golden Horde), from which the authoritarian method of government began. At that time, the only ruler was the khan. Later on, having outgrown the traditions of the Golden Horde, the Moscow prince, or the Moscow tsar, was regarded as the only source of power.

All other people in this state were powerless. Ukrainian historian V. Lipinski described this type of government as ochlocracy. It is about rule based on coercion over the crowd (ochlos). At the same time, the said ochlos is passive and incapable of making independent decisions. Consequently, it is dependent on the authorities, on which it is completely entrusted.

The political culture of Ukraine has its original origins. It was formed under the influence of the Kyiv-Russian tradition, later developed in the Galicia-Volhynia state. Consequently, during the Middle Ages and early modern times, it used a different model of government. Behind it, the main carriers of power were the military-powered strata of the population.

In Kievan Rus and Galicia-Volhynia, we are talking about military boyars (Parshyn and Mereniuk, 2022); in the early modern period, this role was played mainly by the nobility and the Cossacks. The Cossacks even managed to create their own statehood, which at one time was characterized by democratic principles. For this reason, it is obvious why Ukrainians have such traits as dignity, freedom, individualism, freedom-loving, and other values of a free person. Now, these European democratic signs are clearly represented in Ukraine, where in contrast to Russia, there is freedom of speech and tolerance.

Subsequently, in the XVIII and XIX centuries, the Moscow area became an empire. Moscow became an empire, which was called Russian, thus trying to appropriate the patrimony of Kievan Rus'. Revolutionary upheavals during World War I led to the collapse of this country. However, the Bolsheviks who seized power restored an empire called the Union of Soviet Socialist Republics. Unfortunately, many Ukrainian scholarly figures influenced the development of this imperial project.

However, Ukraine played a key role in this structure. Ukraine was decisive for the functioning of the USSR and its collapse because this imperial project was simply impossible without Ukraine (Ishchuk, 2020). Consequently, by launching aggression against Ukraine, Acting Putin wants to restore the Russian empire of the 19th century, for which reason Ukraine is an important component.

At the same time, from the beginning of the nineteenth century to the present, Ukraine went through a difficult period of nation-building. This period had peak rises, in particular during the Ukrainian Revolution of

1917-1921, World War II, independence in 1991, and the Revolution of Dignity in 2013-2014. Consequently, Ukrainians gained weighty experience in the creation of the state.

Despite many trials, Ukrainians are becoming a consolidated nation. The Orange Revolution, the Revolution of Dignity, and the resistance to Russian aggression since 2014 showed a further strengthening of national categories (Ghilès, 2022). On the other hand, the beginning of Russia's large-scale war against Ukraine led to a great consolidation of Ukrainians to defend the homeland (Kuzio, 2021). From this time on, a truly nationwide war against the Russian occupiers began.

It should be noted that as early as February 27, 2022, on the third day after the beginning of direct Russian aggression against Ukraine, the website of the Russian state agency RIA Novosti published a scandalous article by the well-known pro-Kremlin columnist Pyotr Akopov entitled "The coming of Russia and the new world". The article was almost immediately removed by the editors, but it was copied and circulated on the Internet. The column was apparently written much earlier and posted on the site for automatic updating.

The material was jointly authored by anonymous political analysts, the name of P. Akopov was put there as a cover, with or without the knowledge of this "figure". This is indicated by the overall style and pathetic rhetoric of the text, certainty of speech turns, and conviction in their quick victory, inherent in the official Kremlin on the eve of the outbreak of hostilities.

In the column, the authors noted on behalf of Akopov about the "final solution" of the Ukrainian issue. They also pointed out that, for now, the brothers were still fighting among themselves, hinting at an obvious victory, the capture of Kyiv, and the Ukrainian capitulation. At the same time, on the third day of the invasion, the military situation for Russian troops was not as successful, and all attempts to encircle the Ukrainian capital and capture other strategic cities failed (Johnson, 2022).

An important element in the material on the authorship of P. Akopov had only one detail. According to the authors of the RIA Novosti piece, the "new Russia" began its journey after V. Putin's Munich speech. Putin's speech on February 10, 2007. During his speech, the then president of Russia pointed out the fallacy of the unipolar model of world politics and noted that Russia seeks to regain the leading position in world geopolitics (Martz, 2022). Many Western politicians expressed indignation at the openly hostile rhetoric of the Russian head of state but could not hinder the implementation of his plans.

The Russian authorities were afraid of "color revolutions", so the events in Georgia and primarily in Ukraine (the Orange Revolution) in 2003-2004 were perceived as extremely hostile. Official Moscow felt that "former

colonies" after 1991 took tangible steps towards independence from the Russian center and officially declared it. It was probably then that the first real decisions were made about future aggressive actions against these countries (Kos, 2022). Russian archives are classified, so it is impossible to officially confirm this version (Kuzio, 2021). However, the following harsh rhetoric and change of political vector on the part of Russia point to this conclusion.

The position of official Moscow in 2007 was based on strong fundamentals. Export prices for energy and other minerals, actively exported from Russia, allowed the accumulation of tangible material resources in domestic and foreign accounts. The heads of state corporations had grandiose plans for the further development of this sector of the economy. Connections with Western politicians were maintained by skillful lobbyists.

In general, the image and. Putin was viewed positively by European politicians and society, despite the gradual curtailment of democratic freedoms (Kulyk, 2017). Russia's managed democracy still left a semblance of respect for basic human rights. Thanks to the sale of gas and oil, it was possible to maintain contact with leading industrial producers for a long time, which allowed Russia to be filled with quality goods.

The population of the country, which received its smaller share of the "oil and gas pie," was exposed to the first sprouts of total propaganda about the greatness of their country and felt an increase in living standards (Kulyk, 2017). All these factors allowed Kremlin politicians to feel confident in the post-Soviet space.

Georgia was the first to be hit by the "new Russia". The war of 08.08.2008 shook the country and brought down the pro-European course of Georgian President Mikheil Saakashvili. The powerful Russian invasion supported and consolidated the positions of several enclaves on the territory of the small mountainous country - Abkhazia and South Ossetia. They were not recognized in the world at the time; even official Moscow was in no hurry to recognize their independence. However, they became convenient tools for stopping all attempts by Georgia to join NATO. In addition, a kind of mechanism was specified in the case of "protests" in another post-Soviet country.

Perhaps the confident victory in Georgia and the joyful perception of this act by the public has given Russian politicians confidence in the correctness of their chosen tactics: the creation of convenient puppet enclaves, military pressure, and non-interference by Western democracies. This set of techniques was complemented by the deployment of insane propaganda and hybrid informational influence - through a network of Kremlin-controlled analysts, print media, TV channels, and other media (Kuzio, 2021).

Their goal is to increase patriotic fervor among the Russian population, sow discord among potential enemies, and form a certain picture of events for European and American audiences. In 2008, this strategy was successful, although the military forces of Georgia and Russia were not comparable.

A similar plan of action apparently took shape with regard to Ukraine as well, but Russia's military advantage did not seem convincing. For this reason, during the presidency of Viktor Yanukovych, who held a pro-Kremlin political course, the military department was headed by ethnic Russians (Kuzio, 2021). As a result, Ukraine's Armed Forces were stranded by constant funding cuts and restructuring of army units (formation of smaller and better equipped military units).

Also, Ukrainian Prime Minister Mykola Azarov, as the following investigation revealed, was one of the main initiators of the so-called Kharkiv agreements (Martz, 2022). According to the provisions of this document, adopted in April 2010, the Black Sea Fleet of the Russian Federation was allowed to stay at the ports of the Crimean Peninsula until 2042 and increase its presence uncontrollably.

The events of February and March 2014 demonstrated that the Kremlin's strategies had some success. Ukrainian society and especially the authorities were disorganized after the bloody confrontation in Kyiv, V. Yanukovych's flight to Russia's Rostov-on-Don, and the murder of the Heavenly Hundred. Thanks to this, the military advantage gained and the active propaganda of the "Russian world" and the "Russian Spring" spread by Moscow-controlled resources, the Russians fairly quickly seized power in Crimea. Because of the pre-planned "referendum," the annexation of the peninsula was formalized. At the same time, the main objectives in eastern Ukraine were not achieved (Ghilès, 2022).

The Ukrainian military, volunteers, society, and government, through an established consensus of action, were able to stop pro-Russian fighters and cadres within parts of Donetsk and Luhansk oblasts. Large cities (Donetsk, Luhansk, Makiivka, etc.) were informally occupied, but Ukraine's industrial potential was not broken, and many settlements remained under the control of the AFU (Elliott, 2022).

The armed forces of the fighters and the Russians who fought on their side suffered casualties. The reaction of the international community was important: although the mechanism of sanctions was repeatedly criticized by experts, it began to work against Russia and became a signal that the democratic world will not allow the restoration of imperial projects in Eastern Europe.

The shaky truce established in 2015 lasted until 2022, which reduced the number of civilian casualties compared to the active phase of hostilities. Thus, based on a brief summary, we can draw certain conclusions regarding the political and military retrospective:

1. We believe that the announcement of intentions to restore Russia's political influence after the fall of the Soviet Union was the so-called Munich speech of V. Putin in the 2007 Munich Speech.

2. In its politics Russia has staked on enclaves, which are easy to manage. These formations, which are not recognized in the world, are becoming preparatory bases for further expansion of Russian influence in the region. For example, the situation unfolded in Georgia (in Abkhazia and South Ossetia) in 2008. "Zones of influence" were created in Crimea as a result of the Kharkiv Agreements of 2010 (Kulyk, 2017). Note that potential crisis territories are the territory of the unrecognized Transnistrian Republic, where the Operative Group of Russian Forces (former 14th Guards Combined Arms Army) is located. In the future, this territory and Russian military bases in other countries could become new sources for conflict zones.

3. Russian agents in Ukrainian politics have also joined the situation as of 2022. Yanukovych's pro-Russian activities in the military sphere have degenerated into complete capitulation. For this reason, in the spring of 2014, there was not enough strength among the Ukrainian military to oppose the annexation of Crimea. There was also disarray among Ukrainian political elites, some of whom did not even allow for the possibility of Russian aggression against Ukraine.

4. The passive reaction of Western politicians to the crisis situation in Georgia in 2008 led to the fact that the actions of the Russian Federation were not properly condemned and punished. Consequently, this confirmed among Kremlin elites the belief that the collective West was not set up to contain it and recognized the territory of the former Soviet Union as a zone of its influence. The certainty of impunity provoked aggressive actions against Ukraine (Manolea, 2021).

In the discussion we try to analyze the prospects for the development of the Russian-Ukrainian war and determine its specifics, using the prognostic method.

4. Discussion

Why was Russia doomed to lose?

The English historian Dominic Lieven wrote a book about the collapse of the Russian Empire during World War I (Ling, 2022). He noted that more than anything else in the world, the fate of World War I depended on what was being done in and around Ukraine. Such a statement may seem

somewhat exaggerated, but in fact, such a conclusion is valid. Historians are now proving that Ukraine was not secondary in World War I: it was the primary territory where the fate of the world was determined (Kuzio, 2021). So, it was in World War II, so it is now. Consequently, the Russian-Ukrainian war is not a local conflict but a geopolitical one.

On the other hand, historical retrospect justifiably proves the view that Russia is losing this war (although it started it insidiously against Ukraine). To confirm this view, let us provide several arguments based on the principles of historical development.

As noted above, Russia's state traditions date back to the Golden Horde. Later, its political culture developed in the prism of autocracy, where ochlocracy reigned: the people were completely dependent on the ruler. Similar parallels can be drawn with today's Russia, where the people depend on the ruler and believe that their fate depends on the will of the government.

We believe that the war against Ukraine may end in the defeat of the Russian federation. It is quite obvious that the president of Russia and. Putin uses the algorithms of dictators of previous times. For example, he has often expressed sympathy for Stalin. However, it is likely that he is coping Hitler more than anything else. This opinion is confirmed by the fact that the current Russian regime, which has moved from kleptocracy and authoritarianism to all-out dictatorship, is copying the Nazi regime in many areas. This is clearly visible in the direction of ideology. Note that researchers are now debating the definition of this ideology. In particular, they propose such varieties as "Putinism," "Rashism," "Russian Nazism," etc.

The features of this ideology emerged:

1. Militarism.
2. Isolationism from the European world.
3. Autocracy.
4. Xenophobia.
5. Ethnophilia.
6. Expansionism.
7. Chauvinism.

Despite this, we emphasize that a significant part of the aggressor's ideology is the so-called "Russian World" concept. At the same time, if previously the Nazis chose the Jews as their main negative target, then the Putin regime chose the Ukrainians. It should be noted that the Russian

authorities began to deliberately emphasize their anti-Ukrainian policy in 1991, that is, since the proclamation of Ukraine's independence.

However, since 2014, this policy has become mainstream Russian propaganda. Clear evidence of this is the destruction of the civilian population, repeated non-compliance with standards of warfare, and the destruction of civilian infrastructure and housing in many Ukrainian cities (Johnson, 2022).

In addition, Russia is actively introducing new totalitarian military symbols into social appeals. In particular, the Latin letter Z, which denotes most of the occupant's equipment, is actively popularized in Russia along with the St. George's ribbon. Western European media call these signs "Putin's swastika". At the same time, and. Putin is trying to copy some of A. Hitler's actions. For example, a direct analogy can be traced between the anschluss of Austria and the anschluss of Belarus.

In addition, the Nazis used slogans about the protection of the German population outside of Germany, while the Russians are now "protecting" Russian-speakers outside of Russia. Obviously, such protection serves as a pretext for open aggression. Based on a continuation of the associative series of comparisons between Hitler's Germany and Putin's Russia, the latter appears to be only an imperfect copy of the former.

Another argument for Ukraine's victory is that Russia is turning into a terrorist state. Having received a strong Ukrainian response, the Russian military has shifted to a strategy of terror, deliberately implementing war crimes prohibited by all world conventions. However, we note that in scientific literature, the phenomenon of terrorism is always considered a strategy of the weaker.

In addition, the support of other major countries was of great importance for the victory of Ukraine. Ukrainian historians have quite often investigated the reasons for the defeat of the first liberation struggle during the Ukrainian revolution of 1917 -1921 and analyzed the defeat during the second liberation struggle (1938-1950). Many have noted that a decisive role in these failures was played by a low level of national consciousness, weak Ukrainian elite, lack of unity in the actions of Ukrainian forces, and the like.

Historians increasingly go back to the fact that these were not the main reasons. For example, the Lithuanian movement, which was also active in the Russian Empire, was much weaker than the Ukrainian. However, the Lithuanians were able to get their own state, while the Ukrainians were not. Ukraine was geopolitically more important than Lithuania. Its existence depended primarily on the consent of major political players.

Consequently, neither World War I nor World War II agreed to create Ukraine as an independent state, so the Ukrainian movement was in a geopolitical vacuum. For this reason, the key difference between these two wars and the modern war is that Ukraine has emerged from this state of geopolitical isolation. We are now seeing Ukraine receiving substantial support, both militarily and diplomatically.

On the other hand, Russia is isolated, which is subject to condemnation from many countries around the world. This means that the chances of Ukraine winning are very high. Consequently, we believe that the geopolitical factor is important for future victory: Russia does not have such significant support, so Ukraine has a great chance of winning.

Conclusion

Thus, the origins of the Russian-Ukrainian war have a definite civilizational basis. Ukraine is a product of the development of the Kyiv-Russian civilization matrix, while modern Russia appeared on the ruins of the Mongol Empire. For centuries there have been conflicts between the two peoples, and only the conquest of Ukrainian lands by the Russian Empire and the domination of the Romanovs "muted" these wars. The USSR succeeded the Romanov dynasty and suppressed the attempts of the Ukrainians in 1918-1921 to establish their own state, so the policy of denazification of the Ukrainians continued.

After the collapse of the Soviet Union, Ukraine was allowed to develop independently. However, economic and political defeat briefly stopped Russia. As a result of the policies of V. Putin's policies began an aggressive revival of its influence in the post-Soviet space. We define this process as finally starting with Putin's Munich speech on October 10, 2007.

In its policy, Russia has staked on enclaves that are easy to manage. These formations, which are not recognized in the world, are becoming preparatory bases for further expansion of Russian influence in the region. For example, the situation unfolded in Georgia (in Abkhazia and South Ossetia) in 2008. "Zones of influence" were created in Crimea as a result of the Kharkiv Agreements of 2010. Russian agents in Ukrainian politics also joined the situation as of 2022.

Yanukovych's pro-Russian activities in the military sphere were capitulative. Part of the Ukrainian political elites did not even allow for the possibility of Russian aggressive actions against Ukraine. The passive reaction of Western politicians to the crisis situation in Georgia in 2008 led to the fact that the actions of the Russian Federation were not properly condemned and punished. Accordingly, confidence in impunity provoked aggressive actions against Ukraine.

We note that Russia is losing in this war family. It is quite obvious that the president of Russia and. Putin uses the algorithms of the dictators of previous times. In particular, based on the formation of associative rows comparing the activities of Hitler's Germany and Putin's Russia, the latter appears to be only an imperfect copy of the former. Russia is also turning into a terrorist state.

We also see Ukraine receiving substantial support, both militarily and diplomatically, from other countries. On the other hand, Russia is isolated and subject to condemnation from many countries around the world. This means that the chances of Ukraine winning are very high.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 662-672
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Interactions between the international convention and the system of guaranteeing the rights of persons with disabilities in Ukraine

DOI: https://doi.org/10.46398/cuestpol.4074.36

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Abstract

The purpose of the study is to clarify the essence and outline the functions of the international convention-institutional mechanism for the observance and protection of human rights, as well as to reveal the directions of its interaction with the national system of administrative and legal protection of the rights and freedoms of persons with disabilities of Ukraine. We use methods of scientific knowledge, in particular system-functional, formal-legal, technical-legal, methods of analysis and synthesis. The National system of ensuring the rights and freedoms of persons with disabilities of Ukraine, which is presented in the form of a three-level structure, among which: organizational level - is implemented by the Commissioner of the President of Ukraine for the Rights of Persons with Disabilities and the Government Commissioner for the Rights of Persons with Disabilities; management level – the Cabinet of Ministers of Ukraine; functional level – individual central bodies of the executive power of Ukraine, their structural units and local self-government bodies. The key directions and principles of coordinated interaction of public administration subjects with relevant international institutions, primarily the UN and the Council of Europe, in the analyzed area are indicated.

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Recibido el 14/07/22 Aceptado el 25/08/22

Keywords: convention-institutional mechanism; administrative and legal support system; law and freedom; persons with disabilities; public administration bodies.

Interacciones entre la convención internacional y el sistema de garantía de los derechos de las personas con discapacidad en Ucrania

Resumen

El estudio tuvo por objeto esclarecer la esencia y delinear las funciones del convenio internacional-mecanismo institucional para la observancia y protección de los derechos humanos, así como develar los sentidos de su interacción con el sistema nacional de protección administrativa y judicial de los derechos humanos y libertades de las personas con discapacidad en Ucrania. Utilizamos métodos de conocimiento científico, en particular métodos de análisis y síntesis sistémico-funcionales, formal-jurídicos y técnico-jurídicos. El Sistema nacional para garantizar los derechos y libertades de las personas con discapacidad de Ucrania, se presenta en forma de una estructura de tres niveles, los cuales son: nivel organizacional: es implementado por el Comisionado del Presidente de Ucrania para los Derechos de las Personas con Discapacidad y el Comisionado del Gobierno para los Derechos de las Personas con Discapacidad; nivel de gestión: responsabilidad del Gabinete de Ministros de Ucrania; nivel funcional: órganos centrales individuales del poder ejecutivo de Ucrania, sus unidades estructurales y órganos de autogobierno local. En las conclusiones del caso, se indican las direcciones y principios clave de la interacción coordinada de los sujetos de la administración pública con las instituciones internacionales relevantes, principalmente la ONU y el Consejo de Europa.

Palabras clave: convención-mecanismo institucional; sistema de apoyo administrativo y jurídico; derecho y libertad; personas con discapacidad; órganos de la administración pública.

Introduction

Today, the public administration of Ukraine takes an active part in the functioning of the international human rights system of the UN and the Council of Europe, and has also officially assumed international obligations in terms of ensuring the rights and freedoms of persons with disabilities. A significant number of such obligations have been fulfilled, but a number of

provisions of the UN Convention on the Rights of Persons with Disabilities are still often ignored, which makes life difficult for this category of citizens.

In view of this, the need for further search and development of legal instruments for the interaction of international institutions and domestic subjects of power regarding the implementation of an effective system of administrative and legal means of ensuring the rights and freedoms of persons with disabilities in Ukraine does not disappear from the agenda.

It deserves special attention that the human rights activities of international organizations and international standards for ensuring the rights and freedoms of people, in particular persons with disabilities, by public authorities have become the subject of scientific research by many Ukrainian scientists. A number of important issues related to this problem have been subjected to theoretical and legal analysis, but the issues of interdependence of the implementation of Ukraine's international obligations and the effectiveness of the use of administrative and legal means of ensuring the rights and freedoms of persons with disabilities remain insufficiently considered.

1. Objectives

The purpose of the study is to clarify the essence and functions of the international convention and institutional mechanism for ensuring human rights, as well as the main directions of its interaction with the national system of public realization and protection of the rights, freedoms and legitimate interests of persons with disabilities of Ukraine.

2. Materials and methods

The article is based on a legal analysis of the international legal acts of the UN and the Council of Europe, the provisions of current Ukrainian legislation and a general overview of practice in the field of application of administrative and legal instruments regarding the observance and protection of the rights, freedoms and legitimate interests of persons with disabilities by certain competent bodies of the executive power and officials (Cabinet of Ministers of Ukraine, Ministry of Education and Science of Ukraine, Ministry of Social Policy of Ukraine, Ministry of Economy of Ukraine, Ministry of Reintegration of Temporarily Occupied Territories of Ukraine, Ministry of Justice of Ukraine, Commissioner of the President of Ukraine for the Rights of Persons with Disabilities, Government Commissioner for the Rights of Persons with Disabilities disability).

The methodological basis of the article is formed by a set of methods of scientific knowledge, in particular, systemic-functional, formal-legal, technical-legal methods contributed to the disclosure of the essence, content and functional orientation of the contractual-legal and organizational-legal aspects of the international convention-institutional mechanism for the observance and protection of human rights.

Taking into account the administrative-legal direction of international standards for ensuring the rights and freedoms of persons with disabilities, relevant international documents are systematized in five blocks. The specifics of the legal status of the relevant competent bodies of the public administration of Ukraine and officials are also revealed.

The structural-analytical method, methods of analysis and synthesis made it possible to reveal the levels of the national system of administrative and legal protection of the rights and freedoms of persons with disabilities and to propose priority measures for the fulfillment of Ukraine's international obligations in the field of implementation of the Convention on the Rights of Persons with Disabilities.

The specified measures provide for the introduction of a legal mechanism of state statistical monitoring in the field of education, construction and transport in relation to persons with disabilities, the development of project proposals for the use of funds of international financial support taking into account the needs of persons with disabilities, the development of a joint plan of measures to promote the provision of assistance by representatives of international organizations, who are in the temporarily occupied territories.

3. Results and discussion

It is generally accepted in international law that the international convention-institutional mechanism for ensuring the rights and freedoms of a person includes two components: the contractual-legal (conventional) aspect - international acts and treaties on human rights, which define the list of relevant objects of state protection, general principles, ways, methods, directions of its implementation; organizational and legal (institutional) aspect – the statutory activity of international organizations and other relevant competent bodies and officials who, in order to realize their legal status, exercise control (supervision) over the correct implementation into the practical plane of the established international approaches to ensuring the rights and freedoms of man and citizen, take measures to stop relevant violations.

Based on the administrative-legal direction of international standards for ensuring the rights and freedoms of persons with disabilities, we systematize relevant international documents, which will allow us to determine the basic elements of the above-mentioned conventional component of the human rights protection mechanism.

The first block of legal acts includes the main doctrinal international acts of the UN, which are the basis of the global system of human rights protection. These documents establish the legal obligations of the public authorities to guarantee the rights and freedoms of the less protected population, as well as define the basic principles of the application of appropriate legal remedies and the restoration of violated rights (Kondratenko *et al.,* 2020).

The second block consists of numerous conventions and recommendations of the World Health Organization (WHO), the International Labor Organization (ILO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), which establish requirements in a recommended or mandatory form to national bodies of public administration in their spheres of competence. Such legal acts are not only of a general nature, but also a number of them are devoted to solving the problems of persons with disabilities in matters of employment and employment, education, social security, etc.

The third block concerns international European regional institutions, primarily conventions, resolutions and recommendations of the Parliamentary Assembly and the Committee of Ministers of the Council of Europe. Taking into account the provisions of legal acts on human rights, the legal grounds and conditions for the administrative and legal provision of the rights and freedoms of various categories of citizens of the member states of the Council of Europe have been expanded and specified.

The fourth block is of a specialized nature, which relate exclusively to the implementation and protection of the rights and freedoms of persons with disabilities, adopted mainly by the UN and the Council of Europe, their statutory bodies and relevant officials. The specified documents define the framework for the implementation of the legal status of public administration bodies and the use of appropriate administrative and legal means to ensure the rights and freedoms of persons with disabilities in the main spheres of social life.

The fifth block includes a significant number of documents adopted by various international organizations and other competent entities, but common to them is the regulation of certain important issues related to the implementation and protection of human rights and freedoms, where a certain number of provisions are partially or fully devoted to individuals with a disability.

The conventional component of the international mechanism for ensuring the rights and freedoms of persons with disabilities is a fundamental and systemic entity supplemented by legal means of an institutional nature. The statutory activities of relevant international organizations, including, if we speak directly about our country, the UN and the Council of Europe, are entrusted with the duty of ensuring compliance with international legal standards on human rights, while simultaneously promoting development taking into account modern requirements of international legislation on creating equal opportunities for people with impaired body functions. Along with a number of international bodies, the UN Committee on the Rights of Persons with Disabilities (Convention on the Rights of Persons with Disabilities, 2006) has a specialized nature.

The Council of Europe also pursues a similar goal in its activities, that is, achieving greater unity among its members in order to preserve and implement the ideals and principles that are the common property of the European community. In this context, ensuring the recognition of the principles of the rule of law and the exercise of human rights and fundamental freedoms by all persons under the jurisdiction of the said regional authority (Statute of the Council of Europe, 1949) comes first.

To enable the proper implementation of the provisions of the Convention on the Protection of Human Rights and Fundamental Freedoms, the European Court of Human Rights (ECtHR) functions, which is extremely important within the outlined issues, because it acts as a court that, according to the established procedure, resolves disputes regarding violated individual rights on the territory of the member states of the Council of Europe. The practice of the ECtHR is a component of domestic law, while its decisions are binding on all subjects of public and private law in Ukraine (European Court of Human Rights, 2022).

International human rights mechanisms and the system of administrative and legal protection of the rights and freedoms of persons with disabilities in Ukraine are closely interconnected, where cooperation between them is implemented in general and special directions by competent bodies and officials of the public administration, as well as by other subjects authorized to apply appropriate legal remedies.

The general direction of interaction includes certain forms and types of coordination of agreed actions and decisions made regarding the implementation and protection of the rights of various segments of the population on the part of international institutions and national authorities, where the following vectors are the main ones:

1. participation in scheduled and unscheduled meetings of international organizations, as part of which includes our country;

2. international cooperation and conclusion of international agreements with international institutions and other countries in the field of human rights, where the leading role belongs to cooperation with the Council of Europe (Government portal. Unified web portal of executive authorities of Ukraine, 2022);
3. Ukraine's fulfillment of formal duties and obligations to respected international organizations, in particular the UN, the Council of Europe, the OSCE, as well as monitoring their compliance in accordance with the relevant recommendations and resolutions of the Parliamentary Assembly of the Council of Europe;
4. the functioning of human rights bodies and officials who cooperate with international institutions in their activities, in particular the Office of International Cooperation of the Secretariat of the Plenipotentiary of the Verkhovna Rada of Ukraine on Human Rights and the Government Plenipotentiary for ECHR Affairs (Official website of the Ministry of Justice of Ukraine, 2022).

The specifics of the legal and social status of persons with disabilities require the specification of the relevant elements of the international convention-institutional human rights mechanism in order to best enable the fulfillment of their needs on an equal basis with others, which is provided for by the provisions of the Constitution of Ukraine and the Convention on the Rights of Persons with Disabilities. (Sobol *et al.*, 2020).

Taking into account the criterion of our country's fulfillment of international obligations on human rights, the domestic system of ensuring the rights and freedoms of persons with disabilities should be presented in the form of a three-level structure, which includes the following steps: a) organizational level, which is implemented by the Commissioner of the President of Ukraine for the Rights of Persons with Disabilities and the Government Commissioner for the Rights of Persons with Disabilities; b) management level – the Cabinet of Ministers of Ukraine; c) functional level – individual central bodies of executive power, their structural subdivisions and local self-government bodies.

The organizational level plays an important role in the system of guaranteeing the fulfillment of international obligations on the issues of ensuring the rights and freedoms of persons with disabilities, where the following tasks are implemented: 1) monitoring compliance with and facilitating Ukraine's fulfillment of international obligations in the relevant field; 2) assistance to central and local subjects of public administration in the fulfillment of international obligations regarding the observance of the rights and freedoms of persons with disabilities, enshrined in international legal acts and international treaties; 3) implementation of image and information-explanatory activities at the international and national level

regarding the rights and freedoms of persons with disabilities, as well as the results of the activities of competent subjects of public administration at the expense of the effectiveness of ensuring compliance with and fulfillment of international human rights obligations.

The executive level of the implementation of international obligations on the rights and freedoms of persons with disabilities is implemented by the Cabinet of Ministers of Ukraine and provides for the following tasks: 1) implementation of measures to establish intergovernmental cooperation and conclusion of international agreements on the rights and freedoms of persons with disabilities; 2) development, approval and implementation of state target programs on the harmonization of domestic legislation and the implementation of law enforcement practices of public administration entities to ensure the rights and freedoms of persons with disabilities in accordance with international human rights standards; 3) direction, coordination and control over the activities of central and local executive bodies regarding the proper, full and timely fulfillment of international obligations to respect the rights and freedoms of people with persistent violations of body functions.

Practical implementation of international standards and international agreements on the rights of persons with disabilities is entrusted to a number of ministries and other executive authorities. The functional level of the fulfillment of international obligations to ensure the rights and freedoms of persons with disabilities involves the implementation of the following tasks: 1) ensuring the formation and implementation of state policy in the relevant areas regarding the creation of appropriate living conditions in society for persons with disabilities on a level with other citizens, taking into account international standards on human rights; 2) development of projects of normative legal acts on issues that belong to their competence regarding persons with disabilities, based on the provisions of the Convention on the Rights of Persons with Disabilities and other relevant international acts; 3) implementation of state social standards and guarantees for persons with disabilities, taking into account the rules and regulations established in international legal acts and international agreements; 4) application of a set of administrative and legal means aimed at ensuring the fulfillment of international obligations on the rights and freedoms of persons with disabilities; 5) implementation of coordination and analytical activities in relation to public administration bodies regarding the fulfillment of their duties to ensure the rights and freedoms of persons with disabilities according to international human rights standards.

The analysis of the updated regulatory and legal array made it possible to find out the list of unfulfilled planned measures provided for by the National Action Plan for the Implementation of the Convention on the Rights of Persons with Disabilities for the period until 2025 (National

Action Plan for the Implementation of the Convention on the Rights of Persons with Disabilities for the Period until 2025, 2022). In connection with this, the meticulous fulfillment of assumed international obligations through the following measures, which must be implemented in the near future, looks urgent, in particular:

1. The Ministry of Education and Science of Ukraine and the State Statistics Service of Ukraine to introduce an effective legal mechanism of state statistical monitoring in the field of education, construction and transport regarding persons with disabilities;
2. To the Ministry of Social Policy of Ukraine and the Ministry of Economy of Ukraine to develop project proposals for the use of funds of international financial support, taking into account the needs of persons with disabilities, primarily in the field of education, culture and sports;
3. The Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine and the Ministry of Social Policy of Ukraine should work out a joint plan of measures to promote the provision of assistance by representatives of international organizations to persons with disabilities who are in the temporarily occupied territories.

Conclusions

Based on the results of the research on the interaction of the international convention-institutional human rights mechanism and the national system of administrative-legal protection of the rights and freedoms of persons with disabilities in Ukraine, it is appropriate to draw the following general conclusions.

1. The international convention-institutional mechanism for the observance and protection of the rights and freedoms of persons with disabilities should be understood as a unified and formalized system of legal means, methods and forms provided for by the provisions of international human rights law and special legislation regarding people with special needs, which are carried out by competent international institutions with the aim of implementing, protecting and restoring the violated rights and freedoms of persons with disabilities, as well as a set of legal guarantees of compliance and implementation of international standards for ensuring the rights and freedoms of the specified category of persons by national public administrations.

2. The following functions are inherent to the international convention-institutional mechanism for ensuring the rights and freedoms of persons with disabilities:

- humanistic function - the spread of ideals in the world regarding the promotion and development of respect for the rights of persons with disabilities;
- integration function - promotion of interpenetration of provisions between international law on issues of ensuring the rights and freedoms of persons with disabilities and domestic law;
- law enforcement function – protection and restoration of violated rights and freedoms of persons with disabilities;
- regulatory function – establishment of legal prescriptions regarding the implementation and protection of the rights and freedoms of persons with disabilities, as well as the obligations of national public authorities on defined issues, objectified in international legal acts;
- control function – monitoring of the implementation of relevant international standards into national legislation, as well as control of the fulfillment of international obligations undertaken by national public authorities;
- jurisdictional function – consideration and resolution of cases of violation of the rights and freedoms of persons with disabilities and rendering of a justified court decision;
- coordination function - coordination of actions and adopted decisions of subjects of international law regarding the provision of rights and freedoms of persons with disabilities;
- informational and explanatory function - development and distribution among the relevant member states of international organizations of informational, methodical and other similar materials regarding the means, methods and forms of implementation and protection of the rights and freedoms of persons with disabilities.

The interaction between the subjects of the public administration of Ukraine and the international convention-institutional mechanism for ensuring the rights and freedoms of persons with disabilities is complex and multifaceted, based on the following principles: a) a functional combination of the primacy of international law and the independence of domestic law on the implementation and protection of rights and freedoms of people with disabilities; b) consistency of the goal and objectives of the implementation of the state policy of Ukraine to ensure the rights and freedoms of people with disabilities and relevant international standards; c) coordinated nature of joint actions and decisions taken to ensure the rights and freedoms of persons with disabilities between international organizations and public administration bodies; d) mandatory observance and fulfillment by public administration bodies of international obligations to ensure the rights and freedoms of persons with disabilities.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 673-685
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Humanitarian measures to understand the problems of the physical and psychological integrity of the human personality in conditions of war

DOI: https://doi.org/10.46398/cuestpol.4074.37

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Abstract

The purpose of the research was to analyze the problems of preservation and reproduction of physical and psychological integrity of a person in extreme conditions and, at the same time, to identify the patterns of formation of a complete personality, since today there is a lot of stress, depression and physical fatigue. In extreme situations of martial law and instability, we do our best to overcome the problems of physical and psychological incongruity and personality crisis. The methodology consists in the use of methods such as: analytical, logical, historical, comparative, axiological, which contribute to the identification of problems addressed. The object of the research means or implies a set of humanitarian tasks that correspond to the processes of formation of the integrity of the individual. The novelty lies in the understanding of objective processes of reproduction of physical and psychological integrity of the individual in extreme conditions, including wars, crises, uncertainty, instability, informational similarity, which are analyzed in terms of interconnection, interdependence and development, the overcoming of which contributes to the integrity of the individual and social welfare.

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Recibido el 15/07/22 Aceptado el 28/08/22

Keywords: preservation and reproduction of personality; physical and psychological integrity; social neurology; social intelligence; war conditions.

Medidas humanitarias para comprender los problemas de la integridad física y psicológica de la personalidad humana en condiciones de guerra

Resumen

El propósito de la investigación fue analizar los problemas de preservación y reproducción de la integridad física y psíquica de una persona en condiciones extremas y, al mismo tiempo, identificar los patrones de formación de una personalidad completa, ya que hoy en día hay mucho estrés, depresión y cansancio físico. En situaciones extremas de ley marcial e inestabilidad, hacemos todo lo posible para superar los problemas de incongruencia física y psicológica y de crisis de personalidad. La metodología consiste en el uso de métodos como: el analítico, lógico, histórico, comparativo, axiológico, que contribuyen a la identificación de problemas abordados. El objeto de la investigación significa o implica un conjunto de tareas humanitarias que corresponden a los procesos de formación de la integridad del individuo. La novedad radica en la comprensión de los procesos objetivos de reproducción de la integridad física y psíquica del individuo en condiciones extremas, que incluyen guerras, crisis, incertidumbre, inestabilidad, similitud informacional, los cuales son analizados en términos de interconexión, interdependencia y desarrollo, cuya superación contribuye a la integridad del individuo y al bienestar social.

Palabras clave: preservación y reproducción de la personalidad; integridad física y psicológica; neurología social; inteligencia social; condiciones de guerra.

Introduction

Respect for physical integrity ensures the protection of human life and its integrity. The protection of the human body is secured, in particular, by the Bioethics Act of 1994 (reformed in 2004), which introduced Articles 16 et seq. of the Civil Code. Article 16 of the Civil Code provides that the law ensures the primacy of the person, prohibits any attack on his or her dignity and guarantees respect for the person from the beginning of his or

her life. The Law of 29 July 1994 introduced a new title in the Civil Code «On Respect for the Human Body».

This text creates the legal status of the human body and the great principles of the human body are inscribed in the Civil Code. Other rules can be found in particular in the Health Code. Article 16-1 paragraph 1□□ of the Civil Code provides that everyone has the right to respect for his or her body, forming a legal framework known as «Bioethical Laws».

The law of 6 August 2004 concerning bioethics reformed the laws of 1994 without changing the Civil Code. These laws were to be amended in 2009. The purpose of the 1994 laws was, on the one hand, to protect people from attacks by a third party, against attacks that a person may have on himself. The definition of the human body as a unity of spirit and body, physical and spiritual tempering of human integrity is respect for the physical unity of the human being. The 1994 laws distinguish the human body from its elements and products without defining «human body». The body would be a «fleshly shell». It is proved that elements and products are assimilated with the human body and are its integral part. The principle of inviolability of the human body is respect for the physical integrity of the human being, which implies that the human body is untouchable.

The principle of inviolability of the human body can be compared to the principle of integrity of the human body. The integrity of the human body can be violated only in case of medical necessity of the person or exclusively in the therapeutic interests of others. However, today a big problem is the reproduction of the physical and psychological integrity of the human personality in extreme conditions, conditions of war, instability, crisis, COVID-19, which are necessary for the survival of the individual.

Extreme conditions give rise to depressive states of the human personality, disconnection of the psyche and consciousness, aggressive states, states and inadequacy of human behavior caused by various factors - medical, physiological, mental and psychological, various deviations in the health system of the personality and violation of its integrity, insecurity, danger, instability, the emergence of deep complexes that seek an unhealthy way out for transcendence - such as violent extremism, sects or gangs based on hatred or hostility to the Other.

The generation of the needs of one's own egoic self leads to an imbalance between the spiritual and physical basic needs, a lowering of the demand for spirituality, and, consequently, an underestimation of one's own potential, the search for one's own self. Many individuals who suffer from autism, dyslexia, generalized anxiety disorder, which leads to a violation of integrity, have at the same time passionate hobbies, extraordinary abilities, strive for skill and creativity, strive for many other aspects of their personality.

Therefore, security, love, development, meaning, authenticity, freedom, creativity, liberty, which are the ontological, substantial, existential foundations of human existence, contribute to the integrity of the personality. Today, too many people seek for transcendence without healthy integration of other needs, which harms their full potential. Let's consider social neuroscience as a science of human relations and a deep understanding of the neural dynamics of human interactions in extreme situations and the conditions for the survival of the individual, preserving its integrity, mechanisms for increasing the survival of the individual in extreme situations (Kyrychenko *et al.*, 2021).

The object of research is the phenomenon of the integrity of the human personality in extreme conditions, which requires the preservation and reproduction of its physical and psychological integration in extreme conditions. The object of research includes a set of humanitarian tasks, issues and problems that correspond to the processes of personality integrity.

The novelty of this study is a systematic general theoretical understanding of the objective processes of reproduction of physical and psychological integrity of the personality in extreme conditions, which include war, crises, uncertainty, instability, information scholasticity, which are analyzed in interconnection, interdependence and development (Buhaychuk *et al.*,2022).

1. Materials And Methods

The analysis of such a complex topic as the preservation and reproduction of the physical and psychological integrity of the human personality in extreme conditions is based on the methods, principles and approaches of humanistic psychology, scientific achievements of a number of fields, in particular positive, social, evolutionary, clinical and organizational psychology, sociology, psychology of personality development, cybernetics and neuroscience, in order to understand their behavioral patterns deeply immersed in the search for their own profound "I".

In order to understand fully the problems of preserving and reproducing the physical and psychological integrity of the human personality in extreme conditions, it is necessary to integrate a wide range of methods and approaches, because excessive concentration on one of them creates a danger of distorting the idea of the nature of the human personality, in particular with the methods of research on intelligence, creativity, personality and psychological well-being (Voronkova *et al.*, 2017; Voronkova *et al.*, 2022).

Undoubtedly, the counterbalance to these negative phenomena that are formed in extreme situations are humanistic methods and approaches that seek to reveal the human potential in the search for truth, beauty, connection, knowledge, creativity, originality, destination which are deeply intertwined in the lace of human nature.

In order to do this, one should look into the profundity of one's "I" to feel the richness of one's being, to move away from the "psychopathology of the average", to overcome the syndrome of unfulfillment in this chaotic and torn world that encourages the pursuit of money, a lucrative, dishonest game to gain financial success, which leads to neuroses and neurotic conflicts, the emergence of alienated forms of activity, the emergence of crisis forms of consciousness, leading to the destruction and destabilization of society.

Disorganization processes destroy the stability of the social, generate chaos, in which both the system and the individual are drawn. (Nikitenko *et al.,* 2021) The role of the human factor of error is growing, leading to disasters and turning into a destructive force of modernity; modernization risks lead to threats to health, nutrition, healthy food due to the emergence of an increasing number of modified products.

Therefore, it is no coincidence that philosophers spoke about the "art of being" in this torn and chaotic world, and psychologists were supporters of the "psychology of being", within which there is a systematic study of human goals, not means.

Therefore, humanistic methods and approaches are aimed at understanding the personality as an integrity that dreams of the meanings and meanings of life, combined with the achievement of integrity, aimed at resisting pressure from society, constantly striving for development and self-development, striving for the significance and dignity of one's own life, overcoming the destructive forces of modern life.

It is the systemic method and its principles that help to reveal the integrity of the personality, to achieve balance, orderliness of all systems of its being, distribution of values and resources, achievement of structuredness at all levels of being, autonomy and adaptability to the environment.

The human personality as a system and integrity can grow and set the highest goals if its basic needs are realized, as the humanistic philosopher and psychologist A. Maslow said (Maslow, 2009). The anthropological method as a method of research is based on the study of the human being as a generic being, as a holistic being, which comes from its nature, stable features of its intellect and psyche, sustainability as a biological, social and intelligent (spiritual) being, based on which security and growth as the foundation of the formation of a holistic personality, its healthy transcendence.

Therefore, life is not seen as a climbing to the top, but a journey through the boundless blue ocean, full of new opportunities for finding meaning and discoveries.

Sailing through a life full of adventures is rarely cloudless, the boat itself protects us from the water, but does not protect us from new anxieties, so the sails should help protect a person from anxiety, danger and instability. Undoubtedly, an important role was played by the axiological method, which is based on human values as the highest human goods - connection, security, love, cognition, self-esteem, purpose, which are accumulated in human life as a result of physical survival.

Cognition, love and purpose as axiological values of a holistic personality give rise to synergistic interaction that allows us to grow and become holistic individuals, because it is based on the need for cognition (Dweck, 2017). It gives a person the opportunity to go beyond the boundaries of its components, to master all forms of its being, to become something more than their aggregate, but it is necessary to cope with the axioms of being in its own way. No one can build bridges for you, because you have to go through your life yourself, but for this you have to decode your life, enter the depths of your being in the shortest way, to get to the bottom of your essence.

According to humanistic methods of cognition of the problems of maintaining and reproducing the physical and psychological integrity of the human personality in extreme conditions, a healthy revelation of needs aimed at finding and expressing one's "I" is necessary, because a good and meaningful life is a process, not a state, a direction, not a destination. Therefore, we should constantly go beyond our comfort zone, discover our potential and dive headlong into the whirlpool of life as enriching, exciting, inspiring, because it is creative and meaningful, rich and exciting.

And one of the methods that will help us to comprehend this complex topic is the synergetic method, which is based on self-esteem, self-actualization, self-representation of the personality as a complex integrity of being, which overcomes all difficulties through its self-organization.

The use of such categories of the synergetic method as entropy, the idea of threshold effects, bifurcations, order parameters, principles of minimal dissipation (energy dissipation), synergetic resonance and unpredictability of the complex social systems development allowed to study the object - the phenomenon of the integrity of the human personality in extreme conditions, which requires the preservation and reproduction of physical and psychological integrity in extreme conditions.

General philosophical methods - the method of analysis and synthesis, the method of interconnection, the method of abstraction and transition from the concrete to the abstract and from the abstract to the concrete, the

method of historical and logical, the method of comparison, the institutional method and others helped us to reduce all the fragmented empirical data to a coherent concept.

One of the methods is Agile-method (method of flexible management), which tries to explain the crisis of existence and uncertainty of organizations, promotes the transfer of the system to the optimum of existence, for which both organizations and individuals should be adaptive, stable, effective.

The supernew time has called to life new categories - information, Datasphere management, Big Data law, data mining, creative digital technologies, digital society and digital man, which are characterized by the intensification of human communication capabilities in the space of personality demand (Swaab, 2019).

2. Results And Discussions

1 Social neuroscience as a science of human relations and profound understanding of neural dynamics of human relations in extreme situations

The analysis shows that a recently discovered class of neurons - spindle cells that guide sudden social decisions - is more numerous in the human brain. Another kind of brain cells are mirror neurons, which anticipate another person's movements and feelings and instantly adjust us to the same movement and feelings. Each of these discoveries demonstrates a different aspect of the "social brain", the neural system that works during interaction.

Today, this science has come so far that it is possible to comprehend how the brain can help humans act in extreme situations. Scientists have found links between being involved in toxic relationships and increasing stressful situations and raising stress hormones to levels that harm genes which control anti-virus cells.

The social brain is the sum of neural mechanisms that govern our interactions, thoughts and feelings and adjusts us to the inner state of people. The ways of the social brain are unique to the human world in general. In fact, chronic pain and anger or emotional nourishment can reconfigure our brains, often leaning towards negativity or positivity, and can generate empathy or worry (Goleman, 2020).

Relationships between people make us re-evaluate our lives, as every interaction has an emotional subtext. Today, there is even a concept of «emotional economy», which every person should work on, develop it, save, develop social skills, make social fine-tuning for coexistence in the society as a whole, as sociality offers people a winning strategy, and sociability will help everyone to survive in difficult extreme conditions.

During empathy, our thoughts are equal to the thoughts of another person. From a cognitive point of view, we have a common mental «mirror», a set of images, associations and thoughts, and our brains are programmed for kindness.

The components of social intelligence can be organized into two broad categories: 1) two broad categories: 1) social knowledge (what we feel about others); 2) social ability (what we then do with that knowledge). Social cognition is the knowledge of how the social world actually works, it is the ability to find solutions to social dilemmas in the extreme conditions of human existence. The moment when empathy becomes mutual has a particularly rich resonance in the relationship of «I» and «You» (Voronkova, 2016a). The state of life is strongly influenced by stresses that give rise to various psychological disorders that have a negative impact on human health and give rise to ambivalent relationships. Medical science has recognized a biological mechanism that directly links toxic relationships with heart disease, determined by various extreme situations.

Feeling helpless adds to stress, people take threats worse when they cannot do anything about them. As we age, our health inevitably deteriorates, as cells age and die, the immune system and other bastions of good health do not work as well. American scientists have found that the greater the emotional support from other relationships, the lower the rates of biological stress, when older people have excellent supportive social lives, they show better cognitive abilities up to seven years longer than those who are more isolated.

The complexity of a person's social environment stimulates learning by accelerating the formation of new brain cells. Emotional burnout in relationships has its biological consequences. The more anxiety we feel, the worse is the cognitive performance of the brain.

So, we conclude that social intelligence is one of those human abilities that contributes to the survival of the human race in extreme situations. The main functions of the social brain are the synchronicity of interaction, varieties of empathy, social cognition, interaction skills and concern for the survival of others in extreme situations of war, instability, crisis.

New discoveries in neuroscience have the potential to revitalize the social and behavioral sciences. Emotional intelligence can be a backup mechanism when social intelligence fails. It is time to revive social intelligence along with emotional intelligence. If emotional intelligence is self-awareness and self-management, social intelligence is social awareness, social ability or relationship management.

3. Brain diseases and the environment in extreme conditions

A. Depression. Genetic factors that switch the stress system in extreme conditions play an important role in the occurrence of depression. Genetic configuration makes a child more vulnerable to environmental factors, which leads to stronger stressful situations. Powerful stress caused by war, instability, crises, epigenetic changes (changes in DNA caused by environmental factors), which can cause high levels of depression, disruption of consciousness, ambivalence of approaches to understanding phenomena and processes, can lead to a constantly high activity of the stress system. When certain events occur in a person's life, to which they react with anger or sadness, this excessive reaction of their stress system contributes to the fact that the person falls into depression (O'conor and Mcdermott, 2018).

Over time, it can be cured, but the sensitivity to environmental factors remains unchanged and often leads to a relapse. The cause of depression lies in the disorder of brain areas or in the environment, which brought unfavorable critical extreme situations.

Mental predisposition to a particular mental illness must first manifest itself in the form of other mental or neurological problems. Manic-depressive disorder includes important genetic components that manifest themselves in the form of various symptoms, such as sleep disorders, hyperactivity, phobias, personality disorder (strange or eccentric behavior), mood disorders and the appearance of manic phases of depression. In persons who are prone to depression, the depressive state arises as a result of a violation of the physical and psychological integrity of the human personality, especially in extreme conditions, leading even to manic depressive disorder.

The brain is active to free itself from the captivity of depression by changing the activity of certain parts of the brain. Cognitive behavioral therapy has proven to be an effective way to treat depression, for which the patient must learn to turn negative thoughts into positive ones. Internet therapy and acupuncture can also contribute to the fight against depression. It would be best to combine light and motion therapy (Diamandis and Kotler, 2021).

B. Suicide is a major problem that is considered as a human risk factor arising from the violation of the physical and psychological integrity of the human personality, especially in extreme conditions of life. In the Netherlands, 2.5 times more people die by suicide than on the roads. In China, three times more people commit suicide than in the Western world, although according to official statistics, the number of depressive disorders is only 39% of all cases in the West. Inadequate treatment of depression has been raised as a possible explanation for China's high suicide rates.

The gap between rich and poor is deepening, the cost of living is constantly rising, and good health insurance covers only part of the cost of treatment. The number of suicides of the elderly is rapidly increasing because of the above. Literally deadly competition contributes to these statistics, the most important factor of suicide is mental disorders in extreme situations, depression, schizophrenia, post-traumatic stress disorder of soldiers during the war, borderline personality disorder, traumatic experience in childhood or adolescence.

Epigenetic mechanisms, feelings of isolation and discrimination, previous suicide attempt, war and disasters (loss of a partner, alcohol, drugs, breakup, social oppression, etc.) The increase in the number of suicides over the past years is associated with the economic, banking crisis and war, and also primarily among older people. Most suicides occur in spring and in the first months of summer. In most cases, suicide is also associated with mental disorders, violation of the physical and psychological integrity of the human personality. Some patients with depression or psychiatric problems are inclined to suicide, in China three times more women die by suicide than men (Dixon, 2021).

C. Schizophrenia. The interaction between genetic and environmental factors plays a crucial role in the development of schizophrenia. Schizophrenia is a severe and chronic mental disorder that belongs to the group of psychotic disorders. It usually manifests itself in early adulthood (approximately between 15 and 30 years). Like other psychoses, schizophrenia is manifested by a loss of contact with reality and anosognosia, i.e., the person suffering from it is not aware of their illness (at least in the acute phase). Due to this fact, it is difficult for a person with schizophrenia to accept the diagnosis and adhere to medication therapy.

The first symptoms detected by others concern changes in the sensory process (hallucinations, which can manifest themselves in all sensory areas) and the functioning of thinking (delusions or obsessions, such as ideas of exile, greatness, persecution, etc.), or disorganized thinking), often accompanied by behavioral disorders. A person may hear voices criticizing him or commenting on his actions (auditory hallucinations). He or she may see objects or entities that are not actually there (visual hallucinations).

He or she may attach eccentric meanings to elements of the environment or believe that they are directed at him or her, beyond any logical connection. Typically, the schizophrenic patient has the impression that he or she is being controlled by an external force, that he or she is no longer in control of his or her thoughts, or that he or she is the object of a conspiracy with an uncertain purpose. Less obvious but equally disabling are negative-type symptoms, especially voluptuousness and reduced emotional expression (Kaufian, 2021).

Schizophrenia is usually accompanied by impairment of cognitive functioning (impaired attention, working memory, executive functions), affective and social functioning (reduced emotions, affective inversion or emotional lability with a strong impact in relationships with others). Disorders affect the attitude to one's body, emotion regulation, ability to perform or plan goal-oriented actions, will.

The causes of schizophrenia and factors that trigger or accelerate acute phases remain poorly understood. In patients with schizophrenia, the use of drugs, alcohol and invasive social or emotional stimulation accelerate the acute phase of the disease. According to the World Health Organization, patients with schizophrenia experience human rights violations both in psychiatric institutions and in the community. The stigmatization of this disorder is high. This contributes to discrimination, which in turn can limit access to general health care, education (Voronkova, 2016b).

Conclusions

In the occurrence of brain morbidity among the factors, the interaction between genetic and environmental factors is highlighted. In general, the environment, and especially the extreme (stressful) conditions of human existence in the modern world, affect the occurrence and course of brain diseases and the emergence of an increasing number of such diseases.

Practical recommendations for the preservation and reproduction of the physical and psychological integrity of the human personality in extreme conditions are made. The term "development" on a global scale means the evolution and optimal deployment of the potential opportunities available to each child individually.

This term includes maintaining or preserving the physical integrity of the child, ensuring its safety. However, the main thing is to move from disease to health, and for this, an extensive healthcare system of the digitalization era is working today, as the system itself is being treated, as well as patients. Work should be proactive, not reactive, doctors act after the fact, often fighting ineffective, expensive and absurd battles.

Nevertheless, changes are happening and they relate to technology: robotics, 3D printers that change the nature of medical procedures, artificial intelligence, quantum computing, genomics, early diagnosis of diseases, overcoming cellular aging, editing the genetic code with breakthrough technologies, cellular medicine, new drugs for cancer and old age, the call of the source of youth. Medicine does everything to save a person at the earliest stages of his life, creates conditions for longevity and healthy human life.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 686-6
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Formación de una perspectiva de identidad y conciencia como base cívica de la nación

DOI: https://doi.org/10.46398/cuestpol.4074.38

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Resumen

El propósito del estudio es fundamentar el concepto de cosmovisión nacional, que subyace a la unidad efectiva de una persona con su Estado. Actualmente, se están llevando a cabo acciones decididas en Ucrania dirigidas contra la condición de ser Estado soberano, amenazando la integridad territorial del país, la identidad nacional y su infraestructura. El renacimiento del sentido de nación se considera una tarea importante de la juventud, ya que es la base del amor a la comunidad nacional de la que se es parte. El presenta trabajo se constituye en un ensayo próximo a la filosofía política. Se concluye que, en condiciones de crisis e incertidumbre, aumentan los requisitos para la formación de una cosmovisión de sentido de país, cuyo desarrollo se basa en el beneficio del pueblo de Ucrania como un Estado social democrático, dispuesto a formar una sociedad responsable. Definitivamente, la cosmovisión cívica es parte integral de la idea holística de la consolidación educativa de la sociedad, que incluye la amplitud de la comprensión de las fronteras del país, el grado de amor por los conciudadanos, la buena voluntad y la conciencia de ser parte de organismo social único propio, la nación ucraniana.

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Recibido el 17/07/22 Aceptado el 21/09/22

Palabras clave: identidad nacional; conciencia historica; comunidad; seguridad nacional; consolidación educativa de la sociedad

Formation of a perspective of identity and conscience as the civic basis of the nation

Abstract

The purpose of the study is to substantiate the concept of national worldview, which underlies the effective unity of a person with his state. Currently, purposeful actions are being carried out in Ukraine directed against the sovereign statehood, threatening the territorial integrity of the country, national identity and its infrastructure. The revival of the sense of nationhood is considered an important task of the youth, as it is the basis of love for the national community of which one is a part. The present work is an essay close to political philosophy. It is concluded that in conditions of crisis and uncertainty, the requirements for the formation of a worldview of sense of the country, the development of which is based on the benefit of the people of Ukraine as a social democratic state, ready to form a responsible society, increase. Definitely, civic worldview is an integral part of the holistic idea of educational consolidation of society, which includes the breadth of understanding of the country's borders, the degree of love for fellow citizens, goodwill and awareness of being part of own unique social organism, the Ukrainian nation.

Keywords: national identity; historical consciousness; community; national security; educational consolidation of society.

Introducción

La identidad nacional junto a la conciencia histórica se analiza, en su conjunto, como la cualidad sistémica de un organismo, desplegada dentro de las características del mundo social y del potencial subjetivado de un individuo capaz de transformarse en una cualidad renovada: la naturaleza social del hombre. La relevancia del estudio radica en el hecho de que miles de millones de parámetros cerebrales nacionales son la expresión de la adaptación a la historia, los padres y la tierra natal. Estas características se objetivan para formar una cosmovisión nacional única, con nuevos valores, y características cualitativamente modernas en relación con el mundo exterior.

Formar una cosmovisión de identidad nacional y conciencia histórica, en cada persona, es un problema urgente y práctico que juega un papel importante para el individuo, el Estado y la historia, por lo que la educación nos enseña cómo adaptarnos debido a los complejos heredados de nuestros padres.

La historia, el pasado histórico único, la tecnología educativa en la escuela, que tiene como objetivo amar a la comunidad de la que se es parte fundamental: familiares, distrito, padres e idioma, deviene en patriotismo no chovinista, como factor en la consolidación social que revela los intentos humanos de absorber todos los valores diferenciales de la cosmovisión; tales como: el amor por la tierra natal, la gente, la asimilación de sus prácticas, discursos y representaciones.

Por las razones aludidas, la pedagogía es un privilegio humano, basado en la combinación de una multiplicidad de saberes, que se conjugan para el logro de la estabilidad y la consolidación social, para lo cual, debemos desarrollar significativamente la capacidad cerebral, llenándola de la mayor cantidad de información valida, que se traduzca en habilidades y destrezas para la vida cotidiana, en beneficio del capital social en general.

Todo indica que, la identidad nacional en su dimensión material y simbólica se ha moldeado dialécticamente a lo largo de miles de años, perfeccionando las facetas de los factores objetivos y subjetivas que contribuyen al crecimiento personal y a la cohesión social que actúan, a su vez, como un diamante pulido, moldeado a lo largo de generaciones. Por su parte, la conciencia histórica es un acelerador de la inteligencia nacional extremadamente importante, que heredamos de nuestros padres, formado por escuelas, universidades y trabajo en la industria. No es sorprendente que, en los países desarrollados avanzados, la educación sea un gasto importante porque da forma a la identidad.

Casi todos los despegues de la civilización humana se deben, en buena medida, a la capacidad de una sociedad determinada para valorar y fomentar su ciencia, sus descubrimientos, su nación, las habilidades de su gente, lo que resulta en el desarrollo de la escritura, el arte, el amor por su tierra, el fervor multiplicador, la voluntad legitima de defender la independencia de la nación. En este orden de ideas, la comprensión de la identidad nacional está determinada, en este caso, por el orden social de la nación ucraniana en la preminencia de la educación, cuya esencia se concreta en el «Programa Nacional Estatal «Educación» (Ucrania, siglo XXI).

Mas específicamente, el objetivo del ensayo consiste en conceptualizar nuevas reflexiones científicas sobre la formación de la identidad nacional, como factor de consolidación de la nación mediante la promoción de la historia de la tierra nativa, estableciendo las posibilidades de la experiencia de aprendizaje significativo a través del contexto del espacio educativo, que conjuga un conjunto de herramientas didácticas y pedagógicas.

1. Discusión del problema

Como muestra el análisis, la identidad nacional no es solo el amor por la historia propia y el país, implica, además, la voluntad de levantarse para protegerlo, el trabajo concienzudo de cada persona. La formación de una cosmovisión nacional específica incluye un aparato tanto conceptual y categórico: un ciudadano activo de su familia, su universidad, empresa, un amante de su pequeña patria y de todo el país. Los pueblos con una arraigada identidad nacional son aquellos que aprovechan cada oportunidad para hacer feliz a su comunidad, que viven con optimismo, que desarrollan soluciones racionales en lugar de críticas indiscriminadas. Por lo tanto, una cosmovisión patriótica consolida la sociedad, contribuye a la integridad morfológica de la sociedad y determina la necesidad social de una nueva forma de actividad vital.

Sin un sentido profundo de conciencia histórica en la década de 1990, las peores situaciones comenzaron a aparecer en la sociedad: indiferencia, egoísmo, individualismo, cinismo, agresión y falta de respeto por el Estado y sus instituciones sociales. Asimismo, el prestigio del ejército se erosionó y, lo que es peor, el fenómeno del nacionalismo se ha mezclado y la cuestión nacional se ha exacerbado.

Recientemente, la identidad nacional ucraniana ha ido creciendo, pero la necesidad de educar este sentimiento para perfilar la conciencia nacional de los jóvenes, como la base de la sociedad y, el fortalecimiento de la nación soberana e independiente, sigue siendo bastante relevante muchos más en tiempos de guerra, donde una potencia exterior amenaza nuestra existencia. Debido a este contenido moderno de cosmovisión patriótica a nivel local, los educadores fomentan ritos históricos y culturales locales para fortalecer las tradiciones nacionales, la unidad material y simbólica de la nación, la personalidad humana, la «comunicación global».

La efectividad de la experiencia cognitiva, al menos en el plano de lo colectivo, significa comprender las fortalezas y debilidades de la conciencia nacional, porque todos deben conocerse a sí mismos, como decían los antiguos filósofos griegos: "Conócete a ti mismo y conocerás el universe".

Los científicos modernos han analizado que la mayoría de los estereotipos tienen un origen histórico: un evento que una vez sucedió e influyó en la formación de alguna impresión, es simbolizado por un rastro de recuerdos positivos o negativos y se superpone a la representación de la generación moderna, pero el hombre en su dimensión holística debe convertirse en un sujeto de la «noosfera» (Voronkova *et al*., 2022).

Por lo tanto, el ámbito de la conciencia histórica es la corriente de reflexión del sistema nervioso de la sociedad en el tiempo, de su *think tanks*, de sus memorias de la historia del Estado, de los duros pasos hacia

la independencia. De modo que, la identidad nacional se caracteriza por una conciencia de las influencias internas y externas; la posibilidad de una respuesta colectiva de cara a la acción histórica; la posibilidad de autodesarrollo y autorrealización; la tendencia a la responsabilidad solidaria y a la realización continua del inconsciente colectivo.

Según el investigador O. Prosina, la formación de la cosmovisión nacional entre los jóvenes de Ucrania debe corregirse en las condiciones específicas del período moderno. Dependiendo de las condiciones específicas de una región, ciudad, distrito o aldea en particular, hay un énfasis en la formación de programas nacionales, actos legislativos y regulatorios que resuelven los problemas de formar una cosmovisión inclusiva, poliétnica y multicultural.

La formación de la cosmovisión cívica para los jóvenes permite, al menos en Ucrania, implementar el concepto de educación nacional-patriótica en los estudiantes, que consiste en el objetivo, el contenido, los componentes de resultados, tales como: valorar la actitud de los estudiantes hacia la sociedad; utilizar tecnologías innovadoras de la dirección nacional-patriótica; para monitorear el sentido de conciencia e indetidad de los estudiantes en la región oriental de Ucrania y la formación de actitudes de valor de estos hacia la sociedad y el Estado (Prosina, 2016).

Llevar a la generación más joven a los valores civiles y ciudadanos de su desarrollo moral, intensificando el estudio de la historia, que conecta con los eventos más importantes en la vida colectiva de las personas, estas son, en síntesis, las principales direcciones del trabajo educativo, siendo al mismo tiempo una opinión, una visión, una intención, una cierta manera de ser y hacer en el mundo. Formar una cosmovisión cívica contribuye con todo el proceso educativo (Prosina, 2016). La formación de sentimientos nacionales constructivos a través de diversas medidas, la popularización de los símbolos nacionales, la participación en diversos eventos patrióticos, es una de las formas de consolidar la nación política ucraniana.

En nuestra opinión, en primer lugar, se debería elevar el estatus de la identidad nacional en la sociedad ucraniana y, especialmente, en el sistema educativo para fortalecer las funciones pedagógicas de las Instituciones de educación superior; implementar el conocimiento de las tradiciones nacionales, en conexión dialéctica con el mundo moderno y la experiencia educativa doméstica, con la ciencia psicológica y pedagógica que busca desarrollar tradiciones regionales y locales, que incluyan características territoriales, sociales y nacionales, coordinándolas con sus necesidades, objetivos, para reestructuran el mecanismo de implementación de la cosmovisión nacional.

En términos de modernidad, la indetidad nacional no es solo un amor por la historia de nuestro país, sino también una voluntad de defenderlo. Es el trabajo concienzudo de todos nosotros.

La formación de una sólida identidad nacional consolida la sociedad, por lo que los educadores deben moldear el comportamiento mental del niño. R. Descartes dijo, en su momento, que el sistema nervioso de un niño debe contener ciclos que procesen la información visual y la conviertan en principios establecidos que sirvan como actitudes hacia la realidad, preparando a los estudiantes para la acción, basados en el amor por su tierra, su historia.

Los investigadores y educadores en ejercicio están buscando activamente formas de forjar la cosmovisión nacional entre los jóvenes de hoy. Para tal fin, desarrollan diferentes métodos y medios; pero son unánimes en lo principal, en la base espiritual de la conciencia histórica. Por lo tanto, el contenido moderno de la educación subsume a nivel local, la enseñanza de las tradiciones históricas y culturales (Andruschenko y Rudenko, 2011).

Por un lado, el estudio de las historias locales y regionales es necesario para revivir las tradiciones nacionales y; por otro, significa un entendimiento de que no hay "patria-estado" sin una "patria-cuna", "patria-madre", como el lugar donde creció el individuo, como resultado de lo cual comienza a formarse una nueva actitud hacia uno mismo, la sociedad y el medio ambiente.

Aprendiendo a respetar y apreciar los símbolos y rituales propios, las tradiciones populares locales y preservando la cultura regional de la gente, el joven aprende a apreciar Ucrania, reconocer los valores culturales e históricos de todas sus regiones y, también, a esforzarse por el manteamiento del compromiso histórico entre Oriente y Occidente, en el diálogo de sus culturas e identidades (Afanasyeva *et al.*, 2018).

La formación de una cosmovisión nacional debe ser el núcleo de toda práctica educativa, porque debemos formar una persona que se enorgullezca de su pais, cumpla concienzudamente con los deberes públicos, sea consciente de los problemas sociales de la nacion y del pueblo ucraniano, y ame a su pueblo nativo. Sin esta forma de conciencia, una persona se pierde a sí misma. El civismo ucraniano debe convertirse en la idea principal de la educación moderna, implementada en clases y en las actividades extracurriculares.

Después de todo, fortalecer la identidad nacional es configurar sus parámetros de modelo interno teniendo en cuenta los datos en cada nivel jerárquico, cuya viabilidad está asegurada por el *metabolismo social de su existencia en la sociedad*. La conciencia histórica actúa como la vitalidad de una nación, por lo que un verdadero ciudadano representa las cosas que fortalecen y desarrollan al país y repele todo aquello que la destruye o daña (Voronkova, 2009).

En síntesis, la identidad nacional se expresa de forma individual y grupal, significa una cosmovisión patria de la mano con una educación

integral que multiplica el número de ciudadanos activos dispuestos a construir (cotidianamente) sus propios espacios para la convivencia. En lo epistemológico y ontológico, en el núcleo de toda identidad nacional se extienden complejos procesos del ser humano en el entorno individual, social, educativo, llegando a la vanguardia del sentido de pertenencia, dando lugar al proceso educativo de formación de una nueva personalidad con pensamiento creativo y cosmovisión holística.

2. Principios de la identidad nacional

Los principios de la indetidad nacional incluyen:

1. Honrar el lugar de nacimiento y residencia permanente como lugar para el desarrollo del ser. Respeto por las tradiciones locales. Dependiendo de la percepción de su lugar de nacimiento, para una persona la nacion puede extenderse desde el área de la propia casa: patio, calle, municipio, ciudad, hasta escalas distritales, regionales y territoriales.
2. Respeto por sus antepasados y por los ciudadanos que viven en el territorio; deseo de promover la integración con la comunidad mundial. El índice más alto de este parámetro es la buena voluntad hacia todas las personas y seres vivos que son ciudadanos, junto a la conciencia de ese organismo social llamado en todo el mundo "Estado nacional".
3. Desarrollar actividades cotidianas concretas en este horizonte vital para mejorar el estado de cosas del país. La ayuda y la asistencia mutua de las personas (desde mantener el orden, la limpieza y el fortalecimiento de la amistad con los vecinos, hasta el desarrollo digno de la ciudad, distrito, región y país) sobre la base de las pautas de la racionalidad, globalidad y diálogo intercultural.

Por lo tanto, la amplitud de la comprensión de los límites materiales y simbólicos del país, el grado de amor por los ciudadanos, su lista diaria de acciones destinadas a apoyar el territorio y sus habitantes, todo esto determina el grado de identidad y conciencia de un ciudadano decente y es asimismo un criterio cualitativo para la convivencia.

3. Educacion, identidad y conciencia

Por lo demás, la participación de la generación más joven en los valores civiles, su desarrollo espiritual a través de las actividades experienciales de los estudiantes para comprender los desafíos del pasado y el presente

nacional, son las principales direcciones para formar una cosmovisión a la altura de las circunstancias más difíciles. Esta cosmovisión contribuye al éxito de todo el proceso educativo y permite, al mismo tiempo, transformar el tiempo y espacio del cual se forma parte.

Una de las tendencias en el desarrollo de la formación de la identidad nacional, en la educación moderna, debe ser el desarrollo del «civismo activo», fomentando las actividades de excursiones, vacaciones, competiciones deportivas, competiciones de revisión, olimpiadas, museos escolares, exposiciones temáticas, exposiciones de arte infantil, exposiciones de libros, proyectos, informes, obras creativas colectivas, festivales o viajes turísticos, etc., que deben culminar en la creación del modelo ideal del siglo 21 de la persona comprometida con su entorno y sensible a sus principal problemas (Voronkova, 2009).

La formación de sentimientos proactivos mediante distintas actividades, la popularización de los símbolos nacionales, a través de la participación en diversos eventos de contenido patrio es uno de los medios para consolidar la nación política ucraniana. En nuestra opinión, en primer lugar, deberíamos elevar el estatus de la formación de la identidad nacional como eje trasversal en el sistema educativo; fomentar el festejo de las tradiciones nacionales; utilizar la experiencia educativa mundial y doméstica, así como la investigación de la psicología y pedagogía en el área de la conciencia histórica; promover sistemas de cosmovisión regional y local que tengan en cuenta las características territoriales, sociales y nacionales y; potenciar el papel de la familia en la educación de los chicos.

Por lo tanto, la etapa básica en la formación del amor de los jóvenes debe considerarse la acumulación de la experiencia social al vivir en su Estado-nacion y asimilar las normas establecidas de comportamiento y relaciones, que se interpreta como el entorno de creación y reproducción de la vida ancestral.

Si consideramos la indetidad nacional a través del concepto de «actitud», podemos distinguir varias direcciones:

1) actitud hacia la naturaleza de la tierra nativa, país nativo;

2) actitud hacia las personas que viven en el país nativo;

3) actitud hacia los valores morales, tradiciones, costumbres, cultura;

4) actitud hacia la estructura estatal (Voronkova, 2017).

Figura 1. Representacion de la estructura de los sentimientos nacionales, que deben encarnar los estudiantes formando su propia actitud (Voronkova *et al*., 2020).

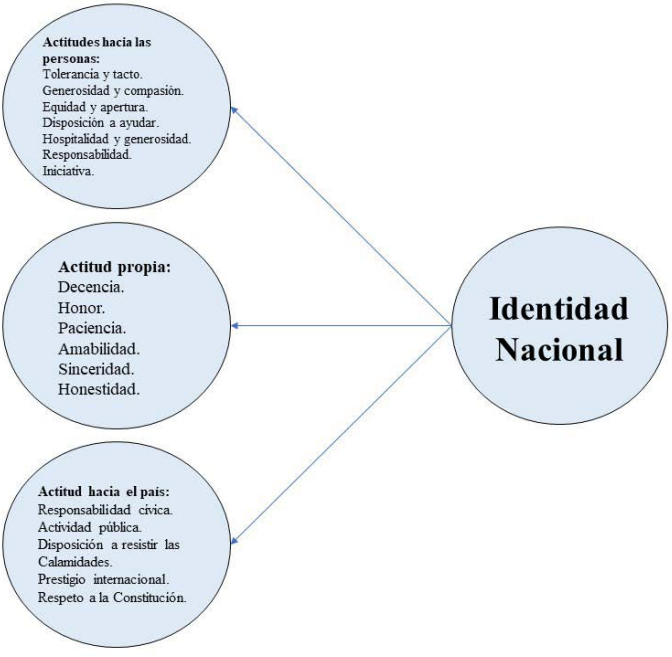

Fig.1 Estructura de los sentimientos propios de la indetidad nacional. Fuente: elaboración propia.

Cada una de estas áreas puede convertirse en el contenido de actividades educativas con niños y jovenes. Todas contribuyen a la socialización del individuo, formándose como sujeto activo del proceso cultural e histórico del que forma parte. Es imposible hablar de cultivar el amor por la nacion y proporcionar a los niños ciertos conocimientos al respecto.

La cuestión de apoyar una cosmovisión nacional está ligada a un sentido de identidad y conciencia dificil de explicar, que está experimentando importantes desafíos en el contexto de los procesos de globalización del mundo. Como señaló Voronkova (2020: 74): "La formación de la identidad nacional en el mundo de la globalización es un proceso extremadamente complejo y contradictorio en todas las esferas de la vida: económica, política, financiera, pedagógica, psicológica" y revela propiedades ancestrales humanas como el altruismo, el amor, el respeto por la personalidad humana, la capacidad de ser y hacer y la moralidad (Metelenko y Voronkova, 2020).

La formación definitiva de la identidad nacional es la creación de condiciones a través de las cuales se realiza la influencia de todos los factores educativos y otros factores en el proceso de formación, desarrollo y autorrealización personal. Implica la posibilidad de crear un sistema de educación integrador de la persona del siglo XXI. Es el espacio donde se lleva a cabo el proceso de crianza de la personalidad, que determina su aspiración y carácter, mejorando los contenidos, componentes, funciones, criterios, principios y condiciones educativas en general.

El área del espacio de crianza es más amplia que el sistema educativo, cubre y une los intereses de todos los sujetos de la sociedad: público, autoridades, medios de comunicación, organizaciones públicas e instituciones públicas, organizaciones involucradas en el proceso de educación, a nivel regional, para apoyar a las organizaciones juveniles; organiza la cooperación y coordinación con las organizaciones públicas ganadas a fomentar la identidad nacional.

El análisis de la literatura filosófica, psicológica y pedagógica da razones para afirmar que la formación de la identidad nacional significa, al decir algunos científicos: "La formación de una persona armoniosa desarrollada, altamente educada, socialmente activa y consciente a nivel nacional, dotada de profundas cualidades intelectuales, creativas y espirituales. Trabajo duro, espíritu emprendedor e iniciativa" (Metelenko y Voronkova, 2020: 173).

Además, la formación de la conciencia histórica, que representa entender los desafíos del tiempo y espacio en el que se está inmerso, tiene un impacto psicológico y pedagógico dirigido al desarrollo de las cualidades personales de los jóvenes para formar orientaciones de valores, patrones de comportamiento socialmente aceptables, adquirir habilidades para la realización personal y la participación en procesos democráticos, del espacio público.

En consecuencia, se propone a la identidad nacional como concepto multifacético implementado de manera integral, en todos los niveles del proceso educativo, como una idea transversal, a saber, mediante: cursos de educación cívica, la presencia de un clima democrático, un tiempo libre organizado de cierta manera, la participación de los jóvenes en las actividades de las organizaciones comunitarias locales y la comunidad local.

La base de la educación de los sentimientos nacionales, es el ideal de un ciudadano dispuesto a defender los valores y tradiciones propios de su cultura. Por lo tanto, es importante averiguar cuál es la esencia de la cosmovisión personal y cuáles son las condiciones para su formación. Se sabe que la cosmovisión de la personalidad es una forma de su autodeterminación, en primer lugar, que se expresa en la autoconciencia civil. De modo que, es aconsejable también analizar la esencia de la

formación de la cosmovisión en una serie de aspectos: el contenido de la cosmovisión; formas y estados psicológicos en los que una persona asimila este contenido. Las actitudes sociales determinan las actitudes personales y viceversa: la actitud hacia el trabajo, hacia el deber cívico, hacia el país, hacia los conciudadanos, es decir, la posición de vida del individuo.

La formación de actitudes personales: este es el resultado final de la asimilación de las ideas de la cosmovisión nacional, la educación de los sentimientos y, al mismo tiempo, el requisito previo más importante para la asimilación de los ideales, el desarrollo de los puntos de vista personales, las creencias. Por lo tanto, uno de los problemas pedagógicos básicos es la formación de altos intereses morales y la orientación de valores para la convivencia.

Con base en la literatura psicológica se descubrió que la educación de la conciencia histórica de los jóvenes puede considerarse como una actividad sistemática, integral y propositiva de las autoridades públicas, las organizaciones públicas, la familia, la escuela y otras instituciones públicas para formar en los jóvenes identidad, amor a la nación, así como la disposición a cumplir con su deber civil y constitucional relacionado con la protección de los intereses de la sociedad.

Es necesario formar en la generación joven no un patriotismo subconsciente, sino uno espiritualmente significativo, reflexivo, que combine un amor apasionado por su pueblo, su país, con un sentido de la proporción y el respeto por otros pueblos (Kulchitsky, 2018). El propósito de la educación que se propone de la generación más joven es establecer a los futuros profesionales como ciudadanos-activos de Ucrania, aquellos que deberían ser los únicos interesados en el deseo de verla como un Estado fuerte, poderoso e independiente.

El trabajo educativo que se anhela es esa actividad, cuyo contenido está dirigido al cuidado de la generación más joven, así como a la creación de condiciones para el desarrollo, la transferencia de conocimientos necesarios, la formación de la cosmovisión y las normas de comportamiento adecuados (Kyrychenko *et al.*, 2021). Cabe señalar que los macros, mesa y microfactores de socialización, determinan entre los factores de influencia externa en la educación del civilismo personal.

Analizando la influencia de los mesofactores, el científico L. Nikanorova señala que la formación de una personalidad implica el surgimiento de su propio mundo de vida dentro de los factores culturales y morales. Dos factores: los mecanismos de formación espiritual y moral de un individuo mismo, su propio mundo de vida y la actividad cultural, que indican las posibles facetas de dicha formación (Carta de MES de Ucrania del 16.08.2019 No 1/9-523) están determinando en el surgimiento y la formación definitive de la conciencia.

Una gran influencia en la personalidad es prestada por los microfactores de socialización, en particular las características de la educación familiar, la formación en la escuela y la comunicación con los compañeros.

Es en los sistemas sociales que la personalidad se convierte en un microsistema, una unidad estructural de la sociedad, y el proceso de educación actúa como fuerza sociopedagógica, dirigida en cada momento a la formación de un microsistema integral (interno y externo). Por lo tanto, la formación del civilismo en los niños será más efectiva solo si se tienen en cuenta las características psicológicas individuales del estudiante en interacción con los microfactores externos de la socialización.

4. Bases ideológicas de la educación

La base ideológica de la educación para la identidad nacional y la conciencia histórica en una escuela moderna son los valores morales, espirituales y cívicos de la nación. La esencia de la educación para la vida en las condiciones modernas puede interpretarse como el desarrollo de un sentido de personalidad, conciencia y respeto, basado en los valores espirituales humanistas de su pueblo (Oleksenko *et al*., 2021).

Dependiendo de la composición y la integridad de las cualidades formadas de la personalidad, su dirección y posición moral, hay niveles de educación de una persona joven, que se basan en los criterios e indicadores anteriores:

- Bajo nivel de educación cívica: interés superficial en todo lo ucraniano, conocimiento insuficiente de la historia del país, falta de comprensión del alcance y significado de la cultura de su pueblo; falta de responsabilidad por el futuro de su país, manifestación de una actitud indiferente hacia el aprendizaje, la capacitación, los deberes cívicos, la tendencia a romper la disciplina, la falta de deseo de autoeducación; la exhibición pobre de sentimientos de solidaridad; el conocimiento pobre de la esencia de los conceptos nacionales.
- El nivel medio de educación civica se observa en aquellos jóvenes que son conscientes de su identidad nacional, muestra un nivel suficiente de conocimiento de la lengua, la historia, la cultura, pero tiene un interés superficial en todo lo ucraniano, participa en actividades educativas sobre educación nacional sólo por instrucciones del maestro; aún no es plenamente consciente de la necesidad de contribución personal al desarrollo del Estado ucraniano, de la cual depende su future.

- Alto nivel demuestra la actitud concienzuda de los estudiantes hacia el aprendizaje, la autoeducación, expresada en el deseo de superación moral y física, el deseo de ser *útiles* a su familia, sociedad, pueblo y al país, para proteger los intereses nacionales y se caracteriza por una posición cívica activa (Oleksenko *et al*., 2021)

Los problemas de la educación cívica de los ciudadanos de Ucrania y, en particular, de los estudiantes son extremadamente relevantes en la etapa actual de desarrollo de nuestro Estado. En el contexto de un mayor desarrollo de la sociedad, existe la necesidad de formar una personalidad socialmente activa y creativa de un estudiante-ciudadano, cuyas actividades en el futuro dependerán en gran medida del desarrollo espiritual y el bienestar del Estado ucraniano (Afanasyeva *et al*., 2017).

Una definición clara de los ideales de la educación cívica y las orientaciones de valor de los estudiantes ayudarán a optimizar esta importante dirección de la educación y superar los fenómenos negativos en la conciencia pública. En particular, la falta de algunos jóvenes de una cosmovisión clara sobre el comportamiento y la actividad adecuadas, la indiferencia a los problemas del país junto a un el bajo nivel de compromiso social, incluso en tiempos de guerra.

Simultáneamente, cabe señalar que la base del civilismo es un cierto sistema de ideas sociales que determinan los principios básicos del desarrollo de la nación. Es por eso que la educación para la conciencia histórica de los estudiantes es una tarea urgente y socialmente importante debido a las necesidades de la teoría y la práctica pedagógica (Punchenko *et al*., 2017).

Cabe señalar tambien que la educación para el civilismo es un proceso complejo, y de gran importancia, que da a los estudiantes fundamentos morales, pero, simultáneamente, requiere de ellos: actividad, creatividad y madurez social. Los fundamentos sociopedagógicos de esta educación forman la cosmovisión de un joven, su conciencia cívica y madurez social. A través de la educación, el estudiante se convierte en un verdadero ciudadano de su Estado y comprende su propósito en la vida social y política (Oleksenko *et al*., 2021).

Un papel importante en la formación de la personalidad se asigna a la familia, que es responsable de la reproducción de la población, así como de su desarrollo moral y espiritual. Observemos que la misión educativa de la familia es especial, porque es en la familia donde se forma el carácter de la persona, su actitud hacia el mundo circundante, la vida, las costumbres y las tradiciones del país. Sólo en la familia es posible la educación-cívica, porque es allí donde el niño va por el camino de una familia a una nación soberana.

5. Objetivo primario de la educacion cívica en la globalización

Así, sobre la base de la literatura científica y metodológica podemos formular el objetivo de la educación cívica de los jóvenes a nivel regional. Radica en el hecho de que los jóvenes de todas las edades, independientemente de su nacionalidad y región de residencia, se identifican con Ucrania, buscando vivir en Ucrania. Comprender la necesidad de cumplir con las normas constitucionales y legales, conocer el idioma del Estado; en síntesis, perciben la historia regional como parte de la historia general de Ucrania, sienten su propia participación en el destino futuro de su tierra natal como parte integral de un país unido y abierto al mundo.

Cualquier país necesita ciudadanos leales para quienes la identidad nacional y la conciencia histórica es una necesidad moral-personal. El civilismo es un factor que une a la población del país en una sola nación multiétnica, una garantía de estabilidad y desarrollo estatal en sí. Como resultado, al realizar el trabajo pedagógico sobre la educación, debe tenerse en cuenta que Ucrania ha desarrollado históricamente una amplia gama de diferencias regionales, políticas y culturales, existe una actitud ambigua de la población ante muchos eventos del pasado y del presente.

Por lo tanto, es la conciencia cívica lo que debe unir a los ucranianos, para preservar lo que ha sido nuestro objetivo durante siglos: un Estado independiente, soberano y próspero. De modo que, uno de los factores de unión importantes en la sociedad puede ser la preservación del patrimonio cultural e histórico núcleo ontológico de nuestra identidad.

Hoy en día, el espacio educativo internacional se está desarrollando intensamente. Por lo tanto, la comunidad internacional busca crear una estrategia global para la formación de la personalidad humana independientemente de su residencia y nivel educativo. Todos los países están unidos por el entendimiento de que la educación moderna debe convertirse en cosmopolita. Desarrolla la capacidad de evaluar fenómenos desde la perspectiva de otra persona, diferentes culturas, sentimientos patrióticos, otra formación socioeconómica. Se crea un ambiente multicultural, lo que implica la libertad de autodeterminación cultural del futuro especialista y enriquece su personalidad (Voronkova *et al.*, 2019).

Al mismo tiempo, los procesos de globalización e integración hacen que la imperfección del sistema educativo sea más visible y crítica, lo que requiere reformas radicales. En particular, existen los siguientes factores de crisis en el sistema educativo de Ucrania:

> El colapso de los principios y dogmas fundamentales de la educación soviética, causado por la caída del sistema político e ideológico pasado; la gubernamentalización y burocratización del sistema educativo; la distorsión del propósito y las funciones sociales escolares; el principio residual de financiar

> la educación y la cultura; la falta de nuevos modelos educativos, alternativos científicos y formales; la disminución del prestigio social de la educación y la inteligencia en una sociedad en crisis, que sigue siendo la sociedad ucraniana» (Afanasyeva *et al*., 2017: 16).

Por lo tanto, un verdadero ciudadano puede considerarse solo una persona que fortalece constantemente su salud física y moral, está bien criado y educado, tiene una familia funcional, honra a sus antepasados, crece y reproduce las mejores tradiciones de sus descendientes, mejora constantemente su vida cotidiana, estilo de vida y cultura de comportamiento, trabajando en beneficio de su país, participando en eventos públicos u organizaciones con orientación cívica; es decir, dirigido a fortalecer siempre a los conciudadanos para lograr objetivos loables y tareas compartidas de diversos grados de complejidad e importancia, para la organización y el desarrollo continuo de su comunidad.

Conclusiones

La verdadera sociedad ucraniana es el camino de la transformación radical, el Estado social de derecho y de justicia. Los jóvenes modernos se olvidan de sus raíces nacionales, tienen un bajo nivel de conocimiento de la historia de su país natal, por lo que la educación cívica es extremadamente relevante. Un mayor desarrollo de la sociedad requiere la formación de una personalidad activa, asociativa y creativa, cuyo movimiento dependerá siempre del desarrollo espiritual y el bienestar de Ucrania, como país soberano.

La identidad nacional es la base de los valores más importante de cualquier sociedad democrática y actúa como un motivo interno esencial para el autodesarrollo y la divulgación de todas las oportunidades sociales potenciales en las esferas: cultural, económica y social. Por lo tanto, el propósito de la institución educativa en la etapa actual: educar a los jóvenes: humanos, creativos y responsables, con una posición de vida activa, que pueda realizarse a sí misma. Sin el despertar de fenómenos morales como el civilismo, el deber, la conciencia, el sentido de la dignidad y el trabajo duro, difícilmente podemos esperar mejorar la situación general del país.

Un papel especial en la educación de la conciencia debe pertenecer a la historia, ya que la generación más joven se enfrenta a los desafíos laborales y militares de su pueblo. Seguimos defendiendo nuestros intereses nacionales, no permitimos que otros países interfieran en nuestros asuntos internos y estamos desarrollando nuestro bloque social y económico. Todo esto debe continuar, porque nuestro objetivo es la prosperidad de Ucrania y el bienestar de todos los ciudadanos, tal como es la aspiración legítima del cualquier país del mundo con un proyecto de nación de libertad y soberanía.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 704-721
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Social and legal problems of discrimination by age in the medical field

DOI: https://doi.org/10.46398/cuestpol.4074.39

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Abstract

The article aims to analyze the medical and legal aspects of human equality. Discrimination in the medical field affects both medical personnel and patients. The authors have used the method of comparison of legal regulations of various states, the systematic method, which allowed to reconcile the approaches: medical and legal and the synergistic method as a method of development of a modern globalizing society. It has been found that the typical policy of agism includes the requirement to examine elderly physicians as to their competence or skills without objective and substantiated reasons. Everything leads to the conclusion that, discrimination of elderly patients manifests itself in treating them with less respect and courtesy and providing a worse level of services in medical institutions. Discrimination of gediatric patients is caused by their lack of legal opportunity to express their opinion on consent or voluntary refusal of treatment, including vaccinations.

Keywords: discrimination in the medical sphere; medical personnel; patients; vaccinations; COVID-19.

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Recibido el 15/07/22 Aceptado el 16/09/22

Problemas sociales y jurídicos de la discriminación por edad en el ámbito médico

Resumen

El artículo pretende analizar los aspectos médicos y jurídicos de la igualdad humana. La discriminación en el ámbito médico afecta tanto al personal médico como a los pacientes. Los autores han utilizado el método de comparación de la normativa legal de varios Estados, el método sistemático, que permitió conciliar los enfoques: médico y jurídico y el método sinérgico como método de desarrollo de una sociedad moderna en vías de globalización. Se ha comprobado que la política típica del agismo incluye la exigencia de examinar a los médicos de edad avanzada en cuanto a su competencia o habilidades sin razones objetivas y fundamentadas. Todo permite concluir que, la discriminación de los pacientes de edad avanzada se manifiesta en el trato con menos respeto y cortesía y en la prestación de un peor nivel de servicios en las instituciones médicas. La discriminación de los pacientes gediátricos se produce por su falta de oportunidad legal de expresar su opinión sobre el consentimiento o la negativa voluntaria a recibir tratamiento, incluidas las vacunas.

Palabras clave: discriminación en el ámbito médico; personal médico; pacientes; vacunas; COVID-19.

Introduction

The widespread spread of digital technologies and the creation of new information and communication methods create conditions in which the boundaries of a person's personal space are either completely erased or become thin, balancing on the verge of full disclosure of personal information. A person's age, personal and professional life become public knowledge, are studied in detail, and "flaunted. The consequence of this is that the thin line that exists between a person's private life and society at the present stage, which encroaches on their personal freedom and values, subjects the individual to discrimination to one degree or another.

Differentiation, exclusion, restriction or preference that denies or diminishes the equal exercise of rights represent all manifestations of discrimination, which is a widespread problem in contemporary society, infringing upon individuality, democracy, humanism, equality and other value categories developed by humankind throughout its history.

Everyone has the right to be treated equally, regardless of his or her race, ethnicity, nationality, class, caste, religion, creed, sex, language, sexual orientation, gender identity, sex characteristics, age, health or other

condition, merely on the basis that he or she is a self-sufficient person and possesses individual dignity. However, social stereotypes quite often violate the individual value of an individual only on the basis that he/she belongs to a "different group". To be different in today's world, to maintain your individuality and personal boundaries, is becoming increasingly difficult.

The world is changing rapidly, crushing in its path everything that used to be considered acceptable, permissible and right for society. The values that were cherished yesterday are no longer of any value today. Human life, which in past eras was short, fraught with difficulties and dangers, had a special value for every human being. Thanks to modern technologies, in particular those that have recently emerged in the field of medicine, human life has become easier, longer, and, at the same time, the attitude toward people, especially the elderly, has changed.

One of the most common manifestations of discrimination is ageism since it affects people of all ages and is particularly prevalent today. A wide range of interdisciplinary research shows that individuals face discrimination based on age in many contexts, including health care. Ageism, which is defined as "the systematic stereotyping and discrimination of people because of their old age", is widespread in society, and a significant proportion of older people report experiencing age discrimination in their daily lives.

It would seem that medical professionals, who help everyone to extend their lives, are a category that should not be discriminated against, but rather admired, respected, and thanked. But the realities of everyday life show the opposite process. Both medical workers and patients are subject to discrimination in the medical sphere. The peculiarities of discriminatory manifestations against them require a substantive analysis.

1. Materials and Methods

The authors have used the method of comparing the legal regulation of several states, the systematic method, which allowed reconciling medical and legal approaches and the synergistic method as a method of developing a modern globalizing society.

2. Results and Discussions

2.1. Discrimination of medical workers in the workplace

At all times, elderly people have evoked associations with wisdom, experience and competence in one sphere or another. If we talk about the image that arises in our minds when we talk about a folk healer, for

example, it is likely to be an old man or an old lady, who is respected by the entire population of a particular locality. But modern society, overloaded with new technologies, with the help of which it has been able to defeat more than a dozen deadly diseases that have killed several thousand people on all continents, perceives in a completely different way medical workers who have reached old age.

Health care workers are discriminated against based on their age in the workplace. Workplace discrimination should be understood as any act or failure to act, expressing any direct or indirect disparagement, exclusion or privilege on the basis of race, color, political, religious or other beliefs, sex, ethnic or social origin, property, place of residence , on linguistic or other grounds unrelated to the professional qualities of an employee or group of employees, if they are aimed at limiting or prevent the recognition, enjoyment or exercise on various grounds of labor rights, are arbitrary and entail legal liability.

One of the significant problems of modern society is the rapid aging of the population. The birth rate is falling rapidly in all countries of the world, which inevitably leads to an increase in the number of elderly people. The population is aging, and changes in the population age structure has led to an aging national workforce. An important challenge for firms and organizations is the impact of an aging workforce on labor costs, productivity, and the economic sustainability of the organization.

However, an aging population also entails individual problems, it is a factor that violates the humanistic doctrine and infringes on human rights. This is logical from the point of view that man functions not only as a biological being or a social unit, but is also a person, an individual, with a distinctive, characteristic only for him character, way of thinking, and views on life.

The attitude towards the elderly in society, as a category of the population that has "outlived" it's time and is more of a burden than an asset for the nation, is also confirmed by scientific research and experiments. Health care workers, similar to all other workers, are discriminated against as their age increases. The results of a recent economic experiment confirm this trend, in which more than 6,000 fictional resumes with randomly assigned age information (35-70 years old) were sent to Swedish employers concerning vacancies in low- and medium-skill occupations.

The callback rate begins to fall substantially for workers in their early 40s and becomes very low for workers close to retirement age. The decline in the callback rate by age for women is precipitous compared to that for men. Employers' stereotypes regarding the ability to master new tasks, flexibility, and ambition seem to be important explanations for age discrimination (Carlsson and Eriksson, 2019).

The indicated issue concerns all spheres of economic activity, however, taking into consideration significant educational requirements, the period of training, which is much longer for medical workers (on average, it takes from 10 to 14 years to become a fully licensed doctor) (How long does it take to become a doctor? n.d.), the issue of age discrimination in the field of labor becomes particularly important.

According to the American Medical Association, 43% of all doctors and surgeons are 55 or older. Specialists, on average, are older than primary care physicians. These figures provide the basis for an increase in cases of ageism. Advances in medicine have given humans longevity, but this longevity can be lost if the medical community negatively perceives old-age doctors (Ageism in medicine: A look at medical ethics, laws, and regulations, 2020).

On the other hand, to be objective, given the long period of training of medical professionals, as well as the long time it takes them to acquire the necessary knowledge, skills, and abilities to become a specialist in this field, such age figures seem adequate.

Currently, about 5% of health care facilities have age-related screening policies. The typical agism policy includes the requirement to test an older physician's competence or skills without objective, reasonable methods; inquiries on disability; or requiring an employee to undergo a physical, medical, or cognitive examination without reasonable belief or justification that the physician cannot perform the essential functions of his or her job.

Aging is associated with a decline in cognitive abilities and other functions, and proponents of age-based screening programs argue that assessments are necessary to protect patient safety. For instance, the U.S. Equal Employment Opportunity Commission disputes mandatory retirement policies or other forms of age discrimination against Yale New Haven Hospital on their general "senior doctor" policy, which requires a series of mandatory tests starting at age 70 (U.S. The Equal Employment Opportunity Commission, 2022).

It would seem to be quite reasonable approach and reasonable requirements to medical workers, based on the best motives, care about the patient, and the quality of medical services that are provided to him. But, on the other hand, there is a fine line between caring for the patient and discriminating against the medical professional, which is manifested by the implication that the elderly person cannot properly, professionally, and competently, perform his official duties because of the age in which he is.

The question arises as to whether the professional performance of the duties of a health care worker is related to the age of the worker. Academic research on this subject argues that there is no such correlation. There is no conclusive evidence that older doctors perform worse. The research shows

that between the ages of 40 and 75, average cognitive ability declines by more than 20%, but there is considerable variability from one individual to another, indicating that while some older physicians have profound impairments, others retain their abilities and skills.

Studies have shown high mortality rates from cardiovascular procedures performed by, for example, older surgeons, however, high mortality rates from gastrointestinal surgeries performed by younger surgeons (Dellinger *et al*., 2017).

We should note that the senior population performs a very important function; not only do they impart knowledge and experience, but they also provide a significant portion of the working staff. In today's world, there is no tendency for the birth rate to increase. Pandemics, natural disasters of a global nature, and local and international conflicts only exacerbate the situation. Accordingly, the process of aging of the world's population will continue to gain momentum in the future. The nation's population is aging, and older people need more medical care, with the U.S. estimating a shortage of at least 46,000 physicians by 2032. Senior specialists can help to tackle this issue.

At a time when it is impossible to stop the aging of mankind, it is necessary to take urgent measures to preserve the intellectual potential already available in all spheres of life, including medicine, regardless of the age of its representatives. A comprehensive legal and social policy is needed to overcome this problem. In particular, the most effective method of overcoming discrimination is administrative and financial leverage against employers. Experts state that in the States where the legislation on age discrimination allows a greater penalty, there is less discrimination against senior people (Neumark *et al.,* 2019).

2.2. Age discrimination of patients

It is also surprising that those who took the Hippocratic oath, medical professionals, competent specialists, and professionals who should treat all patients with respect, including the elderly, often show the opposite of the stated behavior. The most common practice is discrimination against patients by health care providers. Discrimination as patients in the field of health care is primarily suffered by the elderly. The recent research performed by experts proves that among participants who reported experiencing age discrimination (1,406 respondents) said they were treated with less respect and courtesy (45,1%) reported being treated as being unreasonable and indicated that they received worse services or treatment in health care institutions (41.4) (Jackson *et al*., 2019). Other studies show that one in five adults over the age of 50 is discriminated against in health care institutions (Rogers *et al.,* 2015). This leads to the conclusion that the problem is extremely widespread.

Health care providers must offer health care to all patients equally, and patients should not be discriminated against under any circumstances on the basis of sex, nationality, religion, ethnicity, gender identity or age. In practice, however, age has served as a criterion for establishing treatment policy. Older women with breast cancer tend to have fewer options for conservative breast surgery than younger women (Smith *et al.,* 2009).

In addition, women over 70 years old are 40% more likely to be scheduled for radical surgery than younger women (Di Rosa *et al.,* 2018). Nursing care for immunotherapy, breast reconstruction, and chemotherapy is less available for older patients with breast cancer than for younger patients (Schroyen *et al.,* 2016). According to this study, we can conclude about a kind of neglect of elderly patients, about age discrimination against them.

This raises another question, whether age discrimination applies only to the category of the elderly. As practice shows, this category of the population is not the only one when it comes to discrimination, biased and ambiguous treatment of patients in the medical field. Issues of the legal status of children in the medical sphere are of particular importance. The category of patients in need of a special consent procedure primarily includes children.

The Convention on the Rights of the Child in Article 1 states that "a child is every human being below the age of eighteen years unless under the law applicable to a particular person he or she attains majority earlier" (Council of Europe, 1996). The perception of the concept of "child" and the definition of the boundary from which a person becomes an adult, capable of understanding this or that situation, of perceiving its consequences, will differ from country to country, which is related to the cultural and social factors of a particular society. Regardless of this, however, the obvious need is to determine the age of the child we are considering as a patient.

A child's ability to participate in the treatment process depends on his or her age. The consideration of underage patients' opinion contributes to more effective protection of their legitimate interests. As stated in Article 2 of the Convention on the Rights of the Child, "States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions or beliefs of the child".

Moreover, Article 12 of the Convention explicitly states that a child who is capable of forming his or her own views should be assured the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with age and maturity.

Another international instrument, the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (known as the Oviedo Convention) declares in Article 6 that: "The opinion of the minor shall be taken into

consideration as an increasingly determining factor in proportion to his or her age and degree of maturity" (Council of Europe, 1997). However, the initial age limit of a child's age when his or her opinion is taken into account in the case of a medical intervention is different (Miric, 2020).

For instance, Section 4-4 of the Norwegian Patients' Rights Act states that when a child "has reached 12 years of age, he or she shall be allowed to give his or her opinion on all questions concerning his or her own health" (The act of 2 July 1999 no. 63 relating to patients' rights (the patients' rights act), n.d.). The similar norm can be found in Art. 26 of the Icelandic Patients' Rights Act (Iceland - patients' rights act no 74/1997, 1997).

There is no clear lower boundary for considering a patient's opinion in Australian law, but it is explained here that "when a person is under the age of 16 and a health care professional, observing him/her, believes that they can make decisions about themselves, they are given the right to decide their own health care" (Consent to Medical and Healthcare Treatment Manual - Policy and procedure manuals, n.d.).

In a number of countries this age of voluntary consent is below the age of majority. It can be 13 years old (the Czech Republic, Denmark, Ireland, Latvia, Poland, Spain, Sweden, Great Britain), 14 years old (Ukraine, Russia, Bulgaria), 16 years old (Hungary, the Netherlands). By a certain time, limit, patients cannot provide informed consent or refusal of intervention, this right is fully transferred to their parents or other legal representatives, who are responsible for the life and health of their children and must legally represent their interests. It is considered that the child has reached a certain level of development, socialization, in order to understand the meaning of his/her actions and to be able to express his/her position, but cannot yet fully enter into legal relations on his/her own. We consider this position to be reasonable.

However, there is a wide range of countries, such as Cyprus, Croatia, Estonia, Finland, France, Greece, Italy, Latvia, Portugal, Romania, and Slovenia (Consent to use data on children, 2018), where only parents, without asking minors' consent, must agree to medical interventions. All the above is additional evidence that the legislator, when adopting a rule of law, is primarily guided by the cultural traditions of his people.

We believe that this approach is clearly discriminatory. A person at the age of supposedly 17 years old is mature enough to take responsibility for his or her own life and health. Issues of medical intervention are particularly sensitive information. For example, a girl of this age can lead a sexual life, has the biological ability to become a mother of a child, but she cannot independently decide the question of reproduction, birth, or termination of pregnancy, since she is underage, and her legal representative decides these issues.

Obviously, in this situation, we are no longer talking about a child, but about a person who has entered adulthood and is responsible for the decisions he makes independently and adequately perceives their consequences. Children should not only be cared for, but also prepared for independent life. In this way, minors are given the opportunity to express their individual opinions, defend their beliefs, and learn to take responsibility for themselves and their health.

2.3. Discrimination in the sphere of vaccination

On the one hand, humanity is successfully fighting terrible diseases, such as plague and smallpox, while on the other hand, it is facing new health challenges. The COVID-19 pandemic is a vivid example of the fact that humanity was not prepared for new threats on a planetary scale in the field of medicine. Not only was the issue of combating the new disease and its consequences acute, but also the methods of combating it, and a new form of discrimination associated with vaccination against it emerged. Even before the outbreak of the coronavirus disease, there were two opposing groups of people in the world, those who supported the vaccination of children and those who considered it unnecessary and harmful.

Another aspect related to the legal status of children in the medical field, namely the possibility of medical intervention with parental consent, the issue of vaccination, and the consequences that can occur if parents refuse to immunoprophylaxis of their children from serious diseases (which, by the way, are most dangerous precisely in the first years of life, therefore, the argument of anti-vaccinationists "when a child grows up, he/she will decide themselves on getting vaccinated", as horrible as it sounds, requires the continuation "if he/she survives").

Numerous cases have been known in which children unvaccinated due to parental persuasion have died or become disabled from tetanus or polio, infections that can be controlled by specific prophylaxis. At the same time, the bacterium Clostridium tetani, which causes tetanus, exists almost everywhere, an infection can occur even from micro-injuries, and the effectiveness of vaccination against this disease reaches almost 100%.

There is an opinion that such parental behavior, in general, is a violation of the rights of the child to health Caplan and Hotez (2018), and in case of serious consequences, it can be qualified as a negligent performance of parental duties and entail legal responsibility.

Whether it's easy for parents to decide whether to vaccinate their child when it comes to preventing him or her from contracting a deadly disease, or the possible unavoidable negative health consequences of vaccination, obviously not. Mass refusal to vaccinate (without a valid reason) is recognized by the WHO as one of the 10 most dangerous threats to public health (Ten

health issues WHO will tackle this year, 2019). But the issue of compulsory vaccination is certainly not topical. Even the Covid-19 pandemic, caused by the SARS-CoV-2 virus, has not convinced the global community to impose compulsory vaccination due to concerns about compliance with the principle of non-discrimination.

Thus, PACE Resolution 2361 (2021) "COVID-19 vaccines: ethical, legal and practical considerations" (Doc. 15212) provides that the Assembly calls on member states and the European Union to "ensure that citizens are informed that vaccination is not compulsory, that no one can be subjected to political, social or other pressures to be vaccinated unless they themselves so choose"; "ensure that no one is discriminated against for not being vaccinated for possible health risks or unwillingness to be vaccinated" (Parliamentary Assembly Resolution 2361, 2021).

This demonstrates that the trend toward prohibiting coercive medical interventions with respect for human dignity has persisted since the establishment of the six principles of legitimate medical research (later expanded to 10) known as the Nuremberg Code, among which is the principle of free consent, which requires precisely the free and informed consent of the individual to the intervention. This principle was further recognized in the 1966 International Covenant on Civil and Political Rights (Article 7), the 1997 Oviedo Convention on Human Rights and Biomedicine, and the 2005 Universal Declaration on Bioethics and Human Rights with respect to any medical intervention.

Thus, the parental decision to vaccinate or not to vaccinate their children at this stage of the formation of international human rights standards can hardly be subject to peremptory influence by the state. This situation should be influenced by strategies to popularize immunoprophylaxis, prevent the spread of misleading or distorted information about the "harm" of vaccination, and spread reliable information about its importance in preventing or eliminating a number of deadly infectious diseases altogether. What is indisputable is that in doing so, a fine line must be preserved between the needs of the entire state to ensure the health of its people and the boundaries of each individual's private life, rights and legitimate interests.

Thus, in the absence of an opportunity to effectively address the issue of parental violation of children's rights and the violation by such actions of everyone's right to a safe environment and sanitary and epidemic well-being, other aspects of this issue are worth considering. There are at least two issues that fall within the realm of age discrimination, which arise precisely on the basis of the "anti-vaccination" behavior of parents.

The first is the issue of protecting children who cannot be vaccinated for various reasons (health status, immunosuppressive therapy, newborn

period, lack of vaccines, etc.), and which ones are most in need of protection through collective immunity. The second is the normative prohibition of unvaccinated children from attending childcare (educational institutions), which is prevalent in a number of European countries.

Regarding the first issue, it was the need to develop collective immunity to protect the small proportion of persons who are contraindicated by vaccination that led to the development and adoption of the famous "Lorenzini Law" prohibiting children from attending school without vaccination (Lege Vaccini, 2021). The information spread about a case where an eight-year-old child could not attend school in Rome because of a weak immune system. After long-term treatment for leukaemia, the child was at risk of infection because a percentage of the students at the school had not been vaccinated, including several children in the same class.

It appears that in a state governed by the rule of law, in civil society, in a world that seeks to spread the ideas of justice, equality, tolerance, and the rule of human rights, this kind of discrimination is perhaps the most inhumane. Considering this, it is important to understand that when we are talking about diseases that are transmitted from person to person (anthroponoses), especially if transmission occurs through airborne droplets, it is by no means a personal matter of an individual.

The confirmation of the unacceptability of such an approach can be seen even in those ECtHR decisions that generally uphold the idea of self-determination in medical care. Thus, in the case of Jehovah's Witnesses of Moscow and Others v. Russia (Application no. 302/02) (2010) the ECtHR on the basis of analysis of national practice noted:

> Although the public interest in preserving the life or health of a patient was undoubtedly legitimate and very strong, it had to yield to the patient's stronger interest in directing the course of his or her own life ... free choice and self-determination were themselves fundamental constituents of life and that, absent any indication of the need to protect third parties – for example, mandatory vaccination during an epidemic, the State must abstain from interfering with the individual freedom of choice in the sphere of health care, for such interference can only lessen and not enhance the value of life (ECHR, n.d.).

Thus, in this case the scales of justice tipped in the direction of the decision to protect human rights, namely his right to dispose of his life and health.

An extremely important event precisely in relation to the debate on compulsory vaccination marked the current 2021, namely: The Grand Chamber of the European Court of Human Rights (by a vote of 16 to 1) ruled on April 8, 2021, in the case of Vavřička and Others v. the Czech Republic (Applications nos. 47621/13 and 5 others). Notably, for the first time,

the European Court ruled on compulsory vaccination against childhood diseases that are well-known to medical science (Court's first judgment on compulsory childhood vaccination: no violation of the Convention, n.d), and the Court found no violation of Article 8 of the Convention.

The Court determined that the purpose of the Czech legislation is to protect against diseases that may pose a serious health risk. This applies both to those who receive appropriate vaccinations and to those who cannot be vaccinated and thus are in a state of vulnerability, relying on the achievement of a high level of vaccination in society as a whole to protect against contagious diseases. This goal is consistent with the public health and the protection of the rights of others as recognized by Article 8 of the Convention (Q&A on the case of Vavřička and Others v. the Czech Republic, 2021).

The Court's interpretation of Article 2 (right to life) and 8 (right to respect for private life) of the Convention as a positive obligation of states to take appropriate measures to protect the life and health of individuals within their jurisdiction requires particular attention. In the Czech Republic, the obligation to vaccinate represents the national authorities' response to an urgent social need for protection against any downward trend in vaccination rates among children.

According to judicial practice, children's best interests are paramount in all decisions concerning them. It follows that states have an obligation to place the interests of the child, as well as those of children as a group, at the center of all decisions affecting their health and development. About immunizations, the aim should be to protect every child from serious diseases.

In most cases, children who receive a full immunization schedule during their first years of life achieve this. Those who cannot be administered such treatment are indirectly protected from contagious diseases if the necessary level of vaccination coverage is maintained in their community; that is, protection occurs from collective immunity. This health policy is based on appropriate arguments and as such is consistent with the best interests of targeted children.

In the Court's view, it cannot be seen as disproportionate for the State to require those for whom vaccination poses a remote health risk to accept this commonly used protective measure as a legal obligation and in the name of social solidarity for the sake of the small number of vulnerable children who cannot benefit from vaccination. The Court concluded that it was a valid and legitimate decision for the Czech legislature to make this choice, which is fully consistent with the public health rationale.

The decision under consideration also relates to the other issues highlighted above in the area of age discrimination in the medical field,

which arises from parents' refusal to vaccinate their children, namely the non-admission of such children to pre-school educational institutions. The ECtHR considers that this "means the loss of an important opportunity to develop their personalities. But it was a consequence (clearly provided for in the legislative texts) of the parents' choice to decline to comply with a legal duty, which was aimed at the health of young children and had an essentially preventive rather than punitive character".

In other words, limiting the ability of unvaccinated children to exercise their right to education specifically in full-time form (provided they retain access to other forms of education) seems justified. However, such measures are extremely traumatic specifically for the child, who faces the inability to attend school with his peers, and therefore feels different, dangerous, and perhaps even "contagious" (given how cruel children are sometimes, and how they are not fully aware of the nature of the issue, which has been difficult even for adults to perceive and correctly interpret the ban by his/her classmates to study together with all because of the danger of contagious diseases).

It seems that the entire world community must now unite to minimize the manifestations of the anti-vaccine movement and make its supporters aware of how they, by their own actions, are contributing to the violation of the rights and discrimination of their children, and what consequences this will have on their health, both physical and psychological.

Thus, we cannot speak of discrimination against those who oppose vaccination, if only because every rejection increases the likelihood of the entire human civilization being killed by a deadly disease.

Whether discrimination is a factor that affects human life solely in the social aspect is evidently not. Finally, discrimination on any basis negatively affects a person's social standing, as well as causes severe psychological and physical consequences.

Researchers have examined the hypothesis that psychological distress through perceived discrimination can lead to chronic pain, where perceived discrimination is based on age, gender, race, ethnicity, disability, sexual orientation, height/weight, religion and other characteristics.

Using a sample of 1,908 people in the U.S., they found statistically significant relationships between perceived daily discrimination and psychological distress, between lifetime discrimination and psychological distress, and between psychological distress and chronic pain. Overall, experts estimated that 4.1 million people in the United States in 2016, aged 40 and older, experience chronic pain caused by increased psychological distress, where psychological distress has increased through perceived discrimination (Brown *et al.*, 2018).

Discrimination is neither age, nor social status, nor a certain color. It is a destructive restriction of human rights and freedoms in society. In fact, this does not only apply to the elderly. It also applies to adolescent behavior. Perceptions of discrimination are associated with more depressive and internal symptoms; greater psychological distress; lower self-esteem; weaker academic achievement and inclusion in the educational process; less academic motivation; greater involvement in risky sexual behavior and drug abuse; and greater association with deviant peers (Benner *et al*., 2018).

Conclusion

The age of digital society dictates its own rigid rules for the survival of human civilization. More and more often in today's world, one person's interests are being sacrificed for common interests, infringing on his personal and professional life. Discrimination extends to almost all aspects of human life. Age discrimination is a common form of discrimination. The field of medicine, as one of the most important to ensure the continuation of human life, is also subject to discrimination. In the medical field, it affects both medical personnel and patients.

Since a person's life consists not only of ensuring his vital activity as a living organism, but also as a representative of society, his professional activity, and social life are also important. Discrimination in the labor sphere is associated with age in all professions. However, medical workers, given a longer period of training than other professionals, have the problem of insufficient period of professional realization.

The typical agism policy includes the requirement to test an older physician's competence or skills without objective, reasonable methods; inquiries on disability; or requiring an employee to undergo a physical, medical, or cognitive examination without reasonable belief or justification that the physician cannot perform the essential functions of his or her job.

The motivation is the assumption that aging is associated with a decline in cognitive abilities and other functions, and proponents of age-based screening programs argue that assessments are necessary to protect patient safety. However, this policy is opposed to age discrimination, is considered illegitimate, and patient safety should be addressed with a more flexible, individualized approach.

Discrimination against elderly patients is manifested through the treatment with less respect and courtesy and providing a worse level of services in medical institutions. Discrimination against paediatric patients occurs due to their lack of legal opportunity to express their opinion

regarding voluntary consent/refusal to receive treatment since only legal representatives have this right until children reach the age of majority (particularly in countries such as Cyprus, Croatia, Estonia, Finland, France, Greece, Italy, Latvia, Portugal, Romania, and Slovenia).

The refusal of a child's legal representatives to vaccinate also creates a legal conflict between the right to privacy and the right to life and health of the child. Discrimination, in this case, consists in the lack of immune protection and in counteracting socialization through the normative prohibition of unvaccinated children from attending children's institutions (educational institutions). The latter general peremptory norm also discriminates against individuals who are medically prohibited from being vaccinated, although it is justified in the context of protecting public health.

Issues of age discrimination in the medical field should be further studied in order to develop practical, effective methods to combat ageism, since its existence is unacceptable in today's civilized society.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 722-740
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Remedies against Online Defamation of Public Figures

DOI: https://doi.org/10.46398/cuestpol.4074.40

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Abstract

In legal literature, the dissemination of false information on the Internet is referred to as online defamation. However, Ukrainian legislation does not enshrine this term, which creates difficulties with respect to legal protection against online defamation. So, the aim of the article is to determine the legal remedies for countering defamation of public figures on the Internet. The research involved the following methods: analysis, case study, graphic methods. The study revealed the main contradictions in defamation research and identified unexplored aspects of the issue. The legislation of Ukraine and other countries of the world with regard to defamation and protection against libel is examined. International aspects of providing protection against defamation and the researchers' recommendations on how to balance the right to freedom of expression and the right to privacy are studied. Highlighted in the conclusions are that the study established the need to improve Ukraine's legislative framework on defamation issues, make changes in educational programs and improve the media literacy of the population. Prospects for future research include the study of the means of settlement of defamation cases at the international level.

Keywords: online defamation; legislation; legal protection; criminal liability; freedom of expression.

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Recibido el 07/08/22 Aceptado el 22/09/22

Recursos contra la difamación en línea de figuras públicas

Resumen

En la literatura legal, la difusión de información falsa en Internet se conoce como difamación en línea. Sin embargo, la legislación de Ucrania no consagra este término, lo que genera dificultades con respecto a la protección legal contra la difamación en línea. Entonces, el objetivo del artículo es determinar los recursos legales para contrarrestar la difamación de figuras públicas en Internet. La investigación involucró los siguientes métodos: análisis, estudio de casos, métodos gráficos. El estudio reveló las principales contradicciones en la investigación sobre difamación e identificó aspectos inexplorados del tema. Se examina la legislación de Ucrania y otros países del mundo con respecto a la difamación y la protección contra la calumnia. Se estudian los aspectos internacionales de brindar protección contra la difamación y las recomendaciones de los investigadores sobre cómo equilibrar el derecho a la libertad de expresión y el derecho a la privacidad. Destacan en las conclusiones que estudio estableció la necesidad de mejorar el marco legislativo de Ucrania sobre cuestiones de difamación, realizar cambios en los programas educativos y mejorar la alfabetización mediática de la población. Las perspectivas de futuras investigaciones incluyen el estudio de los medios de solución de los casos de difamación a nivel internacional.

Palabras clave: difamación online; legislación; protección jurídica; responsabilidad penal; libertad de expresión.

Introduction

Information has become one of the most valuable resources. The development of means of communication enabled distribution of information among a wide range of users in the shortest possible time and at minimal cost. Information has become a key means of shaping the public attitude to certain events or individuals. A particular political party, personality, programme or decision can win the majority of votes in an election depending on the public attitude (positive or negative). This will further affect the course of the country as a whole, including the international policy (Novytskyi and Novytska, 2016).

The increasingly rapid development of communication tools urges the issue of the contradiction between freedom of speech and the right to the protection of personal data. This contradiction is especially acute when information disseminated in one way or other harms an individual,

business or country. The legal science defines the case when disseminated information causes harm, shames, deprives of a good name in a certain way as defamation.

Many researchers studied defamation, as well as the border between the right to freedom of expression and the right to privacy in its context (Agarwal, 2020; Bevz *et al.*, 2021; Petkova, 2019; Schulz, 2018). They do not, however agree on a number of aspects of the problem. The main one is the reliability of disseminated information. When defining defamation, researchers have no single view on whether the information that injures the reputation should be true or fabricated. Second, there are no clear criteria regarding the harm caused: what can be considered as a harm, how to measure it, etc.

Third, it is not determined who is responsible for defamation and in what cases. The following parties are involved in the dissemination of harmful information: the source of information, the person who disseminated it, and also who used the information to cause harm (Novytskyi and Novytska, 2016). The questions about who bears the responsibility (and should bear it) among them and to what extent remain unsolved.

The issue of protection against the spread of harmful information, in particular online defamation, is extremely urgent, especially in view of the pace and scale of development of Internet communications. It is especially acute because the outlined theoretical aspects of defamation are not certain both in the scientific literature and in the legislation of many countries. In particular, the article examines the legislation of Ukraine because the defamation problem in the country is highly relevant in the course of military confrontation.

So, the aim of the article is to determine the legislative means of countering the spread of harmful information about public figures on the Internet. The aim involves the following objectives:

- clarify the definition of the term “defamation” and some theoretical aspects of the issue;
- examine the legislation of Ukraine regarding defamation and legislative regulation of related issues;
- survey the legislative provision of protection against defamation of individual countries;
- conduct a case-study of defamation cases using the example of spreading harmful information about Ukraine and Ukrainian public figures in the course of military confrontation;
- determine legal remedies against online defamation of public figures.

1. Literature Review

The terms "defamation" and "online defamation" are generally similar, they mean dissemination of harmful information about a person, business or country. The difference is in the means of disseminating such information. Xiaobing and Yongfeng (2018) note that compared to traditional defamation, online defamation is characterized by a high degree of "occultism", high speed of dissemination, and significant attention. Moreover, the cost of legal proceedings is low, which makes defamation crimes easier to implement and more difficult to eliminate.

The fact that the legislation of Ukraine lacks this term is the main reason for the imperfection of means of protection against online defamation, as well as defamation in general. Besides, modern scientific and legal literature provides no single definition of defamation. Disagreements relate to such important criteria as the reliability of information, determining the damage caused, establishing those who are responsible, the type of responsibility, etc.

Rooksby (2018) considers defamation as a ground for bringing an action which, if satisfied, provides monetary compensation for reputational damage, which is caused by false statements made by others. Magalla (2018) defines defamation as an action of tort in which one person provides false information about another person in any way. The person providing the information is known as the defendant before the court, the other is known as the plaintiff. Such information may be published and disclosed by any means, causing damage to reputation or injury to another person.

Moutos *et al.* (2020) consider a false or defamatory statement as one of the key elements of a satisfied defamation claim. With the exception of some nuances, these researchers agree that the information given to third parties shall be primarily false. There is, however a point of view that defamation involves the transfer of any information, including true information. Thus, Sytko and Shapovalenko (2018) reveal defamation as "the public distribution of true or fabricated information that degrades the honour, dignity and harms business reputation of a citizen or organization."

Some researchers focus not only on the reliability of information, but also on its other characteristics. Telychko and Rekun (2021) believe that the concept of defamation is supposed to mean the illegal collection and distribution of false information about a person's private life that degrades his/her honour and dignity. So, the researchers interpret defamation as the dissemination of information about private life, not the information related to professional activity or other spheres. According to researchers, defamation implies not only spreading, but also collecting harmful information.

Contrary to this view, some researchers separate the spread of false information from the spread of private information through the use of special terms. For example, Solo (2019) defines defamation as the spread of false statements that harm a person's reputation. The researcher interprets doxing an individual as the publication of a person's private information, such as his/her home address or that of his/her family members.

The issue of measuring damage caused by defamation is also poorly studied. According to Algburi and Igaab (2021), defamation refers to accusations of wrongdoing. Navrotska *et al*. (2021) hold a similar opinion, they refer defamation as slandering an admittedly innocent. In this case, the damage caused by defamation moves to a different level, because it contains accusations of violation of the law. However, most researchers agree that defamation refers rather to the disclosure of information that degrades a person's dignity or harms a person's reputation.

In addition to disagreements about the nature of information and measurement of the harm, researchers do not have a common opinion about responsibility in case of defamation. Novytskyi and Novytska (2016) point out that if defamation is defined as a violation of the right to protect business reputation, the criminal liability occurs.

However, most authors agree Xiaobing and Yongfeng (2018). The authors note that criminal laws and excessive judicial regulation of freedom of speech on the Internet can undermine the right to freedom of expression. In particular, this applies to international legislation. Nielsen (2019) notes that the conflict between defamation, privacy and freedom of speech is very contradictory, even in the EU.

Therefore, the issue of balancing the right to freedom of speech and the right to privacy is extremely important in the modern information society. This applies to both the state and interstate levels. At the international level, conflict resolution is complicated by the differences in the legislation of different countries.

The issue of who shall be responsible for defamation remains unsolved, as well as who was engaged in the collection of information or its distribution, whether this person was aware that the information was false, etc. The next unresolved issue is should website owners, social media users with a certain number of followers, site administrators and so on be held responsible. Some researchers even consider the responsibility of search engine operators (Yew, 2019).

2. Methodology

The research involved the following methods: scientific literature survey to clarify the aspects of the studied concepts, as well as the analysis of the legislative framework of Ukraine and other countries to establish the legal aspects of the issue under research; case study to describe an example of the studied problem and its consequences; graphical methods for visual presentation of the obtained results.

The research is comprehensive, so it was divided into separate related stages.

The first stage was to determine that the studied concept of defamation has significant differences in terms of interpretation by researchers. It was established that such discrepancies are explained by the absence of the concept of defamation in Ukrainian legislation. The key controversial aspects of defamation were identified, and the main problem of inadequate legal protection against defamation was revealed. Controversies primarily concern the reliability of the disseminated information, measuring harm caused, and the identification of those guilty of defamation. The problem of legal protection is the imperfection of the legislative framework.

The second stage of the study describes the main legislative acts related to the protection of individuals, businesses, and the country from false information distributed online. The legislative framework of Ukraine and other countries of the world was studied. It was established that the Ukrainian legislative framework provides for ways of protection against the spread of false information and the right to restore honour and dignity.

But it lacks the term “defamation”, which distinguishes Ukrainian legislation from the legal systems of some other countries. The survey of the legislation of these countries lead to the conclusion about the areas of protection against defamation that can be introduced in Ukraine. Such areas relate, in particular, to innovations in the legislative framework, educational programmes in schools, and improving the media literacy of the population.

The third stage of the research involved a case study on the example of the current military and political events in Ukraine. This stage confirms the importance and relevance of protection against false information distributed on the Internet for Ukraine and its public figures. In particular, the importance of the influence of defamation and its role in the development of the military conflict on the territory of Ukraine was determined. Ukraine and its public figures were chosen as an object of study because of the significant impact of defamation on events in the country. This is confirmed by a review of scientific literature and analytical data on the consequences of defamation against a country.

The last stage of the study involved a discussion regarding means of protection against online defamation. International approaches to changes in the legislative framework to be introduced for effective protection against defamation in Ukraine were considered. The recommendations of researchers for improving protection against defamation were studied.

Ways to establish a balance between the protection of the right to freedom of speech and the right to privacy are outlined. Means of measuring damage and determining responsibility, in particular, the categories of persons responsible for defamation were provided. The problem of settlement of defamation cases in international legislation was revealed.

The conclusion of the article provides that further research should focus on establishing the need for criminal liability for defamation. It is also necessary to detail the problems of the international enforcement of court decisions on defamation and to determine the means to solve them.

3. Results

3.1. Problems of defining the concept of defamation

Information technologies have penetrated into all spheres of human activity in recent decades. Domestic affairs, professional activities, as well as state-level issues are increasingly being carried out and solved online. The so-called digital transformation is a universally recognized necessity as it provides unconditional benefits to society. First, it is an increased mobility due to the acceleration and facilitation of most actions of any nature. Internet technologies are used in virtually all affairs — from purchasing to professional tasks that can be fulfilled anytime and anywhere. Second, it is an increased security, in particular the possibility of cashless payments, information protection technologies, fraud prevention, video surveillance, etc. Third, it is the savings of both individuals, businesses and the state through the introduction of electronic document management, electronic services, production automation, etc. Fourth, they provide wider opportunities in the fields of science and education (in particular, distance learning), medicine, culture and art.

The established fact of the need for the development of information technologies in the world provides not only benefits, but also the lack of alternatives to the introduction of innovations. This poses numerous challenges to modern states, economies, businesses, and individuals. Failure to implement information technology may entail significant losses. Their implementation, however, hides many problematic issues. In addition to the organizational aspect, it is dangerous to significantly strengthen information influence, which increases in the course of digital

transformation. The information can have both positive and negative impact on individuals, businesses, and even on the state. This determined the emergence of the concept of information war.

The distribution of any information is justified by freedom of speech, on the one hand. On the other hand, it may overlap with the violation of the right to privacy. This is ground for the emergence of the institution of defamation. In the most general sense, defamation is the dissemination of information that harms the reputation of a certain subject of information. However, the researchers interpret this term differently, so it needs to be clarified.

The literature review revealed that researchers do not agree on the reliability of harmful information. Some of them believe that defamation is primarily the collection and distribution of false information. Others admit that spreading true information that harms reputation can also be considered defamation.

The latter consider that dissemination of false information is denoted by the term "slander". Besides, there is no single approach to understanding the harm caused by information dissemination. In particular, how to measure the damage, how to confirm the fact of the damage, as well as the scope of damage, etc. Finally, there is no clear indication of who should be liable for defamation and in which cases.

The conflicting views of researchers on aspects of the concept of defamation are explained by the difference in its interpretations in the legal systems of different countries. The legislation of Ukraine lacks this term, which causes certain discrepancies on the definition of defamation by Ukrainian scholars. The problem of inadequate protection against the dissemination of harmful information arises in the absence of clear criteria for defining defamation in the legal system of Ukraine.

3.2. Legislative provision of protection against harmful information in Ukraine and the world

The lack of the concept of defamation in Ukrainian legislation does not mean that the country's legal system does not provide for legal protection against harmful information in general. Figure 1 shows the legislative acts of Ukraine relating to legal protection against harmful information.

Figure 1 shows that Ukraine provides for responsibility for the dissemination of false and shameful information. The right of the person in relation to whom such information was disseminated to defend and refute the information is also provided.

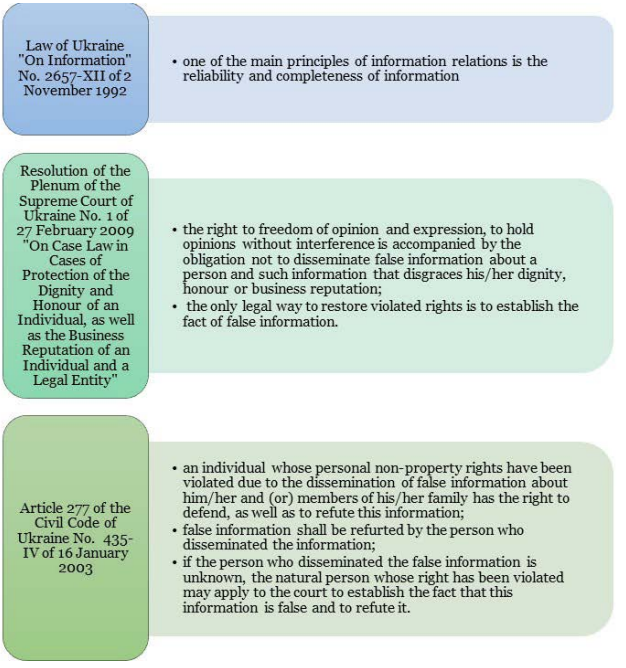

Figure 1: Legislative protection against harmful information in Ukraine (Civil Code of Ukraine No. 435-IV, 2003; Law of Ukraine No. 2657-XII, 1992; Resolution of the Plenum of the Supreme Court of Ukraine No. 1, 2009).

In general, this is in line with the Council of Europe's standards set out in Resolution 1577 (2007) Towards decriminalisation of defamation. The Resolution states that freedom of expression cannot be unlimited, however:

> "Statements or allegations which are made in the public interest, even if they prove to be inaccurate, should not be punishable provided that they were made without knowledge of their inaccuracy, without intention to cause harm, and their truthfulness was checked with proper diligence" (Parliamentary Assembly, 2007).

The Human Rights Committee holds a similar view in its General Comment No. 34 "Article 19. Freedom of expression": if a person was in good faith mistaken about the information, he/she disseminated, he should not be held criminally liable (Koliver, 2011).

However, the legislation of many countries provides for liability for defamation (Figure 2).

Figure 2: Legislation and anti-defamation measures in different countries (BBC News, 2018; Bundesministerium *für* Familie, Senioren, Frauen und Jugend, 2017; Etzold, 2017; European Commission, 2018; Telychko and Rekun, 2021; Haciyakupoglu *et al.*, 2018; Qi *et al.*, 2018; Zharovskyi, 2018)

Figure 2 shows the decisive steps taken by some countries to counter the spread of false information. However, such actions are often opposed by the opposition, whose main argument is the violation of the right to freedom of speech. However, the unrestrained spread of misinformation, especially on major online platforms, can be harmful to both individuals and the country. Disinformation creates wrong views, imposes biased judgments, and can incite unwarranted enmity, promote violence, etc. Therefore, the spread of false information should be limited in a certain way, in particular, through the right to refute such information, as well as through shaping critical thinking among information users.

3.3. Case-study on the example of current military and political events in Ukraine

Russian propaganda and defamation of the aggressor in relation to Ukraine is an extremely relevant example of the spread of false and harmful information. This issue is especially acute in the world of catastrophic consequences caused by such information.

Ciuriak (2022) notes that in an information society, the government of a country with more power can formulate and control the narratives of the population. That is, people perceive imposed thoughts as their own views. This is how preparations for war are carried out according to the formula: delegitimization of the target country; "demonization" of the country; submitting complaints that legitimize the use of force; inventing an excuse or pretext for war. Besides, the invasion must be large-scale and interpreted as "liberation", and the invaders must appear as "saviours".

These were the principles for the Russian invasion of Ukraine. Ciuriak (2022) reveals the formula he defined regarding the war in Ukraine as follows.

Table 1: Components of the formula for preparing for war against Ukraine in the context of its defamation by the aggressor (Ciuriak, 2022).

Components of the formula	Content and main slogans of defamation against Ukraine
Delegitimization	"Ukraine is not a real country", although it is a founding member of the UN and was recognized by Russia after the collapse of the USSR
Demonization	"Ukraine is full of Nazis", although the consolidated far-right share of votes in the last Ukrainian elections was only 2.25% of the votes. Besides, the President of Ukraine is a Jew

Complaints	"Russia was robbed by transferring "historical Russian lands" to Ukraine under the Russian-led Soviet Union." "Russia was betrayed because of NATO expansion" (although Ukraine is not a NATO member). "There is a threat of mass destruction of Russians", although Ukrainianization does not threaten the 144 million population of Russia. Some Ukrainians speak Russian, but identify themselves mostly as Ukrainians
The reason for the war	"The invasion was necessary to stop the genocide in Donbas." However, Donbas has been already occupied by Russian troops at that time

Ian Garner (2022) conducted a study of the reaction of users of groups in Russian social networks to the invasion of Ukraine. In particular, the researcher focused on violence and murders in the city of Bucha. His work proves that the "formula" applied by the aggressor works as the leaders of the aggressor country expected. The researcher focuses on three channels, each having more than 60 thousand subscribers. He analysed the publications that appeared within two days after the start of the Bucha discussion in mass media. He selected ten posts by the largest number of comments and top ten comments by user reaction to each post. As a result, Garner determined that at least half of the users in that sample called on the Russian military to be more violent in their offensive in Ukraine. Many messages concerned individual personalities, in particular, Ukrainian President Volodymyr Zelenskyi (Garner, 2022).

The described tragedy is an example of the "successful" use of defamation by one country against another to achieve its goals. This confirms that defamation can have catastrophic consequences. Therefore, the definition and introduction of means of protection against it is an important issue both for individuals and for the country.

4. Discussion

4.1. Remedies against online defamation

The conducted research allows us to identify a number of problems regarding the means of legal protection against online defamation. First, Ukrainian legislation lacks the term "defamation". Second, there are significant differences in the interpretation of this concept by researchers. The differences relate, first of all, to the reliability of the disseminated information, measuring damage, and the establishment of liability for defamation.

Third, defamation against Ukraine and individual public figures of the country leads to catastrophic consequences. These facts determine the

relevance and necessity of finding and implementing appropriate measures of legal protection against defamation. The analysis of the global practice of protection against defamation suggest that such measures may concern the improvement of the legislative framework, educational programmes, and the improvement of media literacy.

The foregoing justifies the conclusion that Ukrainian legislation requires legislative enshrinement of defamation. The law on defamation should provide for an unambiguous interpretation of this term, an algorithm for determining the damage caused and liability depending on the legally defined conditions. Telychko and Rekun (2021) have a similar opinion on this issue. The researchers note an increase in the number of cases related to the protection of honour, dignity and business reputation on the Internet.

This fact necessitates legal enshrinement of responsibility for defamation. The creators of sites and administrators of web pages for the distribution of false, compromising information shall bear the responsibility. Researchers propose the adoption of the Law on Defamation on the Internet, which has certain nuances compared to traditional defamation.

In the event of a decision to make such changes in the legislation, a dilemma regarding the reliability of information remains the priority issue. As noted, there is a view that defamation can include the dissemination of any information that harms reputation, even true information. In particular, Sytko and Shapovalenko (2018), who are the authors of the legal dictionary, hold this opinion. However, most authors focus on the spread of false information. They associate the disclosure of true information with other terms (for example, doxing) and do not associate it with defamation.

Moutos *et al.* (2020) point out that satisfied defamation actions must establish four key elements: the existence of a false or defamatory statement; guilt that is at least equal to negligence; non-privileged communication to a third party; damage or loss suffered by the plaintiff as a result of the application.

If the opinion that defamation is the dissemination of false information is accepted, the next controversial issue is whether criminal liability occurs for it. Magalla (2018) notes that defamation law depends on whether it is treated as a criminal offense or a civil offence.

Novytskyi and Novytska (2016) consider it logical to establish criminal liability for defamation. This is legitimate when defamation is identified with violation of the right for the protection of business reputation, intentional dissemination of disinformation in order to cause harm. Researchers support their views by the existence of such laws in most democratic countries. They also note that the 1961 Criminal Code of Ukraine contained an article providing for criminal liability for defamation. However, this action was decriminalized in 2001.

It should be noted that the modern world community considers freedom, in particular freedom of expression, as one of the main values. It should, however, be agreed that liability for defamation should be criminal only in particularly serious cases. For example, if we define slandering a person of committing illegal acts as defamation. This is how defamation is considered in the works of Algburi and Igaab (2021) and Navrotska *et al.* (2021). Contrary to this opinion, Rooksby (2018) believes that liability for defamation involves monetary compensation for damage to reputation. Therefore, liability should depend on the scope of damage caused. The scope of damage must be clearly established and its definition must be enshrined in legislation.

Xiaobing and Yongfeng (2018) focus on clarifying the question of who should be liable for defamation. It must be a natural person who has criminal liability and has reached the age of criminal liability. Researchers divide such people into five categories.

The first category includes those who published slander on the Internet, fabricated or falsified the original content of information to the detriment of the reputation of others. The second category consists of those who realize that the information is false and harms the reputation of others. The third category includes persons who fabricated information and organize others to spread it. The fourth category includes persons who falsify the original information of other individuals, organize and manage the distribution of such information. The fifth category consists of network service providers. The study was conducted in China, and the researchers note that the first, third and fourth categories of persons are not controversial in judicial practice. The second and fifth categories require detailed analysis.

Some researchers list search engine operators among others responsible for defamation. They should not be automatically released from liability for search results and autocomplete function. The scope of potential liability should, however, be limited (Yew, 2019).

Drawing up of a plan of measures to combat defamation should be preceded by coordination of the specified aspects of defamation. Solo (2019) offers recommendations for countering defamation and doxing (the study was conducted in the USA). The improvements relate mostly to changes in the legislative framework and are fairly strict methods of countering defamation:

- defamation should entail enforcement of criminal legislation;
- defamation should be recognized as a criminal offense and prosecuted accordingly [in the United States];
- publishing a home address on the Internet without a person's consent should be defined as a crime;

- small claims courts should be authorized to hear defamation or doxing claims;
- website owners must log the IP addresses of their website users for five years;
- website owners should not be able to hide their identity when registering a domain name;
- website owners should be held liable for defamation or doxing by a website user. Liability occurs if the website owner does not remove the relevant information after a complaint by the subject of defamation/doxing;
- search engines should be prohibited from indexing and displaying hyperlinks to websites known for defamation or doxing;
- websites that deal with archiving should stop caching or archiving websites known for defamation or doxing;
- search engines should comply with court orders to remove defamation or doxing hyperlinks on third-party websites;
- foreign defamation or doxing judgments should be enforceable in the US (Solo, 2019).

The improvements referred to above can be applied in practice in relation to changes in Ukrainian legislation by adapting them to Ukrainian realities. It should be noted that defamation of the country's public figures both domestically and internationally is the main problem in Ukrainian practice. This fact should be taken into account when introducing legislative changes.

Nielsen (2019) notes on the issue of international settlement of defamation cases that the cooperation of states will facilitate the enforcement of judgements. The researcher gives the example of the EU, which has special conventions and supranational legislation. But in case that the judgement conflicts with the legislation of the state where its enforcement is required, such a state may refuse to enforce.

Conclusions

The high influence, both positive and negative, of information in modern society determined the relevance of the study of defamation aspects. This especially applies to the dissemination of false information, which is known to be harmful to the reputation of a certain person, business, or country. The problem of defamation in Ukraine is the lack of this term in the national legislation. This causes the differences in the interpretation of the

term by researchers and the difficulties in providing legal protection against defamation.

A survey of the legislation of some countries gave grounds to conclude that the term "defamation" is used in the legal systems of other countries. The countries established different types of responsibility for defamation, in particular, fines and criminal liability. But the problem of balancing the right to freedom of speech and privacy still remains unresolved even in those countries.

The legal protection against online defamation in Ukraine should start with the introduction of changes to the legislative framework. Besides, the example of Italy shows that it is advisable to introduce special programmes for schoolchildren. Those programmes will aim to develop skills of recognizing false information on the Internet. The state should also introduce measures to improve the media literacy of the population.

Further research may detail the means of settling defamation cases at the international level. An important prospect is establishing criminal liability for defamation and the cases in which it may occur.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 741-763
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Improved Planning of Information Policy in the Cyber Security Sphere under Conditions of Hybrid Threats

DOI: https://doi.org/10.46398/cuestpol.4074.41

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Abstract

The study aimed to consider the current state of planning information policy in the field of cybersecurity under intensified hybrid threats, using the methods of comparison and observation. The study conducted showed that in the face of intensified hybrid threats, states must develop common approaches to implement state information policy and ensure information cybersecurity. In the face of Russia's hidden and direct aggression, governments should develop an effective system for implementing national information policies to ensure information security and introduce new state structures and mechanisms for timely detection and neutralization of threats to national interests in the sphere of information security. It concludes on the need to counter the destructive behavior of states using hybrid threats at the national and supranational levels and explains the low level of information protection in individual states and international institutions. The European Union and NATO can play a key supporting role and offer support where national responses to cybersecurity threats have proved insufficient.

Keywords: information threats; hybrid threat; state cybersecurity; disinformation; information policy.

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Recibido el 15/07/22 Aceptado el 01/09/22

Mejora de la Planificación de la Política de Información en el Ámbito de la Ciberseguridad en Condiciones de Amenazas Híbridas

Resumen

El estudio tuvo como objetivo considerar el estado actual de la política de información de planificación en el ámbito de la seguridad cibernética bajo amenazas híbridas intensificadas, utilizando los métodos de comparación y observación. El estudio realizado mostró que, ante la intensificación de las amenazas híbridas, los Estados deben desarrollar enfoques comunes para implementar la política de información estatal y garantizar la ciberseguridad de la información. Frente a la agresión oculta y directa de Rusia, los gobiernos deben desarrollar un sistema efectivo para implementar políticas nacionales de información para garantizar la seguridad de la información e introducir nuevas estructuras y mecanismos estatales para la detección y neutralización oportunas de amenazas a los intereses nacionales en la esfera de la seguridad de la información. Se concluye sobre la necesidad de contrarrestar el comportamiento destructivo de los Estados que utilizan amenazas híbridas a nivel nacional y supranacional y se explica el bajo nivel de protección de la información en los Estados individuales y las instituciones internacionales. La Unión Europea y la OTAN pueden desempeñar un papel clave de apoyo y ofrecer soporte cuando las respuestas nacionales a las amenazas a la ciberseguridad hayan resultado insuficientes.

Palabras clave: amenazas de información; amenaza híbrida; ciberseguridad estatal; desinformación; política de información.

Introduction

Information can be defined as statistical and qualitative data and as beliefs that motivate professionals and mobilize the public (Maor, 2020). In the conditions of the development of innovative technologies, information can be considered a strategic national resource due to its increasing role in the national security system (Hlushko *et al.*, 2022). Information policy provides a set of principles that guide decision-making. The use of modern information resources requires a broad set of information policies.

At the state level, the top priority is the development of information policy, comprising the laws, regulations and doctrinal positions, as well as other decisions and practices that affect society as a whole, including the creation, processing, flows, access and use of information. Information policy includes such issues as net neutrality, filtering, intellectual property,

e-government and major social problems arising from the convergence of policies – levels of access and availability of infrastructure, social support of digital literacy, and digital integration of different population groups.

Digital technological developments and their growing interconnection with changes in social relations have allowed some states to challenge unfriendly countries using so-called "hybrid threats" – coordinated and synchronized actions, that specifically target the vulnerabilities of states and institutions through various online platforms (Dragos *et al*., 2020). This method of warfare entails the use of a wide range of well-designed tools that remain below the thresholds of detection, attribution and retaliation (Balcaen *et al*., 2022). Disinformation campaigns result in undermining vulnerable places of democracy, such as freedom of speech, and freedom of the media, exacerbating existing ethnic, religious, political or economic differences, which leads to decreased social cohesion (Wigell, 2019). Countries around the world have also faced a flurry of disinformation about COVID-19, which puts human lives at risk, raising doubts about the safety of approved vaccines and the reliability of imposed restrictions (Luo *et al*., 2021).

Resilience – the ability of states and societies to deter, resist, and overcome the impact of external interference – is needed to seriously confront hybrid threats in cyberspace, resulting in a demonstration of institutional capacity, good governance, and social cohesion (Bērziņa Čerenkova *et al*., 2019).

Countries differ in their approaches to countering hybrid threats in terms of the security organization and the scale of measures taken to deter the enemy's activities. At the same time, countries detect and respond to hybrid attacks in a similar way, which can be explained by the nature of hybrid threats (Wijnja, 2022).

National governments are developing the necessary information policy tools used in cybersecurity to counter hybrid threats, in the first place – means of communication with citizens and the possibilities of responding to cyber incidents and countering hybrid threats (Kalniete and Pildegovičs, 2021). Increasing user awareness allows us to avoid or neutralize undesirable consequences of information intervention that may occur during the digital transformation of the system (Taherdoost *et al*., 2021).

In modern conditions, Ukraine is the object of constant informational and psychological influence due to its geopolitical position and political and economic interest on the part of a large number of states. Ukraine is in a state of war, characterized not only by aggressive military attacks but also by the use of modern information technologies for hybridizing established rules of war (Veselova, 2021). In this context, the problem of ensuring the information security of national interests by improving approaches

to planning information policy in the field of cyber security is becoming increasingly important (Bondar and Rakutina, 2019).

Thus, given the above, the study aims to consider the current state of planning the information policy in the field of cyber security under hybrid threats. The research objectives are 1) to identify the main ways of improving information policy planning in the field of cyber security under conditions of hybrid threats in the case of Ukraine; 2) to reveal the current state of planning information policy mechanisms in the field of cyber security in the European Union and NATO in the context of helping Ukraine in the fight against hybrid threats.

1. Literature Review

The major toolkit and basis for the article was Howlett's (2019) work, dedicated to some significant and procedural tools of information policy in the era of globalization and innovative technologies, principles and methods, necessary for their implementation. The researcher evaluated the advantages, and disadvantages and provided a rationale for the use of specific information tools, revealed several problems and proposed recommendation solutions to them. The authors' position on the research topic was influenced by Maor's (2020) comprehensive analysis of the theoretical and legal foundations of policy design, the consequences of suboptimal plans, and the role of information quality in policy development.

In turn, Bondar and Rakutina (2019) defined the role of information security in information policy and determined possible prospects for optimizing the implementation of information policy and information security. The study took into account Wijnja's (2022) research on the specificity of individual countries and international cooperation on the liability for the actual use of counter-hybrid measures.

Special attention should be paid to the scientific work by Taherdoost and others (2021) on the systematization of scientific approaches to the concepts of "cyber security" and "information security" and the article by Zvezdova and Vakalyuk (2022) on the cyber security problem, challenges and dangers of high-tech cybercrime and cyber terrorism in modern hybrid warfare. Wigell (2019), Nilsson and others (2021) emphasized the need to develop a comprehensive approach to detecting, analysing and countering hybrid threats.

Kalniete and Pildegovičs (2021) stressed the need to intensify cooperation between the EU, NATO and the Eastern Partnership countries for further progress in cooperation against hybrid threats. Ratsyborinska (2022) traced the transformation of an innovative approach to the information policy

planning processes in the field of cyber security at the supranational level and its characteristics: innovativeness (novelty), objectivity, subjectivity, dedication, demand, implementation in practice, efficiency.

Multiple studies on this problem confirm the fact that special attention should be paid to the improvement of planning information policy in the cyber security sphere in light of hybrid threats. Therefore, it is necessary to conduct a study based on the new criteria of scientific research.

2. Methods

The research design was structured (Figure 1) given the multidimensional nature of the chosen research topic and the rapid dynamics of empirical material in the context of geopolitical transformations. The study is based on comparative research of different counties' positive experiences in the field of cyber security and on the grouping of the data obtained.

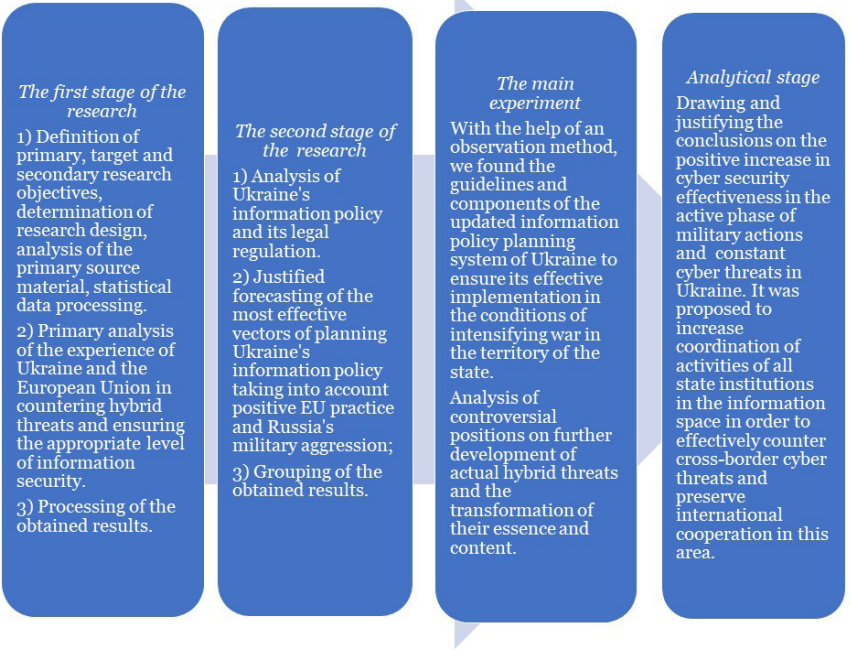

Figure 1: Research design

The main method of research is the method of observation, which allowed to achieve the aim and research objectives and identify the main vectors of improving information policy in the cyber security sphere of Ukraine in the context of modern challenges and draw attention to the expediency of improving coordination of activities of all state institutions in the information space.

The comparison method allowed us to judiciously compare the key statistical indicators of the implementation of the state's information policy and propose conceptual changes based on the most effective EU practices and new hybrid threats. The expediency of adopting EU practices into the legal field of Ukraine as soon as possible, which would also correspond to the declared postulates of future EU membership, was substantiated by this method.

The empirical content of information policy planning processes was based on the historical-genetic method, which allowed to describe the essential characteristics of information policy in the cyber security sphere, to uncover causal relationships in the development of hybrid threats and further transformations of state planning for effective protection, as well as in the organization of the state bodies activities regarding the prevention and protection of the population from disinformation.

In addition, an empirical basis for further evaluation of activities of state bodies and fiscal decentralization was created on the example of the state's development and indicators of its information security.

The historical-comparative method was used to determine the essential characteristics of government participation in the implementation of information policy and cyber security programs at different stages and to find positive features and critical disagreements in the implementation of effective information policy planning during different periods of statehood.

The statistical method was used to analyse the dynamics of implementation of cyber security programs at the national and supranational (the EU) levels, as well as to study a significant array of data on the actions of Ukraine and the EU.

A large amount of data was carefully analysed in the research, among which forty-three sources were cited within the text of the article.

3. Results

Information policy is used to denote political initiatives, that promote the use of tools and concepts related to the global information society, to realize their potential in achieving national, social and economic development

goals. The process of choosing the most effective and profitable options is the main way to make the necessary changes in creating reliable mechanisms for effective development of information policy, information planning and information management.

The information policy is aimed at the development of mechanisms that would promote compliance with reliability and availability of information, privacy, intellectual property rights, and storage of archival copies of materials. Its main areas are shown in Figure 2.

Planning of information policy is necessary to transform appropriate tactics into a set of actions. Approaches to strategic planning are distinguished by the following parameters: objectives, formalities, time period, completeness, organizational, inter-organizational and/or geographical focus, emphasis on data and analysis, degree of participation, place of decision-making, and links with implementation. In this context, it is necessary to identify and acknowledge the problems, to further develop, implement, and evaluate information policy.

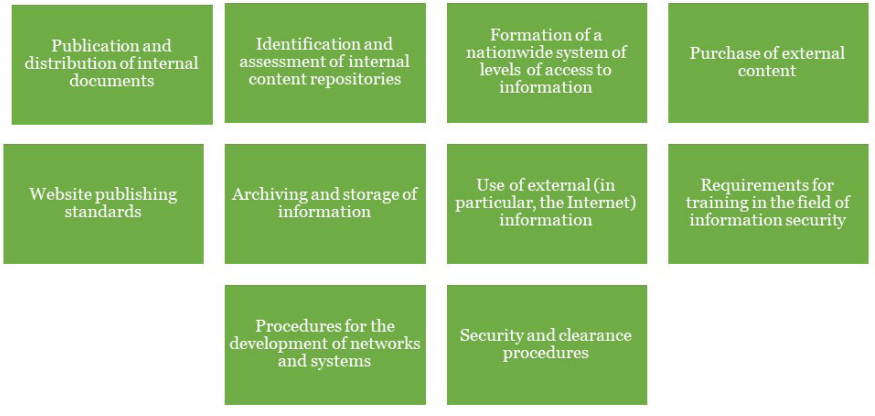

Figure 2: The main spheres of influence of information policy (compiled by the authors).

Information policy includes infrastructural, vertical, and horizontal levels. The infrastructural level deals with the development of the national (or in recent years regional) infrastructure, necessary to support the information society. As a rule, telecommunications policies are reviewed first, then the focus is given to separate policies. Vertical information policy involves such sectoral policies as education, tourism, production, and health care.

Horizontal information policy affects broad aspects of society, for example, policies on the freedom of information, tariff and pricing, and the use of information and communication technologies by the government within the country and in its relations with citizens, businesses, workers, and academia.

The target audience should be provided with truthful and convincing information based on national priorities, which leads to the great importance of the development of specialized scientific institutions, analytical centres, and mass media, which contain many information resources. Their primary task is to reflect the interests of citizens and state priorities.

The development of information policy in the cyber security sphere is influenced by the fact that hybrid threats in the information field are becoming more frequent and sophisticated and combine military and non-military, as well as covert and overt means, including disinformation, propaganda, cyber-attacks, special informational and psychological influence, economic pressure, the deployment of irregular armed formations and conventional armies.

Hybrid action is ambiguous, as hybrid actors blur the lines of international policies and operate at the intersections between external and internal, legal and illegal, peace and war. Each action has its algorithm, forms and methods of implementation. For example, the methods of external information aggression of special information operations are based on disinformation, diversification of public opinion, psychological pressure, and the spread of rumours.

The subjects of information security are directly the state, individual citizens, groups, and associations, which fulfil special functions for ensuring information security, given to them by law. The object of information security should be considered the psyche of a person, his/her consciousness, and even the consciousness of the masses, information systems for various purposes.

Objects of cyber protection include all types of communication systems, including relevant systems that are used for public inquiries and government electronic services and management. A special place is given to the objects of critical information infrastructure. A set of measures within various information protection regimes is of particular importance in today's reality (Figure 3).

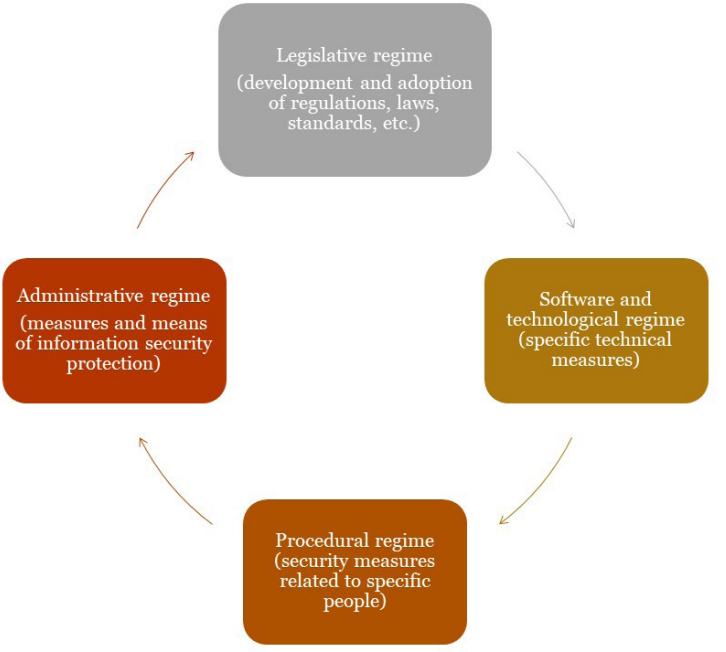

Figure 3: Measures of the main regimes of information protection (compiled by authors).

According to forecasts, the global information security market will reach 366.1 billion dollars by 2028 (Varonis, 2022). Information systems in cyberspace comprise all information infrastructures accessible through the Internet, including its largest and long-established segment web 2 with its social networks and platforms.

The communication network also includes a segment of mobile applications web 3 (on smartphones, tablets, and other similar devices); payment processing networks such as Paypal, SWIFT, Bitcoin and others; onboard processors for various objects of industrial and household infrastructure. Cyber-attacks can disrupt essential services and endanger the lives and safety of ordinary citizens.

They can be committed by organizations or private individuals who express their disagreement with the country's policy and promote their political agenda. Cyber actors can compromise information technology (IT) networks; develop mechanisms to support long-term permanent access to IT networks; withdraw sensitive data from IT networks and operational technologies; disrupt critical industrial control systems by installing destructive malware.

Cyber-attacks occur due to the use of unlicensed software and anti-virus software by state organizations and a low level of security of internal information and communication networks at critical infrastructure objects. Cyber fatigue or apathy towards proactive defence against cyber-attacks affects up to 42% of companies in all countries (Cisco Cybersecurity Report, 2020).

Personal attacks include negative and hurtful comments on victims' social media pages, usually anonymously or using pseudonyms. An example of hybrid threats to citizens in cyberspace can be the activities of troll farms, that is the creation of space in social networks to promote trolling as a kind of serious criticism. Besides, there are controversial, instructive posts to form the necessary opinion.

The provocative nature of the post is fuelled by anonymous and pseudo-anonymous comments, made by digital attackers. Meta trolling in videos is used by content creators (often acting as micro-influencers) to criticize popular political issues and is usually politically motivated and targeted at government and military websites. Placing or reposting memes on various forums disrupts the conversation, inflames emotions, and makes imperceptible but obvious changes to the information space.

In modern conditions, special attention is drawn to the information policy of Ukraine, which strongly resists Russian cyberattacks. Russian information operations are focused on encouraging and supporting separatist armed forces that create chaos and territorial disintegration; increasing polarization between elites and society to provoke a value crisis with a further process of reorientation towards Russian values; demoralizing the military and undermining their commitment; undermining socio-economic stability; provoking a socio-political crisis; intensification of psychological warfare to demoralize the armed forces and the population to break their determination to fight; inciting mass panic and undermining confidence in the most important state institutions; false information about political leaders who do not share Russia's interests; the informational undermining of trust in international alliances and partnerships.

Thus, the purpose of the information policy of Ukraine is the activity of state authorities concerning the creation, collection, obtaining, storage, use, distribution, and protection of information data (Law of Ukraine No. 2657-XII, 1992). The hybrid information war is a threat to national security (Law of Ukraine No. 2469-VIII, 2018).

Therefore, a lot of attention should be paid to cyber security, that is, the implementation of policies, processes, and technologies to protect organizations, their critical systems and confidential information from digital attacks (Law of Ukraine No. 2163-VIII, 2017). The main task in improving this structure is to preserve the cyber stability and cyber security

of the set of state information institutions, management systems, and communication in the digital transformation (Decree of the President of Ukraine No. 392/2020, 2020).

The Ministry of Culture and Information Policy of Ukraine has broad powers in the coordination of information security in Ukraine. Part of the coordination functions is assigned to the National Security and Defence Council of Ukraine (the NSDC) (Law of Ukraine No. 183/98-BP, 1998).

In turn, the State Committee for Television and Radio Broadcasting of Ukraine is responsible for the creation and implementation of a national course in the field of television and radio broadcasting (Resolution of the Cabinet of Ministers of Ukraine No. 341, 2014).

The Ministry of Digital Transformation and the Committee on Digital Transformation of Ukraine carry out a huge amount of work on cyber security. Considering the discretion of the powers of state bodies, planning Ukraine's state information policy in the cyber security sphere in conditions of direct aggression by the Russian Federation should contain mandatory components (Figure 4).

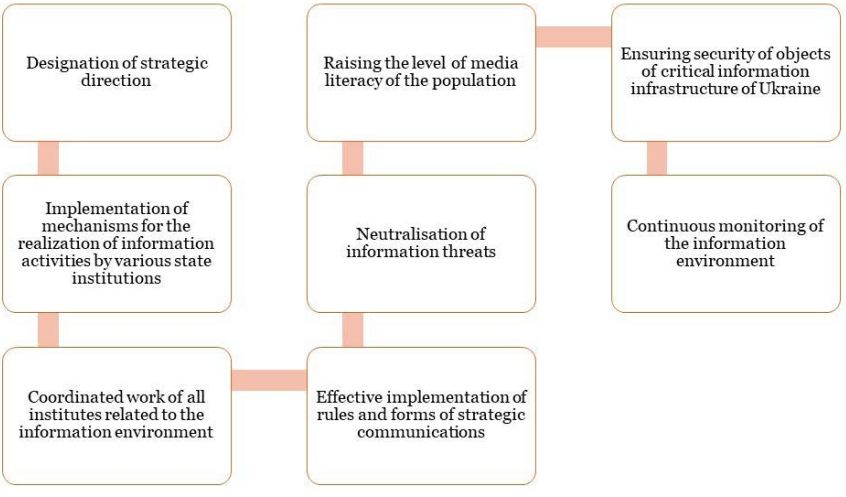

Figure 4: Mandatory components of planning the state information policy of Ukraine in the cyber security sphere in conditions of direct aggression by the Russian Federation (compiled by the authors).

Ukraine is making a lot of efforts to improve the planning of information policy in the cyber security sphere. In December 2021, the Information

Security Strategy of Ukraine was put into effect (Decree of the President of Ukraine No. 685/2021, 2021). Accordingly, on August 11, 2022, the Ministry of Culture and Information Policy of Ukraine proposed a public discussion of the draft Strategy implementation plan.

In March 2021, the Centre for Strategic Communication and Information Security was established under the Ministry of Culture and Information Policy of Ukraine. On March 11, 2021, the Centre for Countering Disinformation was established in Ukraine (Decree of the President of Ukraine No. 106/2021, 2021). Its main areas of activity include immediate notification of the population; detection of disinformation and manipulation; guarantee of information security; fight against information terrorism.

There are also some Ukrainian non-governmental organizations, engaged in fact-checking: "StopFake", "VoxUkraine", "FactCheck" and "Slovo i Dilo". On March 19, 2022, considering Russia's direct military aggression and the martial law, the President of Ukraine V. Zelensky signed a decree on the unification of all national TV channels into one platform according to the decision of the NSDC on the implementation of a single information policy (Decree of the President of Ukraine No. 152/2022, 2022).

Round-the-clock information is presented on the consolidated platform "United News". The decree also stops the activities of private media companies. The goal of the development of a unified information platform is to counteract the active spread of disinformation that justifies or refutes the armed aggression of the Russian Federation against Ukraine.

The modern development of cyberspace in Ukraine is influenced by both civilizational and specific components, which are a consequence of the hybrid threat from the Russian Federation. In Ukraine, a list of categories of cyber incidents has been developed (Computer Emergency Response Team of Ukraine, 2021).

These include malicious (offensive) content, malicious software code, collection of information by an intruder, attempts to interfere, interference, violation of accessibility, violation of properties of information, fraud, and known vulnerability. Since the beginning of the war, 796 cyber-attacks have been carried out in Ukraine (State Service of Special Communications and Information Protection of Ukraine, 2022). Government and local authorities were most often subjected to attacks – 179 times, the defence sector was attacked 104 times, the financial sector – 55 times, energy sector – 54 times. The most common methods of cyberattacks were the collection of information by an intruder – 242 times, malicious software code – 192 times, interference – 92, attempts to interfere – 82 times, and violation of accessibility – 56 times.

The Cyber Security Strategy of Ukraine was approved on August 26, 2021 (Decree of the President of Ukraine No. 447/2021, 2021). On February 1, 2022, the plan for implementing the Strategy was put into effect (Decree of the President of Ukraine No. 37/2022, 2022), which defines strategic goals: effective cyber defence; protection against cybercrime and cyberterrorism; implementation of appropriate deterrence mechanisms; high-quality technical knowledge in the cyber security sphere; protection of digital public services; increasing the level of appropriate coordination; development of international cooperation in this field.

A set of measures for the implementation of the plan should be carried out annually with corresponding indicators of implementation based on the best practices of the USA and EU member states and considering modern challenges in the cyber security sphere. A lot of attention was paid to the establishment of systematic exchange of information on destructive activities in cyberspace and the development of cooperation with the USA, EU member states and NATO member states. Information on the state of implementation of the plan must be provided to *the National Coordination Centre* for *Cybersecurity* (Decree of the President of Ukraine No. 96/2016, 2016).

To counter hybrid threats, the decision of the NSDC of May 14, 2021, provides for the creation of cyber troops within the structure of the Ministry of Defence of Ukraine (Decree of the President of Ukraine No. 446/2021, 2021). The establishment of the National Centre for Reserving State Information Resources in 2021 was an important step forward cyber security (Resolution of the Cabinet of Ministers of Ukraine No. 94, 2021). The strategic task on implementation of the state information policy and ensuring information security of Ukraine in the cyber protection sphere and its main problem is to increase the level of coordination of activities of all state institutions in the information space.

Unlike the European Union or other international organizations, the national governments of the member states have the necessary tools, including intelligence and counter-intelligence agencies (both civilian and military), security forces (enforcement of public order and security), means of communication with citizens and capacities to counter hybrid threats.

At the same time, while national security is a vital concern of each member state, hybrid threats often transcend borders, leaving the EU with a critical complementary role in supporting member states' efforts. In April 2016, the European Commission presented the Joint *Framework* on *Countering Hybrid Threats* (Joint Communication to the European Parliament and the Council, 2016). In June 2018, the European Commission published the *Joint Communication* on *increasing resilience* and bolstering *capabilities* to address *hybrid threats* (Joint Communication to the European Parliament, the European Council and the Council, 2018).

The EU's strategic agenda for 2019-2024 clearly emphasizes resilience to hybrid threats and disinformation as one of the key areas of future work.

In December 2019, the European Council Conclusions on complementary efforts to enhance resilience and counter hybrid threats were adopted (Council of the European Union, 2019), which states the possibility for member states to invoke the EU solidarity clauses when dealing with a serious crisis caused by hybrid threats. The Security Union Strategy adopted by the EU (EUR-Lex, 2020) is based on coordinated EU support to member states on several issues, ranging from organized crime and terrorism to cyber security and hybrid threats.

The European Parliament has also established a Special Committee on Foreign Interference in All Democratic Processes in the EU, including Disinformation (INGE). With a strong political mandate and a high-profile political platform, the INGE Committee can provide visibility and political support to the EU's efforts to investigate and counter foreign interference, including through a series of hearings, testimony sessions and public debates.

The European Union states that Russia's military aggression against Ukraine is accompanied by information manipulation and interference (European Commission, 2022a). There is a constant risk of manipulation of audio-visual materials and disinformation, which Russia may try to use as a pretext for new military attacks, resulting in the weakening of determination and unity of the Ukrainian people, division of the international community in its rejection of the war, and the emergence of doubts about Russia's violations of international law.

The Strategic Compass (ANNEX, 2022), commits the EU to react harshly to foreign information manipulation and interference, to increase its resilience and ability to counter such threats. Russia's aggressive war against Ukraine has strengthened cooperation in the field of cyberspace. In this regard, the European External Action Service (EEAS) and the *European Union Agency* for *Cybersecurity* (ENISA) are working on sharing, situational awareness and coordinating responses to malicious cyber activities against Ukraine.

They also work on supporting Ukraine and other countries in the region by working with partners, including the US and NATO, to ensure complementarity. The creation of the European Centre of Excellence for Countering Hybrid Threats (Hybrid CoE) in April 2017 was a notable event in EU-NATO cooperation. This organization is a key contributor to the deepening of trust and information sharing between the EU and NATO at the strategic level, the expansion of the EU's research and analytical capacity, as well as the organization of joint exercises for strengthening training capabilities and resilience to counter a hybrid intervention.

The work on exposing Russia's manipulations was intensified, in particular, through the EUvsDisinfo website. From March 2, 2022, the broadcasting of the Russian state media RT and Sputnik channels in the EU or diverted to the EU was stopped. Online platforms, leading social networks, advertisers, and the advertising industry, which signed the Code of Practice on Disinformation (European Commission, 2022b), are taking urgent measures to limit disinformation related to Russian aggression against Ukraine.

The EU works closely with its Member States through the EU Rapid Alert System and the G7 Rapid Response Mechanism, as well as with international partners such as NATO, the US, Canada, to share information on Russia's manipulation tactics.

The European Digital Media Observatory (EDMO) created a disinformation task force after the outbreak of war in Ukraine and coordinates fact-checkers and researchers across its network. This format provides for the annual approval of the NATO-Ukraine National Cooperation Program at the state level. Effective civil society engagement may strengthen social resilience, including through efforts to support information pluralism, investing in civic awareness through education, and supporting an independent press that responds quickly to any disinformation.

A successful example of such cooperation in the Baltic States was the involvement of investigative media "Re:Baltica" (2020) in official fact-checking for Facebook, which helped to detect and prevent the rapid, uncontrolled spread of malicious content.

4. Discussion

It may be concluded that hybrid threats are multifaceted, ambiguous and hidden by nature, which makes them very difficult to contain, identify, counter or attribute (Bērziņa Čerenkova *et al*., 2019). The main task of the hybrid threat is not to directly confront the state or attack it, which would lead to an immediate response, but to weaken the country's determination to confront through covert means of intervention, aimed at undermining the internal cohesion of the state (Wigell, 2019). Hybrid threats are a constant feature of today's security environment and part of the current security landscape of the EU, NATO, and Eastern Partnership countries. Joint adaptation to future challenges will mark the transition to a better vision of security and strengthen strategic thinking regarding hybrid threats (Ratsyborinska, 2022).

The nature of hybrid threats is constantly changing, which requires continuous vigilance. Most countries need to develop a more strategic

approach to countering hybrid threats, implement national adjustments, and develop active community participation (Bajarūnas, 2020). The Euro-Atlantic governments and institutions should develop a more effective and comprehensive transatlantic counter-hybrid strategy in cooperation with the private sector and civil society to strengthen their counter-hybrid capacity.

These activities range from organizational initiatives at the national and international levels to functional efforts related to resourcing, training, adoption of laws and their implementation. Due to the strengthening of hybrid threats shortly, including in the aftermath of the coronavirus crisis, transatlantic policymakers should consider this agenda an urgent priority (Speranza, 2020).

Key international organizations should work together with various states both within and outside international organizations and ensure cooperation between sectors and levels (Nilsson *et al*., 2021). According to scientists, this requires cooperation between the military, political, economic, civil and information spheres both in the public and private sectors, as well as at the local, regional, national, and international levels.

The need to collect qualitative information and carry out its multi-level assessment and verification was established in the study. Scientists believe that policymakers must precisely set the rigidity of restrictions within which the intended policy will be implemented (Howlett, 2019). In the case of short-term policy goals, the task of developers is to accurately assess the rigidity of current restrictions and include this information into the design process at the right time (Maor, 2020).

When it comes to long-term policy goals, the challenge is to establish, which restrictions cannot be changed, which restrictions can be ignored, and which ones can be changed (and how) at the beginning of their realization to increase the chances of policy success. After that, this information, according to the scientist, should be fully incorporated into the design process at the appropriate time.

It can be concluded that carefully developed cyber protection should be used for the information security of objects for different purposes. This applies to both the protection of the object itself and the protection of the information circulating in it (Zvezdova and Vakalyuk, 2022). Future ups and downs in countering disinformation will be determined mainly by the development of public-private partnerships, especially through cooperation with the largest online platforms (Szymański, 2020).

Close collaboration with the private sector is the vital long-term impact of any legal framework that may be developed to address hybrid threats (Lonardo, 2021). According to the scientist, hybrid threats may lead to the era of privatization of security and defence, or, at least, to the spread of basic government functions in the private sector.

The implementation in Ukraine of a virtual educational laboratory for modelling processes in information policy for the needs of state and private cyber security will become an effective tool in social processes. This will allow Ukraine to move along its educational trajectory and will expand the range of educational tasks and enrich them with modern content (Arsenovych, 2021).

Conclusions

State information policy should reflect current problems that have emerged in the sphere of information security in the international arena. It is necessary to implement legal and regulatory protection of the rights and interests of all subjects of information relations, namely individuals, social groups, society, and the state in general. The planning of changes in information management should ultimately contribute to the achievement of common national goals and priorities.

Improvement of current planning of information policy in cyber security depends on the strategic approach, goals and context, and should be based on unified conceptual principles. When planning information policy, it is necessary to consider justifications and sets of arguments, which form the basis of the corresponding policy in the field of cyber security.

Russia's aggressive war against Ukraine has shown how quickly theoretical threats can become real and stressed the importance of vigilance, coordination, and readiness. In the conditions of a hybrid war, the state that has become the object of aggression should make every effort to neutralize the corresponding threats. The conflict with the Russian Federation showed that the state information policy of Ukraine is aimed at restoring the sovereignty and territorial integrity of Ukraine, ending the conflict, and stabilizing the post-conflict socio-political situation.

Special attention is paid to constant objective monitoring of the information environment, outlining the strategic narrative and coordination of work of all state institutions in the information space. The planning includes the principles and methodology of strategic communications, detection, assessment and forecasting of the consequences of information threats, security guarantees for the objects of critical information infrastructure of Ukraine and raising media literacy of the population.

The improvement of information policy planning in the field of cyber security is also based on the need to develop a system of relevant views and determination of the action plan of the military-political leadership of Ukraine.

The strategic task of implementation of the state information policy and ensuring Ukraine's information security in the field of cyber protection is also to increase the level of coordination of the activities of all state institutions in the information space. The cross-border nature of cyber threats contributes to the strengthening of international cooperation between countries. National and supranational initiatives in the field of information cyber security can be involved in the planning of the information policy of states and may become the object of further studies.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 764-778
FCJP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Interpretation of human legal value in the natural concept of understanding law

DOI: https://doi.org/10.46398/cuestpol.4074.42

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Abstract

The aim of the article was to identify the essence of the legal value of man within the natural concept of law. The article used methods and perspectives, such as: philosophical dialectics, analysis, synthesis, systemic, functional, historical, axiological and special-legal. It is substantiated that the knowledge of the value of a person within the natural-legal type of understanding is important for determining the criteria of normativity in the protection of human and civil rights and freedoms. The essence of the objectivist variety of the theory of natural law is that the image of law is associated with legal consciousness and is reflected in the active and creative human activity, based on the principles of freedom inherent in man from birth. It is concluded that, within the framework of the modern theory of natural law, the points of iusnaturalistic and legal are combined with the historical and sociological study of legal ideals, which leads to expanding the list of natural rights and including, in addition, not only inalienable human rights, but also, human rights of social, economic and political nature, which contribute, to the strengthening of human activity to realize and protect their needs and interests.

Keywords: human person; legal value; legal understanding; natural law; human rights.

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Recibido el 15/07/22 Aceptado el 16/08/22

Interpretación del valor jurídico humano en el concepto natural de entender el derecho

Resumen

El objetivo del artículo fue identificar la esencia del valor jurídico del hombre dentro del concepto natural de derecho. El artículo utilizó métodos y perspectivas, tales como: dialéctica filosófica, análisis, síntesis, sistémica, funcional, histórica, axiológica y especial-jurídica. Se fundamenta que el conocimiento del valor de una persona dentro del tipo natural-jurídico de comprensión es importante para determinar los criterios de normatividad en la protección de los derechos y libertades, humanas y civiles. La esencia de la variedad objetivista de la teoría del derecho natural es que la imagen del derecho está asociada a la conciencia jurídica y se refleja en la actividad humana activa y creadora, basada en los principios de libertad inherentes al hombre desde su nacimiento. Se concluye que, en el marco de la teoría moderna de la ley natural, los puntos de *iusnaturalista* y legal se combinan con el estudio histórico y sociológico de los ideales legales, lo que lleva a ampliar la lista de derechos naturales e incluir, además, no solo los derechos humanos inalienables, sino también, los derechos humanos de carácter social, económico y de naturaleza política, que contribuyen, al fortalecimiento de la actividad humana para realizar y proteger sus necesidades e intereses.

Palabras clave: persona humana; valor jurídico; entendimiento jurídico; derecho natural; derechos humanos.

Introduction

Considering new views on the definition of the essence of human legal existence, it is necessary to turn to the definition of the concept of "human rights", which is inherent in modern legal science. As noted by MI Kozyubra, a given concept in the literature (foreign and domestic) is defined differently: as opportunities necessary for human existence and development in certain historical conditions; as human requirements addressed to the state and society; as certain benefits, needs and interests of man, etc.

Summarizing the existing approaches to understanding human rights, we can offer the following definition: human rights are recognized by the world community goods and living conditions that a person can seek from the state and society in which he lives, and which are real in terms of human progress (Koziubra, 2015).

Special attention should be paid to the scientific developments of scientists who emphasized the need to use progressive ideas of natural law

in the formation of the constitutional and legal framework and take into account the principles of law in modernizing the legal system of society (Koziubra, 2013, Pohrebniak, 2008).

Scientists emphasize that the system of natural human rights includes the right to human dignity, because, being a creature of natural origin, man deserves to live in decent natural and social conditions. Man is worthy of self-control, as well as worthy of being treated as a subject of moral choice; "philosophy of human dignity" includes such a worldview that requires self-preservation and development of any person, people and humanity as a whole, the law with signs of anthropocentrism includes the dignity of every human person who would enjoy the respect and protection of the state (Myronova, 2008-2009; Muchnik, 2009; Pukhovska, 2015).

These issues become especially relevant in the context of increasing the role of civil society and strengthening its influence on law-making and state-building processes. According to N.M. Onishchenko and N.M. Parkhomenko, the approach to man should be considered not only as to an individual with relevant consumer interests, but as to a unique individual, the potential of which can be realized only in the relevant cultural and legal environment (Onishchenko and Parkhomenko, 2011).

1. Methodology of the study

This scientific article used the method of philosophical dialectics, as well as a number of general and special scientific methods. The method of philosophical dialectics aimed to prove the regularity of the gradual change of understanding of the essence of human legal value in the natural law concept, to clarify the causal links between modern interpretation of human legal value and the humanization of law.

The method of analysis allowed to distinguish in the natural-legal type of legal understanding the peculiarities of the interpretation of human legal value, to give them a description, to clarify their features and basic features.

Their synthesis allowed to give the concept of "human legal value" a holistic image, to find out that the modern understanding of human legal value is holistic and includes such features as self-determination, value orientation, effectiveness and responsibility.

The application of the system method made it possible to consider the legal value of man as a phenomenon of the system order. The latter is also a system that has a holistic and dynamic nature, based on human rights and freedoms, their needs and legitimate interests.

Based on the use of the functional method, the place, significance, role of man and his purpose were determined depending on the peculiarities of the content of the natural-legal concept of legal understanding.

The application of the axiological method allowed us to conclude that the legal value of man is manifested primarily in his awareness of the importance of natural and legal values, and secondly, the need to reflect them in law.

The hermeneutic method allowed to interpret the works of scientists who contain studies of the legal value of man in the context of the natural-legal concept of legal understanding, objectively and critically evaluate different approaches to this concept.

The historical method was aimed at understanding the historical process of formation and development of understanding of the legal value of man in the context of the natural-legal type of legal understanding.

The use of a special legal method made it possible to investigate the interpretation of the content of human legal value depending on the natural legal concept of legal understanding using legal terminology.

2. Analysis of recent research

A limited number of scientific papers have been devoted to the study of the legal value of man in the natural-legal type of legal understanding. This is a clear confirmation that the research topic is new and relevant enough to conduct research in this area. Problems of defining the concept of «human rights», based on the natural-legal concept of legal understanding, were studied (Pohrebniak, 2008; Koziubra, 2013; Koziubra, 2015). Issues of humanization of law and understanding of the legal value of man in the natural-legal type of legal understanding were raised in the works of such scholars as Shevchenko *et al.*, 2020; Shevchenko *et al.*, 2020; Shevchenko *et al.*, 2020.

A number of works by scientists are devoted to the legal status of man and citizen in the natural-legal concept of legal understanding (Bachynin, 2003; Humboldt, 1985; Lvova, 2008; Muchnik, 2009; Onishchenko and Parkhomenko, 2011). In addition, the literature review is devoted to an important series of works that examine the problems of interpretation of human and civil rights in the natural law concept of law (Myronova, 2008-2009; Pukhovska, 2015; Bobrovnyk *et al.*, 2022. The problems of correlation between the legal value of a person in the normative and natural law concepts of law-understanding are devoted to the works of such scientists as Sorokin, 1992; Radbruch, 2004; Ol, 2005; Kostenko, 2009; Shevchenko *et al.*, 2019; Shevchenko *et al.*, 2021.

3. Results and Discussion

3.1. Features of understanding the legal value of man in the theories of natural law

We believe that the basic positions on the knowledge of the legal value of a person within the existing types of legal understanding takes the theory of natural law, which originates from the depths of ancient philosophical and legal thought. It is appropriate in this context to recall the essence of the worldview revolution, which was carried out by Socrates.

Realizing that the individual must oppose to natural chaos his moral law, Socrates for the first time among philosophers turned to the problems of values, the conscious choice of the ideal norm for determining the options of human behaviour. This is where the disclosure of the essence of the behaviour of the individual begins, which can demonstrate the implementation of the requirements of goodness and justice, honesty and morality, or, unfortunately, be a manifestation of destructive phenomena in society.

Knowledge of the legal value of a person within the natural and legal type of legal understanding is important for defining and consolidating the true criteria of normativity in law, implementing an effective process of its implementation in the system of public relations, building the legal state, protection of human and civil rights and freedoms (Bobrovnyk *et al.*, 2022).

We emphasize that there is no generally accepted approach to understanding the notion of «value» in contemporary scientific literature. Problems to define the notion of value have been developed within various concepts (phenomenological, neo-Kantian, sociological, psychological, pragmatic, structuralist, normative, etc.) (Shevchenko *et al.*, 2021).

The basic concept for revealing the essence of this issue is the concept of “value”, i.e., everything that allows people to satisfy their desires and needs, makes them make efforts to achieve, maintain and increase them. It is worth agreeing with the thesis that socio-historical conditions do not affect the content of the absolute values of natural law, the latter are not a product of the will of the state, and are not established by its regulations (Bachynin, 2003).

The highest social value is a person. This means the right to life, freedom, security, dignity of the individual. In this context, the opinion of some scientists will be fair that the human-cantered dimension of law, if viewed from the standpoint of reflection and consolidation in the system of appropriate forms of law, is to ensure and guarantee the real process of natural human rights (Shevchenko *et al.*, 2020).

The humanism of law is to ensure and guarantee the real process of realization of natural human rights. It should be noted that with the help of normative consolidation of natural human rights there is a filling of positive law with general social content, its humanization is carried out. "Today, the constitutional consolidation of human rights and freedoms as the highest value and their compliance with international law is one of the important features of a democratic state" (Shevchenko *et al.,* 2020: 450).

The idea of natural law is important for revealing the essence of the legal value of man within the natural-legal type of legal understanding; given the fact that it has passed a long historical path of its development and is considered from several points of view, namely: theological, objectivist and modern interpretation of natural law, it is advisable to dwell on the role of man in the context of these approaches.

Summarizing the views of various scientists O.L. Lvova noted that the idea of natural law has long developed in the form of absolute natural law, based on the belief in the existence of immutable and universal laws of world life and human relations. It was believed that every living being has natural properties that are inevitably manifested in its behaviour, and natural law – an unchanging and universal ethical, or legal, norm of human behaviour (Lvova, 2008).

The essence of the theological theory of natural law was that the initial condition for understanding the law is the awareness of God's will to establish the order to which people must obey in the process of their lives. As noted by PA Old, "natural law" is the outward manifestation of eternal, divine law, and human law is contradictory (Ol, 2005). But, the question of who and how will represent "God's order" remains open.

That is, in such conditions a basis is created for determining the instructions of God in the will of God, which is beneficial for the representatives of the authorities, filling it with content that may be far from the interests of man himself. Thus, the historical past of human development is a clear indication that in the genesis of feudalism was proposed awareness of law as a privilege granted by the monarch.

Within the framework of the theological theory of natural law, the concept of ideational law was developed (P.A. Sorokin), which provoked a contradictory reaction from scholars. Its author noted that in its system of values, all social interests must be subject to religious norms. Judges are clergy, and many legal procedures take the form of sacred rituals. In states of ideological orientation, only those rulers whose origins reach the gods have legitimacy. Therefore, in such states, the monarchy is a theocracy. These were the states of archaic Greece and Rome, India and Tibet, the Inca Empire and the medieval European states (Sorokin, 1992).

The specificity of the objectivist version of the theory of natural law, which originates from Hegel's philosophy of "absolute idea", is that the central place in the system of Hegel's philosophical views was the spirit, so it is with legal consciousness, he associated the image of law is reflected in the actions of members of society in different socio-historical conditions. He represented law as freedom, which is a manifestation of natural law.

It should be noted that in defining the idea of law through freedom, Hegel emphasized that the idea of law goes through three stages in its development: abstract law as the right of abstract free personality; morality as an appropriate field, which includes the assessment of human behavior and is subjective; morality as an objective idea of law, which affects the family, civil society and the state. Thus, natural and positive law, according to Hegel, are almost identical concepts, except that the image of the law contained in the individual consciousness, changes the positive law in accordance with changing social conditions.

In our opinion, the change of the image of positive law acquires its real manifestation and consolidation in the rules of law only in the presence of freedom, which is inherent in man from birth. Thus, the objectivist version focuses on significant human activity. Such a person clearly responds to everything that happens in society, assessing the environment through the prism of their own consciousness, the degree of which is determined by the level of freedom of the individual. W. Humboldt (1985: 452) noted that: "... nothing contributes to reaching maturity, as freedom itself". This assertion will be denied, of course, by those who have often used the lack of maturity as suggestions in order to continue oppression.

But it seems to us that such an inference follows from the very nature of man. «Insufficient maturity, necessary for freedom, can only be the result of a lack of intellectual and moral strength ... it requires work, and work - freedom that causes initiative» (Humboldt, 1985: 452).

Continuing the idea of the role of natural law in the context of human creativity, we note that it is within this concept that the image of man is deprived of obedience to the law as a model of behavior that is ideal in the context of normative value. It should be noted that such a person will unquestionably focus his efforts on the protection of rights and freedoms of non-state origin. That is why, considering human rights as an integral part of natural law, given that they provide the value to the subject, it is quite natural to consider them as an internal natural impulse that determines human behaviour.

Fundamental human rights exist before law in its formal sense, and therefore, in our opinion, it is appropriate to say that human rights in their natural manifestation are the basis for the formation of legal activity of the subject as a natural need. It follows that legal activity cannot be considered

solely as a consequence of a high level of socio-legal development of the individual, but should be assessed as a feature of the subject, which exists before the involvement of the subject in the plane of legal relations.

Legal activity in static form constantly exists as a behavioral element that becomes active when the subject is aware of its role in social processes. It never disappears and should be considered from the standpoint of a dynamic approach as the realization of the natural needs and interests of man, a man who is free, creative and aimed at implementing the values of a natural character.

3.2. The specifics of the interpretation of human values in the modern theory of natural law

It should be noted that the modern understanding of the theory of natural law has specific features that determine the place and role of man in the process of lawmaking and law enforcement. This is due to the fact that compared to the era of anti-feudal revolutions, there have been significant changes in views on man as a subject of natural rights.

New approaches to defining the legal existence of man are associated with the adoption after World War II of a significant number of human rights regulations. It was during this period that many declarations and conventions on human rights were developed and adopted under the auspices of the United Nations. An important place among these documents is occupied by the Universal Declaration of Human Rights.

It should be noted that human rights, being recognized by the world community, are universal. They are indivisible and interdependent. An important role in relation to human rights belongs to the international community, which should treat them globally, given the importance of national and regional specifics and various historical, cultural and religious features of state development. Therefore, we believe that the normative consolidation of human rights has opened a wide space for creative and active activity of the individual and defined the limits of state intervention in society.

The law-abiding subject is replaced by a person who has significant potential for legal activity, focusing on the volitional behavior of the subject, who, being in the axiological field of law, is able to choose between legal values and their own ideas about the legal. expediency or inexpediency, right or wrong behavior. Under such conditions, there is a neglect of the foundations of the eternal legality of regulations.

Changing the political situation from democratic to anti-democratic, the specifics of social relations, practical needs inevitably lead to the fact that regulations lose their legitimacy and put the subject in a situation of need

to resolve the dispute between the dogma of law and real needs, between natural values and values, which are proclaimed by law.

It is worth noting that the realization of the value of human dignity does not happen automatically, but requires a high level of value content of the individual, a meaningful attitude to human existence. The peculiarity of the realization of the human right to dignity is that without it, it is impossible to realize all other human rights and freedoms.

That is why, in certain historical conditions, man and civil society are faced with issues related to the need to understand the existence and choice between two types of values, namely: values that express practical, temporal and subjective guidelines for human behaviour; values that do not have time limits, or follow from their content.

Thus, the hierarchy of values is determined by the change of value determinants, and this inevitably leads to the fact that in the first positions is one or the other value determinant, forming a value-based basis of human behaviour in the legal field. This is a clear indication that the development of human society is uneven.

It is worth recalling in this regard at least the fact that for a long historical period of time the power of the state was determined by its territorial scale (Roman Empire, Russian Empire, former USSR) and anti-democratic law served the needs of such a state. However, it is wrong to perceive the greatness and power of the state, based only on the scale of its territory and regulatory system of law. And humanity realized this, turning again after the tragic events of the mid-twentieth century to the problem of natural law.

It should be noted that in the context of globalization, human capabilities to influence their future existence are significantly expanded. We believe that the use of the ideas of natural law creates a solid basis for the active involvement of man in integration processes. The solution of today's problems is inconceivable without a valuable understanding of the ways of coexistence and development of mankind, the need for mutual convergence of legal systems while preserving their identity and uniqueness.

Based on the conceptual ideas of the theory of natural law, humanity will inevitably approach the realization of the need to form a universal civilization mentality, which includes the desire for peace and a reasonable solution to existing problems. Otherwise, without this approach, it will be impossible to reach a consensus on many global issues.

Taking into account the essence of modern theory of natural law, we note that the list of natural rights includes not only inalienable human rights, but also a number of socio-economic rights, the right of nations to self-determination, the right of people to revolt against anti-democratic

government. Thus, based on the peculiarities of modern theory of natural law, it should be noted that it is not considered as a set of once and for all established regulations.

The focus is on the development of legal awareness, moral and spiritual values of a particular society and people. That is, natural law views in modern jurisprudence are combined with the historical and sociological study of legal ideals. It should be noted that based on the essence of the theory of natural law with variable content, the role of man is to direct their activities to the process of realization of values of a natural nature, arising from the needs of a particular historical period of society. To achieve this goal, a person must prove himself as a "person in law".

It is believed that this concept was first introduced by G. Radbruch. In his opinion, a person in law has two images, namely: a legal person and a judicial person. A legal person is a human individual who, given his biological nature, has such legal qualities as natural, inalienable, fundamental rights. As for the judicial person - a human individual who in the process of socialization is able to perceive, implement and transform law as a special social, i.e., as a state-volitional, legal, "positive" phenomenon, which is an element of culture formed in a particular society (Radbruch, 2004).

Thus, the legal value of man is reflected at the level of natural law type of legal understanding. Within the framework of positive law, it must find its logical continuation and development. Positive law gives normative certainty, stability to the value characteristics of man, which at the initial stage are contained in natural law. This fully corresponds to the essence of the naturalistic concept of law as one of the types of the concept of natural law, the content of which is the understanding that natural law is the laws of social nature. The role of man is to give them the form of legislation. In this case, positive law should be considered as a legislative form of natural law.

3.3. Features of the mechanism of protection of human and civil rights at the beginning of the XXI century

However, the value of man within the naturalistic concept of law is not limited to the identification and normative consolidation of the laws of social nature. Thus:

> The dramatic events of late 2013 – early 2014 in Ukraine, associated with the "Revolution of Dignity", mass violations of human rights and freedoms by the then authorities, encroachment on life and health, other rights of Ukrainian citizens, as well as the temporary occupation of Russian troops of the Autonomous Republic of Crimea, the undisguised aggression of the Russian Federation against Ukraine in its eastern territories, the Anti-Terrorist Operation and the Joint Forces Operation proved that the formal consolidation of human rights and freedoms, their declarative proclamation do not have sufficient grounds for observance and realization of human rights and freedoms" (Shevchenko *et al.*, 2019: 536).

Thus, the laws of social nature alone cannot be implemented, but require the need to involve in this process the will and consciousness of man, which, in turn, are part of a more complex system – the mechanism of protection of human and civil rights and freedoms.

However, it should be noted that the process of functioning of such a mechanism does not happen automatically, but requires the participation of a number of actors, namely: political parties, public organizations, political leaders, civil society in general.

A special role in the functioning of this mechanism should belong to civil society as a set of free and equal citizens and their voluntary associations, which, guided by the requirements of natural law, should direct their activities to take an active part in law-making, implementation of legal norms and control over observance of human and civil rights and freedoms. The level of awareness of the value of law, the effective process of law-making and the implementation of legal norms are all indicators of the interest of various actors in the life of law, in its implementation in the system of public relations (Shevchenko *et al.*, 2020).

Note that the question of the functioning of the mechanism of protection of human and civil rights and freedoms acquires special significance in the conditions of human development in the XXI century. And here it is necessary to agree with the opinion of O.M. Kostenko, that in modern conditions there is a massive nature of abuses disguised as human rights, but in fact is an abuse of human rights enshrined in law – a new challenge to modern civilization, which can only be met by further development and improvement of human rights (Kostenko, 2009).

In order to counter arbitrariness and illusions that manifest themselves in the form of human rights abuses, it is necessary to supplement the concept of "natural human rights" with the concept of "natural human responsibilities". It follows that the value of man must be expressed not only in the realization of human rights, but also in the performance of his duties arising from the natural laws of social life. This should be the criterion by which a line can be drawn between human rights and human rights abuses.

Using a natural-legal approach to legal understanding, there is a constant process of comparing one's own behaviour with ideal patterns that are universal in nature. In the process of communicating with other people, a normative value system is formed, which is constantly correlated with ideas about human-centered law.

The idea of the desired right is inextricably linked with the issues of normative consolidation and implementation of natural human rights as ideal patterns of behaviour, and they should be considered in two senses: in the objective, when they are recognized by others, and subjective – human awareness of their role and importance in public life. The peculiarity of

natural rights is that they are ethical in nature, emphasize the self-worth of the individual and provide a high level of spiritual development of society, but do not coincide with the moral and ethical norms, which are due to historical and other factors.

The legal value of man derives from the very content of the natural-legal type of legal understanding and is inextricably linked with issues of morality, on the basis of which there is an awareness of the need to link human rights with its responsibilities. This is especially true for the obligation to recognize the rights of others. Given the fact that man is a creature that is unthinkable outside of society and lives not only for himself but also for others, so he is able to establish appropriate order in the relationship.

Like natural law, moral values originate from absolute and eternal concepts such as justice, dignity, wisdom, goodness and, as an integral formation of moral consciousness, include the norms of morality, ideas, principles and ideals found in relationship with human needs and act as guidelines for its behaviour. Moral values are the basis for the implementation of activities that have the characteristics of a self-regulatory nature and involves the ability of a person to consciously resolve relevant issues, to freely choose solutions based on socio-moral values. Obviously, moral values and natural law are closely intertwined.

Since law as a phenomenon of public life has a holistic nature, and one or another approach to its understanding is only a perspective on it, carried out from the appropriate point of view, we can say the following: law will make sense only if the legal value of man, which is revealed through the natural-legal type of legal understanding, will be recognized as a positive law as an indisputable fact. This requires that the rules of positive law include the spirit of natural law.

It should be noted that such inalienable rights as the right to life, liberty, equality, the right to fair treatment of a person must find their further development and specification not only at the level of normative consolidation, but also at the level of real process of implementation them in life. The classical doctrine of natural law and the modern understanding of natural law with its changing dynamic content act as the main reference point for the development of various forms of law. Therefore, it is quite natural to focus on the multifaceted manifestations of natural law, to explore how natural law is reflected in the system of legal acts, how exactly is implemented the constitutional provision on the recognition of man as the highest social value.

Conclusions

Within the natural-legal type of legal understanding, the legal value of man has its own features, namely:

- in the theological theory of natural law, the role of man is characterized by the fact that he acts as a passive executor of another's will, which leads to the possibility of any manipulation, directing human behaviour in one direction or another, neglecting his own interests;
- the essence of the objectivist kind of theory of natural law, manifested in the fact that the image of law is associated with legal consciousness and is reflected in the active, creative human activity, based on the principles of freedom inherent in man from birth, depriving him of obedience to the law as an ideal normative-value model of behaviour, which may not correspond to the values of a natural character;
- within the modern theory of natural law, natural and legal views are combined with historical and sociological study of legal ideals, which leads to the expansion of the list of natural rights and the inclusion of not only inalienable human rights, but also a number of social, economic, political and of another nature, which contributes to the strengthening of human activity in order to implement and protect its needs and interests.

The natural-legal type of legal understanding determines the definition of human value not only through the expression of the realization of human rights, but also the fulfillment of the responsibilities assigned to it, which derive from the natural laws of social life.

The ethical nature of human rights and responsibilities emphasizes the self-worth of the individual and provides a high level of spiritual development of society. Under such conditions, a person acts as a subject who is capable of active creative activity, feeling the influence of the mentality of the society.

Given the fact that the quality of social and legal life is determined not only by the declaration of rights and freedoms, but also by the real process of their implementation in the system of social relations, the legal value of man thus acquires a broader meaning, including the ability to influence others in order to achieve appropriate results. The specific features that a person should have in the legal life of society are:

- to be the bearer of universal values;
- to act as a subject that has the opportunity to choose appropriate behaviours, analyzing the existing legal reality;
- to be an active participant in legal relations.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 779-803
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Considerations on the reform of Ukraine's wartime criminal justice system

DOI: https://doi.org/10.46398/cuestpol.4074.43

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Abstract

The purpose of the article was to consider the main development trends in certain elements of the criminal justice system, which were integrated due to Russia's large-scale attack on the sovereign territories of Ukraine. The subject of the article is the institution of the reform of the Ukrainian criminal justice system. The legal bases ensuring the functioning of criminal justice institutions (in particular, the investigative bodies) are examined and the corresponding conceptual and categorical apparatus is analyzed. A review of selected elements of the criminal justice system during the war is conducted. The influence and significance of Ukraine's acquisition of EU candidate membership status on the functioning of certain elements of the criminal justice system is clarified. Finally, the content and essence of the main requirements of the EU to Ukraine, which can be the basis for conducting negotiations on the issue of Ukraine's final accession to the organization, are characterized. In the conclusions, directions and methods of reforming certain elements of the criminal justice system in the conditions of large-scale invasion are described.

Keywords: criminal justice; European integration; criminal punishment; martial law; justice in wartime conditions.

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Recibido el 14/07/22 Aceptado el 27/09/22

Consideraciones sobre la reforma del sistema de justicia penal de Ucrania en tiempos de guerra

Resumen

El propósito del artículo fue considerar las principales tendencias de desarrollo en ciertos elementos del sistema de justicia penal, que se integraron debido al ataque a gran escala de Rusia contra los territorios soberanos de Ucrania. El tema del artículo es la institución de la reforma del sistema de justicia penal de Ucrania. Se examinan las bases jurídicas que aseguran el funcionamiento de las instituciones de justicia penal (en particular, los órganos de instrucción) y se analiza el aparato conceptual y categorial correspondiente. Se realiza una revisión de elementos seleccionados del sistema de justicia penal durante la guerra. Se aclara la influencia y la importancia de la adquisición por parte de Ucrania del estatus de candidato a miembro de la UE en el funcionamiento de ciertos elementos del sistema de justicia penal. Finalmente, se caracterizan el contenido y la esencia de los principales requisitos de la UE a Ucrania, que pueden ser la base para llevar a cabo negociaciones sobre el tema de la adhesión definitiva de Ucrania a la organización. En las conclusiones, se describen las direcciones y métodos para reformar ciertos elementos del sistema de justicia penal en las condiciones de la invasión a gran escala.

Palabras clave: justicia penal; integración europea; sanción penal; ley marcial, justicia en condiciones de guerra.

Introduction

The institutional capacity to protect the rights and freedoms of a person and a citizen is one of the most important directions in State development in general, and acts as an essential organizational and structural vector in the criminal justice system, in particular. The active phase of russia's full-scale invasion and military aggression against Ukraine, which began as a result of an insidious attack by enemy troops in February 2022, had a significant negative impact on the functioning of all State institutions, threatening the lives and health of people, the stable functioning of economic mechanisms, and the social existence of society (Kharytonov *et al.*, 2021) and somewhere stopped the law operation altogether, and to this day leads to blatant and systematic violations of human rights, in particular in the temporarily occupied territories. Accordingly, in wartime conditions, the activities of law enforcement agencies must also change. First of all, it concerns their powers and effectiveness of activities in such conditions.

The National Police of Ukraine is at the forefront of the fight against the occupying forces and, within the limits of its competence, systematically participates not only in ensuring the criminal and administrative liability of persons guilty of offenses, but also performs other functions related to humanitarian areas, protection and security of both civil and service infrastructure or individuals. Among others, in our opinion, one of the most important and complex tasks is performed by the pre-trial investigation bodies of the National Police of Ukraine – inquiry and investigative units, the activities of which are a fragment of the criminal justice system and are correlated with national interests.

For example, during 5 months (the end of February – June 2022), investigators of the National Police of Ukraine investigated almost 982,000 criminal proceedings, of which almost 128,000 were directly initiated during the specified period. The materials in almost 15,000 criminal proceedings were sent to the court during the specified period, which is almost 12,000 less than last year, in this period (27,000). This is logically justified by the full-scale invasion of Russian troops into the territory of Ukraine, as a result of which the territories of the Donetsk, Luhansk, Kherson, Zaporizhzhia, and Kharkiv regions were partially occupied (in the first months of the war, separate administrative and territorial units of the Kyiv, Chernihiv, and Sumy regions were also partially occupied).

All this fundamentally negatively affected the functioning of the pre-trial investigation bodies of the National Police of Ukraine, taking into account the fact that the relevant investigative and inquiry units continued to perform their duties and exercise procedural rights and powers even in conditions of semi-encirclement of territorial units, as well as in cities, which were (and still are) filled with internally displaced persons.

Under appropriate conditions, the legislative base was also promptly and systematically improved. So, for example, articles 185 (Theft), 186 (Robbery), 187 (Brigandism), and 189 (Extortion) were supplemented with new special qualifying features "whether under conditions of war or emergency", which automatically penalized (increased criminal liability) for their commission in wartime conditions. It should also be emphasized that in five months, starting from February 24, 2022, a pre-trial investigation of more than 15,000 criminal proceedings was initiated: thefts – slightly more than 12,000, robberies – more than 500, brigandism – more than 200.

We focus on other already introduced changes, their nature and the need for further improvement based on the first results of law enforcement in one of the paragraphs of the corresponding study. While, in our opinion, it is impossible to ignore the effect of the criminal justice system in the conditions of war, through the prism of a new status for Ukraine – a candidate for membership of the European Union. This fundamentally changes the legal status of some institutions, the operation of certain

legal norms, and also, according to the recommendations provided by the European Parliament, necessitates complex changes in the legislation of Ukraine, which influences law enforcement agencies and the functioning of the pre-trial investigation system, in particular, in terms of prosecution of persons guilty of war crimes.

That is why this issue needs a deeper study through the prism of the Europeanization of national legislation in the light of obtaining the status of a candidate for membership of the European Union and the correlation of the relevant requirements with the realities of martial law and the possibilities of Ukrainian democracy.

The article aims to analyze the scientific views of researchers and scientists, legislative acts of Ukraine and the European Union, as well as international legislation in general, regarding the functioning of the criminal justice system according to the European model and ways to optimize it in conditions of active hostilities. This aim requires solving several research tasks, among which, in particular: to carry out a general overview of the functioning of the criminal justice system in wartime conditions, to determine the main tendencies of pre-trial investigation, as well as to establish risks and dangers in the relevant process; to characterize the influence and significance of the fact that Ukraine has acquired the status of a candidate for membership of the European Union on the functioning of the pre-trial investigation system as an element of the criminal justice system; to make an attempt to outline directions and ways of reforming the criminal justice system in general and pre-trial investigation in particular, in the conditions of the large-scale invasion of Russia and the operation of the legal regime of martial law.

1. Methodology

During the research, such general scientific and special scientific methods were used: formal logic – for the detailed implementation of the assigned tasks to establish ways of reforming the elements of the criminal justice system of Ukraine in the conditions of martial law and in connection with the acquisition of the status of the candidate for membership of the European Union, description – for the determination of general theoretical and purely legal categories characterizing the criminal justice institution in general, as well as pre-trial investigation as its fragment, as well as categories related in the context of the research subject and within its object, comparative legal method – during the analysis of administrative and international legal, as well as criminal procedural norms and scientific provisions relating to the researched issues; dogmatic method – for the interpretation of the main legal categories and clarification of the conceptual and categorical research apparatus.

The object of this study is public relations in the field of criminal justice in Ukraine. The subject of the study is the system of pre-trial investigation as an element of criminal justice through the prism of the Europeanization of legislation in wartime conditions.

2. Literature Review

Taking into account the multidisciplinary nature of the subject of research, it should be noted that the issue of pre-trial investigation in the conditions of the legal regime of martial law was highlighted in the works by Hloviuk *et al.,* (2022) and other co-authors of the scientific and practical commentary on Section IX-1 of the Criminal Procedure Code of Ukraine «Special regime of pre-trial investigation, trial in conditions of martial law». Besides, one of the co-authors Teteriatnyk (2021) considered the relevant issue within the scope of her own doctoral dissertation research on the topic «Criminal proceedings in conditions of emergency legal regimes: theoretical and methodological and praxeological foundations».

It should be noted that the personal contribution of Lazareva (2018) regarding the definition of the general structure of the mechanism of detention by an authorized official in the criminal process of Ukraine (monographic level), which provided a substantial theoretical basis for deepening the relevant aspect of the outlined topic, as well as the work by Udalova (2005), which is directly related to the main fundamental problems of science and the field of criminal procedure.

International researchers also did not ignore the relevant topic in general and the difficulties in the work of the mechanisms of bringing to criminal responsibility the persons guilty of committing the relevant offenses, the work by Devi and Fryer (2020) regarding the organizational and procedural aspects of bringing to criminal responsibility Brazilian criminal organizations as transnational actors of violence, including in the context of armed conflicts, and Borch (2001) concerning the characteristics and level of functioning of the institute for the protection of the rights and freedoms of persons taking or participating in hostilities, in particular the examples of Vietnam, Haiti and others.

In general, these works fragmentarily and in general characterize the relevance of the outlined scientific publication, however, taking into account the full-scale war started by Russia on the sovereign territory of Ukraine, there are current and fundamental problems in law enforcement that require scientific study.

3. Results and Discussion

3.1. An overview of pretrial investigation mechanism as part of the criminal justice system in war

It should be stressed that Russia's invasion of Ukraine has made the functioning of the entire criminal justice system extremely difficult, whose major aim is to set up a process to prosecute those who had committed criminal acts. This process is always accompanied by a symbiote mechanism to protect rights and freedoms of suspects or persons who have allegedly committed an offence. This further requires the engagement of both judicial institutions and defense lawyers, and the activities of other non-institutional units.

Temporary occupation of certain territories of Ukraine had significantly and adversely impacted police responses to committed criminal offenses, made judicial control over the activities of certain subjects of the criminal process impossible, and posed serious threat to the human and citizen rights and freedoms.

Herewith, the Constitution of Ukraine determines that the individual, his or her 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 shape the essence and orientation of the State's activities. The state is responsible to the people for its activities. Affirming and ensuring human rights and freedoms is the fundamental obligation of the State (Constitution of Ukraine, 1996), and when there is significant and massive violation of the rights and freedoms of Ukrainian citizens, in particular in the temporarily occupied territories, the basic fundamental processes to enhance human and citizen rights and freedoms need to be updated.

One of such processes, the most effective as we believe, is criminal prosecution for committed criminal offenses, which provides a punishment proportional to the committed crime and a relevant social effect when it is exercised.

The Criminal Procedure Code of Ukraine contains a number of provisions that regulate pre-trial investigation and court proceedings and follow clear and transparent 'rules', which are solid and the only for all its participants. Herewith, Article 615 of the Code sets a special routine for criminal proceedings during war, which makes some procedures and processes in the pre-trial investigation much easier and as efficient as possible, taking into account that the rights and freedoms of humans and citizens (who are participants in criminal proceedings) may be greatly reduced (Criminal Procedure Code of Ukraine, 2012).

In our opinion, the introduction into the national legislation of mechanisms to facilitate pre-trial investigation in certain cases, in particular related to the conduct of investigative (search) activities, respond to committed criminal offenses etc., is needed due to the long-term nature of activity prescribed by a certain procedure and the inability to carry out certain actions (make a relevant decision) later.

Hloviuk, Teteriatnyk, Rohalska, Zavtur emphasize that the background driver for the criminal proceedings during emergency legal status is the specifics of the regulatory control of this process. Together with the regulations that are commonly used to regulate legal relations during normal life, the regulatory component of legal regulation shall also include emergency laws. They shall provide both specific means and mechanisms for the legal regulation and be of special nature in terms of territorial extent, time and scope of persons (Hloviuk *et al.*, 2022).

We believe, such circumstances primarily include a number of factors, where the most significant are as follows: increase of certain types of crime; weakened capacity of the police to respond to committed criminal offenses (in particular, in the occupied territories); failure to actually exercise judicial, public control and prosecutorial supervision over the activities of the prosecuting party (investigator, prosecutor) due to active hostilities or occupation.

Due to blatant aggression of russia, a number of new offenses were added to the Criminal Code of Ukraine, which are enforceable only during wartime, in particular article 201-2 (Illegal use of humanitarian aid, charitable donations or free aid for profit) (Criminal Code of Ukraine, 2001), which sets liability for the large-scale selling of goods (items) of humanitarian aid or the use of charitable donations for the purpose of profit.

The Criminal Code of Ukraine has also been supplemented with some new offenses to timely and effectively response to all 'fascist'-related activity by the rf, in particular articles 111-1 (Collaborative activity), 111-2 (Assistance to the aggressor state), 114-2 (Unauthorized publicity about the movement of weapons, armaments and military supplies to Ukraine, the movement, transfer or placement of the Armed Forces of Ukraine or other army units formed as per Ukrainian law, committed in state of war or emergency) (Criminal Code of Ukraine, 2001).

These changes and few others were initiated by the Committee on Law Enforcement of the Verkhovna Rada of Ukraine from the suggestions of the Main Investigative Department of the National Police of Ukraine, since effective addressing unlawful actions and anti-State activities by individuals, including support for the aggressor, in particular, through unauthorized publication of information about the location of the Ukrainian army and its units, is one of the most important and fundamental factors for Ukraine's victory.

Having statistics about the performance of the pre-trial investigation agency of the National Police of Ukraine in wartime and comparing it with the pre-war figures for the same period last year is an unbiased approach to measure the performance of the relevant units, their coherent and coordinated work. This is also supported by domestic researchers who emphasize that the police should utilize procedures and mechanisms that do not allow manipulations with the performance indicators of its staff and units in general (Molchanov, 2014).

So far, investigators of the National Police of Ukraine have registered over fourteen thousand nine hundred criminal proceedings on war crimes and other serious crimes against Ukrainians and Ukraine committed by russian troops on the territory of the State during the five months of wartime announced according to the law. When we have a more extensive look at how the national police ranks war crimes committed by rf, it should be emphasized that the vast majority of criminal proceedings were initiated under Article 438 (Violation of the laws and customs of war) of the Criminal Code of Ukraine and Article 110 (Encroachment on Ukraine's territorial integrity and inviolability), which is 95% of all registered war crimes (total – 14,970, of which 10,612 cases fall under Article 438 of the Criminal Code of Ukraine; 3,678 – under Article 110 of the Criminal Code of Ukraine).

We believe, amid the flurry of introduced changes, we should draw particular attention, for example, to the Law of Ukraine dated April 14, 2022 No. 2201-IX that has conceptually changed Article 615 of the Criminal Code of Ukraine on how to conduct pre-trial investigation during martial law. The main provisions of this Law of Ukraine include, in particular:

- It is now impossible to declare evidence inadmissible, which was gain in accordance with Article 615 of the Criminal Procedure Code of Ukraine (amendments to Article 87 (Inadmissibility of evidence obtained as a result of a significant violation of human rights and freedoms).
- It is stated that the statements collected during a pre-trial investigation in a court session in accordance with Article 225 (Interrogation of a witness, a victim during a pre-trial investigation in a court session) of the Criminal Procedure Code of Ukraine must be acknowledged by the court when making a decision (Article 95 (Statements).
- It shall be possible to revive a missed deadline in criminal proceedings taking into account specifics defined by Article 615 of the Criminal Procedure Code of Ukraine, not later than 60 days from the date of termination or cancellation of the status of war or emergency (Article 117 (Revival of the procedural deadline).

- It is now impossible to manipulate the deadlines governing the conduct of pre-trial investigation by not allowing the investigating judge in criminal proceedings to cancel the decision on their termination in accordance with Article 615 of the Criminal Procedure Code of Ukraine (amendments to Article 219 (Deadlines of the pre-trial investigation).
- Provisions of the Criminal Procedural Code of Ukraine regarding the suspension of criminal proceedings have been legally fixed and a new ground for suspension has been added, which is availability of objective factors that do not allow to continue pre-trial investigation in the status of war or emergency (Article 280 (Grounds and procedure to terminate pre-trial investigation when the suspicion have already been reported to an individual).
- Accordingly, a new ground was added which allows to resume pre-trial investigation when the status war or emergency was terminated or cancelled, or it became possible to continue pre-trial investigation during such status (Article 282 (Resumption of the pre-trial investigation).
- It became possible to suspend court proceedings if an individual was drafted for military service during mobilization (Article 335 (Suspension of Court Proceedings).

A new version of Article 615 of the Criminal Procedure Code of Ukraine authorizes, in exceptional cases, to choose detention as a preventive measure, for a period of up to 30 days, for individuals suspected of committing grave or particularly grave offences. It is carried out by the head of the relevant prosecutor's office at the request of the prosecutor or at the request of the investigator, finalized by the prosecutor.

If there are well-grounded circumstances that suggest that an individual suspected of committing a crime may escape to avoid criminal liability, an authorized official may detain such individual without a judgement of an investigating judge or a court, or a judgement of the head of the prosecutor's office.

Herewith, this Law of Ukraine, as well as other statutory instruments poorly regulate a number of issues related to the legal framework of certain aspects of pre-trial investigation, which may further lead to that the collected evidence will be recognized as inadmissible, or that the actions of the pretrial investigation staff will be more likely recognized as illegal. Therefore, we believe these issues of concern require strong academic research and further improvement of regulatory and legal acts both at local and national levels.

3.2. On the jurisdiction of war crimes made in war and ensuring prompt, exhaustive and unbiased pre-trial investigation

When investigators conduct relevant activities, the main concern for them is to timely forward the materials of criminal proceedings to the pre-trial investigation agency, which, according to part two of Article 216 (Prosecution) of the Criminal Procedure Code of Ukraine, is authorized to carry out pre-trial investigation of relevant criminal offenses, and is the Security Service of Ukraine.

Knowing that the collection of evidence, documenting of circumstances of the war crimes and identification of the guilty persons needs to be done immediately and within the jurisdiction of the relevant units of the Security Service of Ukraine, as well as that it is impossible for systemic reasons to make a repeated visit to the scene of the incident, repeatedly or additionally interrogate individuals, victims and suspects, as well as witnesses and other objective circumstances that require a number of 'urgent' investigative (search) actions by the National Police of Ukraine, it is necessary to immediately apply to the prosecutor to change the jurisdiction and forward available materials of the criminal proceedings, since the case law shows there is a high risk that the evidence collected in criminal proceedings by improper subjects will be recognized incompetent.

At that, the Criminal Court of Cassation as part of the Supreme Court in its decision, cases dated 28.04.2021 No. 759/833/18 (Resolution of the Supreme Court, 2021) and dated 24.05.2021 No. 640/5023/19 (Resolution of the Supreme Court, 2021) wrote that evidence will be recognized inadmissible if it was obtained by an unauthorized body and in case of violation of the jurisdiction rules.

Under the marital law and an objective need, involvement of an investigative-operational group of the National Police of Ukraine and an investigator as the subject of the pre-trial investigation into the documenting of relevant criminal offenses was regulated and optimized by making changes to Article 39 (Head of the pre-trial investigation unit) of the Criminal Procedure Code, by expanding the authorities of the head of the pre-trial investigation unit with the right to form interdepartmental investigative groups and to appoint a senior investigator within such groups.

At the same time, attention should also be paid to the criminal offenses that were committed by rf's servicemen or mercenaries in civilian (unidentified) clothes, that makes the evidencing processes and the procedure for primary ranking of relevant illegal actions more complicated and requires certain investigative (search) actions to identify the offender, and when the offender's affiliation to rf armed units was established, amend the charges and transfer it to the Security Service of Ukraine in accordance with the procedure established by Ukrainian law.

Here we should note that the National Police of Ukraine has started a pre-trial investigation of proven and probable criminal offenses committed by rf soldiers, members of their sabotage and intelligence groups and private military campaigns, on 14 assaults, 97 robberies, 65 armed attacks, 643 cases of illegal handling of weapons, ammunition or explosives.

From the perspective of the criminal procedural legislation of Ukraine, such acts by pre-trial investigation officials are in line with the regulations and principles, since part ten of Article 216 of the Criminal Procedure Code of Ukraine says that if pre-trial investigation reveals other criminal offenses committed by an individual being the subject of the ongoing pre-trial investigation, or by other individual, where they are related to criminal offenses committed by an individual being the subject of the ongoing pre-trial investigation, and such offences are not under the jurisdiction of the agency conducting the pre-trial investigation in criminal proceedings, the prosecutor supervising the pre-trial investigation shall, where it is impossible to separate such materials into a separate proceeding, define the jurisdiction of all such criminal offenses in its resolution.

At the same time, we believe, a number of technical changes need to be introduced to the Criminal Procedural Code of Ukraine, which, together with the institutional and legal framework to address committed criminal offenses (regarding the performance of investigative and operational units of the National Police of Ukraine), will enable and expand the list of possible investigative (search) actions and allow to make procedural decisions without the risk of them being recognized unlawful in the future for the purpose of effective and timely documentation of criminal activities committed by rf's servicemen and preventing their evasion of criminal liability.

3.3. On detention by an authorized official (in view of the changes introduced by the Law of Ukraine dated April 14, 2022 No. 2201-IX 'On Amendments to the Criminal Procedural Code of Ukraine to improve procedure for criminal proceedings in wartime' (effective from 01.05.2022)

Today, the most controversial issue in the legal community is the one to extend the time of detention of an individual without a judgement of the investigating judge, a court or the order of the head of the prosecutor's office during martial law and such time may not exceed two hundred and sixteen hours (9 days) from the moment of detention, which is set by Article 209 (Moment of detention) of the Criminal Procedure Code of Ukraine.

This provision is the subject of much debate in the legal community, in particular, that it contradicts the Constitution of Ukraine, since, as human rights defenders say, it greatly limits human and citizen rights and freedoms

and is not sufficiently justified and proportionate to the public threat of the offender, which is hard to agree with considering the objective factors.

Surely, it is important to objectively assess all factors during the pre-trial investigation and determine whether it is necessary or not to detent a person without a judgement of the investigating judge for up to 9 days. Other researchers also speak of this.

For example, Lazareva emphasizes that there is no doubt among academics and practitioners that the procedure to detain a person suspected of committing a crime by an authorized body shall fall under criminal procedural regulation. Recognition of the procedural nature of detention by an authorized official raises the need to define its essence as a criminal procedural institution (Lazareva, 2018). The importance of the institution of detention and the need to ensure its proper legal regulation and protection of the rights and freedoms of the detainee are also covered by V. Rohalska and other authors of the Detention in Criminal Proceedings study guide (Fedchenko, 2021), which, as we believe, raises the issue of evaluating the risk when this measure is utilized by authorized subjects illegally but within the formal legitimacy in accordance with the Criminal Procedure Code of Ukraine.

The Constitution of Ukraine stipulates that in case of urgent need to prevent or stop a crime, authorized agencies may use detention of a person as a temporary preventive measure, herewith a court has to verify the relevance of such measure within seventy-two hours. A detained person shall be immediately released if, within seventy-two hours from the moment of detention, he or she was not served a reasoned court decision on detention (Constitution of Ukraine, 1996).

This provision shall be the mainline and the starting point, underlying the entire national legislation that deals with this issue. Herewith, such provision on the detention by an authorized official appeared in the Criminal Procedure Code of Ukraine due to some objective reasons when it is actually impossible to bring a relevant person to court and verify whether his or her detention was reasonable.

Legal uncertainty in this issue has a bad effect, primarily, for the evidencing process, as well as has a high risk that all evidence collected as a result of such detention will be found inadmissible and will further not allow to prosecute offenders, including Russian army men.

3.4. On determining territorial jurisdiction and ensure the judiciary's proper serving (in view of changes introduced by the Law of Ukraine dated March 3, 2022 No. 2112-IX 'On amendments to part seven of Article 147 of the Law of Ukraine 'On the Judiciary and the Status of Judges' regarding the determining of territorial jurisdiction of court cases' (effective from 07.03.2022)

Another fundamental change is determining territorial jurisdiction during martial law, which shall be there where the pre-trial investigation was finished, and before that – where the crime was committed (part nine of Article 615 of the Criminal Procedure Code of Ukraine).

One of the basic pillars of the functioning of the courts on the territory of Ukraine, which are authorized to administer justice on behalf of Ukraine, is the category and principle of territorial jurisdiction, which is also a component of the check-and-balance system and a guarantee of justice, as well as the mechanist for the access to justice for all citizens without exception, and in the pre-trial investigation, it directly affects whether certain investigative (search) actions, which require investigating judge's authorization, may be implemented.

V. Bibilo notes that the competence of the court actually represents its legal function, i.e. the rights and liabilities to fulfill it (Bibilo, 2001). Thus, it is emphasized that the issue of territorial jurisdiction during any time, and in particular during active hostilities, required a profound revision of how relevant arrangements are organized, since it is impossible to objectively administer justice in such area.

In addition, M. Smokovich stresses that ensuring the administration of justice by courts and allowing real access to justice, especially during the martial law, is a complex multilayer issue that involves a wide range of measures and tools (Smokovich, 2022). Which, we think is fair, since the stability and fine functioning of all judicial institutions, without exception, is, primarily, the prerequisite for democracy and the rule of law in all states of the civilized world.

Herewith, we shall stress that the actual scope of the territorial jurisdiction of the courts, separation of duties between them are set by the orders of the Chairman of the Supreme Court, who defines the actual scope of the territorial jurisdiction of the judicial branch, and provides argumentation that serves the basis to declare inability to administer justice in a certain territory and defines how this issue shall be addressed. Speaking about the pre-trial investigation, this issue links with the activity of investigating judges, who, together with the court where they do public service, shall be relocated due to inability to exercise their powers.

In view of that, the orders of the Chairman of the Supreme Court 'On changing the territorial jurisdiction of court cases during war' dated 06.03.2022 No. 1/0/9-22 (regarding certain courts in Donetsk, Kyiv, Luhansk, Kherson regions); dated 08.03.2022 No. 2/0/9-22 (regarding certain courts in Kharkiv and Chernihiv regions); dated 10.03.2022 No. 4/0/9-22 (regarding certain courts in Zhytomyr, Zaporizhzhia and Kharkiv regions); dated 12.03.2022 No. 5/0/9-22 (regarding certain courts in Zaporizhzhia region); dated 14.03.2022 No. 7/0/9-22 (regarding certain courts in Donetsk, Zaporizhzhia and Kharkiv regions); dated 15.03.2022 No. 8/0/9-22 (regarding Kramatorsk City Court in Donetsk region); dated 16.03.2022 No. 10/0/9-22 (regarding suspension of the order dated 16.03.2022 No. 9/0/9-22, change of the territorial jurisdiction of court cases during war in certain courts of Mykolaiv and Kharkiv regions); dated 18.03.2022 No. 11/0/9-22 (regarding certain courts in Donetsk, Kharkiv and Kherson regions); dated 22.03.2022 No. 12/0/9-22 (regarding commercial courts of Mykolaiv, Sumy and Chernihiv regions); dated 22.03.2022 No. 13/0/9-22 (regarding individual courts of the Sumy region), depending on the intensity and nature of hostilities within certain administrative-territorial entities, the rules of territorial jurisdiction are changed ad hoc, since there is a need to ensure that the justice is implemented and human and citizen rights and freedoms are observed on the territory of Ukraine, and the above narratives are also supported.

We find such changes have greatly simplified the communications between investigating judges and investigators (prosecutors), in particular, during pre-trial investigation of war-related criminal offenses and violations of the rules and customs of war. Further, amendments to the content and essence of the institution of territorial jurisdiction allowed to proceed with pre-trial investigation in those criminal offenses where relevant procedural deadlines were about to expire. Introduction of relevant amendments to the Criminal Procedure Code of Ukraine has also guaranteed that all suspects, victims and other participants in the criminal process will have the rights to defense, a fair trial, an unbiased pre-trial investigation and other rights prescribed by the Constitution of Ukraine.

3.5. On cooperation with the International Criminal Court regarding the broadening of its jurisdiction to rf's army officials (in view of changes introduced by the Law of Ukraine dated May 3, 2022 No. 2236-IX 'On Amendments to the Criminal Procedure Code of Ukraine and other legislative acts of Ukraine regarding cooperation with the International Criminal Court' (effective from 20.05.2022)

We believe that another revolutionary change, along with the territorial jurisdiction, is that the Criminal Procedure Code of Ukraine

was complemented with a new IX² section 'Specifics of cooperation with the International Criminal Court', whose provisions cover only cooperation with the International Criminal Court with the aim to expand its jurisdiction to rf's military officials, despite the fact that the Rome Statute has not yet been ratified by the Verkhovna Rada of Ukraine.

The Constitution of Ukraine states that Ukraine may accept the jurisdiction of the International Criminal Court under the terms set out by the Rome Statute of the International Criminal Court, which was adopted by the Verkhovna Rada of Ukraine on July 17, 1998, but has not yet been ratified.

T. Sadova draws attention to the fact that Ukraine, being an independent self-sustained country, shall have legislation that would meet international standards with respect to grave international crimes. Implementation by Ukraine of the legal elements of the crime as defined in the Rome Statute is of special significance, since the International Criminal Court does not encroach upon the sovereignty of states when carrying out its activities, but only complements national criminal judiciary (Sadova, 2019), which in light of the full-scale Russia's armed aggression dictates the need to speed up the harmonization of Ukrainian and international legislation.

At the same time, a decision to ratify the Rome Statute may be adopted successfully if domestic criminal law is aligned with its basic provisions and they do not contradict each other, which guarantees effective international criminal justice for crimes committed on the territory of Ukraine. Ratification by the Verkhovna Rada of Ukraine of the Rome Statute of the International Criminal Court is a political and legal act, which will bring along some consequences in criminological security.

We believe, existing and possible (forecasted, planned) criminogenic risks and elements of policy repelling armed aggression, anti-terrorist policy and future reintegration of currently temporarily occupied territories, shall be taken into account. An important factor when adopting a ratification decision.

According to Part 3 of Article 89 of the Regulations of the Verkhovna Rada of Ukraine, as well as Part 6 of Article 9 of the Law of Ukraine 'On International Treaties of Ukraine', only the President of Ukraine and the Cabinet of Ministers of Ukraine have the exclusive right of legislative initiative to ratify international treaties by Ukraine.

Herewith, we note that the Constitutional Court of Ukraine in its conclusion dated 11.07.2001 No. 3-в/2001 (Rome Statute case) (Conclusion of the Constitutional Court of Ukraine, 2001) recognized the Rome Statute of the International Criminal Court, signed on behalf of Ukraine on January 20, 2000, which was submitted to the Verkhovna Rada of Ukraine to accept it as binding, inconsistent with the Constitution of Ukraine in the part that

covers the provisions of paragraph ten of the preamble and Article 1 of the Statute which say that 'the International Criminal Court ... complements national criminal justice system.'

In justifying their opinion, the Constitutional Court of Ukraine stated that, in accordance with Part 1 of Article 124 of the Constitution of Ukraine, justice in Ukraine is administered only by the courts. These include the Constitutional Court of Ukraine and courts of general jurisdiction (Part 3 of Article 124). The system of courts of general jurisdiction in Ukraine includes: the Supreme Court of Ukraine, which is the highest judicial body in the system of courts of general jurisdiction, higher specialized courts, courts of appeal and local courts (Parts 2–4 of Article 125 of the Constitution of Ukraine).

Article 1 of the ICC Statute, which states that the International Criminal Court is a permanent agency authorized to exercise jurisdiction over persons responsible for the gravest crimes that raise concern to the international community, also says that this Court complements national criminal justice system (The Rome Statute of the International Criminal Court, 1998).

A similar provision is also found in paragraph ten of the preamble of the ICC Statute. It is also pinpointed in some other articles of the ICC Statute, in particular in paragraph 2 of article 4 stating that the Court may exercise its functions and powers on the territory of any member state, in subparagraph 'a' of paragraph 1, article 17, which says that the Court takes over the cases both at the request of a member state and on its own initiative, when the state whose jurisdiction covers a person suspected of committing a crime envisaged in the Statute 'is unwilling or unable to conduct an investigation or initiate a criminal prosecution in a proper manner', which has currently been demonstrated by the court in the context of russia's hostilities against Ukraine (Krasnitsky, 2022).

We believe that the above-mentioned legal basis contrasts the International Criminal Court to the other international judicial agencies, in particular, the European Court of Human Rights, with the right to appeal to them to seek protection of rights and freedoms regularized in part four Article 55 of the Constitution of Ukraine. These international judicial agencies initiate proceedings only at the request of eligible applicants who have exhausted all domestic remedies. Therefore, unlike the international judicial agencies mentioned in part 4 of Article 55 of the Constitution of Ukraine, which by their nature play auxiliary role in protecting human and citizen rights and freedoms, the International Criminal Court complements the national judicial system.

Amendments to Article 124 of the Constitution of Ukraine made in 2016 state that Ukraine may recognize the jurisdiction of the International Criminal Court subject to the conditions laid down in the Rome Statute of

the International Criminal Court. Thus, this drives the conclusion that the ICC may already take over (initiate) cases of Ukraine.

Herewith, our opinion is that it is absolutely necessary to ratify the Rome Statute of the International Criminal Court, so that aggressors from rf who started a war of aggression against independent Ukraine were brought to justice in a proper manner. Upon ratification, provisions of the current Criminal Code of Ukraine need to be harmonized with the Rome Statute, for example:

1. The Criminal Code of Ukraine will need to be supplemented with new offenses, since it does not contain the exhaustive list of crimes available in the Rome Statute (it has only one article 438 (Violations of the Laws and Customs of War), which creates liability for such crimes, and absolutely has no such category of crimes as crimes against humanity (Article 7 of the Rome Statute), war crimes (Article 8 of the Rome Statute) and etc.

   Article 437 of the Criminal Code of Ukraine, which envisages responsibility for the aggressive war, is more narrowly construed than Article 8 in the Rome Statute regarding the crime of aggression. The situation with the crime of genocide is the same (Article 442 of the Criminal Code of Ukraine; Article 6 of the Rome Statute).

   Also, the Criminal Code of Ukraine does not list all types of fellowship in crimes stated in the Rome Statute. The approach laid in the Criminal Code of Ukraine to punishments for the acts that the Rome Statute considers as international crimes is inconsistent and does not meet the standards of the Rome Statute.

   The International Criminal Court is complementary to the national justice system and only complements it when the State cannot prosecute criminals by itself. Law enforcement and judicial bodies of Ukraine currently have no actual opportunity to classify crimes in accordance with the Rome Statute.

2. Even with the amendments introduced by the aforementioned Law of Ukraine, the Criminal Procedure Code of Ukraine does not ensure proper functioning of mechanisms of cooperation with international judicial institutions, in particular with the International Criminal Court, in criminal prosecution of offenders and exchange of information, except as in separate international treaties where such cooperation is currently envisaged only between states, which brings out the need for further academic research of these challenging issues, including in areas where such cooperation is already extensive (for example, documenting of crimes by russian militants in certain communities of Kyiv, Chernihiv and Sumy regions).

2. Availability of statutes of limitation within which persons guilty of international crimes may be held criminally liable in Ukraine. Due to the long-term armed conflict in Donetsk and Luhansk regions and the occupation of Crimea, the number of international crimes that require investigation keeps growing.

But the lack of easy access to the crime scene, evidence, witnesses and suspects makes their investigation very difficult. When setting statutes of limitations, the Criminal Procedural Code does not take into account additional obstacles that occur during the investigation of crimes at wartime and occupation. The Rome Statute does not set such statutes of limitations given the investigating international crimes and prosecuting specific state representatives is challenging.

Other regulations will also need improvements.

3.6. Vectors for reforms of the system of pre-trial investigation during large-scale invasion of Russia and further integration of Ukraine into the European Union

The issue of reforming the system of pre-trial investigation during hostilities was and is highly urgent, since becoming a candidate for EU membership requires from Ukraine introduction of certain amendments to its basic legislation and the fulfillment of European Parliament requirements in certain fields (need to be urgently addressed), and significant academic research in the view of fragmentary changes in the system of pre-trial investigation, in particular.

The fact that in 2020 (according to the official website of the Commissioner for Human Rights of the Verkhovna Rada of Ukraine), the Commissioner received 5,744 reports of violations of procedural rights in criminal proceedings (Annual report of Commissioner for Human Rights of the Verkhovna Rada of Ukraine, 2021) also reflexes the need to identify vectors to enhance pre-trial investigation performance.

The academics stress that the law enforcement system is currently undergoing reforms, therefore external and internal factors dictate the need for constant improvement of the policies of the National Police of Ukraine, changes in their structure and functions, and this requires timely academic analysis and development to further bring them into practice (Kobzar and Daragan, 2020). War, static warfare of the Armed Forces of Ukraine in certain directions, as well as a set of measures to resist the invasion make this process even more difficult.

In this regard, an analyst A. Dmytriev rightly notes that Ukraine may become a European and democratic state when it is able to ensure its national security, which is something what the NP of Ukraine agencies and

units shall do (Dmytriiev, 2016), and this supports the opinion that certain human rights and freedoms cannot be protected only by some certain units of the National Police of Ukraine. This complex process requires intersectional engagement of all structures and units of the police system, which is aimed at comprehensive implementation of human and citizen rights and freedoms – od all people without exception, in particular citizens and persons who are suspected or already accused of committing criminal offenses.

We believe one of the most important areas of improving the system of pre-trial investigation during large-scale invasion of russia and further integration of Ukraine into the European Union is legislative support, legal and informational analysis of the practical application of certain legal norms, which gives further rise to reform the adopted regulations and draft new ones.

For example, the Decree of the President of Ukraine dated August 7, 2019 No. 584/2019 'Issues of the Legal Reform Commission' approved the Regulations on the Legal Reform Commission and its composition, and its priority areas included amendments to the Constitution of Ukraine and the laws of Ukraine aimed at ensuring the implementation of constitutional standards and principles, namely the priority to protect fundamental human and citizen rights and freedoms, improve the legislation on criminal liability and criminal procedural legislation of Ukraine, reform law enforcement agencies, as well as create prerequisites for the reintegration of temporarily occupied territories of Ukraine and its population into the single constitutional space of Ukraine (Decree of the President of Ukraine, 2019).

Therefore, one should concentrate on the institutional approach when identifying the vectors for the improvement of Ukrainian legislation from the perspective of democratic values and European integration efforts, by grouping them into: general issues to ensure human and a citizen rights and freedoms; issues related to policing of the public agencies during shaping of democratic values; ensuring proper compliance with criminal procedural procedures in pre-trial investigation.

For example, the Main Investigative Department of the National Police of Ukraine, People's Deputies of Ukraine – members of the Committee of the Verkhovna Rada of Ukraine on Law Enforcement, as well as academics and experts focus on the fact that the lawmaker overlooked some property crimes, such as fraud and illegal possession of transport vehicles, committed in wartime on the territory of Ukraine, and the number of such crimes is also great.

Also, taking into account the general trend of the need to arm the civilian population, the entire academic community supported the initiative to

change part three of Article 263 of the Criminal Code of Ukraine, where liability for committing a certain act, in cases of voluntary surrender of weapons, ammunition, explosives or devices is cancelled.

Conclusions

Thus, the authors carried out a general review of the functioning of the criminal justice system in wartime conditions, identified the main tendencies of pre-trial investigation, as well as identified risks and dangers in the relevant process, and characterized the significance of the fact that Ukraine acquired the status of a candidate for membership of the European Union. Based on this, the authors offer the following directions and methods of reforming the criminal justice system in general and pre-trial investigation in particular, in the conditions of the large-scale invasion of russia and the operation of the legal regime of martial law:

1. The analysis of the legislation of Ukraine and the European Union in the light of harmonization demonstrates that the legal regulation issue of the establishment of relations between the International Criminal Court and law enforcement agencies (represented by specially authorized entities) of Ukraine requires the most significant legislative contribution since the effectiveness of documenting the criminal activities of the russian troops and their mercenaries determines the final result – bringing them to criminal liability and starting the compensation procedure for the damage caused to the civil infrastructure.

2. The effect and essence of Ukraine's acquiring the status of a candidate for membership of the European Union are that the receipt and confirmation of this candidacy (the procedure for resolving several problematic issues defined in the decision of the European Parliament) have different legal nature and are correlated as the fact of acquisition and some circumstances that may affect the cancellation of the relevant decision.

Therefore, in the context of long-term European integration ambitions to acquire the status of a full-fledged member of the European Union, we believe that other aspects related to the harmonization of national legislation in the European context should be implemented. In particular, the most important thing in a warring state is to ensure the continuous functioning of the justice system, the functioning of law enforcement agencies, the preservation of anti-corruption traditions and tendencies, as well as the creation of a united European security environment.

3. Among the most significant risks in the issue of continuous ensuring of the functioning of state authorities in general and the criminal justice system (in terms of pre-trial investigation) is the impossibility of ensuring the security and protection of human and citizen rights and freedoms in temporarily uncontrolled territories, excessive workload of the law and order system while conducting hostilities, since the usual scope of everyday functions also includes the provision of humanitarian work and others directions aimed at meeting the needs of the civilian population and law enforcement forces.

4. The main and most effective tool for reducing these risks is the rule-making and legislative activity aimed at optimizing the activities of law enforcement agencies, improving procedures and mechanisms in pre-trial investigation and law enforcement activities in the context of the criminal justice institute in general. The clarification of the relevant provisions will, first of all, lead to the harmonization of the range of duties assigned to various law enforcement agencies and guarantee a quick, complete, impartial pre-trial investigation of criminal offenses and unlawful infringements, as well as ensuring the rights and freedoms of a person and a citizen in general.

5. In our opinion, the main and most priority way to improve the legislation today, based on the analyzed and researched materials, is the need to:

    - bringing the provisions of Article 615 of the Criminal Procedure Code of Ukraine into compliance with the Convention on the Protection of Human Rights and Fundamental Freedoms and the Constitution of Ukraine in terms of determining the term of detention of a person and providing him with the right to protection;
    - normalization of the provisions of the Criminal Procedure Code of Ukraine regarding the selection of the most severe preventive measure of detention exclusively by an investigating judge;
    - simplification of the criminal procedural procedure of carrying out an examination of a person based on his voluntary consent, with observance of his guarantees of personal integrity, based on the resolution of the inquirer, investigator, prosecutor;
    - predicting the possibility of the police collecting biological material and establishing genetic characteristics (genomic information) using express tests already at the scene of the incident;

- simplification of the procedure for the extradition of human bodies during the legal regime of martial law with mandatory establishment of the cause of death and in the absence of signs of violent death;
- bringing the provisions of the Criminal Code of Ukraine into compliance with the provisions of the Rome Statute regarding crimes against humanity and introducing the mechanisms of the International Criminal Court regarding the collection of evidence in accordance with the "best evidence rule" principle;
- introduction of special criminal law norms (compounds of crimes) regarding the provision of liability for forced renunciation of citizenship and forced passporting;
- adoption of a basic legal act (Law of Ukraine) on the regulation of legal relations regarding the procedure for obtaining and using firearms by the military, law enforcement agencies and the civilian population.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 804-814
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Attempt on the life of a defense attorney or representative of a person in connection with legal assistance

DOI: https://doi.org/10.46398/cuestpol.4074.44

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Abstract

Using a combination of scientific methods such as comparative and logical-semantic, the article analyzes one of the objective signs of the composition of a criminal offense, which refers to the attempt on the life of a defense lawyer or representative of a person in connection with activities related to the provision of legal assistance. The point of view of scientists on the view of this problem, which relates not only to the noted crime, but also, to the problems of justice in general, is subject to criticism. Bringing a person to criminal responsibility should always be related to the establishment of a socially dangerous act, specific to the actions of a particular person. Under such conditions, it will allow to comply with the letter of the law and ensure the protection and provision of their constitutional rights and freedoms to every citizen. Everything allows to conclude that, the attempted murder of the indicated persons or their close relatives in connection with the activities related to the provision of legal aid can also be committed, both by action and omission. This crime (in the specified form) refers to the intangible component.

Keywords: defense counsel; attempt against life; legal aid; criminal law; purchased law.

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Recibido el 15/08/22 Aceptado el 03/10/22

Atentado contra la vida de un abogado defensor o representante de una persona en relación con la asistencia jurídica

Resumen

Mediante una combinación de métodos científicos como el comparativo y el lógico-semántico, el artículo analiza uno de los signos objetivos de la composición de un tipo penal, que se refiere al atentado de la vida de un abogado defensor o representante de una persona en relación con actividades relacionadas con la prestación de asistencia jurídica. El punto de vista de los científicos sobre la visión de este problema, que se relaciona no sólo con el delito señalado, sino también, con los problemas de la justicia en general, es objeto de críticas. Llevar a una persona a la responsabilidad penal siempre debe estar relacionado con el establecimiento de un acto socialmente peligroso, específico en las acciones de una determinada persona. En tales condiciones, permitirá cumplir con la letra de la ley y garantizar la protección y provisión de sus derechos y libertades constitucionales a todo ciudadano. Todo permite concluir que, la tentativa de asesinato de las personas indicadas o de sus parientes cercanos en relación con las actividades relacionadas con la prestación de asistencia jurídica también puede cometerse, tanto por acción como por omisión. Este delito (en la forma especificada) se refiere al componente intangible.

Palabras clave: abogado defensor; atentado contra la vida; asistencia jurídica; derecho penal; derecho comprado.

Introduction

The legislation on criminal liability is a guarantee of protection of a person and a citizen from criminal offenses. This becomes especially relevant under current circumstances threatening the lives and health of people, the stable functioning of economic mechanisms, and the social existence of society (Kharytonov *et al.*, 2021). It also applies to the provision of legal assistance by a defense counsel or representative of the person in relation to legal assistance related activities. The specified problem is directly indicated in the program documents of the criminal law policy in general and legal instruments in particular.

Legislation on criminal responsibility should fight not only crime in general, but also make a great effort to ensure the rights and freedoms of every citizen, protect him (her) from criminal attacks. Protecting the life of the specified persons is of great importance not only in the legal sphere; this demonstrates that the law on criminal liability protects those, who provide legal aid and often become victims of criminal offenses.

Any violation of the law on criminal liability negatively affects not only the rights of a person and citizen, but also creates an atmosphere of mistrust of the law, the search for ways to violate it, a sense of impunity, etc.

Ensuring human rights and legitimate interests permeates all legislation on criminal responsibility and protection of the life of a defense counsel or representative of the person in relation to legal assistance related activities in particular.

Many negative factors (insufficiently balanced judicial and law enforcement system, corruption, socio-economic component, etc.) affect the implementation of crime fighting tasks. One of the main tasks of the legislation on criminal liability should be explicit acknowledgement of an attack on the indicated persons by the victim. Law enforcement and judicial agencies of the State should be guided in their activities, first of all, by the goal of immediate reparation to the victim of the crime. Moral damage and other costs associated with attack on a defender or representative of a person should not be overlooked. The main goal of the State in the crime control and securing constitutional rights and liberties of a person and citizen can be achieved only under such conditions.

The aim of this Article is the establishment of an exhaustive list of methods of attack on the life of a defense counsel or representative of the person in relation to legal assistance related activities.

Solving these important issues will provide for the further maintenance of law and freedom will raise the authority of judicial and security forces.

1. Methodology

To achieve the set goal and solve the research tasks, the following general scientific and special scientific methods were used in the research. Dialectical method was applied for setting the structure of and solving the problems of the Article.

- Dogmatic method helped to examine the views of the scholars on the objective element of an attack on the life of the persons involving in providing legal assistance.
- Comparative approach was helpful when comparing the opinions of the scientists on the stated problem.
- Logical and semantic made it possible to conduct thorough study of the corresponding conceptual apparatus.
- The method of systematic analysis was used to clarify the internal structure and place of the crime enshrined by Article 400 of the Criminal Code of Ukraine.

- With the help of dogmatic method relevant legal instruments regulating the studied issue were investigated.
- Summarization method was applied to *draw appropriate conclusions* of the research.

2. Literature Review

There are a significant number of sometimes contradictory views on the concept of the objective aspect of the criminal offense provided for in Art. 400 of the Criminal Code of Ukraine in the legal literature. Some authors note that the objective element of this act lies in the attack on life, which is recognized as murder or attempted murder of the victim connected with providing legal assistance (Tiutiuhin and Borysov, 2011; Chuvakov, 2001).

The others insist on the fact that the objective element of this criminal offense is characterized by attack on life of the specified victim and can be manifested in: 1) intentional murder; 2) attempted murder (this criminal offense is considered completed in its first form – from the moment of the victim's death; in the second form – from the moment of committing actions constituting an attempt to kill him) (Melnyk and Havroniuk, 2010). The third claim that the objective element of the attack on life of a defense counsel or delegate of the person or their close relatives constitute as acts resulting in the death of these persons (murder) and actions that caused the possibility of death (attempted murder) (Kuznetsov, 2017). Smikh (2011) notes that this criminal offense can be committed both by act and omission.

The analysis of the existing views on the concept of the objective element of the offense provided for in Art. 400 of the abovementioned legal act testifies that Tiutiuhin and Borysov (2011), Chuvakov (2001) rewrite the provision of the article, noting that this provision is the objective element, but do not name the mandatory features of this aspect of the criminal offense. They also mention the moment of completion of this action, but do not refer to these criminal offences in the form of a description of their objective element.

Kuznetsov (2017) takes some steps towards describing the mandatory features of the objective element of this criminal offense, namely, he notes that it is committed in the form of an action, but does not attempt to describe its construction.

The description of the objective element of this offense by Smikh (2011) is more successful. He correctly notes that it can be committed both by act and omission and certifies that this criminal offense is formal and material one. However, his judgment has certain shortcomings, which we will reveal in the course of our research.

3. Results and Discussion

It is a generally accepted view that objective element of a criminal offense is the set of signs established by the law on criminal responsibility, which characterize the external manifestations of criminal offense (Dudorov and Havroniuk, 2014). External features (signs) of a criminal act are partially reflected in the law. Of all the structural elements of a criminal offense objective element contains the most information necessary for the qualification of the act. The common-sense explanation of the signs of the objective element of the investigated act is an important prerequisite for compliance with the law in the law enforcement activities of the corresponding agencies, since accountability of a person is connected with the establishment of the conduct of a specific socially dangerous criminal offence, which is referred to in the law.

The signs of the objective aspect of the investigated criminal act are reproduced in general terms in the Law. Mandatory signs of the objective element of this criminal offense include act and omission, the consequences of "murder" and the necessary cause-and-effect relationship – the death of the victim. The moment of completion of the criminal offense in the case of attempted murder is the commission of an action (act or omission) aimed at deprivation of life of the defender or representative of the person. Establishing mandatory features of the objective element of the investigated criminal offense is not only of scientific, but also practical importance.

It is important to emphasize the fact that criminal responsibility for attack on the life of a defense counsel or representative of the person in relation to legal assistance related activities occurs only for the lawful activities of the specified persons, that is, for those that are performed according to the enshrined procedure and not by means prohibited by law (Melnyk and Havroniuk, 2010), i.e., legal activity. This is also confirmed by scientific sources; in particular, liability under Art. 400 of the Criminal Code of Ukraine takes place only if the victim's activity regarding the provision of legal assistance is carried out when it was legal (Tiutiuhin and Borysov, 2011).

Common to these definitions are: 1) such activity is performed in the order established by law and not by means (methods) prohibited by law; 2) using a broader scope, namely, any legal measures taken by a defense counsel or a delegate of a person to protect the rights and interests of persons on whose behalf or on behalf of whom they act in criminal, administrative, civil or economic proceedings.

Therefore, legal services activity by the defense counsel or other person should be understood as any legal measures to protect the rights and interests of persons on whose behalf or on behalf of whom they act in criminal, administrative, civil, economic processes that are carried out

in accordance with the procedure prescribed by law and by means and methods not prohibited by law.

Art. 400 of the specified should first of all protect legal activities be the specified persons, since otherwise it would be contrary to the intention of the legislator and the fact that advocacy is an independent activity of a lawyer to grant protection, representation and other kinds of legal support to the client, then such the activity should not contradict the current legislation.

However, based on the provisions of Art. 45 of the Criminal Procedure Code (Law of Ukraine No. 4651-VI, 2012) of Ukraine, one should know that a defender cannot be a lawyer who is not entered in the Unified List of Lawyers of Ukraine or for whom the Unified Registry of Ukrainian Lawyers contains information on the suspension or cessation of the right to deal with legal issues. Therefore, the activity of such a defender will be unlawful in criminal and administrative proceedings.

According to Art. 47 of the said Code, the defender is obliged to use the means of protection provided for by this act and other legal instruments in order to guarantee the rights, liberties and lawful interests of the perp, convict and to find out the facts that deny assumption or assertion, reduce or preclude criminal liability.

Adult close relatives or family members, as well as the representatives of tutorship and guardianship agencies, establishments and organizations, in whose care or guardianship a juvenile, incapable or a person with limited legal capacity resides, may be involved as legal representatives of the suspect, accused. Such a legal representative enjoys the procedural rights of the person whose interests he (she) represents, except for those whose implementation is carried out directly by the suspect, the accused and cannot be entrusted to the representative. Based on this, his legitimate activity cannot cover the limits of procedural rights that can be exercised only by the accused or the suspect.

Based on the provisions of Art. 58 of the Criminal Procedure Code of Ukraine Code (Law of Ukraine No. 4651-VI, 2012), a victim in criminal proceedings may be represented by a person who has the right to be a defender. It should be noted that the representative of the victim enjoys the procedural rights of the victim, whose interests he (she) represents in addition to procedural rights, the implementation of which is carried out directly by the victim and cannot be entrusted to the representative. It is important to stress on the fact that if the victim is a minor or a person recognized as legally incapable or partially capable, a legal representative is also involved in the procedural action along with him (her) – such a representative enjoys the rights of the victim.

On the basis of the above, it can be concluded that the lawful practice of defense counsel or representative of the person in relation to legal

assistance should be understood as duly certified legal measures regarding protection or representation of a of the rights and interests of persons and legal bodies, on whose behalf they act before the courts, as well as in other government agencies, local authorities, with other individuals and legal persons in accordance with existing legislation.

We emphasize the fact that murder of the indicated persons is considered the act with a material composition. The act that encroaches on the lives of the above-mentioned persons is a manifestation of an active influence on the victim. It can be in the form of a physical impact on the victim, that is, a direct physical impact on the human body, which is accompanied by a violation of the function or anatomical integrity of the vital organs of the person (for example, inflicting blows, gunshot injuries to vital organs, dropping, holding under water, squeezing the neck, stabbing vital organs, poisoning) (Matviychuk, 2008).

Physical impact in the act of murder also includes the influence through any environmental factors, in particular: 1) effect of low or high temperatures; 2) effect of electric current; 3) effect of poisoning; 4) effect of explosives; 5) effect of radioactive materials, etc. An active act in murder of these victims can occur through physical influence, for example: 1) inflicting mental trauma on the victim, which, according to the plan of the perpetrator, leads to death; 2) by means of intimidation, which caused the death according to the plan of the perpetrator; 3) by providing information that intends to cause a heart attack; 4) by hypnotic suggestion to cause death (Matviychuk, 2008).

Instead, committing the murder of a defense counsel or representative of the person in relation to legal assistance related activities or their close relatives may also be committed through omission. Taking into account that omission is a passive element of the act, it should be recognized that responsibility for the murder of the indicated victims can only be in the presence of objective and subjective prerequisites, namely: 1) duties specifically assigned to the person to protect life by law, profession, contract; 2) a person has a real possibility to prevent death. That is, it is about the perpetrator failed to prevent the death of such victims, provided that such a person was obliged and could have prevented death, but does not do so (intending to take the life of such a victim).

The examples that clearly confirm that the murder of the indicated persons or their close relatives through omission are: 1) when a person is a medical worker, who, in view of the performance of his (her) professional duties is obliged to provide appropriate medical assistance to the specified persons, does not provide such assistance intending to cause death to these victims; 2) when the official, who is entrusted with the functions of activating the relevant mechanisms and signaling systems at railway and train stations, in sea and river ports, at airfields, having had the intention to

kill the listed victims in these vehicles, did not fulfill these duties; 3) when a teacher or head of a children's preschool institution, intending to cause the death to the child (children) of the listed persons, knowing that a child (children) under the age of 18 has (have) entered the carriageway and may die, does not take measures to prevent this.

Therefore, biological death of the victim or victims, enshrined in the disposition of the studied Article of the Law of Ukraine No. 2341-III (2001) is a mandatory sign of a completed criminal act. From this moment, this act in the specified form is finished. A person is considered dead from the moment when the person's condition is defined as irreversible death, that is, when the irreversible death of the brain is established (in all other cases, we can only talk about attempted murder, in the presence of direct intent to kill the victims).

This form of criminal offence requires a causal link between the actions of the perpetrator (act or omission) and the consequences (the death of another person – the victim (victims), which occurred. The time of the victim's death is not a decisive factor. It is also important to establish the intent to achieve such a result. It should be noted that the causal link between these actions and the consequences must be necessary — the death of the victim is a natural result of the intentional act of the guilty person.

We agree with the opinion that the creation of conditions for the commission of the murder of the listed persons (finding means, tools, development of a plan, conspiracy of accomplices, etc.) should be qualified as the preparation for this criminal offense under Part 1, Art. 14 and Art. 400 of the Criminal Code of Ukraine. When the murder of these persons is committed by means of torture, then the act should be qualified just under Art. 400 of the said Code; additional qualification under Art. 127 is not required.

Art. 400 provides for criminal offenses that are characterized (differ) in their number (they are not regulated by the General Part of the Criminal Code of Ukraine, but presented as analyzed in the Special Part of this act and some other legal instruments). Such a division has an independent meaning in the criminal defamation legislation, which is why it is subject to separate consideration on the basis of a corresponding study.

Let us consider the second form of committing criminal offense provided for in Art. 400 – attempted murder of a defense counsel or representative of the person in relation to legal assistance related activities. We can state that the specified criminal act can be committed both by act and omission. This is evidenced by Part 1, Art. 15 of the Criminal Code of Ukraine, which states that an attempt to commit a crime is the commission of an action (act or omission) by a person with direct intention, designed to commit criminal offense provided for by the relevant provision of this Code, if the offense has not been completed for reasons beyond its control.

This criminal offense (in the specified form) refers to the intangible component. It is a composition in which there is no sign of a socially dangerous consequence, in our case – the death of the victim (or victims), the list of which is enshrined in Art. 400. Composition of criminal offense is considered formal, where the public dangerous behaviour of the perpetrators is fully described. Instead, in our opinion, which follows from the current legislation, the composition of criminal offense resulting from the existing legislation, should be considered truncated.

It is important to focus on the fact that the composition of criminal offenses is divided according to the following characteristics: 1) simple one; 2) complex one. Simple are those features that are not structured, and complex ones are those that have a structure. Difficult ones are also divided according to the following characteristics: 1) alternative; 2) adjacent. Characteristics of the actions in the two forms of manifestation of the criminal offence attributes for alternative features as they are structured.

Therefore, one cannot agree with the opinion by Smikh (2011), who claims that crimes with so-called "truncated components", including the component of assaulting the life of a person's defender or representative or their close relatives, should be recognized as completed only in those cases when the criminal offense included the signs of the completed offence, the description of which is contained in the disposition of the corresponding article. The author ignores the provisions of criminal legislation, where there is a description of two components of a criminal offense, namely murder and attempted murder, which are outlined as signs of completed components of the criminal offense.

His claim would be correct if the disposition were described as a title of Art. 400 of the Criminal Code of Ukraine (description of the signs of the related crime). Therefore, the evidence of attempted murder is not deduced in the second form second form of manifestation of a criminal offense beyond the limits of this composition (its manifestation in the second form); in addition, in the regulation of the named rule we observe two single criminal offences: 1) murder and 2) attempted murder.

Therefore, the act in the second form of manifestation contains a criminal offence, which is characterized by the so-called truncated composition of the act.

Conclusions

Having studied the purview of Article 400 of the Criminal Code, we came to the next conclusions:

1. the objective element of the criminal offense based on the signs of murder of defense counsel or representative of the person in relation to legal assistance related activities is characterized by the following mandatory characteristics of the objective party as an action (act or omission), the consequence of which is the death of the person (persons) due to the necessary link between the action and the resulting consequences;
2. there are two forms of committing criminal offense under the specified Article – murder and attempted murder of the listed persons or their close relatives;
3. murder of the indicated persons is considered the act with a material composition – this offense can be committed both through act (physical impact on the victim(s)) and omission (the perpetrator failed to prevent the death of such victims, provided that such a person was obliged and could have prevented death, but does not do so).
4. attempted murder of the indicated persons or their close relatives in connection with activities related to the provision of legal aid can also be committed both by act and omission. This criminal offense (in the specified form) refers to the intangible component.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 815-829
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Impact of digitalization on the protection and implementation of the national economic interests

DOI: https://doi.org/10.46398/cuestpol.4074.45

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Abstract

The purpose of this article is to study the impact of digitization on the economic system, as well as the protection and implementation of national economic interests. To achieve this goal, scientific and special methods such as analysis and synthesis were used; this methodology also allowed to understand the essence and distinguish the approaches to the concept of digitization, generalization and systematization, which made it possible to clarify the main objectives of digitization, its benefits and risks. The challenges and opportunities of digitization are identified, as well as the main problems hindering its development in the context of protection and realization of economic interests in Ukraine. It is noted that the solution of these problems will lead to significant momentum in the development of digitization. It is concluded that, among the main benefits of digitization is the generation of Internet platforms for the transmission of cutting-edge information and knowledge.

Keywords: digitalization; digital transformation; digital development; national economic system; national economic interests.

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Recibido el 15/07/22 Aceptado el 25/09/22

La influencia de la digitalización en la protección y realización de los intereses económicos nacionales

Resumen

El propósito de este artículo es estudiar el impacto de la digitalización en el sistema económico, así como la protección e implementación de los intereses económicos nacionales. Para lograr este objetivo, se utilizaron métodos científicos y especiales como el análisis y la síntesis; esta metodología permitió además comprender la esencia y distinguir los enfoques del concepto de digitalización, generalización y sistematización, lo que permitió aclarar los principales objetivos de la digitalización, sus beneficios y riesgos. Se identifican los desafíos y oportunidades de la digitalización, así como los principales problemas que obstaculizan su desarrollo en el contexto de la protección y realización de los intereses económicos en Ucrania. Se observa que la solución de estos problemas conducirá a un impulso significativo en el desarrollo de la digitalización. Se concluye que, entre los principales beneficios de la digitalización se encuentra la generación de plataformas de Internet para la transmisión de información y conocimientos de vanguardia.

Palabras clave: digitalización; transformación digital; desarrollo digital; sistema económico nacional; intereses económicos nacionales.

Introduction

At the current socio-economic stage of development of countries there is a rapid and powerful spread of digitalization processes, which are massive and influential and do not bypass any area of activity. Thus, within such a situation, the competitiveness and efficiency of the national economic system has a stable dependence on the ability to generate and successfully implement digital innovations and technologies in all its components.

Today, digitalization is the most relevant aspect of modern economic functioning of countries and their development, is seen as a leading mechanism and tool for achieving future successful and effective results at all levels: from global and national, to regional and individual. Due to digitalization, significant transformations are taking place today, which are manifested in the ability to analyze and forecast the activities of various economic systems, optimize management processes and operations, save resources and more.

Thus, despite the lack of stability in the world, there is a permanent increase in demand for digital services against the background of increasing

costs for the development and implementation of various digital innovations and technologies, as well as lower prices for mobile communications and rapid Internet access, which is inevitable will lead to further growth in popularity and development of digital technologies.

Activation of the process of application of digital innovations in such conditions provides processing of large amounts of information, which are constantly increasing and contribute to more efficient use of resources. The growth of the investment component of digital development leads to the rapid spread of digital technologies in our country, in the areas of artificial intelligence, robotics, mobile communications and the Internet, etc. The above situation leads to an understanding of the need to study the nature and directions of the impact of digitalization on the national economic system, the protection and realization of its interests.

1. Literature Review

In modern economic conditions there is a total digitalization of economic activity of subjects. Digitization is one of the leading modern trends, dating back to 1997 (Gilster, 1997). The digitalization of the economy as an integral part of modern society is the object of study in the works: Cosmulese *et al.* (2019), Djakona *et al.* (2020), Dubyna *et al.* (2022), Garafonova *et al.* (2021), Grosu *et al.* (2021), Kholiavko *et al.* (2021); Kholiavko *et al.* (2022); Shaposhnykova *et al.* (2021).

Digitization can be considered in broad and narrow meanings. Digitization in a broad sense is the process of implementing digital technologies and transmission systems at the level of telecommunications networks, switching and control facilities that provide transmission and distribution of information flows in digital form (Lagodiienko *et al.* (2021), Liutikov *et al.* (2021), Popelo *et al.* (2021)). Digitization in the narrow sense is the process of transition from analog to digital presentation (Reis *et al.*, 2018; Sebastian *et al.*, 2017).

An example of such a narrow (technical) interpretation of digitalization can be the transition from analog television to digital television, the transition from conventional mobile phones to smartphones.

The process of digitalization is gradually demonstrating the transition from the industrial to the post-industrial era of society (from "Industry 3.0" to "Industry 4.0"), which in modern economics and legislation digital economy, cannot but affect national economic interests Shaposhnykova *et al.* (2021), Shkarlet *et al.* (2019), Zhuk *et al.* (2019), Yakushko *et al.* (2021).

The genesis of the digital economy in world economic theory goes back to the report of the American professor J. Stiglitz at the Davos Economic

Forum in 2015: they raised the question of whether there should be an individual for the economic system or "the economy should be for the individual" (Zybareva *et al.*, 2021: 16).

In the first case, the individual is actually a functional unit that serves the economy, and estimates of its development are fair to use indicators such as GDP, investment in fixed assets, unemployment and more. In the second case, the point is that the economy is given the role of a superservice or marketplace, with which the individual builds an interaction based on personal interests and preferences. To assess the economy as a marketplace requires completely different indicators: investment in digital technologies, the level of development of digital infrastructure, public access to the Internet, etc.

Analysis of the scientific literature makes it possible to understand that the digital economy is perceived as a certain ideal system in which a large number of entities and institutions are almost completely digitized, and the whole value chain is based on the principles of smart manufacturing (Djakona *et al.* (2021), Dubyna *et al.* (2022), Irtyshcheva *et al.* (2021), Kholiavko *et al.* (2021).

In domestic practice, in contrast to global trends, the development of the digital economy has a fairly pronounced administrative character from top to bottom (Samoilovych *et al.*, 2021; Tulchynska *et al.*, 2022; Abramova *et al.*, 2021).

At the same time, in foreign practice, the initiative and development of the methodology of digitalization of the national economy lie on the side of business - because it is he who needs to comfortably pursue private commercial interests, and customers - to receive products and services in a new format (Grosu *et al.*, 2021), (Reis *et al.*, 2018), (Vidruska, 2016). The digital economy in the methodological plane is closely connected with artificial intelligence and machine communications (robots) as a fundamental component of the construction of the "Industry 4.0" system.

In the domestic scientific literature, researchers Shkarlet *et al.* (2019), Zhuk *et al.* (2019), Yakushko *et al.* (2021) emphasize the state's efforts to develop digital infrastructure to scale digitalization processes in the market space.

Today, the processes of digitalization are gaining significant development and are gradually penetrating all sectors of the economy and public life. In general, the vast majority of domestic studies by Abramova *et al.* (2021), Gonta *et al.* (2016), Grigoraş-Ichim *et al.* (2018), Kozak *et al.* (2022), Popelo (2017) focuses on the fact that Ukrainian society is actively preparing for the transition to a new socio-economic system. From the standpoint of domestic economists - the country must soon move to a new technological way, resulting in a global change in socio-economic formation, namely: the

transition from a market model of economic development to forecasting, based on big data analysis, cognitive technologies for demand forecasting and planning offers. The key figures of the new technological device will be the developers of digital platforms that will satisfy the economic interests of all participants.

Socio-economic development of the country takes place in a conflict of interests of different groups and the search for compromises, so it is necessary to understand the structure of interests Kosach *et al.* (2022), Okano-Heijmans (2013), Zhavoronok *et al*. (2022). National economic interests are one of the central guidelines for the development of economies in all countries. Adoption of legislative acts, implementation of socio-economic reforms, support of certain sectors of the economy, decisions on accession to international economic organizations, association within integration groups - all this must be done in accordance with national economic interests.

The current trend of the digital economy is characterized by the formation of a new paradigm of scientific and technological development, is a consequence of penetration into all spheres of life of artificial intelligence and IT. A significant factor in the transition to a new socio-economic system is the large-scale digitalization of the economy, affecting public and multiple private economic interests of different groups, forming new economic interests (Frieden, 2017; Grabowski, 2000; Hryshchenko, 2009; Jung, 2016).

To manage the processes of modernization, it is necessary that the content of new economic interests be adequate to the objective needs associated with the progress of society as a whole, and that these interests are expressed in effective motivations. Coherence of economic interests, their balance is the main content of economic life of society.

Today, science does not have a single opinion about the concepts, structure and hierarchy of transforming economic interests and ways to reconcile them in the context of digitalization.

Issues of the impact of digitalization on the functioning and development of the economic system of the state and the protection of its interests are becoming increasingly important. Understanding this scientific position determined the topic and purpose of this study.

The purpose of this article is to study the impact of digitalization on the national economic system, as well as the protection and implementation of its national economic interests.

To achieve this goal in this study used such general and special methods as analysis and synthesis (to understand the essence and distinguish approaches to the concept of “digitization”), generalization and

systematization (to clarify the main objectives of digitalization, its benefits and risks), graphic (for a clear picture of approaches to understanding the category of "digitalization", challenges, opportunities and main problems of digitalization in the context of protection and realization of national economic interests).

2. Results

Acceleration of scientific and technological progress leads to the emergence and rapid spread of new information technologies in society - the so-called digitalization of society. The economic systems of many countries are in search of effective ways to use the achievements of digitalization of society for economic growth. The basis for the development of the digital economy has been created for several decades. Today, the widespread use and use of information technology and the Internet has led to the formation of information technology paradigm of society.

Today, many countries around the world are trying to restructure their economies on a digital platform. The main task of any state is to improve the quality of life of society. Thanks to global informatization, it is possible to simplify and mechanize the functionality and many processes in all spheres of life. Modern digital technologies are strategically important because they allow to bring the management of the state, economy and development of territories to a completely new technological level. Digital transformation is one of the national goals of the country's development and should contribute to the breakthrough development of the country, improving the living standards of the population, taking into account national economic interests.

The current stage of development is characterized by increasing the impact of global problems and security issues, and thus ensuring the effective functioning of national economic systems, as well as the protection and implementation of its national economic interests becomes extremely important. Currently, the leading role among the structural components of national economic systems is played by such as creative, innovative, technological, digital, the successful combination of which contributes to the success of business processes and activities.

Today, the leading aspects of the development of countries are technological, which provide new opportunities and identify new directions in this area, which makes them relevant for modern research. Achieving the goal of the study should begin, in our opinion, with the study of the essence of the concept of digitization and approaches to understanding it, for which we consider the views on this issue of leading researchers and information from scientific sources, the results are shown in Fig. 1.

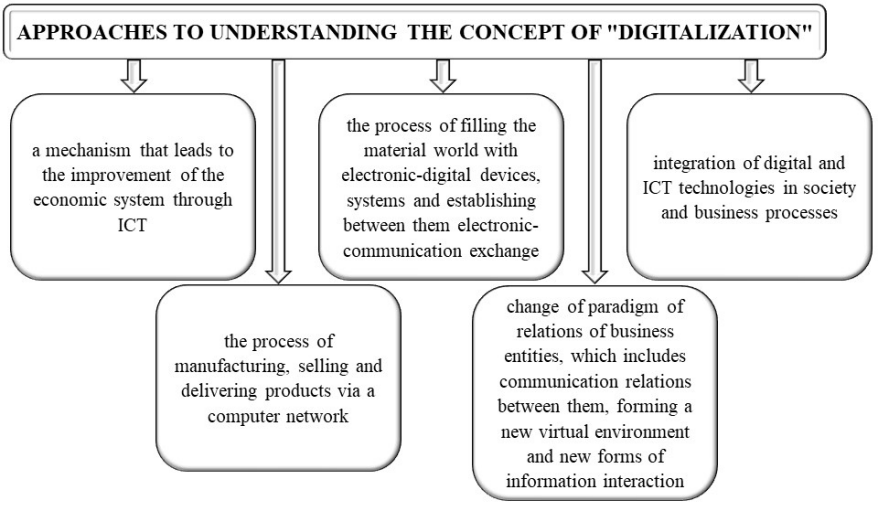

Fig. 1. Approaches to understanding the category of "digitalization Source: generated by the authors

Thus, according to the information on Fig. 1, we come to the understanding that there is no single definition of this definition today, and different scholars interpret it differently. In general, digitalization, in our opinion, should be understood as a process of significant transformations within various spheres of economic activity through the use of ICT, the implementation of the mechanism of which provides efficiency, profitability and success.

For the national economic systems of all countries of the world, the formation and implementation of the mechanism of digital transformation, the use of digitalization tools is now an urgent task that will help increase the competitiveness of states and gain new competitive advantages.

The study of priority goals and objectives of digitalization (Fig. 2) and its impact on the activities of the national economic system, protection and realization of its interests is now relevant. It is important to study and understand the essence of this category, as well as the challenges, risks and problems that hinder these processes, and the opportunities and benefits that can be gained from them.

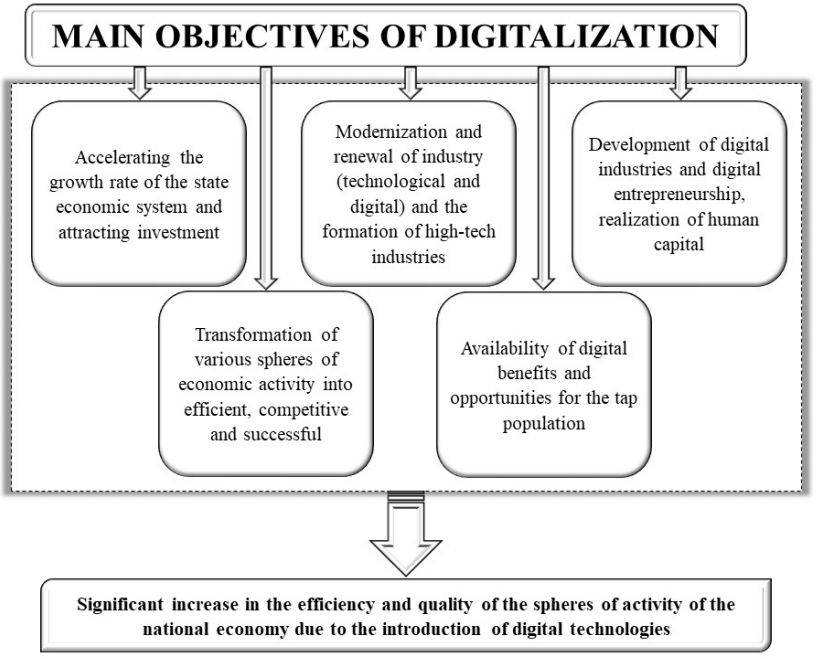

Fig. 2. The main objectives of digitalization and their impact on the activities of the national economic system. Source: generated by the authors

Thus, the main reason for the digitalization of national economic systems should be considered globalization. It is necessary to identify the characteristics of domestic processes of digital transformation through their goals. According to Fig. 2, the main objectives of digitalization should include the following:

- transformation of economic activities into efficient, successful and competitive;
- increase in economic growth and investment activity;
- digital updating of industrial systems and their operational activities, creation and introduction of high-tech industries;
- use of available human potential;
- formation, formation and development of digital entrepreneurship;
- involving the population in digital technologies and processes, expanding access to them and using their opportunities and benefits.

As a result, those activities of the economic system that use digital technologies are developing faster at a lower cost and with a higher level of quality. Many of them, such as education and health, transport system, etc., are updated through the involvement of digitalization processes, increase their success, profitability, competitiveness, move to a new, higher level of significance, value and quality, which cannot but positively affect development national economic system and society.

In the process of formation of domestic digitalization, issues related to digital transformation, which should be understood as the process of introduction of digital technologies in the situation of digital economy to improve and renew the individual, business, society and the country as a whole, need further study and dissemination.

With this in mind, it is necessary to explore such aspects of digitalization as the challenges and opportunities that accompany its formation and development, as well as the main problems that hinder the transformation of the domestic economic system into digital (Fig. 3). Solving the identified problems will lead to the effective implementation of digitalization.

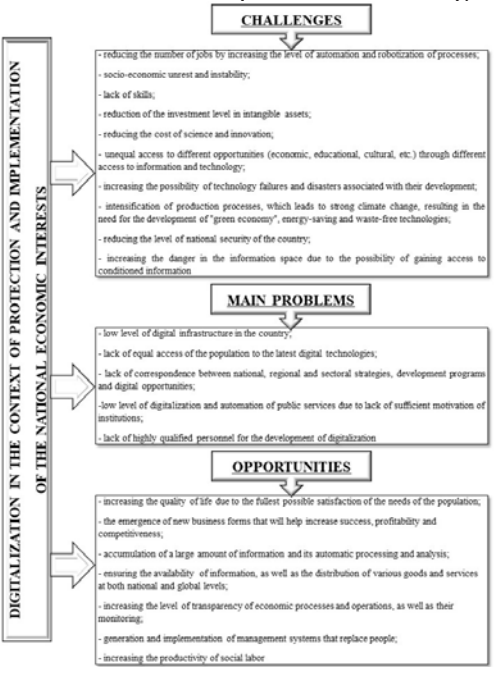

Fig. 3. Challenges, opportunities and main problems of digitalization in the context of protection and implementation of the national economic interests. Source: generated by the authors based on Ukraine 2030E is a country with a developed digital economy. URL: https://strategy.uifuture.org/kraina-z-rozvinutoyucifrovoyuekonomikoyu.html#summary.

In this article, in our opinion, it is necessary to pay attention to the study of the benefits and risks of digitalization, and with this in mind, to clarify the main directions of its impact on the protection and realization of national economic interests (Fig. 4).

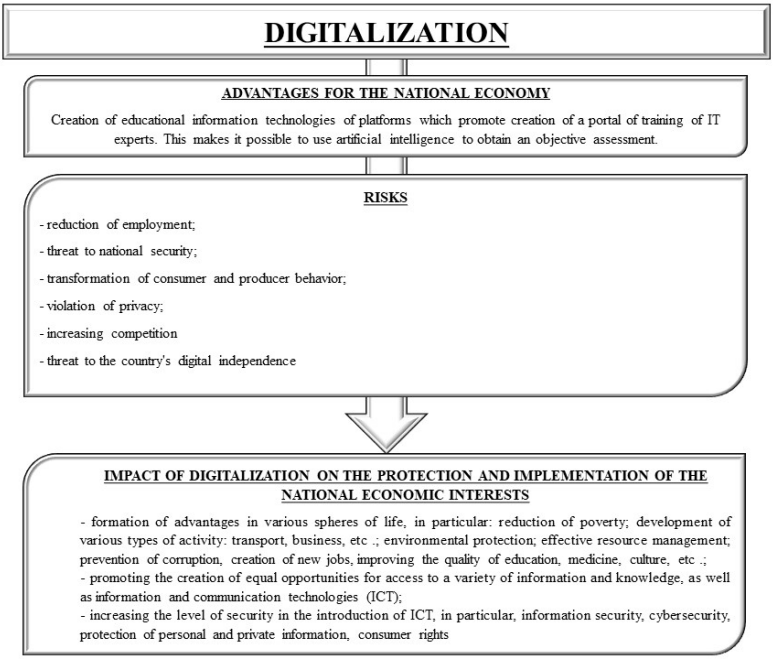

Fig. 4. Advantages, risks and impact of digitalization on the protection and implementation of the national economic interests. Source: generated by the authors based on Digital Agenda of Ukraine - 2020.

Based on the study of scientific sources, the advantages of digitalization were: the possibility of using artificial intelligence and its further rapid development, the emergence of innovative approaches to management and its methods, the formation of Internet platforms to generate and share information, knowledge and more. However, it should be noted the possibility of negative aspects of digitalization, so among the risks of its development, which significantly affect the protection and realization of national economic interests, should be noted: violation of privacy, which is unacceptable for a democratic society, threat to national security and digital independence.

Conclusion

This study clarified the essential aspects of the concept of "digitalization" and the main approaches to understanding it. As a result, it is concluded that there is no consensus on the interpretation of this definition and its author's understanding is presented, according to which digitalization is a process of significant transformations within various spheres of economic activity through the use of ICT. The main goals of digitalization are highlighted and characterized, and the direction of their impact on the activities of the national economic system are clarified.

The main problems that hinder the development of digitalization, it is found that overcoming them will help increase the efficiency and success of this process. The advantages and risks of digitalization for the country's economy and society are presented. Thus, the main benefits of digitalization include the generation of Internet platforms for the transmission of information, knowledge, etc., the spread of artificial intelligence, the formation of innovative directions for the implementation of management processes; the main risks are an increase in the level of threat to the privacy of the life aspects of the country's population, the national security of the state and its digital independence. Based on them, the directions and nature of the impact of digitalization on the protection and realization of national economic interests are determined.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 830-848
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Experience of conclusion and performance of engineering, procurement and construction contracts in post-Soviet countries

DOI: https://doi.org/10.46398/cuestpol.4074.46

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Abstract

The main purpose of the article is the analysis of properties and risks arising during the conclusion and performance of engineering, procurement and construction contracts (hereinafter referred to as EPC contracts) in Ukraine, Kazakhstan, Russia and Belarus, notwithstanding the current situation with military aggression and sanctions. The methodological basis of the study consists of the comparative legal and structural-logical method, systemic analysis and synthesis. It also describes the ways of relevant adaptation of EPC contracts in accordance with the requirements of the legislation. In addition, the authors have studied in detail the legal instruments that could help the contracting parties to establish the control due to occurrence of risks in different jurisdictions of the post-Soviet space. Finally, it was concluded that the application of EPC contracts, in the countries of the post-Soviet space, is connected with the presence of high level of political risks that should be taken into account when carrying out large-scale infrastructural projects. The results of the

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Recibido el 15/07/22 Aceptado el 22/09/22

study will be useful to practicing lawyers, students and scientists who are interested in the examination of public relations in the field of civil works with some political influence on the development of this sector.

Keywords: contract enforcement; capital construction; contract law; civil engineering; post-Soviet countries.

Experiencia de celebración y cumplimiento de los contratos de ingeniería, compras y construcción en los países postsoviéticos

Resumen

El objetivo principal del artículo es el análisis de propiedades y riesgos que surgen durante la celebración y cumplimiento de contratos de ingeniería, compras y construcción (en lo sucesivo contratos EPC) en Ucrania, Kazajstán, Rusia y Bielorrusia, sin perjuicio de la situación corriente con la agresión militar y sanciones. La base metodológica del estudio consiste en el método comparativo jurídico y estructural lógico, análisis sistémico y la síntesis. También se describe los modos de la adaptación pertinente de contratos EPC, de conformidad con los requisitos de la legislación. Además, los autores han estudiado detalladamente los instrumentos jurídicos que podrían ayudar a las partes contratantes a establecer el control debido al ocurrir riesgos en diferentes jurisdicciones del espacio postsoviético. Finalmente se llegó a la conclusión que la aplicación de contratos EPC, en los países del espacio postsoviético, está relacionada con la presencia de alto nivel de riesgos políticos que deben tenerse en cuenta al realizar proyectos infraestructurales de gran tamaño. Los resultados del estudio serán útiles a los abogados en ejercicio, estudiantes y científicos que están interesados en el examen de las relaciones públicas en el ámbito de las obras civiles con alguna influencia política en el desarrollo de este sector.

Palabras clave: cumplimiento de contratos; construcción de capital; derecho contractual; ingeniería civil; países postsoviéticos.

Introduction

In recent years, the area of analysis and adaptation of contracts developed by the International Federation of Consulting Engineers (hereinafter – FIDIC) became highly interested among practicing lawyers.

This is primarily connected to the fact that a number of infrastructure and energy projects have been implemented with the help of EPC-contract forms, created by FIDIC.

FIDIC model contracts were prepared by the International Federation of Consulting Engineers (Fédération Internationale des Ingénieurs-Conseils). There are 9 basic FIDIC model contracts covering a broad range of contractual relations in construction, the most popular being the Red Book (design by the employer), Yellow Book (design by the contractor), Silver Book (turnkey projects), and Pink Book (adapted to the requirements of international financial institutions).

Silver Book «Condition for Contract for EPC Turnkey, First Edition» occupies a special place among the mentioned-above list. It uses for the construction a fully equipped and ready-to-use power plants, factories or infrastructure facilities from A to Z. This form of agreement has given a fresh impetus to the development of standard turnkey capital construction contracts and popularized the EPC (Engineering, Procurement, Construction) contract model.

As world practice has shown, the use of the FIDIC standard helps to significantly increase the efficiency of construction projects, and the use of EPC-contract ensures fluency, transparency of construction project management, and equitable allocation of the risks between employers and contractors with a reduction of delays and cost overrun.

Model FIDIC contracts are not binding and their application is voluntary for the parties, but many foreign companies successfully use them in business. It should be noted that parties are free to decide which edition of a particular book they intend to use. For example, the parties can choose the Silver Book in the 1999 or 2017 edition.

All of the above-mentioned factors contribute that EPC-contracts are now gaining popularity in such countries as Ukraine, Belarus, Kazakhstan and Russia. Definitely, such trends have caused an incredible interest in the scientific community regarding features of EPC-contracts using and the mechanisms of their proper adaptation to the requirements of national legislation. This scientific article is focused on the study of these issues.

At the same time, Russia's military aggression against Ukraine which began on February 24, 2022, posed new challenges to the economy of the country due to the prolonged nature of the warfare. The consequences of this tragic situation for Ukraine, which affected the field of capital construction according to the concept of EPC, will be analyzed in this study as well.

1. Methodology of the study

Analysis of concluding experience and implementation of EPC-contracts in the Post-Soviet Union States involves the use of several leading approaches of scientific knowledge. The main of them are based on the following methods: system analysis, synthesis, comparative legal and structural logic, etc. Among the general scientific methods of cognition in the study of «EPC-contract nature», the method of system analysis played a significant role in identifying the key features and finding out the role of FIDIC contracts in the field of capital construction.

It was carried out an analysis of existing legislation researches regarding EPC-contract use in Ukraine, Russia, Kazakhstan and Belarus in view of the fact that capital construction regulations and contract law in those countries are largely similar. Also, the synergetic method helped to combine the results of the research in the scientific and practical fields. The comparative law method has been also used to compare the rules of law from different jurisdictions.

The application of the system analysis and synthesis methods helped to identify common and distinctive features in the approach to the use of EPC-contracts within the relevant jurisdictions, considering that the above-mentioned states belong to the Romano-Germanic legal tradition. This stems from the fact that belonging to the same legal tradition (family) does not make the identical legislative approach for different states, which significantly complicates the process of EPC-contracts adaptation with the aim of universalizing its provisions.

Also, the method of legal modelling was also applied, which aimed to study a certain phenomenon (model) that arises in one or another country, in particular, attention is paid to the prospects of further use and execution of EPC-contracts in the conditions of full-scale armed aggression of the Russian Federation. This method helped to analyze existing problems in the industry and outlined the range of prospects for its further development.

2. Analysis of recent research

There are an insignificant number of studies that are focused on the issues of concluding and executing of EPC-contracts in the Post-Soviet Union States. Basically, researches are related to a general overview of the practice of applying the FIDIC contracts provisions in a particular jurisdiction. Such studies are caused by the efforts of individual states to improve legislation identically to the standards of Eurocodes (Kazakhstan) or targeting the aim to make FIDIC standard forms more applicable within the rules of the national law (Ukraine, Belarus, Russia).

Provisions of the Ukraine, Belarus, Kazakhstan and Russian legislation as well as the rules of international law make the empirical basis of this research. The empirical basis also includes analysis of practical cases and best market practices. It also consists of regulatory and legal acts that were developed to improve the implementation of FIDIC contract provisions and the involvement of the legal environment.

These might include Methodological recommendations for the application of standard FIDIC contracts taking into account the requirements of the Republic of Belarus legislation in the field of construction, approved by the Decree of the Ministry of Architecture and Construction of the Republic of Belarus No. 67 dated July 07, 2021 (Decree No. 67, 2021), Decree of the Cabinet of Ministers of Ukraine (On amendments to the general conditions for the conclusion and execution of contracts in capital construction) No. 224. dated March 17, 2021 (Decree No. 223, 2021), etc.

The theoretical foundation of this research is based on the works of theoreticians and practicing lawyers that are connected with the study of EPC-contracts and the possibility of their adaptation within the legislation of the respective country. For example, K. Sabirov and Y. Yesimkhanov explore contradictions between the rules of Kazakh legislation and provisions of EPC-contracts, developed by FIDIC (Sabirov, 2018; Yesimkhanov, 2013). The practical application of EPC-contracts in Ukraine was analyzed in studies by S. Teush (Teush, 2013, 2018), I. Sukhostavets (Sukhostavets, 2019) and M. Hritsyshyna (Hritsyshyna, 2021) and a similar study about Kazakh legislation was made by A. Idayatova (Idayatova, 2019).

On the other hand, V. Varavenko has made a comparative legal analysis of FIDIC contracts (including EPC-contracts) and provisions of Russian legislation (Varavenko, 2019). V. Lypavskyi together with colleagues, carried out a study of the practice of the EPC-contracts application in the Russian Federation (Lypavskyi, 2019).

Also, specialized research regarding the legal and practical aspects of EPC-contracts using in renewable energy area was made by V. Ostrynskyi, N. Nykytchenko and other scientists (Ostrynskyi *et al*., 2022). The authors have analyzed the main aspects of EPC-contracts adaptation and made practical recommendations for concluding such contracts while construction of renewable energy facilities in Ukraine.

3. Results and Discussion

3.1. EPC-contract: definition, basic characteristics and concluding features

In the Post-Soviet Union States, relations in the field of capital construction are developing at a rapid pace, national legislation does not have time to carry out its proper legal regulation, which forces business entities to use the norms of foreign jurisdictions or pro formas developed by international specialized organizations for contractual transactions. These also had been encouraged by international investors, which know that the legal systems of Ukraine, Belarus, Russia, Kazakhstan, etc. are imperfect, so they try to protect their own capital and investments as much as possible. Therefore, nowadays, legal scholars are paying a lot of attention to EPC-contracts, the main lobbyists of which are international investors.

The legal nature of EPC-contracts is pretty complicated. For example, S. Oberkovych. notes that there is no separate analog of the EPC-contract in Ukrainian legislation. From the point of Ukrainian law, EPC is a mixed contract containing the terms of several contracts: provision of engineering services, construction contract, execution of design works, and goods supply. Therefore, in the case of EPC-contract subordination to Ukrainian law, legal requirements for all the above-mentioned contracts shall be reflected in the text of the agreement (Oberkovych, 2019). We also need to point out that model forms of FIDIC contracts and EPC-contract as well, contain definitions that do not correspond to the legislation of Ukraine.

1. Goddard interprets the term "EPC-contract" through the disclosure of its subject composition. In particular, the scientist notes that EPC-contractor is a general contractor who performs the main scope of work for a «fixed price» and takes all the risks of its implementation from the moment of design to the moment of handing over the finished object to the employer (including the fulfilment of warranty obligations and financial responsibility).
2. The EPC-contractor manages certain types of "own" works and does not have an opportunity to manage the project as a whole. Also, the scientist notes that, as a general rule, an EPC-contract should be understood as a contract for the construction of a "turnkey" facility with a fixed (lump) sum (Goddard, 2018).

In the view of V. Lipavskyi, EPC-contract is "full-cycle" agreement, according to which the contractor is responsible for the engeneering, supply, construction, and commissioning of the facility. The EPC-contract is usually used in cases when the employer does not have enough human

resources which able to manage the construction project or doesn't want to be involved in such management to share the relevant risks. Also, EPC is one of the main contractual forms in projects that are financed with the help of banks or other financial institutions (especially with regard to project financing), because creditors are likely when the developer (the employer) takes as few risks as possible (Lypavskyi, 2020).

A somewhat pragmatic approach has I. Chumachenko, who reduces the concept of EPC-contract to a combination of the general contractor and general designer role in one person, but at the same time highlights the feasibility of such a combination only in cases of implementation of a large-scale infrastructure project in which there is a need of deadline control for the performance of works. In other cases, the legal practitioner advises dividing the development of project documentation and its implementation between different entities to ensure dispassionate control over the implementation of construction works by the general contractor (Chumachenko, 2015).

According to I. Sukhostavets, the legal nature of EPC-contracts is quite polemic. Some researchers consider that such contracts belong to the so-called "soft law" or "non-legal soft law", others attribute these proformas to the "lex constructionis" – a system of non-governmental regulation of international construction contracts, which reflects the trade customs as well as typical conditions of international construction contracts. In accordance with "lex constructionis", FIDIC develops recommendations in the form of proformas, model contracts, standard regulations, and legal adjustments used by customers and contractors while concluding contracts for the realization of capital construction projects (Sukhostavets, 2019).

Therefore, summarizing all the mentioned above, it is possible to identify the main features that lawyers most commonly characterize EPC-contracts:

- shall be concluded in writing only;
- suitable for construction of the facility on a «turnkey» basis, for which it doesn't contain a closed list of rights and obligations, which results in allocation a lot of project risks on the contractor;
- always has a lump sum (fixed price), which could be changed only at the initiative of the parties.
- delay in the execution of one of the parts of the EPC-contract may lead to increasing the terms of project execution as a whole (for example, a delay in the design leads to a delay in the start of delivery or construction);
- usually governed by rules of English law;
- can be expanded or amended by additional contractual constructions, for example representation, loan provisions, credit, etc;

- contains provisions for limitation of liability for the parties;
- the employer has a limited list of powers related to the impact on the EPC-contractor or subcontractors;
- violations made by subcontractors do not entitle the contractor to postpone project implementation dates or exempt from liability;
- engineering, supply, and construction shall be performed simultaneously which significantly reduces the terms of project implementation in comparison with construction using the multilot/ multi-prime approach.

One of the main principles that allows the conclusion and execution of EPC-contract is freedom of contract, which provides the parties with the right to choose the type of contract, in particular by concluding a mixed contract. In Ukrainian legislation, the principle of freedom of contract is enshrined in article 627 of the Civil Code of Ukraine (hereinafter – CCU), which stipulates that according to article 6 of CCU the parties are free to enter into a contract, choose a counterparty and determine the terms of the contract, taking into account the requirements of the CCU and other acts of civil legislation, business practice, requirements of reasonableness and fairness (The Civil Code, 2003: article 627).

While analyzing this legal rule, it became clear that in terms of the way the content is presented, it is referential and blanket, because it contains a reference to both specific legal rules and the legislation as a whole. Therefore, article 627 of CCU can be a classic example, of when the "spirit of the law" is wider than the "letter of the law".

A similar principle is enshrined in article 421 of the Civil Code of the Russian Federation (The Civil Code of the Russian Federation, 1994: article 421), article 380 of the Civil Code of Kazakhstan (The Civil Code of Kazakhstan, 1994: article 380), and article 391 of the Civil Code of the Republic of Belarus (The Civil Code of the Republic of Belarus, 1998: article 391). Moreover, the wording used in the last two Civil Codes is, for the most part, identical, which once again indicates the similarity of the approach to the regulation of social relations in these states.

The principle of freedom of contract plays a key role in the development of economy and market relations. However, the operation of the principle of freedom of contract has certain exceptions, assigned in legislative norms. For example, article 380 of the Civil Code of the Republic of Kazakhstan prohibits compulsion to conclude a contract, while clarifying that this does not apply to cases where the obligation to conclude a contract is provided for by the legislation or a voluntarily accepted obligation (Sabirov *et al.*, 2020).

The Belarusian legislator has provided the principle of freedom of

contract with the following content in article 22 of the Civil Code: "Citizens and legal entities are free to conclude a contract. The compulsion to conclude a contract is not allowed, except when the obligation to conclude a contract is provided for by the law or a freely assumed obligation" (The Civil Code of Respublika of Belarus, 1998: article 22). N. Bondarenko emphasizes, that such wording of the law should be declared unfit. The principle of freedom of contract cannot be reduced to the freedom to enter into contractual relationships only. It works at all stages of contractual relations until termination thereof. Freedom of contract enables parties of the contractual relationship to initiate succession, entering into a claim assignment or debt transfer agreement (Bondarenko, 2016).

At the same time, the possibility of implementing the principle of freedom of contract by business entities is a starting point that allows the conclusion of the mixed contract on the territory of the Post-Soviet States, which in particular, includes EPC-contracts.

According to the general approach, EPC-contracts consist of two parts: General Conditions and Particular Conditions. In order to avoid disagreements during the execution and conclusion of it, FIDIC had made so-called "Golden Principles":

GP1: The duties, rights, obligations, roles and responsibilities of all the Contract Participants must be generally as implied in the General Conditions, and appropriate to the requirements of the project.

GP2: The Particular Conditions must be drafted clearly and unambiguously.

GP3: The Particular Conditions must not change the balance of risk/reward allocation provided for in the General Conditions.

GP4: All time periods specified in the Contract for Contract Participants to perform their obligations must be of reasonable duration.

GP5: Unless there is a conflict with the governing law of the Contract, all formal disputes must be referred to a Dispute Avoidance/Adjudication Board (or a Dispute Adjudication Board, if applicable) for a provisionally binding decision as a condition precedent to arbitration (FIDIC, 2019).

As noted by I. Sukhostavets, after the publication of the FIDIC Golden Principles, the contractual principles of the standard forms of the FIDIC contracts became considered as untouchable. The Golden Principles are designed to limit the abuse of FIDIC contract terms and refer that using of the FIDIC General Conditions that do not comply with the Golden Principles would be interpreted as misrepresentation and irrelevance. At the same time, the scientist emphasizes that a violation of the FIDIC Golden Principles can result in a balance upset of the risks and cause losses, litigation, or termination of the contract (Sukhostavets, 2021).

Hereby, EPC-contract can be attributed to a special type of mixed contract, concluded in accordance with standard forms, developed by an international specialized organization, according to which the contractor is responsible for the engineering, supply, construction, and commissioning of the facility within the specified time and the employer is obliged to hand-over the site to the contractor in proper condition and to pay for the scope of work at a "fixed price" according to the approved payment schedule.

Also, the application of EPC contracts in the Post-Soviet Union States would be impossible without the establishment of fundamental legal principles in their legislation, such as the principle of freedom of contract and the principle of autonomy of will, which makes it possible to distinguish an EPC-contract from other mixed contracts and helps to make amendments by contractual structure and accessory obligations (parent company guarantee, bank guarantee, pledge, etc.), as additional guarantees which the parties provide to each other, or within the limits of those requirements that may be put forward by financial institutions (banks, credit-export agencies, etc.).

3.2. The main risks in conclusion and execution of EPC-contracts in the Post-Soviet Union States

Legal researches of the construction industry development at the modern stage are becoming more and more connected with the availability of guarantees in contractual relations, which play an important role in risks minimization for its participants, which are interested in the successful implementation of the project because the number of problems and threats related to the activities of construction industry entities is gradually increasing.

The purpose of risk distribution is to find a balance between the interests of the contracting parties and the existing legal regulation of social relations. Of course, in the absence of qualified legal assistance, the possibility of placing the risk on a party that cannot bear it, due to legal regulations or established business practice, should not be excluded.

The full-scale invasion of the Russian Federation on the territory of Ukraine forced investors to reconsider the risk management system. This also applies to the construction industry, which has been greatly affected by war. Many construction projects based on the EPC model have been suspended, and some have been canceled. However, the nature of war, according to the experts and world leaders, will be protracted, which forces businesses to look for new ways and mechanisms not only to protect existing projects but also to potentially preserve the prospect of restoring projects in the future.

In practice, as a rule, the risk-sharing between the contracting parties can be regulated both during the signing of the contract and after it. The second option is possible due to the inclusion of two clauses in the wording of the agreement regarding:

- the application of the Principles of International Commercial Contracts, developed by the International Institute for the Unification of Private Law (hereinafter - UNIDROIT), as part of substantive law, according to which contractual relations are regulated;
- the settlement of disputes in international commercial arbitration.

As a legal definition of the exclusive nature of the above-mentioned clause, the UNIDROIT Principles of International Commercial Contracts introduced a neutral definition for all legal systems as "substantial injustice" (UNIDROIT, 2016), through the prism of which the courts should interpret the terms of the contract without detaching from its purpose.

UNIDROIT Principles of International Commercial Contracts belong to the so-called soft law, which in turn belongs to the "Lex mercatoria" group (extranational commercial law). The last edition of the mentioned principles was issued in 2016. This document was developed by authoritative experts in the field of international contract law and used by national courts and international commercial arbitrations as well.

Among the legal systems of the Romano-Germanic legal family, the prevalent approach is placing the risk on the party for which bearing risk is the least costly. As a rule, such a party can control risks due to effective management of its own operational and economic activities with minimal financial losses or by insurance or reinsurance of risks. This approach is based on the principle of economic feasibility. O. Volovyk represents a thesis that allocation of contractual risks between the parties should be made by using of mentioned principle exclusively. In turn, the application of the specified approach can be implemented with the help of dispositive and imperative methods of risk-sharing (Volovyk, 2013).

While analyzing the practice of concluding contracts according to FIDIC proforma in the Republic of Kazakhstan, Y. Yesimkhanov notes that the application of the FIDIC forms in Kazakhstan has a number of features and specifics that must be taken into account in order to make a positive effect on the application of such forms. Some of these specific features are associated with the peculiarities in the functioning of Kazakhstani legislation, others are connected with the fact that Kazakhstan has not yet developed the relevant practice and regulatory framework (Yesimkhanov, 2013). The scientist enumerates some practical issues of EPC application in Kazakhstan, but the given list of issues can be much wider.

The FIDIC forms contain a large number of references to the term's "acceptability", "rationality", and "reasonableness". In the analysis of such definitions, it's usually clear that the contractor must act "as a reasonable Contractor, taking into account the best interests of the Employer." Similarly, the ymployer must "demonstrate reasonable behavior" (Yesimkhanov, 2013). The presence of such norms can be explained by the set of business customs that have been developed around any standard form of contract.

And that's why the rules of "reasonable behavior", which in Kazakhstan look like a simple declaration, in most European countries have very specific content. Unlike European countries, the contract parties in Kazakhstan will put their own meanings into such norms, which will be definitely different from each other and from those explanations that the competent court will make.

However, Y. Yesimkhanov does not recommend unreasonably removing or amending such norms while application in Kazakhstan. The application of these rules depends on which court will consider the disputes under the contract. In the event, when EPC-contract has been executed between the employer and the contractor, which are registered in different states, the parties are likely to submit the relevant dispute for international arbitration. Also, it is recommended to settle the issue of approving design documentation while applying FIDIC forms in Kazakhstan. This will help to avoid such problems as, for example, incorrect estimation of the time frame required to complete the project by the contractor.

The main question related to the structure of the contract while applying the FIDIC forms in Kazakhstan is whether does it make sense to use a complex two-component contract structure? There are no reasons why such a structure cannot be applied in Kazakhstan. In order to simplify the contract, a lot of parties prefer to combine the General conditions and Particular conditions by transferring provisions of the second one to the first one and including them in the corresponding articles. However, in this case, parties should be careful and take into account the court which shall consider the dispute under the contract.

Unfortunately, it was not possible to find research that would be focused on practical aspects of risk control while executing of EPC-contracts in the Republic of Belarus. Instead, a lot of researches which are devoted to the study of this problem were made in the Russian Federation.

I. Suzdalev, a partner of the Ostlegal law firm, while researching ways to ensure the fulfillment of obligations under the EPC-projects, notes that according to current practice, the fulfillment of the contractor`s obligations is usually ensured by two guarantees:

1. advance payment refund guarantee;

2. performance bond.

The expiration of the period for which the guarantee was issued excludes the possibility of presenting claims according to it. In connection with this, the guarantee should provide the mechanism of its extension in case of its expiring, and the work (or the warranty period) is not completed. For this purpose, the clause regarding the extension of warranty period should be included in the EPC-contract and guarantee wording as well. In case, when such an extended guarantee is not granted, the employer is entitled to recover the entire amount of the previously granted (expiring) guarantee.

The legal status and the fate of the amount collected in this way are likely to be fixed in the EPC-contract. The amount of the retention money may be qualified as a penalty for the failure to provide an extended guarantee to the employer. At the same time, there is a significant risk that the amount of such a penalty will be significantly reduced by the court on the basis of article 333 of the Civil Code of the Russian Federation (Lypavskyi, 2019).

If we are talking about the risks that may occur while signing and implementing EPC-contracts in Ukraine, it is also impossible to provide an exhaustive list. However, we will still try to consider the most common situations where risks can be avoided or risk management opportunities can be foreseen.

Ukrainian employers, as a rule, prefer to control the construction process. Therefore, in most cases, the employer or the consulting engineer carries out a lot of checks, measurements, and other controls. Meanwhile, the imperative rule contained in article 853(1) of the CCU says: "The employer is obliged to accept the work performed by the contractor in accordance with the contract, inspect it and, in case of deviations from the terms of the contract or other deficiencies admitted in the work, immediately report the contractor about that. If the employer does not make such a statement, he loses the right to refer to these deviations from the terms of the contract or deficiencies in the work performed in the future." (The Civil Code of Ukraine, 2003: article 853).

It should be emphasized that the specified rule of the CCU is fundamentally different from the existing international practice. For example, a lot of the FIDIC model contracts are based on the reverse principle: the approval of the performance of any work or the absence of comments by the employer in no case exempts the contractor from responsibility for committed violations.

Most of standard forms of contracts developed by FIDIC require the contractor to complete the work by a specified time, either by a specified date or within a specified number of days, weeks or months. Along with this, the contractor usually uses the provisions regarding limitation of liability and liquidated damages as a previously prepared legal protection.

According to the generally accepted approach, the concept of «liquidated damages» means damages whose amount the parties designate during the formation of a contract for the injured party to collect as compensation upon a specific breach (e.g., late performance).

The parties, as a rule, agree that the fixed amount of compensation cannot exceed the total value of the entire EPC-contract and calculates as a percentage for each day or week that has passed since such delay. At the same time, the Ukrainian legislation does not contain such a concept as «liquidated damages». Instead, there are provisions of article 216 of the CCU, which contains an indication that economic and legal responsibility is based on the principles according to which:

- the injured party has the right to compensation for damages regardless of whether there is a clause to this effect in the contract; the manufacturer's (seller's) liability for poor quality products provided by law also applies regardless of whether there is a clause to this effect in the contract;
- payment of fines for breach of obligation, as well as compensation for damages, do not release the offender without the consent of the other party from fulfilling the accepted obligations in kind;
- clauses regarding the exclusion or limitation of the liability of the manufacturer (seller) of products are unacceptable in the business contract.

Hereby, there are existing contradictions between the provisions related to compensation for damages under the EPC-contract and Ukrainian legislation. However, there is a way out of the situation, because when the party of the agreement is a non-resident company, it gives the opportunity to regulate contractual relations according to the norms of certain jurisdictions on their own. As a rule, this is the application of English law, which allows the parties to limit their liability under the contract. However, in this case, there should be a direct indication of this matter in the text of the EPC-contract itself.

Conclusions

It can be concluded, that during the implementation of capital construction projects under EPC-contracts in the Post-Soviet Union States, contracting parties should take into account the occurrence of not only controlled risks: delay in receiving town planning documentation, untimely delivery of components and materials, inadequate quality of performed works, but attention should also be paid to the occurrence of uncontrollable risks, which often have a political nature, in particular: armed aggression, war, change of political regime, international sanctions, etc.

Right now, uncontrolled risks play a significant role in stifling the development of the construction industry in Ukraine. The Ukrainian Chamber of Commerce and Industry evidenced force majeure circumstances (force majeure): military aggression of the Russian Federation against Ukraine, which led to the imposition of martial law from 05:30 on February 24, 2022 (The Ukrainian Chamber of Commerce and Industry, 2022). This document made it possible to remove responsibility from the contractual parties for the non-fulfillment of the terms of EPC-contracts throughout the territory of Ukraine.

However, it is still too early to talk about a complete shutdown of the industry. In the controlled territories, the construction projects of renewable power plants, which, according to our data, are partially implemented according to the EPC concept by foreign contractors, continue the construction. The Tiligulska wind farm project currently located in the Mykolayiv region, on the territory of which active hostilities are taking place, can be an example of this. Such a conclusion can be made after analyzing the decision of the National Regulator, dated 06.14.2022 about increasing of the installed capacity of the wind power plant to 36 MW (NEURC, 2022).

A different situation occurred in the Republic of Belarus and the Russian Federation, where under the influence of sanctions pressure, construction projects based on the EPC concept are suspended or completely canceled. An example of such a project is the construction of the LNG-terminal «Arctic LNG 2», where Technip Energies refused to participate, following the Maire Tecnimont which also stopped participating in the implementation of EPC projects in Russia (Interfax, 2022).

Almost nothing is known about the suspension of EPC projects in Belarus, probably due to the presence of a high level of political censorship in the country.

Thus, the situation in Kazakhstan looks like the most stable and predictable, where EPC projects are not under such a high threat, and the political autocracy does not foresee a sharp change of power and guarantees political stability. Also, an indicator of this is the high interest among Kazakhstani scientists and a sufficient number of legal studies on the issues application of EPC-contracts according to FIDIC proforma, which were analyzed in this research.

Summarizing the above, we can conclude that proper legal adaptation of the FIDIC Silver Book to the legislation of the relevant Post-Soviet Union State is a necessary, but not sufficient condition for avoiding risks associated with the impossibility or improper execution of EPC-contracts. Lawyers should pay attention not only to the form of the main contract (Contractual Agreement does not contain basic conditions); permissions and consents; terminology while translating into the appropriate language

(works, employer, site); wording from English law (such as "acceptability", "rationality", "reasonableness"); arbitration clause; applicable language (agreement, documentation, correspondence); procedure for commissioning of the facility, but also on the possibility of insuring the occurrence of the so-called political risks.

This approach makes it possible to cover part of the losses (let's be honest, insurance companies, as a rule, will not be able to compensate the entire amount of damage caused in large-scale projects), which were caused by armed aggression or the imposition of sanctions by third countries and makes implementation of project impossible (Jones Day, 2022).

Also, it should be emphasized that the above list is not exhaustive, and the adaptation process must take place on the condition of obtaining a license from FIDIC to make changes to the standard form of the contract in line with the copyright of the developers on its wording.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 849-862
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Administrative and legal regulation of space tourism

DOI: https://doi.org/10.46398/cuestpol.4074.47

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Abstract

From a documentary methodology, the objective of the article was to analyze the administrative and legal regulation of space tourism and the characteristics of this form of tourism as a type of space activity. In legal perspective, space tourism as any type of relationship must be regulated, including in the administrative and legal sense, because the role of the State in the regulation of these relationships is of particular importance and, in our opinion, requires special attention and legal analysis. A characteristic feature of the administrative and legal regulation of space tourism is that one of the participants in these relations are corporations that develop the space industry, including space tourism, and the state creates a legal basis for the development of these relations and if it applies to the developed space industry, invests in this activity and promotes development in all possible directions. Therefore, we believe that special attention should be paid to the administrative and legal regulation of space tourism. It is concluded that the administrative and legal regulation of space tourism is a deliberate influence of the norms of administrative law on the regulation of social relations arising in the field of space tourism.

Keywords: space and tourism; state regulation; legal relations; norms; spatial activities.

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Recibido el 03/08/22 Aceptado el 11/10/22

Regulación administrativa y legal del turismo espacial

Resumen

Desde una metodología documental, el objetivo del artículo fue analizar la regulación administrativa y legal del turismo espacial y las características de esta forma de turismo como tipo de actividad espacial. En perspectiva legal, el turismo espacial como cualquier tipo de relación debe ser regulado, incluso en el sentido administrativo y legal, porque el papel del Estado en la regulación de estas relaciones es de particular importancia y, en nuestra opinión, requiere especial atención y análisis legal detallado. Un rasgo característico de la regulación administrativa y legal del turismo espacial es que uno de los participantes en estas relaciones son las corporaciones que desarrollan la industria espacial, incluido el turismo espacial, y el Estado crea una base legal para el desarrollo de estas relaciones y si aplica a la industria espacial desarrollada, invierte en esta actividad y promueve el desarrollo en todas las direcciones posibles. Por ello, creemos que se debe prestar especial atención a la regulación administrativa y legal del turismo espacial. Se concluye que la regulación administrativa y jurídica del turismo espacial es una influencia intencionada de las normas del derecho administrativo en la regulación de las relaciones sociales que surgen en el ámbito del turismo espacial.

Palabras clave: espacio y turismo; regulación estatal; relaciones jurídicas; normas; actividades espaciales.

Introduction

In today's world, international tourism has become one of the fastest growing industries. Every year, reports from the World Tourism Organization show that despite the youth of the international tourism industry, it occupies an important place in the world market. In this regard, the issue of administrative and legal regulation of space tourism is of particular importance. According to the definition given by the World Tourism Organization, tourism covers all forms of temporary departure from a place of permanent residence for the purpose of recovery and arrival at a place of temporary residence, where he engages in unpaid activities, as well as to meet intellectual needs in leisure or business activities Report of World Tourism Organization (2021).

For the development of space tourism as one of the types of space activities, first of all, it is necessary to regulate this industry within the framework of uniform rules. That is, the study of the prospects of administrative and legal regulation of space tourism in the framework of international space law is a

very important and relevant topic of our time. In this regard, this article is devoted to topical issues of administrative and legal regulation of the use of outer space for tourism purposes.

Legal regulation in the legal literature is considered as one of the central and comprehensive legal phenomena. It pursues the goal of ordering and improving social relations, without which law and order, the normal rhythm of life and peace of citizens are impossible in society (Babanina *et al.*, 2021).

Legal regulation is a purposeful effective impact of law on specific social relations in order to streamline and improve them through purely legal means. This definition contains all the most important characteristics of legal regulation: 1) is a kind of social regulation; 2) is carried out by civil society or the state; 3) has a normative-effective nature - is carried out with the help of a holistic system of legal means that ensure the implementation of legal norms to achieve the desired goal (result); 4) has an organizational nature - with the help of legal regulation of relations between the subjects acquire a certain legal form (the rules of law enshrine the degree of possible or appropriate behavior); 5) has a purposeful nature - aimed at satisfying the rights, freedoms, legitimate interests of legal entities; 6) has a specific character - always associated with real (specific) relationships (Gusarev, 2017).

Regarding administrative and legal regulation, it should be noted that V.Y. Razvadsky defines administrative-legal regulation as a combination of methods of legal regulation in which obligations and prohibitions predominate. This combination is formed by giving the participants of legal relations subjective legal rights and imposing obligations on them by defining and enshrining in legal acts certain rules of conduct as a result of law-making activities of authorized bodies (officials) (Razvodovsky, 2003).

Petrova and Semenov (2015) define this type of legal regulation as executive-administrative activity of the state organizations endowed with the state-power powers directed on stabilization of public relations by acceptance of regulatory legal acts and maintenance of their execution. Kozlov (1999) defines administrative-legal regulation as a process of consistent use of administrative-legal means to achieve the goals of regulating the behavior of participants in public relations.

Thus, the administrative and legal regulation of space tourism is a purposeful influence of the rules of administrative law on the regulation of social relations arising in the field of space tourism. Administrative and legal regulation includes the use of various means and methods and their use in the implementation of such regulation, especially in such a specific area as space tourism. This is the main purpose of the article.

1. History of space tourism development

The idea of space tourism was first reflected in a series of works by Barron Hilton and Craft Eric, published in 1967. They first tried to push the idea of commercializing space. However, at that time it was not successful. Space tourism began to develop actively in the late twentieth century. In 1986, the International Astronautical Congress presented a report on "Potential Economic Implications of the Development of Space Tourism", which provoked a lot of discussion not only in scientific, but also in business circles.

The first space tourist was to be the American teacher Sharon Christa McAuliffe, who died during the launch of the shuttle "Challenger" on January 28, 1986. Following the incident, the US government passed a law banning non-professionals from flying into space. Currently, 3 companies are organizing space flights: the American Virgin Galactic and the Russian-American Space Adventures, which has been actively cooperating with Roscosmos since 2001, and SpaceX. With the help of these companies, more than 10 tourists have already visited space, and one of them (Charles Simony) - twice. In addition, there are 4 unsuccessful attempts to make a space tour (Lance Bass, Daisuke Enomoto, Sarah Brightman, Vladimir Gruzdev).

2. The concept of space tourism and its legal regulation

In international legal theory, issues of legal regulation of space tourism are considered at the junction of international space law and international tourism law. From this point of view, Kuliev (2014) believes that it is necessary to consider the legal sphere of international space law and international tourism law, their sources, existing domestic legislation in this area (the Law "On Space Activities" and the Law "On Tourism") and the legal regulation of space tourism.

Thus, according to Huseynov (2012), international space law is a set of norms that determine the legal regime of outer space, including celestial bodies, and the regulatory rights and responsibilities of participants in space activities. Y.M. Kolosov believes that international space law is a set of international principles and norms that determine the legal regime of outer space and celestial bodies and regulate the rights and obligations of international legal entities in the use of outer space and space techniques (Valeev and Kurdyukov, 2010).

International tourism law is a sub-branch of international public law, which is a set of legal principles and norms governing interstate cooperation in the field of tourism (Yurchenko, 2016).

According to the theory of international space law, the concept of space tourism can include:

- participation of citizens as passengers of the spacecraft controlled by the pilot (as a member of the crew);
- observation of phenomena and objects in outer space during space flight, controlled by the pilot and simultaneously from the ground from the appropriate equipped places;
- use of space infrastructure and its activities (stay in the flight control center, use of the center and equipment for training astronauts, monitoring the launch of space objects at the spaceport, visits to the observatory, etc.);
- the use of space technology decommissioned, as well as the use of space activities for tourism purposes (Malkov, 2007).

Space tourism is a type of tourism and one of the links in the global tourism industry, which provides services to people for access to space, enriches the experience of adventure and recreation. The European Space Agency defines space tourism as a private-funded and / or privately operated suborbital flight with the help of vehicles and the development of technologies based on the space tourism market. Space tourism can be considered as one of the branches of the tourism industry, which is mainly based on technological development, progress and its activities related to satellite orbital flights (Movchan *et al.*, 2022).

Mironov defines that space tourism is one of the areas of commercialization of space activities, which is gradually developing and is relevant today. Space travel, orbiting for entertainment purposes, unlike other space travel (for example, for research purposes funded by governments), is paid for privately. Unlike other types of tourism, participation in space tours requires tourists to be in perfect health and appropriate special training (Mironov, 2019).

Space tourism is the flight or series of flights of one or more people into space (space is usually understood as an altitude exceeding 100 km above sea level - the so-called Pocket Line, the conditional upper limit of the Earth's atmosphere) or Earth orbit, paid on a commercial basis with entertainment or research purpose. People who go into space at their own expense for entertainment purposes are usually called space tourists, but their official name is space flight participants, because in orbit they become participants in scientific experiments, learn what the risk of space flight is, and work alongside the crew. Therefore, space tourism is often called a visiting expedition, because the preparation for the flight of tourists and crew is the same (Vyshnevsky, 2018).

Space tourism, of course, can be considered as a sphere of entrepreneurial activity, i.e., it is a business that can be both profitable and unprofitable. The organization of space travel on a commercial basis is a full-fledged and, most importantly, profitable business. The same laws apply here as in other markets for goods and services, there are consumers who are willing to pay a lot of money for a bright and extreme trip. To earn your money, you need to attract a potential customer. Today, "Space Adventures" offers several programs for wealthy tourists: - tour to launch a spacecraft (Baikonur Cosmodrome, Kazakhstan); - preparation for space flight (Star City near Moscow); - space travel to the International Space Station (ISS); - access to outer space; - flight over the other side of the moon (Space Adventures, 2022).

Confirmation of this is the opinion of Mironov as for promising projects and plans for the development of space tourism business, it all depends on the ingenuity of entrepreneurs. The main principle is to make an idea, even an unrealistic one, work and make a profit in the future (Mironov, 2019).

Regarding the legal regulation of space tourism, it should be noted that the sources that regulate space activities, including tourism, are international treaties, domestic regulations of countries engaged in space activities in the field of tourism.

International agreements include:

1. Space Treaty of 1967;
2. Agreement on the Rescue of Astronauts, Return of Astronauts and Return of Objects Released into Outer Space, 1968;
3. Convention on International Liability for Damage Caused by Space Objects, 1972;
4. Convention on the Registration of Objects Released into Outer Space of 1975;
5. Agreement on the Activities of States on the Moon and Other Celestial Bodies of 1979 (Agreement on the Moon) (Blatova and Melkov, 2011).

The internal normative acts should include the Laws of Ukraine "On Space Activities", "On Insurance", as well as bylaws of the Cabinet of Ministers of Ukraine and central executive bodies.

Regarding the Law of Ukraine "On Space Activities", it does not provide for the concept of space tourism, which in our opinion is a negative aspect. Therefore, we believe that the issue of space tourism must be regulated in the Law of Ukraine "On Space Activities".

If we talk about administrative and legal regulation, the leading place in the system of sources of regulation is occupied by bylaws of ministries and other central executive bodies, among which are the acts of the State Space Agency of Ukraine, which directly implements space programs of Ukraine (Chernuavskyi *et al.,* 2021).

Speaking of space tourism, it should be noted that the main problem of space tourism, in our opinion, is the relative unavailability of such travel (extremely high health requirements, special and physical training of space tourists) and the high cost of services. The cost of the program at present - from 30 million US dollars. It includes a medical examination, training and education in Star City, the flight itself, a stay on the ISS. Going into outer space will cost tourists about 15 million US dollars. This high cost is due to the fact that sending a person into space requires much more expensive media than, for example, to launch a satellite.

An important factor influencing the price of the flight is the risks of both the company and the participants in the flight. One way to solve this problem is to use manned suborbital aircraft. This aircraft is a high-speed aircraft that rises to a height of about one hundred and fifty kilometers. From its board a person will be able to see the Earth from space, as well as feel weightless. One of the developers of such devices is the company "Virgin Galactic". The company has created the spacecraft "SpaceShipTwo". The aircraft will be overclocked with the help of the White Knight Two aircraft, the maximum number of passengers will be 6 people, and the flight duration will be from 2.5 hours.

The cost of the flight to the borders of space will be approximately 200 thousand US dollars, which is much cheaper than the price of orbital flight. In addition, the flight conditions are much "softer" and more comfortable. Despite the fact that the aircraft is under development and testing, tickets for the first flight have already been sold out. The starting point for the suborbital flight is the world's first private spaceport "America", which was built as a result of cooperation between "Virgin Galactic" and the government of New Mexico (USA) (Chiornyi, 2011).

Today, outer space is becoming more accessible. In the coming years, space tourism should be differentiated by cost - suborbital travel is promising, which can be organized at much lower prices than orbital tours and expeditions. Currently, space tourists can stay on the ISS, in addition, technological developments are already underway for the construction of space hotels. Scientists predict the appearance of the first such hotels in a decade. The next two celestial bodies of commercial interest are the Moon and Mars (Ignatova and Gracheva, 2016). Mironov suggests that with the development of science and technology will be available to travel to other planets, with which we can agree (Mironov, 2019).

It is possible that Ukrainians will be able to afford a space tourist ticket.

Analyzing the financial basis for the development of space tourism, it should be emphasized that the most important part of the costs is the use of space and information technology in sightseeing and tourism (Vyshnevsky, 2018).

Space activities are constantly accompanied with different types of risks, therefore there arises quite an appropriate problem faced by a number of space countries, i.e. to continue exercising the space activities and deliberately risk or confine themselves to the existing situation and make use of existing treasures. Therefore, the question of ensuring civil security arises. This concern of the state manifests itself by granting permission to commercial organizations to get engaged in the applied types of space activities. The state must ensure effective and efficient control over the activities of entities that launch rockets and satellites into space, that are a priori the sources of elevated danger (Muraviov *et al.*, 2019).

That is, I would like to emphasize that with the development of space tourism, the issue of responsibility in international space law is growing. No matter how financially secure space tourists are, they enter into various insurance contracts or sign a series of documents agreeing that their actions are associated with risk. Therefore, the issue of space tourism insurance deserves special attention.

3. Space tourism insurance and liability in space tourism relations

The mechanism of civil law regulation of insurance relations in space activity in Ukraine is in an unsatisfactory state, that negatively affects provision of reliable insurance protection of property interests of primarily the subjects of space activities in the process of their implementation of space projects and programs. This circumstance requires filling the existing gaps in the legal regulation of the relevant civil law relationships (Babanina *et al*., 2021).

Insurance of space activities should be understood as a comprehensive insurance industry covering personal insurance, property insurance and civil liability insurance. It is the complex nature of insurance in the field of space activities that provides reliable and universal insurance protection of property interests of subjects of space activities in the process of exploration and use of outer space (Movchan *et al.*, 2021). An important role in insurance is played by the norms of civil legislation, which are provided for in the contract relations when implementating insurance in the domain of space activities.

Space activity insurance is an independent branch of insurance that includes personal, property, liability insurance, etc. Case of causing damage to the third persons in the process of these activities. Complexity of this special insurance is conditioned by the necessity of insurance protection of property interests of the subjects of space activities in connection with production and exploitation of space technology for the purpose of research of the use of outer space. Underwriters can not be individual citizens, since they are not recognized as subjects of space activities.

That is, underwriters when conducting mandatory insurance in the field of space activities can be presented by any enterprises, institutions and organizations (incl. international and foreign), which perform space activities and want to have a financial guarantee of insurance protection from possible losses. After all, concluding an insurance contract is important for determining all the conditions for the occurrence of an insured event. First of all, it is necessary to list the risks in the process of implementation of space activities, with regard to which the degree of risks probability as compared to other insurance contracts is unknown. First of all, this is due to the insufficiency of the relevant statistical data, in particular for insurance cases. To properly develop the effective insurance market in Ukraine in the process of implementation of space activities, it is necessary to resolve a number of legal problems associated with insurance of life from misfortunes. Today, the Law of Ukraine "On Insurance" indicates that it is prohibited to carry out insurance activities on the territory of Ukraine to be performed by underwriters who are nonresidents, except for the following cases of types of insuring activities:

- risk insurance is necessary if the object of insurance is property interests in goods transported by vehicles, if such risks are related to aviation, sea transport, etc.;
- insurance mediation such as brokerage and agent operations in relation to: reinsurance, exclusively with the insurance of the riskc connected with martine transportation, commercial aviation, launches of rockets and satellites, if they belong to property interests in the goods being transported. In addition, the following types of insurance are defined, if space objects:
- insurance of objects of space activities (Earth's infrastructure), the list of which is approved by the Cabinet of Ministers of Ukraine after submission of the central body of executive power, which ensures formation of the state policy in the domain of space activities;
- insurance of civil liability of subjects of space activities;
- insurance of objects of space activities (space infrastructure) which is a property of Ukraine as for the risks connected with the preparation of space technology for launching on a launching site,

its launch and operation in outer space; - insurance of liability as for the risks related to preparation to launching of space technology on a launching site, its launch and exploitation in outer space.

It may be expedient to introduce changes and amendments to the Law of Ukraine "On Insurance" in the part of introducing mandatory personal insurance of life for spacecraft crew (tourists) on the territory of Ukraine. For the civil law regulation of insurance activities in the field of space, it is necessary to adopt the Law of Ukraine «On mandatory insurance for the implementation of space activities in Ukraine». This law defines the order and rules of compulsory insurance, the size of the insured amount, the subjects of insurance activity, the terms of the contract, etc.

Main international treaty, which regulates the issue of liability in the international space law, is the Convention on Liability 1972. According to Article VII, a state party to the Treaty assumes responsibility for damage caused by space objects that it launched or arranged for launch. Such a state is also responsible for such objects in case of damage in space, on Earth, or on the Moon. Damages are compensated to other states or legal entities and individuals.

In connection with the constant expansion of the boundaries and forms of space activities, there appears a need to update the Convention on Liability or conclude an appropriate agreement for each individual type of liability. It is especially true that the Convention accepted 40 years ago does not fully meet the present conditions and achievements in the space industry.

While solving the issue of liability in international space law, it should be judged who has caused damage: a subject of international public law or international private law. In accordance with international legislation, in the event of damage caused by space activity, it is compensated in the manner and within the limits stipulated by international treaties.

And in the second case, everything depends on the type of factor which specifically regulates the relations of international private law. It is due to the fact that the space research is sometimes carried out not by the governments of the countries, but separate individuals and legal persons, that leads to the change of legal relations type and in case of solving the issues of liability the subjects are not states, but separate individuals and legal entities.

That is, when causing damage during a tourist trip there is a question of who and how will compensate for the damage and here again follows the special role of the state and its administrative and legal methods of regulating relations in this area (Babanina *et al.*, 2021).

Summarizing the above, it can be concluded that in order to improve the regulation of space activity, it is necessary to change the grounds and procedure for prosecution of member states of various space programs, which is inextricably linked to changes in their national legislation.

Conclusions

Thus, the administrative and legal regulation of space tourism is a purposeful influence of the rules of administrative law on the regulation of social relations arising in the field of space tourism. Administrative and legal regulation includes the use of various means and methods and their use in the implementation of such regulation, especially in such a specific area as space tourism.

Administrative and legal regulation of space tourism has the following characteristics:

- has a purposeful nature (aimed at regulating relations in the field of space tourism), as it acts as a kind of regulator of public relations, regulating them through law at the societal level;
- has an organizational and orderly nature, ie is carried out by certain means;
- aimed at achieving certain goals, and therefore has a regulatory nature;
- has a certain subject and sphere of legal influence, which are perceived by people and society and have a certain meaning for them;
- is provided with certain methods that coordinate the activities of subjects of international space law;
- has certain stages that involve the legal regulation of public relations, the emergence of subjective rights and legal obligations and their implementation. Space tourism is space or suborbital flights for entertainment or research purposes, usually carried out at private expense.

The issue of liability in the event of damage to the protected rights and interests of individuals is important in tourism-related space activities. In order to anticipate risks, the institute of insurance in space activities related to tourism should be improved.

Finally, we must agree with Bogdan *et al.*, (2019) that despite the economic instability in the world, the space industry remains one of the promising investment sectors, so it's time to dispel the myth that has

misled both the government and the public that outer space is a barrier, not an area of opportunity development. After all, in the future there will be a prospect for the beginning of passenger suborbital space flights with the help of newly developed commercial spacecraft. Space tourism includes aspects of space transport, manned space flight and the commercialization of outer space.

Given the loopholes of existing laws, there is an urgent need to regulate space activities. In addition, the approach to international space law needs to be properly revised and reshaped so that private enterprises can directly engage in commercial activities in this area. The growth of the "space tourism movement", which can be called such, will have a huge beneficial cultural effect, which will expand human horizons and opportunities. Under its influence, space tourism may in the future become the main direction of space activities, which will provide many people with jobs and bring significant profits to the participating states.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 863-879
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

The concept of "Child" and its historical and legal description

DOI: https://doi.org/10.46398/cuestpol.4074.48

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Abstract

There are a number of questions in the theory and practice of law: "Who is a child?" "When does childhood begin and end?", "What is the definition of the term 'child'?", "What does the concept of 'child' include and what is the content that makes it up?". In this vein, the aim of the article was to analyze the issue of children's rights, the discussion of which is still under debate and does not fully satisfy all parties involved. The authors used a set of methods including: logical, chronological and systematic approaches, comparative analysis, as well as the results of social surveys, literature analysis and statistical methods. As a result, the content and essence of such historical and legal terms as "Rushd", "adna sinn al-bulug", "murohiq" were clarified. The authors conclude that at present there is a disagreement among researchers in determining the legal status of the concept of "child" and in elaborating the definition of "child" itself, so one of the ways to solve this problem is the proposal to change the legal definition of the concept of "child" by expanding its scope and meanings.

Keywords: children's rights; rights in Central Asia; history and laws; concept of "Child"; Islamic law.

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Recibido el 15/07/22 Aceptado el 12/09/22

El concepto de «Niño» y su descripción histórica y jurídica

Resumen

Hay una serie de preguntas en la teoría y la práctica del derecho: «¿Quién es un niño?» «¿Cuándo comienza y termina la infancia?», «¿Cuál es la definición del término «niño»?», «¿Qué incluye el concepto de «niño» y cuál es el contenido que lo conforma?». En este orden de ideas, el objetivo del artículo fue analizar la cuestión de los derechos del niño, cuya discusión sigue siendo objeto de debate y no satisface plenamente a todas las partes implicadas. Los autores utilizaron un conjunto de métodos que incluyen: enfoques lógicos, cronológicos y sistemáticos, análisis comparativos, así como los resultados de encuestas sociales, análisis de la literatura y métodos estadísticos. Como resultado, se aclaró el contenido y la esencia de términos históricos y jurídicos como «Rushd», «adna sinn al-bulug», «murohiq». Los autores llegan a la conclusión de que en la actualidad existe un desacuerdo entre los investigadores a la hora de determinar el estatus legal del concepto de «niño» y de elaborar la propia definición de «niño», por lo que una de las formas de resolver este problema es la propuesta de cambiar la definición legal del concepto de «niño» ampliando su alcance y significados.

Palabras clave: derechos del niño; derechos en Asia Central; historia y leyes; concepto de «Niño»; ley islámica.

Introduction

The article examines the historical and legal basis of the concept of "child" from a theoretical point of view, analyzes the controversial aspects of the modern interpretation of the concept, as well as the main sources on the rights and interests of the child.

It is known that to date, international and national legal instruments define a child as "a person who has reached the age of eighteen (adult)". However, the minimum age limit, i.e. when a child's life begins, is not clear. The article emphasizes the expediency of setting the period from childhood to 18 years, given the need to protect the interests of the fetus. On the basis of the analysis, the scientific and legal essence of the concept of "child" was studied, and legal scholars (Ganibaeva, Nikonov, Besedkina, Malgorzata, Sologub) expressed their views on this issue. the author's definition of the concept has been proposed in the context of ongoing scientific discussions on his considerations. This section also presents the results of social surveys conducted among children in different regions of Uzbekistan to understand the meaning of the term "child".

According to this, most children do not know about the age limit, and the necessary recommendations are being made to address this issue.

1. Research Methods

The research has been accomplished according to the principles of objectivity, diversity of opinions, completeness and comprehensiveness.

Authors use logically cohesive, chronologic and systematic approach in investigating the child rights in the territory of Central Asia. The research also uses comparative analysis, public opinion gathered via social survey, research of manuscripts and statistical techniques to acquire new knowledge.

It includes the Avesto rules on the boundaries of childhood in Central Asia, legal traditions, sources of Islamic law, Jami ahkam as-sigor, Fatwa al-attobi, and Legal Relations of the Muslim Population. Historical and legal sources such as "Turkistan", "Russian legal relations" and Soviet colonial law, as well as modern norms of national and international law.

2. Results and Discussion

Law is a historical and social reality, which is formed as a means of ensuring the balance of different relations between people and their regulation. From this point of view, law has developed as a norm of social relations, a way to keep them in balance, a socially relevant requirement. Later, legal norms became the norm, which required and guaranteed the introduction of states. Accordingly, legal norms are interpreted as a set of certain rules and requirements, obligations and rules governing social relations, which are introduced by the state authorities and protected by the state. Thus, one of the legal norms, rules, obligations and requirements recognized by the modern civilization of mankind, which has developed its own historical and social development and has been developed since ancient times, is the issue of children's rights.

As the child is physically, physiologically and mentally immature, there is a great need for a special defense system, mechanisms and traditions to protect it (Kokina, 2022). This set of needs is in fact equal to his/her vital needs, the requirements and conditions necessary for his/her survival. It is these systems and mechanisms that guarantee the rights of the child.

Children's rights are a unique, inimitable, complex, multifaceted phenomenon, which today are shaped by their essence in relation to the child and his/her human status by:

1. a set of cultural, spiritual, educational, legal knowledge, experience and practice, i.e., legal culture;
2. The system of national traditions, the system of folk customs, the legal consciousness and mind-set concerning the child prevailing in societies;
3. The extent to which the guarantees of the rights of the child are applicable in all societies, i.e., the question of their realization;
4. The institutional systems, infrastructure, civil society institutions and their comprehensive activities for the implementation, protection and enforcement of the rights of the child in society.

However, the most difficult issue when considering the rights of the child, the solution of which is still under discussion, did not fully satisfy all the parties involved, therefore it is one of the scientific and theoretical issues that cause certain difficulties in the theory and practice of law is to determine the answers to questions like "Who is a child?" "When does childhood begin and end?", "What is the definition of the term "child"?", "What does the concept of "child" include and what is the content that shapes it?". It can be observed that practitioners, scientists and lawyers around the world are trying to find answers to these questions and develop a clear definition.

On the one hand, the "child" is a reality that came into being as soon as man came into being. That is, the concept of the child has been introduced into legal practice since the time it first appeared, although in a more primitive form, and special terminology has been used to describe it. From the time of the child's birth, humanity has understood that the child and his/her physiological needs exist, and the skills and norms to meet them as much as possible have been developed and put into practice.

If this were not the case, humanity would be deprived of the opportunity to grow in quantity. However, on the other hand, the scientific, theoretical, socio-historical and legal understanding of the concept of "child" and its specific definition has historically been very recent, and this definition is more concerned with the physiological maturity of the child, his/her age difference, rather than defining the socio-legal status of the child.

In this regard, in our study we will try to consider the concept of "child" and the process of its understanding on the basis of the following factors:

- Scientific and theoretical legal understanding of the concept of "child";
- National-mental understanding of the concept of "child" in the system of national values of the Central Asian people, family traditions, folk pedagogy and the practice of daily life of the Central Asian people;

- Socio-legal understanding of the concept of "child" in the world, in particular in Western philosophical and social thought;
- Understanding the concept of "child" in Islamic traditions, as well as in world religions;
- Spiritual and educational understanding of the concept of "child" in the Central Asian region during its development, at different stages of historical development.

The attitude of the peoples of Central Asia and other nations to the concept of "child" in everyday life is based on folk traditions and family values, formed as more national-mental criteria, and this set of criteria is passed from generation to generation, highly valued as a family tradition.

In Uzbekistan, the legal understanding of the concept of "child" appeared much earlier than the traditions of other nations and through the system of care, maintaining, nurturing and upbringing the child, through various taboos in the form of traditions, incentives, and rituals incorporated into the daily life of child protection, and later in harmony with Islamic beliefs scientifically and theoretically, already in the Middle Ages, deeply and comprehensively developed in accordance with the requirements of its time.

If we consider the issue of understanding the problem of the rights of the child and its application in legal practice from a comparative point of view, it should be noted that it was in Central Asia that it first appeared and was widely used. This historical fact confirms that the content and scientific problem of the "right of the child" in the framework of the existing civilizations in Central Asia was first put into practice in the history of mankind, and no other such phenomenon has existed in the history of mankind.

Therefore, given that the "right of the child" and its development in Central Asia for the first time in the history of its time, there are no other similar events in human history to date, it is reasonable to assess such a historical fact as a unique legal phenomenon.

National-historical thinking about the personality and concept of the child went through stages like - *the main goal of human life ↔ offspring, pregnancy ↔ newborn, child ↔ the greatest value ↔ God's gift ↔ child and his/her health, physical, mental and spiritual development ↔ child rearing ↔ child education ↔ the owner of certain moral norms ↔ a system of primitive rights of the child.*

From ancient times, "child" is power and a gift of God, the main purpose and essence of life, spiritual blessing, family's happiness, spiritual nourishment, a symbol of joy, a continuation of generational traditions, one of the important foundations of national and spiritual values of the Uzbek people.

The concept of the child, the child and his or her development, in particular the family and social protection of the child throughout his or her life, has long been formed and developed in Uzbekistan within the framework of national thinking, and is therefore a historical and social event for Uzbekistan.

The humanistic requirements for the child and his personality have been set before our society in every historical period in Uzbekistan, and various means, methods, mechanisms and systems of their formation have been developed.

Views on the historical dynamics of the concept of the child in the territory of Uzbekistan consisting of a set of integral and interrelated categories as: *child ↔ healthy child ↔ moral owner ↔ capable child ↔ master of certain professions ↔ successor of family values ↔ successor ↔ the main element of the family's social status ↔ object of education ↔ enlightened and educated child ↔ mature child ↔ adult ↔ happiness of family and parents.*

If we define the concept of the child in the territory of Uzbekistan and its semantic change and transformation in the structure of different views, ideas and thoughts, the stages of its content in different historical periods, it manifests the following civilizational sequence developed in interconnectedness and continuity, a historical algorithm for the conception of the child.

This algorithm, on the one hand, reflects the content of the evolutionary stages of world civilizations, on the other hand, embodies a system of national views on the child and his place in society.

We have defined the stages of the system of national views on the child and his place in society as follows:

- Stages of historical formation of the system of national views on the concept of the child and the rights of the child;
- The system of legal views on children in "Avesta", "Sogdian inscriptions";
- The system of thinking related to the concept of the child in the first written and oral sources;
- Features of the views on the child and his rights, formed by the scholars of Islam and Transoxiana as part of Islamic culture;
- Children's rights during the Russian colonial period;
- Guarantees of children's rights during the rule of a totalitarian regime, their one-sided nature and social crisis;

- The transition from the system of limited views on children's rights formed during the independence to the idea of a new "harmoniously developed generation" and the creation of a relatively comprehensive system of children's rights.

In the spiritual heritage of the peoples of the East, many sources created in the Middle Ages have always focused on issues such as generation, child and his/her maturity and upbringing, raising a child as a craftsman.

In such works as "Kalila and Dimna", "Sindbodnoma", "A Thousand and One Nights/ "Ming bir kecha", "Qobusnoma", "Gulistan" and "Boston", "Bahoriston", "Shohnoma", "Donishnoma", "Monuments from ancient peoples/ "Qadimgi halqlardan qolgan yodgorliklar", "Saodatnoma", "Siyasatnoma", "Rushnoma", " Qutadg'u bilig", "Devonu lug'otit turk","Hibat ul haqoyiq", "Akhloqi Jamoliy", "Hamsa", which have become the spiritual values of mankind, special place is given to the child and his/her great position in human life, that the child is a gift of God and responsibility to bring him/her up in the system of ethical and aesthetic values of humanity.

The advanced traditions of the position of the child and his place in society have always been emphasized in the scientific-theoretical and literary-spiritual views of the world-famous Eastern thinkers who grew up in Uzbekistan like Muhammad Musa al-Khwarizmi (782-847), Abu Nasr al-Farabi (870-910), Abu Rayhan Biruni (973-1048), Abu Ali ibn Sina (980-1037), Yusuf Khass Hajib (XI century), Ahmad Yugnaki (XII-XIII centuries), Pahlavan Mahmoud (1247- 1325), Mahmud Kashgari (XI century), Alisher Navoi (1441-1501), as well as the great representatives of Islamic culture and Islamic sciences, Imam al-Bukhari (810-870), Hakim at Termizi (750 / 760-869), Az Zamakhshari (1075-1144), Imam al-Maturidi (870-975), Burhaniddin Marginoni (1116-1197), great mystics Najm al-Din Kubra (1145-1221), Ahmed Yasawi (aproximately 1050-1166 / 7), Yusuf Hamadoni (1048-1140), Khoja Abdahadik al Gijduvani (first quarter of the 12th century-1220), Khoja Bahauddin Naqshband (1318-1389), Sufi Alloyar (1644-1721) and others.

In the independent Republic of Uzbekistan, the main goals of the rights of the child and the child have developed in close connection with public policy, and the rights of the child have been interpreted as a key element and object of the state's preventive and long-term development factors. The issue of the rights of the child and children is developed on the basis of a combination of national and universal values based on the following principles of state policy:

- Ensuring full guarantee of children's rights in all state programs based on the definition of the main goals of building a new democratic society;
- Constant concern for the fate of the child and his future, to follow the path of constant provision of his needs;

- Continuous legal and social protection of children;
- Ensuring the continuity of national spiritual and cultural traditions and values in the field of child protection, the continuation of intergenerational incorporation;

Ensuring the integration and development of positive values, practices, views, ideas, traditions, experiences, including legal norms, in the field of child protection, developed in the world and in line with the mentality of the Uzbek people, ensuring the implementation of international law in Uzbekistan.

One of the issues that most researchers object to is the question of the definition of the concept of a child. It should be noted that in defining the scientific definition of the concept of "child" in the territory of Uzbekistan, the development of national-cultural areola, development of philosophical-social and spiritual-enlightenment ideas and its main ideas, the system of national values and national wisdom, the basics of education and upbringing are of great importance.

According to Article 1 of the 1989 Convention on the Rights of the Child, adopted by the United Nations (UN), a child is "every human being under the age of 18" (Law of the Republic of Uzbekistan № ZRU-139, 2008).

If we look at modern legal sources and scientific-theoretical research, all scholars have to one degree or another objected to the concept of the child, concluding that the general definition of 'child' proposed by the UN fails to mention all the specific aspects of the issue of the child and his or her rights, the specific features of the concept of the child.

So, what are the aspects of this definition that are challenged by scientists and researchers:

If the concept of a child includes all human beings from birth to 18 years of age, there is a huge physiological difference between a newborn and an 18-year-old human being, their age differentiation and aspects of their characteristics, how can they come to a definite unique solution to the problem of psychological, anthropological, physiological identity? Wouldn't the psychology, behavior, knowledge, level, capabilities of a one-year-old human being and an 18-year-old human being be different?

If we accept exactly the definition proposed by the UN, then how will the issue of the interdependence of the rights of the child with his socio-spiritual needs be addressed? Wouldn't the set of socio-moral and other types of rights of the newborn human being and the 18-year-old human being be different? Consequently, the definition does not fully answer in these places on the concept of the child.

If the main task of the law is considered to be a system of efforts aimed at the protection of the human being, then how to solve the problem of protection of the various rights of the newborn and the 18-year-old human being? Is there mutual equality and unity in the topics, places, issues of protection?

If the rights of the child are to meet all the social needs of the child, then is it not necessary to consider the fetus as a child and to provide for all his/her needs in accordance with the law?

Naturally, the above definition of the UN raises such various objections, but the answer to them becomes clear when we move from general theoretical issues to minor ones.

In our opinion, the first of the minor issues is that, despite the fact that the concept of a child is in fact a single concept, from the birth of the child to the age of 18 years, in connection with the different age characteristics, the concept of the child is originally one, but essentially different, that is, it is made up of step-by-step and sequential concepts that embody a certain number of independent developmental stages, in fact the concept of a child consists of their unity and integrity. If we emphasize them on the basis of the Uzbek national tradition, the scheme is as follows:

Fetus ↔ Infancy ↔ Teenage ↔ Adolescence ↔ Becoming a socially capable person.

If we look at the system of interrelated meanings that operate within the semantic framework of the concept of "child", we can see that there are different areas in the process of understanding the concept of child. For example, there is a variety of ideas and positions within the context of what a child's concept is:

Understanding the concept of a child ↔

For parents - the apple of the eye, a symbol of happiness, the successor of the generation, the highest blessing, the grace of God, the meaning of life and its sweetness, the source of joy, the subject of education and upbringing, etc.;

For the pedagogue or teacher - the object and subject of education and upbringing, the purpose of the educational process, the central object of the pedagogical process;

For a psychologist - a person whose thinking and psyche are not fully formed;

For the writer - the first manifestation of the human concept, the object of study, artistic interpretation and understanding;

For the law - to be under the protection of the state due to his/her age, physical and mental immaturity, and therefore a specially protected subject of the law;

For the state - one of the main elements of great strategic importance, ensuring the evolutionary development of the state, the succession of generations, ensuring the general existence of the state, the basis for the future of the state.

Consequently, there is also a diversity in the understanding and interpretation of the concept of the child, depending on the interests and goals of the parties who react to it.

Legally, the interests of the child, his personality and needs, that is, the harmony and integrity of *personality ↔ interests ↔ needs ↔ legal custom ↔ legal norms ↔ legal requirements and obligations ↔ legal security ↔ implementation of the law*, ensures that the child has a place in society as a subject of law. In this context, the legal aspect works in the interests of the child from the point of view of his general, special and personal position.

If the general aspect of the law takes into account a set of features arising from the point of view of the child's age, maturity, psychological and mental health, the spiritual-human and humanitarian aspects of the concept of the child, in addition to the above-mentioned features, also include psychological, physiological, anthropological, medical, sexual, humanitarian aspects.

In all societies, it is clear that the concept of "child" is unique in terms of the needs of the child. For example, if we list the social, family, personal and other needs of a child, we can see that the following needs are necessary for the child and his/her full development in society: *health, welfare, food, upbringing, education, exemption from certain obligations, the imposition of certain obligations, the duty, especially the duty to the interests of parents, society and the state, the existence of a system of duties and responsibilities in general, the traditions of punishment, the adequacy of punishment, the child's special status and place in the family and society; children's rights and traditions of their observance, the existence of a systemic infrastructure for child protection and their practicality, family and ensuring the continuity of generations in society*, and a number of other such important issues play an important role in defining the social significance of the concept of 'child'.

In our social environment, the harmony of national traditions, secularism and religious thinking of the Uzbek people is reflected in the formation of thinking about the concept of the child. In the independent state of Uzbekistan, the system of legal guarantees for the interests of the child has been developed in close connection with the priority of human interests, priority of law, priority of formation of civil society, priority of

legal literacy, which are the priorities of the state in the context of building a democratic state to implement reforms.

In our opinion, the following trends in the issue of the child and his rights are relevant today, they are:

1. A system of rights that protects the child from the legal point of view as an autonomous, i.e., independent legal entity (right of residence, right of name, right to citizenship, right to family, right to education, right to health and medical services, right of opinion, etc.).
2. The system of rights that ensures the socialization of the child (the right to live in the family, the right to education, the right to culture and tradition, the right to nationality, the right to own the language, traditions, religion, the right to be a member of society).
3. The right of the child to exercise his or her potential outside the family, i.e., the right to development (the right to join and participate in various social organizations, the right to receive information and use it to protect his or her interests, the right to use the opportunities of various social institutions, etc.).
4. The right to make full use of the infrastructure available in society for the full protection of the child (including protection from various medical, environmental, ideological and extremist threats, protection within and outside the family, protection of the child's interests, protection of the child from limitations of abilities and talents, etc.).

Who do children understand not only experts in the field, but the whole society, especially the children themselves? Until what period do children consider themselves "juveniles" or "children"? So we did a public opinion poll to find out what the kids thought[2]. According to the survey, only 37.7% of respondents answered, "Who do you mean by a child" in accordance with the law, ie "all persons under 18 years of age". Almost the same number of respondents (32.3%) said that "child" refers to a person under the age of 16. 3.8 percent of respondents said they understand all children under the age of 17 as "children", 21.7 percent understand all children under the age of 15, and 4.5 percent find it "difficult to answer". This means that most children do not consider themselves "children" after the age of 15, 16 or 17 (Figure 1).

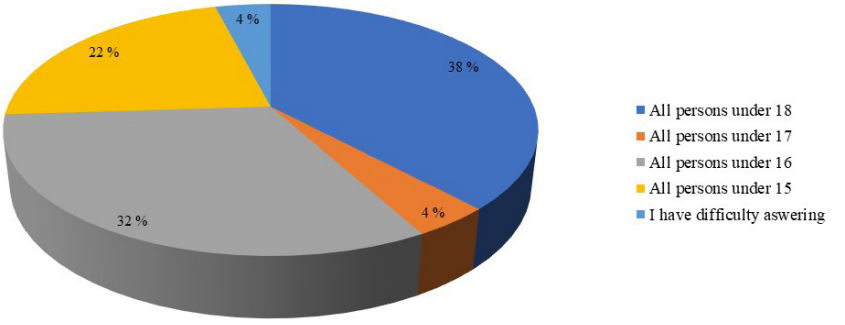

Figure 1. Response for the survey "Who do you mean by a child"?

Children are also asked when their "childhood" ends with a certain process. We asked them, "By law, when a child is considered an adult". Fortunately, the vast majority of respondents (79.8%) did not choose to answer distracting questions such as "after marriage", "after getting a passport", "after graduating from high school". 14.1 percent of respondents believe that a child will grow up after obtaining a legal passport, 3.8 percent will grow up after graduating from high school, and 2.3 percent could not answer. Therefore, based on the results obtained, it is advisable to pay special attention to this topic in law classes in educational institutions (Figure 2).

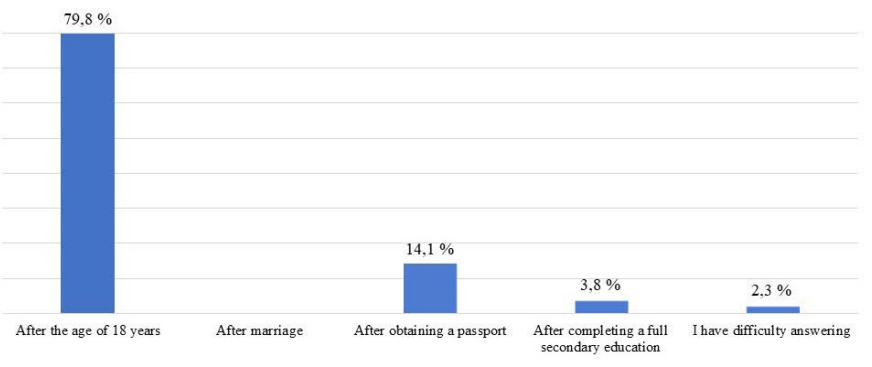

Figure 2. Response to the survey, "When is a child considered an adult by law"?

If we look at the history of statehood and law in Central Asia Uzbekistan, we will see that the legal views on the concept of "child" have long been

formed. The oldest of the religious teachings available in Central Asia is Zoroastrianism, which is one of the main sources in the study of the most ancient period of the development of law. The oldest legal norms related to Zoroastrianism are described in the book "Avesta" (Muminov *et al.*, 2004). Until Zoroastrianism became official, parts of the Avesta were distributed among the peoples of Turan and Iran. These were compiled into a book after Zoroaster's death and called "Avesta - established, firmly established".

Zoroastrianism is one of the oldest religions in the world and originated in Central Asia in the II-I millennium BC. Until the spread of Islam in Central Asia in the VIII century, Zoroastrianism was the main religion of the indigenous peoples (Muminov *et al*., 2004). The Avesta contained many important legal norms guaranteeing the rights and interests of the child, as well as issues such as legal and moral relations between people, family and marriage, crime and punishment. The fact that words such as "child" is mentioned more than 80 times in this source indicates that it pays special attention to children.

In the Avesta, childhood covers the period from his/her appearance in the mother's womb to the age of fifteen. After the age of fifteen, s/he was required to wear a special belt, which signified adulthood, and to wear a sudra dress (Mahkam, 2001). Those who have reached the age of 15 are taught the laws of Zoroaster, moral and virtuous thought, virtuous words, and virtuous deeds (Toychieva, 2010).

It is considered one of the sources of medieval law in Central Asia, and in Islamic teachings, many scholars have argued that "childhood includes the period between 14 and 15 years of age" by including the fetus in childhood (Legislative History of the Convention on the Rights of the Child, 1995).

In particular, according to Sheikh Muhammad Yusuf, childhood consists of the following four stages: *The first stage* is the fetal period in the womb of the mother. There are two focus on it during this period. One is that s/he is a piece of her/his mother and walks with her and stays with her. The second consideration is that s/he has a private and individual life and will soon be separated from his/her mother and become a separate person. *The second stage* is the childhood stage, which starts at birth and lasts until the age when ability to distinguish things appears. In order to enforce the rulings, the scribes defined the age of seven as "tamiz" – "the age of distinguishing between good and evil". *The third stage* is called the "imperfect performance". That is, there is the potential to fulfill the Sharia ruling, but it is incomplete. *The fourth stage* is called the "perfect performance". That is, if the natural signs of puberty do not appear, and it is later than usual, it will reach puberty at the age of 15 years (Muhammad Yusuf, 2011).

Also, in the thirteenth century, in Jami ahkam as-sigor (The Compendium of Sharia Judgments on Minors) Muhammad ibn Mahmud al-Ustrushani stated that the minimum age for puberty of girls was 9 years, and the maximum age was 17 years, for boys, the minimum age was 12 years and the maximum age was 19 years. The play shows three types of puberty:

a) the child reaches a certain age;

b) the child develops signs of puberty;

c) the child's own confession of adulthood.

Paragraph 398 of the work states: "Adolescence is determined sometimes by age, sometimes by signs. The puberty sign is menstruation and pregnancy for girls, the minimum age is 9 years. The puberty sign is to conceive a child for boys, the minimum age is 12 years. As for the age (marking puberty): the boy will be 19 years old and the girl will be 17 years old (Muhammad ibn Mahmud al-Ustrushani, 2010).

Also in the system of views on the child and adulthood is the "Confession/ (Iqror)[1]" part of the work "Fatwa al-Attobi" (Muhammad ibn Mahmud al-Ustrushani, 2010); The fatwas of Abu Hanifa and the thoughts of Muhammad ibn Muqatil; Views of A. Aitov, a Russian scholar who studied legal customs in Central Asia (report of lieutenant Aitov "on the Kyrgyz customs that have the force of law in the steppe", 1846); A.B. Sarsenbaev's concept of "rushd" in Islamic law related to the state of emancipation and the ability to behave (Sarsenbaev, 2011); O.K. Kayumov's expansion of social and spiritual boundaries of youth; V. Karimova's phrase "juvenile" is based not on the biological age of a person, but on his psychological state; Ganibaeva's definition of the Convention's status as a child is "somewhat ambiguous" (Ganibaeva, 2009: 160).

Pavlovsky's coverage of adolescence and puberty covers his period from 15 to 30 years (Pavlovsky, 2001); N.I. Grodekov's custom in Turkic peoples is that a child should reach the full age of 15 years; from a medical point of view, the physiological maturity of the child is taken into account and he is called a "puberty" age (Dobrenkov and Kravchenko, 2005); psychologists' "adolescence" covers the period from 10-11 years to 14-15 years (Karimova, 2013); Opinions of Abdurrahman, the elder of the mahalla "Avliyo ota"/ Saint father" and others on the subject of "Sharia articles on legal relations" during the colonial period of Tsarist Russia; A study of the civil legislation of the former Soviet Union and the Allied republics (Fundamentals of civil legislation of the USSR and the Union Republics, 1961) and etc. are noteworthy (Karimova, 2012; 2014; Baksheev *et al*., 2022).

Another controversial issue in the context of the issue under consideration is when a fetus is considered a human being. Jami ahkam as-sigor states that a child is considered a child both before and after birth.

In the process of drafting the International Convention on the Rights of the Child, different countries have put forward different concepts about when a child's life begins. Countries such as Italy, the Vatican, Argentina, Guatemala, Malta, and Senegal have argued that the rights and interests of the child should be guaranteed from the time of conception.

Countries such as France, the United Kingdom, China, Poland, Indonesia, and Tunisia believe that the articles of the Convention apply only to children born (Le Blanc, 1995). As a result, the general definition of "child" in the Convention does not emphasize the question of when childhood begins. However, the preamble to this Convention states that "*a child... needs adequate legal protection both before and after birth*".

Scientists such as Ganibaeva (2009), Nikonov (2010), Besedkina (2005) noted that the fetus is not a part of the mother's body, but the beginning of a new human life. Scholars such as T.V. Lobanova (2006), Malgorzata (2002), Sologub (2012) say that a child can be legally protected only after birth.

Footnotes

1Note 1: Jomi al-Javomi, written by Abu Nasr Ahmad ibn Muhammad al-Attabi al-Bukhari, consists of four volumes and is known as al-Fatwa al-Attobi.

Conclusion

In our opinion, based on our historical characteristics and the interests of the fetus, it is expedient to define childhood in our country in the period from the fetal period to 18 years. Therefore, we propose to change legal definition of the concept of "*child*" in Article 3 of the Law of the Republic of Uzbekistan "On guarantees of the rights of the child" to "*A child is a human being from a fetus to 18 years of age*" and to introduce the concept of "*Fetus - a child developing in the womb from the twelfth week to the time of birth*".

Thus, there is a difference of opinion among researchers in defining the legal status of the concept of child and in the development of the definition of the child, which is due, on the one hand, to the complexity of the specifics of the concept of child and, on the other hand, the multi-layered meanings.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 880-894
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Argentine Universities: Problems, COVID-19, ICT & Efforts

DOI: https://doi.org/10.46398/cuestpol.4074.49

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Abstract

In this paper the general objective was determine the situation of Argentine universities: Problems, COVID-19, ICT & efforts. Methodology, in this research, 36 documents have been selected, carried out in the period 2016 - 2021; including: scientific articles, review articles and information from websites of recognized organizations. The keywords used in the searches were: Argentine universities, COVID-19 and ICT. Results, Argentine universities have many difficulties, like other Latin American universities. The pandemic has reduced access to economic resources. However, Argentine universities are making many efforts to fulfill their social role. Conclusions, the oldest university in Argentina is the National University of Córdoba, founded in 1613. Higher education in Argentina is primarily public, where direct entry is offered to students. The professional careers preferred by Argentine

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Recibido el 14/08/22 Aceptado el 26/09/22

students are engineering, law and administration. There are also very internationally recognized private universities. Many universities are struggling to quickly set up their virtual platforms, before classes start. The difficult economic situation that the country is going through for several years, the health emergency and social isolation due to the pandemic, have paralyzed public and private university activity. It is important and urgent that Argentine universities strengthen the adoption of ICT and also promote innovation.

Keywords: Argentine universities; COVID-19; ICT; health problems; public policies.

Universidades Argentinas: Problemas, COVID-19, TIC y Esfuerzos

Resumen

En este trabajo el objetivo general fue determinar la situación de las universidades argentinas: Problemas, COVID-19, TIC y esfuerzos. Metodología, en esta investigación se han seleccionado 36 documentos, realizados en el periodo 2016 - 2021; incluyendo: artículos científicos, artículos de revisión e información de sitios web de organizaciones reconocidas. Las palabras clave utilizadas en las búsquedas fueron: universidades argentinas, COVID-19 y TIC. Resultados, las universidades argentinas tienen muchas dificultades, al igual que otras universidades latinoamericanas. La pandemia ha reducido el acceso a los recursos económicos. Sin embargo, las universidades argentinas están haciendo esfuerzos para cumplir con su rol social. Conclusiones, la universidad más antigua de Argentina es la Universidad Nacional de Córdoba, fundada en 1613. La educación superior en Argentina es principalmente pública, donde se ofrece ingreso directo a los estudiantes. Las carreras profesionales preferidas por los estudiantes argentinos son ingeniería, derecho y administración. También existen universidades privadas muy reconocidas internacionalmente. Muchas universidades están luchando por configurar rápidamente sus plataformas virtuales, antes de que comiencen las clases. La difícil situación económica que atraviesa el país desde hace varios años, la emergencia sanitaria y el aislamiento social por la pandemia, han paralizado la actividad universitaria pública y privada.

Palabras clave: universidades argentinas; COVID-19; TIC; problemas sanitarios; políticas públicas.

Introduction

In this paper the general objective was determine the situation of Argentine universities: Problems, COVID-19, ICT & efforts. Higher education in Argentina is mostly public... Because of historical trends and regulatory framework, the main characteristics of Argentinean HE is: first, the consideration of HE as a human right and a public (social) good. Secondly, publicly funded universities have no fees (gratuity), unrestricted access (without entrance exams or other conditions), are massive and open (no quotas, available for each person living in the country) (Perrotta, 2020).

The initial examination of the process of construction of the dominant model of higher education in Argentina presented above reveals the organic presence of indirect effects of the Cabanis Reform. The question that must be considered, therefore, is not whether the origins of Latin American higher education in health can be traced to the French model of education, but the degree to which it is a result of this historical process, mediated by the gravitation between Idéologie (Argentina) and positivism (Brazil) (Almeida-Filho & Di Pasquale, 2016).

For the Secretary of University Policies of Argentina, Perczyk, "in Argentina, the government has defined that the people are at the center of concerns and aspirations" and therefore, all the orientations of government policies revolve around this aspect. In this context, Argentine universities have adopted a number of measures since March 20 approximately (UNESCO – IESALC, 2020).

Argentina has reached the number one spot of all South American countries and number three in all of Latin America to receive university students from the U.S. (U.S. Embassy in Argentina, 2017). "57 universities and 4 university-level institutions were publicly funded. Unlike multi-disciplinary universities, institutions classified as 'university-level' institutions are typically mono-disciplinary institutions..." (Monroy, 2018).

The country's oldest university is the National University of Cordoba, founded in 1613 and considered one of the largest and most capable universities in the country (THE, 2021).

"Created in 1821, the University of Buenos Aires is one of the most important public institutions of higher education in Latin America and is currently a national and international landmark for education and vocational training, research and university extension" (University of Buenos Aires, 2017).

In the figure 1, important information about the University of Buenos Aires (UBA) is shown.

320.000 undergraduate students
25.000 postgraduate students
31.500 academic staff
97 undergraduate courses
448 postgraduate courses
5900 high school students
5 high school
6 university hospitals
Over 7000 researchers and 2500 scholars
27000 research projects
61 research institutes
5 interdisciplinary programs

Figure 1. UBA in numbers.

Source: University of Buenos Aires (2017).

"UNSAM (Universidad Nacional de San Marttín), Argentine state university founded in 1992, has become a leader in higher education, research, cultural development and social transformation" (UNSAM, 2021).

1. Method

This research presents a qualitative-interpretative design, of a documentary type, which specified the selection procedure and the data recording (Barrero y Rosero, 2018).

36 documents have been prefered, in the period 2016 – 2021. The keywords used in the searches were: Argentine universities, COVID-19 and ICT. The bibliographic matrix of table 1 was used to classify the works cited.

Table 1. Bibliographic matrix

Name	Type	Objectives	Conclusions

Source: Adapted from Barrero & Rosero (2018).

2. Results

- **Problems**

In Argentina, education in this environment has become even more difficult in the face of an economic crisis that has prompted budget cuts of $10 billion to social services, including education (MacGoy, 2018).

"Nevertheless, we have also found indicators regarding the difficulties that these institutions struggle with. In particular, these linked to the economic crises that the country has suffered for decades, which in turn have changed the universities specific features" (Mendonça, 2020).

"The historical tension between the National Council for Scientific and Technical Research and the public universities. It describes the current structure of the scientific field in terms of researchers, institutes, publishing circuits, and institutional evaluative cultures" (Beigel, Gallardo & Bekerman, 2018).

We reflect on the role of the university librarian as a disseminating agent and provider of access to scientific information in Argentina (Fushimi, Pené, Unzurrunzaga, Sanllorenti, 2020).

Finally, based on some results of an investigation that we carried out at the National University of Rio Negro that give account of this problem, we will argue the hypothesis of certain (dis)agreements between the relations with the knowledge promoted by the university and that the new registrants (Vercellino, Bohoslavsky, 2020).

There are many pending problems to be solved in Argentine universities, which have been exacerbated by the difficult economic situation that the country is going through for several years.

- **COVID-19**

"Today, Argentina ranks ninth in the number of infected inhabitants and has experienced a notably high mortality rate, which has been estimated at 879 deaths per million" (Rabinovich & Geffner, 2021).

"The COVID 19 crisis struck Argentina at a particularly difficult time, in macroeconomic terms. Overcoming these challenges is therefore essential for stimulating the economy and bringing the country out of the crisis" (International Labour Organization, 2020).

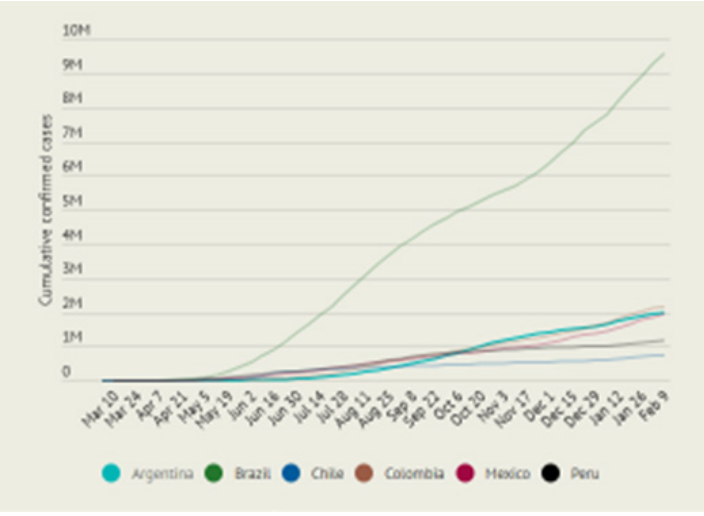

Figure 2. Tracking COVID-19 in Latin America

Source: Gonzalez (2021)

"We find that mobility (as a proxy for the effectiveness of the lockdown) has an impact on observed cases in Buenos Aires City with a lag of 8 days and deaths relate with new cases registered 16 to 19 days before" (Ahumada, Espina & Navajas, 2020).

"Throughout 2020, Argentina continues to implement stay at home measures and a stimulus package that includes assistance for workers in the informal economy" (U. S. Department of State, 2021).

"Argentina's response to Covid-19 has been marred by a violent police response towards people accused of breaking the rules. In late March, the government imposed a nationwide lockdown requiring people to quarantine at home." (Vivanco, 2021).

For the university sector, the current pandemic implied a quick turn to shift operations, now in remote mode. For Argentina it meant mobilizing more than 130 universities and almost 2 million students towards a mostly unknown universe (Fanelli, Marquina & Rabossi, 2020).

"Most universities are working against the clock to ensure that their virtual platforms are set up for the courses scheduled for the first semester of the year, supporting teachers and evaluating options..." (Marquina, 2020).

"In sum, the health emergency and the social isolation were far from paralysing university activities. Not only did they accomplish to advance in actions to mitigate the COVID-19 but also were able to redirect the different research lines" (Mendonça, 2020).

As in other Latin American countries, the scarce arrival of vaccines generates uncertainty in the population of Argentina. The pandemic has a negative impact on the economy, health, education and other aspects of society. Universities have migrated to a virtual education, to serve their student population.

- **ICT**

"Information and communication technology, abbreviated as ICT, covers all technical means used to handle information and aid communication. This includes both computer and network hardware, as well as their software" (Eurostat, 2016).

Compared to other economies in Latin America and the Caribbean, Argentina performs above average in four out of seven GII pillars: Human capital & research, Infrastructure, Business sophistication, and Knowledge & technology outputs. Top ranks are found in sub-pillars Education, Research and development (R&D), and Knowledge absorption where the country ranks in the top 50 worldwide (WIPO, 2019).

"They offer university degrees of the highest professional levels. Some of them also offer intermediate degrees and short courses of studies: Atlántida Argentina University (Computer Engineering, Bachelor's Degree in Computing and Higher Third-level Degree in Computing) ..." (ATICMA, 2021).

Mr Carril is the creator and teacher of the course "International ICT Organizations" at Argentina's National Technological University and is a member of the Impact of Technologies in the Environment Group at the National University of La Plata (ITU News, 2019).

Table 2 shows the report of some Argentine universities, which participated in the Huawei ICT Competition 2018-2019.

Table 2. Huawei ICT Competition 2018-2019 Argentina RoadShows

Status Report				
University	University Name	Location	Date	Notes
	National University of La Plata	La Plata, Buenos Aires Province, Argentina	TBD	1st Huawei authorized ICT academy in Argentina
UTN	National Technology University	Various, Argentina		
	National University of Córdoba	Córdoba, Córdoba Province, Argentina		
	National University of Tucumán	Tucumán		
UNDEF	University of National Defense (Aeronautical University Institute)	Buenos Aires		
Universidad Nacional Arturo Jauretche	Arturo Jauretche National University	Buenos Aires		
	National University of Buenos Aires	Buenos Aires		
	National University of La Matanza (UNLaM)	Buenos Aires		
ITBA	Technological Institute of Buenos Aires (ITBA)	Buenos Aires		
UBP	Blas Pascal University	Buenos Aires		
	National University of Luján (UNLu)	Buenos Aires		
	National University of Moreno	Fernando Elías Llamosas 9400, N3304 Posadas, Misiones		

Source: UNAJ (2018)

In spite of these similarities, certain differences were observed in the perceived competencies for academic purposes, which would be associated with different proposals for ICT uses promoted from the context by teachers (Bossolasco, Chiecher, Dos Santos, 2020).

"Finally, the results not only suggest the absence of the linear model of innovation, but the existence of a completely opposite relationship: scientific productivity is negatively associated with groups' technological performance" (Barletta, Yoguel, Pereira, Rodríguez, 2017).

- **Efforts**

In Argentina, where public universities face huge enrollment issues, especially in first-year courses, the teachers of these classes emphasize the benefits of writing as a way of thinking, participating, sharing, and learning (Molina y Carlino, 2019).

The creation of The Comisión Nacional de Evaluación y Acreditación Universitaria (CONEAU) in 1995 opens a chapter about the evaluation processes that, 20 years from its functioning... or its evolution, or the increasing levels of quality achieved in the system, in the elaboration of university rankings, or in the taking of exams for teachers and students (Paulozzo, 2017).

Most students studying at Argentine universities mentioned that they had socialized and interacted with host nationals and rated these experiences positively (Blake, 2018).

"This paper proposes a methodology for evaluating efficiency in higher education institutions, which was applied at the National University of the South, in Argentina" (Ibáñez, Morresi y Delbianco, 2017).

"Argentine universities are interested in forming partnerships with U.S. higher education institutions to teach Spanish and Latin American studies courses to U.S. students coming to study in Argentina" (International Trade Administration, 2021).

Table 3. Current and planned activities under World Bank-supported higher education projects

Country/Activity	Supporting alternate modes for education delivery	Building teacher capability/skills	R&D/innovation	Equity	Other
Argentina: Improving Social Inclusion in Secondary and Higher Education Project			Supports the design and implementation of an action plan to overcome non-financial barriers for education progression and completion through different mechanisms. Among them: i) TA to develop online modules to: (a) close academic gaps in specific subjects or areas as identified by the diagnosis; (b) develop specific socioemotional skills and increase students motivation and belonging; (c) different interventions to close information gaps (e.g., information on returns to education and alternative career options).	Supports the PROGRESAR Scholarship program for 18 to 24-year-old vulnerable students in all education levels, including university and non-university tertiary by: i) improving the targeting, management, monitoring and efficiency of the program; ii) ensuring that HEIs submit academic certification for scholarship applicants on time; iii) improving the progression of students in their careers and the effectiveness of strategic career incentives in higher education.	Instrument: this is the first PforR in Argentina. The instrument provides clear incentives for a government program to achieve concrete results and allows dialogue during implementation to focus on institutional strengthening and capacity-building within the implementing institutions.

Source: World Bank (2020).

The World Bank supports some projects related to education in Argentina, as shown in table 3. It is an important support, which the different Argentine governments have requested.

3. Discussion and conclusion

Argentine universities have many difficulties, like other Latin American universities. The pandemic has reduced access to economic resources.

However, Argentine universities are making many efforts to fulfill their social role, which matches the claims of (Bernasconi & Celis, 2017) "public policy decentralization in Argentina, quality assurance models in Colombia and Uruguay, the emerge of new institutions and universities in Argentina...".

The oldest university in Argentina is the National University of Córdoba, founded in 1613. Higher education in Argentina is primarily public, where direct entry is offered to students. The professional careers preferred by Argentine students are engineering, law and administration. There are also very internationally recognized private universities.

Many universities are struggling to quickly set up their virtual platforms, before classes start. The difficult economic situation that the country is going through for several years, the health emergency and social isolation due to the pandemic, have paralyzed public and private university activity.

It is important and urgent that Argentine universities strengthen the adoption of Information and Communication Technologies (ICT) and also promote innovation permanently.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 895-908
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

On the Principles of Sanctions of Criminal Law Norms in the Context of the Russian Invasion of Ukraine: Clarification of Definitions

DOI: https://doi.org/10.46398/cuestpol.4074.50

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Abstract

The aim of the work was to determine the peculiarities of the principles of formation of sanctions of criminal law norms in the conditions of the Russian invasion of Ukraine. The method of analysis and research was used to interpret the works of legal scientists and determine the main theoretical approaches to the application of sanctions in international law on the example of Russia's violation of international law against Ukraine. For the detailed study of the subject the method of analysis and synthesis and descriptive method was used, as well as the method of generalization to determine the results of the research. The scientific novelty consists in the fact that the study clarifies the concept of sanctioning of criminal law norms as one of the original factors of international conflict resolution. The practical significance of the study

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Recibido el 11/06/22 Aceptado el 18/09/22

consists in identifying the action of sanctions in conditions of war by Russia against Ukraine. It is concluded that, the conducted study is the basis for specifying the concept of the principles of sanctions in the international legal sphere, which is also the result of the analysis of legal works.

Keywords: globalization; criminal liability; international conflicts; Russian aggression; Russian-Ukrainian war.

Sobre los Principios de Sanción de las Normas de Derecho Penal en el Contexto de la Invasión Rusa de Ucrania: Aclaración de las definiciones

Resumen

El objetivo del trabajo fue determinar las peculiaridades de los principios de formación de las sanciones de las normas de derecho penal en las condiciones de la invasión rusa de Ucrania. Se ha utilizado el método de análisis e investigación para interpretar los trabajos de los científicos jurídicos y determinar los principales enfoques teóricos sobre la aplicación de las sanciones en el derecho internacional a partir del ejemplo de la violación del derecho internacional por parte de Rusia contra Ucrania. Para el estudio detallado del tema se utilizó el método de análisis y síntesis y el método descriptivo, así como el método de generalización para determinar los resultados de la investigación. La novedad científica consiste en que el estudio aclara el concepto de sanción de las normas de derecho penal como uno de los factores originales de la resolución de conflictos internacionales. La importancia práctica del estudio consiste en identificar la acción de las sanciones en condiciones de guerra por parte de Rusia contra Ucrania. Se concluye que, el estudio realizado es la base para especificar el concepto de los principios de las sanciones en el ámbito jurídico internacional, que además es el resultado del análisis de los trabajos jurídicos.

Palabras clave: globalización; responsabilidad penal; conflictos internacionales; agresión rusa; guerra ruso-ucraniana.

Introduction

Innovative society is being formed as postmodern development, combining the achievements of information technology and aspects of civilizational development. Various processes encompass social development and stimulate innovative achievements that could be the beginning of a new civilizational era (Kay and Goldspink, 2016).

Today's problems are global, hence the need for close cooperation and integration. Global processes cover different areas of life (Floridi *et al*., 2018). Thus, in the face of the challenges of today's problems, communication between people is changing, in particular the transformation from the physical environment to the virtual world. New notions of human presence in space are being formed, and the concept of interaction, feedback, authenticity, the experience of existence, and communication is emerging.

That is, in the conditions of the modern world there is a need for a new interpretation of human activity in social space, established in the context of rethinking. Man, as part of his thinking, creates the conditions for improving his worldview and improves his skills in different areas to make life more perfect.

Thus, in the context of creating a "perfect world" in the new worldview, it is necessary to understand that the highest value is a man and his life. In the process of acquiring a new experience, man's idea of his limitless possibilities is formed, the realization that he "can do anything," depending on his thinking and worldview. To determine the essence of the new way of thinking, one should form a certain idea of the space in which communication is created as a manifestation of interaction, as a definition of normative and legal values.

Today's Ukraine is amid full-blown anger on the part of the Russian country. The war has no political or economic justification. Ukraine has begun the process of law reform in the context of European integration, that is, it has determined the task of bringing the legislation of the Ukrainian state to European norms.

Therefore, there is a need to streamline the new norms of criminal law policy. This trend is relevant to the scientific exploration of the legal norms of confrontation with a crime in the world meaning, so there is a question of researching the problem of determining the international principles of sanctions as a factor in the implementation of criminal law regulation in the process of Russian-Ukrainian war.

The main problem of the research is to determine the appropriate principle of punishment of criminals, which would prevent further atrocity and could stop the spread of terror. The sanctions specified in the Criminal Code (Criminal Code of Ukraine) are the main regulator of the measure of punishment for the crime, approved by a court decision. Sanctions determine the degree of responsibility for violating the law.

Assigning the necessary and sufficient punishment to the perpetrators of the crime is the key to achieving the goals set for punishment (Noonan, 2017).

Determination of the principle of sanctions in the context of the Russian-Ukrainian war is especially important because the Russian invasion is an unlawful, groundless, gratuitous crime against humanity, a violation of international legal norms and therefore there is a need to determine the responsibility for such actions both in the context of international law and the relevant Ukrainian legislation (Koniushenko *et al.*, 2022).

Scientific works highlight the procedure of elimination of deficiencies in the formation of sanctions of the Criminal Code as an important stage in the formation of criminal legislation in the process of European integration. The relevance of the research is determined by the need to establish criminal law sanctions as an important tool to influence the prevention of the spread of terrorism in society (Criminal Code Of Ukraine, 2007).

It is Russia's invasion of Ukraine that demonstrates the essence of sanctions that can actually prevent the spread of criminal activity.

The problems of the formation of normative and legislative norms in world history have been of interest to the study of many scholars (Lappo *et al.*, 2022).

Researchers have studied criminal law and the principles of sanctions as one of the most important factors in influencing criminal activity. Thus, Denisova (2004) analyzed sanctions as a factor of punishment for the perpetrator. So, based on the analysis of theoretical and methodological approaches, the main aspects of the concept of "sanctions" as a criminal law aspect of the modern representation of the political world are defined.

The article aims to investigate "sanctions" in the context of practical political meaning.

The goal defined the corresponding tasks:

1. to analyze the theoretical and methodological foundations of the implementation of sanctions as a factor of confrontation in war;
2. to find the peculiarities and reasons for the formation of normative-legal principles of the implementation of sanctions in the implementation of criminal responsibility during the war;
3. examine the factors of the formation of sanctions.

Studies of sanctions as the basis of criminal-legal responsibility are presented in many scientific works and publications. Various theoretical and methodological approaches present the essence of the problem under study in legal, socio-political, and other aspects (Kurilovská and Kordík, 2018).

Scientific works on sanctions illuminate the problematic of it in the world sense. Legal Science in Action is a conceptualization of normative-

legal foundations in the scientific discourse of Abschnitt (1916), which has been reprinted three times and translated into various languages. The corresponding work illuminates' sanctions as a theory and practice of action, which is illustrated with relevant images revealing the content of historical facts. There are also theoretical generalizations in the work as a basis for defining the role of sanctions in modern warfare.

Interesting and unconventional in the context of the methodological approach of the study are the works of Galasso *et al.* (2016), Gartner (2018), and others, highlighting the peculiarity of sanctions as the essence of criminal law responsibility.

1. Materials and methods

Theoretical and methodological approaches of the scientists were analyzed for the purpose of effective research. The method of analysis and synthesis was used in the study of performative practices of Ukrainian and Russian content. In particular, the main manifestations of performance-based practices were analyzed and, according to the synthetic methods, the main features of the concepts on the research topic in the conditions of modern information society were determined.

In the process of research philosophical and general scientific approaches, principles and methods were used, which became the basis for the analysis of the concept of sanctions in the context of various aspects. The principle of transdisciplinarity reveals the content of the concept of sanctions as a socio-cultural paradox.

With the help of philosophical methods, which became the ontological basis of scientific work, in particular dialectics, we investigated sanctions as a manifestation of the postmodern politicized and globalized worldview of humanity in the conditions of modern information society and in the context of the virtual environment. The historical method is the basis for determining the factors of the formation of normative acts. The analytical method becomes the basis for determining the structural components of different concepts that characterize sanctions as a conceptual manifestation of the modern artistic and social approach based on practices. The method of generalization is applied to determine the important conceptual provisions of the study.

2. Results

An important consideration in this article is the procedural nature of this concept. It makes it possible to go beyond the political discourse itself.

In some cases, when the legislator changes the upper limits of sanctions, he thereby changes the category of the crime, which, accordingly, entails a change in a number of criminal law consequences, since the category of the crime affects many institutions of criminal law, such as parole, the application of grounds for dismissal on criminal responsibility, the limitation period for criminal liability (Brown *et al*., 2017).

The presence of significant gaps between the lower and upper limits of penalties enshrined in the sanctions of the articles of the special part indicates that the legislator has difficulty assessing the public danger of the act, the signs of which are reflected in the disposition of the corresponding article of the criminal law.

This situation is due to the significance of the range of lower and upper limits of criminal punishment in the form of imprisonment in the sanctions of the articles of the Special Part of the Criminal Code, which gives rise to a fairly wide discretion of judges. Obviously, subsequently, it will not contribute to the formation of uniform judicial practice. because of the war are violated such basic principles of criminal law as legality, equality of citizens before the law, and justice. It is unacceptable when a person is sentenced to significantly different terms of punishment for committing the same in nature and consequences, which is clearly confirmed by the materials of the criminal case in which the crime is committed.

In the Russian invasion of Ukraine, a number of sanctions were applied. In particular, since the beginning of the war, economic sanctions have been imposed in 2014, which should have stopped the aggression. Researchers study the impact of sanctions as a warning of overt aggressive action on the part of the perpetrator. Yes, when analyzing the effect of sanctions, it can be argued that it is difficult to stop the aggressor in such circumstances because it does not act according to logic. The aggressor does not stop, because he decided to commit a crime (Gertler *et al*., 2016).

Nevertheless, sanctions economically reduce the capacity of the Russian state, and, in the end, they may hinder the advancement of Russian troops. After all, sanctions reduce revenues, making it impossible to pay for the war. Thus, when examining the authors' conclusions, it can be argued that sanctions are an effective way of inhibiting aggression, but over a period of time. When examining the Russian invasion, it can be argued that the crime is committed, but the sanctions are effective for the next few months.

When assessing sanctions as criminal responsibility, one can be more specific about the impact of sanctions on responsibility. Analysis of publications shows that 60% of judges are positive about the fact that the legislator removed the lower limits of sanctions because this expands judicial discretion and gives more choice to the judge when imposing punishment, implementing his principle of individualization; 15% of

judges support this idea because these changes reflect the main direction of criminal law policy - humanization of the criminal law. Only a third of judges (30%) have a negative attitude towards this innovation because it causes various difficulties in the application of the new criminal law.

Court practice shows leaves the possibility for the judge to set the punishment for a particular person, taking into account the specific circumstances of the case, guided by legal conscience. A survey of judges showed that 86% of them are guided by inner conviction in any case, and more than 60% take judicial practice into account (Oswald, 2018).

Analysis of criminal sanctions enshrined in the legislation of foreign states shows an ambiguous approach to their construction, due to the belonging of the state to a particular criminal legal family (Troshani *et al*., 2018).

In other words, the level of differentiation of criminal responsibility through sanctions in the legislation of different countries varies, which is associated with the peculiarities of the formation and development of their criminal legislation.

In the criminal legislation of some countries, there is a maximum differentiation of criminal responsibility, with limited judicial discretion (Italy, France); in the legislation of other countries, the differentiation is minimal, which contributes to the determination of trends related to sanctions: First, the formation of sanctions is determined by the types of punishments enshrined in the Criminal Code.

As already noted, some of the penalties specified in the law are applied very rarely, some are not applied at all. Hence there is confusion about the types of punishments included in the sanction and their essence; Secondly, the undeveloped mechanism of construction of sanctions, and their inconsistency with each other both at the level of criminal law norms and at the level of articles of the Criminal Code; third, there is excessive variability in the sanctions of certain criminal law norms, and, on the contrary, in a number of others, there is a lack of alternatives.

In the legal literature, there are proposals aimed at solving these problems. Even before the adoption of the Criminal Code, a mechanism for the construction of criminal law sanctions was developed. Jurists investigated sanctions and argued that crimes of the same type have a single nature of the public danger. Therefore, first, it is necessary to assess the typical features for a crime, which cannot exist separately and affect the content of the sanction. This requires a unified assessment of all the typical features inherent in a particular type of crime, which is achieved by comparing them to each other. The resulting evaluation is an absolute value and determines a certain sanction.

Thus, it follows that one of the most significant features of the corpus delicti of a crime, enshrined in the disposition of a criminal-law norm, depends entirely on the absolute value. Such a sign is determined by ranking the signs of one type of a crime (for example, infliction of harm to health - its degree, etc.). The main feature is the typical type of punishment, which is established based on the average ranking of the penalty measure as the median of the sanction.

In order to determine the regulation of the sanction, it is necessary to determine the essence of the sanction. The sanction is a certain part of the legal norm, which in case of its violation implies the application of state influence in the form of coercion.

Thus, Melnyk (2022) believes that the sanction is a part of the norm of the Special Part of the Criminal Code, which characterizes the characteristics of responsibility for the crime specified in the disposition. Aladekomo (2022) defines the sanction as an indication of the negative consequences arising from the violation of legal norms.

Chachko and Linos (2022) argue that a sanction is a certain direction of a rule that determines the degree of state coercion.

The sanction is important in determining the punishment for the crimes caused by the Russian invasion of Ukraine, because it makes the punishment individual, taking into account the general norms. That is, the sanction allows you to determine the measure of punishment in the process of its assignment. In war, it is necessary to determine the severity of the crime, the category of the crime, the person who committed the crime, and the circumstances that change the measure of punishment.

Also in war, international organizations must be enlisted to determine the measure of the crime. That is, it is important to determine the procedure for sanctioning punishment. The sanction helps the court to determine the measure of punishment, taking into account different circumstances. The legislator imposes punishment according to the specific circumstances and takes into account the necessary measure of punishment. The punishment is individualized because it takes into account all of the circumstances that have occurred virtually.

In some circumstances, in particular, as with war, that is, under special circumstances, the sanctions provide for additional penalties that meet the additional circumstances. Sanctions are imposed in accordance with the principles of humanity and moral standards. They must be fair in the context of criminal responsibility under international law.

3. Discussion

Legal perception of sanctions is relevant at the time of the invasion of Ukraine by Russian troops. Sanctions are one of the most relevant varieties of legal responsibility, most accurately representing the values of modern society. This statement may or may not be true. Let us try to understand the relevance of the principle of sanctions as a type of legal responsibility in the conditions of modern military conflict, as well as define the meaning of law in the sociological and political aspects.

Modern socio-humanitarian studies are reflected in the context of various scientific and sociopolitical approaches. Thus, sanctions are seen as a form or type of criminal-legal responsibility as a socio-cultural phenomenon. Many researchers interpret a sanction as a political action that forces certain actions, so the sanction is seen as a political decision. The main purpose of a sanction is to bring the offender to justice. Accordingly, there must be a human reaction, that is, social interaction takes place. Hence, a sanction is a manifestation of the social aspect.

Take into account that every person creates his or her own idea of the world, his or her own visual picture of the world, which is a set of general reflections of personal worldview perception of the world, formed in the process of development of the historical and cultural epoch. Sanction acquires new features and forms and expands the range of its action in the conditions of the Russian invasion of Ukraine.

In the modern world, the sanction is an ambiguous political-legal phenomenon, because it is difficult to define its political or social meaning. Such aspects of sanctions are also determined by the existence of different attitudes and principles, a variety of methodological attitudes and principles.

The sanction reflects political, social, and artistic actions in the context of the modern military challenge, which is the main substantive phenomenon of criminal-legal responsibility. The political and social aspect is most important in the formation of the concept of presence in space, which is a reflection of responsibility.

In general, the proposals on the consideration of sanctions in the work are interesting for further scientific research. However, due to the presence of certain shortcomings, they cannot be fully supported. Speaking about the signs of a crime, it is impossible to single out the main one, since all the signs in the composition of a crime form a system reflecting its public danger.

At the same time, they in the aggregate are the basis of criminal responsibility, which in accordance with the Law is the commission of an act that contains all the features of a crime. The legislator, defining the basis of criminal liability, does not single out any of the signs of the most significant.

Chachko and Linos (2022) believe that initially the sanctions should be set by the logical rule of matching the upper and lower limits of one category of crime. The author proposes the introduction of two more categories of crimes - minor and exceptional gravity. According to this, crimes of low gravity should provide for custodial penalties in the sanctions. For crimes of minor gravity, sanctions should range from 2 months to 2 years of imprisonment.

In general, while agreeing with Gartner (2018), we note, however, the excessive categorization of crimes. There is no need, in our opinion, to single out a category of exceptional gravity. Punishment through life imprisonment and the death penalty can be provided for especially grave crimes. Crimes of minor gravity, when combined with crimes of minor gravity, should be classified as criminal.

Developing this position, Grodska (2017) notes that "a private" means of reducing the entropy of the legal complex could be a principled transition from the preferential use of an alternative to certain sanctions in the construction of legal norms to the preferential use of alternative absolutely certain sanctions. Such a solution is inappropriate for some authors because this, in their view, could seriously limit the freedom of judicial discretion and the possibility for a thorough differentiation of the responsibility. This disadvantage, according to the researchers, can be largely compensated by means of legal techniques.

Other scholars are less categorical, they propose a return to perfectly defined sanctions only for some varieties of a criminal act, for example for acts committed in the field of organized crime. The position of Kay, who notes that as part of the strengthening of the fight against corruption and organized crime, the issue of this type of sanction becomes relevant.

In his opinion, one of the main lines of criminal policy in case of subsequent reform of the criminal law in the part concerning sanctions of criminal law norms should be the reduction of the number of alternative sanctions. Certain sanctions through imprisonment should become more widespread, which is due to the socio-psychological perception of this type of punishment by the population.

Continuing the scholarly discussion, we should turn to the view of Potapchuk (2020), who proposes the construction of a step-by-step system of sentencing. He believes that it is possible to establish an absolutely certain punishment for this type of crime, abstracted from the presence of mitigating and aggravating circumstances. Thus, punishment is formed, which is calculated as an arithmetic mean according to the minimum and maximum limits of the sanction.

Further steps and decreasing the punishment are determined. To define the step of increasing the punishment it is necessary to divide the range

between the received average and the maximum limit of the sanction by the number of all the aggravating circumstances of committing a crime. The step of decreasing the sanction is calculated in the same way, the distribution is made by the number of all possible mitigating circumstances.

The number of sanctions multiplied by the number of burdensome circumstances proven in the case. The concrete punishment to the person found guilty of committing a crime, in particular during a military invasion by the Russian army, is appointed by means of the sum of the received average punishment and the total amount of increase of the punishment and the difference of the total amount of its decrease.

In this case, the basis of the calculation is the sanctions of the current criminal law, which require revision. However, in the assignment of punishment, it is necessary to take into account also the personality of the guilty.

Proposals related to the search for a mathematical correlation of crimes and punishments, with a full formalization of the process of sentencing, require further elaboration and coordination with international legislation.

In the process of individualization of punishment judicial discretion cannot be replaced by anything. At the same time, some formalization by the legislator of such discretion would lead to greater stability of judicial practice, its uniformity, strengthening of the rule of law, and maximum realization of the principle of justice (Potapchuk *et al*., 2020). Summarizing the above views, it should be noted that a balance between judicial discretion and the formalization of the process of sentencing should be observed in the construction of sanctions. The sanction, on the one hand, should ensure the principle of diversity of criminal responsibility, and on the other - its individualization.

Conclusions

Rethinking the very content of the concept of "right," the presence of obligatory characteristics that distinguish one artistic branch from another (for example, language), make the principle of punishment one of the varieties of modern politics and at once a socially significant act. In this way, the boundaries separating the political and legal spheres are overcome, making it possible to implement the principle of sanction. At the same time, sanctions, being universal and cross-species in nature, represent a kind of crossroads of interdisciplinary studies: jurisprudential, political, psychological, and sociological.

The correlation of law enforcement by the framework of the law with the freedom of choice of measures of criminal-legal nature should be optimal,

corresponding to the principles of legality, justice, and equality of citizens before the law. The rules of construction of sanctions developed in the science of criminal law, which exclude the difference between the minimum and maximum values of a certain type of punishment, should be taken into account by the legislator when reforming the criminal law. In joining this position, we note that it is necessary to reduce such a significant difference in sanctions, including those that enshrine criminal responsibility for the commission of grave and especially grave crimes.

To summarize, we emphasize that criminal-legal sanctions should reflect the legislative assessment of the public danger of unlawful action in the context of military invasion. However, as our analysis shows, in the current legislation sanctions do not always reflect the nature and degree of public danger of deeds, in connection with which it is necessary to thoroughly review them, since our state has not had in practice war crimes, so it is difficult to evaluate the effectiveness of sanctions.

Improvement of criminal-legal regulation with individualization of punishment implies consistent reforming of sanctions of criminal-legal norms based on the principle of inevitability of criminal liability taking into account the degree of public danger of a crime and the harm caused.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 909-935
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Dicotomia entre "nosotros" y "ellos": la causa catalana en la prensa

DOI: https://doi.org/10.46398/cuestpol.4074.51

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Resumen

El estudio que sigue pretende ser una aproximación crítica a la situación política que padece España en su relación con la autonomía Cataluña. Se trató de hacer un tratamiento analítico del conflicto catalán en la prensa nacional y catalana, a partir de la celebración de la Diada, el día 11 de septiembre de cada año, hasta el encarcelamiento de los líderes del *proces* el 02 de noviembre de 2017. Por tanto, se intentó además recopilar unas muestras a lo largo de los meses de septiembre hasta noviembre del año 2017 para analizarlas cualitativamente, tratando los artículos de opinión. Por ello, el diseño metodológico de la investigación se centra en examinar el tratamiento que hizo la prensa de referencia, tanto del ámbito estatal como de ámbito autonómico (catalán, vasco, gallego), acerca del independentismo catalán en sus artículos de opinión (editoriales). La muestra está integrada por 10 periódicos. Con los resultados obtenidos, se revela el posicionamiento de cada diario respecto a este polémico tema. En la conclusiuones del caso se pone de relieve la importancia primordial de la prensa considerada como cuarto poder del Estado y se destaca, al mismo tiempo, su capacidad de remodelar la opinión pública.

Palabras Clave: nacionalismo español; independentismo catalán; prensa escrita; referéndum del 1-O; La DUI.

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Dichotomy between «us» and «them»: the Catalan cause in the press

Abstract

The following study aims to be a critical approach to the political situation in Spain in relation to the autonomous region of Catalonia. We tried to make an analytical treatment of the Catalan conflict in the national and Catalan press, from the celebration of the Diada, on September 11 of each year, until the imprisonment of the leaders of the process on November 02, 2017. Therefore, an attempt was also made to collect samples throughout the months of September until November 2017 to analyze them qualitatively, dealing with opinion articles. Therefore, the methodological design of the research focuses on examining the treatment made by the reference press, both state and regional (Catalan, Basque, Galician), about Catalan independence in their opinion articles (editorials). The sample is made up of 10 newspapers. The results obtained reveal the position of each newspaper on this controversial issue. The conclusions of the case highlight the primordial importance of the press as the fourth power of the State and, at the same time, its capacity to reshape public opinion.

Keywords: Spanish nationalism; Catalan independence; written press; 1-O referendum; La DUI.

Introducción

La independencia en Cataluña está vinculada con la triple crisis económica que ha padecido España, desde la crisis económica global de 2007 que perjudicó a España particularmente por su sistema de crecimiento debilitado y el aumento de las tasas de desempleo. Se trata además del agotamiento del modelo territorial basado en la Constitución del 1978. Todo ello y más ha ayudado a alimentar sensaciones de rechazo del modelo territorial vigente, el hartazgo hacia los partidos políticos tradicionales, la incertidumbre y temor (Serra et al, 2018).

Dice Eduardo Mendoza en su obra ¿Qué está pasando en Cataluña?, la relación que une Cataluña con España es una unión entre el poder vigente en España y los intereses catalanes. Ya que en la época del Franquismo la relación entre ambas partes ha sido beneficiosa también en la Transición fue muy nutrida e fundamental (Mendoza, 2017).

Por otra parte, la muestra también incluye artículos de opinión que oscilan entre 59 durante el primer evento, 46 en el segundo llegando a unos 41 muestras en el tercer evento, lo que consta el total de 146 muestras. Los artículos de opinión serán investigados mediante un análisis crítico

del discurso. Entonces, consiste en una parte empírica en donde se usa el **método** cualitativo (análisis crítico del discurso) para analizar el tratamiento de la prensa en plena crisis catalana, es decir a partir del 11 de septiembre hasta el 02 de noviembre del año 2017.

1. Marco Teorico: Cataluña y los anhelos separatistas

Lo que pasó en Catalunya en plena crisis refrendaria, se simplifica en que quienes no comparten las mismas inclinaciones son considerados traidores y enemigos, creando así más rupturas y división (García, 2019). Por tanto, gran parte de los catalanes abrazaron el independentismo, debido a dos razones fundamentales: el recurso contra la reforma del Estatuto catalan en 2010 y la crisis económica desde 2008. Lo que generó una ola de indignación entre las filas del independentismo aferrándose en llevar adelante sus propósitos separatistas.

A raíz del lema "España nos roba" y que Cataluña da más que recibe del Estado central, la *Generalitat* de Cataluña adoptó estas reclamaciones para pedir algo más como el pacto fiscal igual que Navarra y el País Vasco, de ahí Cataluña encargara de gestionar sus gastos e ingresos. En cuanto a los gastos comunes, la Cataluña independiente va a otorgar únicamente una cuota anual al Estado mientras limitando la solidaridad interterritorial. No obstante, la petición a la autonomía fiscal fue rechazada por el gobierno del partido popular, sobre todo, cuando coincidió con los albores de la crisis económica en 2008. A partir de entonces, Cataluña iba entrando dentro de una nueva etapa en que el *Parlament* insta a la población tener derecho de decidir su futuro (Fontelles Borrel, 2015: 171).

Entonces los desencuentros entre España y Cataluña se resumen en cuatro hechos de relevancia histórica:

1. El 17 de enero de 1641 (12 años), Pau Claris entregó el Principado de Cataluña a la soberanía francesa, proclamando el rey de Francia Felipe IV como conde de Barcelona.
2. El 21 de febrero 1873 (6 meses), tras un motín federalista sublevado en Barcelona, mandaron al general Martínez Campos para restablecerse la normalidad en el territorio.
3. El 14 de abril de 1931 (3 días) declaración de indpendencia por Francesc Masià.
4. El 6 de octubre de 1934 (12 horas) por Lluís Companys quien fue detenido tras el intento.

Asimismo, la situación se intensificó desde el 2012, cuando el entonces ejecutivo central cerró todas las vías de diálogo. También en el año 2014

anuncia el ex presidente popular Mariano Rajoy que en Cataluña no habrá un referéndum. Al día siguiente salen dos millones y medio de catalanes para refrendar su futuro ilegalmente (Ortiz, 2018: 55).

2. Metodología: ficha de análisis cualitativo del conjunto de editoriales

1/ Análisis macroestructural: tema del texto y de qué tipo de texto es. Esto engloba el título del artículo, la fecha y los *framing* o los marcos utilizados.

2/ Análisis microestructural: análisis de estructuras gramaticales, conversaciones y sentencias; el contexto en que están utilizados "nosotros" y "ellos"; por ello, se centra en "nosotros" como detentores de ciertos derechos considerándolos unos privilegios legítimos. Por tanto, ven que "nosotros" es representante de lo normal y lo moral, excluyendo a los demás diferentes, quienes no cumplen con los requisitos comunes.

Cuando estas prácticas sociales se consideran preocupantes, vuelven a su vez justificadas y legitimadas por el clan de *disclaimers* o "nosotros", aquí donde interviene el analista del discurso como defensor de los derechos de las minorías. En este caso, la minoría desprotegida es de ambos lados, es decir, el nosotros dominante en los discursos estudiados se difiere de un corpus a otro y no es un único sujeto, depende de la ideología de cada diario.

Mejor dicho, es un discurso de doble sentido, "ellos" son los mismos "nosotros", por ejemplo, en el diario *ABC* "nosotros" *somos nosotros los españoles respetuosos de la Constitución*, "ellos" son la gente que quiere separarse de España y amenaza su unidad. En *Ara*, "el nosotros" somos los separatistas, pedimos un derecho común lo que es autodeterminarse, "ellos" son los populares que *quieren privarnos de nuestros derechos legítimos*. Por eso, la balanza del lado dominante "nosotros" se convierte en "ellos", depende de cada diario y cada objetivo. Se trata de detectar la transformación de "ellos" y de "nosotros" entre la secuencia inicial y la secuencia de cierre. En otras palabras, arrojamos luz en:

- El estudio del lenguaje y representación de los catalanes en la prensa.
- Detección de palabras de manipulación y los aspectos discriminatorios.
- Indagar la existencia de términos que revelan la tendencia de cada periódico.

Grosso modo, en este análisis cualitativo pretendemos combinar los dos métodos de ACD: por un lado, el método de Teun

Van Dijk y por otro la perspectiva de Ruth Kodak (2001-2012) quien habló de las retóricas de exclusión, recalca sobre el análisis contextual y la práctica histórica a fin de comprender las fórmulas sociales. Para averiguar si hubo violación o descalificación relativamente a "nosotros" y a "ellos."

Es el estudio interpretativo de "ellos contra nosotros", un análisis crítico de las muestras de los artículos de opinión desde una perspectiva crítica, obra del conflicto catalano-español desde septiembre de 2017 hasta inicios de noviembre.

3. Editoriales del primer evento (desde el 11 de septiembre hasta el 22 de septiembre de 2017)

Tabla 1. Artículos de opinión durante el primer evento

1. ***El Mundo***	
Titulación	***1. El coste de la no-España*** 11-09-2017 ***2. Fuera de línea*** 13-09-2017 ***3. Si el 1-O un Estado***14-09-2017 ***4. Otro gesto tontiloco*** 14-09-2017 ***5. El separatismo ya contempla un horizonte de detenciones*** 22-09-2017 ***6. El sentimiento catalán*** 22-09-2017
Nosotros	-"Nosotros", los independentistas somos contra la política de Rajoy.
Ellos	-Rajoy y su clan político/Flagrante desobediencia de los separatistas.
2. ***El Pais***	
Titulación	***1. Las certezas y algunas dudas del PNV*** 20-09-2017 ***2. Dos repúblicas por el precio de una*** 22-09-2017 ***3. La tormenta catalana amenaza el País Vasco*** 22-09-2017
Nosotros	- "Nosotros" no representamos a la extrema derecha.
Ellos	-Los de extrema izquierda/Mienten en su carta diciendo que están reprimidos por España/Utilizan eufemismos para parecer ante todo el mundo los líderes de la paz.

3. ***ABC***	
Titulación	***1. "los otros" : el manifiesto viral de los catalanes que no se creen " la vil mentira de que "España nos roba"*** 12-09-2017 ***2. De la paciencia a la independencia*** 13-09-2017 ***3. La mayoría de los catalanes no quiere la independencia*** 15-09-2017 ***4. Pancho Sánchez*** 17-09-2017 ***5. Cataluña, dos exámenes*** 21-09-2017 ***6. Dispararse en el pie*** 15-09-2017 ***7. El " pirata" Puigdemont[2], nuevo agente del independentismo virtual*** 17-09-2017 ***8. ¡Hay que ganar el 1-O!*** 21-09-2017
Nosotros	-Aliados de la ley/Los catalanes contrarios a la independencia/ Hartos del *procés* y de fomentar fobia entre territorios/Los excluidos, los catalanes no independentistas/Representantes del estado de derecho.
Ellos	- Caballo perdedor/Los nazi, fascistas/ Burlan del Gobierno/ Corsarios virtuales/ Ilusionismo mítico/Imaginario épico/Desafío a la legalidad del Estado democrático/Pretenden seguir los pasos de Quebec y Escocia/Padecen el ensimismamiento supremacista/ Poseedores de la posverdad y la intoxicación para la gente.
4. ***Ara***	
Titulación	***1. Civismo, determinación, responsabilidad*** 11-09-2017 ***2. A les portes del´1-O la Diada de la democracia***11-09-2017 ***3.11 de setembre inmortal*** 12-09-2017 ***4. La Diada impulsa l´1-O davant l´ofensiva judicial de l´Estat***12-09-2017 ***5. Entre l´alarma antiterrorista i l´ordre de requisar urnes***13-09-2017 ***6. Diada 2017***14-09-2017 ***7. Setge judicial de l´Estat a la societat catalana***15-09-2017 ***8. La campanya del l´1-O arrenca malgrat totes les amenaces*** 15-09-2017
Nosotros	-"Nosotros" los catalanes vivimos unos años llenos de esperanza.
Ellos	-Hay que ser cívico para no darle razón a Aznar y su división de la sociedad catalana.
5. ***La Vanguardia***	
Titulación	***1. Un once de setiembre distinto***11-09-2017 ***2. La fuerza de la gravedad*** 11-09-2017 ***3. La política y la calle*** 13-09-2017 ***4. Represión***16-09-2017 ***5. Ruptura y enfrentamiento***16-09-2017 ***6. Una legalidad, una legitimidad***17-09-2017 ***7. Certidumbre y zozobra*** 19-09-2017 ***8. ¡Ahora empieza el mambo!*** 21-09-2017
Nosotros	-Los independentistas catalanes somos manifestantes pacíficos.

2 Expresidente de la Generalitat de Cataluña.

Ellos	-Independentistas que quieren conseguirlo a la fuerza/ Régimen autoritario que cubre su vergüenza en los tribunales/El PP, el Partido Popular y el partido Ciudadanos es una máquina de fábrica independentista/ Apuestas tan arriesgadas y el independentismo recaba la confianza del pueblo y están sin proyecto final/Hay división entre los independentistas y los que no sienten incertidumbre.
6. ***El Periódico***	
Titulación	***1. Soc[3] independentista i l 1-O votare " No"*** 13-09-2017 ***2. Bel-ligerancia i protecciò***14-09-2017 ***3. El federalisme, una soluciò quotidiana***15-09-2017 ***4. Referendum, votar, un cop a la democracia***19-09-2017 ***5. Elogio de la equidistancia*** 20-09-2017 ***6. El Periódico, con el autogobierno*** 21-09-2017 ***7. El periódico, amb l autogovern[4]*** 21-09-2017 ***8. Responsabilidad política i referéndum 21-09-2017*** ***9. Guanyar la partida a cops[5]***21-09-2017
Nosotros	-Los otros catalanes sentimos la inseguridad y tememos de lo que va a pasar.
Ellos	-Indignación social/Saltadores de la ley/Desde el 2012, el independentismo se ha convertido en movimiento de masas que ha conseguido cargar con idealismos, emoción y estética colorista/ Gente enamorada de la idea de construir una República catalana perfecta formada por gente igualmente perfecta, honrada, solidaria y moderna.
7. ***El Correo Vasco***	
Titulación	***1. Prevenir lo peor en Cataluña*** 13-09-2017 ***2. Cataluña, en tensión***21-09-2017
Nosotros	-Nosotros los vascos no apoyamos este referéndum rupturista/ Irresponsabilidad e insensatez.
Ellos	-Los secesionistas son irresponsables.
8. ***El Diario Vasco***	
Titulación	***1. Las cinco diadas que marcaron la política catalana*** 11-09-2017 ***2. El Estado acelera en Cataluña*** 11-09-2017 ***3. L´estaca***21-09-2017
Nosotros	-Estamos entre tener solidaridad con los independentistas o al Gobierno/Cabeza vacía, quieren un nuevo país sin el acuerdo del Estado constitucional/Los partidos políticos están poniendo la cosa más fea (rupturas en el PSOE, Inacción del PP, Ciudadanos busca ascenderse y exhibir más músculos, la no reclamación de Podemos).
Ellos	Exhibición de músculos del independentismo desde el 2012.
9. ***La Opinión***	

3 Soy independentista

4 El periódico con el autogobierno

5 Ganar la partida a veces

Titulación	***1. Por España, púgiles al rincón*** 13-09-2017 ***2. Independetistas, soberanistas y oportunistas, ante el referéndum que no ser***á17-09-2017
Nosotros	-Respetamos la ley y no ponemos la unidad de España en riesgo de ruptura.
Ellos	-Los independentistas rupturistas del orden constitucional español, peleadores entre sí.
10. ***El Correo Gallego***	
Titulación	***1. El disparate catalán***12-09-2017 ***2. El tío Tomo gallego***12-09-2017 ***3. El día D no ha llegado aún***13-09-2017 ***4. Siempre copiando*** 13-09-2017 ***5. En la trampa del president*** 18-09-2017 ***6. Bilocación de la política catalana*** 21-09-2017 ***7. Pecado original y virtud original*** 21-09-2017
Nosotros	-Somos los gallegos que no votaríamos el 1-O/Los gallegos no nos consideramos inferiores a los nacionalistas catalanes/Copiadores del nacionalismo vasco y catalán/Los nacionalistas gallegos nos falta la originalidad.
Ellos	-Estos independentistas son oportunistas /Manipuladores de los intereses privados/Rebeldes e infantiles/Secuestro del parlamento bajo los pies de la ilegalidad/Sentimentalistas, soñadores/ Discursos vacíos sin ideología definida/ Quieren manipular a la ley para aparecerse /Puigdemont es un pelele/Los nuevos colonizados/ Los que se consideran superiores y que inspiran a los demás nacionalismos en España.

Fuente: elaboración propia.

3.1. Discusión del conjunto de editoriales evento I

En el primer evento, *El Mundo* pone de manifiesto que la política del ex presidente del Gobierno español Mariano Rajoy no va a llevar a ningún lado, por lo tanto, no resolverá el conflicto catalán. De acuerdo con la posición ideológica de cada diario con respecto al conflicto catalán, *El Mundo* supone que Rajoy y su política va a afectar a la seguridad del Estado y de que el nacionalismo no tiene fines lógicos.

El País está en contra de la extrema izquierda catalana. Hace hincapié también en que el PNV opone el proceso independentista. Se centra sobre todo en el País Vasco. Entretanto, El País (2017) dice que no es cierto que Cataluña esté sufriendo. Tampoco el PNV vaya apoyando este proceso independentista, aun así, teme contagiarse del mismo.

ABC (2018) se ha focalizado en la minoría silenciosa, los otros catalanes contrarios a la independencia. Enfatiza que no parece justo poner a todos los catalanes en el mismo saco. Califican a los catalanes de todo a diferencia de los diarios *El País* y *El Mundo*, este diario se ha mostrado más contundente e intolerable. Es más, dice que el independentismo es "*un*

tsunami de ilusiones", por lo que hay que parar inmediatamente la acción golpista, dado que el independentismo no tiene el apoyo que lo respalda; la otra mitad, los excluidos, sigue contraria a esta acción. Para el diario, la independencia quiere seguir los pasos de Quebec y Escocia, pero lo que hacen de verdad es ir intoxicando a la gente, pues, no van a llegar a ninguna parte.

En la parte catalana, *Ara* pone de manifiesto que hay que desafiar el Estado, para poder llevar adelante la acción electoral, es decir, en las urnas. Desde luego, *Ara* intenta validar la acción independentista pero no califica al Gobierno de ningún atributo. Enfatiza que *el Gobierno no ha de meterse con nosotros*, que procura preocuparse del terrorismo que es más grave, el artículo titulado "*La Diada impulsa l'1-O davant l'ofensiva judicial de l'Estat*" (12/09/2017).

Cuando *La Vanguardia* apoya lo mismo que *Ara*, la Diada es pacífica y la culpa lo lleva el Gobierno del PP, "*es una fábrica de independentistas*"*;* dice. Para el diario son libres electos, parece que apoya el derecho de decisión pero no a los independentistas, afirma que es una apuesta arriesgada. No se sabe exactamente el lado que escoge este diario. Mientras subraya que la Diada da la autoestima a los catalanes. Es más; Cataluña en tanto que dividida no ayuda a fijar los fundamentos de una República catalana.

El Periódico no parece apoyar el proyecto de la República catalana. Él se atreve a llamar a los independentistas de todo, son saltadores de la ley. Además, acarrea que la inacción del Gobierno pone en riesgo a los otros catalanes.

Entonces, la inacción de los populares y el partido Ciudadanos ha ayudado a fabricar más independentistas, dice también que son irresponsables mientras, la solución está en negociar con la España constitucional, porque el independentismo no se dispone de legalidad ni garantías ni un plan para el futuro.

En Euskadi, *El Correo Vasco* enfatiza que la intentona independentista es una irresponsabilidad que quiere romper la unidad del Estado en *Cataluña en tensión* (21/09/2017). Cuando, *El Diario Vasco*, recalca que la independencia es un riesgo a asumir. Este diario está con un referéndum pactado y demócrata entre todas las partes.

En la región de Galicia, *La Opinión* de Coruña está con la reforma o revisión del texto constitucional. Igual que *ABC* se ha manifestado muy indignado vía los independentistas les califica de todo. Lo compara con el nacionalismo vasco y está en contra de todos los nacionalismos.

El Correo Gallego hizo lo mismo que *La Opinión* pero esta vez se centra en que los gallegos no vayan a imitar a los independentistas, al mismo tiempo, teme que los gallegos se copien de los independentistas catalanes.

Defiende que España nunca roba a las Comunidades Autonomas. Para el diario los independentistas vulneran a la democracia española. De hecho, está totalmente en contra de la acción golpista, según dice, no es verdad que España esté aprovechando de Cataluña. Así que, *a los gallegos no tenemos que seguir los pasos del independentismo catalán*, a estos lo que les importa más es acabar con la solidaridad entre territorios, (13/09/2017).

4. Editoriales del segundo evento (desde el 1 hasta el 7 de octubre del 2017)

Tabla 2. Artículos de opinión durante el segundo evento

1.	***El Mundo***
Titulación	***1. La rebelión en Cataluña pone hoy a prueba la fortaleza del Estado*** 01-10-2017 ***2. El referéndum del odio*** 03-10-2017 ***3. Un discurso valiente y muy arriesgado*** 05-10-2017 ***4. Intolerable desafío de Puigdemont al Rey y a España*** 07-10-2017 ***5. Jà no tindrem pressa***[6] 07-10-2017
Nosotros	-Nosotros los nacionalistas de España vamos a emprender una cruzada contra el infiel.
Ellos	-Puigdemont tiene una misión religiosa la de conducir a las catalanes a la tierra prometida de la independencia/ Gente que incita el odio interregional/El anhelo de una minoría/ Manipulación independentista/Mentiras flagrantes/Delirante huida / Estrategia propagandística cargada de mentiras/Descaro/ Los independentistas viven en la bipolaridad/Euforia de los independentistas, consiguieron paralizar Cataluña.
2.	***El Pais***
Titulación	***1. Carnaval político en Cataluña*** 01-10-2017 ***2. El escudo de la libertad*** 01-10-2017 ***3. La ruptura nacional-populista*** 04-10-2017 ***4. Cuando quieran y no puedan*** 04-10-2017 ***5. Procés antieuropeo*** 07-10-2017
Nosotros	-Los españoles de hoy reivindican ser libres e iguales/Vivíamos amenazados por la mafia etarra y el nacionalismo obligatorio/ Para una España libre, nosotros, los contrarios a la independencia debemos ser el escudo indiscutible de esta libertad.
Ellos	-Los independentistas catalanes están dirigiéndose hacia el abismo para atraer la simpatía internacional.
3.	***ABC***

6 Ya no tenemos prisa

Titulación	***1. A los catalanes, siempre Sí*** 01-10-2017 ***2. Los valencianos y el independentismo*** 01-10-2017 ***3. Frustración*** 02-10-2017
Nosotros	-Los demás españoles, son los catalanes contrarios a la independencia/ No hay que meterles todos en el mismo saco/Los cuerpos de policía han sido atacados en Cataluña.
Ellos	-Políticos oportunistas y fervientes/Sociedad enferma de sectarismos intoxicada de arbitrariedad/ Cabecillas golpistas/Piden dialogar guardando el mismo discurso de siempre/ Los secesionistas desafían el Estado pretenden ir reanudando sus acciones.
4. ***Ara***	
Titulación	***1. Qui paga les factures dels nostres drets illebertats?***[7] 01-10-2017 ***2. 1934-2017. Del federalismo al independentismo*** 05-10-2017 ***3. El fantasma de Grecia sobre Cataluña***06-10-2017 ***4.1-O civisme i democracia*** 07-10-2017 ***5. Notes sobre el procés*** 07-10-2017
Nosotros	-Los catalanes, hemos vivido un período de tensa movilización, pero también ha hecho falta dinero.
Ellos	-Presión judicial y policiaca ha despertado la indignación popular.
5. ***La Vanguardia***	
Titulación	***1. Lo que hemos aprendido*** 01-10-2017 ***2. La DUI será un tremendo error*** 05-10-2017 ***3. Cuidado con las prisas*** 04-10-2017 ***4. España no se vota*** 05-10-2017 ***6. Inquietante silencio*** 07-10-2017
Nosotros	-Nosotros los catalanes estamos viviendo bajo tensión.
Ellos	-La DUI, declaracion unilateral de independencia impulsada por los independentistas es un suicidio y un período obscuro para Cataluña.
6. ***El Periódico***	
Titulación	***1. Aixi***[8]***, no*** 01-10-2017 ***2. Fracaso colectivo*** 02-10-2017 ***3. Represión contra votos*** 02-10-2017 ***4.Thats´s all folks***[9]02-10-2017 ***5.La clau***[10]02-10-2017 ***6. ¿Que vam aprendre de la Guera Civil?*** 04-10-2017 ***7. España ha perdido nuestro respeto*** 04-10-2017
Nosotros	-Los catalanes, tenemos que bajar los pantalones defendiendo un referéndum.

7 ¿Quién paga la factura de nuestros derechos y libertades?

8 Así

9 Significa que la historia está hecha ya

10 La clave

Ellos	-Gracias a la política de Rajoy, Puigdemont pasa a ser un *president* de todos los catalanes/ Es una convocatoria efectuada a espaldas de la mitad de los catalanes/Errores que ha cometido el Gobierno español y mala gestión de la crisis catalana.
7. ***El Correo Vasco***	
Titulación	***1. Incertidumbre*** 03-10-2017 ***2. Un mensaje claro*** 04-10-2017 ***3. Cataluña desencajada*** 06-10-2017
Nosotros	-Cataluña está colocada al borde del caos/Nosotros los catalanes en contra de la DUI, enfatizamos que no hay otra legalidad que la de la Constitución y del Estatuto.
Ellos	-Utilizan la fábula de la mediación como cortina de humo/ Puigdemont adopta un discurso demagógico/ Un secesionismo ciego/Callejón sin salida.
8. ***El Diario Vasco***	
Titulación	**1.** ***Cataluña al límite*** 02-10-2017 ***2. El desengaño*** 02-10-2017 ***3. Los catalanes del 78 ya no existen*** 02-10-2017 ***4. Intervención real*** 04-10-2017
Nosotros	-Las dos parte del conflicto, han de dialogar para evitar la DUI.
Ellos	-Los independentistas quieren quebrar la cohesión territorial de España y desbordar el estado de las Autonomías para quedarse en la tierra de nadie.
9. ***La Opinión***	
Titulación	***1. Fusibles*** 01-10-2017 ***2. Resucitando las dos España*** 02-10-2017 ***3. Al borde de la fractura*** 06-10-2017
Nosotros	-Los gallegos estamos en contra de una DUI porque es una amenaza a la estabilidad del país.
Ellos	-Los secesionistas catalanes pretenden llevar España al borde de ruptura/A los dirigentes catalanes deben respetar el orden constitucional español y mostrarse empáticos con Cataluña.
10. ***El Correo Gallego***	
Titulación	***1. Galicia ante el 1-O*** 01-10-2017 ***2. Batallas inútiles*** 02-10-2017 ***3. En el día de después*** 02-10-2017 ***4. Restablecer la legalidad democrática*** 02-10-2017 ***5. Imposibilidad de los imposible*** 06-10-2017
Nosotros	-Todos los españoles/La mayoría cualificada contraria a la independencia/Nuestra relación con Cataluña es recíproca/A los gallegos no nos van a contagiar nunca.
Ellos	- Minoría no cualificada con la independencia/Teme la respuesta del pueblo/Creen tener su derecho a decidir sin preguntárselo a nadie/Nacionalismo excluyente/Predisposición.

Fuente: elaboración propia.

4.1. Discusión del conjunto de editoriales evento II

En el segundo evento, *El Mundo* parece que está inclinado hacia los populares, favorece además el discurso del Rey. Según lo explicado más adelante, este diario dice que el Estado es fuerte ante el desafío catalán, también, la manipulación independentista lo es, éstos últimos están tomándose por victimistas.

El País está contra de los populares, los ve como amenaza nacionalista, favorece el diálogo. Igual que *El Mundo* subraya pues que Cataluña está viviendo en una gran mentira, porque el nacionalismo está imponiendo.

ABC aquí es menos contundente, es decir, no ha calificado a los independentistas. Por su parte, este diario dice que los golpistas adoptan el mismo discurso de siempre y "*no hay que sentarse con ellos a dialogar*", (02/10/2017). Además, sugiere que el castigo que conviene a éstos es la cadena perpetua. Desde luego, los catalanes no son todos por la vía independentista.

Ara, la represión policial es la causa principal de la independencia popular. Cuando la fuga de empresas de Cataluña es debida a la inacción del Gobienro central; dice el diario. Este periódico no usa términos despectivos para tildar a los políticos de España, que sí hace una autoestima del "nosotros" como los más pacíficos, con una cierta negación aparente, pero no es inventado, es decir, da mucha estima a "nosotros" pero no desprecia a los "ellos." De hecho, pone de manifiesto que un total de 70% de la población está de acuerdo con la independencia, *1-O civisme; democrácia* (01/10/2017).

Aunque los sondeos confirman que solo trata de la mitad. "*No nos impulsemos por dinero que aquí no falta. Pedimos la colaboración para decidir nuestra independencia*"

Igualmente, durante este segundo evento, se nota que dicho diario ha cambiado de actitud, no ve necesario proclamar la independencia porque la ley del referéndum no es sagrada. También, recalca que no hay reconocimiento internacional, diciendo que el heroísmo de mucha gente no va a permitir que los resultados garanticen un mínimo reconocimiento internacional. A raíz de esto, teme que los bancos cambien de acciones, sin embargo, afirma que el cambio de sedes de las grandes empresas de Cataluña fue culpa exclusiva del ejecutivo.

La Vanguardia en contra de la aplicación del articulo 155 de la Constitucion española en que se desuelve el autogobieno catalán, *estamos con el nacionalismo catalán pero el pacífico, La DUI sera un tremendo error* (05/10/2017). Sugiere seguir los pasos del nacionalismo vasco para obtener más privilegios como el pacto fiscal por no ser independentista; "*nosotros, nos dificultaron las cosas con mucha mala gestión*". A su vez,

La Vanguardia afirma que aplicar el 155 va a llevar Cataluña a un callejón sin salida, es decir, el bienestar en Cataluña está en peligro, dice también que el independentismo catalán es un movimiento pacífico con términos democráticos.

El Periódico está con la vía del diálogo y contra del gobierno del PP; afirma que la política de Rajoy no hizo más que hacer de Puigdemont un héroe. Al mismo tiempo, denuncia la represión policial hacia los independentistas. Pide que los catalanes gocen de un mayor autogobierno y una repartición justa de los recursos fiscales. Esta en de contra la DUI con la reforma constitucional.

El Diario Vasco subraya que el independentismo es pura desconexión con España, porque se trata de la tierra de nadie cuyo un trozo, refiriéndose a Cataluña, quiere separarse del total. *El Correo Vasco estamos por la legalidad en contra del referéndum es un callejón sin salida*. Subraya que el nacionalismo tiene la culpa de todo, (02/10/2017).

Cuando *El Correo Vasco* supone que Cataluña está al borde del caos, puesto que el referéndum es *una farsa política, Cataluña desencajada* (06/10/2017).

Ahora bien, *El Correo Gallego* apoya lo que dice *ABC* en que el independentismo adapta el mismo discurso de siempre. De hecho, afirma que el independentismo catalán no va a afectar a Galicia, porque carece de la mayoría cualificada. Además, es un nacionalismo excluyente que se crece en detrimento de los intereses de los pobres en beneficio de los ricos. Entonces está por la aplicación del 155.

Asimismo, *La Opinión* está contra la causa catalana y la política del gobierno, dice que esto no va a afectar a Galicia. Para el diario, los independentistas no son cualificados ni tienen el derecho a decidir su futuro político, eso no lo deciden ellos solos, "*somos cualificados y ellos son una minoría no cualificada*." "*Nos van a empobrecer para hacerse ricos*." Nadie los está apoyando que la extrema derecha europea, (06/10/2017).

5. Editoriales del tercer evento (desde el 27 de octubre hasta el 02 de noviembre del 2017)

Tabla 3. Artículos de opinión durante el tercer evento

1. El Mundo	
Titulación	***1. Fuerza y honor*** 27-10-2017 ***2. Puigdemont lleva Cataluña al desastre*** 27-10-2017 ***3. La bandea española*** 30-10-2017 ***4. El relato imprescindible*** 01-11-2017 ***5. Empujar al suicida*** 02-11-2017
Nosotros	-Nosotros, los contrarios a la independencia somos sensatos.
Ellos	-Barbaros secesionistas/Se basa sobre mentiras de una historia inventada/Intoxicación en escuelas y semilla del odio/Traición por los secesionistas/Perversión de los barbaros/Sainete sin gracia y político no responsable/El independentismo fomenta los valores de exclusión e insolidaridad/Fanáticos separatistas/Tanta insistencia en la vía incomprensible.
2. El Pais	
Titulación	***1. El feroz bestiario del separatismo*** 28-10-2017 ***2. El descrédito de Cataluña*** 30-10-2017 ***3. Nunca más*** 02-11-2017 ***4. Heroísmo Prêt à porter*** 02-11-2017
Nosotros	-Los constitucionalistas debemos reformar la democracia y recuperar a Cataluña como corazón de ideas y de vitalidad/ Nosotros representamos a la Cataluña mayoritaria española, adicta a la Constitución.
Ellos	-Los locos llevan de la mano a los ciegos/ Victimistas y manipuladores/ /Puigdemont era indigno/ Un oscuro cardinal que quiere mediar entre el cielo y el infierno/El expresidente cree ser el ombligo de Cataluña/ Está frivolizando lo que ha sido el exilio tiene a sus incondicionales alrededor suyo.
3. ABC	
Titulación	***1. De la República al abismo*** 27-10-2017 ***2. Humor*** 27-10-2017 ***3. Cachete*** 28-10-2017 ***4. El túnel de la risa*** 03-11-2017
Nosotros	- Los que respetan la Constitución, seguimos siendo amenazados.
Ellos	-A los catalanes tienen que librarse/ /Es una fe sustentada en la sugestión de los mitos/ Un cachondeo nacional, angustia/ Puigdemont es un humorista y también un antídoto contra las creencias y mentiras del secesionismo/El humor gráfico ha contribuido en socializar el proceso catalan.

4. Ara	
Titulación	***1. Porque me da la gana*** 27-01-2017 ***2. Republica i Assamblea General*** 27-01-2017 ***3. Octubre negre*** 27-10-2017 ***4. Resistir, Resisitir, Resistir*** 01-11-2017 ***5. La matriu española de l´independentisme catalán*** 02-11-2017 ***6. Votar per la Republica*** 02-11-2017
Nosotros	-Proclamar la República va de acuerdo con las leyes votadas en el *Parlament* con el mandato de expresión por la ciudadanía/Los catalanes, pedimos la dignidad de aquellos demócratas pacíficos que salen a la calle/ Estamos en contra de la aplicación del artículo 155 de la Constitución /Se ha iniciado la otra fase de resistencia.
Ellos	- Una gran vulneración a los derechos y libertades fundamentales/ Escándalo de repetida manipulación al tribunal constitucional por forzar una sentencia contra el *Estatut* de 2006, lo que destrozara la confianza de una mitad y fabricara más independentistas.
5. La Vanguardia	
Titulación	***1. Un país a la deriva*** 27-10-2017 ***2. Banderas, gritos y pancartas*** 27-10-2017 ***3. Reparar el error : reconstruir***30-10-2017 ***4. Desolación***30-10-2017 ***5. La pregunta*** 01-11-2017
Nosotros	-Los catalanes hemos perdido la senda de vuelta, nos hemos perdido en un bosque.
Ellos	-Aventurismo de líderes/Puigdemont tiene vacilaciones es perplejo y se duda de ser un interlocutor fiable del gobierno/Puigdemont está montando Cataluña en la vagoneta de una montaña rusa que no se sabe quién pilota.
6. El Periódico	
Titulación	***1. La vida más enlla del proces*** 27-10-2017 ***2. Persones i idees*** 27-10-2017 ***3. Las elecciones, el mal menor***28-10-2017 ***4. L´endema*** 28-10-2017 ***5. Puigdemont, no en el meu nombre***28-10-2017 ***6. Puigdemont el comic*** 01-11-2017 ***7. Bombers piro´mans***[11] 02-11-2017
Nosotros	-No somos iguales que el resto que quiere la independencia/*El Periódico* aclara que la aplicación del 155 de la Constitución podría tener consecuencias perjudicadas para todos los catalanes.
Ellos	-Los separatistas tienen que reconocer que la independencia es por ahora inalcanzable/No hablan en nombre de la mitad de los catalanes/En Bruselas, Puigdemont ya no se luce como un líder revolucionario, sino como un político superado por la realidad que empeña en mantener su discurso en vía muerta.
7. El Correo Vasco	

11 Fascinación por el fuego.

Titulación	***1. Una independencia de otro planeta*** 27-10-2017 ***2. Rajoy el sorprendente*** 28-10-2017 ***3. Todos somos Cataluña*** 30-10-2017
Nosotros	-Los vascos, apoyamos a Cataluña pero no estamos de acuerdo en reclamar la independencia. Porque no es apta para ello, en términos económicos sobre todo.
Ellos	-El independentismo tendría que reconocer sus propios límites.
8. El Diario Vasco	
Titulación	***1. Cataluña, el drama se ha consumado*** 27-10-2017 ***2. Salto al vacío y golpe de efecto*** 28-10-2017 ***3. Agujero negro*** 29-10-2017
Nosotros	-Los vascos estamos con la celebración de elecciones en Cataluña.
Ellos	- Los catalanes contribuyen a resucitar una imagen negra de España/Puigdemont es una marioneta de los cobardes y los radicales/A Puigdemont le falta el valor personal/ Lo que fomenta el independentismo catalán es el odio hacia España, está llevando a los catalanes a un camino de empobrecimiento, ruptura y tensión, ira, dolor/El independentismo le interesa tener una guerrilla urbana en España de un nuevo 1-O.
9. La Opinión	
Titulación	***1. DUI y 155 y causas de separatismos europeos*** 28-10-2017 ***2. Doble caliz: DUI y 155 simultáneos*** 28-10-2017 ***3. Nada que negociar, es hora de restablecer el orden constitucional*** 29-10-2017
Nosotros	-Los gallegos estamos con establecer el orden constitucional/ Puigdemont y Rajoy eran infantiles en su trato y son absurdas sus comparecencias/Actuación juridicial y política descabellada/Hay que frenar este disparate y con contundencia/Los gallegos estamos con establecer el orden constitucional.
Ellos	-Puigdemont y Rajoy eran infantiles en su trato y son absurdas sus comparecencias/Actuación judicial y política descabellada/Hay que frenar este disparate y con contundencia.
10. El Correo Gallego	
Titulación	***1. La obligada aplicación del 155*** 28-10-2017 ***2. ¡Iniesta de mi vida!*** 29-10-2017 ***3. Del esperpento al realismo*** 30-10-2017 ***4. El soviet catalán*** 01-11-2017 ***5. España no es Manolo Escobar*** 02-11-2017 ***6. ¡Ciudadanos de Catalunya!*** 03-10-2017 ***7. La vacuna*** 03-10-2017
Nosotros	-Los gallegos estamos por la aplicación del artículo 155 de la Constitución/Cataluña es nuestro amado y compatriota nordeste peninsular.

Ellos	-No hay mal que por bien no venga /El independentista es un tigre de papel, insignificante que va a convertir en un tiñeron de la pastelea/Relato victimista fallido/Esta intentona independentista logró despertar a una bella durmiente/Relato victimista catalan/ Perdieron la dignidad y llevaron su pueblo al abismo/Bolas de nieve llenas de mentiras/Una farsa, engaño y ensoñación/El pueblo prefiere vivir en victimismo asfixiante/El gran beneficiario del 155 es Puigdemont para la brevedad en términos de vigencia de las instituciones/El himno de España no se hace para cantarlo ante aquellos que quieren romper España.

Fuente: elaboración propia.

5.1. Discusión del conjunto de editoriales evento III

Durante el tercer evento, *El Mundo* hace hincapié en el porcentaje de los partidarios de la independencia. Pero mantiene su postura en contra de los separatistas, así, tilda a los independentistas con muchos adjetivos. Subraya que el proceso ha consolidado la unidad de España por lo que no hay futuro para los independentistas. Cuando el Gobierno abstiene a dar la otra versión del cuento, ayuda al independentismo a dar una imagen falsa acerca de España. Así, para el diario, los secesionistas son bárbaros que envenenan con sus ideas a la población.

El País centra su tercer discurso en la otra Catalunya contraria a la independencia. Está por la reforma, culpa todo a Jordi Pujol. Sin embargo, no usa términos despectivos para hablar de los independentistas. Entonces, señala que el independentismo ya se ha roto gracias a la mayoría española contraria al separatismo.

ABC, está por la celebración de elecciones en Cataluña, da por claro que con eso controla a los independentistas, cuando a los catalanes tienen que librarse. Lo mismo que el diario *El País* afirma que Puigdemont es una marioneta y un títere de la CUP, (Candidatura de Union Popular) proindependentismo. De hecho, toda la culpa lo tienen ellos, por eso, *ABC* se basa sobre el discurso golpista de lo peligroso que es. Por tanto, ha de actuarse ya y destruir el aparato independentista, debido a que el ejecutivo todavía no ha sabido canalizar la situación.

En Cataluña, *Ara* focaliza en la corrupción del aparato del PP, además, confiesa que este ejecutivo es una fábrica de independentistas. El diario basa en la vulneración de los derechos democráticos de los catalanes. Ya Cataluña tiene otro objetivo que la autonomía y no está con la celebración de elecciones en Cataluña. El otro giro que tenemos durante este evento es que se empieza a no fiar en la independencia: *"los independentistas han empezado a perder el control de la agenda"* .Según indican las encuestas, ni ellos están por la DUI, el artículo titulado: *"La matriu española de l´independentisme català"* (02/11/2017).

La Vanguardia duda de la decisión de Puigdemont, está también con la celebración de elecciones. A su vez, recalca que *los catalanes estamos perdidos en un camino sin vuelta*, entonces, la solución está en las urnas porque Cataluña está dividida ya, del mismo modo, está reinada por el silencio.

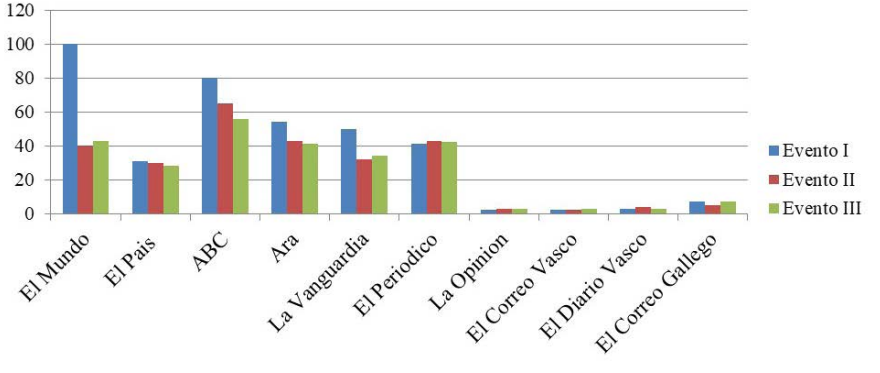
El Periódico está también con celebrar elecciones, *no hablen en mi nombre, nos somos partidarios de la DUI*, (28/10/2017). Duda de Puigdemont y lo considera superado de la realidad. Pone claro que ni la independencia tiene futuro que el daño está hecho ya, no se puede volver a la normalidad. Sigue *El Periódico* en la misma línea subrayándose que no es momento para la independencia.

Para *El Correo Vasco* la independencia es un relato exagerado y es imaginaria, Cataluña no tiene la condición para forjarse su camino como República independiente. Cuando *El Diario Vasco* dice que el independentismo está llevando Cataluña al vacío, de eso, es un proyecto frívolo sin bases ni garantías.

Igual que los demás diarios, Puigdemont es una marioneta. Por su parte, los catalanes deforman la imagen de España.

El Correo Gallego invoca a Josep Tarradellas, el entonces líder catalán opuesto a la independencia, sus seguidores hicieron el ridículo en desoír las palabras de su líder. Se abunda el uso de términos despectivos, como que ellos quieren romper España. Entretanto, *La Opinión*, es que ser muy contundente con los instigadores del *procés*, cuando Cataluña necesita ser gobernada con determinación, *"La respuesta de la policía a los independentistas catalanes que han roto el DNI"*, (28/10/2017).

Gráfico I. Cobertura de cada diario: los tres eventos



Fuente: elaboración propia

De acuerdo con el gráfico, el diario que dio más tirada en este evento fue *El Mundo* (ámbito español) y *Ara* (ámbito catalán). Mientras, *El País* se ha acertado en tener más editoriales durante el segundo evento, cuando *Ara* y *El Periódico* han tenido casi el mismo número de editoriales. En el tercer evento, sobresale *El País* y *El Periódico*. Si bien, *El Correo Gallego* supera los demás diarios regionales en tener más artículos de opinión a lo largo de los tres eventos.

Ahora bien, en su mayoría, los medios catalanes se conforman con llamarlo más legal y los estatales lo consideran ilegal, por ejemplo: *El Mundo* insta hablar de las rivalidades entre catalanes y españoles, pone de manifiesto, sobre todo, que los catalanes compiten con el resto de los españoles, se nota que este diario junto a *ABC* sienten una cierta catalanofobia al respecto, además del uso de la diferenciación entre "ellos" y "nosotros"; *"ellos" quieren romper la unidad de España y llevarnos al caos, cuando "nosotros" nos importa mantener a salvo las fórmulas de la Constitución del 78*.

El País considera Cataluña como un territorio conflictivo y a los *mossos d'esquadra* (cuerpo policial de Cataluña) como obstaculizadores del cumplimiento de la ley, dada su posición en cuanto al 1-O. En cambio, *Ara* ve que aquellos cuerpos de policía son los verdaderos héroes en contraste de la acusación injustificada de los cuerpos de policía nacional. El mismo diario duda de la funcionalidad del Gobierno que no ha sido capaz de parar la celebración del referéndum. Es decir, *Ara* refleja la perspectiva desde el *Govern* catalán, mientras se nota una cierta influencia nacional en las muestras de *El Periódico* y *La Vanguardia*, los que determinan una postura menos independentista o moderada que se aproxima a la perspectiva del Estado.

Con lo anteriormente explicado, los medios en España se han dividido en dos, partidarios y opositores, con el inicio de la historia del *procés* catalán, son los medios de inclinación centralista y de derechas, como *El Mundo* y *ABC* han reivindicado el castigo a los violadores de la ley en referencia a los independentistas catalanes. Sus discursos se han caracterizado por la abundancia de términos despectivos y la diferenciación aparente entre "nosotros", los guardianes de la ley y "ellos" los violadores del mismo. Son los mismos diarios que han usado términos como *corsarios virtuales*, *intoxicación*, *supremacistas*, *ensimismamiento*, con la excepción, *ABC* ha sido más contundente y cruel a la hora de hablar de los independentistas.

Entre los conservadores en el lado catalán, tenemos a *Ara*, aun sosteniendo a la independencia, el diario no ha atacado al ejecutivo español. Que si expresa su indignación a la actuación del Gobierno hacia su causa y la policía en particular, pero a lo largo de las muestras no ha faltado respeto. Obviamente, recurre al uso de la diferenciación entre " nosotros", los víctimas, los que no gozan de su autogobierno y la libertad de elegir

su propio futuro político, en contra de "ellos", los verdaderos violadores de la ley que *no nos dejan practicar nuestros derechos democráticos como se debe*. Con su política discursiva. Si bien, *Ara* ha acertado en llevar adelante su discurso político a favor de la independencia de Cataluña, pese a las críticas de los demás diarios opositores, pero se ha simpatizado con su causa. Mejor dicho, la diferenciación que usó el diario, pese a no tener bastantes pruebas sólidas, superó al discurso nacionalista, con su contraria.

6. Dicotomía de opiniones acerca de la Cataluña independiente

En una entrevista que tuvo lugar el 26 de noviembre de 2018, hemos podido saber los diveros puntos de vista de los profesores más especializados en el impacto del independentismo en la prensa. Además de una encuesta basada sobre 32 entrevistados (realizada en octubre 2020). Entre ciudadanos de diferentes profesiones, unos que están pro independentismo y en contra del mismo, la totalidad de la encuesta reúne a nacidos en Cataluña, hijos adoptivos de esta región, hijos de inmigrantes y otros nacieron en otra ciudad española pero que han pasado la mayor parte de su vida en esta Comunidad Autónoma. De modo que, hemos tenido la oportunidad de tener una diversidad de opiniones indiscutible:

La encuesta incluye a personas de más de 18 años hasta 65.

Aquí tenemos a las preguntas planteadas al conjunto de los entrevistados:

7. ¿Cómo ve usted la relación España-Cataluña?

53,1% de los encuestados dice que la relación entre ambas partes es compleja mientras el 37,5% dice que es mala, los demás dicen que es complementaria y que se debe recuperar el respeto mutuo.

De los encuestados se destaca un 43,8% a favor de la separación entre Cataluña y el Estado español, cuando un 31,3% está en contra de la misma, mientras el resto se contenta con que el Estado llegue con Cataluña a un acuerdo que garantice los derechos de Cataluña.

A la luz de esto, en una entrevista el 26/10/2018 con el profesor de Teorías de la comunicación en la universidad de Pompeu Fabra, Barcelona; Miquel Rodrigo-Alsina subraya que la relación que une las dos partes es problemática, por lo que, Cataluña nunca ha podido encajar bien en España, es decir, hay visiones muy distintas de cómo tiene que ser esta relación. Pues, para una parte significativa de la ciudadanía catalana, la relación con los gobiernos del Reino de España y con las instituciones del Estado español es bastante mala con cierta catalanofobia en medio.

8. ¿Qué fundamentos fomenta un nacionalista español/ un independentista catalán?

El profesor Rodrigo-Alsina respalda en el libro de *Comunidades imaginadas* (1983) de Benedict Anderson por el cual sostiene que las naciones son comunidades imaginadas, lo mismo dice el historiador español Tomas Pérez Vejo en *España imaginada* de (2015) que las naciones son construcciones imaginadas, pero con cierto poder. Nuestro entrevistado, parte del hecho de que las naciones son construcciones narradas y auto-narradas, por lo que, la idea de la nación se construye a partir de relatos.

Zygmunt Bauman, en su obra *Identidad* (2005), sugiere el concepto de "Lugareños" en referencia a los polacos, cuando le preguntan ¿De dónde es usted? Les contesta, soy de aquí. Por tanto, la tarea de la construcción de la nación por medio de relatos, lo asumen los medios de comunicación, los profesores, ya que, los seres humanos somos los narradores de la historia pero resulta peligroso si hay una sola versión de la historia. Pues, es diferente la historia contada por los españoles y los *Aymara*_ pueblos indígenas de Bolivia_ en cuanto a la conquista de América. También de las cruzadas vistas en la versión del escritor libanés Amine Maalouf por los árabes y por el Occidente. Es por eso, los nacionalistas se alimentan de los hechos, fundamentados por los independentistas. Aun así, el independentismo y el nacionalismo son incompatibles, se puede hallar con independentistas catalanes que no son en nada nacionalistas.

Mientras nuestro educador social señala que no nació independentista, y en su casa al igual que en la escuela ha recibido una educación de cierta empatía, justica social y diversidad.

9. ¿Cuándo aparecieron las primeras huellas del independentismo?

Un 65,6% de las personas encuestadas lo atribuye a fechas anteriores porque siempre ha estado allí, mientras el 9,4% confirma que ha empezado lucir a partir del 2010, cuando el proyecto de reforma estatuaria fue rechazado por el Tribunal Constitucional.

Desde luego, el profesor Rodrigo-Alsina nos dice que la sentencia del TC sobre el Estatuto de Catalunya fue el factor que canalizó el aumento del independentismo, al declarar anticonstitucionales a Artículos que eran vigentes en otros Estatutos. Cuando nuestro educador social sostiene que el independentismo empezó a ganar huella con la política del expresidente popular Mariano Rajoy, además de la crisis económica.

10. ¿Ve usted que el independentismo planteado en la Guerra Civil y durante la Transición es lo mismo de hoy?

Un total de 80,6% de los encuestados dice que no es igual cuando un 19,4 % dice que sí lo es.

Dice Romualdo Bermejo García, profesor de Derecho Internacional; la crisis catalana es la más grave que ha ocurrido a España desde la Guerra Civil de 1936-39. Cabe señalar que Cataluña tuvo el más voto a la actual Constitución 90,5% comparándola con 86,1% en Madrid, algo que demuestra que los catalanes estaban totalmente de acuerdo con el régimen de las Comunidades Autónomas subrayado en la Constitución con el fin de descentralizar el Estado español. No obstante, hubo solo una participación de 59,6% de los catalanes en el referéndum que tuvo lugar el 25 de octubre de 1979 acerca del Estatuto de Autonomía, esto quiere decir que el asunto no despertó mucho interés en la ciudadanía.

Del mismo modo, el profesor Rodrigo-Alsina sostiene que existe un fondo semejante en el independentismo de lucha por la democracia, los derechos civiles y la autodeterminación. Conforme con el educador social el independentismo de la Guerra Civil y durante la Transición no es el mismo que el de la actualidad. El día 11 septiembre de cada año, en años anteriores no llegaba a reunirse 200 personas, porque a nadie le parecía que la división fuera una manera de progreso en un mundo globalizado y universal. Entonces, la profesora Soto-Sanfiel nos advierte que el independentismo en la época de la dictadura franquista fue enmudecido pero que retomó posiciones a partir de la Transición.

11. ¿Cómo interpretaría usted la salida de la minoría silenciosa a la calle?

Enfatiza Eduardo Mendoza que en Cataluña hay de todo, en los pueblos en sus entradas se lucían colgadas en los balcones, banderas independentistas y la estelada. Hay una multiculturalidad donde nos encontramos con africanos, pakistaníes, chinos, magrebíes e hispanoamericanos que según dice Mendoza no acaban de encajar en el tejido social de la sociedad catalana, lo que hace que se reduzcan en su comunidad minoritaria; viven al margen de todo o de espaldas a la política, no votan ni saben quién está al mando de la política, les da igual, son los inmigrantes marginalizados.

Subraya el profesor Rodrigo-Alsina, es la minoría silenciosa o movimiento de los indignados en Europa, lo que toca *Catalunya* es una especie de revolución democrática, una revolución pacífica. Es aceptable una ruptura democrática que un golpe de estado, porque originalmente, los golpes de estado sí hacen con bombas y armas pero aquí en Catalunya

lo hacemos con urnas y votos. Entonces, es un pacto de un nuevo estado en vez de un golpe de estado. Es decir, hay un componente emocional y un motivo muy fuerte, algo que ha podido despertar las emociones reales de gente que ha vivido el franquismo, así hacerles callar resultaría difícil de manejar.

Mientras la profesora Soto-Sanfiel nos señala que la posición mayoritaria de los catalanes fue colonizada por el independentismo cuyo discurso monopolizó el espectro social. Mucha gente que se considera españolista o anti-independentista es tildada de facha. Aun así, estas personas decidieron posteriormente salir del armario y quitarse las máscaras. Eso incluye a la gente de índole independentista como a la gente no independentista y al resto que no lo importa.

12. ¿Ve usted que los partidos son los mejores representantes de la voluntad de un pueblo?

65,6% dice que los políticos no son dignos de presentar la ciudadana, el 21,9% dice sí lo son, otros no generalizan y dicen que en ocasiones podrían asumir tal responsabilidad. Es por eso, la profesora Soto-Sanfiel señala que los partidos representan a sí mismos.

Asimismo, el profesor Rodrigo-Alsina recalca; en Catalunya los partidos políticos van por detrás del movimiento social independentista, su existencia es imprescindible. Pero hace falta basarse sobre la democracia más directa por medio de referencias del periodismo sobre los temas más relevantes como suelen hacer en Suiza, adoptando el tipo del voto electrónico, pero con esta forma, los partidos políticos podrían perder su función.

13. ¿Qué diario piensa usted que es más fiel transmitiendo la verdad?

Para los encuestados los tres diarios que mejor han sido fieles transmitiendo la verdad acerca de la causa catalana son: primero; *La Vanguardia* con un 25% de votos, por ello, recalca la profesora Soto-Sanfiel, que este ha sido el único diario catalán que tuvo un tratamiento moderado de la situación, tratando de navegar entre dos aguas, de forma seria, le sigue el diario pro-independencia *Ara* 18,8% y *El País* 9,4%.

De hecho, el profesor Rodrigo-Alsina pone de manifiesto que no es cuestión de mentira o verdad sino más bien de una interpretación de la realidad. Los medios en España son en su mayoría contra la independencia de Catalunya, aun así, los que han tenido una visión más equilibrada en este caso, son los diarios *Público* y *eldiario.es*.

Tabla 4. Clasificación de los periódicos según las ideologías políticas en España

Vox (ultra conservadores)	**PP (los populares)**	**PSOE (los socialistas)**	**ERC (los independentistas)**
-*ABC* -*La Opinión*	-*El Mundo* (pero no forzosamente que a veces critica a la política del partido).	-*El País* -*El Periódico* -*La Vanguardia* -Los dos diarios de Galicia y de Euskadi	-*Ara*

Fuente: elaboración propia.

Desde luego, en la parte conservadora nacional, hay *El Mundo*, *La Opinión* de Coruña con un discurso ultra conservador_*ABC* versus *Ara*_. Se trata de un discurso contundente, rígido y cruel con los primeros, y un discurso victimista sin aludir a ningún miembro del ejecutivo en particular, es decir, se ha centrado en su causa y no en las personas. El único que se ha mostrado su cambio de inclinación durante el tercer evento, ha sido algo sincero en declarar que no es tiempo adecuado para la independencia, mientras los primeros, han sostenido desde el primer evento que son contrarios al celebrar el derecho a decidir, se han concluido de no sentarse con la otra parte a dialogar, su lema era respetar la ley o ser castigado.

En la parte moderada tenemos a *El País*, *La Vanguardia*, *El Periódico*, la perspectiva moderadora y casi neutral, *El Diario* y *El Correo* vascos junto con *El Correo Gallego*.

En otras palabras, *El Mundo*, *ABC*, *La Opinión*: parte conservadora derechista, contraria al diálogo, y al nacionalismo en general. Uso de palabras gruesas.

- *Ara*, discurso conservador pero blando.
- *El País*, *La Vanguardia*, *El Periódico*. Discurso moderado con la vía del diálogo.
- *El Correo Gallego*, *El diario* y *El Correo Vascos*, discurso progresista, contrario a la independencia y con el diálogo

Conclusión

No todos los periódicos han caído en la estética de la diferenciación entre "ellos" y "nosotros", hay unos como *Ara* ni siquiera usaba términos diminutivos refiriéndose al bando contrario (el Estado español), lo que hace que su mensaje pudiera llegar a lo más lejos, algo que explica que llamar a

su enemigo en este caso opositor con menosprecio no hace más que derivar el interés del lector a otras perspectivas. En otras palabras, los medios catalanes pro independencia han creído en su causa desde el principio, se han concentrado en hacer llegar su mensaje a lo internacional, cuando los de ámbito nacional no han empezado a hablar del asunto hasta cuando la situación se puso más crítica, es decir, después de la celebración de la consulta ilegal el 1 de octubre de 2017.

En las muestras se han destacado la presencia o alusión a los excluidos o lo que llama Noelle Neumann, "los callados" en su obra "*La espiral del silencio*"; en la escena pública siempre gana aquello que expresa su ideología y su opinión con convicción. Mientras los callados son perdedores, porque como seres vulnerables temen a que les desatiendan de la sociedad y quedarse sin respaldo alguno, por eso, se juntan al bando vencedor por miedo no por convicción. Lo mismo ocurre con los nacionalistas, el nacionalismo catalán después del 1-O y la actuación desproporcionada de la policía española ganó más adeptos. Además, el sector catalán que está reclamando la independencia ha pasado a una centralidad y una destacada presencia social, mediática e institucional a principios del siglo XXI, formando parte del sistema, después de 30 años sentado en la marginalidad.

Al fin y al cabo, Cataluña es ante todo un ente plural y rural, de gente que, en su mayoría, no tiene nada que ver ni les interesa la imagen de una Cataluña ideal ya que muchos ciudadanos se sienten poseer una triple identidad, catalana, española y europea. Además, con la exclusión de la mayoría silenciosa está resurgiendo otra Cataluña diferente a la Cataluña nacional.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 936-9
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Prioritizing Factors Affecting Sexual Victimization of Children and Identifying Personality Characteristics of Sex Delinquents in Iran

DOI: https://doi.org/10.46398/cuestpol.4074.52

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Abstract

The increased commission of sex crimes in Iran highlights the need for more efforts to design strategies towards prevention and reduction of such crimes. Accordingly, the present research aimed to identify the factors affecting the sexual victimization of children and adolescents as well as to identify the personality characteristics of sex delinquents in the criminal justice system of Iran. The research method is mixed design in terms of data nature (qualitative and quantitative) and practical in terms of purpose. The qualitative section has reviewed the previous literature and the quantitative section has benefited from the analytic hierarchy process (AHP). This research has used the opinions of 13 experts in the field of crimes against children and adolescents, and 43 sex offenders. The research findings led to the identification of six factors (social, economic, psychological, legal, executive, media) that are effective on the prevention and postvention of sexually abused children and adolescents in Iran. The highest rank is related to the economic and social factors, and the lowest rank is related to the media factors. The results of this study showed that the identified parameters are approved by experts and have theoretical support that can be effective in reducing sexual delinquency.

Keywords: childhood and adolescence; sexual victimization; effective factors; analytical hierarchy process; Iranian law.

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Recibido el 15/07/22 Aceptado el 12/09/22

Priorización de los factores que afectan la victimización sexual de los niños e identificación de las características de personalidad de los delincuentes sexuales en Irán

Resumen

El aumento de la comisión de delitos sexuales en Irán destaca la necesidad de más esfuerzos para diseñar estrategias para la prevención y reducción de tales delitos. En consecuencia, la presente investigación tuvo como objetivo identificar los factores que afectan la victimización sexual de niños y adolescentes, así como identificar las características de personalidad de los delincuentes sexuales en el sistema de justicia penal de Irán. El método de investigación es de diseño mixto en cuanto a la naturaleza de los datos (cualitativos y cuantitativos) y práctico en cuanto al propósito. La sección cualitativa ha revisado la literatura previa y la sección cuantitativa se ha beneficiado del proceso de jerarquía analítica (AHP). Esta investigación ha utilizado las opiniones de 13 expertos en el campo de los delitos contra la niñez y la adolescencia, y 43 agresores sexuales. Los hallazgos llevaron a la identificación de seis factores (social, económico, psicológico, legal, ejecutivo, mediático) que son efectivos en la prevención de niños y adolescentes abusados sexualmente en Irán. El rango más alto está relacionado con los factores económicos y sociales, y el rango más bajo está relacionado con los factores mediáticos.

Palabras clave: niñez y adolescencia; victimización sexual; factores efectivos; proceso de jerarquía analítica; derecho iraní.

Introduction

Sex crimes are one of the oldest human deviations, whose traces can be seen throughout history (Sotoudeh *et al*, 2015). Sex crimes, behind murder and assault, are considered one of the most important crimes in the world, which greatly affect the victim and the society. These crimes are also of special importance in Iran due to Sharia and Islamic law. The Islamic government of Iran does not allow the occurrence and spread of such crimes in any way. Correspondingly, the use of various methods of prevention and postvention and reduction of these crimes, like other crimes, have always been considered by lawyers and experts (Tawhidi and Fazli, 2013: 72).

Sex crimes, in its general sense, include any type of sexual behavior for which punishment is determined by the law (Tawhidi and Fazli, 2013); and sexual harassment is defined as the imposition of sexual demand on a person, regardless of their consent, and this occurs when power relations are unequal (Andersen & Hysock, 2009: 234).

In Iranian law, sexual delinquency was criminalized for the first time in Article 3: "Legal bill regarding the punishment of carrying knives and other types of cold weapons and disturbing public order, security, and comfort", approved in 1957; at that time, the victims of this crime were only women and girls. In 1996, in Article 619 of the Islamic Penal Code of the Islamic Republic of Iran, the legislator included children in the territory of the victims of this crime; therefore, currently molestation of boys up to 15 full lunar years is included in the scope of this crime.

There is no specific definition of sexual harassment in the legal system of Iran. According to the United Nations, sexual harassment is any unwelcome physical approach, request for sexual service or other physical, verbal and non-verbal behaviors (Bagheri, 2017: 428).

There is no definition of sexual harassment in the law of Iran. Despite the inclusion of the Islamic Penal Code in Article 619 of the Penal Code, which refers to verbal sexual harassment implicitly, and Article 637 of the same law, which refers to sexual harassment other than rape (an act that violates chastity), and finally Article 224, which refers to rape, no precise definition of the term sexual harassment has been used. However, it should be noted that it is very difficult to prove sex crimes even in Hudud cases, and in many cases the perpetrator may go unpunished. The proof of this claim is related to Article 224 of the Islamic Penal Code.

Rape is also a divine Hudud and it has the aspect of divine right, and the perpetrator's repentance and confirmation of it for the judge, despite the conditions prescribed in religion and law, will cause the punishment to fall or be changed and reduced. Unlike qisas, which has the aspect of human rights and is not removed by the perpetrator's repentance, and the judge is not allowed to reduce or convert it without the consent of the victim or the guardians, in rape and fornication by force, according to Article 114 of the Islamic Penal Code, if the perpetrator of fornication repents before the crime is proven, and in some cases even after the crime is proven, and his repentance is verified by the judge, even without obtaining permission from the plaintiff, the judge can cancel the Hudud punishment of his execution.

However, based on Note 2 of the same law, regarding the general aspect of the crime, this aggressor should be sentenced to imprisonment or flogging of the sixth degree or both. On the other hand, with more precision in the mentioned legal cases, it seems that these actions were only to preserve the sanctity of Sharia and not to preserve the rights of the victim. In addition, Article 619 itself has caused a lot of confusion because it is not easy to distinguish what action is inside or outside of this article. It can be concluded that the failure to mention the evidence related to sex crimes causes the lack of follow-up by the law and also leads to the failure to preserve the dignity and framework of privacy of individuals.

It seems that the increasing spread of abnormalities in sexual relations in recent years shows the ineffectiveness of the legislator's reactive approach in the field of crimes and sexual abnormalities. Despite the excessive increase in the rate of committing sex crimes and the increase in the rate of sex crimes in the society, these crimes have not received much attention from experts and specialists in various fields for unknown reasons.

Considering the spread of these crimes and their appearance in virtual spaces and people's awareness of this type of behavior, it is considered necessary to criminalize and inform the family, children and adolescents; and this type of education has not yet been implemented in the media, schools, etc., and even their expression is considered obscene; since the reasons and factors for the occurrence of this crime are different and on the other hand, this class of society (children and adolescents) has a more sensitive and vulnerable psychological and social status than others; therefore, an effective method should be adopted according to the conditions and situation of these people.

Nevertheless, previous researches have each addressed one aspect of prevention and postvention of sexual victimization; accordingly, this research was designed and compiled with the aim of providing a model of prevention and postvention of sexual victimization of children and adolescents in the criminal justice system of Iran to answer the question, what factors are effective on the prevention and postvention of sexually victimized children and adolescents in Iran?

1. Theoretical principles

It should be kept in mind that sexual victimization is one of the issues that has roots in different fields and scientific fields, with multifaceted causes. Nowadays, due to the complexity and multidimensionality of the causes of sexual victimization and the ineffectiveness of single-disciplinary knowledge, there is a need for comprehensive and multidimensional investigations. Child abuse, like other phenomena, has causes and factors that become the basis and because of its occurrence. In the research literature, some studies presented the cause of sexual abuse in a general way.

Some sociologists and psychologists believe that some social and family factors, including the place of residence, migration from the village to the city, drug addiction, parental divorce, parental alcoholism, smoking, parental death, conflicts and fights in the family, staying alone at home, having a separate room, fear of the child at home affect the incidence of sexual victimization of children and adolescents (Delia, 2020; Savioja, 2019; Stewart *et al.*, 2019; Letourneau *et al.*, 2017; Woodward *et al.*, 2017; Arslan *et al.*, 2016).

Some researchers reported that economic factors such as parental occupation, occupation of sex delinquents, type of residential home, family income, offer of gift or money to sexually abused children, and the level of educational facilities of schools are involved in this field (Hosseini and Safari, 2014; Mohseni, 2012; Stewat *et al*., 2019; Letourneau et al., 2017; Kirby, 2015).

Psychological researchers believe that there are some factors affecting sex offenders, including the preference to wear clothes of the opposite sex, orientation towards the opposite sex, desire to have sex, enjoying sex, watching porn videos and photos, seeing the intimacy and sex of others, seeing the intimacy and sex of parents, having friends who have been sexually assaulted, corporal punishment of the child, swearing at the child in the family, lack of peace in the family, conflicts with siblings, strict parents, having strict teachers, making fun of the child in the family, aggressive behavior before sexual assault, depression of the sex offender, the sex offender's anger, high self-confidence in the sex offender, fear of the sex offender, isolation of the sex offender, lack of self-control in the sex offender, feelings of guilt or worthlessness in the sex offender, mental or practical obsession (Abed Khorasani, 2010; Amran *et al*., 2020; Siria *et al*., 2020; Savioja, 2019; McMunn, 2019; Woodward *et al*., 2017; McCuish and Lussier, 2017; Curcio *et al*., 2013).

Physicians and biologists introduced some influential factors in this field, including the weight of sexually abused children, skin color of sexually abused children, hair color of sexually abused children, eye color of sexually abused children, order of sexually abused children in the family, and physical condition (Smallbone *et al*., 2013; Letourneau *et al*., 2017).

In the law books and documents in the field of sexual delinquency, there are reports about the influencing factors in this regard, including the age of sexually abused children, the age of sex delinquents, the gender of sexually abused children, educational status, the number of family members of sexually abused children, age gap with friends, time of sexual assault of sexually abused children, age gap of sexually abused children with the person who sexually assaulted, and marital status of sex delinquents (Hosseini and Safari, 2014; Mohseni, 2012; Stewart *et al.,* 2019; Letourneau *et al*., 2017; Kirby, 2015).

In the last decade, media factors have shown their importance in this regard, including the use of satellites, the possession of personal mobile phones of sexually abused children, the use of mass media such as Telegram, WhatsApp, and Instagram (Bagheri, 2017; Letourneau et al., 2017; Choi et al., 2017; Wykes, 2017). According to the mentioned introduction, the theoretical foundations of sexual victimization can be classified into six categories including social, economic, media, psychological, legal and executive factors.

2. Methods

The research method is mixed design in terms of data nature (qualitative and quantitative) and practical in terms of purpose. The qualitative section has reviewed the previous literature and the quantitative section has benefited from the analytic hierarchy process (AHP). The statistical population in the quantitative section included all experts, specialists and professors related or informed in the field of sex crimes against children and adolescents in the country, so that we used the opinions of 13 experts in the field of criminal law and criminology.

Therefore, following the design of the questionnaire through AHP, experts in the field of criminal law and criminology were asked to rate each of the criteria and determine the priority of each of the criteria. In using AHP to solve the evaluation process, five basic steps were performed as follows:

- The first step: Forming the hierarchy.
- The second step: Determining the importance coefficient of criteria and sub-criteria.
- The third step: Determining the importance coefficient of items.
- The fourth step: Determining the final score (priority of items).
- The fifth step: Examining the consistency of judgments.

Expert Choice software was used for analysis and analytic hierarchy process.

Cattell's 16 Personality Factors questionnaire was used to determine the personality characteristics of sex delinquents, and 43 sex delinquents were used in this section.

3. Results

Ranking of factors affecting sexual victimization

In this research, the factors affecting sexual delinquency were identified through theoretical literature, which were divided into six categories including economic, social, psychological, legal, executive and media.

After developing the model, a questionnaire was designed and re-evaluated by experts to check the effect of each factor. The designed questionnaire is given in Table 1.

Table 1. Factors affecting sexual delinquency

No.	Effective factors	Number of experts' response to items			
		Low	Moderate	High	Very high
1	Social	0	0	3	10
2	Economic	0	0	4	9
3	Psychological	0	0	3	10
4	Media	0	0	4	9
5	Legal	0	0	4	9
6	Executive	0	0	5	8

Source: authors' elaboration.

After collecting the questionnaires, the results obtained from the responses were analyzed. In order for the degree of importance of each criterion to be known, specific numerical values were assigned to the options of the degree of influence (low=2, moderate=4, high=7, very high=10). By summing and averaging the obtained values for each factor, the effectiveness of the factors was determined. Factors that had an influence among variables as value as between 7 and 10 (very high influence) were considered as main criteria.

Table 2. Determining factors affecting sexual delinquency

No.	Main criteria	Mean value	Result
1	Social	9.307	Acceptable
2	Economic	9.076	Acceptable
3	Psychological	9.307	Acceptable
4	Media	9.076	Acceptable
5	Legal	9.076	Acceptable
6	Executive	8.846	Acceptable

Source: authors' elaboration.

According to Table 2, all determined factors were estimated to be among the effective factors on Sexual Victimization of Children ($\mu \geq 7$).

The results showed that the degree of inconsistency of six items of the pairwise comparison matrices were less than the standard limit (0.1) and

thus all items were used in AHP. The final matrix of pairwise comparisons was formed by using the six matrices of pairwise comparisons obtained by the experts; thus, the arrays of the final matrix of pairwise comparisons were formed from the average arrays of all six pairwise comparison matrices obtained from experts. Table (3) shows the final matrix of pairwise comparisons. The degree of inconsistency of the above matrix is 0.08, which is a verified value.

Table 3. The final matrix of pairwise comparisons for the factors affecting sexual victimization of children

Social	Economic	Psychological	Media	Legal	Executive
	3.36587	2.0	2.0	3.0	3.9487
		5.0	7.0	5.0	2.0
			7.0	1.43097	3.03143
				1.64375	4.04282
					3.5652
Incon:0.08					

Source: authors' elaboration.

The weight of the criteria

The weight and importance of each criterion was determined using the information of the final matrix of pairwise comparisons and Expert Choice 2000 software.

Table (4) shows the weight of each of the influential criteria.

Table 4. The weight of each of the criteria affecting sexual victimization of children

No.	Main criteria	Weight	Normalized weight	Rank
1	Economic	0.397	1	1
2	Executive	0.257	0.647	2
3	Psychological	0.143	0.362	3
4	Social	0.095	0.240	4
5	Legal	0.057	0.143	5
6	Media	0.051	0.129	6

Source: authors' elaboration.

As can be seen in table (4), the most influencing factors (weight) on sexual delinquency were economic (1), executive (0.647), psychological (0.362), social (0.240), legal (0.143) and media (0.129) factors, respectively. The degree of inconsistency was estimated to be 0.08, which is lower than the standard limit of 0.1; therefore, these results can be trusted.

B: Identifying the personality characteristics of sex delinquents

Table (5) indicates that the personality characteristics of sex delinquents included sociability, domination, boldness, suspicion, imagination, insecurity, self-righteousness, anxiety, objective reasoning, emotional instability, lethargy, non-adherence to the law, stubbornness, self-disclosure, conservatism and unrestrainedness (Table 5).

Table 5. Profile of Cattell's 16 Personality Factors questionnaire in 43 sex offenders

Factors	F-	Aligned scores										F+	Factors
		1	2	3	4	5	6	7	8	9	10		
Isolation	A				3		5	11	20	4		A	Sociability
Objective reasoning	B		11	23	8			1				B	Abstract reasoning
Emotional instability	C		22	15	5		1					C	Emotional stability
Submission	E				2	3		17	19	2		E	Domination
Lethargy	F	1	20		18		3			1		F	Vitality
non-adherence to the law	G	10	13	10	8		1		1			G	Adherence to the law
Caution	H	1	2		3			11	10	16		H	Boldness
Stubbornness	I	8	11	20		2		1		1		I	Gentle and sensitive
Trust	L		2	1		2		9	13	16		L	Skepticism
Pragmatism	M	1		2	1		2	12	10	15		M	Imagination
Self-disclosure	N		16	9	12	2	1		1	2		N	Accountancy
Safety	O		1	2		2		8	12	18		O	Unsafety
Conservatism	Q1		14	15	11			2		1		Q1	Empiricism
Reliance on others	Q2			1		2		10	12	18		Q2	Self-righteousness
Unrestrainedness	Q3	1	8	16	10	5		1		2		Q3	Perfectionism
Calmness	Q4			1		2		16	13	11		Q4	Anxiety

Source: authors' elaboration.

According to the information in Table 5, it can be said that the offenders are sociable in terms of personality, meaning that they are people with strong communication and have effective interactions with others.

- Another characteristic of sex offenders is domination, which includes a set of behaviors, customs, and principles that cause one person to dominate another person in the sexual dimension or lifestyle.
- Another personality trait of sex delinquents is boldness, indicating that most of them are fearless and bold people.
- Another personality trait of sex delinquents is suspicion, so they don't trust others most of the time.
- The results showed that the personality of sex offenders is imaginative and not pragmatism.
- Another personality trait identified for sex offenders is unsafety, which affects their communication, and they are distrustful of communicating with others, but at the same time, they try to adapt to others.
- Another personality trait of sex offenders is selfishness, so that these people are not able to sympathize and understand the feelings of others and exploit others as much as possible. Self-righteous people have unfavorable expectations from others, they need a lot of admiration from others and feel arrogance.
- Another personality trait of sex offenders is anxiety and indicates that they are restless people. Sex offenders suffer from other personality characteristics, including objective reasoning, emotional instability, lethargy, non-adherence to the law, stubbornness, self-disclosure, conservatism, and unrestrained Ness, which are considered negative personality characteristics.

4. Discussion

The results of our analyses revealed that the most influencing parameters on sexual delinquency were economic, executive, psychological, social, legal and media factors, respectively.

One of the effective factors that may affect the sexual victimization of children is the economic factor, and criminologists have paid special attention to it and have written about this factor in most of their works. Therefore, criminologists have agreed on the principle that "the economic factor is effective in sexual victimization" and if there is a difference in some cases, it is due to the effect of different aspects of this strong factor (Stewart *et al*, 2019).

Economic poverty can be one of the important factors of committing people to all kinds of deviations such as theft and paraphilia, especially in adolescents and young people, and they will leave their negative impact on human life in any case (Letourneau *et al*., 2017). Deprivation of food and clothing, illiteracy, backwardness, ignorance and superstitions, insufficient hygiene and all kinds of mental and physical diseases and even wars and bloodshed at the global level are all rooted in material needs and poverty.

Unemployment, which is the result of the economic crisis, causes unemployment and puts people in trouble and is the basis for committing various crimes (Smallbone *et al*, 2013). Poverty in the family causes parents to be unable to fulfill their duties in order to meet the needs of life, in such a way that they abandon raising their children and start working outside the home. Inadequate housing for families, lack of living facilities, unhealthy entertainment, inability of families to protect their children from corruption in unhealthy environments and socializing with unscrupulous people are all caused by poverty and helplessness of families (Letourneau *et al*, 2017; Stewart *et al*, 2019).

Sexual victimization may occur due to social factors, because criminology of some social factors is examined under the title of social environment, which is a part of social factors (Savioja, 2019). In this regard, we analyze some of the social factors under the same title. Social factors cause an increase in sexual delinquency and victimization, which are problems that have a wide scope throughout society; in other words, sexual delinquency also increases with the increase in the extent of family disorder.

The social and economic dimensions together show the special importance of these two, so that the inappropriate conditions of each of them create many problems for families, such as the increase of sexual delinquency in the society (Smallbone *et al.,* 2013). The family is one of the most important factors affecting the society; as far as it is possible to say that no society can be healthy unless it has healthy families.

It is obvious that any failure in the functioning of the family leaves adverse effects on the child's behavior, which can have negative consequences for the entire society. As prevention is better than treatment to prevent disease, it is necessary to take preventive actions to prevent sexual delinquency in order to finally achieve a healthy society (Badali, 2019).

Psychological factors originating from the family and school environment can have an effect on delinquency and sexual victimization of children and adolescents. Usually, the parents of delinquent children or adolescents are either very violent and strict in terms of behavior, or they are very inattentive and negligent towards their children (Amran *et al.,* 2020). Parents of this group of children and adolescents often suffer from problems in communicating with their children and cannot properly perform their duties towards their children (Curcio *et al*., 2013).

Researchers and scientists have found the fact that family factors are among the crime factors in the society that provide the causes of crime. Criminologists also confirm that the family is the most important center for the education of children's delinquency and victimization. The results of most studies showed that family factors have a significant effect on sexual delinquency and victimization of people (Badali, 2019; Kirby, 2015; Curcio *et al.,* 2013; Woodward *et al*., 2017; Savioja, 2019).

Considering the fact that the health of the society depends on the health of the individual and the family, extra efforts should be made to eliminate the causes of sexual abuse. It should be kept in mind that despite the control of social, economic, family and psychological factors, we still cannot hope that sexual victimization and delinquency can be controlled. Because researchers have acknowledged in the last two decades that media factors and mass media have undeniable effects on sexual delinquency and victimization (Wickman, 2017; Wykes, 2014).

The media factor is one of the other influential factors identified in this research. Human achievements in relation to industry and new technologies, in addition to benefits and prosperity, have always brought harm. One of the clear examples of these innovations is the creation of social networks (Razavi Fard *et al*., 2017). While creating interaction and multi-way communication among users, these networks make it possible to share interests, communicate with other cultures, beliefs, and religions, and obtain information on various topics.

In addition to these advantages, the incorrect use of these networks can lead to irreparable harm, such as the endangerment of personal privacy, the loss of family relationships, and the phenomenon of sexual abuse. Sexual delinquency in social networks can be defined as the process of sexual victimization of people through the emergence, growth, development and consequently the use of information and communication technology. This crime can manifest itself in various forms, including sexual harassment, extortion, and pornography.

Therefore, identifying the sources of this damage both at the social-family level and within social networks requires the provision of a complete and comprehensive program in order to provide the possibility of curbing a wide range of sexual injuries in this communication technology, on the one hand, and all affected persons should be included in its measures by identifying different classes of sexual victims, on the other hand (Razavi Fard *et al*, 2017).

Another factor affecting sexual delinquency is executive factors. Executive factors refer to the strict supervision of executive agents on harmful environments; monitoring the correct implementation of preventive and protective rules and regulations; establishing a management organization

for the prevention of sex crimes; cooperation of governmental and non-governmental institutions in order to prevent sex offenders; identifying vulnerable and high-risk people; and providing suitable platforms for not committing sex crimes. Some researchers including Bagheri (2017), and Tawhidi and Fazli (2013) have studied the effect of executive factors.

Another identified influential factor on the sexual delinquency of children and adolescents is related to legal factors. The results obtained from the interviews with experts and the classification of the results showed that legal factors such as revision of laws and regulations, maximum use of decriminalization methods, emphasis on restorative justice, formulation of preventive (active) criminal policy against sexual harassment, adopting situation-oriented preventive measures (situation-oriented), and formulating counter-criminal policy (reactive prevention) can be effective in preventing sexual victimization of children and adolescents.

The research literature supports the obtained results, so that in accordance with the results of the present study, Bagheri (2017) also found the effect of the mentioned factors to be effective in preventing sexual victimization of children and adolescents.

Conclusion and Suggestions

The results indicate the identification of six factors affecting the sexual victimization of children and adolescents; among the factors, the highest rank was related to economic factors and the lowest rank was related to the media factor. Therefore, according to the findings of the research, the prevention and postvention model is presented for each factor, so that the use of the results of this research and the desired models for the identified factors is suggested for the officials and planners.

Table 6. Suggested prevention strategies in the field of factors affecting sexual victimization and delinquency

Dimensions	Prevention strategies
Economic factors	Rapid development of educational indicators in schools
	Rapid development of entrepreneurship in society
	Conducting vocational training and entrepreneurship courses
	Economic rehabilitation of sex delinquents and the family of sex victims

Social factors	Control of crime-prone places and neighborhoods through both governmental and non-governmental institutions
	Family supervision and control over children in unsafe environments
	Parental supervision and control over friends and acquaintances of sexually abused children
	Education of sexual care to children in families and schools
	Identifying sexually deviant people in society and monitoring them
	Identifying vulnerable points and social crisis in urban, rural and informal settlements and planning to improve their situation.
	Continuous assessment of social health, especially sexual delinquency, and adoption of mechanisms to reduce it.
	Providing various facilities and opportunities for the leisure time of the community members, especially children and adolescents.
Psychological factors	Creating a healthy environment without fear in the family
	Educating families about proper parenting
	Teaching the correct and rational treatment of children with sex offenders
	Existence of diagnostic tools and equipment to determine the level of readiness of criminals to leave care facilities
Legal factors	Maximum use of judicial solutions
	Developing preventive (active) criminal policy against sexual harassment
	Adopting situation-oriented preventive measures
	Identifying the legal gap in the field of sexual delinquency
Media factors	Educating families to prevent sexual delinquency by national media
	Non-use of satellite in the family
	Controlled use of mass media for children under 18 years of age
	Proper sex education in schools and family
	Using the capacity of virtual space and social networks to inform, raise awareness and increase people's sensitivity to sexual injuries.
	Using the capacity of mass media in the field of information and awareness in the field of controlling and reducing sexual harm.

Executive factors	Cooperation of governmental and non-governmental institutions to prevent sex offenders
	Detailed supervision of executive agents on harmful environments
	Monitoring the correct implementation of preventive and protective regulations
	Providing appropriate platforms for not committing sex crimes
	Forming a management organization for the prevention of sex crimes
	Identifying vulnerable and high-risk people
	Setting up a monitoring system for the prevention of sex crimes

Source: authors' elaboration.

Study limitations

This research was conducted cross-sectionally, which makes it difficult to draw conclusions about causality.

Acknowledgments

The authors express their gratitude for the sincere cooperation of the PhD students to examine the "credibility" criterion. This article has been adapted from a PhD thesis in criminal law and criminology at the Faculty of Humanities, Ardabil Branch, Islamic Azad University, Ardabil, Iran, with the approval code of 139891666.

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Cuestiones Políticas Vol. 40, N° 74 (2022), 953-974
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

La reincidencia culposa: un análisis jurídico y doctrinario

DOI: https://doi.org/10.46398/cuestpol.4074.53

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Resumen

Se analiza la figura de la reincidencia culposa tipificada en el Artículo 57 del Código Orgánico Integral Penal Ecuatoriano, esto respecto con la existencia de posibles vulneraciones a principios básicos del derecho, como la proporcionalidad y la culpabilidad, además de su aplicación como agravante en casos de peligrosidad del delincuente y potencialidad para volver a cometer infracciones, destacando el incumplimiento de los fines del derecho penal. La eventual divergencia entre la legislación ecuatoriana, los tratados internacionales y las posiciones jurisprudenciales son temas para destacar en el trabajo. Se trata de una investigación de carácter cualitativo y de tipo documental, enfocada en construir una correcta diferenciación de la reincidencia genérica y específica, para evitar futuras transgresiones a los derechos de los condenados por reincidencia culposa. Se concluye que la aplicación del Artículo 57 del COIP sanciona la conducta de la persona, lo que vulnera derechos inherentes a los ecuatorianos y los extranjeros residentes en el país, pues se toma en cuenta la peligrosidad del individuo como identificativo del reincidente, esto resulta en una tendencia previa al juzgador al momento de sentenciar, incumpliendo con la finalidad de mantener un orden jurídico que evita poner en una situación vulnerable al reincidente.

Palabras clave: culpa; delitos; principios; proporcionalidad; reincidencia.

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Recibido el 07/07/22 Aceptado el 22/09/22

Guilty recidivism: legal and doctrinal analysis

Abstract

The figure of culpable recidivism typified in Article 57 of the Ecuadorian Organic Integral Penal Code is analyzed with respect to the existence of possible violations to basic principles of law, such as proportionality and culpability, in addition to its application as an aggravating factor in cases of dangerousness of the offender and potential to commit infractions again, highlighting the non-compliance with the purposes of criminal law. The possible divergence between Ecuadorian legislation, international treaties and jurisprudential positions are issues to be highlighted in the work. This is a qualitative and documentary type of research, focused on building a correct differentiation between generic and specific recidivism, to avoid future transgressions to the rights of those convicted for guilty recidivism. It is concluded that the application of Article 57 of the COIP punishes the conduct of the person, which violates the inherent rights of Ecuadorians and foreigners residing in the country, because it takes into account the dangerousness of the individual as an identifier of the recidivist, this results in a previous tendency to the judge at the time of sentencing, failing to comply with the purpose of maintaining a legal order that avoids putting the recidivist in a vulnerable situation.

Keywords: guilt; offenses; principles; proportionality; recidivism.

Introducción

La figura de la reincidencia ha sido constantemente un tema de amplio análisis dentro de la materia penal, por constituirse una de las posibles formas de vulneración a principios y derechos, por ello, en la presente investigación, se aborda un estudio doctrinario y jurisprudencial sobre la reincidencia culposa en la legislación penal ecuatoriana (Ferri, 1895). Su efectividad ha sido cuestionada bajo diversos puntos de vista, sea desde la dogmática hasta la política criminal, sin embargo, esto lleva a analizar, a fondo, para conocer las leyes internacionales y formular una comparación con la normativa nacional, hasta llegar a una consolidación de una reforma para la ley penal vigente.

Por ello, el centro de la presente investigación es analizar el Artículo 57, inciso 2, respecto con la reincidencia culposa, para establecer si existe una vulneración a principios que se encuentran en tratados internacionales, así como encontrar las diferencias con la norma suprema, con el fin de explicar la base de la reincidencia desde la necesidad de la pena, es decir, aceptar la agravación del injusto culpable en virtud del nuevo hecho criminal realizado por un sujeto que, normativamente, representa un peligro para la sociedad.

Resulta complicado establecer un concepto sólido sobre reincidencia como lo demostraron las tentativas en el Congreso Internacional de Criminología de 1955 y en el Curso Internacional de 1971, esto debido a varias razones, como la disparidad de presupuestos existentes en la legislación comparada y los intereses de juristas que discrepan en las delimitaciones conceptuales, sin embargo, durante el desarrollo de la presente investigación, se opta por una delimitación del objeto de análisis, una delimitación más amplia que permite adecuar a la convicción de la interrogación jurídica sobre la reincidencia, entendida esta como un plus de gravedad en la consecuencia de un delito a raíz de delitos anteriores que han sido juzgados (Carrara, 2000).

Desde el siglo XVIII hasta la presente fecha, se han creado muchas explicaciones para la reincidencia, por una parte, se procura compatibilizarla con principios del derecho penal y, por otra parte, separarla, totalmente, de estos, por ello, se crean un sinnúmero de teorías que se detallan, como el análisis de la "doble lesión" con criterios emitidos por Carrara (2000) y Antolisei (1996), los que se inclinan por especificar sobre los daños eventuales que se producen a raíz de la aplicación de la reincidencia (Zaffaroni, 1993).

"Se ha dicho que la aplicación de esta agravante supone la vulneración de la prohibición del *bis in ídem*, al determinarse el monto de la pena tomando en consideración un hecho que anteriormente fue sancionado" (Alcocer, 2016: 17), así como determinar que, con la reincidencia, el Estado impone una sanción más grave con base en el cometimiento de un delito anteriormente sancionado (Díez, 1986). Por otro lado, el principio de proporcionalidad también ha sido puesto en tela de juicio, pues, con la reincidencia, la cantidad de pena supera el daño efectivamente ocasionado, con lo que se afirma que la sanción más grave carece, en este caso, de legitimidad por no sustentarse en una real afectación a un bien jurídico (Bustos, 1989).

1. La reincidencia

El ser humano y sus distintas actividades diarias, desde los comienzos de la historia, se han distinguido de las acciones incorrectas, perjudiciales o peligrosas para la sociedad o los individuos que la componen, de otras que son imprescindibles, útiles y necesarias. Varias de las primeras resultan reprochables al grupo según el nivel de gravedad que se le imponen, así, quedan terminantemente prohibidas, previniéndose las respectivas sanciones para quienes las rehacen pudiendo evitarlo.

El conocimiento de los antecedentes legislativos de una institución jurídica facilita la comprensión de su contexto actual, por ello se considera

necesario comenzar con la aproximación histórica de la reincidencia a grandes rasgos, la cual se genera a partir de la presentación de un panorama general de la agravante a través de los tiempos.

Como lo dijo Martínez (1971: 15), en este recorrido histórico se identifica la tendencia a incrementar la pena como expresión de rechazo frente a la recaída en el delito. Sin embargo, en las culturas más antiguas, el reincidente no era objeto de los castigos más severos dada la gran cantidad de delitos que se castigaban con la pena de muerte y la dificultad para identificar a los autores que ya habían sido previamente condenados.

Este último obstáculo fue superado al comenzar la práctica de marcar corporalmente a los condenados, con el propósito de reconocer a aquellos que por su conducta iban en contra de la Ley, se utilizaban marcas en la piel realizadas con hierros candentes, también dando latigazos en la espalda y las piernas para marcar al esclavo que había intentado huir o al ladrón; la flor de Liz, en la que tatuaban con un hierro candente la frente, el pecho o la espalda a los condenados según el delito, pero estas prácticas no solo eran inhumanas; no garantizaban conocer la identidad real del supuesto delincuente y mucho menos del reincidente.

Resuelto el problema de reseñar al reincidente con dichas prácticas, a este le aplicaban un castigo con mayor rigor punitivo que el anterior, situación que tiene origen en los mismos albores de la civilización. De acuerdo con Martínez (1971: 17), los datos conocidos al respecto, como los presentes en el Manava Dharma Sastra, permiten llegar a dicha conclusión. Este escrito brahmánico del año 500 a. C. indicaba que: "El Rey castiga primero con la simple amonestación, después con severos reproches, la tercera vez con multa y finalmente con la pena corporal".

Asimismo, la antigua civilización China para el año 2285 a. C., tenía definido en su código penal el castigo de la muerte para los delitos premeditados y para los reincidentes. Por otra parte, en el Derecho hebreo, S. XIII a. de C., el delito se castigaba con azotes y la reincidencia con una cadena perpetua que constituía finalmente en la pena de muerte de manera indirecta. En el Levítico se describe la inmensa cólera que recaerá sobre quienes desobedezcan, de manera continuada, los preceptos divinos.

El Derecho romano reaccionó a la recaída en el delito, particularmente en la reincidencia específica, donde se tenía en cuenta la repetición en determinadas faltas (González, 1988, p. 8). El Derecho canónico se acogía también a este tipo de reincidencia, donde se castigaba con pena agravante en los casos de herejía y concubinato.

Asua (1982, p. 8) indica que, en el siglo XVII, Farinacio presenta la expresión conocida como: "*Consuetudo delinquendi poenam delicti auget regulariter*", haciendo referencia al aumento de pena para la costumbre de delinquir. En el siglo XVIII comienza la unificación de los diversos códigos

existentes en Europa, con lo que se reconstruye la reacción frente a la recaída en el delito.

Según el citado autor, pese a toda la configuración histórica de la reincidencia, no es hasta el siglo XIX que realmente se da una estructura de reacción frente a la recaída en el delito, luego de que el movimiento codificador europeo dotara esta institución jurídica de perfiles definidos, garantías jurídicas y de aplicación.

Según lo anterior, se puede afirmar que el concepto de reincidencia tal y como se conoce hoy en día es, en general, el mismo que se configura desde el siglo XIX, aunque su aplicación está sujeta al contexto en el que se desarrolle (Ossa, 2012).

Así, en el estudio del derecho romano, se evidencia la reincidencia; sin embargo, se destacan ciertas particularidades específicas e importantes:

> En Roma se tenía en cuenta, sobre todo, la reincidencia específica, especialmente limitada a la hipótesis de identidad de delitos; a reincidencia genérica era, como máximo y solo para los delitos en los que ello fuera posible, un criterio de agravación atribuido al arbitrio del Juez (Martínez, 1971: 14).

Otra parte clave dentro del derecho romano y la reincidencia es que "no existía una exacta distinción entre reincidencia, reiteración y concurso de delitos; no había, por tanto, un principio general sobre la reincidencia como circunstancia agravante, ni una norma fija de agravación" (Martínez, 1971: 14).

La Iglesia y el derecho canónico no tenían un concepto explícito sobre la reincidencia ni un término técnico para expresarlo, además, existía cierta confusión entre pecado y delito, así como entre reincidencia y repetición criminal, considera esta agravante en determinados delitos, entre ellos, la herejía y el concubinato (Martínez, 1971).

> El Concilio Tridentino llegó a distinguir, para ciertas infracciones, entre mera repetición y reincidencia (específica) y entre reincidencia tras la condena y reincidencia tras la expiación. Se ha discutido si en este Concilio se recogió el criterio de la incorregibilidad del reincidente. El vigente Código de Derecho Canónico disciplina tanto la reincidencia genérica como la específica (Canon 2.208).
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> En el derecho germánico era prácticamente desconocida la reincidencia; solo las Leyes de Liutprando y las Capitulares de Cario Magno imponían una sanción específica, limitadamente respecto al hurto. También la Carofina de Carlos V castigaba el tercer hurto con la pena de muerte, pero no existe una línea de identificación clara entre reincidencia, repetición criminal y habitualidad (Martínez, 1971: 14)

"El término de "reincidencia" proviene del latín *recidire*, el cual significa recaer, volver a incidir, reclama la idea de algo que se repite y comprende

una especie de recaída" (Martínez, 1971, citado por Hernández *et al.*, 2018: 115). Sin embargo, el concepto técnico acogido por los legisladores trata de que esta recaída es el cometimiento de un delito por parte del infractor anteriormente condenado por otro delito con sentencia ejecutoriada; por ello, este retorno al crimen está basado en una realidad que se ha dado en todo el desarrollo de la historia, así, el derecho penal lo ha tomado en cuenta para que la rigurosidad de la reacción punitiva sea efectiva (Martínez, 1971).

Hay autores explican la existencia de esta figura en la peligrosidad del agente, y en la necesidad de defender a la sociedad del mismo mediante el aumento de las penas y aislamiento del sujeto en cuestión. Así lo expresa Joaquín Pacheco, al distinguir entre clases de reincidencias: solo la reincidencia especifica debería tenerse como agravante, ya que la reincidencia falsa o ficta, al carecer de delitos análogos, va a contrapelo de la razón: "el que conspira por segunda vez, después de penado la primera, acredita que es un incorregible conspirador; el que conspiró una vez y después riñe con otro, no acredita nada que sea análogo" (Pacheco, 1856, citado por Sanhueza, 2015: 7).

Actualmente, en el Código Orgánico Integral Penal (COIP) se estipula, respecto con la figura de la reincidencia, lo siguiente.

> La comisión de un nuevo delito por parte de la persona que fue declarada culpable mediante sentencia ejecutoriada.
>
> La reincidencia solo procederá cuando se trate de la misma infracción penal o se haya atentado contra el mismo bien jurídico protegido en cuyo caso deberán coincidir los mismos elementos de dolo o culpa.
>
> Si la persona reincide se le impondrá la pena máxima prevista en el tipo penal incrementada en un tercio (Artículo 57) (Asamblea Nacional de la República del Ecuador, 2014: 14).

A partir del punto social acerca de la figura de la reincidencia, se observa que la prioridad del legislador es crear precedentes punitivos, para evitar la repetición de los delitos bajo el criterio de proteger la paz pública y la prevención de futuros delitos; en el COIP, existen artículos que hacen referencia a la reincidencia, como el Artículo 630, número 2 y 3, para la suspensión condicional de la pena, "que la persona sentenciada no tenga vigente otra sentencia; que los antecedentes personales, sociales y familiares del sentenciado (…)" (Asamblea Nacional de la República del Ecuador, 2014: 103). Asimismo, el término "reincidencia" también se encuentra en el Artículo 725 del COIP: "sanciones. - Se impondrán las siguientes sanciones dependiendo de la gravedad y reincidencia (…)" (Asamblea Nacional de la República del Ecuador, 2014: 118).

Con la finalidad de precisar que la reincidencia va en contra de principios constitucionales, se citan dos artículos de la Constitución de la República del Ecuador, así, en su Artículo 11, número 2, se señala que "nadie podrá

ser discriminado por razones de (...) pasado judicial", adicionalmente, en el Artículo 76, número 7, letra i de la Constitución, se establece que "nadie podrá ser juzgado más de una vez por la misma causa y materia" (Asamblea Nacional Constituyente de la República del Ecuador, 2008).

Al considerar a la Constitución como Norma Suprema que prevalece sobre cualquier ley, como lo estipula el Artículo 424, no es menos cierto que toda la política pública respecto con la seguridad ciudadana hace prevalecer la normativa establecida en el COIP, por lo que se ha sostenido que la reincidencia se convierte en la evidencia fáctica que determina, en última instancia, el dictamen condenatorio por parte del juez.

Por lo expuesto, se puede establecer que la reincidencia según el COIP se basa en un incremento de la pena máxima en un tercio, además para poder acceder a una suspensión de la pena, el delincuente no debe representar ninguna peligrosidad y no contar con antecedentes personales, de esto se puede aseverar que la política penal representa una total discriminación hacía los infractores. En otras palabras, se podría imaginar que quiere implementar la política de tolerancia cero, mano dura y mayor sanción.

En este escenario político social se da la reincidencia en nuestro ordenamiento jurídico, se creó un derecho penal de autor, en el cual, "lo que hace culpable aquí al autor no es ya que haya cometido un hecho, sino que solo el que el autor sea ‹tal› se convierte en objeto de la censura legal" (Bockelman, 1939, citado por Chávez, 2016: 32).

1.1. Definición de reincidencia dolosa

Si bien la reincidencia ha sido tratada como un elemento que ha necesitado ser tomado en cuenta en el historial de quienes han de ser juzgados por el cometimiento de acciones listadas dentro de los códigos penales presentes en cada lugar y tiempo, al existir esta división entre culpa y dolo, es posible entender, de una nueva forma, a estos dos. En el caso de la reincidencia dolosa, se compone de varios elementos compartidos con lo que ha señalado el Artículo 57 del COIP, el que ha presentado a la reincidencia de manera total y unitaria; pese a ello, en el caso de la reincidencia dolosa, se pueden tomar varios puntos como compatibilidad entre lo descrito en el artículo y lo que se ha considerado como reincidencia dolosa. De este modo, lo que compartirían estas dos definiciones es la existencia de la comisión de un nuevo delito igual a un delito previamente juzgado y por el mismo sujeto.

Ahora, para aludir en sí a la reincidencia dolosa, es menester iniciar con el hecho de que, en esta clase de reincidencia, se ha de tomar en cuenta las acciones que ha realizado el sujeto, las que se han visto meditadas y tomadas en plena consciencia, y dejan ver que su materialización se ha dado, de manera ordenada, para trazar una vía en la que se pueda lograr

conseguir un objetivo determinado; dicho objetivo a lograr es considerado como un delito de carácter doloso dentro del Código Penal que rija en el espacio temporal y territorial, además, que cumpla con todos los elementos de tipicidad señalados dentro del código. Sumado con todo lo precedente, indudablemente, se ha de tener, dentro de los elementos que conformarían la reincidencia dolosa, la existencia de una sentencia ejecutoriada que pueda determinar la presencia de un delito cometido y motivo de que se pueda hablar de reincidencia.

Para aclarar un poco más lo que se ha intentado expresar, es posible empezar con que, en el historial penal de un sujeto determinado, se encuentra el cometimiento de un delito que se ha visto realizado nuevamente, así, es claro que su realización se ha dado mediante acciones que demuestran pleno conocimiento, consciencia y dolo por parte del sujeto activo.

1.2. Características

De la anterior definición de la reincidencia dolosa, se pueden obtener, como características, que se necesita de la presencia de una sentencia ejecutoriada, acciones conscientes, nuevo delito con los mismos elementos de tipicidad del juzgado y dolo. Al tener presentes las cuatro características que se han considerado como parte importante de lo que conforma la reincidencia dolosa, es necesario entrar mucho más en detalle en cada una de estas.

En el caso de la primera característica, es la existencia de una sentencia ejecutoriada; cuando se alude a que exista este elemento, se ha de ver que es algo esencial para iniciar el tema de la reincidencia, pero no es únicamente porque brinda pie a la reincidencia, sino que suma información necesaria para considerar, con el fin de calificar la reincidencia en el punto de dolosa. Lo dicho ocurre debido a que, en dicha sentencia, se han de encontrar los elementos del delito cometido con anterioridad, lo que permitirá que se vea si el cometimiento del nuevo delito puede caer dentro del mismo tipo, inclusive, esto permite que se llegue a conocer si ha existido una evolución en la forma del cometimiento del delito y si se pudiese llegar a tratar del inicio de una carrera enfocada en ciertos tipos de delitos por parte del sujeto activo.

Ahora bien, cuando se hace referencia a las acciones conscientes el sujeto activo, se debe aclarar que son aquellas que, una vez materializadas, han sido necesarias para que se llegue a producir el cometimiento del nuevo delito. Estas acciones han de ser, en su mayoría, tomadas de manera concienzuda, lo que forma una continuidad que llega a forjar el camino adecuado para alcanzar el objetivo propio del sujeto activo; se podría explicar más tangible mediante un ejemplo, podría suponerse que el sujeto activo realiza la compra de una reproducción técnica de una pintura en óleo

y publicidad, de manera privada, sobre dicha pintura sin mencionar que se trata de una reproducción.

Posteriormente, se encuentra que varias personas han ofertado por dicha pintura, creyendo que se trata de la pintura original por como fue ofertada, así, luego de realizado el pago, una de las personas recibe la reproducción. En ese caso, resulta obvio que la consecución de acciones formó el camino adecuado y necesario para que se llegara a obtener la venta de la reproducción; en definitiva, se hablaría de una estafa.

Cuando se alude a un nuevo delito con mismos elementos de tipicidad, es claro que se hace referencia a que se realizará la comparación con el delito juzgado en la sentencia ejecutoriada, esto es lo que conecta a estas dos características, pues se alimentan mutuamente. Lo que se cree que se ha de realizar es que, tomando como referencia lo que señale la sentencia ejecutoriada, se pueda establecer una comparación adecuada en la que se proceda a revisar, detalladamente, los elementos de la tipicidad, para que se asegure que existe la reincidencia y la aplicación del aumento de la pena, motivo de que la reincidencia dolosa ocurra de manera justa. Finalmente, en el caso del dolo, es innegable que se ha de tratar de la intención de causar daño que posee el sujeto activo al momento del cometimiento del delito, asimismo, debe tomar en consideración que es esta partícula la que da el sentido a que esta clase de reincidencia exista y se divida de la reincidencia culposa.

1.3. Problemática en el actual entorno jurídico respecto con la reincidencia

Actualmente, existe una diversidad de posturas respecto con la doctrina y la reincidencia, así, se ha desarrollado, dentro de la materia penal, un avance al enfoque de esta figura; en primer lugar, históricamente, se ha identificado con la teoría de la mayor alarma social, para luego verse enmarcado con la teoría de la lesión de un bien jurídico diverso de la lesión más profunda del mismo jurídico y, en la actualidad, la teoría que fundamentan la reincidencia en la culpabilidad.

La Constitución de la República del Ecuador establece, en su Artículo 393, lo siguiente.

> El Estado garantizará la seguridad humana a través de políticas y acciones integradas, para asegurar la convivencia pacífica de las personas, promover una cultura de paz y prevenir las formas de violencia y discriminación y la comisión de infracciones y delitos (Asamblea Nacional Constituyente de la República del Ecuador, 2008: 119).

Por ello, se hace un énfasis en la creación de políticas criminales que deben ser reguladas y planificadas por órganos especializados, lo que tiene íntima relación con las políticas públicas en lucha de impunidad, así como

el respeto de los derechos de los individuos que forman parte del territorio ecuatoriano

> El garantismo estimula el espíritu crítico y la incertidumbre permanente sobre la validez de las leyes y de sus aplicaciones, de manera que, como su propia denominación indica, se aboga por un derecho penal restringido a lo mínimo necesario, en correlación con el derecho valido y efectivo (Cornejo, 2016: 220).

En este sentido, es necesario determinar que el COIP tiene contenido de carácter garantista, dentro del que se debe destacar un aspecto crucial como la finalidad de la pena, entendida esta como la rehabilitación y la resocialización.

Así, Barbero Santos "explica que el sistema penitenciario basado en la resocialización y en la rehabilitación, apenas ofrece resultados apreciables en la prevención de la reincidencia (...)" (García, 1996: 85). Por su parte, Foucault (1976) señaló que la prisión conducía a un resultado opuesto, pues era una escuela de delincuencia, así, los más finos métodos de los aparatos policial y judicial, lejos de asegurar una mayor protección contra el crimen, llevaban a lo contrario, es decir, reforzamiento del medio criminal por mediación de prisión.

La realidad de la situación penitenciaria en Ecuador es compleja, según Núñez (2006: 6), con base en tres características que definen la situación de las personas encarceladas en Ecuador: "la corrupción del sistema penitenciario, la dependencia económica del preso de su familia para poder sobrevivir el encierro y la violación sistemática de los derechos humanos de las personas recluidas". Por ello, al aplicar la reincidencia en delitos culposos, es posible que se vulneren los derechos de estas personas que han cometido una infracción, más cuando se trata de sancionar a aquellos en los que se aplica esta figura por cometerlos con culpa.

En varios países latinoamericanos, entre ellos, Ecuador, entre el 30 % y el 50 % de las personas que han salido de los sistemas penitenciarios cerrados suelen ser condenadas nuevamente y vuelven a las cárceles antes de los cuatro años (Martínez, 1971), lo que señala que la reclusión aporta poco a la rehabilitación de los encarcelados, además, se trata de un indicador de la efectividad de las medidas preventivas del crimen y la seguridad ciudadana al cabo de la experiencia carcelaria, por lo tanto, su decremento sistemático es un efecto deseable y debe ser trabajado de manera más eficiente, pero no con la idea de imponer una pena por reincidencia, especialmente, en delitos de culpa.

En efecto, las cifras demuestran la reincidencia que tiene Ecuador, según Guerrero y Campaña (2015):

> (...) el nivel de reincidencia elevada en el Ecuador se ubica en un 46% aproximadamente, es decir, que casi la mitad de las personas privadas de libertad de los centros de rehabilitación social, vuelven a entrar en conflicto con la ley

> por lo que la reinserción del delincuente debe ser considerada uno de los ejes primordiales de la rehabilitación social el cual es causante del desequilibrio del sistema de rehabilitación social por su nivel de reincidencia (Citados por Chávez, 2016: 33).

En América Latina, la desaparición de la reincidencia parecería ser una realidad con el paso del tiempo, así, como antecedente, es importante destacar el año 1984, cuando Brasil redujo los efectos de la figura mencionada y eliminó las medidas post-delictuales, asimismo, en 1985, desaparecieron ciertas normas del código uruguayo. Sin embargo, es un tema de controversia al refutar la importancia de la reincidencia desde la visión político-criminal, mencionando casos de multireincidentes que, al evitar esta norma, producirían efectos negativos para la sociedad; la huella que tiene la prisión sobre la conducta de la persona que ha cumplido con una condena es relevante.

> Al respecto, Molina (1988) indica que hay una relación existente entre la estancia en prisión y el comportamiento posterior del encarcelado, donde el sistema penal interviene a través de la imposición de penas que privan de la libertad, las cuales, en lugar de reeducar al delincuente, consolidan su identidad como tal, y en la mayoría de los casos incentiva el ingreso a una verdadera carrera criminal (Ossa, 2012: 131).

Así, el sistema penitenciario tiene una influencia significativa en la persona reincidente, en primer lugar, la acoge en un centro de privación de la libertad, la rehabilita para la vida en la sociedad y le presenta un abanico de motivos para comprender lo indebido de cometer un delito.

En tal marco, se daría un gran paso con la eliminación de la reincidencia culposa para la reparación del derecho penal de garantías, pues son años de constantes desvíos de principios fundamentales como el *ne bis in ídem*, culpabilidad y proporcionalidad, especialmente, del estricto derecho penal de acto.

1.4. Propuesta

Al realizarse un análisis previo sobre la reincidencia y evitar aquella tradición según la que la reacción jurídico penal más adecuada, para combatir este fenómeno, es el incremento de la pena, la que ha sido constante histórica en la legislación ecuatoriana, es necesario diferenciar y crear dos tipos de reincidencia, para facilitar al juzgador que emita una sentencia conforme con lo que tipifique la norma.

Por una parte, la reincidencia culposa debería detallarse como este cometimiento de un nuevo delito de culpa con los mismos elementos de tipicidad, para esto, no debería existir un incremento de la pena al vulnerar varios principios del derecho, como el *ne bis in ídem*, proporcionalidad y culpabilidad. Por otra parte, se especifica la reincidencia dolosa como

el cometimiento de un nuevo delito doloso, por parte de la persona que fue declarada culpable mediante sentencia ejecutoriada, solo si vuelve a cometer un delito de análoga naturaleza, es decir, los mismos elementos de tipicidad de dolo; así, será impuesta la pena máxima del tipo penal incrementada un tercio.

Además, es importante destacar que un Estado constitucional de derechos y justicia respeta los principios y las garantías, esto con base en el respeto de los derechos fundamentales de los individuos, así, actúa realizando una política criminal adecuada a la realidad; por ello, es necesario que el Estado adopte la creación de ciertas políticas criminales. Zúñiga (2001: 23) sostuvo que: "La política criminal como parte de la política en general de un Estado, tiene las características básicas de cualquier actuación política: es un conjunto de estrategias para un determinado fin que no tienen que ser netamente represivas".

Se debe precisar que las políticas criminales toman, como base, que el derecho penal no es la única respuesta ante conductas delictivas que lesionan ciertos bienes jurídicos, por lo que el Estado debe responder con actos de distinta naturaleza, con el propósito de controlar y, sobre todo, prevenir comportamientos que lesionan derechos de la colectividad.

> Por lo tanto, si conocemos las debilidades y/o causas que llevan a una sociedad a ser delictiva, y a los sujetos de los diferentes estratos sociales, estaremos dando el primer paso hacia la realización de políticas públicas y criminales que vayan de acuerdo con la realidad social (García, 2013: 3).

Esta propuesta tiende a salir de las esferas de críticas que ha mantenido la doctrina sobre la figura de reincidencia, lo que ofrece un nuevo entorno a la forma de tratar al fenómeno de recaída en el delito; para alcanzar este objetivo, es útil crear dos conceptos nuevos y tratar de que la propuesta sea susceptible de ser trasladada, con éxito, de la esfera de lo teórico a lo práctico.

1.5. Principio *"Ne bis in ídem"*

El principio de *ne bis in ídem* es una institución jurídica de rango constitucional y convencional, la que va a impedir que una persona pueda ser procesada o castigada dos veces por los mismos hechos; de esta manera, impide que una persona sea sancionada o castigada dos o más veces por una misma infracción cuando exista identidad de sujeto, hecho y fundamento.

Dentro del ámbito internacional, en la Convención Americana de Derechos Humanos, se establece, dentro del apartado de Garantías Judiciales, en el Artículo 8, numeral 4, que "el inculpado absuelto por una sentencia firme no podrá ser sometido a nuevo juicio por los mismos hechos" (Organización de los Estados Americanos (OEA), 1969: 5), lo que hace referencia directa sobre el principio *ne bis in ídem*.

> Se cuestiona a la reincidencia en la medida que se traduce en una mayor gravedad de la pena del segundo delito violando el mencionado principio, puesto que esa mayor gravedad es el resultado del anterior delito, ya juzgado, en definitiva, pues la condena anterior, presupuesto de la reincidencia, es consecuencia del delito anterior (García, 1992: 126).

Por lo tanto, este autor considera la violación del principio *ne bis in* ídem, pues manifiesta que también se produce cierto impedimento de imputar efectos subsiguientes que quebrantarían este principio.

1.6. Principio de proporcionalidad

Dentro del ámbito legislativo, la proporcionalidad es la consecuencia del examen de varios componentes que lo constituyen y la interpretación de las normas constitucionales de cada país que acepta este principio. Así, se crea como un mecanismo de control, para que se eviten ciertas circunstancias negativas como el error manifiesto y, sobre todo, encontrar un equilibrio entre costos y beneficios de las intervenciones del Estado, direccionando a la protección de los derechos fundamentales, en este caso, relativos con el derecho penal.

El Artículo 76, numeral 6, de la Constitución determina que "la ley establecerá la debida proporcionalidad entre las infracciones y las sanciones penales, administrativas o de otra naturaleza" (Asamblea Nacional Constituyente de la República del Ecuador, 2008: 34); de este modo, se consagra, de forma expresa, el principio de proporcionalidad en su básica y amplia concepción.

Asimismo, la Corte Constitucional Ecuatoriana ha afirmado que el principio de proporcionalidad se establece como el estudio del propósito que se persigue, así como si este es constitucional y legítimo (Chávez, 2016). Por otro lado, el COIP estipula lo siguiente respecto con la proporcionalidad.

> Artículo 12.- Derechos y garantías de las personas privadas de libertad. - Las personas privadas de libertad gozarán de los derechos y garantías reconocidos en la Constitución de la República y los instrumentos internacionales de derechos humanos:
>
> 16. Proporcionalidad en la determinación de las sanciones disciplinarias: las sanciones disciplinarias que se impongan a la persona privada de libertad deberán ser proporcionales a las faltas cometidas. No se podrán imponer medidas sancionadoras indeterminadas ni que contravengan los derechos humanos.
>
> Se respetará este derecho durante los traslados, registros, requisas o cualquier otra actividad. (Art. 12. núm. 16) (Asamblea Nacional de la República del Ecuador, 2014: 8-9).

La vulneración al principio de proporcionalidad, al aplicar la reincidencia, es clara, debido a que el juzgador impone un incremento de la pena sobre la base de antecedentes penales, por lo que no se centra en

un contexto de igualdad al no tomar en cuenta el comportamiento actual, pues, únicamente, se aplica el aumento de la pena por el quebrantamiento de la ley en una segunda ocasión; esto es desproporcional, puesto que se rebasa la gravedad y se sanciona como doblemente culpable al infractor. La imposición de la pena debe ser proporcional con el delito cometido, por lo que, de ninguna manera, debe ser exagerada, por ello, la legislación debe ajustarse en la relación de la gravedad de la pena y el cometimiento de un hecho.

1.7. Principio de culpabilidad

El principio de culpabilidad es considerado un límite al poder punitivo del Estado, para evitar castigos motivados en hechos de otras personas; se basa en la responsabilidad objetiva direccionada, únicamente, a las características propias del delincuente, así como para evitar ir más allá del grado del injusto cometido: "La culpabilidad es la imputación de responsabilidad por un injusto personal en base a la exigibilidad en un ámbito comunicativo, en atención a condicionamientos reconocible, en una determinada practica social" (Terreros, 2006, citado por Álvarez, 2017: 25).

La culpabilidad se encuentra tipificada en el COIP: "culpabilidad. Para que una persona sea considerada responsable penalmente deberá ser imputable y actuar con conocimiento de la antijuridicidad de su conducta" (Asamblea Nacional de la República del Ecuador, 2014; artículo 34).

Así, el principio de culpabilidad es un pilar fundamental al ius puniendi del Estado, por lo que Garro (2017: 42) manifestó lo siguiente.

> La culpabilidad es un presupuesto y un límite de la pena. Constituye un indispensable límite al poder punitivo estatal no solo para evitar cualquier castigo motivado en hechos de otros, en una responsabilidad puramente objetiva o basada exclusivamente en las características personales del autor, sino también para no sobrepasar la medida o grado del injusto cometido. La esencia de la culpabilidad no radica en un defecto del carácter, adquirido culpablemente por el modo de vida que se ha llevado, sino en que el autor ha cedido a la tentación en la situación concreta y ha cometido un hecho punible y de esa forma se ha hecho culpable por su actuación.

El principio de culpabilidad es un apoyo de graduación de la pena por la comisión de un delito, por lo que la esencia de este principio no radica en la personalidad del delincuente, sino en la comisión del delito, por ello, la reincidencia vulnera la culpabilidad por originar un análisis de la culpabilidad de un hecho pasado. De este modo, por los antecedentes se agrava la pena por un tercio más del previsto en el tipo penal, por lo que la vulneración del principio de culpabilidad por el hecho es real (Mera, 1998). Por su parte, Bustos (1989: 376) hizo un acertado comentario acerca de la reincidencia y la vulneración al principio de culpabilidad al considerarla inconstitucional:

> Se considera que la reincidencia se fundamenta en el carácter o personalidad del reincidente, quien, tendría un desprecio permanente en contra de los bienes jurídicos, lo que no puede implicar ni mayor responsabilidad (ya que se funda en un rasgo permanente) ni mayor injusto. Este rasgo permanente lleva a tipos de autor o bien a un Derecho Penal por el carácter. Tal rasgo de carácter no puede fundamentar, por tanto, una agravación, a lo más podría servir para determinar la forma de ejecución de la pena.

Asimismo, en el Informe de la Comisión de Constitución, Legislación y Justicia, se hace un análisis, lo que arroja, como resultado, lo siguiente.

> Las agravantes de reincidencia y reiteración no solo representan un sensible quebranto del Derecho penal de culpabilidad, sino que, además, aparecen, desde otra perspectiva, como medios político- criminales poco adecuados. Ambas suelen mostrar el fracaso de los efectos preventivos de la pena anteriormente impuesta. Ante este fracaso parece poco oportuno que el ordenamiento jurídico reaccione, a su vez "reincidiendo" en la pretensión de lograr finalidades de aseguramiento y prevención precisamente a través de la misma sanción que fracasó ya con anterioridad. El medio más apropiado para conseguir estas finalidades no será ciertamente el aumento de la cantidad de la sanción retributiva que ya fracasó, sino la aplicación de una sanción de naturaleza distinta (Comisión de Constitución, Legislación y Justicia, 2006, citada por Sanhueza, 2015).

Así, la Norma Suprema establece que "se presumirá la inocencia de toda persona, y será tratada como tal, mientras no se declare su responsabilidad mediante resolución firme o sentencia ejecutoriada" (Asamblea Nacional Constituyente de la República del Ecuador, 2008: artículo 76, núm. 2).

1.8. Relación con los principios

En relación con los principios, lo que se busca es que no exista una vulneración de estos al momento en el que se plantee la figura de la reincidencia, por ello, con la bifurcación de la reincidencia, lo que se ha tratado de ver es que, en el caso de la reincidencia dolosa, el principio de proporcionalidad se hace presente y no lo vulnera cuando se aplica la figura, puesto que, al momento en el que se da el incremento de la pena, no se hace de manera apresurada, ni bajo la vista de un récord criminal y tomando cualquier delito como base para la reincidencia dolosa, de este modo, se hace después de que se ha llegado a comprobar que se ha caído bajo el mismo, lo eleva la gravedad del delito.

En este sentido, no se ha llegado a ver, en el caso de la reincidencia culposa, la existencia de una vulneración del principio *ne bis in ídem*, puesto que no se juzga, nuevamente, el delito presente en la sentencia ejecutoriada, sino que se considera la gravedad del cometimiento de un nuevo delito del mismo tipo penal, al haber purgado y tenido conocimiento de la afectación que se produce dentro del equilibrio social por el cometimiento de dichas acciones. Finalmente, en el caso del principio de culpabilidad, no se evidencia ningún tipo de vulneración, puesto que el sujeto activo, al

reincidir en un delito doloso, demuestra la existencia del conocimiento de la antijuricidad de su conducta, por lo que es este principio el que refuerza que, al existir la reincidencia dolosa, se llegue a incrementar la pena.

2. Política criminal enfocada en la diferencia entre reincidencia culposa y dolosa

Ecuador vive una de las crisis penitenciarias más importantes de la historia, el hacinamiento, la violencia y el control por parte de las bandas delincuenciales de los centros penitenciarios son una muestra clara de que la política criminal tiene que cambiar de forma total. Para entender un poco más acerca de este problema, se debe recordar que, en Ecuador, la autoridad a cargo de la administración de justicia, en el año 2018, propuso, ante una comisión de la Asamblea Nacional, que se revisaran las sanciones previstas en el COIP, para encontrar mecanismos de sanción ante delitos sin que represente privación de libertad; aquí, se encuentra que las sanciones que deben ser revisables son las que tienen que ver con la reincidencia, pues ha resultado esta medida inútil a la hora de disminuir la criminalidad.

Para Oré (2017), citado por Coello (2017), la reincidencia muestra las fallas del sistema social y de las propias agencias de ejecución penal; con esto, se puede comprender, de mejor manera, que la medida de utilizar la reincidencia dentro del marco de la política criminal no ha generado ningún resultado positivo, sino que los problemas existentes dentro del sistema penitenciario se agraven.

Es momento de una transformación importante, para ello, es preciso que se tomen en cuenta las circunstancias en las que una persona ha reincidido, donde se deben considerar los elementos esenciales sobre el delito y el nivel de responsabilidad que tiene el sujeto imputado en ello, pues jamás puede ser lo mismo un acto en el que la persona tenía la voluntad de generar un daño a un delito en el que no hubo la intencionalidad, así, si se juzga de la misma manera, esto implicaría todos los principios básicos que recoge la Constitución ecuatoriana, en la que se tiene que tener en cuenta que el fin de la pena es la reinserción en la sociedad, de manera que la persona que recupera su libertad, luego de una pena privativa de libertad, no tenga ningún estigma, sino que pueda desarrollarse de forma óptima en la sociedad.

En la teoría del delito, existen dos formas que nacen del tipo subjetivo: el dolo y la culpa; esta diferencia es importante, pues es trascendental a la hora de imponer una pena privativa de libertad, así, de ella pueden desprenderse penas más altas o un grado de responsabilidad mayor dentro del ilícito (Villa, 2014). No es lo mismo, bajo de ninguna perspectiva, mantener una conducta dolosa que contiene un elemento cognitivo (conocimiento de

realización de la acción típica) y un elemento volitivo (querer realizar la acción típica) (Roxin, 1997).

Así, tener una conducta culposa no es lo que trasciende en el delito la finalidad del autor, sino que en la forma en la que se llega al resultado típico es mediante la infracción de un deber de cuidado, pues, en estos delitos, no se trata de verificar el conocimiento del autor, sino determinar lo que este debía conocer en función de las exigencias normativas (Almanza y Peña, 2014). Por ello, el solo hecho de asumir las reincidencias y darles el mismo grado de severidad no es solo un error de carácter logístico o psicológico, sino que contraviene los principios básicos de la doctrina penal.

> No se puede, por tanto, equiparar este conocimiento con el de cognoscinilidad que ocurre en el caso del dolo, sino se trata de un conocimiento cuantitativamente menor que el exigido para el dolo; por tanto, la culpa tiene lugar en el insuficiente conocimiento imputado al autor sobre la lesividad de su hecho y el criterio de evitabilidad de el que se deriva la posibilidad de no cometer dicha lesión (Jakobs y Cancio, 2005: 59).

En virtud de todo lo mencionado, la reincidencia culposa no debe ser una agravante a la hora de juzgar a una persona, todo lo contario, es menester del Estado proporcionar un ecosistema adecuado que permita que esta persona se desarrolle y se reduzca su capacidad de caer en ilícitos.

2.1. Política criminal propuesta

Las áreas de acción de la política criminal son amplias, para citar algunas de ellas, son derechos de sospechosos y procesados, seguridad ciudadana, modelo de justicia juvenil, entre otros.

> La expresión "Política Criminal" se utilizó, por primera vez, en el siglo XVIII por Kleinschrod, quien definió a la misma como "conocimiento de aquellos medios que el legislador puede hallar, según la especial disposición de cada estado, para impedir los delitos y proteger el Derecho Nacional de sus súbditos". Esta definición, trasladada a nuestros días, se refleja en la misión de la "Dirección de Política Criminal" de la fiscalía general del Estado de Ecuador (Romero, 2020: párrs. 5-6).

Para que la política criminal cumpla con sus fines, es importante que se apoye en las investigaciones criminológicas, con el fin de que se promueva la prevención de la delincuencia y la reincidencia; "la mejor política criminal es una buena política social" (García, 2013: párr. 1). La Constitución ecuatoriana del 2008 es garantista, así, tiene a los derechos y las garantías como prioridad, sin embargo, la Revolución Ciudadana, con el COIP del 2014, pasó a endurecer las penas, remontándose a ese antiguo derecho penal en el que se buscaba infundir, mediante el temor, la disuasión para que no se cometan delitos, sin embargo, está comprobado, con pruebas claras, que esto no es lo útil.

De nada sirve endurecer penas e infundir temor, si una vez que la persona es ingresada a un centro penitenciario, no se tiene ninguna garantía de que el individuo vaya a salir rehabilitado de ese lugar, todo lo contrario, se ha demostrado, con los recientes acontecimientos, que ni siquiera el Estado es capaz de proporcionar la seguridad adecuada a las personas privadas de libertad.

Por ello, revisar los artículos que tienen que ver con la reincidencia culposa por parte de los legisladores debe ser una prioridad, para liberar el hacinamiento carcelario y dar la oportunidad de que las personas que se encuentran culpables por un delito culposo puedan tener otras alternativas para surgir; es importante hacer un censo carcelario, para determinar, de mejor manera, los años y la razón por la que se encuentran detenidos, para saber cuáles son los principales delitos que se cometen en territorio nacional y conocer los sectores más afectados, así, solo con ese punto de partida, se podrá mejorar la técnica legislativa de una punitivista a una verdaderamente garantista y respetuosa de la Carta Magna.

2.2. Ventajas existentes por dicha aplicación

Debido a la bifurcación entre la reincidencia culposa y dolosa, lo que se puede llegar a obtener, como beneficio, es que no se incremente la pena ni que se vulneren principios como la proporcionalidad, la culpabilidad y *ne bis in ídem*, esto al momento en el que se juzgue en los casos en que tenga asidero la reincidencia culposa; cuando sea la reincidencia dolosa la que se presente al momento de ser juzgada, se puede proceder como indica la norma, así como imponer la pena máxima del tipo penal incrementada en un tercio.

Así, esto se podría enfocar en una reestructuración adecuada para el aparataje penal, de tal forma que la política criminal sea mucho más práctica y se moldee, para generar mejores resultados a largo plazo, con el fin de que no se tengan, únicamente, estrategias represivas. Con esto presente, se podrá brindar una forma nueva de ver el fenómeno de la reincidencia, para, de ser llevada a lo práctico, sea factible una mejora respecto con la realidad actual.

Conclusiones

En el presente artículo, se ha identificado la existencia de una incorrecta aplicación de la reincidencia culposa, por existir un endeblez entre las normas nacionales y diferentes tratados internacionales al no cumplir con las garantías y el debido proceso, lo que resulta en una vulneración a los principios *ne bis in ídem*, proporcionalidad y culpabilidad de la persona sentenciada por reincidencia, donde se aplica un tercio más de la pena del delito cometido con culpa, como lo estipula el Artículo 57 del COIP.

La aplicación del Artículo 57 del COIP sanciona la conducta de la persona, lo que vulnera derechos inherentes a los ecuatorianos y los extranjeros residentes en el país, pues se toma en cuenta la peligrosidad del individuo como identificativo del reincidente, esto resulta en una tendencia previa al juzgador al momento de sentenciar, incumpliendo con la finalidad de mantener un orden jurídico que evita poner en una situación vulnerable al reincidente.

En este sentido, se demuestra que existe una notable vulneración al principio de proporcionalidad y culpabilidad a la persona sentenciada, nuevamente, por el cometimiento de un delito de culpa; en lugar de sancionar el nuevo delito, el que es materia de juzgamiento, se castiga a la persona y se le condena por lo que es y no por el acto que cometió. Por ello, se consideraría indispensable que se realice un análisis profundo del Artículo 57, inciso 2, donde se haga una clara diferenciación de la reincidencia dolosa y culposa, para que esta última no tenga una imposición de la sanción establecida por vulnerar los principios mencionados.

Asimismo, la Asamblea Nacional y la Corte Constitucional son las encargadas de hacer las observaciones pertinentes en torno al tema de la reincidencia, para evitar, en un futuro, más transgresiones a los derechos de las personas condenadas por reincidencia culposa, con el propósito de brindar una respuesta favorable para una correcta aplicación de esta figura en casos venideros.

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 975-988
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

The Value of Man in the Positivity Type of Understanding Law

DOI: https://doi.org/10.46398/cuestpol.4074.54

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Abstract

The purpose of the article was to clarify the essence of human value in the positivist type of legal understanding. To achieve the objectives of the publication, such methods were used as: philosophical dialectics, analysis, synthesis, functional, axiological, historical, special legal. As a result of the study it was concluded that the essence of human value in normative jurisprudence is due to the need to know the law and the need to realize the interests and needs of man by law. It was also argued that the basis of «humanistic» positive law should be natural law, which meets the need for its humanization, recognition and real process of realization of individual rights. The authors found that the knowledge of the essence of human value in the framework of positive law is possible only with the study of the theoretical foundations of normativism, identifying both positive and negative characteristics. It is concluded that it is proved that the use of general principles of law in the process of functioning of the legal system is an indicator of a high level of legal awareness of persons whose activities are related to law enforcement.

Keywords: natural law; human dignity; intrinsic value of the person; legal philosophy; legal positivism.

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Recibido el 21/06/22 Aceptado el 28/09/22

El valor de la persona en un tipo positivo de comprensión del derecho

Resumen

El propósito del artículo fue esclarecer la esencia del valor humano en el tipo positivista de entendimiento jurídico. Para lograr los objetivos de la publicación, se utilizaron métodos tales como: dialéctica filosófica, análisis, síntesis, funcional, axiológico, histórico, jurídico especial. Como resultado del estudio se concluyó que la esencia del valor humano en la jurisprudencia normativa se debe a la necesidad de conocer el derecho y la necesidad de realizar los intereses y necesidades del hombre por el derecho. También se argumentó que la base del derecho positivo "humanista" debe ser el derecho natural, que responde a la necesidad de su humanización, reconocimiento y proceso real de realización de los derechos individuales. Los autores encontraron que el conocimiento de la esencia del valor humano en el marco del derecho positivo solo es posible con el estudio de los fundamentos teóricos del normativismo, identificando características tanto positivas como negativas. Se concluye que está comprobado que el uso de los principios generales del derecho en el proceso de funcionamiento del sistema jurídico es un indicador de un alto nivel de conciencia jurídica de las personas cuyas actividades están relacionadas con la aplicación de la ley.

Palabras clave: derecho natural; dignidad humana; valor intrínseco de la persona; filosofía jurídica; positivismo jurídico.

Introduction

In the development of modern science, which studies the problems of man, his place and role in the multifaceted processes of public life, one of the most important areas of scientific knowledge is to study the essential characteristics of human legal value within the basic levels of law.

Based on the depth of the ages, the problem of understanding the law, the role of man in relation to law and law in relation to man does not lose its relevance in our time.

Any historical period brought its vision into the field of knowledge about man and law, and this was emphasized by the presence of various factors.

However, centuries of historical experience, the accumulated system of philosophical knowledge, which is permeated with various ideas, principles, etc., do not give us a clear answer to the question of what is a right. It follows that the awareness of law is directly dependent on the position chosen by a person who wants to know the phenomenon of law.

As you know, for a long historical time mankind has been interested in the values of eternal nature, which are inseparable from man and his life. This influenced the fact that in different historical periods the process of establishing these values took place taking into account certain changes in the genesis of certain states.

It is worth noting that the law, being inextricably linked to the specific conditions of society, is not in a static state. This is expressed in the fact that, above all, eternal values under the influence of various factors change their meaning. This provision is important for clarifying the importance of law for man and the value of man in relation to law.

These problems are of particular importance in the framework of the complication of the role of civil society and the strengthening of its influence on the development of law-making and state-making. This is especially important at the beginning of the 21st century in connection with the processes of globalization and anti-globalization, local world wars, and environmental problems facing humanity.

According to N.M. Onishchenko and N.M. Parkhomenko, "it is desirable to define a person not only as a person with consumer interests, but as an individual with certain unique features, whose potential can be realized only in the appropriate cultural and civilizational environment" (Onishchenko *et al.*, 2011: 41).

According to R.M. Minchenko:

> It is necessary to make the direction of elimination of social apathy, civil impartiality, amorphousness of people's thinking and actions, activation of their initiative, as well as social and legal affirmation of the individual who can use his rights, protect them through state bodies, authorities, management, court (Minchenko, 2008: 126).

In the scientific literature today, the idea of qualitatively new human capabilities in global world processes is quite relevant. In particular, according to V.V. Mykhieiev, developed the concept of "international man" – "a new type of people who think in world terms, not limited to the interests of their villages, countries, regions, and who have a desire for mutual unity and unity" (Mykhieiev, 1999: 213).

1. Methodology of the study

The research method used the method of philosophical dialectics, as well as a number of general and special scientific methods. The method of philosophical dialectics was aimed at proving the regularity of gradual change in the understanding of the essence of human legal value in normative jurisprudence, elucidating the causal links between modern

interpretation of human legal value and humanization of law. The method of analysis allowed to highlight the specifics of the interpretation of the legal value of man in the positivist type of legal understanding, to give it a description, to clarify the features and basic features.

Their synthesis made it possible to give the concept of "human legal value" a holistic image, to find out that the modern understanding of human legal value is integral, which includes such features as self-determination, value orientation, effectiveness and responsibility. The application of the system method made it possible to determine the legal value of man as a phenomenon of the system order. The latter is also a system that has a holistic nature, a dynamic nature, which is based on human rights and freedoms, its needs and legitimate interests.

Based on the use of the functional method, the place, significance, role of a person and his purpose were determined depending on the peculiarities of the content of the normative understanding of the essence of law. The application of the axiological method made it possible to conclude that the legal value of man is based primarily on his awareness of the importance of natural and legal values and, secondly, the need to reflect them in positive law. The hermeneutic method allowed to interpret the works of scholars who contain research on the legal value of man in the context of the positivist type of understanding of law, objectively and critically evaluate the various definitions of this concept.

The historical method was aimed at understanding the historical process of the genesis of awareness of the legal value of man. The authors of this publication have established that the essence of the legal value of man in normative jurisprudence is due to the need for knowledge of law and the need to realize within its interests and human needs. The use of a special legal method made it possible to investigate the interpretation of the content of human legal value using legal terminology.

2. Analysis of recent research

A limited number of scientific works are devoted to the study of human value in positivist jurisprudence. This is a clear confirmation that the research topic is new and relevant enough to conduct scientific research in this area.

Problems of solving the search for an individual in a positivist type of legal understanding were studied Minchenko, 2008, Mykhieiev, 1999. Issues of humanization of law and understanding of the legal value of man in normativism were raised in the works of domestic scholars (Onishchenko *et al.*, 2011; Shevchenko *et al.,* 2020; Shevchenko *et al.,* 2020). A number

of works by scholars have been devoted to the legal status of man and citizen in normative jurisprudence (Hart, 1985; Dworkin, 1977; Ilin, 1993; Kozlovskyi, 2005; Koziubra, 2013).

In addition, the literature review is devoted to an important series of works, which explored the problems of interpretation of individual rights in the normative concept of law (Bergel, 1985; Brugger, 1995; Bobrovnyk *et al.*, 2022). The works of a number of scholars are devoted to the problems of the ratio of human legal value in positivist and integral concepts of legal understanding (Kozlovskyi, 2005; Pohrebniak, 2008; Poliakov, 2004; Shevchenko *et al.*, 2020).

3. Results and Discussion

3.1. Problems of humanization of positive law

Given the fact that at the beginning of the XXI century there is a mass violation of human rights both at the level of functioning of non-democratic countries and in the system of interstate relations, this issue remains relevant today, which requires further efforts to study it by philosophers and lawyers, sociologists, psychologists, etc.

"A positive phenomenon in the functioning of the theory of state and law is that it has lost its political color and acquired status of science" (Shevchenko *et al*, 2021: 12).

It should be taken into account that the axiology of a person is reflected in the right cognition of a person and the right realization of a person in the right based on the right determined by the human dimension. Therefore, it should be used in the process of researching the legal value of a person in positivist jurisprudence due to the need to axiologize normative law.

Humanism of law consists in ensuring and guaranteeing the real process of realization of natural human rights. It is worth noting that with the help of normative consolidation of natural human rights, positive law is filled with universal content, its humanization. Humanization means the axiology of the process (in the sense of giving a person social and legal value) and anthologizing (it is assumed that a person has a sufficient list of rights and freedoms). In general, the features of a person are defined as a biological but socialized being, in the philosophical aspect, he achieves the goal of his life activity - the acquisition of an ideal creature.

"Today, the constitutional consolidation of human rights and freedoms as the highest value and their compliance with international law is one of the important features of a democratic state" (Shevchenko *et al*, 2020: 143). However, human existence is characterized not only by the natural

aspect, but also includes psychological and social conditions that affect the "modelling" of law, giving it a humanistic or anti-humanistic direction. In this context, it should be noted that in the emergence of objective law, subjective factors play an important role: emotions, moods, experiences, attitudes to law and the existing legal reality of those who participate in law-making.

It is obvious that for the positive influence of man on the process of law-making it is necessary to have a qualitatively full-fledged personality, i.e., one that would be the bearer of cultural values. As N.M. Onishchenko rightly points out, a cultured person is a personality who has such traits as responsibility for the harmony of life, moral and metaphysical intuition, the ability to perceive what is useful for their society and so on. "Such people strive for Beauty, Truth, Justice, Harmony, Order and Acceptance" (Onishchenko, 2008: 213).

Note that having the appropriate value potential, a person is able to be a participant in the relationships that develop in society. It is worth agreeing with a number of scholars that the existence of a value individual requires various spheres of human life and the law itself, which must be considered in inseparable connection with it.

The level of awareness of the value of law, the effective process of law-making and the application of legal norms - all these are indicators of interest of various actors, the right to implement it in the system of public relations (Shevchenko *etal.*, 2020). In this regard, issues of particular importance are related to the formation of a highly spiritual, educated and harmonious individual, able to form a positive humanistic direction in order to protect the interests of man and civil society.

The source of human rights is man himself, his needs and interests, his way of existence and progress Since natural law does not require any normative consolidation and reflection for its existence, it does not depend on the will of the state. But the above does not mean that there is no connection between natural and positive law.

That is why they must be considered inseparable, unthinkable without each other. Normative law should be evaluated as one of the resources of law as a whole, a necessary element of which should be its complexity of nature.

In principle, the basic normatism is possible, but it is possible to trace a number of its inherent features, namely: the positivity of law consists in the fact that it arises as a result of the will of the state and finds its reflection in various forms of law; the right is considered as an order subject to mandatory execution; law is a tool of the state to solve various social issues; the value of law derives from the value of the state, and its emergence is considered as a function of the state, the result of the will of the state and the

functioning of the state power, which enforces legality in society; positivism directs a person to law-abiding behavior, making it impossible to criticize the existing legal order.

The well-known modern theorist of positive law G. Hart recognizes that the contribution of J. Austin to the development of a system of views on the understanding of law is that it is quite important to distinguish between positive law and morality. According to G. Hart, J. Austin not only laid the foundation of the science of law, but also freed the concept of law from a number of disastrous consequences to which it led. Positive laws, according to G. Hart, must have legal force, and at the same time the law can be unfair. He noted that the law as such can be immoral, and in this case, it will be our moral duty not to obey it (Hart, 2005).

Unfortunately, anti-democratic state-legal regimes orient a person to obedient behavior, legislative positivism draws attention to the agreement of society and the state. The opinion is expressed that law includes two components: natural and positive law, the dominant element of which is natural law, since it establishes its own laws and rules.

The task before a person is to identify these laws and turn them into rules of their activity, into norms of behaviour. In this way, the rules of existence become the rules of man. "And those norms that contradict the laws of existence are destroyed by being" (Kozlovskyi, 2005: 36). It is worth agreeing with the opinion of I.A. Ilin:

> that the main task of positive law is to accept the content of natural law, to develop it in the form of a series of rules of external behaviour, adapted to the conditions of life and the needs of this time, to give these rules meaningful form and vocabulary in the consciousness and will of the people as the dominant command". "Positive law is an appropriate form of maintaining natural law (Ilin, 1993: 137).

We believe that with such a set of features inherent in legal positivism, a number of questions arise, namely: is such a right capable of protecting a person?

Problems of the relationship between law and legislation become very dangerous in extreme cases of legal positivism. When distinguishing between legislation and law, it should be remembered that legislation is a form of law. It will be considered identical to the law only when it is fair and excludes any arbitrary prescription or claim. This is particularly important in the context of recognizing the need to limit public and administrative interference in the lives of individuals and civil society.

It should be noted that the modern legal practice of most countries mostly lags behind the existing views in science. Evidence of this is the reluctance of the subjects of law to resolve specific life situations, guided primarily not by the letter of the legislation, but by the humanistic spirit of law.

The future development of universal principles of law should take place at the regional, continental levels and in the middle of the state. Only then can we talk about the effectiveness of legislation and its impact on the genesis of the state's legal system. Recognizing the significant role of general theoretical legal science in the study of the principles of law, we note that the real process of resolving specific life situations often occurs by neglecting the humanistic spirit of law.

For example, in the modern conditions of human existence, the problem related to the implementation of a number of basic provisions is becoming more acute, namely: observance of human rights and freedoms; territorial integrity of states; equality of peoples. Normative activity, especially the law-making process, depends on the interests of the authorities, leaving aside the problems of ordinary citizens. In this context, it is very important to note the axiological and anthropological aspects: the legislation of any state should be aimed at ensuring the social and legal value of a person, and taking into account the rights, freedoms and legitimate interests of a person.

3.2. The role of the principles of law in the context of regulating social relations

It is worth noting that a number of scientists objectively studied the principles of law and determined the direction of the affirmation of natural-law ideas. Scientific developments of scientists who emphasized the need to use progressive ideas of natural law in the formation of the constitutional and legal framework and take into account the principles of law in the modernization of the legal system of society deserve special attention (Koziubra, 2013; Pohrebniak, 2008).

In this context, it is worth noting that natural law is reflected not only in the Constitutions of the countries of the world or their legislation, it encompasses the worldview of citizens of different countries in philosophical and theoretical-legal dimensions, and is the basis for solving many modern problems.

It is worth agreeing with those scholars who claim that "a principle as an appropriate standard should be followed not because it favors or protects a desired economic, political, or social situation, but because it is a requirement of justice, honesty, or some other dimension of morality" (Dworkin, 1977: 261):

> The process of emergence and development of general principles of law is influenced not only by the rules of positive law, but also morality, religion, customs, politics, scientific concepts, which changes the prerequisites of legal regulation and determines its direction for the future, and finds its expression in the judicial practice (Bergel, 1985: 217).

Significant application of various principles of law in the process of law making would allow to circumvent the problems associated with excessive regulation. This situation, when the rule-making subject directs its activities to the adoption of rules of law with detailed content, is evidence of excessive care of society by the state.

This state of affairs has a negative impact on the genesis of the legal system, which permanently increases a large array of legislative material. Secondly, paternalistic sentiments in society are growing, which leads to the formation of appropriate stereotypes of behaviour, which are devoid of signs of legal activity, initiative, creative approaches to addressing certain issues of public life.

Thirdly, increasing the role of the principles of law in the context of legal regulation would help to create appropriate conditions for the selection of the best options for behaviour, taking into account specific life circumstances in the absence of legal norms that directly regulate public relations.

The active use of the principles of law in the process of functioning of the legal system is an indicator of a high level of legal awareness of both lawmakers and persons whose activities are related to the use of legal norms. This is a marker of the state's trust in a person and the person's belief in his defense, certainly by the state.

The state only determines the most optimal scale of behaviour of subjects who have a wide field of choice of options for solving the relevant life situations. The support of a person by the state within the framework of a positivist approach to the understanding of law has very real reasons for its existence. It arises as a result of the objective-historical struggle of man for his rights and their reflection in the norms of normative law.

The state of respect for the value of man himself, his life and freedom is not static, but dynamic, as it requires constant control of civil society over the functioning of state structures. The state power is able to get rid of its signs and features, having embarked on a totalitarian path of activity.

And, unfortunately, civil society cannot control the government for objective reasons. In the opinion of the authors of the article, lack of control over the activities of state structures is a direct path to the usurpation of power through the adoption of anti-democratic laws.

For states whose system operates on the basis of the rule of law, this practice is unacceptable. The development of the rule of law, as stated in the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Copenhagen, 1990), means not only the significance established at the legislative level, which reproduces the democratic order, but also justice, which is based on the recognition of the highest value of a person and is guaranteed by state and municipal institutions.

Thus, when considering the value of a person in the framework of positive law, it is advisable, first of all, to address the origins of the law-making process, which is inextricably linked with the quality of persons involved in the preparation and adoption of relevant law. After all, the assertion of the legal value of a person in positive law is closely linked to the internal potential of lawmakers.

We are talking about the level of legal thinking and legal awareness of people's deputies. They must be subject to special requirements regarding the quality of their knowledge, skills and abilities in the legal field. That is, it is necessary for lawmakers to achieve a quality level of legal training and skillful use of practical skills in the field of law.

In the process of resolving this issue, it is desirable to proceed from the existing in the theory of law scientific views on the legal consciousness of the individual.

Characterizing its elements in relation to legislators, we note the following: first, the legal ideas of this category of persons are the appropriate image of law in a generalized form, resulting from the assimilation of various information about him.

It should be remembered that any knowledge is only a relevant part of the holistic view that the subjects may have about the functioning of the legal system of the state. Secondly, the knowledge itself is not once and for all defined, constant, but is in constant motion, subject to change, addition, and so on. Their type of legal consciousness depends on the type of thinking, people's ability to accumulate and process valuable information.

In the context of law-making, the relationship between the state and law is clearly traced, and the influence of factors is not only objective but also subjective. By establishing the rights and responsibilities of individuals, the law not only brings order to society and the state, but also creates the preconditions for the functioning of all institutions of the state legal system.

As for their further development, there may be reasonable objections, namely: no development of law can be discussed in the conditions of non-democratic political regime. For certain reasons, the law is not based on the historical laws of the state, but on the authoritarian attitudes and prejudices of the authorities.

Under such conditions, the rule-making activity of the state is frankly subjective. This can be traced on the example of Germany, where, as A. D. Mashkov notes, between 1918 and 1949, the ban on the rights of national minorities changed several times, either from formal equality based on nationality to a ban based on racial affiliation, discrimination provided by the Constitution of the Weimar Republic - and to the declaration of racism and nationalism, which were recognized as the main principles of social and

state practice in Hitler's Germany - and back to their prohibition (Mashkov, 2011).

We can also cite the example of Bolshevik Russia and the USSR, because these states committed genocide of national minorities, proclaimed a totalitarian system, and prohibited the right of Ukrainians, Belarusians, Kazakhs, Uzbeks, Crimean Tatars, Georgians, and other peoples to self-development.

The analysis of law-making and the qualitative filling of its axiology, which man recreated during the historical period of competition for his rights and freedoms, is the direction that will make it possible to make a historical map of the vision of the law, to clarify the role of man in his knowledge and creativity, the application of law in the system of legal relations and understanding it as the basis of statecraft.

It should be emphasized that the right to life, freedom, equality, fair treatment of the individual must be concretized not only at the level of normative consolidation, but also at the level of the real process of their implementation (Bobrovnyk *et al*., 2022).

Conclusion

The essence of the legal value of man in normative jurisprudence is due to the need to know the law itself and the need to realize the interests and needs of man through law. The basis of human values-oriented law is humanistic law, which constitutes the essence of natural law and contributes to the reproduction of the inalienable rights of people, which are markers of the norms of legislative law.

Knowledge of the essence of the legal value of man is possible only if the study of the theoretical foundations of legal positivism and its acceptance as a relevant value for man can not be completely arbitrary. The value of positive law is possible only in the case of its unquestionable conformity to natural law.

The application of the principles of law in the process of modernization of the legal system is a marker of a high level of legal awareness of legislators and citizens of the state. On such grounds, state authorities respect people as an absolute social and legal value, and a person is fully under the protection of state and municipal authorities and management.

The assertion of the legal value of a person in positive law is closely related to the theoretical and practical potential of the subjects of lawmaking in general and lawmaking in particular.

The use of dialectical philosophical methodological and axiological and anthropological approaches, which consider a person as a socio-legal value, is a direction to the positive content of legal normativism and its perception as a significant element in the knowledge of the legal system.

It should be noted that the scientific study of the social and legal value of a person within the framework of axiological, anthropological and positivist legal understanding certainly leads to the integration of scientific research regarding the recognition of the following fact: the social and legal value of a person is manifested in his understanding of the relevance of natural legal values and the need to specify them in legislation. However, it makes it possible to consider the efforts of scientists to combine the axiological and anthropological resources possessed by legal understanding, which are determined by different sources of law.

In modern science, the problem of substantiating the integrative approach to legal understanding, within which the anthropological-communicative concept of law has developed, is quite debatable.

One of its developers, Poliakov stressed that the ideology of human rights should not be cultivated, substituting the essence of law for it. It is more appropriate to lay in the essence of law the most important social communications.

Since law is an integral part of society, a person as a social subject cannot be constructed without law, rights and responsibilities, which are realized in legal communication (Poliakov, 2004).

Some scholars have drawn attention to the possibilities of an integrative approach, in particular, that it can act as an appropriate approach, way, method for understanding law, knowing it as a special and holistic social phenomenon (Shevchenko *et al.*, 2020).

In the context of substantiating an integrative approach to legal understanding, the position of W. Brugger is quite interesting, as he proposed a kind of formula for the image of man, presenting it as a holistic system of characteristics that includes the following subsystems: self-determining, value-oriented, responsible, vital and individual-stylistic (Brugger, 1995).

Recently, scientists have been paying particular attention to the problem of human capabilities in the context of globalization, expressing different opinions depending on belonging to groups of "globalists" or "anti-globalists".

However, we can agree with the view of A.M. Kolodii, which identified the preservation of modern civilization as a priority of mankind, and integration processes can meet the needs and interests of each person (personal value of the integration process), social communities and associations (group

value of the integration process), society as a whole (social value of the integration process) (Kolodii, 2015).

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ppi 201502ZU4645
Publicación científica en formato digital
ISSN-Versión Impresa 0798-1406 / ISSN-Versión on line 2542-3185
Depósito legal pp 197402ZU34

CUESTIONES POLÍTICAS

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

Vol.40 N° 74
2022

Cuestiones Políticas Vol. 40, Nº 74 (2022), 989-1004
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Representaciones de la prensa escrita latinoamericana sobre la invasión rusa a Ucrania en 2022

DOI: https://doi.org/10.46398/cuestpol.4074.55

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Resumen

La forma como la opinión pública representa un conflicto bélico nunca es neutral y, por lo tanto, viene dada por el manejo periodístico que de tal situación problemática hacen los medios de comunicación social, siempre condicionados por los intereses de su agenda política, de modo que la prensa escrita es también uno de los teatros de operaciones privilegiados donde se desarrolla el conflicto bélico entre la Federación rusa y Ucrania. El objetivo de la investigación fue analizar las representaciones, esto es (lo que se dice, cuando se dice y como se dice) que cierta prensa escrita latinoamericana de amplia divulgación hace sobre la invasión rusa a Ucrania en 2022. En lo metodológico se empleó la hermenéutica dialéctica y el análisis crítico del discurso político para describir el alcance y sentido de la narrativa periodística sobre este conflicto que adquiere consecuencias impredecibles para el orden mundial vigente. Se concluye que el conflicto bélico entre los países referidos ocupa un lugar destacado en la sección de política internacional de la prensa latinoamericana. En líneas generales, prevalece en estos medios el apoyo a la resistencia de Ucrania y la condena de Rusia como peligrosa para la seguridad de Europa y el mundo occidental.

Palabras clave: prensa escrita latinoamericana; invasión rusa a Ucrania en 2022; representaciones de la prensa escrita; medios de comunicación social; análisis crítico del discurso político.

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Recibido el 25/07/2022 Aceptado el 22/09/2022

Latin American written press representations on the Russian invasion of Ukraine in 2022

Abstract

The way in which public opinion represents a war conflict is never neutral and, therefore, is given by the journalistic handling of such a problematic situation by the social media, always conditioned by the interests of its political agenda, so that the written press is also one of the privileged theaters of operations where the war conflict between the Russian Federation and Ukraine takes place. The objective of the research was to analyze the representations, this is (what is said, when it is said and how it is said) that certain Latin American written press of wide dissemination makes about the Russian invasion of Ukraine in 2022. Methodologically, dialectical hermeneutics and critical analysis of political discourse were used to describe the scope and meaning of the journalistic narrative on this conflict that acquires unpredictable consequences for the current world order. It is concluded that the war conflict between the aforementioned countries occupies a prominent place in the international politics section of the Latin American press. In general, support for Ukraine's resistance and Russia's condemnation of Russia as dangerous to the security of Europe and the Western world prevail in these media.

Keywords: Latin American written press; Russian invasion of Ukraine in 2022; representations of the written press; social media; critical analysis of political discourse.

Introducción

La invasión de la federación rusa a Ucrania, denominada eufemísticamente por el Kremlin como "Operación militar especial" para no admitir que le declararon la guerra al otrora hermano país, es uno de los acontecimientos más dramáticos del año 2022. Dramático porque ha significado la perdida invaluable de cientos de vidas humanas, así como la destrucción de la infraestructura de Ucrania, país que desde el colapso de la URSS –en la última década del siglo XX– ha trabajado legítimamente por el desarrollo autónomo e independiente de sus fuerzas económicas, políticas y sociales. Además, se trata de un conflicto bélico que directa o indirectamente involucra a un conjunto de actores y factores de poder como: la OTAN, EE. UU., la Unión Europea y Rusia, de modo que, de prolongarse indefinidamente, podría ocasionar consecuencias nefastas para el orden mundial vigente (Oleksenko *et al.*, 2021; Voronkova *et al.*, 2022).

La forma como la opinión pública representa discursivamente un conflicto bélico nunca es neutral y, por lo tanto, viene dada en buena medida por el manejo periodístico que de tal situación problemática hacen los medios de comunicación social, siempre condicionados por los intereses de su agenda política, de modo que la prensa escrita es también uno de los teatros de operaciones privilegiados donde se desarrolla el conflicto bélico entre la Federación rusa y Ucrania. El objetivo de la investigación fue justamente analizar las representaciones, esto es (lo que se dice, cuando se dice y como se dice) que cierta prensa escrita latinoamericana o, con una versión para América Latina, hace sobre la invasión rusa a Ucrania desde febrero de 2022.

No obstante, conviene indicar que el concepto de representaciones sociales no se limita solamente a los momentos o etapas de la comunicación política (lo que se dice, cuando se dice y como se dice), en su sentido más profundo tiene que ver con lo que Vasilachis de Gialdino (1998), identifica como:

> Construcciones simbólicas, individuales y/o colectivas a las que los sujetos apelan o las que crean para interpretar el mundo, para reflexionar sobre su propia situación y la de los demás y para determinar el alcance y la posibilidad de su acción histórica (1998: 301).

Sin lugar a dudas, las representaciones sociales son en los imaginarios políticos colectivos, modelos interpretativos de la realidad que varían de un tiempo y espacio social a otro, ya que están íntimamente vinculadas a los *paquetes cognitivos* de una cultural y, más precisamente, a sus valores, sentimientos, prácticas intersubjetivas, discursos, rituales, cosmovisión y moralidad. En consecuencia, los estudios de representaciones sociales significan, en cada momento, una forma privilegiada para entender la fuerza ilocucionaria de una comunidad determinada en sentido ontológico y epistemológico, como lo es, en este caso, Latinoamérica.

Por otro lado, los vínculos académicos y científicos que al menos en el último lustro relacionan cooperativamente a Ucrania con Latinoamérica se traducen en la decisión de este equipo de investigación de escribir este trabajo en español como un intento fructífero de tributar al acervo científico que produce la América Latina hispanohablante, región caracterizada por sus: "(...) aportes significativos para el enriquecimiento de la cultura académica global, tal como lo evidencia entre otras cosas la cantidad y calidad de sus revistas científicas de alto impacto" (Dymchenko *et al.*, 2022: 26).

El artículo está dividido en cuatro secciones interconectadas, pero al mismo tiempo autónomas en su afán de responder al objetivo planteado: en la primera, se describen les técnicas y la metodología usada para el procesamiento de las fuentes seleccionadas intencionalmente; en la segunda

sección, se presenta una pequeña discusión teórica sobre la concepción de los autores en torno a las representaciones sociales y la prensa escrita como categorías de análisis; seguidamente, en la tercera sección, que representa metafóricamente hablando "el plato fuerte del trabajo" se describen los aportes y resultados obtenidos científicamente por la investigación; para finalmente, arribar a las principales conclusiones del caso, como un insumo para la discusión sosegada de un tema que esta es pleno desarrollo y que admite además diferentes lecturas geo-políticas e ideológicas (Villasmil-Espinoza, 2022).

1. Metodología

Desde nuestra perspectiva los estudios de análisis crítico del discurso político, en adelante solo (ACDP) se desarrollan –incluso sin saberlo el investigador– en los dominios más generales de la hermenéutica dialéctica, esto es, la postura filosófica devenida en metodología cualitativa de investigación científica, dedicada rigurosamente a la interpretación de diversos textos orales o escritos –interpretación o exegesis que debe desarrollarse no en un modelo general ambiguo– sino en las coordenadas culturales del contexto donde se produce precisamente el texto objeto de estudio.

Al decir de Gadamer (1998), la hermenéutica se expresa como el acto primario que busca la compresión profunda –con alguna pretensión de verdad– de un texto, el cual entiende en sentido amplio como cualquier fragmento de realidad documental o contextual que puede ser leído y releído mediante un diálogo circular en el cual se relacionan lo abstracto y lo concreto, el todo y las partes, los sujetos cognoscentes con los discursos cognoscibles, no solo como mensajes que codifican un conjunto de símbolos y signos con algún significado, sino, fundamentalmente, como "trozos", materiales y simbólicos de un tiempo y espacio determinado que dan cuenta de un sistema de pensamiento, de una concepción del mundo y de unos intereses particulares, que pueden ser comprendidos de forma coherente.

En este sentido, el ACDP se nos presenta no como un método univoco, sino más adecuadamente como un campo de estudio interdisciplinario interesado en la discursividad como fenómeno típico del poder político. De modo que son igualmente válidas las aproximaciones que se construyen en torno al alcance y significado de la discursividad provenientes de la semiótica, la lingüística, la psicología social, la antropología cultural, la filosofía del lenguaje o la ciencia política, entre otros campos. Pero más específicamente:

> El análisis crítico del discurso es un tipo de investigación analítica sobre el discurso que estudia primariamente el modo en que el abuso del poder social,

> el dominio y la desigualdad son practicados, reproducidos, y ocasionalmente combatidos, por los textos y el habla en el contexto social y político. El análisis crítico del discurso, con tan peculiar investigación, toma explícitamente partido, y espera contribuir de manera efectiva a la resistencia contra la desigualdad social (van Dijk, 1999: 24).

Un campo de estudio tan complejo éticamente demanda de una explicación más detallada. En principio, se trata de un método determinado por una clara intencionalidad política de franco carácter contrahegemónico, en la cual a diferencia de la escuela positivista de antaño, donde el investigador se veía en la obligación de simular una falsa neutralidad, ya que en el fondo nadie puede suprimir sus sesgos políticos e ideológicos que son propios, en última instancia, del condicionamiento social del conocimiento, el ACDP asume una posición explicita a favor de los grupos dominados, excluidos o violentados por los poderes hegemónicos y; al mismo tiempo, produce un conjunto de herramientas teóricas y metodológicas que favorecen la resistencia y liberación de estos grupos, violentados en sus derechos fundamentales, y en su dignidad intrínseca de seres humanos.

Operativamente, se seccionaron de forma intencional 5 medios de comunicación[6] que en América Latina marcan la pauta informativa en la dimensión de la presenta escrita y/o audiovisual, bien sea por la divulgación internacional de su narrativa informativa o, por lo polémico que puedan resultar sus líneas editoriales al representar intereses en franca oposición a la democracia y los derechos humanos. Estos medios fueron:

- Infobae.
- CNN en español.
- Telesur.
- BBC Mundo.
- Rusia Today (RT) en español.

La muestra seleccionada (notas de prensa) para analizar las representaciones sociales, que estos *Mass Medios* de prensa escrita latinoamericana[7] de amplia divulgación hacen sobre la invasión rusa a Ucrania en 2022, se compiló en un periodo de tiempo de más de 5 meses: desde el inicio de la invasión a finales de febrero de 2022, hasta julio, periodo de tiempo en el cual –a juicio de los autores– el conflicto bélico deviene por 3 etapas diferenciables: a) *advenimiento de la guerra*, etapa en la que se

6 Aunque el foco se puso en estos 5 medios a lo largo del trabajo también se consultaron y citaron otras fuentes de prensa escrita en formato digital.

7 La mayoría de los medios seleccionados como: CNN, BBC y RT en español no tiene su origen corporativo en América Latina sino, simplemente, una presentación en español; no obstante, fueron seleccionados por su formidable capacidad para configurar matrices de opinión en la región con impacto directo en el modelamiento cotidiano de las representaciones sociales y los climas de opinión que se producen y reproducen hoy sobre la guerra en Europa del Este.

conmociona la opinión pública internacional en general y latinoamericana en particular; b) *desarrollo de la guerra*, en la cual se difunden los posibles crímenes de guerra y de lesa humanidad cometidos por las tropas rusas y, la acción heroica de los ucranianos para defender su soberanía territorial; c) *etapa de estancamiento de la invasión*, caracterizada por los éxitos militares del ejército ucraniano bajo el apoyo occidental en la recuperación paulatina de algunos de los territorios ocupados por el invasor. Como se puede imaginar, cada una de estas etapas responde una línea informativa diferente y no necesariamente tienen que ver con las etapas materiales propias del desarrollo dialéctico este conflicto.

A nivel operativo los autores consideran que la metodología del ACDP demanda de la definición esquemática de un cuadro de operacionalización de variables como guía de criterios en el manejo hermenéutico de las fuentes periodísticas recabadas en el arqueo de fuentes.

Cuadro No. 1: Operacionalización de las variables que se dan en el proceso de ACDP

Objetivo específico de la investigación	Variables	Dimensiones	Indicadores	Medios seleccionados	Observaciones
Analizar las representaciones que cierta prensa escrita latinoamericana hace sobre la invasión rusa a Ucrania en 2022.	■ Representaciones sociales de la prensa escrita en América Latina. ■ Invasión rusa a Ucrania.	■ Intereses políticos de la prensa. ■ Narrativas ideológicas sobre el conflicto	■ Causas objetivas y subjetivas del conflicto. ■ Intereses geopolíticos y geoestratégicos de los actores involucrados. ■ Política internacional. ■ Relación representaciones sociales y narrativa perióstica.	» Infobae. » CNN en español. » Telesur. » BBC Mundo. » Rusia Today (RT) en español. » Otros.	Con el ánimo de crear un diálogo polifónico se trabajó con 5 *mass medios*, tres de los cuales tienen una línea editorial a favor de la resistencia ucraniana (CNN, Infobae y BBC). Y dos prorrusos (Telesur y RT) que justifican casi de forma coordinada la "Operación militar especial" de Rusia en Ucrania, identificados abiertamente con una narrativa antioccidental y antinorteamericana.

Fuente: elaboración de los autores con base a las fuentes consultadas.

Todo proceso de operacionalización de variables busca mover los constructos de la investigación, esto es, las variables, dimensiones e indicadores que se desprender del objetivo, del plano abstracto, en el que se conciben inicialmente, a la concreción analítica de los temas involucrados en el objetivo o problema de investigación. En este sentido, en este caso particular, la noción de variables tiene que ver con las dos grandes categorías de análisis que sirven de base al objetivo específico, sin ninguna pretensión de medición o cuantificación. Simplificando las cosas, se trata de una valoración hermenéutica y descriptiva de una realidad discursiva y no de un estudio cuantitativo en el que se desdibujan los confines existentes entre los géneros: artículo científico y el ensayo político.

Las dimensiones del cuadro expresan, muy concretamente, los elementos que se desglosan de las variables y que, consecuentemente, describen de forma precisa los temas marco que se analizaron. Finalmente, los indicadores significan la parte más elemental que surge de las dimensiones y que, en completa sintonía con las variables, aportan datos cualitativos sin los cuales las narrativas examinadas no serían completamente comprensibles o susceptibles a la investigación científica cualitativa. Por lo demás, la estructura lógica que se presenta en el Cuadro No. 1 también fue fundamental para el desarrollo de las conclusiones de la investigación.

2. Aclaratoria final sobre representaciones sociales y prensa escrita como categorías de análisis en el marco del ACDP

Al decir de Villarroel (2007) las representaciones sociales son desde los aportes primarios de Serge Moscovici una categoría de análisis con existencia propia, en la teoría y en la realidad histórica concreta, que conecta dialécticamente el reino de la cultura, construida colectivamente por relaciones intersubjetivas que se pierden en el tiempo, aunque delimitadas en el espacio, con lo estrictamente psicológico e individual. Se trata de modalidades partículas de conocimiento que se producen y reproducen en la vida cotidiana y finalizan por perfilar, en cada persona, su estructura subjetiva que conjuga en igualdad de condiciones lo bio-psico-social.

En consecuencia, desde esta perspectiva conceptual las personas perciben su mundo de forma muy poco original, ya que sus percepciones, ideas y conceptos están siempre condicionados o, hasta determinados en algunos casos, por los parámetros y modelos particulares típicos del tiempo y espacio en el que están inmersos en la doble condición de actores socioculturales y sujetos políticos, lo quieran o no o lo entiendan o no.

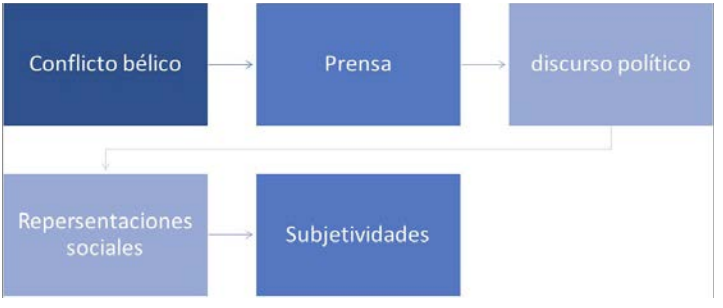
No es posible entender en profundidad las subjetivadas de las personas y grupos, esto es, el contenido concreto de lo que sienten, piensan y viven, con instrumentos cuantificadores propios del trabajo estadístico de signo

neopositivista; se requiere, más bien, de metódicas inductivas-ideográficas como la fenomenología, la hermenéutica o las historias de vidas, entre otras, que describen y simultáneamente interpretan los mundos de vida particulares desde la narrativa de sus protagonistas.

En este orden de ideas, la mayoría de las personas no tiene acceso directo a un fenómeno trascendental, como por ejemplo la invasión rusa a Ucrania, con la excepción de los ucranianos que padecen, en carne propia, los estragos de una *guerra destructora* conducida por un ejército de ocupación, que no respeta los derechos humanos y humanitarios. En consecuencia, son las representaciones de la prensa, es decir: *lo que se dice, como se dice y cuando se dice*, lo que termina configurando las representaciones sociales en general sobre esta guerra en naciones enteras y, en la Latinoamérica no es la excepción.

Por esta razón, el discurso político hegemónico se esfuerza machísimo incluso en país con arraigadas democracias liberales en controlar y vigilar los flujos de información, para lo cual se construyen, a veces, alianzas estratégicas entre algunos medios de comunicación y los poderes políticos y económicos que buscan en cada momento legitimar sus acciones y propuestas ante la gran audiencia. Todo lo cual demuestra que, las subjetividades que se expresan en indicadores observables como las conductas, prácticas y discursos de las personas comunes, dependen simbólicamente de variables como la prensa y los discursos políticos de los actores de saber y poder que se subsumen, a su vez, en el universo de las representaciones sociales y los imaginarios colectivos de una época (Nikitenko *et al*., 2022).

Cuadro No. 2: Proceso simplificado de configuración subjetiva de los modelos interpretativos de la realidad



Fuente: elaborado por los autores con base a la tecnología Word Office.

En completa sintonía con nuestro planteamiento, Rodríguez *et al*., (2017) mediante una síntesis de autores, agregan que:

> Los medios de comunicación no solo son divulgadores de información, sino que también elaboran sus propias representaciones sociales (RS) sobre temas, personas o hechos que difunden ampliamente, que a su vez pueden ser incorporados o rechazados por las audiencias (Cuevas, 2011, pág. 5). Dichas representaciones son un conjunto organizado de cogniciones relativas a un objeto, compartidas por los miembros de una población homogénea respecto a ese objeto (Flament, 2001, pág. 33), que se constituye en una "guía para la acción" (Abric, 2001b, pág. 13) (Rodríguez et al., 2017: s/p).

Como es lógico suponer, todos los medios de comunicación con voluntad de poder intentan sistemáticamente que sus narrativas se conviertan en un ingrediente fundamental en la producción y reproducción de las representaciones sociales de temas específicos, propósito para el cual pueden transitar por dos caminos diferentes: o bien alcanzan adherirse a la formación discursiva del poder (lo que sería el camino fácil) o; por el contrario, pueden desarrollar una narrativa crítica e independiente a contravía de los intereses hegemónicos con el firme propósito de servir de modelo interpretativo de la realidad de forma equilibrada y justa y, transcender, a convertirse en una guía informativa objetiva de cara a la acción de personas y grupos que luchan por su independencia y libertad. Los segundos se han convertido por su *naturaleza rebelde* en medios de comunicación en peligro de extinción.

3. Discusión de resultados

En la madrugada del jueves 24 de febrero de 2022 la federación rusa invade a Ucrania confirmando los temeros del mundo ante la concentración sistemática de blindados y tropas en la frontera, tal como lo reseñó un titular de la BBC (en español) el 21 enero informando que: "(...) Rusia tiene más de 100.000 soldados cerca de la frontera con Ucrania, **aunque niega planear una invasión**" (BBC News, 2022a: s/p) (negritas añadidas); nota que al mismo tiempo afirmó: "Putin ha hecho una serie de demandas a Occidente, insistiendo en que nunca se debe permitir que Ucrania se una a la OTAN y que la alianza defensiva debe abandonar la actividad militar en Europa del Este" (BBC News mundo, 2022a: s/p).

Según la BBC (2022b) esta declaratoria de guerra a un país soberano de Europa del Este debía comprenderse en el marco de un conflicto más amplio (Conflicto: Rusia-Ucrania) iniciado hace al menos una década atrás, en el cual la sociedad civil ucraniana ha luchado con esmero para sacar a su país de la órbita rusa y construir una alianza más fructífera con la Unión Europea y la OTAN. En este sentido, otra nota de prensa se intituló como: "Rusia invade Ucrania: «Putin es la expresión de una mentalidad imperialista que busca destruir los cimientos del orden mundial»" (BBC News, 2022b: s/p), y, seguidamente, señaló que:

> En la madrugada del jueves, Rusia lanzó una invasión masiva contra Ucrania, en una escalada de agresiones militares que no se veían en el mundo desde 1945.
>
> Cuando los tanques y los misiles de Rusia cruzaron hacia suelo ucraniano, mientras Naciones Unidas imploraba a Putin no iniciar el ataque, los principios del derecho y las relaciones internacionales que costaron dos guerras mundiales e innumerables vidas parecieron echados por tierra (BBC News, 2022b: s/p).

En este contexto informativo propio del momento a) de *advenimiento de la guerra*, se perfilaron tres ideas de anclaje esenciales para conmoción de la opinión pública latinoamericana: primero, el recrudecimiento de este conflicto representaba un retorno inusitado a los peores momento de la historia de Europa, tal como la segunda guerra mundial, terrible episodio que se intentó no volver a repetir nunca más con iniciativas como la Declaración Universal de los Derechos Humanos en 1948; segundo, Vladimir Putin es la expresión más nítida de la mentalidad belicista e imperialista contaría a la doctrina del derecho internacional público que sirve de guía para todas las relacione internacionales entre Estados soberanos y; tercero, la guerra no solo afecta directamente a Ucrania y Rusia, sino que implica una amenaza trascendente para el orden mundial en su conjunto.

En contraste a esta línea informativa RT informó un día después del inicio de la invasión militar –el 25 de febrero– que su "operación militar especial" tenía un doble propósito, por un lado, "desnazificar" a Ucrania y; por el otro, detener el supuesto "genocidio" perpetrado en la región del Donbass, sin ninguna prueba o evidencia creíble, en consecuencia: "Putin a los militares ucranianos: «No permitan a neonazis usar a sus hijos, esposas y ancianos como escudos humanos, y tomen el poder en sus manos»" (RT, 2021a: s/p). y seguidamente acotó que:

> El presidente de Rusia, Vladímir Putin, se dirigió este viernes a los integrantes de las Fuerzas Armadas de Ucrania y les instó a no permitir que los neonazis usen a "sus hijos, esposas y ancianos como escudos humanos".
>
> El jefe de Estado señaló que los principales combates del Ejército ruso se realizan, "como se esperaba, **no contra unidades regulares de las Fuerzas Armadas de Ucrania, sino contra formaciones nacionalistas**, que, como se sabe, tienen una responsabilidad directa por el genocidio en el Donbass y la sangre de ciudadanos civiles de las repúblicas populares" (RT, 2021a: s/p).

A pesar de estas declaraciones propagandistas sin ningún fundamento en lo real, el desarrollo de la guerra rápidamente demostró que las tropas rusas no diferencian en su acción bélica entre blancos civiles y militares, todos los ucranianos: hombres, mujeres, ancianos y niños, son atacados por igual a su paso. Prueba de esta situación fue documentada por distintas organizaciones de defensa de los derechos humanos precisamente el registro de la comisión sistemática de crímenes de guerra y crímenes de lesa humana perpetrados por tropas rusas en la forma de masacres programadas, violencia sexual contra mujeres, desaparición forzada de

personas y grupos, torturas y despedidos asesinados de desplazados por el conflicto en ciudades como: Bucha, Borodyanka, Gostomel, Irpin y Buzova, por mencionar solo algunas (Villasmil *et at.*, 2022).

Ya en la etapa b) *desarrollo de la guerra*, son comunes en el contexto latinoamericano e internacional, noticias como:

- "Video: crímenes de guerra en Ucrania, ¿el gobierno ruso está llevando a cabo un genocidio en el siglo XXI?" (Infobae, 2020a: s/p).
- "Documentando los supuestos crímenes de guerra de la invasión rusa" (Euronews, 2022: s/p).
- "Investigan en Ucrania 13.000 presuntos crímenes de guerra cometidos por las tropas rusas" (Arciniegas y Chávez, 2022: s/p).
- "Ucrania: aparentes crímenes de guerra en zonas controladas por Rusia" (Human Rights Watch, 2022: s/p).
- "La retirada rusa deja un reguero de cadáveres que Kiev califica de "crímenes de guerra" (Dastis, 2022).

En esta etapa informativa el equipo de investigación recabo al menos 100 notas de prensa en español con contenido similar a los 5 títulos citados. En general, esta muestra de notas de prensa pone en evidencia que los *mass medios* en formato digital, representan la invasión rusa a Ucrania como un escenario bélico en el cual hay sobrados elementos para alertar a los organismos competentes, junto a la opinión pública, sobre la posible comisión de crímenes de guerra y crímenes de lesa humanidad, no como actos aislados típicos de toda guerra, sino como acciones deliberadas por parte del ejército ruso en el marco de una política diseñada, al más alto nivel, para sembrar en el país invadido una atmosfera, material y psicológica, de terror y devastación en detrimento de la dignidad humana.

En contraste a línea informativa mayoritaria, y en sintonía con el "discurso desinformativo" de RT, en el mismo periodo de tiempo TELESUR reseña que autoridades rusas: "Desde el 1 de marzo despachamos 483 caravanas de camiones a Donetsk, Lugansk y Ucrania", dijo a medios locales un portavoz de la entidad" y además enfatiza que: "Solo en estos cuatro meses, la ayuda enviada equivale a 36.700 toneladas de alimentos, medicamentos, agua embotellada y materiales de construcción para reconstruir infraestructura dañada" (TELESUR, 2022a: s/p).

Según Berrocal *et al.*, (2020) las representaciones antagónicas de la guerra responden no solo a líneas editoriales disímiles, condicionadas históricamente por factores geopolíticos diferenciados en la dicotomía Rusia vs Occidente, la cual se remonta a la guerra fría, sino demás, intentan responder a los gustos y preferencias ideológicas polarizantes del público latinoamericano. De modo que, se infiere de los autores citados que las

sociedades polarizadas, como por ejemplo Colombia y Venezuela, se dividen en el clivaje de ideologías excluyentes en el continuo tradicional izquierda-derecha y, en consecuencia, alimentan su polarización social mediante las narrativas contrarias de mass medios incompatibles como CNN y Telesur.

Ya en el tercer momento, etapa c) *etapa de estancamiento de la invasión,* se muestra como el ejército de ocupación ruso no solo no ha tenido la capacidad táctica y estratégica para controlar Ucrania, tal como indicaban sus primeros planes operativos al inicio de la invasión, sino que, además, ha perdido algunos territorios controlados gracias a la acción del ejercito ucraniano que busca, como es natural, defender la integridad territorial del país y liberar los territorios ocupados. En este contexto también se han incrementado las amenazas del presidente Putin de utilizar su arsenal nuclear contra todos los actores y factores que percibe como "amenazas para la seguridad nacional de Rusia".

- "Rusia usaría armas nucleares en caso de una "amenaza existencial", dice el portavoz del Kremlin" (CNN, 2022a: s/p).
- "Exclusiva CNN: Zelensky afirma que el mundo debería prepararse ante la posibilidad de que Putin use armas nucleares" (CNN, 2022b: s/p).
- "El uso de armas nucleares o químicas es posible, según un coronel retirado del Ejército de EE. UU" (CNN, 2022c: a/p).

A modo de resultados, la lectura minuciosa de estos artículos demuestra más allá de toda duda razonable que la Rusia de Putin es capaz de cualquier cosa sin importar las consecuencias en términos de destrucción de millares de vidas humanas. De hecho, no es descabellado suponer que, si su estrategia militar convencional no tiene éxito, como ya parece estar sucediendo, el alto mando militar ruso pueda recurrir en serio al uso de armas de destrucción masiva, tales como: armas nucleares o químicas para inclinar la balanza en su favor: ¿de usarse ese tipo de armamentos en el conflicto cualquier sería el desenlace? ¿ante un eventual escenario de ataque nuclear cual sería la contestación de EE: UU y la OTAN? Obviamente que no hay respuestas simples a este tipo de preguntas, pero todo indica que el mundo entero se vería afectado por una conflagración militar que podría determinar incluso el fin de la vida en la tierra, tal como la conocemos hoy.

Conclusiones

Todo indica que queda demostrado una vez más que, la forma como la opinión pública representa un conflicto bélico nunca es neutral y, por lo tanto, viene dada en buena medida por el manejo periodístico que de tal situación problemática hacen los medios de comunicación social a su

alcance, siempre condicionados por los intereses de su agenda política, de modo que la prensa escrita es también uno de los teatros de operaciones privilegiados donde se desarrolla el conflicto bélico entre la Federación rusa y Ucrania.

El conflicto bélico entre los países referidos ocupa, desde su inicio, un lugar destacado en la sección de política internacional de la prensa latinoamericana. En líneas generales, prevalece en estos medios (Infobae, CNN en español y BBC Mundo) el apoyo a la resistencia de Ucrania y la condena de Rusia como peligrosa para la seguridad de Europa y el mundo en su totalidad. Para lo cual han desplegado una estrategia comunicacional que argumenta los motivos absurdos (des- nazificación de Ucrania, detención del genocidio en el Donbass) e injustificables que llevaron a los lideres de la federación rusa a invadir a un país soberana e independiente como Ucrania, quien a la luz de los parámetros del derecho internacional público puede decidir, como cualquier país grande o pequeño, soberanamente sus alianzas estratégicas y su estilo de vida.

En el caso de RT y TELESUR, su narrativa sesgada, creada muy posiblemente para consumo exclusivo de algunos sectores radicales de la extrema izquierda de la región, quienes se identifican históricamente, desde la era de la URSS, con el discurso contra-occidental y antinorteamericano, describe un panorama distorsionado de los acontecimientos en completa sintonía como los intereses comunicacionales de la agenda del Kremlin y sus pocos aliados en América Latina. Están pendientes futuras investigaciones que muestren como ha sido el apoyo de las distintas capitales latinoamericanas a Kiev o Moscú, e igualmente cuál ha sido la política general de esta región del mundo ante esta guerra que, al parecer, no tiene aún un final próximo.

Llama la atención de los autores que la narrativa de estos medios ignore por completo *intencionalmente* la diferencia del poderío militar de Rusia y Ucrania y, más aún, la crisis humanitaria compleja que ha generado esta invasión en los territorios ocupados: incursión militar que objetivamente: "Viola el derecho internacional porque está prohibido hacer uso de la fuerza, **y la ocupación militar de un territorio soberano por otro Estado… La agresión está tipificada en el Estatuto de Roma como uno de los crímenes internacionales"** (Vega, 2022: s/p)

Por estas razones concretas, las políticas editoriales de RT y TELESUR representan intereses en franca oposición a la democracia y los derechos humanos en el mundo, al justificar solapadamente una agresión militar de una potencia hegemónica como Rusia en contra de un Estado libre y soberano como Ucrania, que tiene derecho irrefutable a ejercer su soberanía territorial y, más aún, definir un proyecto de nación sin tutelas ni intromisiones de la federación rusa, con el legítimo propósito de responder a las necesidades, aspiraciones y anhelos de su pueblo, que ve

en la civilización occidental, los modelos de desarrollo más prometedores, no solo en materia económica y tecnológica, sino en términos de goce y disfrute de los derechos humanos.

Finalmente, el arqueo de fuentes a nuestra disposición permite concluir que:

- En líneas generales, la prensa latinoamericana o más precisamente occidental, con una presentación latinoamericana, ha jugado un papel importante en la configuración de unas representaciones sociales contrarias a la guerra y, al mismo tiempo, favorable a la causa ucraniana.
- En términos dimensionales esta prensa que en Latinoamérica es hegemónica quizá por cercanía con EE: UU, posee una marcada línea editorial ideológicamente liberal para la defensa de la democracia, el Estado de derecho y los derechos humanos, como valores universales de la civilización humana.
- En términos de indicadores, el discurso periodístico analizado representa el conflicto: ruso-ucraniano de forma compleja, ya que, por un lado, destaca las causas objetivas y subjetivas del conflicto: en lo primero asignando la completa responsabilidad de Rusia como artífice de un aguerra que pudo ser evitada. En lo segundo, intenta describir la forma como las personas comunes viven y sienten el conflicto; por el otro, asume que en esta guerra intervienen, no solo los dos países beligerantes, sino demás un conjunto de interés geopolíticos y geoestratégicos que pueden transformar el orden mundial vigente, para bien o para mal.

Conviene enfatizar en el hecho de que no fue la intensión de los autores de esta investigación arribar a conclusiones con alguna validez universal sobre esta guerra cruenta que afecta sus vidas de múltiples maneras, sino simplemente, mostrar su versión de los acontecimientos mediante el empleo de métodos científicos cualitativos que privilegian las subjetivas en el proceso de producción de saberes y, al mismo tiempo, propendan a contribuir desde la academia con los procesos de la liberación de las personas y comunidades que, por la acción violenta de los poderes hegemónicos, ven entorpecido el goce y disfrute de sus derecho fundamentales y su capacidad creativa para ser y hacer en libertad.

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UNIVERSIDAD DEL ZULIA

CUESTIONES POLÍTICAS

Vol.40 Nº 74

Esta revista fue editada en formato digital y publicada en octubre de 2022, por el ***Fondo Editorial Serbiluz, Universidad del Zulia. Maracaibo-Venezuela***

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Cuestiones Políticas Vol. 40, Nº 74 (2022), 989-992
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

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5. Escribir nombres y apellidos completos del o los autores, sin títulos profesionales. Indicar, al pie de página del resumen del trabajo, la adscripción institucional señalando el organismo, la institución, el centro, el instituto o la dependencia, así como sus direcciones y correos electrónicos.

6. El cuerpo del trabajo debe tener el siguiente orden: introducción, desarrollo y conclusiones. El desarrollo debe dividirse en secciones, identificadas por subtítulos. Los comentarios al pie de página se realizarán cuando sea estrictamente necesario para explicaciones adicionales, enumerados consecutivamente, y escritos a un (1) espacio.
7. Las citas bibliográficas incluidas en el texto se deben realizar por apellidos del autor y año de la obra, por ejemplo: (Contreras Portillo, 2005). Cuando la cita es textual se coloca entre comillas, y debe aparecer los apellidos del autor, año de la obra y número de página, por ejemplo: (Contreras Portillo, 2005: 56); en caso de varios autores, se colocan los apellidos del primer autor que aparece en el texto a citar y se agrega la expresión et al, por ejemplo: (Contreras Portillo et al, 2005: 24). Si la cita está constituida por varias páginas continuas deben separarse por un guión, por ejemplo: (Contreras Portillo, 2005: 54-55), cuando la cita es de páginas aisladas, no continuas, deben separarse por una coma, por ejemplo: (Contreras Portillo, 2005: 56, 58, 60). Si existen varias citas de un mismo autor publicadas en el mismo año, se distinguen con letras, por ejemplo: (Contreras Portillo, 2005a) y (Contreras Portillo, 2005b). Cuando se trate de citas de jurisprudencias, se coloca el órgano emisor, fecha de la decisión, fuente, año y página, por ejemplo: (Tribunal Supremo de Justicia, Sala Constitucional: 6-11-2001, en Pierre Tapia, 2001: 55). En caso de citas de textos normativos, se coloca el nombre del texto normativo, año y artículo, por ejemplo: (Constitución de la República Bolivariana de Venezuela, 1999: artículo 49). Las citas de internet deben contener los apellidos del autor, página web y año de la publicación, por ejemplo: (Contreras Portillo, en: www.luz.edu.ve, 2008). Las citas textuales de más de 40 palabras serán incluidas en un párrafo aparte, en bloque, y a un solo espacio. Las citas de citas deben ser utilizadas en casos estrictamente necesarios, colocando los apellidos del autor comentado, luego la expresión citado por, los apellidos del autor de la obra, año y página, por ejemplo: (Contreras Portillo, citado por: Chirinos Medina, 2009: 54).
8. Las referencias bibliográficas están constituidas por los textos citados contextual o textualmente en el trabajo, deben aparecer al final del mismo con los datos completos de los autores citados en el contenido, y escribirse a un (1) espacio y (2) dos espacios entre cada una:

- Se debe disponer en orden alfabético, atendiendo al primer apellido del autor citado. Se deben seguir las normas del sistema Harvard, así: apellidos del autor en mayúsculas (coma); nombre (punto); año de publicación (sin paréntesis)(punto); título del libro, o, de ser el caso, del capítulo de libro, artículo de la revista o artículo de periódico seguido de la palabra "En" para luego colocar el nombre del libro, de la revista o del periódico (punto); editorial (punto); lugar de la publicación (punto); en caso de tratarse de un capítulo de libro, artículo de revista o artículo de periódico debe señalarse las páginas que comprenden el artículo, por ejemplo: Pp. 250-275.
- Si se hace referencia a más de un trabajo del mismo autor, pero publicados en años diferentes, se ordenará la lista cronológicamente, es decir, en forma descendente, comenzando por el año de la última de las obras publicadas.
- Si dos (2) o más trabajos de un mismo autor tienen el mismo año de publicación se añadirá a éste un código alfabético (a, b, c,…), se ordenarán entre sí tomando en cuenta la primera letra del título de la obra y siguiendo dicho código, por ejemplo 1995a, 1995b, 1995c.
- En caso de existir varios autores de la misma obra deben colocarse los apellidos y nombres de todos, separados con punto y coma.
- En caso de referencias de jurisprudencias se colocará de la siguiente manera: órgano que emitió la decisión (punto), fecha completa (punto), caso tratado (punto), fuente (punto), lugar (punto), editorial (en caso de tenerla) (punto) y páginas.
- Las referencias de los textos normativos serán de la siguiente manera: órgano emisor (punto), año de publicación (sin paréntesis) (punto), título de la norma (punto), lugar (punto), número del órgano divulgativo (punto) y fecha.
- Las referencias tomadas de Internet deben contener los apellidos y nombre del autor (punto), año de publicación (sin paréntesis) (punto), título de la obra (punto); la palabra "En" seguida de la página web (punto); día, mes y año en que se efectuó la consulta.

9. Enviar original debidamente identificado, más tres (3) copias sin identificación alguna y un CD contentivo del trabajo y transcrito en procesador de palabra Word. El disquete debe estar etiquetado identificando al (los) autor (es) y el título del trabajo. El trabajo se

debe enviar con una comunicación dirigida a la Directora o Director de la Revista, solicitando su publicación, y manifestar que el trabajo no ha sido sometido a arbitraje y/o publicado en otra revista. Dicha comunicación debe ser suscrita por todos los autores e indicar el nombre de cada uno de los autores con su dirección, teléfono (s) y correos electrónicos.

10. Los trabajos serán considerados por el comité editor de la Revista y serán sometidos a una revisión exhaustiva por parte de un comité de árbitros, seleccionado a fin de mantener un elevado nivel académico y científico. La evaluación será realizada de acuerdo a los siguientes criterios: identificación del manuscrito; correspondencia del título con el contenido del manuscrito, así como la correcta sintaxis de los mismos; la importancia del tema estudiado, esto es su pertinencia social, académica científica; originalidad y relevancia de la discusión; medida del impacto de los planteamientos en el trabajo; diseño y metodología; valoración de la arquitectura del artículo conforme a los criterios de presentación, tanto formal como metodológicos; organización interna, claridad y coherencia del discurso que facilite su lectura; calidad del resumen, el cual debe dar cuenta de manera sintética del contenido del mismo; actualidad y relevancia de las fuentes bibliográficas.

Realizada la evaluación por el comité de árbitros designado, se informará al autor sobre la decisión correspondiente. Si los árbitros recomendaran modificaciones, el comité editor establecerá un plazo prudencial para que el autor o los autores, procedan a efectuarlos. Transcurrido el plazo señalado, sin que se hayan recibidos las correcciones, se entenderá que se ha renunciado a publicar el trabajo en la Revista.

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Cuestiones Políticas Vol. 40, N° 74 (2022), 993-994
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

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1. Identificación del artículo: se examina la correspondencia del título con el contenido del artículo, así como la correcta sintaxis del mismo.
2. Sobre la importancia del tema estudiado, esto es su pertinencia social y académica-científica.
3. La originalidad de la discusión, si el artículo constituye un aporte, por los datos que maneja, sus enfoques metodológicos y argumentación teórica.
4. Relevancia de la discusión, medida del impacto de los planteamientos del artículo dentro de la comunidad científica en términos de su contribución.
5. Diseño y metodología: valoración de la arquitectura del artículo conforme a los criterios razonables de presentación tanto formal como metodológica.
6. Organización Interna: el artículo debe ser presentado con un nivel de coherencia que facilitando su lectura pueda contribuir a fomentar su discusión.
7. Calidad del resumen: el artículo debe poseer un resumen y suministrar palabras clave que puedan dar cuenta de una manera sintética

del contenido del mismo conforme a las indicaciones para los colaboradores.

8. Bibliografía y fuentes: deben ser suministradas con claridad. El evaluador tomará en cuenta su pertinencia, actualidad y coherencia con el tema desarrollado.

La evaluación de cada uno de esos criterios se hará en una escala que va desde excelente hasta deficiente. El árbitro concluirá con una Evaluación de acuerdo al instrumento: publicable, publicable con ligeras modificaciones, publicable con sustanciales modificaciones y no publicable. Los árbitros deberán explicar cuáles son las modificaciones sugeridas de una manera explícita y razonada cuando este fuera el caso. La revista no está obligada a explicar a los colaboradores las razones del rechazo de sus manuscritos, ni a suministrar copias de los arbitrajes dado el carácter confidencial que ellos poseen.

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UNIVERSIDAD DEL ZULIA

CUESTIONES POLÍTICAS

Vol.40 Nº 74

Esta revista fue editada en formato digital y publicada en octubre de 2022, por el ***Fondo Editorial Serbiluz, Universidad del Zulia. Maracaibo-Venezuela***

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