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CUESTIONES POLÍTICAS

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de la Facultad de Ciencias Jurídicas y Políticas de la Universidad del Zulia
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Cuestiones Políticas

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Comparison of cultural and political legitimation strategies in Germany and Ukraine

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Nataliia Zlenko *
Johannes Crückeberg **

Abstract

Along with the economic and defence sectors, the cultural and political sphere is an indicator of the state's authority on the world stage. A country's success in this area depends on the population's understanding of the government's appropriate actions. Therefore, a balanced strategy of cultural and political legitimization of the state not only justifies the government's activities for citizens, but also solves a number of socio-economic problems. The study identified the main existing approaches to the classification of state policy models in the cultural and political sphere, as well as countries that are typical representatives of each model. The concept of legitimization is defined and its constituent elements are determined. The subjects and objects of legitimization in the cultural and political sphere were clarified, and the author's definition of the concept of cultural and political legitimization strategy was proposed. The main characteristics of cultural and political legitimization strategies are described with a view to the historical aspects of development and the current state. The strategies of these countries and the main directions of further development of culture and politics were compared.

Keywords: legitimization; cultural and political strategy; foreign policy; democratic values; social significance; social significance; cultural and political strategy; foreign policy.

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Comparación de estrategias de legitimación cultural y política en Alemania y Ucrania

Resumen

Junto con los sectores económico y de defensa, la esfera cultural y política es un indicador de la autoridad del estado en el escenario mundial. El éxito de un país en esta materia depende de la comprensión por parte de la población de las acciones adecuadas del gobierno. Por lo tanto, una estrategia equilibrada de legitimación cultural y política del estado no solo justifica las actividades del gobierno para los ciudadanos, sino que también resuelve una serie de problemas socioeconómicos. El estudio identificó los principales enfoques existentes para la clasificación de los modelos de política estatal en el ámbito cultural y político, así como los países que son representantes típicos de cada modelo. Se define el concepto de legitimación y se determinan sus elementos constitutivos. Se aclararon los sujetos y objetos de legitimación en el ámbito cultural y político, y se propuso la definición del autor del concepto de estrategia de legitimación cultural y política. Se describen las principales características de las estrategias de legitimación cultural y política con miras a los aspectos históricos del desarrollo y el estado actual. Se compararon las estrategias de estos países y las direcciones principales del desarrollo ulterior de la cultura y la política.

Palabras clave: legitimación; estrategia cultural y política; política exterior; valores democráticos; significación social.

Introduction

Ukraine's independence increases the significance of the development of the cultural and political sphere. The country's being part of the Soviet Union impeded such development, so Ukraine needs to optimize models and strategies in the cultural and political sphere as soon as possible. In view of Ukraine's course towards the European Union, it is appropriate to study the experience of European countries in determining cultural and political legitimation methods and models which can be useful for Ukraine.

Germany is one of the countries that offers useful experience for Ukraine. One of Ukraine's close neighbours, this country has a historical experience somewhat similar to Ukraine: the weak significance of democratic values, belief in the power of the "leader", the need for post-war restoration, integration into the world community — these factors were characteristic of both countries in certain periods of time.

However, the difference is that Germany started its path towards the progressive development of the cultural and political sphere earlier than

Ukraine, and in recent decades it took place in more favourable conditions, so there is a significant gap between the countries.

Although the cultural and art potential of Ukraine is extremely large, its development and implementation need to be ensured by a thorough state strategy. But the Ukrainian government mostly implements separate short-term measures in the field of culture and art. Besides, it is appropriate to pay more attention to the improvement of institutional support for the development of the cultural and political sphere in Ukraine, which will enable culture-related state and non-state institutions to increase the effectiveness of their activities, consolidate efforts, and also enable the formation and implementation of strategic plans and goals.

The aim of the study is to determine the essence and theoretical aspects of the cultural and political legitimation strategy, and to compare such strategies in Ukraine and Germany with the vectors of further development for Ukraine. The aim involved the fulfilment of the following objectives:

1. Results

Significant differences in the development of countries around the world led to the emergence of numerous cultural and political strategies and models, individual for each country. There are several approaches to the classification of state cultural policy models. Those models can be divided into three types based on the content:

1. Charismatic policy, where the state's efforts in the course of implementing this policy are focused on supporting certain cultural figures or organizations known outside the state and those of national importance.
2. Accessibility policy — the state provides equal access to cultural artifacts and recognized examples of high art to different population groups.
3. Cultural self-expression policy –blurring of hierarchical boundaries in culture by recognizing the value of every attempt at self-expression, cultural self-identification, as well as increasing the value of cultural communication (Babytska, 2019).

Another typical classification of state cultural policy models is the approach with the division of such models into the following types:

1. Liberal model — the state does not actually interfere in the sphere of culture, having transferred the authority to regulate the sphere to various foundations (typical for the USA).

2. Partly-state model — the state transfers its obligations regarding the development of culture to a specially established body (Great Britain and Ireland are typical examples).
3. Bureaucratic educational model – characterized by total control of the state over the sphere of culture, its dependence on ideology (post-Soviet countries);
4. Prestige and education model — culture is determined by the factor of national identity, an indicator of prestige among other countries, for which the state is responsible (France).
5. The national emancipatory model is characteristic of countries, the culture of which was suppressed in the past, and currently their policy is aimed at restoring, preserving and developing cultural traditions (some developing countries — Senegal, Peru, as well as some post-Soviet countries — Kyrgyzstan, Moldova) (Šešić-Dragičević and Stojković, 2013).

The most common classification is the division of state cultural policy models into four types:

1. The assistant state is a model in which the state acts as an inspirer for business and the commercial sphere to invest in the development of culture. The United States of America are an example of a country that successfully implements this approach. The advantage of using the model is to stimulate business through the introduction of economic and/or tax benefits. The shortcoming of the model is excessive subjectivity in making investment, personal preferences of business managers, as well as the limited financial resources of such "donors".
2. The engineer state – the state solely finances the cultural sphere, and exercises control over the allocation of funds. This determines the dependence of culture and individual creative projects on state policy and ideology. Such projects are recognized as "official", while those that contradict the ideology of the state are considered "oppositional". It should be noted that this approach is often used in Eastern European countries.
3. The architect state – this model is characterized by the establishment of numerous official creative associations, as well as long-term funding of the cultural sphere by the state. The inflow of funds for financing the cultural sphere when applying this model is relatively stable, although the dependence on the state budget is increasing. The use of multi-channel financing, which is used in one of the most typical representatives of this model — France — can be the way to solve this problem.

4. Patron state – funding of culture is primarily aimed at ensuring adaptability to changes and needs of culture, as well as introducing innovations. The arm's length principle is in effect, which is implemented through the introduction of a number of independent organizations that create a "bridge" between the state and culture. The financial resources are distributed taking into account expert assessments, which are determined and provided by such organizations. Great Britain and Germany are the representatives of this model (Craik, 1996).

The considered models can be the basis for building cultural and political legitimation strategies for the states in which they are applied. In the most general sense, legitimation can be considered as giving a certain process, phenomenon, etc. legitimacy or its acquisition by this process, phenomenon.

Legitimacy can be defined as the result of legitimation, while legitimation is a process, a system of coordinated actions (Tallberg and Zürn, 2019). The interpretation of Berger and Lukman is worth noting among the first thorough definitions of legitimation. The researchers interpret this concept as a way of explaining and justifying the actions of political and social institutions through their cognitive perception and normative justification (Vodenko *et al*., 2022).

Legitimation consists of the following elements:

1. The subject of legitimation — the one who carries out the process (active party) — government, authorities, state, mass media, etc.
2. The object — something that is legitimized and has high social significance — politics, social phenomena and institutions, etc.
3. The mechanism — a specific way in which legitimation occurs (answers the question "how?");
4. The bearers of ideas about legitimation — individuals (passive party), who are influenced by the legitimation process (Markus, 1982).

In general, the legitimation strategy can be considered as a set of efforts of the country's authorities to justify, explain, and also achieve a positive assessment of their actions by an individual (Tannenberg *et al*., 2021). Considering the cultural and political legitimation of the country, its subject is the state as an active party, an individual as a passive party, and culture as the object.

So, the cultural and political legitimation strategy can be defined as the direction of the state authorities to achieve understanding, acceptance and

recognition of the main goals and orientations of cultural development, the choice of key models and mechanisms of cultural policy by individuals and society as a whole.

It is appropriate to begin consideration of the cultural and political legitimation strategy in Ukraine from identifying the prerequisites and main factors that influenced its development. First of all, Ukraine is a post-Soviet country, and its culture was significantly affected by the totalitarian regime.

So, it needs some time for complete restoration, removal of foreign elements, reproduction of national achievements, etc. Second, Ukraine is a developing country, so the relationship between the state and culture is being developed, and the model of state cultural policy is undergoing a gradual transformation.

Third, Ukraine has chosen integration into the European Union (EU) as a development vector, so the country's culture is influenced by integration and globalization processes. Besides, culture is influenced by such macro-environmental factors as the intensification of crises of various origins, including the so-called legitimation crises of political power, the instability of the economy and politics, as well as the full-scale military invasion of the country by the Russian Federation, which led to the most catastrophic consequences for the population, economy, and culture in the country.

These and other factors determined Ukraine's current transitional position on the way from the "engineer state" to the "patron state". At the current stage, the country is characterized by the implementation of short-term measures for the development of culture in the absence of long-term strategic plans. Among the positive aspects, it is advisable to note the initialling of the Association Agreement and the creation of the Action Plan for the implementation of the Association Agreement with the EU.

After this event, not only the Ministry of Culture and the Ministry of Foreign Affairs of Ukraine played an active part in the building cultural policy in Ukraine, but also such specially established cultural institutions as, in particular, the Goethe Institute, the French Institute, the British Council, the Polish Institute, which expand and provide new opportunities for Ukrainian cultural figures. Moreover, the Ukrainian Cultural Fund, the Ukrainian Institute, and the Ukrainian Book Institute should be mentioned among the recently created cultural institutions.

Comparison of the cultural and political legitimation strategy in Ukraine and Germany shows that Germany uses the "patron state" model efficiently, while Ukraine is on the way to full implementation of this model. However, the path to the current level of development of the German culture was neither short nor easy. The pre-war and war period (until 1945) was characterized by inflated national pride, weak rooting of democratic values, belief in the power of the leader, and weak participation in politics.

The end of the war was followed by the restoration of democratic values, the intensification of political participation, opposition to authoritarian values. There was a crisis of legitimacy in the 80's of the last century, which was characterized by a decreased trust of the population in the authorities. A complex process of merging of two cultures began after the unification of Germany, accompanied by a debate on the political and cultural integration of East Germans into a democratic state (Burns and Van der Will, 2003).

So, Germany's foreign policy on cultural issues has come a long way from cultural expansion to a strategy of the so-called "dialogue of cultures." The attitude towards the state as a guarantor of democratic rights and freedoms is currently typical for German citizens.

German cultural policy is aimed at ensuring freedom of speech and creative independence. Besides, the above-mentioned arm's length principle is in effect in Germany, which implies the creation of a number of self-governing organizations in the field of culture. Promotion of German culture, language and science in countries around the world is one of the most significant vectors of Germany's cultural policy (Zlenko, 2022).

The Ministry of Foreign Affairs of Germany includes a department for cultural cooperation issues. This department deals with the relations with other countries in the sphere of culture, the development of cooperation in the field of science and education, etc. The Ministry of Foreign Affairs of Germany only partly implements cultural policy independently — it mostly entrusts this task to intermediaries.

The largest intermediary organizations include the Goethe Institute, German Academic Exchange Service, Institute of International Cultural Relations, Humboldt Foundation, etc. An important place is occupied by various political (party) funds that "export" the political culture of Germany, work with mass media, public organizations and higher education institutions, etc. (Zlenko, 2022).

Despite some differences in their development, Ukraine and Germany successfully cooperate in the field of culture. The Ukrainian Embassy in Germany and the Consulates General in Hamburg, Munich, Dusseldorf and Frankfurt am Main support a number of projects under the budget programme Financial Support for a Positive International Image of Ukraine, the Activities of the Ukrainian Institute, and Measures to Support Relations with Ukrainians who Live Outside Ukraine.

Today, the Cultural Cooperation Agreement between the Government of Ukraine and the Government of the Federal Republic of Germany of 15 February 1993 is the contractual and legal basis for cultural cooperation between these countries (Embassy of Ukraine in the Federal Republic of Germany, 2019).

The fruitful cultural cooperation between Germany and Ukraine had a positive result for Ukraine —the return of a cultural and historical artifact — the 1708 Charter of Peter I. Among other things, this relic dispels the widespread myth disseminated by the propaganda of the Russian Federation regarding the historical affiliation of the Metropolitanate of Kyiv to Moscow, while the document confirms its subordination to Constantinople. Moreover, numerous monuments related to Ukrainian culture and its outstanding figures — Mykola Lysenko, Lesia Ukrainian, etc.

Were placed in Germany thanks to German-Ukrainian cooperation. Concerts by Ukrainian musicians, events with the participation of Ukraine dedicated to the art of photography, Ukrainian cinematography, as well as literary readings are regularly held in Germany. Much attention is paid to the work with the Ukrainian community in Germany, Ukrainian weekend schools, cooperation in the field of youth policy, etc. (Embassy of Ukraine in the Federal Republic of Germany, 2019).

The results obtained from the review give ground for summarizing recommendations for the further development of cultural and political legitimation strategies in Ukraine. First, it is appropriate to improve the work in the field of strategy and detailed road map development, strengthen the institutional component, document the main provisions and guidelines, and create a thorough documentary framework, ensure adequate funding, etc.

Besides, the individual projects should be properly financed by the state or patrons. Such projects should be aimed at presenting Ukrainian culture and the country as a whole for other countries of the world in the best possible way. Grants for the implementation of such projects should be provided by the Ukrainian Cultural Fund under the Ministry and the Ukrainian Institute.

Conclusions

The conducted review gives grounds to state that the cultural and political legitimation strategies of Ukraine and Germany are similar and are based on the “patron state” model. However, Ukraine is on the way to the implementation of this model, while Germany has already successfully implemented in through the establishment of a number of independent organizations that “connect” the state and culture, ensuring freedom of speech and creative independence for citizens.

The underlying reason is the country’s long being part of the Soviet Union, and the subsequent need to get rid of totalitarian values during independence, which inhibited cultural development, preserving elements

of the "engineer state" model in the country. The Ukrainian-German cultural cooperation currently plays an important role in the development and spread of Ukrainian culture.

This process contributes not only to improving the image of Ukraine and raising awareness of its identity in the international arena, but also makes a significant contribution to establishing the historical authenticity of certain facts. In particular, it dispels the myth about the historical affiliation of the Metropolitanate of Kyiv to Moscow, and determines that it was actually subordinated to Constantinople.

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Derecho Público

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Dimensión política y legal en el ámbito de la administración y dirección de empresas

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Resumen

La alta dirección empresarial es una actividad que por su envergadura requiere de un mayor nivel de organización en materia de formulación y diseño de políticas, que le permitan concretar sus objetivos en un contexto de alta competitividad global. El presente artículo pretendió realizar una descripción de la dirección y administración de empresas desde su dimensión política y legal. Para el logro del objetivo planteado se hizo uso de una metodología de análisis descriptivo y hermenéutico, basado en la revisión de diversas fuentes bibliográficas con predominio de fuentes documentales en formato digital, las cuales se analizaron y discutieron para elaborar las conclusiones del estudio. Los resultados obtenidos permiten concluir que la dimensión política y legal en la administración y dirección de empresas, está orientada a la atención al cliente y a ofrecer bienes o servicios de calidad que le permitan mantener su competitividad y rentabilidad a través del tiempo, a la vez que se administran razonadamente los recursos financieros y humanos disponibles, lo que las transforma en unidades o sistemas políticos en miniatura donde las estructuras organizacionales y gerenciales poseen formulas similares a las de un Estado, las cuales se deben regir bajo objetivos y ámbitos de intereses particulares.

Palabras clave: políticas privadas; administración de empresas; dirección de empresas; legislación empresarial; dimensión política.

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Political and legal dimension in the field of business administration and management

Abstract

Senior business management is an activity that, due to its size, requires a higher level of organization in terms of policy formulation and design, which allows it to achieve its objectives in a context of high global competitiveness. The purpose of this article is to describe the political and legal dimensions of business management and administration. In order to achieve the proposed objective, a descriptive and hermeneutic analysis methodology was used, based on the review of various bibliographic sources, with a predominance of documentary sources in digital format, which were analyzed and discussed to elaborate the conclusions of the study. The results obtained allow us to conclude that the political and legal dimension in the administration and management of companies is oriented to customer service and to offer quality goods or services that allow them to maintain their competitiveness and profitability over time, while reasonably managing the available financial and human resources, which transforms them into miniature political units or systems where the organizational and managerial structures have formulas similar to those of a State, which must be governed under objectives and spheres of particular interests.

Keywords: private policies; business administration; business management; business legislation; political dimension.

Introducción

Los factores externos que intervienen en el intercambio comercial entre las empresas y el mercado involucran a la dirección de las entidades privadas a desarrollar estructuras organizacionales y administrativas cada vez más complejas en función de lograr los objetivos de crecimiento propuestos. esto implica que a nivel corporativo se lleven a cabo procesos que transformen a la empresa en un Estado en miniatura en la cual la alta dirección comparte similitudes notables con las organizaciones públicas, cuyas necesidades a atender son las de la misma organización y mantener la rentabilidad frente a la competencia (Sánchez y León, 2017).

En el caso del Ecuador, Sánchez y León (2017), explican que, la legislación nacional garantiza el derecho de la libre empresa y promueve el libre intercambio comercial en función de cumplir ciertos recaudos de carácter legal que busquen cumplir una permisologia especifica en relación a los bienes o servicios que la empresa ofrezca, lo que implica la presencia de un régimen económico mixto en donde el Estado posee controles flexibles a las

empresas promoviendo el libre intercambio comercial. El presente artículo tiene por objetivo describir la dimensión política y legal en el ámbito de la administración y dirección de empresas de Ecuador a fin de crear una contextualización general de la dinámica existente de este sector en el país en lo que a política empresarial se refiere.

Realizando una revisión de diferentes términos claves para el estudio como la administración y dirección de empresas, su legislación nacional, las políticas empresariales en el ámbito privado, y las políticas privadas. Con una metodología de tipo expositiva se pretende revisar diversas fuentes bibliográficas de carácter digital para luego interpretar la información revisada, la cual será escrutada por medio de un análisis hermético como instrumento de análisis de dato. Para posteriormente señalar la dimensión política y legal en el ámbito de la administración y dirección de empresas, con el fin de desarrollar las conclusiones y recomendaciones del estudio.

1. Elementos teóricos

1.1 Administración y dirección de empresas

Dentro de las ciencias administrativas la dirección de empresas se encarga del conjunto de procesos relacionados con la toma de decisiones de cualquier organización y su posterior proceso de planificación y gestión de recursos para la consolidación de los objetivos propuestos por los integrantes de la junta directiva de esta (Ayala *et al.*, 2020). Dentro de este ámbito se enmarcan dos aspectos claves: el administrativo y el directivo**.**

En este contexto, las autoras antes mencionadas señalan que esta es importante ya que establece las pautas que deben seguir las actividades y planes de la organización, la cual permite regular las acciones de todos los integrantes con los objetivos que se han propuesto. Una correcta gestión de la dirección dentro de la empresa determina la eficiencia del manejo de recursos, la consumación de los objetivos y el nivel de motivación de los empleados que pertenecen a esta.

En las ciencias administrativas se presentan diversos estilos de dirección los cuales se enmarcan dentro del gobierno de la empresa, la cual se relaciona directamente con el tipo de liderazgo y las funciones internas que ocurren dentro de esta. Este estilo puede ser flexible, autocrático, paternalista, burocrático, democrático, corporativista e institucional. Todos estos conciben una idea de desarrollo de dirección diferente que se rige dentro de un enfoque o estilo de dirección específico (Ayala *et al.*, 2020).

Por su parte, Mero-Vélez (2018), explica que la dirección en la empresa está enfocada en realizar mandatos, órdenes ejecutivas y mantener una

adecuada línea de mando a los empleados y gerentes en todas aquellas tareas medulares para el correcto funcionamiento de la organización. A pesar que está es la principal actividad de la administración, la dirección esencialmente vela por qué las diversas estructuras que componen la organización funcionen eficientemente bajo los criterios de funcionamiento que se consideren correctas.

Asimismo, la dirección en la administración de empresas se centra en el funcionamiento y consecución de los términos que velen por los intereses de esta cómo organización. Lo que consiste en que cada líder de equipo, jefe de unidad y encargado de negocios, se encargue de obtener los máximos resultados posibles dentro de sus competencias a fin de ser parte de un todo que permita la consumación de un objetivo mayor, cuya naturaleza es de carácter común para todos los integrantes (Mendoza, 2005).

En líneas generales la revisión bibliográfica realizada permite identificar a la dirección y administración de la empresa como el centro del proceso de toma de decisiones, la cual coordina todas las partes y personas involucradas en lograr los objetivos propuestos, donde cada parte cumple un rol específico y juntas un papel general que se desarrolla acordé a los objetivos generales o plan de desarrollo de la organización.

1.2 Legislación empresarial del Ecuador

A continuación, se hará una breve reseña de los principales elementos legales que constituyen el marco legislativo de la empresa privada en Ecuador. Primeramente, se debe señalar los artículos Art 23, que da garantías por parte del Estado para el derecho de la libre empresa; el Art. 3 numeral 4 que establece la preservación del crecimiento económico y el desarrollo equilibrado de los beneficios colectivos de las empresas. Por último, se encuentra el art. 243 numeral 3, el cual busca el crecimiento económico y la diversificación de los medios de producción, que permitan satisfacer las necesidades del mercado (Constitución de la Republica del Ecuador, 2008).

A su vez, el régimen societario de una empresa es regulado por la Superintendencia de Compañías, que establece los diferentes tipos de sociedades bajo los cuales se debe constituir una empresa. esta puede ser una compañía anónima, colectivas, sociedades limitadas, empresa de comandita simple o por acciones y de naturaleza mixta, según determine las pautas legales que rijan cada una de ellas (Congreso de la Republica de Ecuador, 1999).

Otro elemento a tener en cuenta es la ley de creación del Servicio de Rentas Internas, la cual crea y regula las atribuciones del Servicio de Rentas Internas (SRI) de Ecuador el cual es el ente encargado de las actividades tributarias del país, por lo que todas las empresas deben cumplir con los diversos impuestos que establezca la ley.

Asimismo, el sector privado está regulado por el código de trabajo que establece las pautas y lineamientos legales que debe cumplir la empresa como empleador y sus reglamentos en relación a los trabajadores, abordando elementos como las clases de contratos, remuneraciones, seguridad social, sueldos, condiciones de contratos y sus limitaciones y la ley de comercio que regula todas aquellas actividades por tipo de empresa y las garantías para los consumidores, que formula aquellas normas encargadas de cumplir las obligaciones de los comerciantes, sus operaciones mercantiles, y demás actividades comerciales (Valencia, 2006).

1.3 Planificación y diseño de políticas empresariales en el ámbito privado

Weber (1996), señala que las organizaciones públicas y privadas constituyen un importante soporte de los sistemas económicos y sociales modernos, por lo que las personas se relacionan e interactúan con organizaciones burocráticas de diversa índole, en el manejo de sus finanzas, actividades laborales, educación, salud, entre otros. por lo que la empresa como organización privada posee un rol dentro del sistema político.

Para concretar los objetivos propuestos por las empresas, es necesario formular una serie de lineamientos que serán la pauta a seguir en determinados ámbitos como seguridad, contratación y selección de personal, atención al cliente, proveedores, entre otros lo que implica todo un proceso en el cual se toman las decisiones pertinentes en materia de las políticas internas de la empresa, esto con el fin de darle continuidad a perseguir los objetivos propuestos con el paso del tiempo y poder tomar los correctivos necesarios en caso que la organización no se encuentre encaminada a cumplirlos (Beltrán, 2013).

En este sentido, se identifican a las empresas como organizaciones cuyas estructuras de poder obedecen al logro de unos objetivos que vinculan a sus integrantes y los motivan al trabajo en función de alcanzar un logro, a la vez que intervienen en el ámbito público de manera ocasional por medio de sus actividades o políticas de responsabilidad social, las cuales entre más grandes sean estas organizaciones y mayor cabida posean en el mercado mayor será su influencia y rol dentro de la comunidad y el sistema político, llegando a ser un actor de influencia, como es el caso de los grandes gremios, o empresas que llegan a influir en las campañas políticas de países como los Estados Unidos, Canadá o Brasil.

De manera que: "La dimensión interna de la política de las organizaciones se encuentra presente en las grandes organizaciones privadas en uno de sus elementos fundamentales: la distribución del poder asociado a los roles y la toma de decisión (Beltrán, 2013). Lo citado implica entonces que en la planificación y diseño de las políticas empresariales en el ámbito

privado son desarrolladas a partir de los múltiples intereses que tiene la organización y sus integrantes. Estableciendo a nivel interno sus propias dinámicas, su mecanismo de toma de decisiones, a quien obedecer y los medios de regulación y retroalimentación dentro de la empresa. todo este conjunto de interacción origina entonces un sistema de roles dentro de las organizaciones privadas, su jerarquía y sistema de relaciones formales e informales.

1.3.1 Políticas privadas y su relación con la administración y dirección de empresas

Según Jiménez (1985), las "Políticas privadas" es un término que puede referirse a diferentes tipos de políticas adoptadas por empresas, organizaciones o individuos en el ámbito privado; esto quiere decir que los intereses u objetivos que persiguen son particulares y pretenden llegar a determinadas condiciones de éxito. En general, estas políticas se refieren a las reglas y prácticas establecidas por una entidad privada para regular su comportamiento interno y las relaciones que estos mantienen con terceros.

Algunos ejemplos de políticas privadas pueden incluir políticas de privacidad en línea, políticas de seguridad en el lugar de trabajo, políticas de protección de datos, políticas de igualdad de oportunidades en la contratación, políticas de diversidad e inclusión, políticas de ética empresarial, políticas de responsabilidad social corporativa, entre otras, las cuales orientan el accionar de la empresa ante una determinada circunstancia (Garay, 2015).

Estas políticas son importantes porque ayudan a establecer estándares claros para el comportamiento y las expectativas de las entidades privadas, y pueden ayudar a fomentar la confianza y la transparencia en las relaciones comerciales y laborales entre las empresas y otros actores externos como el gobierno, banca, inversores, accionistas, entre otros. En lo referente a la relación de las políticas privadas en el ámbito de la administración y dirección de empresas; Beltrán (2013), explica que estas son fundamentales ya que establecen las reglas y directrices que guían el comportamiento y la toma de decisiones de una empresa. Estas políticas pueden abarcar una amplia gama de áreas, incluyendo la gestión financiera, la contratación y el empleo, la seguridad y la protección de datos, la responsabilidad social corporativa y la ética empresarial.

Por lo que las políticas privadas permiten a las empresas mantener un control interno efectivo, establecer expectativas claras para los empleados y clientes, y mitigar los riesgos legales y financieros. Además, pueden ser un factor importante en la mejora de la imagen de la empresa y en el fortalecimiento de la relación con los *stakeholders*, incluyendo clientes, empleados, inversores y la comunidad en general. Por ejemplo, una política

de privacidad clara y detallada seria la del derecho de admisión de una empresa de su personal según el criterio de selección propio que esta posea, lo que esta comparta en sus redes sociales mientras este en las instalaciones de la empresa puede violar sus políticas de privacidad ya que sin saberlo puede compartir información sensible a la competencia.

De igual forma, en el sitio web de una empresa puede aumentar la confianza de los clientes y mejorar la reputación de la misma a través de una política de atención al público que promueva cercanía y fomente confianza con los internautas de su perfil digital. De manera similar, una política de ética empresarial sólida puede ayudar a prevenir el fraude y la corrupción interna, y fomentar un ambiente de trabajo justo y equitativo para los empleados.

Además, las políticas privadas pueden ser una herramienta importante para cumplir con las regulaciones gubernamentales y las leyes aplicables. Por ejemplo, la implementación de políticas de protección de datos puede ayudar a una empresa a cumplir con la legislación de privacidad de datos, y las políticas de igualdad de oportunidades pueden ayudar a cumplir con las leyes de discriminación laboral.

En resumen, las políticas privadas son una parte integral de la administración y dirección de empresas, ya que ayudan a establecer un comportamiento y una toma de decisiones éticos y responsables, y pueden mejorar la reputación de la empresa y fortalecer su relación con los *stakeholders*.

2. Metodología

Los aspectos metodológicos de acuerdo a Sampierí *et al.* (2015), tienen como objeto proporcionar un modo de comprobación que permita contrastar la teoría con lo que se presenta en el hecho real, en su conjunto, se forman como una estrategia o plan general que establece como se hará la investigación; en lo particular del presente trabajo, la metodología consiste en la descripción del procedimiento empleado por los investigadores para responder a la problemática planteada en el estudio.

La presente investigación, según Sampierí *et al.* (2015), es un trabajo de tipo documental bibliográfico, que, empleando elementos y criterios de tipo cualitativo, se procederá a medir y analizar las variables del problema planteado. Posteriormente se recolectará el material bibliográfico y hemerográfico disponible, así como las referencias electrónicas utilizables en la Internet, libros, revistas y proyectos de tesis.

Dado que el objeto de estudio es describir la dimensión política y legal en el ámbito de la administración y dirección de empresas de Ecuador,

se recurrirá a un estudio bibliográfico, el cual es realizado mediante un estudio de fuentes documentales como bibliografía, hemerográficas, libros, ensayos, monografías, revistas digitales, artículos de revistas académicas entre otros con la finalidad de recopilar información oportuna, relevante y actualizada a través de la búsqueda, análisis, y sistematización concienzuda que aportan los diferentes enfoques de autores y estudios realizados para escribir esta investigación bibliográfica.

Los cuáles serán analizados bajo la técnica hermenéutica, la cual consiste en el análisis e interpretación de los textos, lo que amerita una comparación y exposición de los diferentes autores citados en el artículo en torno a las dimensiones políticas y económicas de la dirección de empresas. Para llevar a cabo la investigación del presente artículo se realizaron una serie de pasos, con la finalidad de suministrar una estructura organizativa y metodológica tomando en cuenta los siguientes aspectos: recursos humanos, recursos materiales disponibles, así como el tiempo previsto para la ejecución del mismo. Por ello, el procedimiento toma en cuenta los siguientes aspectos:

1. Selección del tema y descripción del problema; 2. Formulación del objetivo de investigación; 3. Revisión bibliográfica y elaboración de las referencias teóricas; 4. Determinación de la metodología; 5. Recuento bibliográfico y electrónico de las fuentes; 6. Selección de los puntos de análisis; 7. Clasificación y sistematización de la información obtenida; 8. análisis hermenéutico de la información; 9. Aplicación del método de análisis seleccionado; 10. Transcripción, interpretación y resumen de los resultados del análisis bibliográfico-documental; 11. Análisis y discusión de resultados; 12. Observación, síntesis y elaboración de las conclusiones del artículo.

3. Dimensión política y legal en el ámbito de la administración y dirección de empresas

Tras la revisión documental-bibliográfica de las distintas fuentes consultadas, se procede a la discusión final del análisis realizado, empleando diversas fuentes documentales y electrónicas las cuales permitieron la consumación del objetivo del presente estudio. En cuanto a la dimensión política en el ámbito de la administración y dirección de empresas, se aprecia lo aportes llevados a cabo por Beltrán (2013), el cual guiado por los postulados de Weber (1996), enmarca a las empresas como organizaciones burocráticas, cuyas estructuras y dinámicas internas permiten que se lleven a cabo relaciones de poder en las cuales es posible encontrar un fin político en las mismas, ya que en estas se involucran la interacción de los diferentes integrantes de la empresa: empleados, obreros, jefes, directivos, proveedores, inversores entre otros.

Los cuales debe trabajar en función de cumplir uno o varios objetivos, a la vez de velar por sus intereses particulares, lo que implica una reproducción de las dinámicas políticas de la sociedad en las cuales se deben recurrir a mecanismos como la mediación, consenso, participación, entre otros para cumplir los acuerdos y objetivos.

Al igual que la política llevada a cabo en dimensiones nacionales, o más concretamente en un sistema político amplio; la dirección y administración de la empresa lleva a cabo sus decisiones desde sus intereses, metas y objetivo llevando a cabo una serie de relaciones a nivel interno y externos con los actores involucrados en sus actividades. por lo que la continuidad de la organización privada se lleva a cabo en establecimiento de relaciones con sus proveedores, sus clientes de demás vínculos de interés.

De acuerdo a Beltrán (2013), expone que los objetivos económicos, estratégicos y personales se entrelazan con los liderazgos de la gestión de las organizaciones privadas. Según el autor antes mencionado, esta fórmula tiene éxito cuando se establecen alianzas de base que le permitan a la empresa lograr sus objetivos mediante un sistema de relaciones de poder en el cual es posible sustentar las decisiones y escalar posiciones dentro del mercado o área en la que se desenvuelva y que la empresa logro una mayor relevancia entre la competencia.

Por lo que este patrón se repite en aquellas organizaciones privadas grandes o pequeñas cuyas pautas siguen un esquema similar en cuanto a que estas se mantengan a través del tiempo y se posicionen adecuadamente por encima del resto de su competencia. La dimensión política se caracteriza por ser esta amplia y dominar las relaciones interinstitucionales de la empresa con otros actores, las relaciones de poder, autoridad e influencia dentro de la dirección de la organización y como su directivo superior lleva a cabo el ejercicio del liderazgo, recreándose a nivel interno el carisma y guía necesarios para lograr el apoyo de todos los grupos de interés dentro de la organización.

Por último, es necesario resaltar que la dinámica política que ocurre a nivel interno de las organizaciones privadas, permite comprender como sus posiciones y opiniones influyen en la relación que estos tengan en espacios políticos más amplios, lo que involucra en los distintos enfoques de liderazgo mencionados por Mero-Vélez (2018), en una proyección en miniatura de lo que serían las distintas formas de gobierno a nivel general: autoritario, democrático, mixto, entre otros.

Por su parte, la dimensión legal en el ámbito de la administración dirección de empresas posee en el contexto nacional un rol eminentemente regulador, más que interventor; a la vez que establece criterios unificados de distinción de las empresas según su tipo y actividad lo que determina un orden que se adapta a las necesidades del Estado en materia tributaria y financiera.

A su vez, Mero-Vélez (2018), señala que los mecanismos legales dentro de la dirección de la empresa son una fuente de control a nivel interno que busca crear normas de auditoría interna, reglamentos para el personal y las posibles causas que impliquen un cese de contrato por parte de alguna de las partes involucradas en las actividades laborales de la empresa. De manera que más que un medio de regulación externo, el ámbito legal se desarrolla a nivel interno de la organización para que esta se regula a si misma y se desarrolle una mayor institucionalización de sus procesos internos, lo que le otorga una mayor fortaleza gerencial y organizacional.

La legislación empresarial vigente a manera general se involucra en asuntos referentes a la permisologia y regulación del tipo de empresa otorgándole una notable autonomía a los directivos y personas de interés por llevar a cabo sus propios procesos internos en materia de normas, lo que implica que estos varíen según el grado de desarrollo que posea la organización y los fines que busquen con las reglas destinadas a controlar al personal, un ejemplo de ello es una legislación interna en materia de supervisión y registro corporal de los empleados en caso de que la empresa trabaje con valores o la extrema confidencialidad que deben tener los trabajadores al ofrecer servicios de protección personal.

Por lo que se aprecia que la dimensión legal está supeditado a las políticas internas de cada empresa y la dirección lo que hace es formular mecanismos normativos para que tales pautas a seguir sean cumplidas. otros aspectos legales dentro de la dirección empresarial consistirían en instrumentos de tipo organizacional como los manuales descriptivos de cargos, los manuales de procedimiento, directrices de teletrabajo (en caso que las haya), instructivos de cumplimiento de obligaciones de empleados, entre otros, los cuales forman parte de las directrices en materia de seguridad en el lugar de trabajo.

Conclusiones y Recomendaciones

La administración y dirección empresarial posee una gran relación con lo político en función de las estructuras de poder que se desarrollan dentro de las mismas, en especial entre mayor sea su capacidad de integración Empleados-empleadores y el tamaño de sus organizaciones. Ya que según Weber (1996), las dinámicas de poder político se desarrollan en organizaciones burocráticas de gran tamaño como empresas y compañías transnacionales o con múltiples sucursales lo que les da una influencia económica y un rol de interés que les hace interactuar en el resto del sistema político.

Por tanto, la dimensión política se centra en la gestión de los recursos y relaciones de poder de la empresa como organización burocrática, siguiendo

los lineamientos propuestos por la teoría organizacional de Weber (1996), Beltrán (2013) y Mero-Vélez (2018), en la cual la empresa en un subsistema cuyas dinámicas internas son eminentemente políticas, dada la interacción entre los directivos, empleados, mandos y proveedores. Asimismo, las dinámicas de poder se encuentran en organizaciones menos complejas y de menor tamaño como las empresas familiares, por lo que las interacciones entre los actores involucrados se desarrollan en entornos más limitados, pero siguiendo los mismos patrones.

A nivel externo la estructura política del Ecuador permite identificar que en cuanto a la relación de la empresa con el mercado la intervención del Estado con las organizaciones de naturaleza privada es mínima y en los últimos años se ha evidenciado una política que busca promover la libre empresa con el menor grado de intervención posible. En lo referente a la dimensión legal de estas, se observa que a pesar que se garantiza la libre empresa desde el ámbito constitucional, el sistema tributario nacional tiende a desarrollar políticas agresivas en materia de impuestos y tributos lo que puede ser una limitante al largo plazo para las pequeñas y medianas empresas. Por lo que se afirma que la dimensión política domina a la legal en materia de dirección de empresas en el contexto de las organizaciones de naturaleza privada.

Por último, se recomienda ahondar en la relación de las organizaciones públicas y privadas en Ecuador, a la vez que es importante desarrollar estudios enfocados en la evaluación y seguimiento de políticas privadas a nivel de las empresas del país.

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Control of Activities of Public Administration Agencies: Financial, legal and administrative regulation and international experience

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Abstract

The objective of the research was to consider financial and legal, administrative regulations and international experience in the exercise of control over the activities of public administration bodies. The main evaluation measures are defined to ensure the effectiveness of control measures; this evaluation is carried out according to the following stages: determination of quantitative and qualitative parameters for assessing the effectiveness of control; evaluation of the competence of control bodies or evaluation of the effectiveness of internal and external control, etc. The methodological basis of the research is presented as comparative-legal and systematic analysis, formal-legal method, method of interpretation, hermeneutic method, as well as methods of analysis and synthesis. In addition, it has been concluded that the following criteria are proposed to evaluate the effectiveness of public administration control bodies: quality and completeness, reliability of information received by control bodies; timeliness of control, regularity of control, objectivity of control, lightness of control measures.

Keywords: administrative and legal principles; international experience; control; public administration bodies; financial and legal regulation.

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Control de Actividades de los Organismos de la Administración Pública: Regulación financiera, jurídica, administrativa y experiencia internacional

Resumen

El objeto de la investigación fue considerar la regulación financiera y jurídica, administrativa y la experiencia internacional de ejercer el control sobre las actividades de los órganos de la administración pública. Se definen las principales medidas de evaluación para garantizar la eficacia de las medidas de control; esta evaluación se realiza de acuerdo con las siguientes etapas: determinación de parámetros cuantitativos y cualitativos para evaluar la efectividad del control; evaluación de la competencia de los órganos de control o evaluación de la eficacia del control interno y externo, etc. La base metodológica de la investigación se presenta como análisis comparativo-legal y sistemático, método formal-legal, método de interpretación, método hermenéutico, así como métodos de análisis y síntesis. Por lo demás, se ha llegado a la conclusión que se proponen los siguientes criterios para evaluar la eficacia de los órganos de control de la administración pública: calidad y exhaustividad, confiabilidad de la información recibida por los órganos de control; puntualidad del control, regularidad del control, objetividad del control, ligereza de las medidas de control.

Palabras clave: principios administrativos y jurídicos; experiencia internacional; control; órganos de la administración pública; regulación financiera y jurídica.

Introduction

In Ukraine, control in its various organizational forms is carried out by the majority of state and municipal bodies and their officials. Control is one of the main components of the management process which is an element of a feedback which in its turn informs the subject of management about the results of his/her influence on the object. The results of the work of public authorities and officials largely depend on the proper organization and effectiveness of control.

Control over public authorities in general and of local self-government bodies in particular is a type of social control designed to ensure preservation and development of the social system and coordinated functioning of its elements. Social control is a complex of measures aimed at the formation of social balance as the basis of the modern social system and its management (Buha *et al*., 2022).

Under modern conditions of statehood development and functioning, the issue of modernization of public administration, activation of the role played by public administration bodies receives special attention. This determines expediency of increasing effectiveness of the system of control over the activities of the specified bodies, developing measures to improve the regulatory and legal field of state and public control over public administration (Bezpalova *et al.*, 2021).

The purpose of the research is to consider financial and legal, administrative regulation and foreign experience of controlling activities of public administration bodies.

1. Literature review

In the scientific literature, control is considered in a broad sense as a set of mechanisms in the social space (individual social groupings, population organizations, etc.) which ensure its self-organization and self-preservation by establishing and maintaining a certain normative order and using appropriate patterns of behavior which can be, for example, presented as moral and cultural values of a certain society, its traditionally developed traditions, legal norms etc. In a narrow sense, it is understood as a set of means and methods of society's influence on undesirable forms of deviant behavior with the aim of their elimination (removal) or reduction, minimization (Danylian, 2009).

Some researchers define control through a systemic approach, which makes it possible to understand control as a set of measures and processes which take place in a separate social organization and are aimed at compliance with the norms and rules of this institution, including in the conditions of restrictions on the functioning of the system. Thus, Stanislav Kosinov defines social control as a separate system of regulators of the social organization functioning, including such regulators as institutions of law, morality, traditions, etc. (Kosinov, 2013).

We believe that there is no grounds to contrast state control with social control; state control and non-state control taken together constitute social control (Halaburda *et al.*, 2021).

S. Kosinov asserts that social control is an integral part of a more general and diverse system of social regulation of people's behavior and social life; it is carried out through internal and external interaction mechanisms; it involves social interaction of personality and the respective social control; its nature, content and orientation are determined by the character, nature and type of the social system; it maintains order and stability in the society, and it also ensures social reproduction (succession) in the direction corresponding to the defined development strategy (Kosinov, 2015).

2. Materials and methods

This research is based on the works of foreign and Ukrainian researchers regarding methodological approaches to disclosure of financial and legal, administrative regulation and foreign experience of performing control over activities of public administration bodies, etc.

With the help of the epistemological method, financial and legal, administrative regulation and foreign experience of control over the activities of public administration bodies, etc. were disclosed; thanks to the logical-semantic method, the conceptual apparatus was deepened, financial and legal, administrative regulation as well as foreign experience of control over activities of public administration bodies etc. were defined. Thanks to the existing methods of law, we managed to analyze the disclosure of financial and legal, administrative regulation and foreign experience of performing control over activities of public administration bodies, etc.

3. Results and discussion

Based on the doctrine of social management, we can conclude that control is implemented in the following areas:

- determining the limits of socially acceptable behavior of an individual;
- directing behavior of objects within the limits that create an optimal and socially acceptable behavior;
- detection of deviations from the specified limits in order to take measures of influence (Kobrusieva *et al*., 2021).

In our opinion, it is appropriate to study the concept of "control" from the standpoint of social management. According to social management, control is a set of processes of observing and analyzing compliance of activities performed by an object of control with defined management approaches, as well as processes of detecting deviations from generally established principles of organization and regulation (Kolinko *et al*., 2019).

Control is an important component of any management system, and this fact guarantees and ensures its high-quality and effective implementation. Control is defined as a part (element) of management which in its turn consists in tracking the controlled object's course and state of activity; such tracking is aimed at creating a systematic review of compliance with the norms of the current legislation of the country, and this compliance with the norms is implemented through the intervention of control bodies in the activities of controlled objects and is manifested as providing

recommendations, application of measures to influence management as well as coercive measures.

The English use the term "controlling" as a systematic control, tracking the progress of tasks with simultaneous making adjustments for further work. The term "monitoring" is also widely used; its meaning is practically identical to the term "controlling", with the only difference that monitoring functions include forecasting and property protection. The term "control" is gradually absorbed by the terms "monitoring" or "controlling" (although there are other points of view according to which the last two terms are a component of control) (Bytiak, 2011).

A separate and widespread view of control, which prevails in the scientific literature, consists in consideration of control as an independent branch of government. For the first time at the beginning of the 20th century, such an opinion was expressed by the outstanding Chinese scientist Sun Yat-sen.

At the same period of time, he formulated the "constitution of five branches of power"; in this constitution, in addition to the classical branches of power ("legislative" one, "executive" one and "judicial" one) he also distinguished independent powers including: "examination" one and "control" one (Bytiak, 2011).

The theory of dividing power into four branches - "legislative" one, "executive" one, "judicial" one and "control" one still has many supporters today. The majority of scientists define the essence of control as a function of authorized subjects, aimed at ensuring compliance with the law, as a form of exercising power, as a set of techniques and methods that can be used in the process of control activity. V. Harashchuk believes in the independence of control as a separate management function that helps in the implementation of all other management functions (Bytiak, 2011).

Summarizing the concepts of control activity proposed in science, experts distinguish three approaches to revealing its nature: control as an organic management function; control as a set of means of regulating behavior of an individual or that of organization as a whole; control as a limiting function of an organization of orderly activities with tasks of these activities including ensured supervision over effectiveness of organization's functioning (Kosinov, 2015).

The analysis of the available scientific approaches to interpretation of the "control" category content showed that views are characterized by unanimity of opinions in terms of establishing and identifying control methods, which are defined as a set of techniques, methods and actions that help in establishing compliance of activities performed by authorities with the norms and requirements of the current legal and regulatory framework.

It is also appropriate to note that scientists, whose works are devoted to the process of administration and management, also distinguish audit, accounting, revision, inspections, monitoring, etc. among various types of control (Kolomoiets, 2012).

Summarizing the above, we can say that a method of control is a certain set of techniques and methods for determining compliance of organizations' activities with current norms, rules, tasks, and instructions.

The method of control, in contrast to the function of control, does not characterize the substantive purpose of activities performed by a public authority, but only the method of ensuring proper implementation of the decisions made.

Scientists distinguish types of control based on various criteria. By subjects, control is divided into public one, parliamentary one, administrative one and judicial one. T. Nalyvaiko distinguishes two types of control in the system of state-society relations - state control and public control. One of the signs determining the type of state regime consists in analyzing the ratio of the state control and public control share and the nature of their relationship (Nalyvaiko, 2010).

According to the nature of the relationship between the subject and the object, control can be internal (departmental) one and external (non-departmental) one. Internal control is characterized by functioning of the subject and the object of control in the same plane, that is, in the same organization; with regard to external control, it is characterized through implementation of control by a separate external subject of activity.

Specialists in the field of public administration distinguish between functional control, administrative control and financial control. Functional control is related to the main activities of the organization, its policies, procedures and methods; administrative control includes procedures and documentation related to the decision-making process, and financial control is related to procedures for maintaining financial documentation.

According to its stages control is divided into preliminary one, current one and final one. Preliminary (preventive) control is a prerequisite for effective ongoing activity of an organization or institution. The main task of this type of control consists in analyzing and determining institution's readiness to conduct its activities and perform functions assigned to it. The key areas of verification are quality of management decisions; work with personnel; financial and material condition and use of resources.

Current control means control that is carried out during the activity of an institution or organization. This type of control is divided into operational one (based on the main current types of activities) and strategic one (it determines the next stages of development of the organization or

institution, assessment of the level of efficiency) (Villasmil Espinoza *et al.*, 2022).

In addition, strategic control is distinguished; it presupposes collection and processing of information about implementation of the strategy, comparing and matching it with the parameters set in advance in strategic plans and programs, identifying deviations, analyzing the reasons that gave rise to such a deviation, evaluating them and making a decision on the corrective impact (Matviichuk *et al.*, 2022).

The next type of control is final control, which is related to providing a retrospective assessment of results of the institution's (or organization's) activities, as well as making conclusions of which can be drawn and used for further planning.

To study control, it is advisable to research its main features including such positions as tasks, goals (objectives), types, objects of control, etc. The main purpose of control is to increase the efficiency of management decisions and other tasks (Tylchyk *et al.*, 2022).

Objectives (goals) of control can be divided into strategic ones and tactical (or applied) ones. The strategic goal of control activities is to create conditions for compliance with legislative and disciplinary social norms and norms of state administration. The tactical purpose of control activities is revealed in "observing and analysing compliance of activities performed by all subjects of social relations with the parameters established by the state, as well as in certain "correction" of deviations from these parameters".

Tasks of control are divided into general ones and specific ones. Specific tasks cover only a separate side or a separate type of activity (use of resources, implementation of budget programs, reliability of data display in financial statements, etc.). General tasks of control cover all areas of activity performed by objects of control.

An object of control means an organization or a separate aspect of its activity that is subject to control. Subject of control means bodies of state power and local self-government, their officials, a group of people or an organization endowed with relevant powers. Subject of control is the state or behavior of the object of control. It can include activity of bodies or their structural divisions as a whole (general control) or individual aspects of activity, which is typical for carrying out selective control (Leheza *et al.*, 2022).

Conclusions

Summarizing, it is worth noting that based on the above, the concept of control can be interpreted as a set of measures of an observational nature

aimed at the relevant object of control, with the aim of obtaining reliable and complete data about the state of the object; application of preventive measures; providing recommendations on restoring the normal functioning of the control object; identification of conditions and risks related with violation of legislation; prosecution measures.

From the point of view of the theory, created is a basis is for revealing the interrelationship of control with other means of ensuring legality and discipline, in particular, identifying common and distinctive features with supervision. The need for proper legal regulation of control activities, updating the regulatory framework and solving many practical shortcomings is an obvious and pressing need today. At the same time, in our opinion, these shortcomings are not a sufficient basis for distinguishing the controlling branch of law.

So, summarizing all of the above, it is worth noting that control is a social, multifaceted phenomenon, which, from mainly philosophical and rule-making standpoints is defined through a set of actions and measures carried out with the aim of monitoring actions performed by natural persons and legal entities or for establishing any phenomena, facts when studying objects of the material world.

When summarizing achievements of scientists, we can conclude that supervision is a separate form of control, and in the process of implementation of this form of control influence measures are applied after violations are detected. According to practitioners, control is characterized by activities within the current legal and regulatory framework including activities of both the organization itself and its individual bodies and officials.

Control and supervision are quite often interpreted as identical concepts, given their single purpose (ensuring legality, restoring legal relations violated by an illegal act, bringing guilty persons to legal responsibility) as well as taking into account the possibility of their implementation in the same forms (inspections, demands for reports, explanations, etc.).

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Improving the Legal Support of Linguistic and Cultural Aspects of Language Learning at School

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Abstract

The main objective of the study was to analyze ways to improve the legal support of the linguistic and cultural aspects of language learning at school. The key method used involved a combination of modern modeling techniques. The specific topic is legal relations for language learning. The novelty is a model of legal support. Legal regulation of education is a historically conditioned form of organization of the educational process, formed as a result of the gradual growth of the role of state institutions in the performance of regulatory functions and the development of social relations. The new requirements faced by a modern teacher, his training and professional quality, make it necessary to take into account the experience and the latest achievements of other countries in the field of educational policy, in particular, in the field of foreign language teaching, as well as to identify and overcome the negative ones. In the conclusions of the case, based on the results of the study, the key aspect of improving the legal support of linguistic and cultural aspects of language learning in school was characterized.

Keywords: legal support; educational culture; language and school; educational policies; linguistic aspects.

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Mejorar el apoyo legal de los aspectos lingüísticos y culturales del aprendizaje de idiomas en la escuela

Resumen

El objetivo principal del estudio fue analizar las formas de mejorar el soporte legal de los aspectos lingüísticos y culturales del aprendizaje de idiomas en la escuela. El método clave utilizado implico la combinación de técnicas modernas de modelado. El tema concreto son las relaciones jurídicas para el estudio de las lenguas. La novedad es un modelo de apoyo legal. La regulación legal de la educación es una forma de organización del proceso educativo históricamente condicionada, formada como resultado del crecimiento gradual del papel de las instituciones estatales en el desempeño de las funciones reguladoras y el desarrollo de las relaciones sociales. Las nuevas exigencias a las que se enfrenta un docente moderno, su formación y calidad profesional, hacen necesario tener en cuenta la experiencia y los últimos logros de otros países en el campo de la política educativa, en particular, en el campo de la enseñanza de lenguas extranjeras, así como identificar y superar los negativos. En las conclusiones del caso, con base en los resultados del estudio, se caracterizó el aspecto clave de mejorar el soporte legal de los aspectos lingüísticos y culturales del aprendizaje de idiomas en la escuela.

Palabras clave: apoyo legal; cultura educativa; idioma y escuela; políticas educativas; aspectos lingüísticos.

Introduction

In recent years, researchers have been particularly interested in the problem of legal regulation of areas of activity that combine relations that are heterogeneous in nature. These, undoubtedly, include the sphere of education, within which various social relations arise and function, regulated by the norms of almost all branches of legislation (Kazanchian, 2020; Sylkin *et al.*, 2021).

The increasing importance of this issue for the education sector is currently facilitated by the ongoing processes in most countries of the world, the processes of comprehensive reform of national education systems aimed at ensuring that people master new social and professional skills, professional mobility, the development of a culture of social behavior in an open society, its rapid informatization (Shapoval *et al.*, 2022).

A significant factor in the changes is the development of international integration processes, the formation of a global educational space. An important influence on the modernization of the education system is also

exerted by the renewal of the mechanisms of public administration and extrabudgetary relations in the country, the implementation of the national project in the industry.

The transformations carried out as part of the modernization processes contribute to the emergence of new "actors" in the educational space, lead to a significant complication and increase in the diversity of social ties, and a change in the balance of public and private interests in the field of education (Cheung and Vogel, 2013). In this regard, the task of establishing legal means that ensure the transformation of education into a driving force and a resource for socio-economic development, an important mechanism for the formation of the innovative potential of society and the economy, while maintaining legal guarantees of freedom and equal access to education, the most complete satisfaction of the educational needs of the individual, is being updated.

The strategic task of legal regulation of modern institutions of education in the context of modernizing the professional training of philology students and directing it towards integration into the European and world educational space is the formation of the linguistic competence of future teachers of the national and foreign language. Society needs an educated, creative teacher with deep knowledge, professional skills, who acquire and generate their own ideas, suggesting ways to implement them in the practice of schools, capable of continuous professional growth and mobility, that is, highly competitive and in demand (Kulpina and Tatarinov, 2018).

The problems of the essence and nature of the language, the hypotheses of its origin and the stages of formation and development, the relationship with the real world, the impact on the thinking and worldview of the individual, the relationship between natural and artificial languages are inscribed in the centuries-old history of linguistic teachings, which today have become the subject of research not only in linguistics, but and philosophy, logic, psychology, sociology, ethnography, cultural studies and other sciences, because one of the important theoretical tasks is to study and describe all aspects of the structure and life of the national language as a social phenomenon, as a means of diverse communication in a human team, a means of human cognition, a factor in the development and enrichment of thought, the consciousness of each collective - the speaker.

Language is a sign system that reflects "the level of development of philosophical thinking inherent in a certain ethnic group, that is, it reflects the features of the perception of the world and oneself in this world (Holubnycha *et al.,* 2019; Nerubasska and Maksymchuk, 2020).

It is impossible to comprehend language outside of philosophy, which means that we can state that the centuries-old traditions and connections of linguistics and philosophy have given impetus to a new direction of

research - the philosophy of language, the main purpose of which is the interpretation of the main worldview ideas on the nature and essence of language in order to comprehend specific scientific facts.

The main purpose of the study is to analyze the main aspect of improving the legal support of linguistic and cultural aspects of language learning at school.

1. Materials and methods

For a more detailed study of the legal norms and aspects of the main aspect of improving the legal support of linguistic and cultural aspects of language learning at school, the following methods were used: induction and deduction, comparison and systematization; synthesis and analysis; abstract-logical - for theoretical generalizations and conclusions of the study.

To more accurately reflect the main norms and aspects of the main aspect of improving the legal support of linguistic and cultural aspects of language learning at school we used the IDEF0 functional modeling method.

2. Literature review

Based on the results of the theoretical analysis (Sylkin *et al.*, 2021; Medynska *et al.*, 2022), the improvement of the legal regulation of all elements of language learning is an important element in reforming and changing school education, as evidenced by the historical experience of this work. The main directions were the change in the organizational structure, the redistribution of management functions between its elements, the development of the independence of educational institutions. The achieved results do not allow us to identify the most effective solutions.

Based on the analysis of the literature (Doorwar *et al.*, 2019; Kryshtanovych *et al.*, 2020), the individual skills of the teacher to adjust the educational material depending on the specifics of the student audience, the programming of the author's teaching methods testify to the originality of his linguistic thinking, creative approach to the learning process. And the more interesting such methods, the better the results of the learning process, the more useful they are for students. The quality of education, the quality training of a specialist in the pedagogical industry is inextricably linked with the language.

Therefore, a linguistically competent person has an educated linguistic instinct, linguistic intuition, which confirms the personal levels of her

linguistic and speech culture. Both the language and speech components are the main ones in the practical activity of an elementary school teacher, so they should be associated with the teaching of all subjects, and not just the subjects of the language cycle.

To form the linguistic culture of the future school teacher in language classes means to form such a linguistic personality who will be able to use their theoretical knowledge and practical experience absolutely freely in their further professional activities, teaching and educating students (Khoshsaligheh *et al.*, 2020).

Linguistic consciousness always reflects the levels of linguistic knowledge, and therefore is a factor in the effective power of theoretical knowledge and practical skills that have developed under the influence of teachers of language disciplines using a personal non-standard creative approach to the complex process of forming linguistic culture. The development of the eccentricity of students' linguistic thinking is always evidence of the eccentricity of the presentation of linguistic material, i.e.

Thus, the complex process of forming the linguistic culture of the future primary school teacher in a pedagogical educational institution is a constant process of forming the individual and collective mentality of conscious members of society by means of of language (Holubnycha *et al.*, 2021; Kryshtanovych *et al.*, 2022).

Comprehensive studies that allow creating a scientifically based approach to improving the system of legal regulation of linguacultural aspects of language learning at school, especially in the context of its systemic changes, have not yet been carried out enough (Braga, 2020; Onishchuk, *et al.*, 2021). The proposed solutions in this area concern mainly the assessment of the general state of management, the redistribution of individual functions between levels of management based on subjective ideas about the effectiveness of their implementation, the creation of public administration bodies and the organization of management in educational institutions.

3. Research Results and Discussions

The effectiveness and balance of the policy of state regulation of education largely determines the prospects for the formation of the country's human resources potential, trends in socio-economic development, and ensures an increase in the level of innovation and economic potential of the national economy.

The linguodidactic principles that formed the basis of our study include: the relationship of language levels; historicism in language learning;

functional-communicative direction in language teaching; relationship in the study of all styles of the Ukrainian language; priority use as a didactic material for the lesson of artistic texts; professional direction of educational material.

The principle of interrelation of speech levels. Language is a system: it consists of many units (phonemes, morphemes, words, sentences) that are organized according to certain rules. Language units are strictly ordered among themselves by stable relations and form an internal unity at all speech levels. The principle of historicism in the study of the language contributes to the expansion of knowledge about the past of the Ukrainian people against the backdrop of the development of their national language.

In particular, in the classes on the modern Ukrainian literary language, the history of the Ukrainian language and the historical grammar of the Ukrainian language, students at the academic level can trace and analyze the history of the functioning of individual layers of vocabulary at a certain stage of its development, characterize their semantics; pay attention to the features of the phonetic, morphological and syntactic structure; understand the functions of speech.

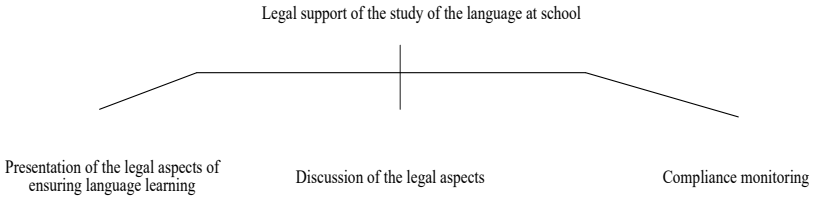
The system of measures that forms the legal mechanism for the implementation of positive linguistic and cultural foundations for language learning at school can be represented as the interaction of the following elements:

1. determination at the national level of specific indicators (indicators) of the educational sphere that are directly related to language learning at school and therefore become the object of constant monitoring;
2. assigning to certain state institutions the functions of monitoring these indicators and responsibility for creating favorable conditions for achieving their desired values;
3. development of national strategies for the development of education in a certain period, taking into account the fact of the existence of positive language learning at school;
4. implementation of individual programs for the development of the educational sphere, taking into account the problems of the educational system that hinder the implementation of language learning at school.

The approach of educational activity to the natural conditions of communication in specific life situations, the formation of skills to navigate in them, to select language means that meet the characteristics of the language situation (why, to whom, under what conditions and what should be said) are facilitated by creative tasks aimed at increasing the level of

speech culture. communication, allow you to adhere to speech and ethical norms, rules of speech behavior.

In the context of the humanization of education, special attention is required to the development and implementation of such forms and methods of language work that contribute to the formation of highly qualified specialists, in particular, future elementary school teachers. One of the important conditions for successful learning is the practical mastery of it in order to qualitatively prepare future elementary school teachers for practical work. A special place in solving this problem belongs to the work on the formation of linguistic culture.

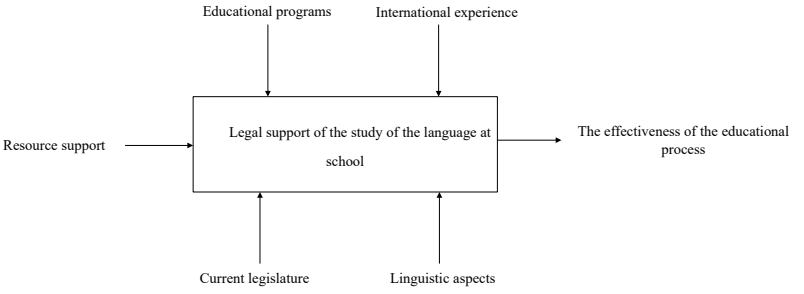


The key stages of legal support of the study of the language at school are shown in Figure 1.
Fig.1. Basic model for achieving the A0 goal - legal support of the study of the language at school. Source: authors

An elementary school teacher is such a specific language personality, the level of linguistic knowledge, speech skills and abilities of which determines not only the level of her professional.

Skills, but also in general her personal status of an experienced, competent specialist, since it is competence that is the measure of true professionalism for the formation of a pedagogical personality. Therefore, the legal support is defined as one of the state priorities of education, the most important factor influencing the formation of an intellectual, truly competent pedagogical language personality.

The qualitative levels of the professional linguistic culture of the future elementary school teacher reflect all the degrees of assimilation of language knowledge, the development of skills, according to the requirements of the curriculum of a higher pedagogical educational institution. The programs of courses of language disciplines are the basis for the implementation of the professional competence of a university teacher.



The model of legal support of the study of the language at school is presented in Fig. 2.

Fig.2. The model of legal support of the study of the language at school. Source: authors

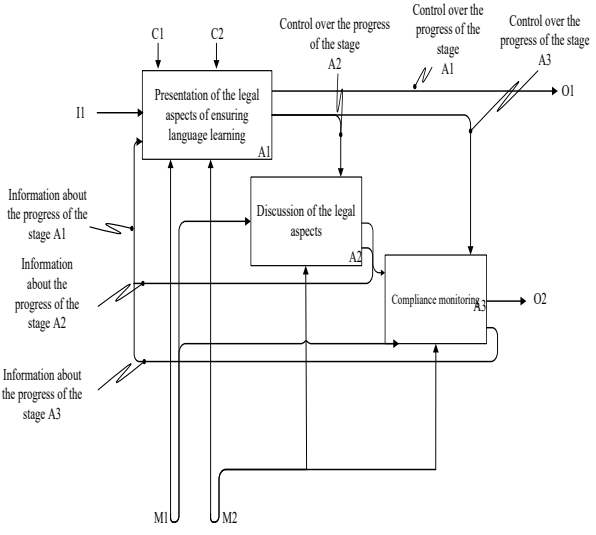


Fig. 3 shows the basic decomposition of the legal support of linguistic and cultural aspects of language learning at school.

Fig.3. Basic decomposition of legal support of the study of the language at school. Source: authors

Summing up, it should be noted that the process of acquiring theoretical knowledge and practical skills in the study of linguistic disciplines, and in the future - the application of the acquired knowledge during the passage of pedagogical practice and in the future professional activities of students involves improving the content of education, bringing it closer to the requirements of modern society, progress towards European level of education. The key is the process of legal support of these processes.

Conclusions

The right to language as a means of vital social communication has in fact already acquired the status of a natural right of the individual. In the event that such communication becomes a factor that the corresponding ethnic group uses for a common understanding of the essence of the normal order of relations between members of society, the language becomes the official means of public communication, and in the case of the creation of a state entity by the ethnic group, in the state language.

In this status, the language is already a common natural right of people belonging to the corresponding ethnos (nation) and thanks to which the state entity (state) is identified with them as with the titular nation1. In the latter sense, the language acquires the status of a state language and becomes one of the most important components of the constitutional legal order. The functioning of the national language as the state language naturally fulfills a socially significant civilizing task aimed at the formation, existence and establishment of the state of the corresponding nation.

Thus, the modern legal support of linguo-culturo-logical aspects of language learning at school should be comprehensively implemented in the context of determining the basis for the formation and implementation of state policy in the field of education and language learning, because this process should be balanced, focused on ensuring the rights of specific individuals and the whole society. Yes, the formation and implementation of legal support for linguistic and cultural aspects of language learning at school is carried out on the basis of scientific research, international obligations, domestic and foreign experience, taking into account forecasts, statistical data and development indicators.

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Pensamiento estratégico en la gestión de políticas públicas en escenarios de alta conflictividad social

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Resumen

Uno de los principales aspectos a tener en cuenta en la planificación y diseño de políticas publicas es la previsión, palabra clave que permite hacer una proyección del momento presente a diversos escenarios cuya naturaleza puede ser pesimista u optimista; dadas las características de las políticas de gobierno cuya gestión y duración pueden proyectarse a su vez: a corto, mediano o largo plazo. El presente articulo tiene por objetivo describir como el pensamiento estratégico actúa en el proceso de la gestión de políticas públicas en escenarios de alta conflictividad social. Haciendo una exposición de los principales términos que componen la problemática para luego desarrollar un análisis descriptivo del mismo. La metodología del estudio fue de tipo exploratoria-descriptiva en cuanto a sus fines, ya que emplea elementos y criterios de tipo cualitativos para medir y analizar las variables del problema planteado. Entre las conclusiones se destaca la importancia de la proyección de escenarios al momento de diseñar políticas publicas de interés medular para el Estado, por lo que estas deben

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formularse desde la planificación estratégica, en la cual el pensamiento estratégico se proyecta como guía en el proceso de toma de decisiones en escenarios de alta conflictividad.

Palabras clave: pensamiento estratégico; políticas públicas; planificación estratégica; conflictividad social; gestión pública.

Strategic thinking in the management of public policies in scenarios of high social conflict

Abstract

One of the main aspects to be taken into account in the planning and design of public policies is foresight, a key word that allows a projection of the present moment to various scenarios whose nature can be pessimistic or optimistic, given the characteristics of government policies whose management and duration can be projected in turn: short, medium or long term. The objective of this article is to describe how strategic thinking acts in the process of public policy management in scenarios of high social conflict. An exposition of the main terms that compose the problem is made in order to develop a descriptive analysis of it. The methodology of the study was of the exploratory-descriptive type in terms of its purposes, since it uses qualitative elements and criteria to measure and analyze the variables of the problem posed. Among the conclusions, the importance of the projection of scenarios when designing public policies of central interest for the State is highlighted, which is why these should be formulated from strategic planning, in which strategic thinking is projected as a guide in the decision-making process in scenarios of high conflict.

Keywords: strategic thinking; public policies; strategic planning; social conflict; public management.

Introducción

Al momento de desarrollar políticas publicas tienden a formar parte de la agenda del gobernante en un lapso de tiempo extenso que puede ser de meses a años, dada la naturaleza cambiante de los acontecimientos en materia de gobierno y las posibles situaciones o contingencias que puedan aparecer en el desarrollo de planes o programas de gobierno se han implementado mecanismos de previsión los cuales se enmarcan en el pensamiento estratégico.

El pensamiento estratégico es un término común en la planificación de empresas privadas, que se ha implementado en la gestión publica desde mediados de los años 80, que sirve de base en el proceso de toma de decisiones para garantizar la salud de una empresa a lo largo del tiempo. La influencia de este estilo de toma de decisiones en el ámbito publico le otorga al gobernante la capacidad de conectar sus acciones con los objetivos propuestos a la vez que puede prever situaciones de conflicto que puedan afectar el cumplimiento de la agenda de gobierno (Zuñiga y Reina, 2010).

Este artículo tiene por objetivo principal describir como el pensamiento estratégico actúa en el proceso de la gestión de políticas públicas en escenarios de alta conflictividad social. Asimismo, pretende exponer los elementos que caracterizan el pensamiento estratégico, su importancia en la planificación de políticas publicas y el rol determinante que este desempeña en situaciones de emergencia.

El presente articulo está compuesto en 5 partes, las cuales detallan un momento especifico de su proceso de realización, los cuales se constituyen en la introducción, en donde se desarrolla una breve descripción de la problemática, el compendio teórico del estudio el cual estará comprendido con una exposición de autores cuyas publicaciones se desarrollen en el área de pensamiento estratégico; gestión pública; Políticas públicas; conflictividad social y planificación estratégica para luego en su segunda parte desarrollar una exposición detallada de la metodología del presente artículo a fin de dar una descripción del siguiente punto el cual será Pensamiento estratégico en la gestión de políticas públicas en escenarios de alta conflictividad social. Posteriormente, las partes finales del estudio estarán comprendidas por el análisis y discusión de los resultados, para luego exponer las conclusiones y recomendaciones de la revisión de la bibliografía relacionada con el tema.

1. Compendios teóricos del estudio

1.1. Pensamiento estratégico

Dentro de la planificación estratégica, el pensamiento estratégico es la forma en como los gobernantes o el gerente desarrollan un plan con una proyección prolongada que determina la estrategia a seguir para lograr los objetivos o metas propuestos en caso de presentarse contingencias de plazos, incidentes o sucesos de causa mayor que impiden los avances propuestos (Olay, 2013).

Asimismo, este suele ser definido como: “la combinación de métodos analíticos y elasticidad mental utilizados para obtener ventajas competitivas. El pensamiento estratégico es un método para encontrar una visión u obtener una vigorización perpetua para esa visión” (Ohmae, 2004:7).

Lo que implica una actividad mental constante en la que se visualicen escenarios futuros y las formas de llegar a cumplir las metas propuestas según una situación dada.

En las políticas públicas Cortes (2023), explica que el pensamiento estratégico se emplea para hacer proyecciones que impliquen una planificación a futuro con escenarios optimistas o pesimistas en la consecución de los resultados esperados. Basándose en principios como las cuestiones complejas de los escenarios proyectivos (situaciones de crisis o falta de financiamiento, desastres naturales entre otros). encontrar tendencias en los actores involucrados, la reflexión acerca de las estrategias tomadas en cuenta, entre otros.

En lo referente a la toma de decisiones aplicando el pensamiento estratégico, Planellas (2019), señala que este proceso empresarial al ser aplicado en el espacio público consta de tres etapas las cuales van en: 1. análisis; entender dónde está el Estado como organización. 2. Decisión; la selección de la estrategia a utilizar, generando una proyección prospectiva de escenarios, alternativas a las cuales se debe plegar la ruta o acciones a seguir para lograr los objetivos. 3. la implementación, la cual consiste en pasar de la decisión a la realidad.

Lo antes expuesto permite señalar la importancia del pensamiento estratégico y la utilidad que este tiene en la planificación publica, en especial en la capacidad de proyección y poder prevenir posibles escenarios de conflictividad en la medida de lo posible a fin de hacer lo menos tenso posible el entorno para llevar a cabo el proceso de toma de decisiones. Aunque si bien estas situaciones de conflicto son en ocasiones inevitables, se busca en lo posible disminuir su aparición en el sistema político.

1.2 Gestión publica

La gestión pública aporta de manera significativa al buen desempeño y fortalecimiento de las organizaciones del Estado. Utiliza herramientas y modelos de gestión de la administración y, en particular, de la administración pública. Esta se concibe como el manejo directivo de las políticas. “Parte del rechazo de la administración pública tradicional, concentrándose en explorar la función del administrador o ejecutivo político en las políticas de alto nivel de las organizaciones públicas” (Escalante, 2015:16).

En suma, Muñoz (2020) explica que el término gestión pública se incorporó al español a partir de las traducciones del término americano *public management*, traducido comúnmente como “gerencia pública” y del término francés gestión publique. La investigación de la gestión pública entraña un enfoque en la estrategia (no en el proceso empresarial), en las relaciones interorganizacionales (no en las relaciones interorganizacionales) y en la intersección de las políticas y la gestión pública. Es decir, las políticas

públicas y la gestión son dos caras de una misma moneda: la decisión pública, de manera que la comprensión de este concepto es de interés para el tema del presente artículo.

La primera cara corresponde a la política pública (plan, programa, proyecto), lo que está en el escrito, el "deber ser" para atender un problema público. La segunda cara concierne a la "gestión", o sea a la operativización y puesta en marcha de las decisiones públicas. Dos caras interdependientes que deben pensarse integralmente para lograr cumplir con los propósitos trazados en la acción pública (Villoria, 2019).

Sin embargo, en la práctica, las políticas públicas pueden quedar en el escrito sin que se lleven a cabo efectivamente por la falta de una gestión clara y oportuna que lleve a unos resultados concretos. Precisamente en el marco de las investigaciones sobre la implementación de las políticas públicas, sale a la luz la brecha que existe entre la formulación de las políticas y la realidad de su aplicación (implementación gap), es en otras palabras, la distancia (a veces abismal) que separa la teoría de la práctica. "Desde el enfoque de la gestión pública este gap llevó a proponer lineamientos que permitan una implementación más aterrizada y coherente" (Villoria, 2019:17).

Precisamente el principal resultado de la gestión pública debe ser "la producción de valor público entendido como el valor generado por el Estado a través de la calidad de los bienes y servicios que brinda a los usuarios o población objetivo de las políticas" (Escalante, 2015:18).

En este enfoque, la gestión pública debe apuntar a tratar a los individuos como ciudadanos y no como simples clientes. Asimismo, la satisfacción ciudadana es la mejor forma de medir el valor público. Estos y otros aportes se empiezan a visibilizar con los diferentes modelos de gestión pública que salen a relucir en diferentes momentos históricos. Los cuales se dirigen a mejorar la administración pública, los mecanismos de coordinación del Estado y la labor de los funcionarios públicos, hoy visibilizados como "servidores públicos".

En términos generales, la gestión pública aporta tres elementos beneficiosos para la Ciencia de la Administración: obliga a pensar en qué es lo que diferencia lo público de lo privado en gestión; aporta nuevos métodos y técnicas de conocimiento de la Administración; obliga a pensar qué se puede enseñar que sea útil a los profesionales de la Administración y por qué (Villoria, 2019).

La gestión pública se podría definir como "una noción derivada, que trata de legitimar una esfera de actividad y un repertorio de conductas para un conjunto de actores públicos formalmente indefinidos y políticamente sospechosos" (Villoria, 2019:106). La gestión pública hoy tiene claro que está situada en un campo de juego político, acepta la politización, además, asume que ya no se trata de cambiar el sistema político para que sirva

a las necesidades de la mejor gestión, sino de cambiar la gestión para servir mejor al sistema democrático. En suma, es necesario conectar teoría normativa y conductual, la segunda puede ayudar a los gestores a comprender y explicar las dinámicas de los contextos en los que se sitúan y la eficacia de las intervenciones potenciales; la primera otorga la capacidad para pensar y reconocer cómo deben actuar de conformidad con los valores que contienden por primar en una situación. Pero, además, es preciso que esa teoría se utilice adecuadamente (Muñoz, 2020).

1.3 Políticas publicas

En la administración del Estado se llevan a cabo una serie de acciones que se enfocan a atender ciertas necesidades o solucionar problemas que afectan a la ciudadanía en general. En este sentido Franco (2021), explica que las políticas públicas son iniciativas del gobierno que buscan concretar objetivos de interés público en áreas clave para el desarrollo del Estado como lo es la seguridad, salud, vivienda, infraestructuras, alimentación, defensa y el sistema de administración de justicia; los cuales se sustentan a partir de un proceso de diagnóstico y factibilidad, que determina si es viable a nivel financiero, político y administrativo por parte de las autoridades que se encuentran ejerciendo la función de gobierno.

Por su parte, Maggiolo y Perozo (2007), la definen como un término que se asocia a los asuntos de gobierno y sistemas políticos en los cuales las actividades de las instituciones y organizaciones políticas van dirigidas a influir en determinados asuntos de la vida de sus ciudadanos; para que una política pueda tener un carácter público, esta debe ser desarrollada o procesada por el gobierno que administra el país o territorio.

Para Dunn (2008), las políticas públicas se basan en un método analítico que busca responder cinco cuestiones relevantes que constituyen los componentes informacionales de la construcción de una política pública a través de los procedimientos analíticos presentados como óvalos en la misma figura. Generando conocimiento relevante acerca de los aspectos de política como el desempeño de la misma, los resultados que se esperan, la opción de política adecuada y sus resultados observados.

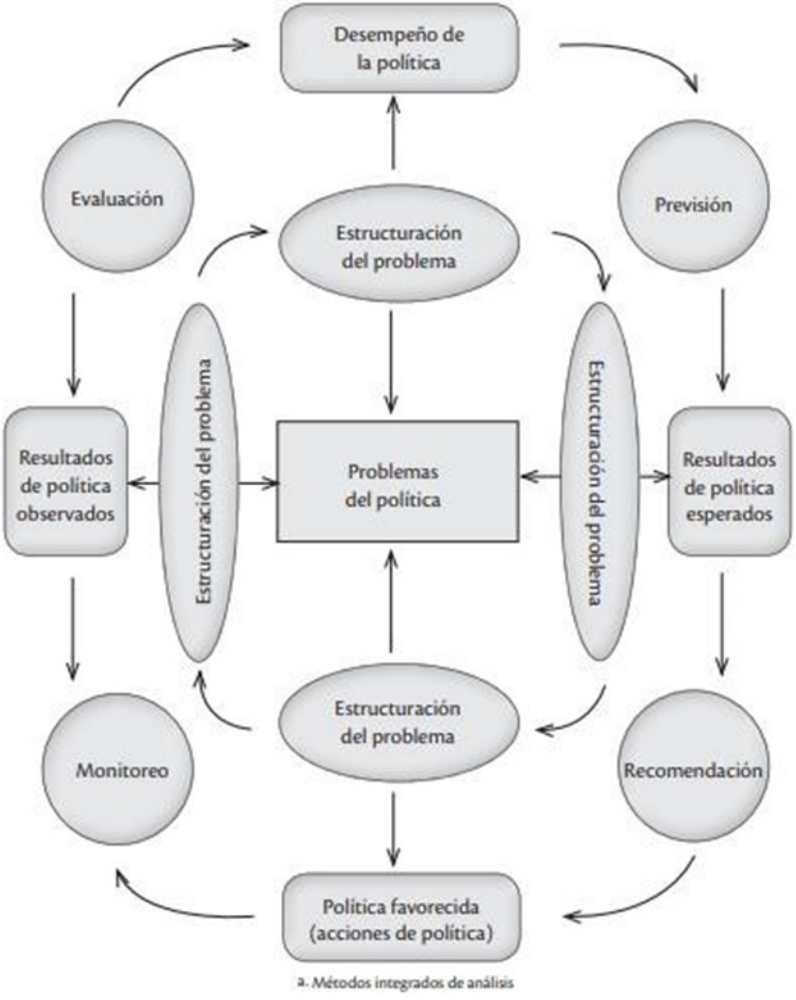

Figura 1. Métodos integrados de análisis del ciclo de una política Pública. Fuente: Dunn, 2008.

Las políticas públicas, por tanto, son una construcción social donde el sujeto que las regula es el gobierno, de la cual se construye una interacción de varios actores dentro del sistema político. El Estado como estructura o institución organizada, entre sus normativas está el velar por los intereses económicos, de seguridad y bienestar de la sociedad. Esto se consigue a

través de tres distintos pasos como la asignación, distribución y estabilidad de los bienes y recursos necesarios para que el gobierno tenga una sociedad armónica en la que satisface las demandas más esenciales.

Siguiendo este razonamiento, Torres y Santander (2013), exponen que el gobierno tiene una responsabilidad compartida con la sociedad, que normalizan y promueven actividades y servicios en una actividad especifica de la vida pública, como el estado de las carreteras o temas más específicos como el aborto o la salud gratuita, entre otros, elementos que con el pasar del tiempo se vuelven procesos cíclicos. Esto se debe a que los recursos que el Estado invierte y gasta para el bien de la sociedad, a su vez los adquiere de la misma, lo cual depende de los intereses y valores de cada una de las partes.

En estas interacciones que ocurren entre sociedad y gobierno hay diversos actores que intervienen en las políticas públicas, por ello es pertinente que se entienda que las mismas son el resultado de una acción colectiva que se desarrolla desde la administración del Estado, donde la acción colectiva de los ciudadanos lleva sus intereses al desarrollo de una serie de transacciones políticas en donde el gobierno no solo se encarga de ejecutarlas sino también de garantizar que estas se lleven a cabo con la cooperación de todos los actores involucrados (Torres y Santander, 2013).

De manera que en toda sociedad se presentará una respuesta a las acciones llevadas a cabo en materia de políticas públicas, lo que permite objetivos que no solo beneficien al Estado sino a diversos sectores de la sociedad que en su conjunto actuaran de forma armónica junto con otros actores en el proceso de la planificación y diseño de las políticas emanadas desde el gobierno. Todas estas acciones realizadas serán articuladas por ambas partes, para evitar las ejecuciones aleatorias y así con el mutuo acuerdo alcanzar metas en común.

1.4 Conflictividad social

La ACNUR (2018), establece que el conflicto social es un desacuerdo entre dos o más sectores de la sociedad como obreros-sindicalistas, maestros-gobierno, entre otros; cuyas tensiones pueden generar efectos negativos para toda la población o en situaciones complejas hechos violentos. Entre las principales causas estas pueden ser la desigualdad, crisis económica o la ausencia de políticas efectivas en la materia.

Asimismo, esta se define como "la actuación de diferentes sectores interdependientes cuyos objetivos, intereses, valores o necesidades se contraponen. En general implica exigencias relacionadas con contaminación, mala prestación de un servicio, interrupción del transporte o exigencia de derechos" (Breno, 2021: 3). Parte de los conflictos de esta naturaleza se crean a partir de las expectativas sociales y la capacidad del

Estado para desarrollar las condiciones necesarias (servicios públicos, desarrollo económico, seguridad, institucionalidad, entre otras) para cumplir con ellas.

Entre las situaciones que desencadenen la desigualdad pueden señalarse aquellos eventos o hechos en los que un grupo atente directamente contra los intereses de otro, la diferencia de control político de un grupo étnico, religioso o social en el Estado que conlleve a acciones de confrontación. La situación económica es quizás el desencadenante más común de conflictos sociales ya que al ocurrir una perdida de la capacidad adquisitiva de un sector de la población se manifiestan tensiones que inestabilizan al sistema político. la ausencia de políticas eficaces puede crear problemas en la calidad de los servicios públicos, el sistema de salud, la educación o los altos índices de delincuencia o corrupción que motive a la población a manifestar en contra de sus carencias o situaciones que les creen desigualdad (ACNUR, 2018).

Se han mencionado las principales fuentes de conflictividad sociales a las cuales hay que prestar especial atención para una correcta política de previsión que sea la que reflexione sobre la situación y posibles consecuencias si las decisiones no favorecen las expectativas de la sociedad, que eviten al gobierno negociar en una situación de tensión extrema. De igual manera las fuentes de conflictividad pueden ser infinitas o prolongadas a través del tiempo como los son conflictos de carácter étnico o religioso en sociedades con un elevado nivel de heterogeneidad.

2. Metodología

El presente texto procura hacer un análisis descriptivo del rol que ocupa el pensamiento estratégico en la gestión de políticas públicas en escenarios de alta conflictividad social, dada la naturaleza de la temática a tratar, este estudio se enmarca dentro del paradigma de investigación cualitativa (Sampierí *et al.,* 2015).

El diseño de la presente investigación obedece a la estrategia para la recolección de datos que se debe adoptar de acuerdo a los objetivos planteados previamente y responder a los mismos. En el presente estudio puede hablarse de un diseño documental-bibliográfico, puesto que la información se obtiene de documentos y archivos cuya tematatica se desarrolla en función del pensamiento estratégico, la gestión pública, las políticas públicas, la conflictividad social y la toma de decisiones en escenarios de alta conflictividad.

De igual forma se emplearon como fuentes bibliográficas secundarias libros, ensayos, artículos y trabajos de grado de varios autores relacionados

con el objeto de estudios sometidos al análisis del investigador. La forma de investigación elegida para realizar este trabajo, por ser la que más adecuada para el objeto de estudio, es un artículo basado en un diseño de tipo "documental-bibliográfico" en cuanto a sus medios; ya que sus fuentes se basan en textos y documentos académicos referentes a la planificación estratégica, políticas públicas y conflictividad social (Sampierí *et al.*, 2015).

De igual manera será exploratoria-descriptiva en cuanto a sus fines, ya que emplea elementos y criterios de tipo cualitativos para medir y analizar las variables del problema planteado, entre las que destacan describir el pensamiento estratégico en la gestión de políticas públicas en escenarios de alta conflictividad social (Sampierí *et al.*, 2015).

El método empleado para recabar los datos pertinentes y para elaborar el análisis del tema de estudio fue la investigación bibliográfica. La búsqueda bibliográfica tubo como estrategia el siguiente procedimiento: en primer lugar, se buscaron artículos que contengan los descriptores: "pensamiento estratégico", "gestión pública", "políticas públicas" y "conflictividad social" en los siguientes buscadores de artículos científicos: Redalyc; Speringer; Scielo. Se restringió la búsqueda mediante los siguientes filtros: a) Período: 2000-2022. b) Idioma: inglés, español). c) Tipo de publicación: Artículo/ Article/Tesis/Libro/Documento. Luego, se seleccionaron los textos que resultaron pertinentes para la presente investigación. Los criterios de exclusión-inclusión de los textos se rigieron por los objetivos propuestos.

La técnica empleada para la verificación del problema planteado es la observación documental o bibliográfica, empleando material documental como libros, textos, artículos documentos, folios, ponencias, revistas y periódicos de diversos autores especializados en la temática de la presente investigación. Otra fuente fue el análisis de protocolos y planes nacionales sobre el tema. Luego del relevamiento de los datos, se sistematizaron los resultados en los segmentos que componen el presente articulo y, por último, se procedió a extraer conclusiones generales sobre el tema.

3. Pensamiento estratégico en la gestión de políticas públicas en escenarios de alta conflictividad social

A nivel organizacional las políticas públicas se gestionan en entornos organizacionales altamente jerarquizados, regularizados y rígidos, por lo que desde los años 90, en la organizaciones públicas se llevan a cabo reformas y actualizaciones bajo las cuales se desarrollen mecanismos más flexibles que posean un campo de maniobrabilidad que mejore el papel de la gestión de la gerencia publica, enfatizando aquellos ámbitos bajo los cuales el liderazgo deba ser llevado a cabo en entornos de conflictividad (Kadi y Escola, 2017).

Tras la revisión bibliográfica de los principales términos involucrados en la problemática, se observa como el pensamiento estratégico se emplea como una herramienta que permite hacer una adecuada proyección de escenarios que impliquen un determinado nivel de conflictividad. Bajo el cual el o los sujetos encargados de la dirección de gobierno puedan tomar la decisión más adecuada.

De manera que la conflictividad se caracteriza por un entorno de confrontación en el cual las partes presentan dificultades para lograr el consenso. Por lo que la negociación debe estar orientada no solo a satisfacer las necesidades sino también de proyectar la confianza suficiente como para que las partes involucradas vean que sus demandas pueden ser debidamente canalizadas, por medio del pensamiento estratégico se plantea entonces

Parte del proceso de las políticas publicas diseñadas bajo el patrón del pensamiento estratégico conciben entre sus principios el establecimiento de cambios mediante la ejecución de pasos mínimos de forma que se ejecuten de forma progresiva y gradual, evitando establecer cambios de forma traumática. esta proyección de la estrategia en empresas ha tenido éxito en situaciones de conflicto entre el estado y otros sectores de la sociedad (Kadi y Escola, 2017).

De manera que el pensamiento estratégico llevara a la planificación estratégica a una mejor toma de decisiones basadas en una serie de principios los cuales Planellas (2019), describió como análisis, decisión e implementación. los cuales son palabras claves al momento de llevar a cabo la gestión de políticas públicas en escenarios de alta conflictividad social; en esta se conciben ciertas consideraciones generales que se deben tener presente al momento de desarrollar la toma de decisiones y actuar en función de a donde se quiere llegar en relación con el escenario de confrontación. haciendo que a pesar de la situación de presión y urgencia permanezcan estables los objetivos y valores del Estado como organización.

Estas pautas antes mencionadas permitirán intuir acerca de las tendencias y prevención de escenarios posibles, por lo que se trata de llevar a cabo un ejercicio de aprendizaje organizacional dentro de la gestión de gobierno que a futuro potencien las actitudes estratégicas de los encargados de formular y diseñar tales políticas. En tanto que la aplicación del pensamiento estratégico es un ejercicio practico que dentro de las estructuras presentes en el proceso de toma de decisiones se desarrolla conforme los oficiales de gobierno interactúen con el resto de los actores del sistema político. Otro elemento clave es la decisión, la cual determina la estrategia a seguir; de acuerdo a Cortes (2023) no existe un modelo único, sino una serie de factores, alternativas y suposiciones que influyen en una dirección a seguir que puede estar compuesta por múltiples pasos, de manera que esta es esencialmente una apuesta a futuro según las condiciones en las que se toman las decisiones a seguir.

La parte final del proceso según Planellas (2019) y Kadi y Escola (2017), es la implementación de la estrategia escogida; esta tiene que tomar en cuenta los recursos disponibles y el talento humano o logístico para llevarlo a cabo. a fin que puedan lograrse los cambios necesarios. un ejemplo a nivel practico de ello es que en un escenario de conflictividad social en el que los gremios de trabajadores le exigen al Estado un incremento de sueldos, la decisión de llevar a cabo tal demanda debe considerar si el gobierno cuenta con los recursos financieros necesarios para aplicar dicha reforma, pues de lo contrario se crearía un desbalance estructural que llevaría al país es mayores complicaciones de tipo económico. por tanto, el pensamiento estratégico en la gestión de políticas publicas permite determinar que tanto es posible negociar o aplicar las subvenciones sociales debidas para atenuar la conflictividad.

Por último, es preciso señalar que más allá de los postulados o teorías se pretende establecer al pensamiento estratégico como una herramienta o recurso que permita transformar los actuales esquemas de desarrollo de la gestión publica en América Latina. Tales contenidos instrumentales solo serian posibles en organizaciones públicas con una gerencia móvil y flexible que le de libertad de acción a los directivos en las especialidades que posean cada una de sus competencias.

La revisión de la literatura sobre este ámbito permite reconocer que mas que un recurso de toma de decisiones en situaciones de alta conflictividad, el pensamiento estratégico permite hacer análisis de aquellos escenarios muy previsibles y que le brindan al gobernante atacar aquellas problemáticas sociales de su gobierno por medio de políticas publicas más efectivas que disminuyan la conflictividad. Si bien este tipo de resultados es difícil de medir, permite atenuar las situaciones de riesgo que deriven en otras de mayor confrontación.

4. Discusión y análisis de resultados

Una vez revisado la documentación seleccionada se establecen a nivel conceptual y teórico una relación entre el pensamiento estratégico en la gestión de políticas publicas como una parte medular del proceso de toma de decisiones con una proyección estratégica que permita no solo mejorar el proceso a nivel operativo si no prevenir la aparición de situaciones de conflicto, a la vez que en tales circunstancias en donde se vea la actividad de gobierno inmersa en los mismos, se proceda a implementar mecanismos de negociación y solución de conflictos.

Por tanto, este ámbito aplicado a la gestión pública implica una combinación de una proyección de la estrategia con una planificación estratégica cada vez más dinámica capaz de seguir las políticas emanadas

del Estado y consolidar su implementación, si bien existen escenarios de alta conflictividad en donde situaciones de carácter político, económico y social saturan la capacidad de respuesta de la dirección política y esta no se encuentra en la condición de dar una respuesta efectiva, se hace una especial referencia que el pensamiento estratégico se emplea como herramienta de previsión, que evita llegar a extremos tales como la alta conflictividad.

Conclusiones

La revisión documental de las principales teorías expuestas en paginas anteriores permite formular a nivel descriptivo y explicativo que el pensamiento estratégico actúa en las formulación y diseño de políticas publicas como un excelente mecanismo de previsión que permite anticipar o evitar situaciones de conflictividad social. Ahora bien, al momento de tomar decisiones en situaciones de conflicto, se atiende que la situación de emergencia debe ser llevada bajo una postura de consenso que evite situaciones de violencia o calamidades mayores.

Por lo que es preciso que la directiva del Estado cuente con planificadores públicos capaces de Diseñar políticas en casos de alta conflictividad entre diferentes actores. También es preciso reforzar áreas medulares a nivel central como lo es la teoría de juegos, las técnicas de negociación y la psicología social para desarrollar una mejor estructura tecnocrática en caso de presentarse un entorno de conflictividad tal que la negociación y decisiones se deban realizar en un lapso de tiempo muy corto.

Asimismo, en cuanto a exponer los elementos que caracterizan el pensamiento estratégico, los estudios de Ohmae (2004) y Planellas (2019), indicaron que este se caracteriza por presentar tres elementos claves los cuales son la decisión, el análisis y la implementación a través del tiempo con la cual se pueden concretar objetivos de acuerdo a los escenarios que se presenten y evitar situaciones de conflictividad redireccionando políticas antes que las demandas de estas sean desproporcionadas a la capacidad del gobierno de poder ejecutarlas o mostrar acciones que solventen la necesidad que los actores involucrados requieran.

En lo referente a la importancia en la planificación estratégica en las políticas públicas se observa en la literatura consultada que esta es una herramienta medular para el desarrollo del pensamiento estratégico para que posteriormente pueda desempeñar un rol determinante en situaciones de emergencia. Por lo que el pensamiento estratégico actúa más como un mecanismo previsor que evita la aparición de escenarios de alta conflictividad que conlleve a una negociación accidentada para la directiva del Estado.

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Mediation as a way to resolve disputes related to the contractual regulation of the use of reproductive technologies

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Abstract

The dispute resolution approach, which transfers a conflict to the jurisdictional authorities for examination, is losing its relevance nowadays. The study presents the analysis of the practice related to the resolution of conflicts arising in the field of application of reproductive technologies through mediation. The authors have analyzed statistical data, judicial practice, surveys on the use of reproductive technologies. The advantages of resorting to mediation in the field of reproductive technologies are speed, lower cost, lack of formalism, simpler procedure for resolving this type of conflicts, application at the discretion of the participants, guarantee of full confidentiality, objectivity of conflict resolution with the participation of a neutral third party, taking into account the best interests of the child. The mediation agreement is also an independent segment of civil law and cannot be identified with a settlement agreement, but only be the basis for its adoption already in court proceedings. In conclusion, comparing the disadvantages and advantages of the use of mediation in the field of reproductive technologies, it can be stated that the latter significantly prevail.

Keywords: mediation and reproductive technologies; surrogacy; conflict resolution; litigation; settlement.

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La mediación como forma de resolver disputas relacionadas con la regulación contractual del uso de tecnologías reproductivas

Resumen

El enfoque de resolución de la controversia que traslada un conflicto a las autoridades jurisdiccionales para su examen, está perdiendo vigencia en la actualidad. El estudio presenta el análisis de la práctica relacionada con la resolución de conflictos surgidos en el ámbito de la aplicación de tecnologías reproductivas a través de la mediación. Los autores han analizado datos estadísticos, práctica judicial, encuestas sobre el uso de tecnologías reproductivas. Las ventajas de recurrir a la mediación en el ámbito de las tecnologías reproductivas son la rapidez, el menor coste, la falta de formalismo, un procedimiento más sencillo para resolver este tipo de conflictos, la aplicación a discreción de los participantes, la garantía de total confidencialidad, la objetividad de la resolución de un conflicto con la participación de una tercera parte neutral, teniendo en cuenta el interés superior del menor. El acuerdo de mediación es también un segmento independiente del derecho civil y no puede identificarse con un acuerdo de conciliación, sino sólo ser la base para su adopción ya en los procedimientos judiciales. En conclusión, comparando las desventajas y ventajas del uso de la mediación en el ámbito de las tecnologías reproductivas, se puede afirmar que estas últimas prevalecen significativamente.

Palabras clave: mediación y tecnologías reproductivas; maternidad subrogada; resolución de conflictos; litigios; acuerdo.

Introduction

The development of civil law relations in the field of application of reproductive technologies reflects the important principles of civil law, which, first of all, are freedom of contract, free expression of the will of the parties, dispositivity. These principles are reflected in the contractual regulation of the above legal relations. The classic scheme for resolving legal disputes arising between the parties to this type of agreement is to appeal to the judicial authorities. This approach to resolving a dispute that arises, by submitting it to the relevant jurisdictional authorities for consideration, is currently losing its relevance.

Litigations have a number of disadvantages, including the longevity and high cost of the process. In our opinion, taking into account the specifics of legal relations of the use of reproductive technologies, it is appropriate to use alternative methods that would contribute to the effective solution

of problems arising from non-fulfillment or improper implementation of the agreement on the use of reproductive technologies. The institution of mediation plays an important role in this situation. No special rule that would regulate the procedure for the application of mediation is defined in civil law.

Moreover, there is no scientific analysis of the use of mediation in the legal relations of surrogacy. In this regard, there is a need to implement the general legal characteristics of the mediation agreement concluded between the participants of the surrogacy program. To do this, it is necessary to identify the advantages and disadvantages of applying this practice.

Particular attention should be paid to the use of mediation in legal relations with a foreign element. Currently, the solution of a number of existing significant legal problems can speed up the procedure for resolving conflicts regardless of the nationality of biological parents or a surrogate mother, which will also contribute to the effective protection of the rights of participants in all legal relations.

The purpose of the paper is to determine the theoretical and legal basis for the mediation clause in contractual relations arising during the application of reproductive technologies. The authors set the task, in addition to the very meaning of such a reservation, to determine the legal nature, the main advantages and disadvantages of the use of mediation in the in vestigated area.

The foregoing emphasizes the relevance of the topic of the study, which requires a deep investigation of the issue.

The fundamental studies of Shatkovsky (2019) have been devoted to the problems of the civil law regulation of reproductive technologies and conflict resolution. The legal constructions of the use of mediation in the resolution of the civil law conflicts have been studied by Dyachenko and Kolokolna (2020), Podkovenko (2020), Rezvorovych (2019) Mazaraki (2018-2019).

We also took into consideration the scientific conclusions of Starikova N.M., (Starikova, 2018) which recognized the forms of civil liability in the field of application of assisted reproductive technologies and contractual relations in this area.

The conclusions made by the aforementioned scientists contributed to the formation of the the oretical and legal basis of the study and specific proposals for amendments to the current legislation were developed.

However, the issue of the application of mediation in emerging relations was not subject to scientific development at all.

Insufficient scientific development in the studied area also indicates the relevance of the chosen topic.

The theoretical basis of the study is scientific development in the form of articles, scientific conferences. The empirical basis is the judicial practice that has developed in the field of disputes arising in legal relations on the application of reproductive topics, as well as law enforcement practice that has developed as a result of the resolution of the above types of disputes involving a foreign element.

1. Material and Methods

The following methods of scientific cognition: dialectical materialism, comparative, historical and legal, sociological, statistical have been used.

The analysis was carried out on the basis of statistical indicators of the use of mediation in dispute resolution in family and civil law. Significant attention is paid to the resolution of disputes arising during the contractual regulation of the use of reproductive technologies.

After analyzing the number of court decisions in the field of dispute resolution arising from the application of reproductive technologies contained in the Unified State Register of Court Decisions for 2015-2022, we can observe an obvious increase in the number of disputes resolved in court.

Therefore, the largest number of court decisions in cases on the use of reproductive technologies occurred in 2019 (295 cases), the smallest (47 cases) in 2012. Since 2012, the number of court cases has gradually increased: 2013 - 89 decisions, 2014 - 92 decisions, 2015 - 83 decisions, 2016 - 77 decisions, 2017 - 140 decisions, 2018 - 196 decisions, 2019 - 295 decisions, 2020 - 259 decisions, 2021 - 277 decisions, the first quarter of 2022 - 140 decisions (Fig. 1) (Unified State Register of Court Decisions, 2022).

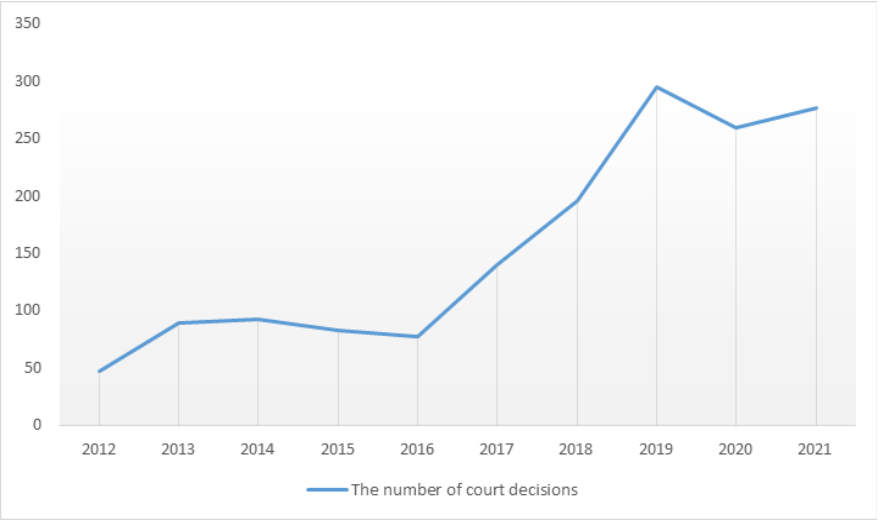

Figure 1 (developed by the author on the basis of the analysis of the Unified State Register of Court Decisions, 2022).

2. Results

The study shows that there is a constant dynamic in legal relations on the use of reproductive technologies and the frequency of appeals to the administrative procedure for resolving disputes arising in this area. Most disputes concern the collection of funds for the provision of medical services under the agreement on the use of reproductive technologies, recognition of paternity and registration of a newborn child. The growth of court appeals in 2019-2020 in Ukraine shows an increase in the number of concluded agreements in the studied area and the need to search for alternative options for resolving disputes that arise.

Extensive judicial practice has developed in the field of disputes related to the use of surrogacy in other countries. The result of consideration of court cases on the use of reproductive technologies depends on the national legislation of a particular country. For example, cases challenging surrogacy treaties in Taiwan are decided by local courts. Moreover, the initiators of such disputes are often surrogate parents. In one of the court cases, the husband of the surrogate mother refused to give the child to biological parents and argued that the surrogacy agreement was invalid. The court found the agreement valid because both parties actually signed the agreement in person.

The court relied solely on general law regarding the conclusion and termination of the agreement, since, there is no regulation that expressly prohibitsor permits surrogacy, so the surrogacy agreement in the case was not invalid under Article 71 of the Taiwan Civil Code. Another illustrative case was a dispute in which biological parents refused to pay for the services of a surrogate mother on the grounds that she failed to bear and give birth to a child.

The court declared the surrogacy contract invalid and critically considered the surrogate mother's demands to pay for her services, ruled that according to Article 72 of the Taiwan Civil Code, a paid surrogacy contract is invalid, because it represents a kind of commercialized labors that is contrary to public policy or morality. The court also concluded that there is no regulation that expressly prohibits the practice of surrogacy that could lead to the annulment of surrogacy agreements (Chianga and Choub, 2018).

The practice of resolving disputes arising between the parties to contractual relations in the field of application of reproductive technologies demonstrates that the only way is to appeal the parties to the judicial authorities. Given the workload of the courts, the long term of consideration of cases, the cost of court fees, the consideration of these disputes is irrational. In our opinion, in such cases, the parties may use another way to regulate the resolution of disputes arising from the contractual relationship.

In accordance with Part 7 of Article 49 of the Civil Procedure Code of Ukraine, the parties may reconcile, including through mediation, at any stage of the judicial process (Civil Procedure Code of Ukraine, 2004).

According to the Law of Ukraine "On Mediation" as of November 16, 2021, this concept should be understood as "extrajudicial voluntary, confidential, structured procedure, during which the parties, with the help of a mediator (mediators), try to prevent the emergence or settlement of a conflict (dispute) through negotiations" (Draft Law of Ukraine "On Mediation", 2020).

The Law of Ukraine "On Mediation" defines the concept of mediation itself quite widely and to a certain extent abstractly. Given the domestic legislative technique, in this case, it is reasonable to draw attention to the fact that the concept of mediation occurs rather not as in the form of a classical legislative definition, but is provided only rather as a characteristic of the procedure itself. However, in this context, it is worth noting that mediation is not only a procedure that is regulated by current legislation, but also a whole range of approaches, theories and methods, constitutes a system of values for conflict resolution.

The basic principles, on the basis of which mediation activity is based and its essence is expressed, are normatively defined in Article 3 of the Draft

Law "On Mediation". This provision contains an explicit list of guidelines that are the basis for mediation activities in the national legal reality and are considered as the starting point for the legal regulation of the institution of mediation. The legislator defines seven important principles: voluntariness, confidentiality, independence and neutrality of the mediator, impartiality of the mediator, self-determination, equality of rights of the parties to mediation (Bortnyk *et al.*, 2021).

Scientists emphasize that mediation helps to save a lot of time and find a solution to the conflict as quickly as possible, which would have a positive impact on both sides. During the quarantine conditions that arose during the pandemic, the institution of mediation, like many other spheres of public life, moved online. Therefore, individuals are involved in the mediation process through the use of online communication or artificial intelligence, for example, chatbots (Dontsov *et al.*, 2021).

The problematic nature of the use of mediation in the studied area is also explained by the attitude of society to the institute of reproductive technologies itself.

Some scientists note that the use of such methods of reproductive technologies as, for example, surrogacy is medical tourism. Modern medical tourism is a rather diverse phenomenon and has different types of legal relations. Currently, many patients with low income go to less developed countries for infertility treatment, which is high-cost in their country, however, much cheaper abroad (Samuel, 2012).

Dispute resolution in the field of medical law, in particular in the field of reproductive technologies, as shown by the findings of research, is becoming an increasingly frequent practice. This situation can be explained by a number of reasons: widespread use of reproductive technologies, imperfection of concluded contracts, non-fulfillment of the terms of the contract by a party, conflicts and gaps in current legislation.

In our opinion, the use of mediation is the best option to solve such difficult situations. Therefore, one of the important arguments of this proposal is the need to apply all the principles in the studied area, which are characteristic of mediation, namely: legal equality of participants, free expression of the will of the parties, impartiality of the mediator, taking into account the interests of all parties. Moreover, given the certain specifics of such conflicts, the use of mediation has its relevance in the complex of relations that lie on the verge of civil, family and medical law.

Notably, the current legislation in the studied area does not always give the right for one of the parties to go to court. For example, Article 139 of the Family Code of Ukraine determines the right of a person to challenge the fact of motherhood. This provision gives the right to a woman who considers herself the mother of a child to sue a woman who is registered as the mother

of the child for recognition of her motherhood. However, if the child was born using assisted reproductive technologies, the legislator deprives the right to challenge the fact of motherhood (Family Code of Ukraine, 2002).

In such cases, it seems that everything is legally determined, however, in practice, situations often occur when biological parents do not return for their newborn children, and the surrogate mother cannot keep the child for legal reasons. In our opinion, such an already complicated legal problem can be solved by applying an alternative method – an agreement.

Along with the formation of mediation in our country, the issue of the development of international family mediation, aimed, first of all, at the possible reduction of tensions in the resolution of disputes arising in relations with a foreign element in family relations, is becoming increasingly important.

Statistical indicators increase every year and show that almost half of the patients seeking the reproductive medicine services in Ukraine are foreigners. The first place is occupied by patients from Israel, and they are also followed by Italians, citizens of the Federal Republic of Germany, Great Britain and other countries of the European Union. In recent years, the number of couples from Georgia and Transcaucasia with infertility problems has increased significantly (Malska and Bordun, 2018).

Studies by foreign scientists show that in the Massachusetts and Florida, for example, the treatment of infertility with assisted reproductive technologies is approximately 30–40% (Thoma *et al*., 2014).

The use of mediation in the field of reproductive rights is usually associated with contractual relations arising in this area. Under the concept of assisted reproductive technologies (hereinafter – ART), a method of treating infertility, in which manipulations with reproductive cells, some or all stages of preparation of reproductive cells, fertilization and development of embryos before their transfer to the patient's uterus are carried out *invitro* (Ministry of Health of Ukraine, 2008).

The birth of the child from a "test tube" dates back to 1978, which occurred through *invitro* fertilization. As a result of the rapid development of the advanced technologies over the past 30 years, there has been a rapid evolution among many other types of assisted reproductive technologies. Along with these technologies, social, cultural, legal and ethical relations developed.

Therefore, ART is a key symbol of our time, representing the growing importance of biotechnology in the configuration of individual, family and collective identities around the world. This fact is confirmed by the findings of more than 50 anthropologists who study the influence of ART in many areas of public life, including the traditional anthropological areas

of kinship, marriage and family, gender, religion and biomedicine (Inhorn and Birenbaum-Carmeli, 2008).

Studies conducted by the European Commission for the Effectiveness of Justice (CEPEJ) show that 47 countries do not have statistics on mediation processes. Since legal relations in the field of application of reproductive technologies arise on the verge of civil and family law, we analyzed the provision of CEPEJ indicators in the field of civil and family disputes. Ukraine showed one of the lowest indicators of the index of a balanced ratio between mediation and litigation (0.08%) (Zalar, 2019).

Other indicators were demonstrated by the Singapore International Dispute Resolution Academy (SIDRA). According to the resulting survey data, the main factors demonstrating superiority over mediation, as an independent institution, have hybrid mechanisms: the advantages were: improved efficiency (35%), cost (34%) and the performance potential (31%). The main disadvantage of mediation based on the results of the survey was determined by the performance potential only to a certain extent, while the performance potential and finality are two important factors (both 55%) in terms of user satisfaction with mediation. Figure 1. (Alexander *et al.*, 2021).

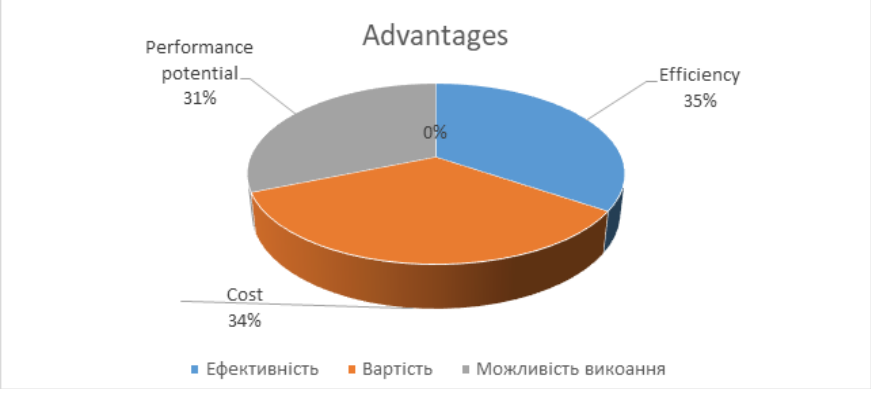

Figure 2: Source: authors' preparation.

Scientists in the field of medicine confirm international statistics and note that assisted reproductive technologies, which were originally developed to treat women with fallopian tube diseases, have been used in an increasing list of other situations over the past decade, which has led to an exponential increase in the number of children born through this procedure, which now account for 2–5% of births in developed countries (Scherrer *et al.,* 2015).

The World Health Organization estimates that at least 48 million couples and 186 million people worldwide suffer from infertility. Today, the use of assisted reproductive technologies is becoming a broad way to recover for couples who have such a diagnosis. However, the implementation of this process is associated with a number of legal elements of such process. A review of the scientific literature also made it possible to determine that couples who experience ART, are likely to face difficulties, particularly at the social, family and financial levels (René *et al*., 2022).

In 2019, the Family Mediation Council, operating in England and Wales, conducted a survey of 122 family mediators, who conducted mediation on 2161 cases within six months. As a result, the following indicators were obtained: in 70% of cases, the parties reached full or partial agreement, with 50% reaching full agreement by concluding written agreements, 20% reached agreement on some issues or on all issues in oral agreement. The findings of the survey showed, that the population was not sufficiently informed about the possibility of mediation, which is reflected in the distrust of the population in the effectiveness of mediation (Family Mediation Council, 2020).

The use of mediation demonstrates its effectiveness in many European countries. For example, in the family law of the Federal Republic of Germany for more than a decade there have been provisions on the application of mediation. In the Republic of Poland, mediation has been operating since 2005 in the resolution of civil law disputes. Labor, family, commercial disputes have been successfully resolved through mediation since 2004 in Bulgaria.

Instead, in Ukraine, the Draft Law on mediation was registered in 2015. Some scientists are critical of the provision providing for a mediation clause. In their opinion, such consolidation is inappropriate, since the legislator already provides the opportunity to apply to mediation in any case, and the presence of the clause itself does not prevent from going to court (Mamnytskyi *et al*., 2019).

In the European Union, the mediation procedure is understood as the voluntary expression of the will of the subjects of the dispute who decide to involve a third, independent party in order to independently resolve the conflict, during which a mediator maintains personal impartiality and ensures the confidentiality of information (Verba-Sidor *et al*., 2021).

K.R. Rezvorovych supports this conclusion and states that the European Community recommends the introduction of mediation both at the pre-trial and trial stage as the main method of alternative dispute resolution, since the European Union countries adhere to the principle that the right to access justice includes both judicial and extrajudicial methods of conflict resolution. Judicial practice of European countries demonstrates, that in

80% of cases, disputes that are in court proceedings and submitted for mediation, are resolved without trial (Rezvorovych, 2019).

A number of scientists believe that the use of mediation in family dispute resolution is an effective method and has positive consequences. Moreover, the application of this method makes it possible that all relations between the parties to the dispute can be restored, which will also provide an opportunity to strengthen the institution of the family in Ukraine (Dyachenko and Kolokolna, 2020).

The scientific literature defines different models of mediation, depending on a mediator. Therefore, one can find judicial mediation as part of legal proceedings (Canada), legal mediation, such services can be provided by lawyers (Italy), notarial mediation, when the mediators are a notary, as well as professional mediation (Podkovenko, 2020).

It is worth noting that alternative ways of conflict resolution in the studied area as a legal tool are not the opposite of dispute resolution in court; on the contrary, such methods are successful auxiliary processes.

Mediation clause does not deprive a party of going to court in the end case if a compromise between them is not reached. The ability of participants in legal relations to independently determine which of the methods is best for the settlement of controversial issues is not prohibited by current legislation and is regulated by the contract. Mediation lies in the private legal plane when the parties are in a contractual relationship with each other. Its application is not a judicial procedure, the participants are legally equal, the participants take actions on the principle of dispositivity without external influence.

The advantages of using extrajudicial methods also include mainly such signs as rapidity, lower cost, lack of formalism, a simpler procedure for resolving this type of conflict. In addition, subjective factors are the free choice of the parties at their own discretion to determine the way to resolve the conflict.

Ensuring confidentiality is also one of the important advantages of using mediation in the legal relations of surrogacy.

Potential parents of the child may have a fundamental interest in protecting their family, social and psychological ties with the child. The decision on the need to notify the child of the fact of its origin should be entrusted solely at the discretion of the spouses. It is up to them to decide whether to inform their child of the manner of birth through surrogacy and/or gamete donation.

Another advantage is application of mediation on the objectivity of resolving a dispute with the participation of a third neutral party with the appropriate specialization. Appropriate training of mediators is an important

element in the effectiveness of mediation. The further development of this important institution for the country depends on how the legal norms are applied and the agreement is concluded.

In the scientific literature one can also find the opposite opinion, based on the belief that the judicial method is the most optimal in legal relations for the use of reproductive technologies. This position is explained by the fact that the value of the court decision is more pronounced, despite the length of the term of consideration. In addition, there is a need to involve professionals. Importantly, as a result of the trial, judicial practice is formed, certain judicial conclusions are summarized, which significantly affects the further resolution of such cases in the future (Shatkovsky, 2019).

Among the disadvantages related to the use of mediation in the studied area, it is worth mentioning possible difficulties in the implementation of the mediative decision, that is, there is no coercive mechanism.

In addition, the delay in time by the parties as a negative factor affecting the effectiveness of mediation can be also considered as disadvantage. One of the parties may show a tendency to intransigence, as well as a desire to transfer responsibility for resolving the conflict to someone else.

The inaccessibility of mediation for vulnerable and low-income categories of the population is noteworthy. In Ukraine, the inaccessibility of services for the organization and conduct of the mediation procedure is explained in the absence of relevant conflict resolution centers. This is especially true of the use of reproductive technologies, since such legal relations have a number of specific features.

Apparently, no sufficient number of mediators in the studied area and the mechanism of payment for their service sexist to date. Usually, a successful mediation procedure ends with the signing of the mediation agreement. In the event that an unqualified specialist makes it incorrectly, difficulties in its implementation may arise. For example, the parties may ignore the terms of the contract.

As a result, it can be stated that the progressive development of mediation in the field of conflict resolution on the use of reproductive technologies can be achieved only if the principles of awareness, accessibility and support of this institution are observed by the government and the population.

There is an opinion that, since the mediation procedure cannot be applied to disputes that affect or may affect the rights and legitimate interests of the third parties who do not participate in the procedure, its purpose in resolving family disputes, where the interests of children are mainly resolved, is not clear (Mazaraki, 2018).

This conclusion is controversial, since a detailed study of the application of mediation in the use of reproductive technologies suggests that an

effective mediation agreement that meets the interests of the child is able to maximize the protection of his/her rights and legitimate interests. Due to the fact that mediation, along with the substantive one, has an emotional component, the parties to the mediation agreement can focus as much as possible on individual needs and protect their children.

In our opinion, the resolution of any dispute should take into account the highest interests of a child. Consequently, the advantages of mediation in this case are obvious. A legal dispute between the parties during the first few weeks or months of a child's life can adversely affect children in the first days of their lives, onerous court procedures can not only legally but also psychologically affect the early period of a child's life. At the same time, if children in adulthood find out the fact that they were the subject of a controversial surrogacy agreement, it can have a significant psychological impacton them.

Therefore, Article 6 of the Convention on the Rights of the Child prescribes States Parties to "ensure, to the maximum extent possible, the survival and development of the child." The Committee also notes that "the first years of the child's life are the foundation of his or her physical and mental health, emotional safety, cultural and personal identity, and the development of his or her abilities." In particular, the Committee notes that the well-being and development of children "depend on and build around close relationships" (United Nations Organization, 1989).

Method of determining the application of mediation is essential, since in national legislation and domestic law there are such concepts as "consent to the use of mediation", "mediation agreement (conciliation agreement)", "agreement on the results of mediation" and "mediation clause", "agreement to mediate" and "agreement on the results of mediation" (Mazaraki, 2019).

In our view, it cannot be unequivocally stated that a mediation agreement should be concluded exclusively in the form of a separate agreement, it can also be defined by the parties as part of the main contract.

However, if we are talking about legal relations arising from the use of reproductive technologies, it is necessary to pay attention to the inherent specifics of these legal relations and the fact that on the basis of it, a conciliation agreement can be concluded in the future. Thus, this type of contract is bilateral and consensual. Its provisions determine the subject of the contract, as well as information on the process and method of resolving the dispute, information about the mediator, as well as the rights and obligations of the parties and the timing of its implementation.

If we talk about the place of the mediation agreement in the system of contracts as a whole, it is worth considering that this agreement is a certain contractual structure arising from existing legal relations.

Therefore, in legal relations arising from the use of reproductive technologies, a mediation agreement will be concluded after the conclusion of the main contract, and therefore will have the characteristic features of a derivative agreement.

When choosing between a mediation clause within the surrogacy agreement and a separate agreement, it is worth noting that the contract is a separate independent legal structure. The main purpose of such an agreement is to resolve the dispute outside the judicial system and resolve the conflict if specific conditions occur. In addition, taking into account the provisions of Article 626 of the Civil Code of Ukraine, the mediation agreement meets all the criteria of a civil law contract.

Importantly, the mediation agreement cannot be identified with the previous agreement or mediation agreement. This type of contract is concluded as a result of a complex legal process.

Conclusions

The mediation agreement is also an independent segment of civil law and cannot be identified with a conciliation agreement, but only be the basis for its adoption already in court proceedings.

The development of the practice of pre-trial dispute resolution and the expansion of the practice of peaceful settlement of the conflict are interrelated. The analysis of the legal regulation of the use of mediation in other countries shows that Ukrainian legislation is making first steps in the application such an institution as mediation, though it has already had a certain practice in the field of application of reproductive technologies.

Given that the courts act as the only state body that carries out legal regulation and protection of the rights and interests of participants in legal relations in a certain way, mediation can be the leading method to be applied.

It is obvious that the resolution of controversial issues during the contractual regulation of the use of reproductive technologies has an objective need for an effective mechanism to low the level of conflicts in the studied area.

The main task of using mediation in the field of reproductive technologies is to reduce the level of conflict, increase the effectiveness of protecting the rights of the parties in contractual relations. We believe that mediation agreement should have consequences not only of a psychological approach to conflict resolution in this area, but also of an appropriate legal mechanism for implementation. Thus, the interested party will be able to demand the fulfillment of the terms of the agreement reached as a result of mediation.

Mediation differs from other methods of dispute resolution since it has special criteria that are characteristic of a civil law agreement. The mediation procedure is used to reformat legal relations into new ones or terminate them.

The advantages of using mediation in the field of reproductive technologies are the rapidity, lower cost, lack of formalism, a simpler procedure for resolving this type of conflict, application at the participants' own discretion, ensuring complete confidentiality, objectivity of resolving a dispute with the participation of a third neutral party, taking into account the highest interests of a child.It has been determined that the disadvantages include difficulties in implementing the mediative decision, delaying time by the parties, inaccessibility of mediation for vulnerable and low-income categories of the population, absence of sufficient number of mediators with appropriate training.

Comparing the disadvantages and advantages of using mediation in the field of application of reproductive technologies, it can be stated that the latter significantly prevail.

In our opinion, it is worth amending Section II "General Provisions on the Contract" of the Civil Code of Ukraine, as well as the Procedure for the Use of Reproductive Technologies, defining the concept of a mediation agreement, indicating that the agreement on the use of mediation in legal relations arising during the use of reproductive technologies is a voluntary, bilateral, consensual agreement concluded in writing between the parties to the agreement on the use of reproductive technologies and is a special way to resolve a dispute arising from specific material and legal relations outside the jurisdictional order of the judicial system.

Taking into account the fact that legal relations in the studied area are usually complicated by a foreign element, it is necessary to establish an appropriate algorithm, as a result of which special norms of international and national law would be created, in order to eliminate a number of conflicting problems of a legal nature arising during the recognition of paternity.

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Peculiarities of state regulation of intellectual property rights protection

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Abstract

The relevance of the study lies in the fact that in Ukraine under martial law the system of protection of intellectual property rights and mechanisms of its public administration is continuously transformed, which implies a scientific search to identify the problems that exist in this area and the development of effective practical solutions to overcome them. The purpose of the study was to identify the main features and obstacles arising in the implementation of public administration in the field of intellectual property and the implementation of protection of its objects under martial law in Ukraine. The research methods used were general and special legal methods of knowledge. Everything allows to conclude that there is an urgent need to develop new mechanisms of digital security of copyrights and to push forward the creation of blockchain accounting of copyright objects. Similarly, a revision of the approach to the evaluation of objects of intellectual property rights and the determination of the inventive level is needed, as a condition of possibility to adapt the legislation governing the matter to the needs of today's society.

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Keywords: intellectual activity; legal regulation; property and personal non-property rights; innovative activity; objects of intellectual property rights.

Peculiaridades de la regulación estatal de la protección de los derechos de propiedad intelectual

Resumen

La relevancia del estudio radica en el hecho de que en Ucrania bajo la ley marcial el sistema de protección de los derechos de propiedad intelectual y los mecanismos de su administración pública se transforma continuamente, lo que implica una búsqueda científica para identificar los problemas que existen en esta área y el desarrollo de soluciones prácticas eficaces para superarlos. El propósito del estudio fue identificar las principales características y los obstáculos que surgen en la aplicación de la administración pública en el ámbito de la propiedad intelectual y la aplicación de la protección de sus objetos bajo la ley marcial en Ucrania. Los métodos de investigación empleados fueron los jurídicos generales y especiales del conocimiento. Todo permite concluir que urge la necesidad de desarrollar nuevos mecanismos de seguridad digital de los derechos de autor e impulsar la creación de una contabilidad blockchain de los objetos de derechos de autor. Del mismo modo, se necesita una revisión del enfoque de la evaluación de los objetos de derechos de propiedad intelectual y la determinación del nivel inventivo, como condición de posibilidad para adecuar la legislación que rige la materia a las necesidades de la sociedad actual.

Palabras clave: actividad intelectual; regulación jurídica; derechos de propiedad y personales no patrimoniales; actividad innovadora; objetos de derechos de propiedad intelectual.

Introduction

Problems of protection of intellectual property rights are the subject of scientific research of domestic and foreign scientists. Relevance is confirmed by the fact that the effective development of the state requires the coordinated functioning of all elements of its system.

For the effective functioning of the economy is a prerequisite for the introduction of digital information and communication technologies and innovative methods of management and organization of society. The system of innovation can be effective only in creating favorable conditions for its creators, one of which is the introduction and implementation of an effective system of intellectual property rights protection.

Analysis of the specifics of state regulation of intellectual property in Ukraine shows that certain problems contribute to a decrease in the effectiveness of state regulation of intellectual property. Therefore, the state system of intellectual property protection in Ukraine faces new challenges aimed at further dissemination of international standards, optimization of legal protection and enforcement of intellectual property rights, dissemination of relevant knowledge in the field of intellectual property among different segments of the population.

The armed aggression against Ukraine has slowed down the transformation in the field of intellectual property and the protection of rights to its objects, in particular, we are talking about a significant reduction in the funding of budgetary scientific institutions and a pause in the implementation of a significant number of planned innovative projects. But alongside the difficulties, the military actions pushed the development of technologies in Ukraine, especially biotechnology, the medical sector and the food industry.

After the end of combat actions, it will be relevant to restore the energy sector and to develop the mining and processing industry. But along with the difficulties, the military actions pushed the development of technologies in Ukraine, especially biotechnology, the medical sector and the food industry, and after the end of hostilities, the restoration of the energy sector, the development of the mining and processing industry will be relevant.

An important role in the development of an economically independent state, the formation of a culture and respect for intellectual property rights should be played by public authorities, as well as their implementation of various activities both within the state and at the international level.

Improvement of legislation in the field of intellectual property, elimination of certain gaps in the law will contribute to the prevention of offenses in general, will strengthen the economic sphere of influence in international cooperation, and will allow the state to develop confidently in the field of innovation activity.

1. Research Methodology

During the study to achieve its goal and solve its problems were used general scientific methods of induction, deduction, analysis, generalization, special methods of prediction and modeling, other methods of scientific knowledge. General scientific methods were used to study the theoretical foundations of the system of protection of intellectual property rights in Ukraine. Special methods were used to comprehend the content of external and internal factors affecting the system of protection of intellectual property rights in Ukraine, as well as the development of practical recommendations for improving the mechanism of its functioning in Ukraine.

In order to achieve the goals and objectives of the study better and effectively, its implementation was divided into three independent stages, namely: study of the theoretical framework, analytical study, and development of practical recommendations and proposals based on the study.

2. Research Results

State regulation in the field of intellectual property in Ukraine under martial law is necessary for its effective recovery on the completion of the armed conflict, development, and use of inventive and rationalization achievements, attracting investment in the economy, development, and preservation of national scientific and technological and intellectual potential of the Ukrainian state. Effective state regulation in the field of intellectual property also contributes to the stabilization of the economic situation since both investors and the authors of intellectual property rights obtain the protection of their rights.

The main ways of protection of intellectual property rights in Ukraine can be defined as the following:

Table 1: Ways to protect the results of intellectual activity in Ukraine.

Name of the method of intellectual property protection in Ukraine	Content of the method of intellectual property protection in Ukraine
Administrative	It is provided only for public demonstration, violation of the conditions of public demonstration and duplication of films and videos without a rental certificate; unlawful introduction of brand names, trademarks.

Civil	Provides for the filing of a lawsuit in court for the recognition of the owner's rights; for the restoration of the situation that existed before the violation of the right; for the termination of actions that violate the right or threaten to violate it; for compensation for damage and lost profits.
Criminal	There is criminal liability for violation of copyright and related rights; violation of rights to an invention, utility model, industrial design, topography of an integrated circuit, plant variety, rationalization proposal; for illegal encroachment on trade secrets.

Source: Author's development.

In Ukraine, we can also distinguish two levels of state regulation of intellectual property rights:

Table 2: Levels of state regulation of intellectual property rights.

Name of the type of state regulation of intellectual property rights	The content of the type of state regulation of intellectual property rights
Individual	Regulation of relations with individuals who create and use objects of intellectual property rights
Collective/Group	Regulation of relations with legal entities that develop or use objects of intellectual property rights

Source: Author's development.

The system of protection of intellectual property in Ukraine can be defined as a totality of measures developed and implemented by the state competent authorities or individuals and legal entities without recourse to them, aimed at the establishment and recognition of intellectual property rights in case of their violation, denial or non-recognition (jurisdictional and non-jurisdictional) forms).

The state provides protection of intellectual property by means of the adoption of corresponding normative-legal acts in a certain sphere, the provision of carrying out of scientific research. The state is interested in the protection of intellectual rights because these rights are an integral part of those rights and freedoms that are guaranteed by the Constitution

of Ukraine, and also for the reason that this protection simultaneously contributes to the development of culture, education, improvement of production technologies, creates favorable conditions for investment, international trade of goods and services

Under the conditions of the problematic transition of Ukraine to a market economy, which is complicated by the introduction of martial law in our country, the system of intellectual property rights protection faces a number of external and internal obstacles for the implementation of its tasks. Among them, the following can be highlighted as the main:

1. obsolete traditional methods of protecting intellectual property rights, caused by the intensive development of digital information and communication technologies, as well as the emergence of opportunities to reproduce, store and distribute large amounts of information, occurs simultaneously with a decrease in the probability of locating an infringer and bringing him to justice;
2. the problem of the "exhaustion" of creativity associated with the active use of elements of artificial intelligence in scientific research and intelligence;
3. increase in the complexity and volume of the examination of applications for intellectual property, which entails a process of deterioration of its quality, as expert judgments on the inventive step become less objective and reliable;
4. insufficient quantity and availability of information on current developments in the intellectual property rights protection system for internal and external users;
5. lack of understanding of new norms and rules for certain goods and services due to the presence of restrictions under the provisions of martial law in Ukraine;
6. combating unfair competition; spread of counterfeit products and services on the territory of Ukraine, which are difficult to detect under wartime restrictions and to bring offenders to justice;
7. there is a lack of opportunities for full financial support from of budgetary organizations and institutions.

3. Discussion

"Promotion of innovations is vital for economic and social development of every democratic society" (Kodynetz and Maidanyk, 2019: 56). However, not only the introduction of innovative information and communication

technologies in the economic and social life of society is important, also one of the important conditions for the successful development of culture, science, and industry is the recognition of property and personal non-property rights for the authors of intellectual property objects and persons who have obtained rights to these objects, as well as ensuring their reliable protection.

At the present stage in Ukraine under martial law, there is an inevitable transformation of the national system of protection of intellectual property rights, which actualizes the scientific tasks of identifying problems in this area and developing effective solutions to overcome them. The process of formation of the system of state regulation of intellectual property in Ukraine continues, and the process of completing its formation at this stage is complicated by the armed aggression against our state, but the foundations of legal regulation of this system have already been created.

Ukraine has adopted and implemented a set of measures aimed at maintaining the full functioning of the intellectual property rights system, reducing the negative manifestations of illegal use of its objects, minimizing the harmful effects caused by it, as well as ensuring free access to certain types of intellectual product for the general public (e.g., artistic and literary works).

Though intellectual and related human rights have common features with other rights, providing human activity, they also have their specific nature. The world is changing, new information and communication technologies are being introduced, many innovative ideas are being implemented, thus, "in the age of the fourth industrial revolution, the metaverse is creating new waves in the world of internet technology and is promising to provide even better and more immersive ways to interact with other people" (Uchida, 2020).

The system of intellectual activity in Ukraine, as well as the mechanism of protection of rights to its results, is changing due to external and internal reasons. The first can include the global phenomena of social, political, and economic nature that affect it in all countries of the world. For example, "globalization has led, inter alia, to the multiplication of flows of international trade of goods, including those covered by intellectual property rights" (Di Cataldo, 2018). Internal factors can include, for example, the unstable political situation in a particular country or social unrest in that country.

"Intellectual property (IP) protection is designed to maintain scarcity in intangibles, and cent of maintaining scope for price and thereby profit" (David, 2019). Accordingly, in any democratic legal country, state regulation of intellectual property law in order to improve the investment climate, commercialization, and integration of new information and communication technologies is a high-priority state task. "The mechanism of the terms

"defense" in IP law is not one of those underground in investment law" (Upreti, 2021). In terms of intellectual property law in Ukraine, it is about protecting individuals and legal entities by granting them such rights, the second group of which is called bachelors contracts or operating licenses (Mehdipour and Bagheri, 2021).

In fact, the named contracts provide for the elimination of others to use without permission of the authors of intellectual property rights. Protection of intellectual property rights in Ukraine in the aspect of investment law is used through the implementation of compensation to investors for breach of contractual obligations committed by a sovereign state.

Another topical problem of protection of intellectual property rights is the problem of manufacturing, marketing, as well as importation into Ukraine of counterfeit products under martial law and given the fact that "in a country with low IPR protection, firms have much incentive to imitate better technology" (Uchida, 2020). In contrast, effective government regulation of intellectual property rights has positive economic consequences for countries, ..."Miscellaneous legal phenomena are now nestled in the intersection between intellectual property rights and human rights" (Samaranayake, 2022). The basic principles of state regulation of intellectual property rights are determined by the Constitution of Ukraine, the Codes of Ukraine, and the special laws of Ukraine.

An alternative way to resolve disputes about the recognition of the rights of the owner; about the restoration of the situation that existed before the violation of the right; about the termination of actions that violate the right or create a threat of violation; about compensation for damage and lost profits, as well as others related to the protection of intellectual property rights in Ukraine, is seen as complemented by mediation since it "...is a dispute resolution method, which is in vogue" (Wechs Hatanaka, 2018). In the conditions of martial law in Ukraine, such an out-of-court dispute resolution method out of court seems appropriate and effective.

Conclusions and Implications

The results of the study lead to the conclusion that under martial law imposed in Ukraine, it is advisable to:

1. development of new mechanisms of digital security of authors' rights and creation of blockchain accounting of copyright objects;
2. revision of the approach to the evaluation of intellectual property rights objects and the determination of the inventive level;
3. ensuring growth in the number of technological expert organizations and transparency of their activities;

4. conducting information events to explain the content of current changes in domestic legislation on the protection of intellectual property rights.

It is also important to continue further scientific research to solve the above problems, as well as the practical implementation of theoretical developments and developments in life, because, despite the martial law, which is introduced in Ukraine, the implementation of these measures will help to overcome the obstacles to the development of the intellectual property rights protection system, as well as the economic growth of our state.

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Access to Justice within Administrative Proceedings of Ukraine: Modern Realities and European Experience

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Abstract

The purpose of the article was to analyze the availability of justice within the Ukrainian administrative judicial system, examining its specific features in terms of martial law and the possibilities of its improvement, due to the implementation of European standards in Ukrainian legislation. The research methods used were: monographic analysis, analysis and synthesis, systemic, generalization, forecasting, etc. It has been found that the principle of access to justice is manifested in the ability of a person to receive unimpeded judicial protection and to apply for judicial protection of one's rights. It has been emphasized that the reform of the judicial procedure in the resolution of administrative disputes requires the earlier introduction of digital technologies and Artificial Intelligence technologies. This will help to ease the burden on the court system and judges, speed up the time of hearing court cases, reduce the costs of their storage and archiving, simplify the presentation of statements and evidence in court, etc. It is concluded that the implementation of the European standards of the administrative process will lead to ensuring the appropriate degree of access to justice in Ukraine and increase public confidence in the judiciary.

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Keywords: right to a fair trial; access to justice; administrative justice; information technologies; international standards of justice.

Acceso a la justicia dentro de los procedimientos administrativos de Ucrania: realidades modernas y experiencia europea

Resumen

El propósito del artículo fue analizar la disponibilidad de justicia dentro del sistema judicial administrativo ucraniano, examinando sus características específicas en términos de la ley marcial y las posibilidades de su mejora, debido a la implementación de las normas europeas en la legislación de Ucrania. Los métodos de investigación usados fueron: análisis monográfico, análisis y síntesis, sistémico, generalización, previsión, etc. Se ha comprobado que el principio de acceso a la justicia se manifiesta en la capacidad de la persona para recibir tutela judicial sin trabas y para solicitar judicialmente protegiendo los propios derechos. Se ha enfatizado que la reforma del procedimiento judicial en la resolución de conflictos administrativos requiere la introducción más temprana de tecnologías digitales y tecnologías de Inteligencia Artificial. Esto ayudará a aliviar la carga del sistema judicial y los jueces, acelerar el tiempo de audiencia de los casos judiciales, reducir los costos de su almacenamiento y archivo, simplificar la presentación de declaraciones y pruebas ante el tribunal, etc. Se ha llegado a la conclusión de que la aplicación de las normas europeas del proceso administrativo conducirá a garantizar el grado adecuado de acceso a la justicia en Ucrania y aumentar la confianza pública en el poder judicial.

Palabras clave: derecho a un juicio justo; acceso a la justicia; justicia administrativa; tecnologías de la información; estándares internacionales de justicia.

Introduction

The right to a trial is fundamental in a legal and democratic country. The manifestation of this right is the guaranteed opportunity for each person to apply to the court for the protection of own rights and interests. The rule of law will be meaningless without access to justice for any person. Administrative judicial system is an important component of access to justice. It covers a wide range of issues related to the possibility of a person

appealing decisions made by state authorities in general and subjects of authoritative power in particular.

Access to justice according to the Constitution of Ukraine and the Law of Ukraine "On the Judiciary of Ukraine" is ensured by the court system and the provision that the jurisdiction of the courts extends to all legal relations that arise in the state. The state's duty to provide a person with real and not formal access to court is also enshrined in the judgements of the European Court of Human Rights.

Access to justice involves: a) provision of legal assistance to anyone who applies to the court for the protection of the rights; b) the acceptable cost of applying to court for the applicant; c) reasonable terms for consideration of the application; d) clarity of legal provisions, which should not create uncertainty and thus, hinder access to court. Therefore, it is necessary to adhere to such principles of judicial proceedings as the right to a trial, legality and legal certainty, when carrying out administrative proceedings in Ukraine. The practical implementation of these principles in terms of war is difficult and poses a challenge to the entire legal system.

Protection and defense of the rights of individuals and legal entities in the field of public and legal relations from violations by state authorities requires the construction of an effective mechanism for fair, impartial and timely hearing of administrative cases. Therefore, the development of democracy in Ukraine is inextricably related to the constant improvement and reform of administrative justice, as well as fair consideration and resolution of public and legal disputes.

Reforming the judicial system is not possible without solving the issue of access to justice, which is basic for a rule of law state and focused on the development of democracy and civil society. It is currently important to implement an effective system of ensuring access to justice as one of the basic rights and as a fundamental guarantee of the rule of law. The dissatisfaction of a large part of Ukrainian society with the incompleteness of the judicial reform is a prerequisite for this. It is about the long term of hearing court cases, significant court costs while hearing administrative and other disputes, etc.

Therefore, there is an undeniable need for a pragmatic and scientific approach to reforms aimed at making the right of access to justice as a reality not only in peacetime, but also in the period of war and post-war reconstruction of the country. Therefore, the purpose of the article is to analyze the accessibility of justice within administrative judicial system of Ukraine, its specific features in terms of the martial law, as well as to study the perspectives of improving access to the court due to the implementation of the European standards of access to justice within administrative justice of Ukraine and harmonization of domestic legislation with the norms of EU law.

1. Methodology of the study

The authors of the study used dialectical and general scientific, special methods of scientific cognition. Thus, due to the method of monographic analysis, a range of problematic issues related to the improvement of access to administrative justice of Ukraine in terms of war and the implementation of European standards of access to justice within administrative judicial system have been clarified. The method of analysis and synthesis made it possible to generalize information regarding the understanding of content of the concept of "accessibility of administrative justice" and to form the authors' vision of its essence.

At the same time, the authors of the article have studied those legal instruments for the administration of justice, which can help to increase the level of access to justice and to strengthen legality in general. The elements of the mechanism of legal regulation in the field of access to justice, which are able to improve access to justice in terms of the martial law, have been critically studied due to the method of theoretical generalization. Systemic method made it possible to conduct a study of access to justice as a comprehensive system of principles, which consists of certain elements.

The application of the forecasting method contributed to the study of tendencies in improving access to administrative justice in case of increased use of modern information technologies and Artificial Intelligence. The method of generalization made it possible to draw conclusions based on the conducted research.

2. Results and Discussion

2.1. The concept, essence and problems of ensuring the principle of access to justice in Ukraine

As one knows, the right to trial and the right of access to justice are enshrined in the Articles 6 and 13 of the European Convention on Human Rights, which guarantee the right to a fair trial and an effective remedy (ECHR, 1950). These rights are also recorded in the Art. 2 (3) and 14 of the International Covenant on Civil and Political Rights (ICCPR, 1966) and in the Articles 8 and 10 of the Universal Declaration of Human Rights (UNDHR, 1948). Interpretation of the Art. 6 (1) of the ECHR provides that everyone, who had no opportunity to file a lawsuit to the court, which has jurisdiction to hear all issues of the fact and law relevant to the dispute, may refer to the lack of access to a court.

Thus, the right to a trial occupies one of the main places in the system of fundamental values of any democratic society, and its component is

the right to access to court. Based on the content of the provisions of the normative acts listed above, the content of the right to a trial reflects its main elements, namely: effective access to court, the right to a fair trial and timely resolution of disputes, the right to adequate compensation, as well as the general application of the principles of efficiency and effectiveness in administration of justice.

We note that most of analyzed scientific sources understand the concept of access to justice as the ability of a person to obtain legal protection without hindrance, as well as access to independent and impartial resolution of disputes according to the established procedure on the basis of the rule of law principle (Matat *et al*., 2017). Access to justice implies a real ability of a person to address the court for consideration and resolution of the case and to receive legal protection without obstacles. The right of access to justice should also ensure the possibility of realizing these rights without any restrictions, obstacles or complications, but with strict adherence to the norms and spirit of the law (Deborah, 2001).

The issue of improving access to administrative justice in Ukraine requires the solution of the following problems: the use of online justice in administrative courts and the implementation of the principles of legality and legal certainty as fundamental values of the judicial process.

Given the active development of information technologies and Artificial Intelligence, improvement of the access to administrative justice requires the active use of online and digital technologies. These technologies have positively proved themselves in many countries when they are used in public governance and in the administration of justice. They facilitated to automate the process of decision-making and assistance in their adoption. And their active use in the commercial sphere contributed to the quick and economical online resolution of disputes.

Judges have repeatedly emphasized that the existing dispute resolution system is time-consuming, expensive and overly formalized; it does not meet the requirements of the online community (Griffiths, 2017). We should also add that financial and time costs of court proceedings are often disproportionate to the value of disputes. Hence, there are refusals of some people to protect their rights. It does not contribute to the implementation of the principle of access to justice, but on the contrary – pushes away from the legal way of solving the problem.

The main problems of ensuring access to administrative proceedings are: imperfect substantive and territorial jurisdiction of administrative courts; high court fee rate; provision of low-quality primary and secondary legal aid; non-compliance with deadlines in administrative proceedings; complexity of court cases and their significant number; excessive load on courts, etc.

We believe that these problems can be solved due to the implementation of modern digital technologies while implementing administrative proceedings. However, the specified technologies must be based on a rational and fair approach and take into account the socio-legal state of development of society and the categories of cases that can be solved with their help. For example, it is obvious that not all people will be able to take advantage of digital technologies, considering their age, financial situation, access to the Internet, understanding of the specifics of court proceedings, etc.

Therefore, it is necessary to introduce modern technologies into administrative proceedings gradually with the simultaneous implementation of informational and educational activities regarding the features and advantages of electronic proceedings. It is also not necessary to impose the latest procedures on society. The traditional form of legal protection and, as an alternative, the latest online procedures should be simultaneously used.

Comparing different types of judicial proceedings, we believe that administrative proceedings in particular have great perspectives for the introduction of digital technologies given the absence of a number of complex and time-consuming procedures typical to civil and criminal proceedings. However, it is important not only to follow all procedural procedures and provisions of the law while conducting online proceedings, but also to pay attention to data protection and information security of the trial participants. Insecurity of these processes can lead to distrust in the entire judicial system and the legality of its decisions.

Reforming the judicial procedure in the resolution of administrative disputes with an emphasis on the implementation of digital technologies will help to relieve the judicial system and judges, to increase the efficiency of case management, to reduce storage and archiving costs, to speed up the time of hearing court cases, to simplify the submission of applications and evidence to the court online, to introduce remote participation through video conferences with the court, etc. Therefore, modern technologies can positively influence the court and the participants of court proceedings.

2.2. Peculiarities of ensuring access to administrative justice in terms of the martial law

The President of Ukraine introduced the martial law on February 24, 2022, which undoubtedly affects all legal relations in society and the state. However, the Art. 64 of the Constitution of Ukraine remains the guarantee of the right to judicial protection, according to which the right to judicial protection in terms of the martial law is not subject to restrictions and must be ensured by the proper administration of justice.

According to the position of the Venice Commission, the judicial system under emergency legal regimes must continue to guarantee the exercise of the right to a fair trial without any limitations in its functioning, except of the case when such functioning is actually impossible (Respecting the principles of democracy, human rights and the rule of law in a state of emergency – reflections, 2022). And if necessary, the intervention in the administration of justice must be proportionate and not encroach the content of the right to judicial protection.

This prompts the Ukrainian legislator to look for special approaches and introduce new and effective forms and means of administering justice. We mean the need to ensure the uninterrupted functioning of courts during the martial law, especially those located on the front line or under occupation, as well as regulating the status of those court employees who have joined the ranks of the Armed Forces of Ukraine. Hence, the issue of strengthening the use of e-government tools to ensure access to administrative justice becomes relevant, taking into account the obstacles or impossibility of the participants in the process to appear in court or provide written evidence.

Nowadays, the implementation of justice in the mode of video conferencing, the use of which has already been successfully tested during the COVID-19 pandemic, is being actively implemented. At the same time, the authorization of the participant in the process during the submission of documents and the court session is ensured by the use of an electronic signature or by presenting documents confirming the citizenship of Ukraine, certifying the person or his / her special status (Zavydniak, 2022).

The improvement of access to administrative proceedings is also facilitated by the provision of electronic document circulation, which involves the complete processing of case materials in electronic format. Electronic document management is fundamentally important in terms of the constant potential threat of loss or destruction of court case materials, which may occur as a result of hostilities or occupation of the territory where the administrative court is located.

A number of electronic applications downloaded to a smartphone help to record case materials and documents that are important for the correct case-resolution. Such applications help to scan documents in PDF format and include them into the administrative case file by uploading them to the court's electronic inbox (Zavydniak, 2022).

If there is no access to the court premises or it is restricted for security reasons, the parties may submit electronic evidence certified by an electronic signature. Submitted evidence is stored on servers, backup systems, memory cards, the Internet or other places of data storage in electronic form. It imposes an obligation on the state to guarantee the security of court servers that store case files in electronic form, since information and communication systems are objects to enemy cyber-attacks during wartime.

Therefore, the possibility of using video conferences and electronic document circulation indicates that Ukraine adheres to the principle of citizens' access to administrative justice, despite military actions.

At the same time, access to the Unified State Register of Court Decisions, the "Status of Cases" and "List of Cases to be Considered" services has been suspended for the safety of judges and participants in court proceedings, and courts are allowed to work remotely. In case of a real threat to the life and health of judges, court employees and participants in the proceedings, courts (judges) are allowed to make a decision on the temporary suspension of judicial proceedings. It is also allowed to consider cases from different premises of the court by using their own technical means in case if the proceedings are considered collegially and the panel of judges cannot gather in one premise (Some recommendations for organizing the work of courts and judges under martial law: approved by the Council of Judges of Ukraine, 2022).

Certain changes are also applied to the procedural time limits for hearing a court case, which may be extended until the end of the martial law, as well as the participation in the court session of the participants of proceedings (in particular, in the absence of the participant of proceedings and information about his / her awareness of such a court session, the proceedings in the case may be stopped or its hearing is postponed without determining the next court session date (BCU called for clarification of the procedures for consideration of cases in civil, administrative and commercial jurisdictions during martial law, 2022).

Therefore, the implementation of administrative proceedings is possible in the mode of video conference, and the participation of a judge remotely in a court session is carried out in exceptional cases, when there are real obstacles to access to the workplace. Under such conditions, administrative proceedings cannot always end with the adoption of a decision on the merits, but must first of all focus on recording facts that are of essential importance for the case, in particular through electronic document circulation, the scope of which will tend to expand.

We note as an interim conclusion that the introduction of the martial law is not a reason to limit the right to judicial protection and imposes on the state additional obligations related to guaranteeing the most complete opportunities for access to justice. Courts primarily rely on electronic document circulation in Ukrainian realities and participation in court hearings via video conferences. The above demonstrates respect for the basic principles of law and, at the same time, for the state's duty to ensure the continuity of justice along with ensuring the safety of judges, the court apparatus and other participants of proceedings.

3.3. Implementation of the European standards of access to justice into administrative judiciary of Ukraine

Integration processes into the European legal space go on in Ukraine even during the martial law. We talk about the implementation of principles and standards into administrative justice formed at the pan-European level. The European standards of accessibility of administrative proceedings are the basic component of the national mechanism of judicial protection of human rights and the basis for further reforming the legal system of Ukraine.

The implementation of the European standards of access to justice in the administrative process is reflected in the normative guarantees of exercising the right to judicial protection and compliance with international requirements regarding the procedure for the administration of justice, as well as the consolidation of the requirements for access to the court in the norms of administrative procedural law, which were developed by the practice of the European Court of Human Rights. The result of such implementation in the activity of administrative courts is improvement and increase in the level of protection of human and civil rights in Ukraine.

The standards of administrative proceedings are embodied in the principles of law, legal norms and customs and establish a mandatory minimum level of human rights ensured in administrative proceedings. Besides, they can be an integral part of international standards of human rights, because they are aimed at ensuring the effectiveness of judicial protection of human rights and freedoms in relations with state authorities.

The European standards of the administrative process mainly relate to the possibility of protecting human rights, which derive from the norms of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and caselaw of the European Court of Human Rights. Government decisions always have an impact on the rights and freedoms protected by the Convention. Therefore, the issue of protecting such rights is extremely important.

The EU Member States must ensure the effectiveness of administrative proceedings in accordance with the requirements of the Convention and other EU acts. The general standards of the judicial process enshrined in the Convention are specified in the resolutions and recommendations of the Committee of Ministers of the Council of Europe regarding the improvement of the legislation of the Member States in the field of administrative process.

The system of administrative process standards includes: 1) the right to a trial and the right to access to a court as its component; 2) the right to a fair trial (this is a public and fair trial by a legally established, independent and impartial court within a reasonable time frames); 3) the effectiveness

of judicial control over the acts and actions or inaction of state authorities. The specified standards are designed to ensure the appropriate degree of accessibility and efficiency of justice in the state, and are also a guarantee of successful reform of administrative procedural legislation.

Thus, the right to a trial and access to justice guarantee everyone the possibility to address an administrative court for the protection of own rights, if there is interference in human rights and freedoms by authorities (Biard *et al.*, 2021). At the same time, access to justice must be effective and embody the compliance with norms regarding the duration of court proceedings, reasonable terms, and procedural economy (Bernaziuk *et al.*, 2022). The Article 13 of the Convention provides that everyone whose rights and freedoms guaranteed by the Convention are violated, shall have the right to an effective legal protection mean in the appropriate national authority, notwithstanding that such violation is committed by official persons (ECHR, 1950).

Therefore, the protection of rights in the sense of the Convention can be carried out not only by the court, but also by another agency that can provide effective protection. However, if functions of protection of the violated right are carried out by the court, paragraph 1 of the Art. 6 of the Convention provides additional guarantees related to the effectiveness of the legal protection mean. In particular, it provides the possibility of suspending the execution of the appealed decision or actions of an administrative agency, if they may lead to irreparable damage, and imposing an obligation on the relevant agency to compensate for the damage (in certain cases) caused by the violation of the rights defined by the Convention (ECHR, 1950).

Administrative cases must be considered within a reasonable period of time and take into account the complexity of the case, the approach of the authorities to the consideration of a specific case, certain aspects of the applicant's behavior that could affect the extension of the consideration period, as well as certain circumstances that justify a longer period of judicial consideration.

At the same time, the effectiveness of the judicial process depends on the compliance with the requirements of mandatory execution of a court decision that has entered into force. Therefore, national legislation should provide the responsibility of administrative agencies and their officials in case of non-execution or improper execution of a court decision (ECHR judgment of March 19, 1997 in the case of Hornsby v. Greece, Rep., 1997-II).

The right to a fair trial involves a public and fair trial by a legally established, independent and impartial court within reasonable terms (ECHR: the Art. 6). The ECHR stipulates that the court must meet the requirements of independence from other branches of power, and judges must properly perform their duties. For this purpose, the Council of Europe adopted Recommendation (94) 12, which concerns the independence of

judges and is based on the 1985 UN principles on the independence of the judicial power.

The provisions of this Recommendation provide that independence should be guaranteed by ensuring the appropriate number of judges, their security of tenure, proper training, appropriate staffing and logistical support (Recommendation N (94) 12 on the independence, efficiency and role of judges (adopted by the Committee of Ministers of the Council of Europe at the 518th meeting of deputy ministers on October 13, 1994). Judges must be not only independent, but also fair, impartial and competent (The European Charter on the Statute of Judges, 1998). Moreover, the trial and the announcement of the court decision must be public, and the trial itself must be fair and should be based on the principle of equality.

The evolution of judicial control is considered the result of the work of judges in terms of the development of such key concepts as procedural justice, unreasonableness and legal error (Griffiths *et al.*, 2017). Judicial control is aimed at rationally respond to decisions that are subject to reversal due to their unfairness or impropriety. It is judicial control that helps in the implementation of the principle of legality and ensures the compliance with laws. Therefore, justice is related to both the legal mechanism for the protection of human rights and is the basis for building and establishing democracy and civil society.

Conclusions

Summing up, we note that access to justice occupies one of the basic places in the system of fundamental values of any democratic society. The availability of administrative justice primarily involves the ability of a person to obtain unimpeded judicial protection as access to independent and impartial resolution of disputes according to the established procedure on the rule of law basis. Access to administrative justice has many different aspects. However, improving the access to justice through the use of online justice in administrative courts and ensuring the implementation of the principles of legality and legal certainty are the most important in modern conditions for Ukraine.

Nowadays, Ukrainian courts are actively using electronic document management and the possibility of participating in court hearings via video conferences. However, it is not enough. Therefore, the implementation of the world's best practices of using, for example, Artificial Intelligence would be of great benefit to Ukrainian courts, given the fact that there will be many disputes that need to be effectively resolved both during the war and in the post-war period.

Therefore, reforming the judicial procedure in the resolution of administrative disputes with an emphasis on the implementation of digital

technologies will help to relieve the judicial system and judges, to increase the efficiency of case management, to reduce storage and archiving costs, to speed up the time of consideration of court cases, etc.

Besides, integration processes into the European legal space encourage domestic legislators to harmonize Ukrainian and EU legislation in the sphere of administrative dispute resolution. European standards of administrative process are embodied in the principles of law, legal norms and customs and establish a mandatory minimum level of human rights ensured in administrative proceedings. The specified standards are intended to ensure the appropriate degree of access to justice in the state, since success in reforming administrative procedural legislation depends on their compliance. Therefore, the implementation and unconditional fulfillment of European standards is the key to the development of modern Ukrainian society and the state.

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Structure of the administrative and legal mechanism for ensuring national security of Ukraine in the context of European integration

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Abstract

The aim of the article was to reveal the structure of the administrative and legal mechanism for ensuring the national security of Ukraine in the context of European integration. In the course of the study the following methods were used and combined: axiomatic, analysis and synthesis, classification, hermeneutic, deductive, dialectical and metaphysical, logical and semantic and modeling. In the results of the research, it is generalized that the framework of national security provision in the circumstances of European integration is similar to the basic elements of any other instrument of provision of activities. In practical terms it is defined, what material and conceptual elements are included in the structure of the administrative legal mechanism. In the conclusions it is emphasized that these legal and administrative components can be: on the one hand, normative, institutional, instrumental, analytical, etc.; and, on the other hand, organizational, practical and implementation and mixed.

Keywords: administrative and legal mechanism; collective security; European integration; national security; Eastern Europe.

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Estructura del mecanismo administrativo y legal para garantizar la seguridad nacional de Ucrania en el contexto de la integración europea

Resumen

El objetivo del artículo fue revelar la estructura del mecanismo administrativo y jurídico para garantizar la seguridad nacional de Ucrania en el contexto de la integración europea. En el curso del estudio se utilizaron y combinaron los siguientes métodos: axiomático, de análisis y síntesis, de clasificación, hermenéutico, deductivo, dialéctico y metafísico, lógico y semántico y de modelización. En los resultados de la investigación se generaliza que el marco de provisión de seguridad nacional en las circunstancias de la integración europea es similar a los elementos básicos de cualquier otro instrumento de provisión de actividades. En términos prácticos se define, qué elementos materiales y conceptuales se incluyen en la estructura del mecanismo jurídico administrativo. En las conclusiones se destaca que estos componentes jurídicos y administrativos pueden ser: por una parte, normativos, institucionales, instrumentales, analíticos, etc.; y, por la otra, organizativos, prácticos y de aplicación y mixtos.

Palabras clave: mecanismo administrativo y jurídico; seguridad colectiva; integración europea; seguridad nacional; Europa del este.

Introduction

The task of ensuring national security and defense should be a priority in the activities of the State, since the very existence of the country depends on the state of national security. Its implementation directly depends on the proper mechanism for the formation and incorporation of the relevant State policy (Shilin *et al.*, 2022). This concept cannot be considered as some isolated phenomenon, separated from public life.

If the national security of Ukraine is considered as the protection of State sovereignty, territorial integrity and inviolability of borders, security and stability of the democratic constitutional system, protection of the rights and freedoms of an individual and citizen, protection of the national interests of Ukraine, then it becomes clear that such a state of security of society and the country, of each individual can be achieved as the result of joint efforts of State authorities, local self-government bodies, public associations and citizens. War stirred up by the Russian Federation possesses special threat to the national security of Ukraine; it is widespread and violates the military, economic, informational, ecological, ideological and other types of security of Ukraine.

As any direction of state activity, ensuring national security requires scientific approaches and the development of appropriate basic principles, on which the country's activity is based, including in the security and defense sector. Within such a model of the Ukrainian state development, there is a need to revise the existing views on the understanding of the essence, goals, tasks and principles of administrative and legal support of the security and defense sector in Ukraine.

Having studied within other scientific works the issue of the categorical and conceptual aspect of the administrative and legal mechanism for ensuring the national security of Ukraine in the contexts of European integration, we established that it is a system of mutually coordinated, interdependent and conceptually united elements with a common goal, which are planned to be adapted to key requirements, standards and the rules of EU security and defense legislation, the proper functioning of which contributes to the achievement of the state of security of Ukraine from dangerous factors, drivers and events relevant for a certain period, harmful to both individual and state security, as well as collective security in general.

Given the limited possibility of considering the issues of the administrative and legal mechanism for ensuring Ukraine's national security in the context of European integration within one scientific publication, we consider it necessary to continue its consideration with an emphasis on identifying the system of elements mentioned above, which is the goal of our Article.

1. Methodology

Using axiomatic method, the view on the national security as the object of administrative and legal regulation is formulated.

The application of methods of analysis and synthesis contributed to the identification of the features of the national security system and the system of ensuring national security.

With the use of the classification method, the elemental composition of the administrative and legal mechanism, including the one we are investigating, is studied.

Hermeneutic method made it possible to examine the views of a number of scholars on the issue under consideration.

On the basis of the deductive method, structural elements of the mechanisms of administrative and legal support for various spheres of the State activity are highlighted.

The use of dialectical and metaphysical methods made it possible to investigate the ways of formation and development of national security as a legal category.

Logical and semantic method and the method of analysis of dictionary definitions are used to deepen the understanding of the conceptual apparatus of the Article.

The application of modeling method helps to formulate the authors' view on the structure of the administrative and legal mechanism for ensuring Ukraine's national security in the context of European integration.

2. Literature Review

As a general rule, the elements of the administrative and legal mechanism of security activities are legal, organizational, economic and material ones. At the same time, they must necessarily be adequate to the tasks facing the state and aimed at achieving the implementation of the goals (Bezpalova, 2014) of this function of the State.

However, as Kovalenko (2018) points out, the definition of the elemental composition of the administrative and legal mechanism, including the one we are investigating, is complicated by the fact that to this day scientists interpret the structural content of this phenomenon, in particular, and the legal mechanism, in general, in different ways.

The scientist analyzes the views by other scholars regarding the definition of the structure of the administrative and legal mechanism for protection, countermeasures, provision, etc., of various spheres of life and comes to the conclusion that the structure of the administrative and legal mechanism of information support for combating corruption in law enforcement agencies of Ukraine has two levels: basic and additional. Consequently, the main level consists of the following structural elements: 1) subject; 2) administrative and legal relations; 3) rules of administrative legislation; 4) acts of implementation of the relevant norms, in particular, orders, on the accumulation and systematization of information; 5) guarantees, which are measures, means, forms, methods, with the help of which the State policy is translated into practice. In turn, the additional level covers the structural elements of this mechanism, which, although they are not mandatory ones, nevertheless, optimize, contribute to increasing the efficiency of its functioning; this is legal awareness; legal education; special educational programs.

Skakun (2000) notes that the legal mechanism consists of interconnected and relatively independent functional systems, to which the scientist includes: 1) regulatory system; 2) legal system; 3) system of legal self-regulation.

However, the problems of the administrative and legal mechanism of ensuring Ukraine's national security in the context of European integration generally do not have their scientific coverage, which indicates the relevance of considering its structure.

3. Results and Discussion

The implementation of the laws of Ukraine in the area of national security, defense, normative legal acts, and other laws of Ukraine on security and defense, as well as program documents is impossible without interaction, coordination and main participation in the process of ensuring national security of all actors of the security and defense sector, their bodies and forces support. Bodies are understood as the legislative, executive and judicial branches, and forces are executive agencies empowered to ensure national security on the territory of Ukraine (Sobakar and Kovaliv, 2016).

The analysis of scientific views of administrative scientists makes it possible to single out the principles of rule-making in the sphere of implementation of the national security of the state: 1) principle of legality of departmental rulemaking (projects of departmental legal instruments must be developed taking into account the requirements of laws and by-laws and regulations of the highest State bodies); 2) the principle of reasonableness (decision on the advisability of developing a specific departmental regulatory act must be properly justified); 3) the principle of planning and forecasting (in institutional rulemaking it is necessary to clearly articulate the objectives that must be achieved as a result of the adoption of a specific regulatory act; to determine the most effective ways to achieve the goals; to identify current and prospective tasks that must be set before specific entities implementing law enforcement function of the State); 4) the principle of scientific integrity (scientific soundness of normative activity is particularly relevant,, because unscientific nature of legal instruments entails their ineffectiveness and instability) (Bezpalova, 2013).

Administrative and legal activity carried out by the actors of the security and defense sector is expressed in everyday organizational and practical measures for the implementation of external and internal administrative in order to solve the tasks set in the field of ensuring the components of national security, in particular, military, economic, environmental, informational, food, ideological and other types of security and to ensure the security of the individual, society and the State.

Ukraine's choice of European integration, entry into the European legal space, orientation to European standards – all this determines the need to take into account foreign practice when adopting relevant legal

instruments. The adaptation of Ukrainian legislation to the legislation of the European Union and the norms of international law plays crucial role. Passing departmental regulatory legal acts by the specified bodies, in turn, must comply with laws and other regulatory legal acts of national legislation that correspond to the legislation of the European Union and the rules of international law. That is, the bodies that adopt normative-legal 153 acts, when developing them, must comply with the relevant directives of the European Union, international standards.

Turuta (2010), distinguishes the following levels in the structure of the legal mechanism for ensuring the rights and freedoms of citizens: 1) regulatory, consisting of two elements: a) regulatory and material; b) regulatory and procedural; 2) institutional (system of State bodies); 3) procedural – formation of experience by the designated bodies on the adoption of administrative, judicial, notarial decisions; 4) effective – effective consequences of procedural decisions made by judicial and administrative agencies, expressed in their implementation.

Slabunova (2013) singles out the following blocks in the structure of the administrative and legal mechanism for ensuring the rights of citizens by the prosecutor's office: 1) regulatory (set of legal norms and legal acts, legal facts); 2) institutional and organizational (the system of prosecutor's office in the field of ensuring citizens' rights); 3) procedural and functional (principles and tools, methods of regulation, as well as procedures and algorithms for the implementation of activities of the prosecutor's office to ensure rights and freedoms of citizens, including management techniques and technologies); 4) support (personnel, information, material and technical, etc.); 5) informational and analytical (analysis of the state of development and existence of the security object).

Without specifying levels, as an example, the structure of the mechanism for ensuring the rights and freedoms of citizens, Lazur (2009) defines as follows: a) rule of law; b) legal relations; c) principles of rights and freedoms of citizens; d) stages of their provision; e) guarantees of exercising the rights and freedoms of citizens; e) legal facts; g) acts of legal norms application.

An entirely different view of the structure is expressed by Frolkov (2013) in his research on the mechanism of administrative and legal protection of consumer rights, which includes special means, appropriate guarantees and legal liability as elements of such a mechanism.

Bezpalova (2015) defines the structure of the mechanism of implementation of the law enforcement function of the State as follows: 1) institutional component (subjects); 2) administrative and legal norms; 3) principles; 4) forms and methods; 5) legal relations, which translate the requirements contained in legal acts into practice; 6) resource component (personnel, information, material, technical support, etc.).

According to Shorskyi (2018), the above opinions by Bezpalova and Slabunova regarding the separation of structural elements of the mechanisms of administrative and legal support of various spheres are the most thorough, because: firstly, they cover various elements of a primary and secondary nature; secondly, they describe in detail the meaningful essence of the mechanism itself; thirdly, they allow to consider separately each of the principles of functioning of the mechanism for their further improvement; fourthly, they contain an exhaustive systematized list of structural units necessary for further activation of the mechanism.

The scientist also notes that despite the possibility, and in some cases, the expediency, of separating each constituent element of the mechanism of administrative and legal support in various spheres, it should be taken into account that, being an established system, its functioning is ensured by all collective elements and the relationship between them, as well as the levers of influence that bring it into action.

Therefore, the analysis of the above leads to the conclusion that, in general, the administrative and legal mechanism for ensuring various spheres includes:

1) organizational elements such as: norms of administrative law, objectified in the system of legal instruments; subjects of establishing and implementing the rules of conduct set out for a specific circle of legal relations; security objects;
2) elements combining organizational and practical manifestation such as legal relations in the field of its implementation, principles and guarantees regarding the activities of its incorporation;
3) practical implementation elements – forms, methods, procedures of activities of authorized subjects, as well as information and analytical activities.

We should also note that the mechanism for ensuring information security is the system of various means (political, personnel, operative and search, informational, legal), which actually ensure the protection of the informational interests of the State, society, and individuals from internal and external threats (Nashynets-Naumova, 2017), as information security of the country is a component of national security (Chernysh *et al.*, 2022) Logically, the administrative and legal mechanism for ensuring information security should be the system of administrative means of protection.

In order to understand the essence of the indicated opinion, let's clarify that the commonly accepted meaning, "means" is understood as reception, some special action that makes it possible to accomplish something, to achieve something; way; that which serves as a tool in any action, business. At the same time, "reception" is a way of performing or carrying out

something; a certain measure for the implementation of something, the achievement of some goal; means of expression.

"Method" is a certain action, technique or system of techniques that makes it possible to do, accomplish something, achieve something; that which serves as tools, means, etc. on any case, action. "Tool" is the set of actions or means to achieve, implement something. That is, means is a technique; reception is a method or measure; method is a certain action; tool is the set of actions (Zamryha, 2018).

Accordingly, the scholar limits the essence of this mechanism to an exclusively instrumental approach. In our opinion, by analogy with the administrative and legal mechanism of regulation, it is appropriate to take into account that the disclosure of their elements only on the basis of the instrumental component is incomplete. It is necessary to take into account the organic unity of all elements making written truths a practical reality.

Conclusions

Therefore, the analysis conducted leads to the conclusion that the structure of the administrative and legal mechanism for ensuring Ukraine's national security in the context of European integration includes:

1) rules of administrative legislation, which determine:
    a) the need to carry out security activities in the area of national security in the context of European integration and the conditions and grounds for the activation of protective, security and support measures;
    b) the status of the actors of its implementation, the main principles of their activity;
    c) the functionality of this mechanism and the framework of life support objects, etc.;
2) administrative and legal relations regarding the provision of national security of Ukraine in the context of European integration;
3) actors of ensuring the national security of Ukraine in the context of European integration;
4) forms, methods and procedures of ensuring the national security of Ukraine in the context European integration;
5) regulatory and legal principles of implementation of the administrative and legal mechanism for ensuring the national security of Ukraine in the context of European integration.

The structure of the administrative and legal mechanism for ensuring Ukraine's national security in the context of European integration is similar to the basic elements of any other administrative and legal mechanism of security activities. These elements can be, on the one hand, regulatory, institutional, instrumental, analytical, etc.; and on the other – organizational, practical and implementation, mixed.

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Legal aspects of postwar reconstruction and development of the state (Ukrainian experience)

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Abstract

The aim of this article was to analyze the legal basis of the postwar restoration of Ukraine, and to investigate the possible options, programs and plans for effecting this restoration. The following methods were used for the detailed study of this topic: comparative, legal-cognitive, logical-legal, hermeneutic, statistical, dialectical and formal-legal. The results of the research are the definition of basic concepts and terms, namely "reparations" and "war"; clarification of peculiarities of Ukraine's post-WWII reconstruction; research and analysis of Ukraine's post-war programs, strategies and plans of renewal, and; establishment of peculiarities and payment of reparations for Ukraine. The legal framework of Ukrainian reconstruction was also studied. It is concluded that, the integration of all existing opportunities in the world to assist Ukraine in its post-war reconstruction will facilitate Ukraine's accession to various international and European institutions, including the European Union. Also, the updating of new international acts regulating assistance to Ukraine and compensation from Russia will

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contribute to the improvement of the international legal framework, which in some respects has not changed since World War II.

Keywords: right to reparations; restoration of Ukraine; post-war scenarios; strategic program and projects; war in the 21st century.

Aspectos jurídicos de la reconstrucción y el desarrollo del Estado en la posguerra (experiencia ucraniana)

Resumen

El objetivo de este artículo fue analizar la base jurídica de la restauración de Ucrania en la posguerra, e investigar las posibles opciones, programas y planes para efectuar esta restauración. Para el estudio detallado de este tema se han utilizado los siguientes métodos: comparativo, jurídico-cognitivo, lógico-jurídico, hermenéutico, estadístico, dialéctico y formal-jurídico. Los resultados de la investigación son la definición de conceptos y términos básicos, a saber «reparaciones» y «guerra»; la aclaración de las peculiaridades de la reconstrucción de Ucrania tras la Segunda Guerra Mundial; la investigación y el análisis de los programas, estrategias y planes de renovación de Ucrania tras la guerra, y; el establecimiento de las peculiaridades y el pago de reparaciones para Ucrania. También se estudió el marco jurídico de la reconstrucción ucraniana. Se concluye que, la integración de todas las oportunidades existentes en el mundo para ayudar a Ucrania en su reconstrucción de posguerra facilitará la adhesión de Ucrania a diversas instituciones internacionales y europeas, incluida la Unión Europea. Asimismo, la actualización de nuevos actos internacionales que regulen la asistencia a Ucrania y las indemnizaciones de Rusia contribuirán a mejorar el marco jurídico internacional, que en algunos aspectos no ha cambiado desde la Segunda Guerra Mundial.

Palabras clave: derecho a la reparación; restauración de Ucrania; escenarios de la postguerra; programa y proyectos estratégicos; guerra en el siglo XXI.

Introduction

Since the twentieth century, in addition to two world wars, armed military conflicts and wars have occurred in the world to this day. The notion of war is contained in the Geneva Convention of 1949, according to which war is a

provoked and organized armed struggle that takes place between states or groups of states, peoples, or nations in order to seize territories, protect or assert the dominance of one state over another (Ivanov, 2019).

Russia, by invading Ukraine and starting a full-scale war, has violated several international legal instruments, such as the United Nations Charter, which provides for the resolution of any disputes by peaceful means so as not to threaten international peace, security, and justice (United Nations, 1945).

Despite active hostilities on Ukrainian territory, the Ukrainian government and other state authorities, as well as international partners and experts, are already actively working on a plan for the post-war reconstruction of Ukraine. The world has experienced large-scale postwar reconstruction of countries after the end of World War II. Thus, Europe began to recover and rebuild only three years after the end of World War II. For all three years, the economic viability of European countries was supported by financial support from the United States and Canada. But this aid could not last forever, so the so-called "Marshall Plan" was created, the main purpose of which was technical and economic aid (Kunz, 1997).

1. Research Problem

The post-war experience of European reconstruction has shown that if a country's economy is not rebuilt immediately, but is constantly subsidized, the latter, as a result, turns out to be much more costly and expensive. It is to avoid the mistakes of the past that the world community is already developing a plan, strategy, and program for post-war reconstruction of Ukraine, not only the economy but also all spheres of life, affected by the full-scale war, which began on the territory of Ukraine on February 24, 2022. The problem of the research of this article is to find and develop legal and legally justified possibilities and ways of post-war reconstruction of Ukraine.

2. Research Focus

The post-war reconstruction of Ukraine is designed to be a catalyst for significant changes in various spheres of life, from the economy to the social sphere, and also creates opportunities for significant reforms and the provision of safe and decent living conditions for the citizens of Ukraine. It is with the realization of these tasks the study of this topic of the article is carried out to develop effective mechanisms for the recovery of Ukraine after the end of hostilities.

2.1. Research Aim and Research Questions

The purpose of this article is to develop conditions and procedures for the post-war reconstruction of Ukraine, to clarify and establish the legal basis on which such reconstruction should be based, as well as to analyze the possibility of Russia paying damage to Ukraine in the form of reparations as one of the forms of raising funds for the reconstruction of Ukraine.

The main tasks of the article to be solved within the framework of this study are:

- to clarify and analyze the specifics and conditions of postwar renewal after World War II;
- researching programs and strategies for Ukraine's post-war reconstruction initiated by the Russian Federation;
- elaboration of recommendations and proposals of procedures for raising funds for Ukraine's post-war reconstruction, and analysis of programs already initiated and proposed by the international community for Ukraine's reconstruction and development;
- researching the legal framework under which Ukraine's recovery should be carried out;
- establishing and clarifying the specifics of compensation by the Russian Federation to Ukraine for damage caused by military actions as a form of post-war reconstruction.

3. Research Methodology

3.1. General Background

The general background to the topic of this article is that since the end of World War II there has been a terrible, large-scale, and unreasonable war in Europe and the world in general, which has caused great loss of life and destruction. Each war ends and one of the main problems arising in the post-war period is the restoration and reconstruction of all that was destroyed and the return to normal living conditions. Therefore, at the state level in Ukraine and the international level, almost every day the question of the post-war reconstruction of Ukraine is discussed and solved.

3.2. Instrument and Procedures

A number of methods of scientific knowledge were used to carry out this study. Thus, the methodological basis of this study consists of general scientific and special ways of cognition. Dialectical, logical, and formal-legal

methods of scientific knowledge were the main means of argumentation of the obtained results of the study.

Thus, with the help of the dialectical method, the analysis of existing programs of post-war reconstruction in the world, the procedure of reconstruction, and their features were carried out. The formal-legal method was used to establish and analyze the possibility of compensation from Russia to Ukraine for the damage caused as one of the forms of post-war reconstruction.

The legal-cognitive method consisted of the use of methods and techniques of cognition, ideas to achieve the scientific result, and with the help of this method, it became possible to investigate the legal basis of the post-war restoration of Ukraine. The historical method helped to investigate the post-war reconstruction after World War II and what it consisted in and to adopt this experience for Ukraine. The statistical method allowed us to estimate approximately the damage caused to Ukraine. The hermeneutical method helped to interpret the provisions of domestic and foreign scientific publications used by the author within the framework of this study. The logical method of scientific knowledge was used to disclose and highlight the features of the concepts mentioned by the author within this article (war, reparations) (Agniv, 2018).

The structural-functional method was used to clarify the available programs initiated by the Ukrainian government and the international community for the reconstruction of Ukraine. The formal-legal method of scientific knowledge was used by the author to clarify the features and purpose of the "Marshall Plan" and the possibility of its creation for Ukraine.

For more effective research of the topic of this article, the systematic method was also used, with the help of which three stages of this scientific work were carried out: the post-war reconstruction of countries after World War II was investigated; proposals were made and existing proposals for the post-war reconstruction of Ukraine were analyzed; the legal framework was established and characterized, and conclusions about the reconstruction of Ukraine after the end of hostilities were drawn.

3.3. Data Analysis

Since military actions have continued on the territory of Ukraine since 2014, but the full-scale war, which began on February 24, 2022, has made its adjustments not only in the economic, social, humanitarian, and other spheres but also in the sphere of scientific research. The issue of post-war reconstruction of Ukraine is studied and researched not only by domestic scientists but also international ones, trying to find the formula and the right solution to the problem of the effective and high-quality program and strategy of Ukraine's reconstruction after the war.

Yes, the issues of post-war reconstruction of Ukraine in one form or another of scientific research have been studied by a number of scientists, as well as a significant number of international politicians, lawyers, investors, and authorized persons of the Ukrainian authorities are trying to develop a unified strategy to address the issue of post-war reconstruction and development of Ukraine.

Boyarchuk and Hartwell (2022) in their work "Plan for Postwar Recovery of Ukraine Needs Concretization" noted three main issues and directions of postwar recovery and development of Ukraine, namely: European integration (implementation of all necessary tasks and reforms); creation of favorable business environment; institutional strengthening of society.

Bohdan (2022), director of research at the Growford Institute, notes the key goals of Ukraine's post-war recovery (restoration of infrastructure, economy, job creation).

Thomas Grant and Alan Riley, in their study of Ukraine's reconstruction and war reparations, noted that there is a need to develop an effective system of reparations for Ukraine and to create and develop effective programs to rebuild it after the war (New Lines Institute for Strategy and Policy, 2022). Scholars have also noted that the way to rebuild Ukraine after the war could be the transfer of Russian assets to Ukraine.

European Commission President Ursula von der Leyen stated her full support for Ukraine's post-war recovery, noting that Ukraine is fighting for democracy and the common values of the European Union. The EU cannot match the sacrifices that Ukraine endures, but the EU must mobilize all instruments to meet immediate needs, including housing for internally displaced persons and repairing critical infrastructure (Von der Leyen, 2022). Also, among world politicians, British Prime Minister Rishi Sunak has expressed support for Ukraine in its post-war reconstruction.

All of the scholarly writings and expert opinions examined in this article point to ways and mechanisms of Ukraine's post-war reconstruction. Yes, in all of their writings or studies they try to develop ways and directions that will help Ukraine and the state authorities in its reconstruction.

4. Research Results

Ukraine already has experience full-scale postwar reconstruction after the horrors of World War II. Thousands of settlements were destroyed, millions of people were left homeless. Ukraine's largest metallurgical plants and industrial facilities (Azovstal, Zaporizhstal, Mariupol Metallurgical Plant, etc.) were destroyed. At that time, a large part of the population was left in dire conditions, lacking even the basic necessities of life (food

and clothing). After the end of World War II, Ukraine (Ukrainian SSR) became a member of many international organizations (UN, UNESCO, International Labor Organization), which indicates positive international cooperation, but Ukraine was completely dependent on Moscow and its decisions, so in fact, the post-war reconstruction of Ukraine took place under the protectorate of the same Moscow.

The events that began in 2014, namely the complete occupation by the Russian Federation of the Autonomous Republic of Crimea and the military conflict and the territory of eastern Ukraine, and later the full-scale war on the territory of independent and sovereign Ukraine launched by Russia on February 24, 2022, repeat the horrors of World War II, with the same large-scale destruction. The policy of terror and destruction on the part of the Russian Federation requires Ukraine and the world community to develop a policy, plan, and strategy for the post-war reconstruction of Ukraine.

By early September 2022, the Ukrainian government, the World Bank, and the European Commission estimate the damage caused to Ukraine by a full-scale war at approximately 340 billion euros (Von der Leyen, 2022). It is also noted that every month, until the full end of hostilities on the territory of Ukraine, the given figure will only grow.

European Commission President Ursula von der Leyen noted that joint efforts have already begun to restore the de-occupied Ukrainian territories, but the restoration requires a comprehensive approach and the mobilization of common resources of the Ukrainian government and international partners (Von der Leyen, 2022).

By attacking the territory of an independent and sovereign state, the Russian Federation committed a number of war crimes and acts of aggression, for which it must be held responsible and compensate Ukraine for the damage caused. Thus, the UN General Assembly Resolution 3314 (XXIX) provides for the following acts of aggression: invasion or attack by armed forces of a state on the territory of another state or any military occupation, however temporary, resulting from such invasion or attack or any annexation by force of the territory of another state or part thereof; attack by armed forces of a state on land, sea or air forces or sea and air fleet of another state; the bombing of territory by armed forces of a state (UN General Assembly Resolution 3314, 1974). The present resolution establishes international responsibility for acts of aggression.

On April 21, 2022, the President of Ukraine Vladimir Zelensky signed an order, according to which the National Council on the Recovery of Ukraine from the Consequences of the War (Decree of The President of Ukraine №266/2022 “Issues of the National Council on the Recovery of Ukraine from the Consequences of the War”, 2022) was created. The main authority of this body is to develop a plan and strategy for the post-war

reconstruction of Ukraine. The National Council for the Reconstruction of Ukraine is composed only of representatives of the government and the Office of the President.

For the purpose of post-war reconstruction of Ukraine, the state authorities created a number of special funds, namely:

- Fund for Economic Renewal and Transformation;
- Economic Recovery and Transformation Fund;
- Fund for the Support of the Army;
- Economic Recovery and Transformation Fund;
- Economic Recovery and Transformation Fund.

Also, the European community has created its own fund for the reconstruction of Ukraine, namely the Fund for the reconstruction of the energy infrastructure destroyed by the Russian war, which can join all states that wish to participate in the post-war reconstruction of Ukraine.

Another important event that took place for the post-war reconstruction of Ukraine was the Ukrainian Reform Conference, which was held in Lugano, Switzerland, in July 2022. At the end of the Conference, the Declaration on the post-war reconstruction of Ukraine was adopted, according to which all the member states of the Conference pledged to support the reconstruction of Ukraine (Ukrainian Reform Conference, 2022).

At the Conference, Ukraine presented its post-war reconstruction plan, which included 850 projects for the further reconstruction of Ukraine. This recovery plan includes the following recovery programs: strengthening and financing of defense and security; development of the digital state; integration into the European Union; energy independence of Ukraine; restoration of environment and development of green course; improvement of conditions for business; completion of the restart of the anti-corruption system; restoration of infrastructure of settlements; (Plan For The Recovery Of Ukraine, 2022).

The Center for Economic Policy Research has engaged world economists and experts for Ukraine's post-war recovery, who have developed an "Essay on the Recovery of Ukraine". In this Essay, the experts noted potential sources of aid for Ukraine's post-war recovery, as follows:

- *Confiscated Russian assets*. Currently, there is no final procedure and decision on the freezing of Russian assets (e.g., assets of the Russian central bank) and their transfer to Ukraine for post-war reconstruction, but the transfer of Ukrainian assets should be radically different from the provision of loans or credits.

- *Bilateral assistance*. Many governments around the world have expressed a desire to assist Ukraine in its post-war reconstruction. Also, some types of assistance to Ukraine can be provided through existing agencies such as USAID and SIDA.
- *Participation in international institutions*. A considerable number of international institutions, such as the World Bank, the United Nations, the International Monetary Fund, the European Investment Bank, and others can provide Ukraine with various kinds of loans and grants, humanitarian aid, etc. for its post-war reconstruction.
- *Private sources of assistance*. Individuals, private foundations, or public organizations that have collected and provided large sums of money for humanitarian or other purposes to Ukraine during the war can also participate in the postwar reconstruction of Ukraine.

Ukrainian Prime Minister Denis Schmigal noted during his speech at the Yalta Conference that the basis of Ukraine's postwar reconstruction should be Russian assets, not just the Ukrainian budget and international aid (Yalta European strategy, 2022).

International law and international acts (General Assembly Resolution 60/147, 2005) enshrine several forms of compensation for war damage (reparations, restitution, etc.). Therefore, the post-war reconstruction of Ukraine may take place through the payment of reparations and contributions to Ukraine by the Russian Federation. War reparations are payments by one state to another state, after the end of military actions (war) intended to compensate for damage and injury.

This form of the post-war reconstruction as payments of war reparations has been used for many centuries and after the end of many wars, especially after the end of the First and Second World Wars. The most extensive payment of reparations was after World War II, in which the losing countries compensated the victors. The last payment of reparations by Germany took place in 2010.

The payment of war reparations is marked by an agreement concluded between the belligerents or is paid in accordance with international acts. However, at this stage of the war between Ukraine and Russia, any conclusion of peace agreements and treaties is unlikely. Also, the payment of reparations by Russia is complicated by the fact that Russia is a permanent member of the United Nations Security Council and has veto power in it, allowing the Russian Federation to veto a UN order on the issue of reparations (United Nations, 1945).

Another way for the Russian Federation to compensate Ukraine for damage that could be brought in for post-war reconstruction could be the creation of a UN Compensation Commission. This Commission was

established in 1991 as a subsidiary body of the UN Security Council under UN Security Council Resolution 687 (Resolution 687, 1991).

The Commission's primary purpose was to adjudicate claims for compensation and reparations after Iraq's invasion of Kuwait (Blank, 2022). However, there is an obstacle to the functioning of the Compensation Commission for Ukraine, namely the veto power of the Russian Federation. It would be possible to overcome the veto power by depriving Russia of such a right in the UN Security Council, which has already been repeatedly discussed.

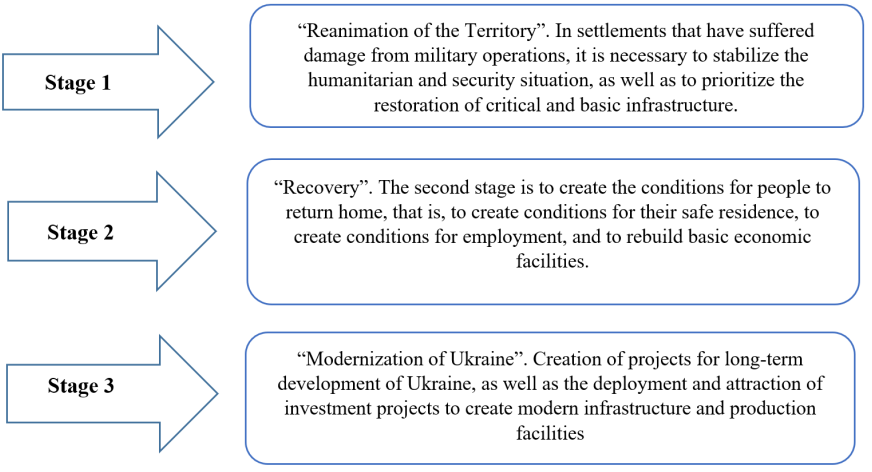
On October 25, 2022, a roundtable was held at the European Parliament where the New Line Institute presented a mechanism under which one could receive reparations from Russia (New Lines Institute for Strategy and Policy, 2022).

New Line Institute experts have developed a legally effective mechanism for Russia to pay reparations to Ukraine as one of the ways to compensate for the damage caused. The following mechanism is proposed:

1) sign an agreement in which the acts of aggression committed by Russia on the territory of Ukraine will be recognized in the legal field;
2) the signed agreement legally establishes the obligation of the Russian Federation to compensate for the damage caused to Ukraine;
3) after signing the agreement, a special commission and a fund are created;
4) the procedure of confiscation of Russian assets in favor of Ukraine begins;
5) the specially created commission awards compensation for the damage caused, and the fund in turn distributes the funds (Grant *et al.*, 2022).

Shpatakova, Ivanenko, Pohrebytskyi in their study of the post-war reconstruction of Ukraine developed the concept of the strategy of post-war reconstruction and development of Ukraine

Figure No. 01: Concept of the Strategy for Post-War Reconstruction and Development of Ukraine and Certain Territories of the State



Source: (Shpatakova *et al.,* 2022).

In the process of Ukraine's post-war reconstruction, attention should be paid to the experience of countries that underwent post-war reconstruction, as well as to the various programs provided to such countries by the world community. The year 1945 marks the end of World War II, the most brutal and terrible war in the history of the world. With the end of the war, however, a number of problems arose, foremost among which was the post-war reconstruction of countries that had suffered the damage and destruction of warfare.

The most famous program of post-war reconstruction was the Marshall Plan. James Yunker noted that the Marshall Plan was the most rushed post-war reconstruction program the world had ever seen. The essence of the plan was the global and extensive reconstruction of Europe after the devastation caused by World War II. Thus, since the Marshall Plan began, the United States has provided more than $13 billion in economic aid to Western European countries for reconstruction and recovery (Yunker, 2021).

However, the "Marshall Plan" was not only about providing goods and products but also about developing European industries and developing international cooperation, which was the impetus for a future European Union. The "Marshall Plan" was also intended to secure European countries against a possible threat from the Soviet Union.

Reconstruction of Ukraine after the war can be a good opportunity to improve both housing infrastructure, cultural monuments, and industrial and production facilities, and help move to modern planning of public space, taking into account the historical heritage and modern context. The post-war renewal of production in Ukraine can take into account the experience of Japan and Korea. After the Korean War Korea was divided into two parts: South Korea and North Korea.

South Korea, after the war, was forced to invest heavily in technology and science and refocus the country on exports. However, the United States developed recovery programs for South Korea and helped it recover both economically and restore industry (Seth, 2013). The situation was similar in Japan where after the end of World War II Japan was a lost country with widespread devastation. The United States took control and protectorate of Japan's recovery with numerous reforms, fought the oligarchs, and improved and developed the free market in Japan (Flath, 2022).

Many countries, each on their own, have taken the initiative to participate in the post-war reconstruction of Ukraine. Thus, for example, in a joint letter of the President of Ukraine and the President of the Republic of Lithuania Gitanas Nausieda declared that Lithuania confirms and is ready to take an active part in the reconstruction of Ukraine and will provide Ukraine with all kinds of necessary assistance on a permanent basis (Joint statement of the President of Ukraine Volodymyr Zelenskyi and President of the Republic of Lithuania Gitanas Nausieda, 2022).

Also, Poland, Germany, Italy, Great Britain, the United States, Denmark, Sweden, Spain, France, etc. declared their readiness to participate in the post-war reconstruction of Ukraine. About 1,200 Polish companies have expressed their willingness to participate in the reconstruction of Ukraine.

5. Discussion

Ukraine's postwar reconstruction should be based on the involvement of civil society, independent experts and institutions, local communities and municipalities, and the international community in rebuilding Ukraine after the war.

Many European leaders are calling for Ukraine to develop its own "Marshall Plan" for post-war reconstruction. One of the initiators of the development of Ukraine's own "Marshall Plan" is Chancellor Olaf Scholz of Germany. Thus, in his statement before his speech at the G7 Summit in Elmau, he noted that Ukraine needs an effective plan for post-war reconstruction, including the "Marshall Plan," because Ukraine's reconstruction is a task for a generation (Toms, 2022).

The involvement of Ukraine's international partners in Ukraine's post-war reconstruction process was addressed by Brian J. Cavanaugh, senior vice president of American Global Strategies noting that after World War II, the United States waited three years before approving a program to help countries in Europe (the Marshall Plan).

Thus, the Marshall Plan taught a valuable lesson: It successfully reconstructed cities and infrastructure and served as a mechanism to strengthen democracy (Cavanaugh, 2022). The international community now has a unique chance not to repeat the mistakes of the past, as the success of Ukraine's reconstruction will serve as a deterrent to other authoritarian regimes and their broader interests (Cavanaugh, 2022).

The author agrees that the creation of Ukraine's own "Marshall Plan" can effectively and qualitatively affect the reconstruction of Ukraine, which is positively indicated by the experience of European countries after World War II when the application of this Plan helped these countries to develop, as well as to develop industry, trade and other. areas of life and become one of the most influential countries in the world. The development of Ukraine's own "Marshall Plan" will be an effective and efficient mechanism for Ukraine's recovery after the war, as well as a promising and long-term way of recovery.

Shpatakova *et al.* (2022) noted that the development of plans and programs for the post-war reconstruction of Ukraine should be one of the main tasks of the Ukrainian authorities and the international community because the timely formed strategy for the reconstruction of Ukraine will help to maintain the stability of the state and strengthen it economically.

Having studied and analyzed the past experience of post-war reconstruction of European countries, the author agrees and emphasizes that it is necessary to develop a plan and strategy for the post-war reconstruction of Ukraine now in order not to repeat the mistakes of the past and not to face a situation where the economy of Ukraine will be held and fully dependent on the assistance of international partners.

With a strong potential in production, industry, innovation, and most importantly in people, and with the help of international programs, strategies, and experts, Ukraine's recovery must take place at the highest level. Also, Ukraine's post-war reconstruction should take place together with the international community and the best experts from around the world.

Hartwell and Boyarchuk (2022) noted that it is premature to talk about a timeline for the end of the war in Ukraine, but it is already necessary to lay the groundwork for what a postwar Ukraine will look like). The full-scale war that has begun in Ukraine has already resulted in significant destruction of infrastructure, industry, and economy, destroying entire local communities.

The rapid and effective restoration of everything destroyed in Ukraine will help restore the economy, attract new investments and create new jobs, develop the state and rebuild cities from scratch, in accordance with international standards, and most importantly return the citizens of Ukraine to a normal way of life, before February 24, creating safe and comfortable living conditions. This study was aimed primarily at developing an effective strategy for rebuilding Ukraine after the devastation it suffered from military action on the part of the Russian Federation.

As for the legal basis for the reconstruction of Ukraine, it should be noted that various international acts in one way or another enshrine the payment of compensation for the damage caused to the country, which was destroyed. The Russian Federation, as the main cause of the destruction inflicted on Ukraine and which started an unjustified and brutal war on the territory of Ukraine, should compensate and make up for the damage inflicted.

The author states that reparation can be made in the form of reparations or the creation of a special UN Commission, which will consider and accompany the procedure of compensation by the Russian Federation. However, in accordance with international law and the rules of the UN Security Council, Russia has the right to veto decisions, which makes it difficult to pay reparations or create a special Commission. But this problem is solved by depriving Russia of this veto right, which is a complicated procedure and has never yet been applied to even one permanent member of the UN Security Council.

The study of the legal aspects of Ukraine's post-war reconstruction aims to develop effective approaches, programs, and strategies for Ukraine's recovery. Established and legally documented mechanisms of Ukraine's reconstruction during the war will help to avoid unnecessary obstacles and problems that may arise at the stage of Ukraine's reconstruction.

Conclusions and Implications

The consequences of a full-scale Russian invasion are incredibly significant. Already now they are measured in billions of dollars, destroyed settlements, major cities affected by Russian missiles and shelling, destroyed infrastructure, industry, agriculture, significant economic decline, etc. Damage from the war is only increasing every day, which in turn requires the development of programs and plans for post-war reconstruction.

As world experience shows, a plan for the reconstruction of Ukraine is needed now, without waiting for the end of the war, because it may take more than one year to recover. Compensation from Russia, as well

as support from the international community, should play an important role in the reconstruction of Ukraine. It is for the purpose of the post-war reconstruction of Ukraine that the world and the government of Ukraine are thinking and developing different options for raising funds and creating various programs and plans for the reconstruction of everything that was destroyed.

The author analyzed and developed a number of proposals and programs for the reconstruction of Ukraine after the end of the war based on the results of the study. Thus, almost from the very beginning of the full-scale war, the Ukrainian government has repeatedly emphasized the creation of programs for the post-war reconstruction of Ukraine. The author supports this initiative and in addition to the already mentioned reconstruction programs, which are discussed at various conferences and the international level, proposes to confiscate the assets of the Russian Federation and create for Ukraine its own "Marshall Plan" for the reconstruction of Ukraine.

Since the war in Ukraine continues and the damage from the war will only increase, further scientific research and development of possible options to raise funds for the reconstruction and development of Ukraine is needed. The conducted research and the foundations, components, and concepts that are laid in it should help future researchers to develop even more effective recommendations for the reconstruction of Ukraine, the creation of a new Ukraine on the ruins of the war.

The integration of all existing opportunities in the world to assist Ukraine in its post-war reconstruction will facilitate Ukraine's accession to various international and European institutions, including the European Union. Also, updating and creating new international acts that will regulate assistance to Ukraine and compensation from Russia will help improve the international legal framework, which in some aspects has not changed since World War II.

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Procedure in absentia in criminal proceedings for legalization (laundering) of taxes derived from crime

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Abstract

The article was aimed at analyzing the characteristics of the procedure for conducting a special investigation (in absentia) in criminal proceedings concerning the legalization (laundering) of criminally obtained taxes. Attention is drawn to the fact that the concepts of "special criminal procedure", "special pre-trial investigation", "special court procedure" are not formulated by the legislator, but the legal norms concerning their practical implementation are found in various parts of the Criminal Procedure Code of Ukraine. It is understood that in the procedural decision to clarify the concept of "special criminal procedure" it is necessary to be guided by the general concept of "criminal procedure" with characteristic features for the special criminal procedure. It was concluded about the imperfection of the legislative provisions regulating the matter under consideration, in particular, the basic concepts establishing the basis for their application, what procedural acts should be performed in the absence of the accused? What is the procedural term of such an investigation? This question is not defined. The proposed changes to the legislation are aimed at improving the procedural order of a pre-trial investigation in criminal proceedings related to the legalization of taxes obtained by criminal means.

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Procedimiento en rebeldía en procesos penales por legalización (blanqueo) de impuestos procedentes de delitos

Resumen

El artículo tuvo por objeto analizar las características del procedimiento para la realización de una investigación especial (en rebeldía) en los procesos penales relativos a la legalización (blanqueo) de impuestos obtenidos por vía delictiva. Se llama la atención sobre el hecho de que los conceptos de "procedimiento penal especial", "investigación previa al juicio especial", "procedimiento judicial especial" no están formulados por el legislador, pero las normas legales relativas a su implementación práctica se encuentran en varias partes del Código de Procedimiento Penal de Ucrania. Se entiende que en la decisión procesal de aclarar el concepto de "procedimiento penal especial" es necesario guiarse por el concepto general de "procedimiento penal" con rasgos característicos para el proceso penal especial. Se concluyó acerca de la imperfección de las disposiciones legislativas que regulan el asunto en consideración, en particular, los conceptos básicos que establecen las bases para su aplicación, ¿Qué actos procesales deben practicarse en ausencia del imputado? ¿Cuál es el plazo procesal de tal investigación? Está cuestión no está definida. Los cambios propuestos a la legislación tienen como objetivo mejorar el orden procesal de una investigación previa al juicio en los procesos penales relacionados con la legalización de impuestos obtenidos por medios delictivos.

Palabras clave: rebeldía procesal; lavado de activos; blanqueo de impuestos; procedimiento penal especial; investigación especial previa al juicio.

Introduction

Abuses in the field of public finance are very dangerous, as they cut the economic possibilities of the country, financial welfare of the people and build an unlovable image for Ukraine in the international arena (Sukhonos *et al.*, 2021).

The problem of legalization (laundering) of money obtained by criminal means has become particularly important or Ukraine during the last decade, since the criminalization of the economy has become one of the key threats to the economic security of our State. As Reznik et al. (2021) correctly stress, money laundering is extremely difficult to investigate and prosecute; besides, the social danger of this phenomenon has recently been revealed in new aspects.

A few years ago, the majority of criminal offenses of this category were committed with the aim of further using the received income in entrepreneurial and other economic activities for profit. Subsequently, funds or other property of criminal origin began to be used to finance terrorism, illegal arms trafficking, organization of contract killings, financing of marginal separatist groups and other serious and especially serious crimes.

Therefore, in order to ensure quick, complete and impartial investigation, bringing guilty persons to justice, pre-trial investigation agencies and courts increasingly turn to "new" procedural forms, in particular, special pre-trial investigation (in absentia). The legal nature of such an investigation is extremely complex and was considered by many foreign and Ukrainian scientists at the level of dissertation studies, in monographs, educational and methodological publications, a number of scientific articles and other publications.

However, due to modern changes in the legislation, seeking new "technological" and more socially dangerous methods of criminal activity for the state and its citizens by offenders, the increase in the borders of temporarily occupied territories and the number of criminals hiding in them in order to avoid criminal liability, a targeted study requires a special pre-trial investigation (in absentia), regarding specific types of criminal offenses specified in Part 2 of Article 297-1 of the Criminal Procedure Code of Ukraine (Law of Ukraine No. 2465-IX, 2012).

Thus, the purpose of the article is a theoretical and practical analysis of the procedural order of a special pre-trial investigation (in absentia) in criminal proceedings regarding the legalization (laundering) of taxes obtained through criminal means.

1. Methodology

The complex of general scientific and special research methods was used to achieve the set goal, fulfill the stipulated tasks and ensure scientifically based research results, which, complementing each other, provided an objective analysis of the research subject, taking into account the specifics of the chosen topic. Thus, the following methods were applied:

Historical and legal approach helped to study the genesis of the institution of special pre-trial investigation (in absentia) in general and in the investigation of certain crimes in the field of official and economic activity in particular.

Logical and normative method was useful for substantiating and formulating amendments and supplements to the relevant provisions of the Criminal Procedure Code of Ukraine.

Comparative analysis approach was used when summarizing the views of scientists on the procedure of special pre-trial investigation of criminal offenses "in absentia", in particular legalization (laundering) of property obtained through tax evasion

The method of systematic analysis made it possible to analyze legal norms governing the procedure for performing special pre-trial investigation.

With the help of statistical method, the number of pre-trial investigation into the legalization (laundering) of property in different years and the quantity of indictments sent to court were revealed.

Formal and dogmatic method was applied for researching the concepts of the criminal procedural legislation of Ukraine, namely "special criminal proceedings", "special pre-trial investigation", "special court proceedings", "hiding from investigative bodies and trial" and "evasion of criminal responsibility".

2. Literature Review

In the research by Piestsov (2012) it is noted that because of improper procedural development of the proceedings in absentia the criminal process of Ukraine and with the aim of improving the legal regulation of this institution, it is necessary to supplement the Criminal Procedure Code of Ukraine.

Matviievska (2013), taking into account the needs of law enforcement practice and the protection of the rights and legitimate interests of the victim and the civil plaintiff, stressed on the need to expand the existing grounds for the application of the in-absentia procedure and regulatory consolidation, in particular, of the accused (defendant) stay outside Ukraine and evasion of summons.

Nahorniuk-Danyliuk (2016) analyzed the signs and grounds for special pre-trial investigation and certain features of criminal proceedings in the absence of the accused in a criminal trial in certain European countries and countries participating in the Commonwealth of Independent States.

Malenko (2019) investigated the procedural and legal characteristics of special pre-trial investigation as a form of in absentia criminal procedure and its improvement.

Anne Schneider (2019) studied the solutions that were developed in the EU to solve the problem of different standards of in absentia proceedings in cross-border criminal proceedings with particular regard to the implementation of the European arrest warrant issued to enforce a decision arising from in absentia proceedings.

The researcher Lorena Bachmaier Winter (2019) analyzed the provisions of criminal proceedings in absentia, enshrined in the EU Directive 2016/343 of March 9, 2016 on strengthening certain aspects of the presumption of innocence and the right of persons to be present during criminal proceedings, in order to assess their impact on the protection of fundamental rights in the EU countries and solve the issue of establishing a higher standard of human rights requirements in the EU than that implemented in the ECHR practice.

In turn, Serena Quattrocolo and Stefano Ruggeri (Billis and Gkaniatsos, 2019) investigated the influence of European legislation, which includes the practice of the ECHR, framework decisions and EU directives on the domestic national legal regulation of criminal proceedings in absentia.

3. Results and Discussion

The instability of the macroeconomic situation in Ukraine, periodic crisis in the economy contribute to the formation and development of a strong shadow sector in the national economy. Its fictitious component, which lies in the withdrawal of significant financial funds from the legal economic sector by illegal means, redistribution of billions of profits in favor of individual business entities and the outflow of capital abroad, has now become global. All this contributes to increasing the threat to the economic security of the State, strengthening the already existing socio-economic recession. Such crises have not spared taxation.

Taxes, fees (mandatory payments) are the most important tool of the State, which guarantees the existence of society; accordingly, the further development of the economy of Ukraine depends on the effectiveness of legislative acts ensuring the legal regulation of the use of this tool. The problem of legalization (laundering) of property obtained through tax evasion has acquired particular significance for Ukraine during the last decade, as it is associated with the commission of criminal offences of varying severity and consequences, with the presence of offshore zones, with sophisticated tax evasion schemes, which has a devastating effect on

both the development of the national economy and the implementation of global international programs.

Precisely because of this, a component of the goal of enshrining the possibility of carrying out special pre-trial investigation (in absentia) in is to increase the effectiveness of the investigation of certain crimes, in particular, in the field of official and economic activity, since the scale of legalized (laundered) capital is currently so significant that it is about the threat to the stability of the entire international financial system. Thus, according to UN data, 37 trillion dollars were found in offshore zones, of which 11.5 trillion dollars (31%) belong to individuals.

This gives reason to conclude about the annual non-payment of about 250 billion dollars of taxes. In particular, according to the Office of the Prosecutor General of Ukraine (2022), in 2014, pre-trial investigation into the legalization (laundering) of property was conducted in 296 proceedings and only 14 indictments were sent to court; in 2016 – 159 (24); 2017 – 243 (42); 2018 – 242 (54); 2019 – 283 (68); 2020 – 348 (73) (+ 23% compared to 2014); 2021 – 395 (103); 2022 – 437 (146). Besides, during the analyzed period, employees of the State Fiscal Service of Ukraine ceased the illegal activities of 297 conversion centers, which converted 81.9 billion UAH, and the damage from their activities amounted to more than 14.7 billion UAH.

However, this type of crime is characterized by the stealth of the various ways in which it is performed under the guise of official financial transactions (Arkusha, 2012), the preservation of a "secret" for a long period of time, a limited circle of participants in criminal activity who do not allow the detection and termination of the committed act, which causes a significant share of latent criminality, and in the case of identification of persons involved in this event, it turns out that a significant part of them is hiding in the temporarily occupied territory of Ukraine, or in the territory of a state recognized by the Verkhovna Rada of Ukraine as an aggressor state.

The procedure of special pre-trial investigation of criminal offenses "in absentia" is designed to overcome the deliberate absence of a suspect accused in criminal proceedings, and further prosecution of the perpetrator in accordance with the rules of substantive law. As Kopersak (2021) successfully pointed out, this proceeding is the result of centuries-old attempts to establish an absentee investigation and conviction of persons guilty of a crime.

The ECHR recognizes proceedings in absentia as a means of protecting legal order, if the human rights guaranteed by the European Convention on Human Rights are respected. That is, the procedure itself does not contradict the Convention, and its implementation must take place without violating the Convention's guarantees. At the same time, along with the recognition of the in absentia procedure, the ECHR consistently adheres

to a firm position regarding the State's duty to ensure that the rights of the suspect and the accused are respected. However, legal regulation of special criminal proceedings in Ukraine has significant gaps, contradictions and fragmentation, as well as inconsistency with the modern development of ideas about human rights.

The concepts of "special criminal proceedings", "special pre-trial investigation", "special court proceedings" are not formulated by the legislator, but the corresponding norms regarding practical implementation of the main components of this institution are enshrined in different parts of the Criminal Procedure Code of Ukraine (Law of Ukraine No. 2465-IX, 2012).

It is understood that in the procedural decision to clarify the concept of "special criminal proceedings" it is necessary to be guided by the general concept of criminal proceedings, which shall mean pre-trial investigation and court proceedings, procedural actions connected with commission of an act specified in the Ukrainian law on criminal liability (Par. 10, Article 3 of the Code of Criminal Procedure of Ukraine) with characteristic features for special criminal proceedings defined by this Code. In view of this, we offer to supplement Art. 3 (Definition of the main terms of the Code) with clause 10-1 of such content:

Part 10-1. Special criminal proceeding is a special order of criminal proceedings that includes specific pre-trial investigation and court proceeding and provides for the procedure for their implementation in cases provided for by the Criminal Procedure Code of Ukraine regarding the exclusive list of crimes, in relation to a suspect (accused), except for a minor, who is hiding from the investigative authorities and the court on the temporarily occupied territory of Ukraine, on the territory of a state recognized by the Verkhovna Rada of Ukraine as an aggressor state with a view to avoiding criminal responsibility and/or being sought internationally, subject to the general principles of criminal procedure for the purpose of ensuring quick and effective protection of the individual, society and the State from criminal offences.

It is not considered appropriate to highlight special pre-trial investigation as a form of pre-trial investigation along with a pre-trial investigation and an inquiry, since it is covered by the concept of "pre-trial investigation", but not identical to it, because although it is carried out according to its rules, but given the unique nature of special pre-trial investigations.

The data by experts and the results of the operatives' survey indicate that the facts of legalization (laundering) of property obtained through tax evasion become known: from the materials of tax inspections (79%); based on the results of operational and search activities (46%); from materials of other criminal proceedings (21%); from official appeals by law enforcement

agencies (17%). The data obtained in this way mostly contain information: on the use of fictitious companies (63%), carrying out of commodity-free transactions (45%), artificial formation of tax credit (35%).

The procedure of special pre-trial investigation (in absentia) is regulated by a separate chapter of the Criminal Procedure Code of Ukraine (24-1 "Features of special pre-trial investigation of criminal offenses" of Chapter III "Pre-trial investigation") (Law of Ukraine No. 2465-IX, 2012), and in criminal proceedings regarding the legalization (laundering) of taxes derived from criminal activities is possible only in relation to the person who has acquired the status of a suspect, i.e., in relation to a person whose suspicion has been duly reported in accordance with the procedure provided for in Art. 276 – 279 of this Code; or a person against whom a report of suspicion has been made, but it has not been handed over for lack of locating, but measures have been taken to serve it in the manner provided for by the criminal procedural legislation.

In this regard, Tatarov (2014) reasonably emphasizes the fact of reporting suspicion by e-mail, fax, telephone, or telegram does not guarantee delivery of the notification personally, therefore, a report of suspicion cannot be sent in this order.

In practice, if it is not possible to serve a notification of suspicion in person, the method of notification by mail with a declared value with a description of the attachment and a notice of delivery is widely used (Alenin and Glovyuk, 2014). The possibility of sending a notification in this way is also confirmed by judicial practice; as for the procedure for sending summons, then, according to Part 1, Art. 297-5 of the Criminal Procedure Code of Ukraine (Law of Ukraine No. 2465-IX, 2012), summons are sent to the suspect at the last known place of residence or stay with mandatory publication in the mass media of national sphere of distribution and on the Prosecutor General's Office official website. The suspect is considered to be properly acquainted with the content of summons from the moment of its publication.

I t should be noted that the procedure for carrying out special pre-trial investigation (in absentia) in criminal proceedings regarding the legalization (laundering) of taxes received from criminal means is possible only in relation to fugitives from investigation and trial in temporarily occupied territory of Ukraine, in the territory of the state recognized by the Verkhovna Rada of Ukraine as an aggressor state with a view to avoiding criminal responsibility and/or being sought internationally.

There is no legal definition of such concepts as "hiding from investigative bodies and trial" and "evasion of criminal responsibility". However, the Grand Chamber of the Supreme Court in the decision of the case No. 598/1781/17 (2020) noted that evasion of investigation or trial should

be understood as any deliberate act by a certain person with the aim of avoiding of criminal responsibility for the committed crime, forcing law enforcement agencies to take measures aimed at locating and detaining the perpetrator (Case No. 5-1ks15, 2015).

Regarding conducting special pre-trial investigation into the declaration of a suspect for the international search, we should note that an international search is a procedural form of international cooperation implemented within the framework of the functioning of the International Criminal Police Organization (Interpol), the main task of which is to search for a specific object or a person (Interpol, 1956).

In our opinion, due to the fact that the presence of a suspect in an international search warrant is the basis for conducting special pre-trial investigation, during the consideration of a petition for conducting a special pre-trial investigation, the investigating judge is obliged to establish this fact and indicate how this is confirmed. Moreover, it is the fact that the suspect has been made public in an international search, and not the fact of applying for such a declaration.

On September 22, 2020, the Instruction on the procedure for the use of the information system of the International Criminal Police Organization - Interpol by law enforcement agencies of Ukraine entered into force, which does not include as a reference that it is through the channels of Interpol that the international search is carried out, and the concept of international search in general (Order No. 613/380/93/228/414/510/2801/5, 2020).

The analysis of the provisions of Part 2, Art. 297-1 of the Criminal Code of Ukraine (Law of Ukraine No. 2465-IX, 2012) allows to state that special pre-trial investigation (in absentia) in criminal proceedings regarding the legalization (laundering) of taxes received from criminal means cannot be carried out against a minor suspect. Without analyzing the legal nature of criminal proceedings against minors in detail, while taking into account the content of the provisions of Chapter 38 “Special Procedures of Criminal Proceedings” of the Criminal Procedure Code of Ukraine, as well as the views of scientists on this issue (Trofimenko 2012), it can be stated that criminal proceedings against minors from the position of differentiation of criminal procedural form is an example of its complexity, that is, it refers to proceedings with enhanced procedural guarantees.

In view of the above, we agree with the view by Piestsov (2012) that pre-trial investigation without the suspect cannot be carried out in cases of crimes committed by minors, because minors are the subjects of proceedings, which strengthens their procedural guarantees, while the implementation of a special pre-trial investigation, on the contrary, involves the simplification of the procedure for its implementation.

It should be added that if the legalization (laundering) of taxes received from criminal means is investigated along with other types of criminal offenses (not specified in Part 2, Article 297-1 of the Criminal Procedure Code of Ukraine) (Law of Ukraine No. 2465-IX, 2012), then they may be investigated together with those, in respect of which the implementation of a special pre-trial investigation is allowed, since any pre-trial investigation can be attributed to those that may negatively affect the completeness of pre-trial investigation based on a subjective approach of the prosecutor.

However, in any case, the implementation of special pre-trial investigation (in absentia) in criminal proceedings regarding the offense under consideration, requires the investigative judge to issue a separate procedural decision (resolution), without which it is impossible, as well as mandatory participation of defense counsel in criminal proceedings.

Attention should be paid to the fact that, in contrast to the requirements that are put forward to the motions by investigator, (prosecutor) on the application of preventive measures, Art. 297-2 of the Criminal Procedure Code of Ukraine (Law of Ukraine No. 2465-IX, 2012) does not include the duty of the investigator to confirm that the suspect has been served with a copy of the application and materials' justifying the need for special pre-trial investigation, i.e., the defense counsel is not entitled to examine the content of the petition and the materials attached to it.

The above makes it impossible for counsel to form a defense position prior to the commencement of the defense, and therefore, in our opinion, it is necessary to provide for the mandatory provision of such materials not later than 3 days before the application is considered (by analogy with Part 8, Article 135 regarding summons).

In accordance with this, Part 1, Art. 297-3 of the Criminal Procedure Code of Ukraine (Law of Ukraine No. 2465-IX, 2012) (consideration of the motion on conducting special pre-trial investigation) should be supplemented with Par. 3, which we propose to amend to read as follows: copy of the application and materials justifying the need for special pre-trial investigation shall be provided to the suspect's defense counsel not later than three days before the application is considered.

Moreover, according to Clause 8, Part 2, Art. 52 of the Criminal Procedure Code of Ukraine (Law of Ukraine No. 2465-IX, 2012), the participation of a defender is mandatory in criminal proceedings against persons who are subject to special pre-trial investigation or court proceedings, from the moment the corresponding decision is made. At the same time, the consideration of the request for special pre-trial investigation takes place with the mandatory participation of a defense attorney. Thus, there is a clear inconsistency with the provisions of Clause 8, Part 2, Art. 52 with the provisions of Part 1, Art. 297-3 of the abovementioned legal act in

defining the moment from which the participation of the defense counsel is mandatory.

Taking into account the fact that special pre-trial investigation is linked to the grounds clearly defined in the abovementioned legal act and is possible in relation to the person who has already acquired the status of a suspect, that is to say, there are no grounds for conducting special pre-trial investigation against the person at the time of notification, we consider it incorrect to link the moment from which the participation of the defender in the case of a special pre-trial investigation is required with the moment of notifying the person of the suspicion.

In order to ensure legal certainty, there is a need to bring the provisions of Clause 8, Part 2, Art. 52 of the Criminal Procedure Code of Ukraine (Law of Ukraine No. 2465-IX, 2012) in line with the provisions of Part 1, Art. 297-3 of the said Code of Ukraine by enshrining mandatory participation of a defender in special pre-trial investigation from the moment the investigating judge receives a request to conduct it.

It should be added that in accordance with Part 6, Art. 297-4 of the Criminal Procedure Code of Ukraine (Law of Ukraine No. 2465-IX, 2012), information on suspects in respect of whom the investigating judge has ruled to conduct a special pre-trial investigation shall be entered into the Unified Register of Pre-Trial Investigations immediately, but not later than 24 hours after the effective date of the ruling.

However, the implementation of these legislative prescriptions in practice faces significant difficulties, since there is no technical possibility to make a corresponding mark in the Unified Register of Pre-Trial Investigations; that is why judges often return the indictment to the prosecutor after considering a request for a special trial, owing to the fact that the pre-trial investigation register does not contain information on the entry of information about special pre-trial investigation into the Unified Register. By the way, this also applies to other types of criminal offenses, of which the procedure in absentia is possible.

If the suspect, in respect of whom the investigating judge issued a decision to carry out special pre-trial investigation, is detained or voluntarily appeared before the pre-trial investigation body, further pre-trial investigation is carried out in accordance with the general rules provided for by the Criminal Procedure Code of Ukraine (Law of Ukraine No. 2465-IX, 2012). We established that almost 80% of the initiative to commit the crime came from the leaders of business entities.

The number of members of such criminal groups is determined in accordance with the need for the distribution of roles, taking into account the technology of specific criminal activity. The formation of such groups is usually performed at the initiative of the organizers (68%). In 22% of cases,

criminal schemes involved fictitious persons as nominal owners of business entities, secretaries and customer service managers who were not aware of the plans of the organizers, but provided relevant services for one-time remuneration (bonuses) or under the pretext of employment.

Conclusions

Inefficient work of investigative and operative units along with objective difficulties, is also associated with the lack of scientifically based methods of investigation, including in the part of the implementation of the procedure in absentia. The investigation of such crimes involves planning of this activity as the main method of organizational and managerial activity in criminal proceedings, which determines the ways, methods, means, forces and terms of successful achievement of the previously set goal and the mandatory creation of an investigative and operational group.

Obtaining evidence from material sources is carried out by conducting a search, temporary access to things and documents (Chapter 15 of the Criminal Procedure Code of Ukraine) (Law of Ukraine No. 2465-IX, 2012), initiating the requisition of documents, audit conclusions and inspection reports (in accordance with Part 2, Article 93 of this Code), investigative inspection, interrogation, examinations, etc.

The procedure for carrying out special pre-trial investigation (in absentia) in criminal proceedings regarding legalization (laundering) of taxes received from criminal means is regulated by a separate chapter of the Criminal Procedure Code of Ukraine and is performed after separate procedural decision (resolution) by the investigating judge with the mandatory participation of the defense counsel against an adult who has acquired the status of a suspect and is hiding from the investigation and trial authorities in the temporarily occupied territory of Ukraine, in the territory of the country recognized by the Verkhovna Rada of Ukraine as an aggressor state for the purpose of evading criminal responsibility and/or who was put on international wanted list, and also provides for a special summons procedure for and delivery of procedural documents.

Along with the establishment of the above-mentioned grounds for initiating in absentia procedure at the initial stage of the investigation of legalization (laundering) of taxes received from crime, it is necessary to establish, in particular: a) the fact of criminal actions (evasion, funds in the form of a budgetary reimbursement of VAT, the implementation of a financial transaction aimed at providing a legitimate type of ownership, use and disposal of this property); b) documents (tax and accounting, economic, registration, electronic; authorizing persons to dispose of financial resources, etc.).

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Legal regulation of ethno-national policies (national minorities, indigenous peoples, multiculturalism)

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Abstract

The current situation of national minorities, indigenous peoples and the policy of multiculturalism needs to be reconsidered from a legal point of view. The purpose of the article was to investigate the legal regulation of ethnonational policy, using the experience of major democratic states. The article used various methods of scientific knowledge such as cognition. On the basis of the analysis, the legal mechanisms of ethnonational policy regulation are examined in detail through the prism of the main trends of indigenous peoples' rights. In the results, special attention was paid to the practices of multiculturalism and observance of the rights of indigenous peoples. In particular, the founding documents of the UN and the Council of Europe, individual legislative decisions of other international organizations and various national parliaments were studied. Also, using the example of the legislation of modern countries of the Balkan Peninsula, modern trends in the resolution of the rights of national minorities are indicated. The conclusions underline the prospect of using the model of autonomous communities for the legal regulation of the life of national minorities and indigenous peoples in a multicultural society.

Keywords: legal regulation; ethno-national relations; multiculturalism; national minorities; indigenous peoples.

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Regulación jurídica de las políticas etnonacionales (minorías nacionales, pueblos indígenas, multiculturalismo)

Resumen

La situación actual de las minorías nacionales, los pueblos indígenas y la política de multiculturalismo debe reconsiderarse desde un punto de vista jurídico. El propósito del artículo fue investigar la regulación jurídica de la política etnonacional, utilizando la experiencia de los principales Estados democráticos. El artículo utilizo varios métodos de conocimiento científico como el de cognición. Sobre la base del análisis, se examinan en detalle los mecanismos jurídicos de regulación de la política etnonacional a través del prisma de las principales tendencias de los derechos de los pueblos indígenas. En los resultados se prest**ó** especial atención a las prácticas del multiculturalismo y la observancia de los derechos de los pueblos indígenas. En particular, se estudiaron los documentos fundacionales de la ONU y del Consejo de Europa, las decisiones legislativas individuales de otras organizaciones internacionales y de diversos parlamentos nacionales. Asimismo, utilizando el ejemplo de la legislación de los países modernos de la Península Balcánica, se indican las tendencias modernas en la resolución de los derechos de las minorías nacionales. Las conclusiones subrayan la perspectiva de utilizar el modelo de comunidades autónomas para la regulación jurídica de la vida de las minorías nacionales y los pueblos indígenas en una sociedad multicultural.

Palabras clave: regulación jurídica; relaciones etno-nacionales; multiculturalismo; minorías nacionales; pueblos indígenas.

Introduction

Contemporary societal developments demonstrate examples of dealing with the complex problems of national life in individual countries and finding ways of peaceful understanding when conflicts or misunderstandings arise. Although individual cases (such as the Russian authoritarian regime and its crimes in Ukraine) point to the existence of open chauvinism as the basis of national policy, in general, democratic states and governments pay attention to respect for ethnic diversity, decision-making on the rights of national minorities, development of multiculturalism and other manifestations of respect for smaller peoples and nations.

The globalized world has turned to the practice of protecting ethnic diversity, the motto of the modern European policy “Unity in Diversity”

can be considered a kind of slogan of this process. At the same time, an analysis of the experience of democratic countries in Europe and America regarding the legal framework of multi-ethnic cohabitation can be useful for developing countries. From this point of view, the study of this issue will occupy an important place among research interests, since the rights of national minorities, the policy of respecting and promoting multiculturalism are evolving, and therefore require further consideration and research.

1. Research Problem

The development of multiculturalism and policies for the protection of indigenous peoples and national minorities is an urgent challenge to a globalized society. Modern world practices, and above all the practices of the multinational states of Europe, the EU, and North America, indicate that national minorities, indigenous nationalities constitute an important, and in some cases tangible and driving force in the transformation and development of civil society and a stable social situation.

On the other hand, an open disregard for the observance of constitutional rights and legitimate interests of national minorities has negative political and legal consequences, which can lead to an escalation of the separatist movement, the growth of discontent in society, etc. Thus, legal aspects of the regulation of the peaceful coexistence of several peoples within one state constitute an important aspect of legal research.

2. Research Focus

The article focuses on the analysis of legislative regulations and the philosophy of legal decision-making (primarily in the countries of Europe and the USA), which aim to develop certain recommendations on the general schemes of regulation of legal mechanisms of the ethno-national neighborhood. Thanks to this, it is possible to work out recommendations for finding legal solutions in this sensitive sphere.

3. Research Aim and Research Questions

The purpose of the article is to explore the legal regulation of ethno-national policies (refers to national minorities, indigenous peoples, and multiculturalism), using the experience of leading democracies of our time.

4. Research Methodology

The study was implemented in accordance with scientific principles and methods of cognition. Based on the analysis, the main subject of the study (legal mechanisms of regulation of ethno-national policy) is divided into several smaller parts, in particular, the coverage of the main trends of the rights of indigenous peoples, the study of models of implementation of national minorities issues by legislation. Using synthesis, these parts are combined and a comprehensive vision of the problem of regulation of ethno-national policy is formed.

The structural-functional method is based on the study of society as an integral system of integrated parts striving for a stable existence by choosing a certain system of values. As a result of using the historical method of cognition, the evolutionary development of the formation of the mechanisms of ethno-national policy is traced on specific examples. Based on the dialectical method, the phenomenon of ethno-national policy is defined as constantly transforming, changing, and requiring study at many stages of development.

A weighty role in this legal research is played by the method of content analysis, which was used in the study of modern literature, invariant in the structure or content of the object under study.

5. Literature Review

Móré (2016) described the peculiarities of the functioning of national minorities in Hungary. The author focused especially on the problem of parliamentary representation of national minorities in Hungary. At the same time, Nipp (2015) identified key problems of legislative regulation of national minority rights in America. Ntalakosta (2021) identified the problem of regulation of indigenous rights in Canada through the prism of historiosophic analysis.

The researcher notes that although Canada has established mechanisms to regulate the legal activities of Indigenous peoples, they continue to face discrimination and violations of their freedoms. Ntalakosta's study (2021) analyzes a number of legal violations committed against indigenous lands, in particular, the author notes large-scale energy projects, coastal pipelines, trans-Mountain pipelines built without taking into account the interests of minorities living in Northern and Western Canada.

At the same time, Rights (2013) described the specifics of the legal regulation of indigenous peoples in the Philippines. Key aspects of national minority rights regulation are analyzed in Stavenhagen (2015). Vrdoljak

(2018) in a study entitled Indigenous peoples, world heritage, and human rights. Paravina (2022) analyzed the long debate over national minority rights for Croatian Serbs through the lens of minority language and educational policies. The researcher notes that such controversy results from the introduction of legislation and integration policies in the European Union that focus on citizenship and the integration of immigrant workers but pay less attention to the constitutional recognition of minority language rights formed after the breakup of Yugoslavia. Paryzkyi (2022) outlined the key features of the transformations of certain vectors of modern legal development.

Johansson (2022) studied the theoretical aspects of the concept of multiculturalism. His study analyzes the literature of the late 1990s and early 21st century: it was during this time that many works on the problem of multiculturalism were compiled. Johansson's (2022) article identifies several important issues that require theoretical explanation. The first relates to the theoretical conceptualization of collective or group identities. The second problem contains a discussion of "race" and ethnicity, and the third is directly related to identity politics.

The fourth concerns the boundaries of national space and transnationalism. The theoretical foundations of the phenomenon of multiculturalism are also explained by Patel *et al* (2017). Krieger (2020) identified the key limits of racism, sexism, and characterized their key manifestations through transnationalism. Morska and Davydova (2021) analyzed key aspects of human rights philosophy through the lens of contemporary globalization trends.

Nevertheless, some problems require more careful analysis, in particular, the search for the best models of cohabitation of national minorities and indigenous peoples through the prism of multiculturalism.

6. Research Results

6.1. Indigenous Rights and Multiculturalism: Trends in Development

The democratization processes that swept the world in the second half of the twentieth century did not initially address the rights of indigenous peoples (Morska and Davydovna, 2021). The constitutional legal instrument, the "Declaration on the Rights of Indigenous Peoples," was not developed and adopted at the UN until 2007 (Stephens *et al.*, 2007). At the same time, only 143 states voted for its legitimization, while countries with sizeable indigenous populations (such as the United States, Canada, New Zealand, and Australia) opposed such a ruling.

The "Declaration" referred to the rights of indigenous peoples, in particular the possibility of self-determination, the possibility of autonomy and self-government in matters relating to the internal life of their communities, the ability to find their own ways to finance autonomous entities (Stephens *et al*., 2007). Legally, indigenous peoples did not have the right to seek independence. The Declaration stipulated that no fact could be construed as authorizing or encouraging any action that would lead to disunity or to the partial or total disruption of the territorial integrity and political unity of sovereign and independent states.

An important international milestone in legal support for indigenous peoples was the adoption of the Indigenous and Tribal Peoples Convention in modern countries (Yupsanis, 2010). This "Convention" was adopted in 1989 and was the basis for another international legal instrument, the Convention concerning Indigenous and Tribal Peoples in the Independent States. According to Article 3 of this document, "Indigenous and tribal peoples shall enjoy full human rights and fundamental freedoms without hindrance or discrimination" (United Nations, 1989).

At the same time, Article 5 of the Convention notes that: "the social, cultural, religious and spiritual values and customs must be recognized and protected, the values and traditions of these peoples must be respected, the policies of governments must be aimed at alleviating the difficulties experienced by these peoples..." (United Nations, 1989: 14).

The provisions of the Convention apply without discrimination to male and female members of these peoples. At the same time, these legal instruments are advisory in nature and not binding (Patel *et al*., 2017). On the other hand, the legally binding instrument is the International Labor Organization Convention 169, which contains clear requirements for the legal protection of indigenous peoples.

In particular, this Convention legally establishes the existence of the collective rights of indigenous peoples, the possibility of their possession of certain territories, and the existence of legal obligations to indigenous peoples, which has generally strengthened the scope of protection of their rights (Sapinski, 2022).

As researchers have noted, it has only become a reality to implement this convention in Latin American countries (Rights, 2013). Many European countries have not ratified it, although Germany's accession in 2021 (although Germany has no indigenous peoples) indicates interest in the document in the legal realm. In general, European lawmakers also consider the rights of indigenous peoples through the prism of multiculturalism, which is characterized by the coexistence of representatives of different cultures, peoples, and religions within the same legal community and the creation of such legal acts, which would avoid overt assessments of the

social structure. To regulate multicultural policies, even at the level of local communities has been decided (Zumeta, 2021).

For example, individual Swiss cantons and Italian regions have charters defining the rights of newcomers and regulating multicultural policies (Johansson, 2022). However, multiculturalism and its legal foundations are represented more by norms of national legislation, which characterize democratic processes in Europe.

In the countries of the European Union, the conventions adopted by the Council of Europe should be pointed out. First of all, in 1992 the European Charter for Regional Languages of National Minorities was supported, and in 1995 the Framework Convention for the Protection of National Minorities was approved, which also referred to the relevant rights of indigenous peoples (Tembo, 2016). The implementation of the main provisions of these documents indeed depends on the provisions of national legislation in these spheres, so they are subject to political will in particular countries.

In North America, there are other methods of protecting the rights of indigenous peoples. In the United States and Canada, legislative and judicial precedent-setting mechanisms are used for this task. The transfer of separate legal rights, the creation of judicial autonomies for indigenous peoples in North America throughout the twentieth century has not demonstrated effective results (Ntalakosta, 2021).

Legislators in legal practice rely on separate agreements between the government and indigenous peoples to regulate their legal status. Judicial decisions also have weighty legal effect (Smith, 2019), that result from lawsuits brought by Indigenous peoples' representatives against governmental organizations or local executive bodies.

6.2. Models for resolving national minority issues through legislation (the case of the republics of the former Yugoslavia)

The ethnic mosaic of peoples in the modern countries that formerly comprised the single republic of Yugoslavia led to fundamental transformations in all ethnic communities after the dissolution of that federation and the formation of new independent states, including those integrated into the modern EU (Zubielevitch *et al.*, 2021). The legal treatment of ethno-national problems in the region became particularly important given the Serbian government's aggressive attempts to preserve the unity of the former country and force other nationalities to comply with political unity (Krieger, 2020). The wars that erupted in the Balkan Peninsula throughout the 1990s had devastating consequences primarily for Serbia itself.

At the same time, attempts to further defuse the political situation under the patronage of other European countries and the U.S. led to the gradual development of legal mechanisms for national cohabitation. The experience of using such regulation can be useful for other countries, as it takes into account the latest trends in defining the legal status of national minorities and their rights.

In fact, every independent participating State of the former Yugoslavia as a whole has a legal framework for the legislative regulation of ethno-national life, in which, above all, the legal position of national minorities is clearly defined (Paryzkyi, 2022). In general, an analysis of the legal framework of these countries shows that the models of such regulation contain many common features and are extremely similar to each other. In particular, the constitutions of the Balkan countries contain separate sections on the fundamental rights of national minorities, which are the basis for the formation of relevant provisions and legislation, detailing these rights and specifying the mechanisms and means of their implementation.

These are fundamental rights (the right to exist as a self-determined community, relating to a particular ethnicity) (Matvienkiv and Shmalenko, 2022), "compensatory" rights (the right to use their native language in administrative activities, the right to receive education, receive information in their native languages, appropriate cultural development, legally regulated ability to freely interact, develop economically, and use national symbols to define themselves) (Stavenhagen, 2015), "political" rights (the rights of minorities to participate in national and local decision-making processes, especially with regard to determining their own political and social position) (Paravina, 2022).

The enshrining of fundamental and "compensatory" rights in the legislation of the member states of the former Yugoslavia has been an important tool for pacifying the region after the bloody wars. In the Republic of Northern Macedonia, for example, members of national minorities may hold free demonstrations, maintain and develop their own national identity and its attributes, and found cultural, artistic, educational institutions and other organizations that should support and develop the national identity. The right to study ethnic languages in primary and secondary schools (with the compulsory detailed study of the state language) is also approved by law. The state undertakes to guarantee the protection of the ethnic, socio-cultural, linguistic, and religious identity of national minorities.

The gradual resolution of national minority problems has also been facilitated by the movement of Northern Macedonia toward membership in the European Union. In particular, in 2017 a long dispute with Greece, whose territory was home to a large Macedonian diaspora, was resolved. Because of hate speech and informal claims by the Macedonian diaspora, official Athens blocked the integration process, and only when the Skopje

government changed the country's name to North Macedonia was the conflict resolved (Patel *et al*., 2017).

With its decision, the Macedonian government put the country's European integration aspirations ahead of the ethno-national confrontation with the neighboring state. Also in 2022, an interstate agreement between Bulgaria and Northern Macedonia was brokered by France - this international document stopped the Macedonian hostility in Bulgaria (Vrdoljak, 2018). Skopje was able to continue its course of European integration, an integral part of which was the solution of problems with national minorities outside the country.

Considering the political rights of national minorities can be seen in Slovenia, where Italians and Hungarians live in compact groups. The fact that Slovenia has been a full member of the EU since 2004 makes it easier to adopt and comply with legislative norms, so the country is also subject to the general legal norms produced in this union (Johansson, 2022). Representatives of national minorities take part in national and local elections on the same level as all citizens of the state. At the same time, they have the right to participate in the election of governors from their own national communes (societies).

In legal practice, such practices are called the double concept of guaranteeing the rights of national minorities (Nipp, 2015). On the one hand, they get the right to vote on general grounds, and on the other hand, they get the opportunity to represent their own interests by electing representatives from their own environment to the legislative and executive authorities at regional and local levels.

The use of the dual concept is justified in a number of legal documents. The Slovene Constitution ensures the right to represent minorities in parliament and local executive structures and details the mechanism of parliamentary elections. In particular, the basic law of the country states that members of national minorities, regardless of their place of residence (ethnically compact or mixed), can participate in the election of their representatives to the general parliament of the country (Patel *et al*., 2017). All communities living separately (dispersed) from the main place of residence have the right to vote remotely to express their own position.

Local elections in Slovenia are organized based on the Local Self-Government Act. In areas where members of national Hungarian or Italian minorities live next to Slovenians, they are guaranteed at least one representative each in local government. A major concession for national minorities is that it is virtually impossible to amend legislative acts governing ethno-ethnic life without the participation of representatives of national minorities and their respective consent.

The formation of self-governing national minorities has become an important and effective instrument for protecting the rights of national minorities. Using the example of Slovenia, we can see that since 1994 the Law on Self-Governing National Minorities was adopted. It defines in detail the issues under the responsibility of minorities, outlines the means of its operation as an autonomous element, the basic functions and structure, the possible sources of financing, and the procedures for contacts with state authorities at the general and local levels.

A typical example is the work of the ethno-national entity of Italians in Slovenia. The Italian self-governing national minority has the power to cooperate on behalf of the Italian minority with the public administration, to be sure to monitor and approve all measures related to the status of the community before putting them into practice. The functions of the self-governing minority also include international cooperation with Italy and other Italian national minorities residing in other countries.

A similar legal basis also exists in other European countries. For example, in Hungary, according to the Law on the Rights of National Ethnic Minorities, national communities have the status of self-governing elements of society (Móré, 2016).

7. Discussion

It is worth agreeing with researchers who believe that contemporary measures to legislate the rights of national minorities, indigenous peoples, and multiculturalism are related to attempts to consolidate society around universal values (Paravina, 2022; Johansson, 2022; Patel *et al*., 2017). A reference to the writings of historians Parshyn and Mereniuk (2022) shows vivid examples of the tolerant coexistence of different peoples and different confessions based on the concepts of humanism and practicality. According to Paravina (2022) appeals to ideas of humanism, respect for human rights, and tolerance are enshrined in law and form an indispensable part of legislative regulation.

Similarly, attempts to suspend or abolish the rights of national minorities are rightly considered to be detrimental to national unity and to disrupt the functioning of the social machinery (Sapinski, 2022). The current level of social development demonstrates that governments of developed countries strive to create conditions that facilitate the integration of ethno-national communities into common national organisms.

Among European democracies, a separate example is Belgium, where the conflict between the Flemish and the Walloons continues. The legal regulation of this case demonstrates the desire of two different peoples to get

along in one state, to arrange the autonomous status of both communities and their territorial arrangement. However, it does not speak of national minorities, but of a confrontation between two peoples with their own interests and traditions. The case of Switzerland is also somewhat similar, although it has a confederal political system with extensive autonomous rights for individual cantons.

The challenge and factor of destabilization in the dimension of the borders of the realization of the rights of national minorities (it is said about the possibility of making a decision) is the issue of the politicization of ethnicity. The process of "politicization" of ethnicity arises when considering the compact settlement of members of a certain national minority outside the home state. European examples of such a policy have several images. First of all, it refers to the Russian minority in the Baltic countries, the Serbian minority in the neighboring countries of the Balkan Peninsula.

The official Kremlin has repeatedly used the consequences of Soviet policy - the considerable number of Russians resettled in other republics during the Soviet era. Similarly, the Serbs have exploited the resettlement of their ethnos in the countries of the former Yugoslavia. The abuse of tolerant attitudes toward national minorities has become a relevant subject for legal response in Latvia, Lithuania, or Estonia, where the legally enshrined institution of non-citizens allows politicians to overcome their political ambitions to use their fellow citizens to achieve their own ends.

The search for coexistence in the legal plane can combine methods of maintaining a tolerant attitude with legal instruments of punishment for those who, under the slogan of tolerance, seek to sow political discord or civil conflict. The legislative model of self-governing national minorities, aimed at maximizing the involvement of national communities in administrative governance, looks effective; combined with the preservation of the integrity and inviolability of national codons, this model is able to satisfy the basic principles of respect for their rights.

On the other hand, current trends of giving indigenous peoples a new legal status, different from that of national minorities, can be considered relevant, which in a peculiar way can be considered as compensation for their lack of statehood. The process of legal renewal of the status of indigenous peoples can become an important tool to reduce tensions in society and prevent possible separatism.

Perhaps the model of self-governing national minorities could also be applied to indigenous peoples, who would be given the right to participate in public and political life, governance, and cultural life. Combined with the proposed UN instruments on the rights of indigenous peoples, this would regulate certain aspects of their legal life. It is also important to emphasize the multiculturalism of modern societies, which would finally change the

public outlook toward tolerance of the rights of national minorities and indigenous peoples and the consolidation of their status in the legislative foundations of society.

Conclusions and Implications

Therefore, public attention to the problems of national minorities, indigenous peoples, and multiculturalism was reflected in the adoption of relevant legal decisions and legislative acts. In particular, the rights of indigenous peoples are regulated by international legislative acts and national legislation. At the interstate level, the UN and Council of Europe conventions, world organizations (such as the International Labor Organization), also point to the inviolability of national borders and do not support indigenous peoples' rights to self-determination.

At the same time, not all of them have been ratified by national governments and put into use in other countries. However, the prospect of their use in Europe exists, as the most influential countries (Germany in particular) are beginning to turn to these norms. The EU and European countries are characterized by an appeal to multiculturalism, which also includes the rights of indigenous peoples and the policy of "unity in diversity". A separate instrument for regulating cohabitation with natives is judicial decisions, which have demonstrated their effectiveness in North American countries - binding arbitral awards serve as mechanisms for indigenous people to influence their status.

The experience of regulating the rights of national minorities is important. In particular, the resolution of this issue in the Balkan Peninsula has demonstrated the effectiveness of the method of granting rights to self-governing communities, thereby giving them a legal presence in state decision-making. The use of this principle is possible while taking into account the rights of indigenous peoples and confronting the aggressive politicization of the national question, such as that actively used by the authoritarian Kremlin regime.

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The Impact of the War on the Economic and Legal Environment of the Regions in terms of Ensuring National Security

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Abstract

The main objective of the article was to study the impact of the war on the economic and legal environment of the Ukrainian regions in terms of ensuring national security. The research methodology involves the use of modern methods of graphical modeling. The scope of study was the system of economic and legal relations that emerged in the course of hostilities. With the outbreak of hostilities, there are certain legal consequences for the belligerents: diplomatic and consular relations are terminated; economic, commercial, monetary and other business and agreements with legal and natural persons of Russia are terminated and prohibited, as a special regime can be applied to citizens of a hostile state; the declaration of a state of war leads to a change in the legal regime of the territories. However, most armed conflicts are not accompanied by a legal declaration of a state of war, which, nevertheless, introduces significant changes in the legal relations of the parties. Accordingly, the key aspects of the impact of war on the economic and legal environment in terms of security guarantees were characterized.

Keywords: legal support; legal environment; security policy; impact of war; economic and legal relations.

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El impacto de la guerra en el entorno económico y jurídico de las regiones en términos de garantía de la seguridad nacional

Resumen

El objetivo principal del artículo fue estudiar el impacto de la guerra en el entorno económico y jurídico de las regiones de Ucrania, en términos de garantía de la seguridad nacional. La metodología de investigación implica el uso de métodos modernos de modelización gráfica. El ámbito de estudio fue el sistema de relaciones económicas y jurídicas surgido en el curso de las hostilidades. Con el estallido de las hostilidades, se producen determinadas consecuencias jurídicas para los beligerantes: se ponen fin a las relaciones diplomáticas y consulares; se ponen fin y se prohíben los negocios y acuerdos económicos, comerciales, monetarios y de otro tipo con personas jurídicas y físicas de Rusia, ya que se puede aplicar un régimen especial a los ciudadanos de un Estado hostil; la declaración del estado de guerra conlleva un cambio en el régimen jurídico de los territorios. Sin embargo, la mayoría de los conflictos armados no van acompañados de una declaración legal de estado de guerra, lo que, no obstante, introduce cambios significativos en las relaciones jurídicas de las partes. En consecuencia, se caracterizaron los aspectos clave del impacto de la guerra en el entorno económico y jurídico en términos de garantías de la seguridad.

Palabras clave: apoyo jurídico; entorno jurídico; política de seguridad; impacto de la guerra; relaciones económicas y jurídicas.

Introduction

The process of formation and development of international law began with the emergence of countries and the emergence of relations between them. Slavery as the socio-economic base of the countries to a large extent influenced the relations between the old states. From the end of the III - beginning of the II millennium BC, one can speak of firmly established international relations of the slave-owning states.

A feature of these relations was their indirect nature, that is, the international norms originally regulated by them and the corresponding relations were created and developed in those regions of the world where the centers of the international life of countries arose. These are, first of all, the regions of China, India, the coasts of the Mediterranean and Aegean seas, the valleys of the Tigris and Euphrates, the Nile.

Peaceful means of resolving emerging international disputes began to be enriched in connection with the fairly widespread introduction of arbitration courts and arbitration. The Treaty of Westphalia of October 24, 1648 had a significant influence on the development of international law. This agreement established a common system of European states, their borders, and the principle of political balance.

The contract provided for all participants "the right to locality and supremacy" and the equality of European countries. This proceeded from the idea of concerted action by European countries, designed to solve common problems not on a religious, but on a secular basis (Bida, 2021; Chervyakova, 2020; Henderson, 2018).

The Hague Peace Conferences of 1899 and 1906–1907 made a significant contribution to the law of armed conflict. The first of these adopted, in particular, the Declaration against the use of projectiles, the sole purpose of which is to emit asphyxiating and noxious gases, and the Declaration against the prohibition of rockets and explosives from balloons or other similar new means, as well as the Convention for the Peaceful Settlement of International Disputes. The Second Hague Conference adopted ten new conventions and reviewed three acts of the 1899 conference (Kononenko *et al.*, 2022.).

At the same time, during this period, the right of countries to resort to war under certain conditions, the right to annex conquered areas and indemnities was still recognized. International relations have changed in the modern world. All this caused the need to formulate the ethics of law and the system of international relations in accordance with modern realities.

Of course, one needs to know how this happens: what generally accepted principles govern the consent of a state to be bound by the provisions contained in the relevant international legal instrument; what are the conditions for recognition of the obligation of such consent by other contracting parties; that there is a procedure for establishing contractual relations with certain participants; what legal rights and obligations are granted to the new participant of such entry.

The problem that attracts the attention of society is the resolution of conflicts between states. Despite the rapid pace of the spread of globalization and the established systemic and democratic relations between countries, disputes and conflicts continue to arise between states and other subjects of international law.

The resolution of such situations by force is an inhumane and unprofitable way to resolve conflicts, this has been proven by the human community on the example of two world wars and numerous riots. Therefore, now is the fundamentally complete and final introduction of peaceful methods for

resolving international disputes, which are the basis for the existence and stable functioning of an international society.

All of the above in the text forms the basis for the relevance of the chosen research problem. The main purpose of the article is to study the impact of the war on the economic and legal environment of the regions in terms of ensuring national security.

1. Materials and methods

Achieving the goal of the study required the solution of certain tasks that led to the use of theoretical ones: induction and deduction - in order to collect primary legal information; analysis and synthesis for information processing, selection of factual material and data based on the processing of the regulatory framework; descriptive and statistical - in order to characterize the system's economic and legal environment in terms of security; logical method - to understand the patterns of the impact of war on the economic and legal environment from the point of view of security; retrospective - in order to clarify the specifics of the impact of war on the economic and legal environment from the point of view of security; predictive method - to highlight the possibilities of using progressive ideas and experience; graphic modeling technique - to present the main models on the research problem.

2. Literature review

Coverage of the subject of ensuring human rights in a state of martial law involves the establishment of a number of methodological provisions. Firstly, human rights are the means that limit public power, preventing its arbitrariness. That is why human rights are a hallmark of a democratic state-legal regime. Authoritarian and totalitarian regimes do not recognize the natural nature of human rights and associate them with their own will: rights exist only when the authorities have "consecrated" them, fixing them in the text of a legal act (in this case, we are mainly talking about socio-economic rights).

Consequently, under a non-democratic regime, human rights are fully dependent on the will of state bodies. In the context of the subject of our study, the above provision allows us to establish that the introduction of martial law in a state with a non-democratic state-legal regime does not significantly affect the state of ensuring human rights, since the latter are not recognized as belonging to a person from birth; the recognition of individual rights does not significantly affect the state, which at any time can

refuse to accept them, based on "revolutionary expediency" (Kozachenko *et al.*,2021).

As noted by most modern scientists and practitioners, martial law should be considered as a means of restoring the conditions under which a person can effectively exercise his rights and freedoms. Accordingly, human rights define the boundaries of the activities of public authorities to introduce martial law and the means used by it. At the same time, a number of rights cannot be limited, and the restriction of other rights cannot destroy their essence (Kryshtanovych *et al*., 2022).

An important place in the economic and legal environment under the influence of war, a well-known system of international law. Some group of scientists notes that international law and international morality are two parallels, complementary, mutually influencing, mutually supporting, mutually restraining and mutually encouraging each other. Law allows a decent existence of people in the state system, morality - a decent existence in a private, family and family environment, and international morality is a synthesis of these positions.

Law and morality are the valuable life basis of any society (Kryshtanovych *et al*., 2022). They are the regulators of interstate, interethnic, interpersonal relations. Law and morality create the closest contact in the regulation of social relations through the manifestation of universal goodwill, which can become a sign of international relations.

Therefore, filling the norms of international law with valuable moral content will have an impact on national systems of law through the process of ratification of international acts by the legislative institution of the state. Imperative norms of international law, enriched with moral content, at the same time enrich the state-legal systems of countries. The moral value of international law is to become a guarantor of the fair provision of the interests of the state and the realization of fundamental human rights and freedoms in every sovereign country (Liebrenz *et al*., 2022).

The value of law does not lie in its declarative nature (although it is also an achievement, a conscious idea set out on paper and sanctioned by the state), but in the possibility of its implementation through the process of law enforcement, that is, ensuring the implementation of agreed international norms by the power of state and public institutions in a democratic sovereign state (Longobardo, 2019; Matvieieva *et al*., 2021; Solis, 2021; Sylkin *et al.,* 2021; Sylkin *et al*., 2021; Tataryn *et al*., 2021; Yukhno, 2012).

However, due to significant scientific developments, it should be noted that the impact of war is chaotic and constantly changing. In such conditions, it is impossible to find a balance between law and economics, which always actualizes this issue in a new way.

3. Research Results and Discussions

The emergence and spread of digital technologies immediately led to the transformation of society and the legal system. The digitalization of modern social legal relations is forming a new legal reality, in particular in the field of constitutional law. Modern legislation does not provide a legal definition of the concept of «digitalization». Digitalization is a phenomenon characterized by a change in life processes through the active introduction of various types of digital technologies in the social, economic, legal and other spheres of human life.

The purpose of this process is to change the approach to the disposal, dissemination and storage of information. More than half of the world's population use various gadgets: smartphones, laptops, tablets and other devices that have greatly facilitated the process of searching and storing information. In practice, lawyers use electronic sources and databases instead of storing hundreds of legal acts necessary for work.

The key changes under the influence of the war in the economic and legal environment are shown in Figure 1.

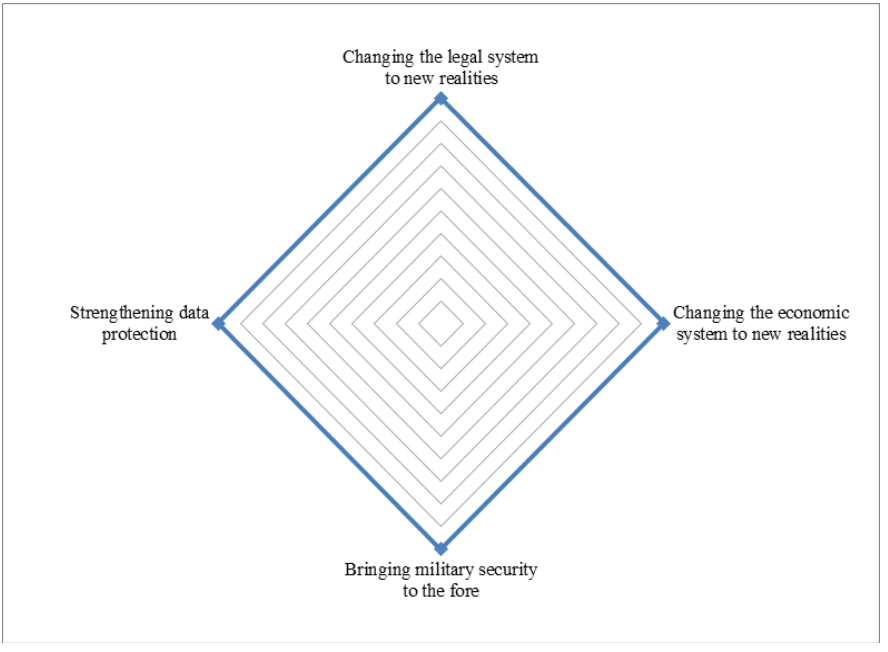

Fig.1. Source: Formed by the authors.

The constitutional branch of law has become an exception. The fact of replacing the paper Constitution with its electronic version makes it possible to look at the problematics of the issue from the side of appearance, the form of the basic law in the context of the concept of «Electronic Constitution». This wording does not have a legal definition enshrined in the law, in the scientific community it is unambiguous and generally accepted.

Speaking about the relevance of distance education, which has arisen in connection with the epidemiological situation caused by the spread of COVID-19, the barcode system should be noted. In this case, the use of digital technologies allows the society, to a certain extent, through the use of the Action portal, to exercise constitutional rights, with the provision of information about vaccination, to freely visit public places.

International legal jurisdictional mechanisms are an auxiliary means of protecting the national interests of the state, which should be applied when using all national legal remedies and in case of failure of the state to defend its national interests on its own.

Today, the activity of international jurisdictional bodies is one of the main guarantees of the effectiveness of international law and an important factor in further improvement. The development of international relations has a clear tendency towards the desire of states to adhere to the peaceful resolution of international conflicts by applying to international judicial bodies.

Fixing the list of rights that cannot be limited even during martial law is a constitutional guarantee of human and civil rights. So, in the event of a state of war or a state of emergency, this cannot be a basis for the use of torture, cruel or degrading treatment or punishment, for any restrictions on the right to life, freedom of thought, conscience, religion in the understanding of these rights and freedoms adopted in International Covenant on Civil and Political Rights and in the laws of Ukraine. And any attempt to use the imposition of martial law or a state of emergency to seize power or abuse it entails legal liability.

Civil rights and freedoms are an integral element of human freedom and provide a person not only with vital conditions for existence, but also provide an actual opportunity to freely dispose of himself, to guarantee non-interference in the sphere of his individual life. That is why, these rights apply not only to citizens of a particular state, but also to all other people legally located on its territory.

The main model for ensuring the security of the economic and legal environment under the influence of war is shown in Figure 2.

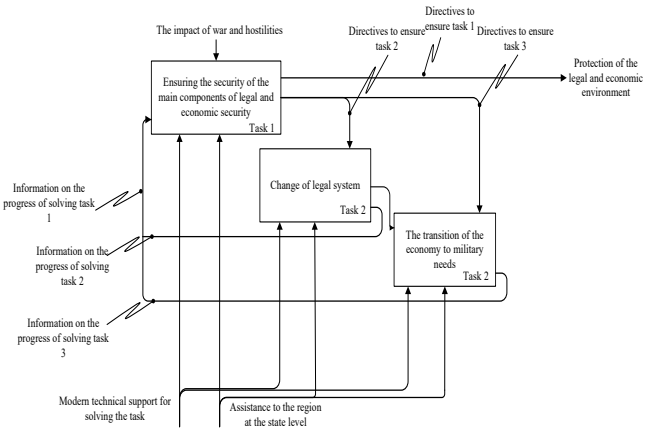

Fig.2. The main model for ensuring the security of the economic and legal environment under the influence of war. Source: Formed by the authors.

Civil rights and freedoms have their own special features, which, by their specific qualities, are: firstly, priority in relation to other rights and freedoms, which is emphasized by their location in Section II of the Constitution of Ukraine, that is, immediately after the principles of the legal status of an individual in Ukraine and before political and other rights and freedoms; secondly, these rights are natural and inalienable, since they belong to every person from birth, they are not acquired or alienated at will, they cannot be donated, sold, inherited or waived, and they do not depend on the recognition of them the state and are determined by the very fact of human existence; thirdly, these are well-established subjective human rights.

Under martial law, the military command is granted the right, together with executive authorities, military administrations and local governments, to introduce and implement measures of the legal regime of martial law. To this end, the military command is vested with the right to issue binding orders and directives on issues of ensuring defense, public security and order, and the implementation of measures of the legal regime of martial law (Kryshtanovych *et al*., 2022).

During the legal regime of martial law, the authorized bodies have the right to prohibit the holding of peaceful meetings, rallies, campaigns and demonstrations, other public events, as well as the right to regulate the work of providers of electronic communication networks and / or services, printing companies, publishing houses, television and radio organizations,

television and radio centers and other enterprises, institutions, organizations and institutions of culture and the media and prohibit the transfer of information through computer networks. In areas where hostilities are taking place, the introduction and implementation of such measures of the legal regime of martial law rests directly with the military command and military administrations.

Conclusions

Summing up, it should be noted that under the influence of war, the right to freedom is important. The right to liberty and security of person is one of the most significant and important human rights. The prevention of arbitrary deprivation of liberty is regarded as one of the main principles of the protection of human rights. Human rights, despite their undoubted highest value in a democratic state governed by the rule of law, cannot be reduced to an absolute and be always and in all cases inviolable, because in the modern conditions of the development of any state, the practical activities of persons and bodies fighting war are impossible without limitation. constitutional human rights.

There must be a system of effective guarantees of these rights, where even if it is necessary to restrict them, it would be justified and legal. That is why the main international human rights instruments enshrine appropriate guarantees, including the right of every person to freedom and personal integrity. International Covenants duly contribute to the development of the domestic legislation of the countries of the world community in the direction of both ensuring human rights and freedoms and establishing legal grounds for their restriction.

War is an integral part of human history. For a long time, the war remained outside the legal regulation. Most of the international legal norms aimed at alleviating the fate of war victims dealt only with international conflicts. The parties to the conflict are not limited either in the choice of means and methods of waging war, or in the choice of targets for attack. They also have a duty to protect victims from the influences and consequences of war.

These fundamental ideas are reflected in the norms and principles of international law, which everyone must adhere to and, taking into account humanitarian considerations, limit the use of force. victims of such internal conflicts. Moreover, states have recognized that individual situations cannot be regarded as purely internal, but, on the contrary, they concern the international community as a whole.

For the security of the individual, it is also important to guarantee respect for private and family life, for housing and the secrecy of correspondence.

Until these rights are actually protected, there can be no question of personal security. In particular, Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms, while affirming the right of everyone to liberty and security of person, prohibits arbitrary arrest or detention. It is worth noting that, especially during the conduct of war, many end up in the colonies of states that directly begin hostilities.

Issues of constitutional and legal consolidation of the foundations of the relationship between the individual and the state, recognition of the priority development of civil society, as well as a clear legislative definition and proper practical guarantee of human rights and freedoms play a particularly important role in the functioning of any democratic state, especially in conditions of internal armed conflict.

Modern international law in the field of human rights and freedoms requires states to constantly monitor the implementation and improvement of their own legislation in this area. At the same time, the issues of ensuring, protecting and protecting human rights are not considered by the international community as a purely internal matter of the state.

It is fundamentally important to realize the need to ensure human rights under any circumstances. It is a general principle of the international law of armed conflicts that humane treatment must be ensured for the civilian population and persons who have withdrawn from the armed forces of both sides or have ceased to participate in hostilities. Guarantees are part of the national legislation and act as preventive levers for regulating the proper application of measures of state coercion to persons.

As a result, we tried to model key recommendations according to the research problem. However, the study has a number of limitations in the form of a theoretical and scientific nature. Further research requires practical aspects.

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Implementation of an effective system for monitoring the application of gender equality policy: Experience from European Union countries

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Abstract

The European Union has been pursuing the policy aimed at achieving equality between women and men for a long time. The adoption of the Law "On Ensuring Equal Rights and Opportunities for Women and Men" is an important step forward. However, the aspects of the control of compliance with the legislation in the field of gender policy remain poorly advanced and need to be adapted following the experience of developed European countries. The aim of this article was to outline the legislative mechanism for ensuring equal rights and opportunities for women and men, and to compare it with European legislative experience and practice. During the research, the methods of analysis and synthesis, deduction and induction and comparative analysis were used. As a result of the research, the mechanism for ensuring equal rights and opportunities in Ukraine was determined; the bodies, institutions and organizations empowered in the specified area were described along with the main aspects of gender equality legislation in Ukraine. It is

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concluded that government officials can use the results obtained during the research to improve some legislative aspects of control over gender policy implementation.

Keywords: gender policy; discrimination; control system; equal rights; stereotypes.

Implementación de un sistema efectivo para el monitoreo de la aplicación de la política de igualdad de género: Experiencia de los países de la Unión europea

Resumen

La Unión Europea ha seguido la política destinada a lograr la igualdad entre mujeres y hombres durante mucho tiempo. La aprobación de la Ley «sobre la garantía de la igualdad de derechos y oportunidades para mujeres y hombres» es un importante paso adelante. Sin embargo, los aspectos del control del cumplimiento de la legislación en el campo de la política de género siguen estando poco avanzados y deben adaptarse siguiendo la experiencia de los países europeos desarrollados. El objetivo de este artículo fue esbozar el mecanismo legislativo para garantizar la igualdad de derechos y oportunidades para mujeres y hombres, y compararlo con la experiencia y la práctica legislativa europeas. Durante la investigación se utilizaron los métodos de análisis y síntesis, deducción e inducción y análisis comparativo. Como resultado de la investigación, se determinó el mecanismo para garantizar la igualdad de derechos y oportunidades en Ucrania; se describieron los órganos, instituciones y organizaciones empoderados en el área especificada junto a los principales aspectos de la legislación sobre igualdad de género en Ucrania. Se concluye que los funcionarios gubernamentales pueden utilizar los resultados obtenidos durante la investigación para mejorar algunos aspectos legislativos del control sobre la implementación de la política de género.

Palabras clave: política de género; discriminación; sistema de control; igualdad de derechos; estereotipos.

Introduction

Equality between women and men is defined as one of the fundamental principles in the European Union (EU). It follows that the introduction and observance of an effective gender policy is one of the keys to the successful

integration of Ukraine into the EU, which, among other things, makes the subject of this study current and relevant.

However, the main task of gender policy in the Ukraine and other countries is to achieve real equality between women and men, as well as other groups of variable identity for the sake of comfortable coexistence without gender discrimination, dignified treatment, respect and security, which will ultimately lead to economic growth through the use of the potential of all population groups and raising the standard of living.

Aspects of gender equality are widely covered in a number of studies conducted by Ukrainian and foreign researchers. The equality of rights and opportunities of women and men were studied in the context of their impact on virtually all aspects of socio-political life, in particular in the field of science, medicine and health, social and economic spheres, in the field of education and employment, etc (Semenyshyn *et al*., 2020). Most of the researchers outline the aspects of gender policy making, as well as the main problems in this area, and barriers to the development. However, issues related to the mechanisms and ensuring the appropriate level of control over the implementation of gender policy remain poorly studied.

So, the aim of this study is to outline the legislative mechanism for ensuring equal rights and opportunities for women and men, and to compare it with European experience and legislative practice to determine the main problems, in particular those related to the control system, regarding the achievement of gender equality in Ukraine and the ways of their overcoming. The aim involved the fulfilment of the following research objectives:

- outline the mechanism for ensuring equal rights and opportunities for women and men in Ukraine;
- describe the bodies, institutions and organizations empowered to ensure equal rights and opportunities for women and men in Ukraine, as well as their main functions and powers;
- identify the main aspects of legislating gender equality in Europe in the context of the study of historical documents and recommendations to member states.

1. Literature review

Problems of gender equality policy implementation, in particular in the context of Ukraine's integration into the EU and the need to bring national standards into line with international norms, are a relevant subject for research by Ukrainian and foreign researchers. The researchers study a

large number of legislative documents related to this problem, because the issues of gender equality have a long history and developed gradually and unevenly depending on the cultural and political characteristics of different countries.

Shcherbak (2020) mentioned the Association Agreement between Ukraine and the European Union (Verkhovna Rada of Ukraine, 2015) as the first document in the context of ensuring gender equality, the main provisions of which testify to the growing importance of issues related to institutional support and ensuring the implementation of gender policy in the state. The article is focused on the mechanisms of the gender policy making in Ukraine, in particular, the functions of the policy-making bodies.

The paper notes that institutional mechanisms for improving the status of women are one of the priority areas for further action, defined by the Beijing Declaration and Platform for Action, which were adopted at the Fourth World Conference on the Status of Women in 1995. Shcherbak's (2020) research, as well as the work of Manlosa *et al.* (2019), are evidence that increasing the representation of women in the highest levels of state power makes the state's policy much more socially oriented, as well as highly humane and tolerant.

Bila-Tiurina (2022) also notes the Beijing Conference as a starting point for launching the process of creating institutional mechanisms in the field of ensuring equal rights and opportunities for women and men in Ukraine. The researcher emphasizes that the institutional mechanism in Ukraine is at the development stage and is currently weak.

Bila-Tiurina (2022) considers the establishment of the institutional mechanism for the implementation of equal rights and opportunities for women and men in the Law of Ukraine "On Ensuring Equal Rights and Opportunities for Women and Men" (2018) as the main achievement. According to the author, another important step of Ukraine in the context of European integration is the ratification of the Istanbul Convention in 2022 (On the Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, 2022), which was signed back in 2011.

Dmytrenko (2021) studies the aspects of building gender strategies by foreign countries in order to determine the positive aspects of the experience for Ukraine. The researcher defines the gender strategy as the main document that outlines the key goals, objectives and principles of the state's gender policy. The author noted that the most popular gender strategy in the world is mainstreaming, which consists in introducing gender aspects into the activities of state management bodies at all levels.

Besides, the researcher emphasizes the importance of such a strategic task within the implementation of gender policy as the introduction

of gender quotas. Gender quotas can be defined as a type of "positive discrimination", which involves the introduction of a system of benefits, compensations, prohibitions and incentives in order to increase the social status of women.

Regarding the concept of "mainstreaming", Saienko (2020) notes that the creation of this concept was provided by the Beijing Action Platform, which was discussed in the works of Shcherbak (2020) and Bila-Tiurina (2022). At the current stage of development, the concept of mainstreaming is often criticized, in particular for the fact that it further opposes women and men, ignoring the differences between other population groups and a number of other problems.

However, some researchers, such as Vorchakova (2019), consider adherence to the principles of mainstreaming as a positive aspect. She emphasizes the observance of such principles in state programmes on gender policy, noting, on the other hand, that the main problems lie in the field of women's political representation.

In addition to the aspects outlined above, Dmytrenko (2021), as well as Vorchakova (2019), note the possibility of using positive aspects of the experience of Scandinavian countries —Denmark, Sweden, Norway, Finland and Iceland — in Ukrainian practice. Vorchakova (2019) states that the principles of gender equality have been an integral part of EU policy since its creation, and EU countries are leaders in terms of the number of women in national parliaments. In the researcher's opinion, the main positive aspect of the experience of these countries for Ukraine is the attention paid not so much to constitutional guarantees, but to the equal employment policy, which is achieved through centralized collective lobbying, as well as through a balanced social policy.

Foreign researchers also widely cover the issue of gender equality, in particular in the countries mentioned above, which have overcome the gender gap as much as possible and can be a worthy example for Ukraine. Urinboyevna and Rustamova (2021) note that Norway, Switzerland and Finland rank first according to the criteria of safety, equality and the ability of women to fully participate in the life of society. Husu (2019) finds that, gender studies and gender studies programmes in universities of Denmark, Finland, Norway and Sweden have significantly more influence than in most other European countries.

Schulstok and Wikstrand (2020) write on the specifics of career guidance in the context of gender equality in the Scandinavian countries. The researchers summarize the main goals of gender policy in Denmark, Finland, Iceland, Norway and Sweden in the course of their study. Besides, they explain how gender and gender equality affect career guidance in science and politics and career practice.

Foreign researchers also pay much attention to the issue of gender mainstreaming. Minto *et al.* (2020) examined aspects of policy evaluation and gender mainstreaming in the EU. Lomazzi and Crespi (2019, 2019a) study legislative and social changes in the EU in the context of mainstreaming. Some studies focus on issues of gender mainstreaming and gender policy related to the educational process (Lempesi, 2019; Rosa *et al.*, 2020).

2. Methods

2.1. Research design

The study was conducted in stages. The first stage involved outlining the mechanism of ensuring equal rights and opportunities for women and men in Ukraine through the analysis of the legislative framework. This mechanism is provided in Chapter II of the Law of Ukraine "On Ensuring Equal Rights and Opportunities for Women and Men", and contains a description of the bodies, institutions and organizations empowered to ensure equal rights and opportunities for women and men in Ukraine.

The second stage of the study provided for the description of bodies, institutions and organizations empowered to ensure equal rights and opportunities for women and men in Ukraine. Their main powers and functions were determined by applying methods of analysis and synthesis. The methods of deduction and induction were used at this stage in order to identify key aspects related to monitoring the implementation of gender equality policy, as well as related problems.

The third stage focuses on coverage of legislating gender equality in Europe, in particular in the context of citing the main historical documents and recommendations to member states. The comparative analysis was used to assess the achievements of Ukraine in relation to the gender equality policy and the introduction of a system of control over the implementation of such policy, and to compare them with European experience and practice.

The methods of analysis and synthesis, deduction and induction, and comparative analysis were used in the course of the research.

3. Results

3.1. The mechanism for ensuring equal rights and opportunities for women and men in Ukraine

The introduction of an effective system of monitoring the implementation of the gender equality policy should first of all be ensured at the state level by enshrining the relevant provisions in the legislative framework. The adoption of the Law of Ukraine "On Ensuring Equal Rights and Opportunities for Women and Men" (2018), the structure of which is shown in Figure 1, was an important step in this regard.

Figure 1: Structure of the Law of Ukraine "On Ensuring Equal Rights and Opportunities for Women and Men" (2018).

A particularly important section of this Law is Chapter II "Mechanism for ensuring equal rights and opportunities for women and men", which establishes the bodies, institutions and organizations empowered to ensure equal rights and opportunities for women and men, as well as their powers and functions. This mechanism should ensure the introduction of appropriate measures for the development of gender equality policies, as well as control over the implementation of such policies should be carried out within its limits.

3.2. Bodies, institutions and organizations empowered to ensure equal rights and opportunities for women and men in Ukraine

The functions of implementing and monitoring the implementation of gender policy in Ukraine as part of the mechanism for ensuring equal

rights and opportunities for women and men are entrusted to a number of bodies, institutions and organizations empowered in this area. Table 1 lists the bodies, institutions and organizations empowered to ensure equal rights and opportunities for women and men, as well as their powers and functions.

Table 1. Bodies, institutions and organizations empowered to ensure equal rights and opportunities for women and men, their powers and functions.

Name of the body, institution or organization	Performed functions
Verkhovna Rada of Ukraine (VRU)	1) outlines the key principles of the country's gender policy; 2) uses the principle of ensuring equal rights and opportunities for women and men in legislative activity; 3) exercises parliamentary control over the implementation of legislative acts on ensuring gender equality
Voluntary Association of People's Deputies of Ukraine Inter-factional Deputies Association (IDA) "Equal Opportunities" established in 2014.	Its main goal is to improve the position of women in society, as well as to stimulate public dialogue on gender equality issues in all spheres of life. The priority areas of activity are combating domestic violence, protecting the rights of children and women, creating conditions for ensuring equal opportunities for women and men in various fields.
The Public Council on Gender Issues operating under the IDA	Improves the coordination of programmes supporting gender equality, in particular by balancing work to address gaps in certain areas and duplication in others.
Ukrainian Parliament Commissioner for Human Rights	Monitors the observance of equality in ensuring the rights and opportunities of women and men; considers appeals regarding gender-based discrimination and gender-based violence etc.

Representative of the Commissioner for Human Rights	Ensures implementation by Ukrainian Parliament Commissioner for Human Rights of parliamentary control over compliance with the principles of non-discrimination and gender equality, as well as individual rights of citizens
Expert Council on Non-Discrimination and Gender Equality under Representative of the Ukrainian Parliament Commissioner for Human Rights on Non-Discrimination and Gender Equality	In the field of ensuring non-discrimination and gender equality: monitors the state of ensuring the right to freedom from discrimination and the gender equality principle; participates in the analysis of compliance of national legislation and law enforcement practice with Ukraine's international obligations; participates in the preparation of proposals and opinions regarding the regulatory legal acts etc.
Cabinet of Ministers of Ukraine (CMU)	In the field of gender policy: takes measures to ensure equal rights and opportunities for women and men; ensures the implementation of the state gender policy; supervises the activities of ministries and other executive authorities.
The Government Office for Coordination on European and Euro-Atlantic Integration established by the CMU in 2017	In the field of state policy for ensuring gender equality: coordinates measures for the implementation of state policy for ensuring gender equality and empowering women in the security and defence sector in accordance with NATO standards and recommendations.
Government Commissioner for Gender Equality Policy (the position was established by the Government in 2017)	Participates in the coordination of actions for the implementation at the state and local levels of recommendations and comments of international monitoring missions and international organizations, informs the public about ensuring equal rights and opportunities for women and men, etc.
Interdepartmental Council on Family, Gender Equality, Demographic Development, Prevention of Domestic Violence and Combating Trafficking in Human Being	It includes both government representatives and leading specialists, scientists, representatives of enterprises, institutions, individual organizations (both national and international, etc.
The Ministry of Social Policy	In the field of gender equality: develops measures to ensure gender equality in all spheres; forms the National Action Plan; summarizes the implementation of state programmes etc.
Ministry of Justice of Ukraine	Ensures legal examination of legislation for observance of gender-related principles.

Ministry of Internal Affairs of Ukraine	Involved in the process of fulfilling the main international obligations of Ukraine regarding the establishment of gender equality, and plays a leading role in the implementation of gender policy on combating sexual harassment, prevention of domestic violence, child abuse, combating human trafficking.
Authorities of the Prosecutor's Office	Receive and consider complaints about facts of gender-based discrimination
Courts	Consider lawsuits on gender-based discrimination

Note: created according to (Issues of legal examination of legislation for observance of gender-related principles, (Verkhovna Rada of Ukraine, 2019); On Ensuring Equal Rights and Opportunities for Women and Men (Verkhovna Rada of Ukraine, 2018); On Approval of the Regulation on the Ministry of Social Policy of Ukraine (Verkhovna Rada of Ukraine, 2022); On Approval of the Regulation on the Ministry of Justice of Ukraine (Verkhovna Rada of Ukraine, 2022); On the Cabinet of Ministers of Ukraine (Verkhovna Rada of Ukraine, 2022); On the Consultative and Advisory Body on Family, Gender Equality, Demographic Development, Prevention and Counteraction to Domestic Violence and Combating Human Trafficking (Verkhovna Rada of Ukraine, 2019); On the Ukrainian Parliament Commissioner for Human Rights (Verkhovna Rada of Ukraine, 2022); On the Government Commissioner for Gender Equality Policy (Verkhovna Rada of Ukraine, 2017; Shcherbak, 2020).

In addition to the bodies, institutions and organizations mentioned in Table 1, there are 2 parliamentary committees, as well as authorized persons (coordinators) empowered to ensure equal rights and opportunities for women and men; advisers on ensuring equal rights and opportunities for women and men; consultative and advisory bodies; responsible structural subdivisions which ensure the formation and implementation of gender policy in the executive and local self-government bodies ("On Ensuring Equal Rights and Opportunities for Women and Men", 2018).

Local state administrations and local self-government bodies also have the right to form consultative and advisory bodies, to appoint advisers on issues of ensuring gender equality, preventing and countering gender-based violence (Shcherbak, 2020).

Table 1 gives grounds to conclude that the establishment of the principles of gender equality has a strong support at the legislative level, and the main aspects of ensuring gender equality should be controlled at all levels of public administration.

However, the problem of gender discrimination continues to exist, which is primarily related to stereotypes rooted in the minds of citizens themselves. In particular, a large proportion of women themselves believe that they "should" perform certain "female duties" due to various reasons: education, ignorance, social insecurity, fear of condemnation from society, etc.

Besides, there are certain "workarounds" that enable you to disregard the rules of the law through certain agreements. It often happens that, for example, when hiring, it is difficult to prove that the choice in favour of a male candidate was made for gender reasons. Therefore, the mechanism for ensuring equal rights and opportunities for women and men should include, among other things, measures to control the observance of gender policy, such as regulation — establishing clear proportions that ensure equality of women and men in the field of employment, access to power, in politics, etc.

It is also appropriate to enhance social work and raise citizens' awareness of the need to achieve gender equality. It is particularly important to further improve the norms in the field of determining responsibility for violations of legislation in the field of ensuring gender equality. It is well known that the fear of punishment is an effective tool in combating crimes.

At the same time, the lack of punishment leads to the spread of crimes, living proof of which is, among other things, the crimes of the Russian occupiers during the war. A large proportion of these crimes are gender-related, and their massiveness indicates impunity. The Government of Ukraine is actively working on measures and mechanisms to prevent such crimes and bring war criminals to justice.

3.3. Legislating Gender Equality in Europe: Historical Documents and Recommendations to Member States

The European Union is, in fact, the "cradle" for the main provisions on gender equality, actively developing aspects of gender policy over many decades. Therefore, the experience of European countries in ensuring gender equality, in particular, regarding the development of the legislative framework, is one of the main examples for Ukraine.

During the period of development of legislation in the field of gender policy, numerous laws were adopted regarding its general and specific aspects. Figure 2 shows key documents with a concise definition of the main focus of the document.

Figure 2: The main standards for ensuring gender equality enshrined in European regulatory legal documents.

Note: created on the basis of (The UN Convention on the Elimination of All Forms of Discrimination Against Women, (Verkhovna Rada of Ukraine, 1999); European Convention on Human Rights (Verkhovna Rada of Ukraine, 2021); Protocol No. 12 to European Convention on Human Rights (ETS N 177) (Verkhovna Rada of Ukraine, 2006); Treaty establishing the European Community (Verkhovna Rada of Ukraine, 2005); Charter of Fundamental Rights of the European Union (Liga 360, 2000; Zadoienko, 2019).

Figure 2 presents only few documents that had a particularly strong impact on the further EU policy making in the field of ensuring gender equality. The full list of such documents is much broader. However, in the context of Ukraine's integration into the EU, it is also appropriate to mention the list of the main Directives of the Council of the EU, the provisions of which must be enshrined in the legislation of the member states:

75/117/EEC of 10 February 1975 on equal pay;

76/207/EEC of 9 February 1976 on equal treatment in the workplace;

92/85/EEC of 19 October 1992 on the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding;

96/34 EC dated 3 June 1996 on the parental leave;

96/97/EC of December 20, 1996 on equal treatment for men and women in occupational social security schemes;

2010/41/EU of 7 July 2010 on equal treatment between men and women engaged in an activity in a self-employed capacity (Roos, 2021; Argren *et al*., 2023; Silander, 2019).

A number of recommendations and resolutions have been developed in order to improve the effectiveness of changes in the gender policy of the EU member states:

Recommendation Rec (2003)3 of the Committee of Ministers of the Council of Europe to member states on the balanced participation of women and men in political and public decision-making (Council of Europe, 2003).

Recommendation 148(2004) of the Congress on the gender approach at the local and regional levels (Council of Europe, 2004);

Recommendation CM/Rec (2007)17 of the Committee of Ministers of the Council of Europe to member states on standards and mechanisms for gender equality (Council of Europe, 2007);

Congress Resolution 391(2015) on fighting the growing poverty among women (Council of Europe, 2015);

Congress Resolution 405(2016) on gender-responsive budgeting (Council of Europe, 2016);

It should be noted separately that in 2018 the Committee of Ministers of the Council of Europe adopted the Council of Europe Gender Equality Strategy 2018-2023 (Council of Europe, 2018).

The document includes six strategic goals, in particular: preventing and combating gender stereotypes and sexism; preventing and combating violence against women and domestic violence; ensuring women's equal access to justice: balanced participation of women and men in making social and political decisions; protection of the rights of migrant women and girls, refugees and asylum seekers; implementation of the strategy for achieving gender equality in all policies and measures (Council of Europe, 2018).

Enshrining the main provisions of the above-mentioned documents in the legislative framework of Ukraine will contribute not only to increasing the effectiveness of gender policy and improving control over its implementation, but also to bringing the national framework in line with the European one, which is especially important in the context of Ukraine's integration into the EU.

4. Discussion

One of the main problems in achieving gender equality in Ukraine is an imperfect system of control and monitoring of compliance with the standards of ensuring gender equality in all spheres of social and political life. Although the institutional mechanism for ensuring gender equality presented in the Law of Ukraine "On Ensuring Equal Rights and Opportunities of Women and Men" is a significant positive step in this matter, the legislative framework needs further improvement.

A number of researchers focus on the problems of ensuring the implementation and control of the gender equality policy in Ukraine and ways to solve them (Kopotun *et al*., 2022; Prokopenko *et al*., 2023). According to Shcherbak (2020) and Manlosa *et al*. (2019), attention should be paid to ensuring balanced access of women and men to state decision-making, creating conditions for equal representation of the interests of all social groups in state authorities, and cooperation between the state and citizens on gender equality issues.

The experience of the Scandinavian countries is taken as an example in the work of Urinboyevna and Rustamova (2021), where the achievements of Norway, Switzerland and Finland in the field of gender policy are associated with a high level of security and life, life expectancy, and freedom of choice in these countries. In the study of Husu (2019) the sample consists of the same countries, and an important aspect of effective gender policy is identified as the introduction of gender research programmes in education, as well as the corresponding funding.

Schulstok and Wikstrand (2020) systematized the main goals of gender policy in Denmark, Finland, Iceland, Norway and Sweden. A comparison of the goals of some of the listed countries found that, despite their common success in implementing an effective gender policy, the Scandinavian states use different approaches and focus on different goals of such a policy.

Denmark focuses on general aspects such as ensuring the freedom of individuals, improved use of talents and resources and global activities. In Finland, attention is focused on aspects of employment, as well as equality in the fields of education and sports, elimination of violence against women,

etc. In Iceland, the primary goal of gender policy is to achieve equality in political representation.

Other goals of this country mostly coincide with the goals of Finland, in addition, both countries pay attention to the issues of gender equality in relation to men. A wide range of gender policy objectives is available in Norway: it covers aspects of child care and education, elimination of violence, employment, business, health, etc. In Sweden, equal distribution of power is at the top of the gender policy goals, and equality must be achieved in the economic sphere, health care, education, unpaid leave and childcare.

The goal of eliminating violence against women in this country is the most specific and unambiguous: "Men's violence against women must be stopped". The positive experience of these countries should be applied in Ukrainian practice during the development of a gender equality strategy.

Minto *et al.* (2020) subject the gender mainstreaming policy in the EU to some criticism due to the discrepancy between the existing assessment standards for gender mainstreaming and the requirements for effective assessment of progress in achieving gender equality. In contrast to this view, Lomazzi and Crespi (2019) note that despite the shortcomings of the gender mainstreaming approach, it is the most important transnational strategy. Researchers define gender mainstreaming as a significant legislative and cultural shift that contributes to the achievement of gender equality in European policy.

Lempesi (2019) expresses a very interesting view on gender equality in education in Greece. The author notes that the country was "forced" to follow the Community guidelines, having no previous traditions in gender policy, so aspects of gender policy remained fragmented in it. If we consider the introduction of gender policy from this point of view, it can be noted that in a certain period, most countries also did not have previous traditions of gender policy. However, most European countries have chosen a progressive approach that takes into account the need to introduce and develop gender policy.

In this context, it is worth noting the role of control and monitoring of EU member states' compliance with the political aspects of gender equality, which contributes to gradual transformation even in countries without previous traditions of gender policy. Rosa *et al.* (2020) also focus on the problems of gender equality in education, and, unlike the previous study, emphasize the positive aspects of ensuring gender equality.

The researchers note that creating a gender-sensitive university requires behavioural and attitudinal changes that can be driven by both innovative thinking and a legislative framework and commitment to change through data collection, monitoring, training, leadership, networking and synergies of the most unexpected kinds.

The conducted discussion can indicate that positive changes in the implementation of gender policy should be ensured in the context of two main directions: legislative (change and adoption of relevant normative documents) and socio-cultural (change in attitude, behaviour, stereotypes). However, the maximum efficiency of work in both directions cannot be achieved without the introduction of a system of effective control and monitoring both at the state level and by citizens and their organizations.

Conclusions

The article presents the key achievements of Ukraine in the development of legislation on gender equality policy issues, in particular, the structure of the Law of Ukraine "On Ensuring Equal Rights and Opportunities for Women and Men" is described. Special attention is paid to Chapter II of the Law, which provides a mechanism for ensuring equal rights and opportunities for women and men.

The bodies, institutions and organizations empowered to ensure equal rights and opportunities for women and men in Ukraine and their key functions were described within such a mechanism. It was determined that this mechanism is intended to increase the effectiveness of the gender equality policy, and also provides for monitoring the implementation of such policy.

The list and main content of the key standards for ensuring gender equality defined in the regulatory and legal documents of the EU are provided. A comparison of the national and foreign legislative framework identified the main problems related to the achievement of gender equality in Ukraine and to form key directions for improving gender policy.

One of the main problems regarding the achievement of gender equality in Ukraine is an imperfect system of control and monitoring of compliance with the standards of ensuring gender equality in all spheres of social and political life. The institutional mechanism for ensuring gender equality, provided in the Law of Ukraine "On Ensuring Equal Rights and Opportunities for Women and Men", is a significant positive shift in the investigated issue, however, it was noted that the legislative framework needs further improvement, expansion and adaptation to international standards.

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Development of territorial communities' potential as a factor of socio-ecological development of territories

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Abstract

The objective of the article was to clarify the concept and classification of the potential of territorial communities; to determine the main indicators of the development of their territorial spaces; to outline the methodology for establishing the socioecological development potential of a particular territorial community and; furthermore, to determine strategic directions for its improvement. The research involved the following methods: economic statistics; BCG matrix; SWOT analysis; graphic methods. As a result of the study, the main statistical indicators related to community development were determined and, similarly, the potential for social-ecological development and the main strategic directions for increasing the potential for social and ecological development were also determined through the use of SWOT analysis. The results of the study can be used by local self-government bodies to increase the potential for social and ecological development and determine strategic directions for its improvement in terms of public policies. Everything allows to conclude that, future research on the topic should be focused on the study of directions of social-ecological development potential in the context of post-war recovery in Ukraine.

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Keywords: socioecological development potential; local self-government; political decentralization; strategic directions; post-war recovery.

Desarrollo del potencial de las comunidades territoriales como factor de desarrollo socioecológico de los territorios

Resumen

El objetivo del artículo fue aclarar el concepto y la clasificación del potencial de las comunidades territoriales; determinar los principales indicadores del desarrollo de sus espacios territoriales; esbozar la metodología para establecer el potencial de desarrollo socioecológico de una comunidad territorial en particular y; además, determinar direcciones estratégicas para su mejora. La investigación involucró los siguientes métodos: estadísticas económicas; matriz BCG; Análisis FODA; métodos gráficos. Como resultado del estudio, se determinaron los principales indicadores estadísticos relacionados con el desarrollo comunitario y, de igual modo, se determinó también el potencial de desarrollo socioecológico y las principales direcciones estratégicas para aumentar el potencial de desarrollo social y ecológico mediante el uso del análisis FODA. Los resultados del estudio pueden ser utilizados por los órganos de autogobierno local para aumentar el potencial de desarrollo social y ecológico y determinar direcciones estratégicas para su mejora en términos de políticas públicas. Todo permite concluir que, las investigaciones futuras sobre el tema deberían centrarse en el estudio de las direcciones del potencial del desarrollo socioecológico en el contexto de la recuperación de la posguerra en Ucrania.

Palabras clave: potencial de desarrollo socioecológico; autogobierno local; descentralización política; direcciones estratégicas; recuperación posbélica.

Introduction

The development of territories is one of the priority directions of the EU policy (Aleksandrova-Zlatanska, 2019). This issue becomes especially important for Ukraine in view of globalization and European integration. In 2014, the decentralization process was launched in Ukraine, which should stimulate the development of the country's territories. Decentralization is

introduced in order to stimulate economic growth, improve the well-being of rural residents, strengthen civil society, increase democracy level of society, and also delegate certain powers to lower levels of governance.

Decentralization reforms are based on ideologies that eschew centralized planning, while favouring increased market competitiveness and bottom-up decision-making (Abimbola *et al*., 2019). European experience proves the effectiveness of reforming local self-government by building an effective governance system based on self-organization and support of citizen initiatives (Zinchuk and Patynska-Popeta, 2019).

During the six years since the beginning of the reform in Ukraine, 4,882 communities have voluntarily merged into 1,070 amalgamated territorial communities. This contributed to local self-government bodies receiving the powers and resources previously held by cities of regional importance (Government Portal, 2022). As part of the decentralization reform, communities must choose their "smart specialization". It is based on defining strategic goals and objectives by the communities, which correspond to the existing innovation potential, and takes into account the competitive advantages of the region (Voitenko, 2020).

Despite the wider opportunities that decentralization opens up for territorial communities, there are a number of problems that restrain their development. The main ones include the extinction of villages and the outflow of the workforce, in particular youth, poverty, poorly developed infrastructure, low innovative activity, as well as the environmental degradation caused, among other things, by the low environmental awareness of community residents (Prokopenko *et al*., 2023).

It can be noted that most of the problems associated with insufficient development of territorial communities are concentrated around socio-ecological issues. That is why determining the potential of territorial communities in relation to socio-ecological development is an important theoretical and practical issue that requires close attention of the scientific community and state administrators.

Besides, it should be noted in the context of recent events that a large-scale military invasion of Ukraine in 2022 will have the largest impact on the development of territorial communities. It causes catastrophic human losses and destruction of infrastructure in particular communities, but does not negate the need to plan and develop strategies for future periods.

In this context, the opinion of Roger Myerson, who was awarded the 2007 Nobel Memorial Prize in Economic Sciences, is interesting. He noted that the reform of local self-government can be defined as one of the main reasons that determined the will of Ukrainians to fight for the country. People are ready to risk their lives, protecting the Motherland, when they know that they serve both the state and their own community (Decentralization, 2022).

The analysis of academic literature identified that the researchers do not have a single view on determining the potential of territorial communities. Most of the studies are dedicated to revealing the features and composition of certain types of potential of territorial communities. Most often, researchers consider aspects of financial or financial and economic potential (Vdovenko *et al.*, 2021; Boyko and Bozhenko, 2020; Zinchuk and Patynska-Popeta, 2019; Lysiak *et al.*, 2021; Shchur, 2018; Hlibko *et al.*, 2021), resource potential (Savchuk, 2018; Matseliukh, 2022), human or social potential (Bil and Leshchukh, 2019; Vitenko, 2021).

Besides, many studies are based on the combination of outlined types of potential of territorial communities or their further division into constituent parts. There are studies that deal with the aspects of the tax potential (Shapoval and Chekh, 2021), which is also often distinguished as part of the financial potential of territorial communities (Shchur, 2018), financial and investment potential (Lapishko *et al*, 2021), natural resource potential (Hutsuliak and Hutsuliak, 2022), labour potential (Filenko, 2018), intellectual potential (Chubar, 2022), innovation and investment potential (Korzhenivska and Niskhodovska, 2022), natural and recreational potential (Tsaryk *et al.*, 2022), tourism potential of territorial communities (Ilnytska-Hykavchuk, 2022), as well as certain types of potential of territorial communities, such as globalist potential (Bobrovnyk, 2019), etc.

Undoubtedly, all outlined types of potential directly or indirectly affect social and ecological development. However, the researchers paid extremely little attention to the role of socio-ecological aspects in determining the potential of territorial communities. Besides, there is no thorough view of the calculation of the potential of territorial communities. In this study, an attempt was made to cover this omission by using the concept of "potential for socio-ecological development of the territorial community" and proposing a methodology for determining it.

Therefore, the aim of the research is to clarify the concept and classification of the territorial communities' potential, to determine the main indicators of the development of territorial communities, to outline the methodology for determining the potential of social and ecological development of a territorial community, and to determine strategic directions for its improvement. The aim involves the following research objectives:

- conduct a statistical analysis of the main indicators of the development of territorial communities;
- determine the potential of the social and ecological development of the territorial community on the example of the Velykoburlutska Community (Kharkiv region) using the BKG matrix;
- justify the choice of directions of the territory's socio-ecological development strategy by applying the SWOT matrix.

1. Literature review

There are many works in the academic literature that study the potential of territorial communities. The absolute majority of studies deal with only one specific type of potential. Table 1 shows the types of potential of territorial communities that are most often found in the works of researchers.

Table 1. Overview of the definitions of certain types of potential of the territorial community based on the analysis of literature.

The type of the territorial community's potential	Authors	General definition
Financial and economic	Vdovenko *et al.* (2021)	The financial and economic potential reflects the ability of the territorial community to attract, accumulate and effectively use financial resources from various sources in order to solve problems of local importance.
	Boyko and Bozhenko (2020); Semenyshyn *et al.* (2020)	The financial potential of the ATC consists in the formation of a set of own and borrowed financial resources, which are used to finance the needs for the implementation of tactical and strategic goals of community development.
	Zinchuk and Patynska-Popeta (2019); Lysiak *et al.* (2021)	Financial potential of ATC includes all available and potential resources of ATC, as well as the ability of local self-government bodies to accumulate and effectively use the necessary number of financial resources in order to achieve the sustainable development goals of communities.
	Shchur (2018)	The financial potential of the ATC is a set of available resources from any sources and opportunities for the effective use of such resources for the purposes of operational, investment activities, etc. in an unstable environment.
	Bulavynets and Karpyshyn (2020)	Financial potential of ATCs — available and potential financial resources, which are attracted by ATCs through the application of investment, budget, grant and credit mechanisms and are used to ensure the effectiveness of the functioning of the territorial community.

Resource potential	Savchuk (2018); Rudyk *et al.* (2022)	The resource potential includes natural resources, production and technical, property, financial, investment, demographic, innovation and other potentials, as well as the territory, taking into account the features of its infrastructure
	Matseliukh (2022)	The resource composition of the potential of the ATC includes natural, material and production resources belonging to economic entities and residents of the ATC, as well as intangible and financial resources, which include social, administrative, personnel, institutional, intellectual, communicative, informational, innovative, organizational resources and time.
Human/ social potential	Bil and Leshchukh (2019)	Human potential includes intellectual, labour, physiological, socio-psychological, cultural and other opportunities of society that can be used for the purpose of ATC development.
	Vitenko (2021)	Social potential consists in establishing mutual relations between citizens on the basis of trust and assistance, which stimulates self-organization of residents within the ATC.

Source: prepared by the authors based on the works and authors consulted.

As Table 1 shows, the resource potential is broadest concept in the understanding of researchers, because it includes all other types of potential that are most often found in the studies (financial, social, etc.). However, researchers do not often distinguish the potential for the socio-ecological development of the territorial community among individual types of resource potential. The works of researchers single out natural resource and social or human potential, but an important scientific issue is their study in combination, because they are subject to significant mutual influence.

As it was established earlier, environmental problems are often associated with insufficient environmental awareness of citizens. Besides, there are no sufficiently substantiated methods for calculating such potential, which is also a critical issue in view of the need to determine the existing and desired level of the potential of socio-ecological development of the territorial community.

2. Methods and materials

2.1. Research design

The approach used in the article requires the distribution of information into three interrelated and sequential stages. The first stage provided for

the study of the main indicators of the general state of public housing in Ukraine through the use of economic statistics. In particular, the number and area of public housing in different regions, the distribution of the volume of infrastructure subsidies by directions and regions, the level of public housing income per inhabitant by region, the structural composition of public housing revenues, as well as the number of ATC located in areas of hostilities or under temporary occupation, encirclement were studied. The information is illustrated with graphs and charts for greater clarity and ease of comparison and data analysis.

The second stage involved determining the potential of socio-ecological development of the territorial community using the example of the Velykoburlutska community (Kharkiv region) using the BCG matrix. The community was chosen because of the availability of information regarding the budget of the ATC, as well as due to the fact that the community was under occupation for some time and continues to be in the combat zone. Therefore, it is important to determine its pre-war potential of socio-ecological development in order to choose the priority areas of post-war development.

The chosen method of determining the potential using the BCG matrix and the selection of indicators (ATC's expenditures related to socio-ecological aspects) is based on the need to identify directions that require close attention in view of their insufficient development and funding. The time period used in the analysis (2019 and 2021) is due to the limited information on the budget of the OTG, but this does not significantly affect the results of the study.

The third stage provides for the justification of the choice of directions for the socio-ecological development strategy of the territory by applying the SWOT matrix. This method was used to determine the main strengths and weaknesses, opportunities and threats of ATC regarding the potential of socio-ecological development. The directions of the strategy of socio-ecological development of ATC were proposed on the basis of this definition by using the methods of analysis and synthesis.

2.2. Information background

The information background of the research is Ukrainian academic periodicals, academic publications of other countries, data from reports (Ministry for Communities and Territories Development of Ukraine, 2021), official websites of the government and local self-government bodies (Decentralization, 2022; Velykoburlutska Community, 2022).

2.3. Research methods

The following scientific methods were used in the study: economic statistics — for the analysis of the main indicators of the general state of the ATCs in Ukraine; BCG matrix — for determining the potential of socio-ecological development of the territorial community; SWOT analysis — to substantiate the choice of directions for the strategy of socio-ecological development of the territory; graphic methods – for visualization of the provided information.

2.4. Limitations of the research

The limitations of the research are related to the lack of individual statistics on the official website of the Ministry for Communities and Territories Development of Ukraine, dating after 2019. The latest document published on the website is the Report on the Review of State Budget Expenditures for Regional Development in Terms of Supporting the Formation of Infrastructure of Amalgamated Territorial Communities, which was published in 2021 with data for 2019 (Ministry for Communities and Territories Development of Ukraine, 2021).

Therefore, some other data are taken for 2019 in order to ensure the structure and homogeneity of the study, but this does not significantly affect the results of the study, because statistics provides only a generalized vision of the issue under research.

3. Results

3.1. Statistics on territorial communities of Ukraine

In order to obtain a general understanding of the state, number, opportunities, priorities, resources and needs of the ATCs, it is appropriate to study the main statistical indicators describing their development at the current stage.

ATCs occupy more than 50% of the region's territory in many regions of Ukraine. This testifies to their significant influence, as well as economic, social and ecological development of the regions. It should also be noted that, the number of ATCs continues to grow in subsequent periods, which, among other things, indicates the effectiveness of the decentralization reform.

Inadequate development of infrastructure in the regions, especially in remote areas, was identified as one of the most problematic issues related to the development of the ATCs in this article. Therefore, an important

indicator regarding the development of the ATCs is the determination of the scope and directions of the infrastructural subvention of the ATCs.

During the research it was discovered that the leaders in terms of the amount of infrastructure subvention received, namely: Dnipropetrovsk, Zhytomyr, Khmelnytskyi, Chernihiv and Volyn regions. Besides, an important indicator for comparing the current state of the ATCs of different regions is the amount of revenue per person in local budgets (Figure 1).

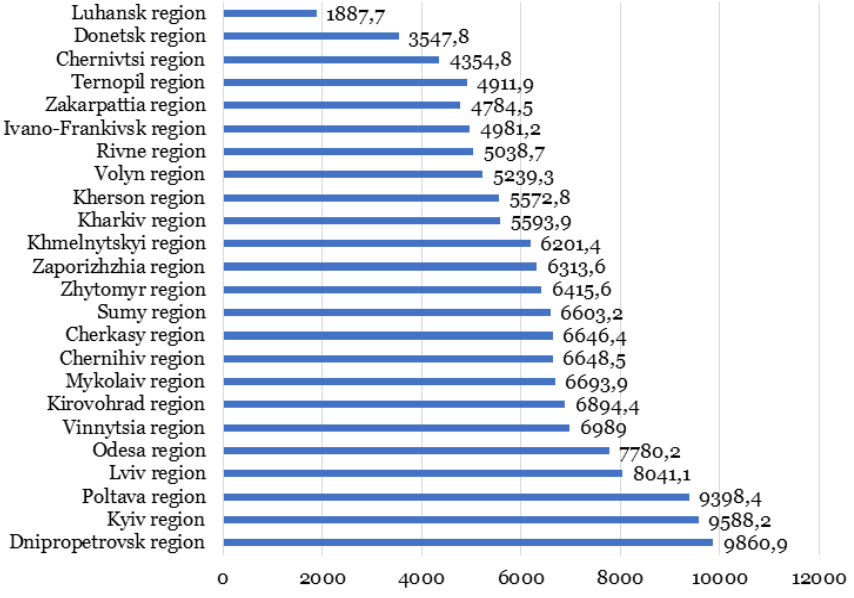

Figure 1. Amount of the local budget revenues per person

Source: Kuznietsova and Pelekhatyi (2020).

Dnipropetrovsk region is the absolute leader both in terms of the amount of infrastructure subvention and the amount of own income per person. Kyiv, Poltava, Lviv, and Odesa regions are also noted for their high level of income.

Personal income tax (PIT) accounts for the largest share in the revenue structure of the general fund of local budgets of the ATCs (more than 60%). Land fee and the single tax account for more than 14 and 12 percent, respectively.

In the context of the characteristics of the general indicators of the ATCs during martial law, the number of communities located in the areas of hostilities or that are under temporary occupation, encirclement should be noted (Table 2).

Table 2. The number of communities located in areas of hostilities or under temporary occupation, encirclement (as of November 30, 2022).

Region	The total number of communities in the region	The number of communities in the region located in areas of hostilities or under temporary occupation, encirclement
Dnipropetrovsk	86	10
Donetsk	66	66
Zaporizhzhia	67	62
Luhansk	37	37
Mykolaiv	52	26
Sumy	51	19
Kharkiv	56	56
Kherson	49	49
Chernihiv	57	4

Source: Decentralization (2022).

It can be concluded from Table 2 that all communities in four regions (Donetsk, Luhansk, Kharkiv, and Kherson) fall under the category of being located in areas of hostilities or under temporary occupation, encirclement. This brings catastrophic human losses and material damage to communities, completely changing their pre-war situation. Therefore, it can be noted that the main priority for the development of communities is their post-war recovery with orientation to a more optimal path of development.

The statistical characteristics of ATCs give grounds to state that, given the growth in the number and area of ATCs, their impact on the socio-ecological development of the regions is significant. It is also an important aspect that educational facilities rank first in the structure of the infrastructure subvention in terms of the volume of financial resources, which plays a significant role in social development.

Ranking of regions by the volume of infrastructural subvention and own income per person enables determining the leaders in relation to individual components of the financial potential, which is closely related to the

possibilities of socio-ecological development. The next step of the research is, in fact, a review of the methodology used to determine individual characteristics of the potential of socio-ecological development of the ATCs.

3.2. Determining the potential of socio-ecological development of the territorial community on the example of the Velykoburlutska community (Kharkiv region) using the BKG matrix

Determining the potential of socio-ecological development of ATCs will be based on the use of the BCG (The Boston Consulting Group) matrix (Yatsiv *et al*., 2019; Hossain and Kader, 2020). This matrix is used to divide the components of the potential of socio- ecological development of ATCs into four groups. It is common knowledge that such groups are defined as "stars"", "cash cows", "difficult children" and "dogs".

However, such definitions are inappropriate in the context of this study, so they will not be applied. The location of the components of the potential of socio-ecological development on the matrix determine the main strategic goals of the development.

Velykoburlutska community of Kharkiv region was chosen as an example for determining the potential. Table 3 contains the initial data for building the matrix.

Table 3. Expenditures of the budget of Velykoburlutska community (Kharkiv region) for 2021, related to socio-ecological development and are the initial indicators for building the BCG matrix.

Area of expenditures	2019	2021	Growth rate	Share in budget expenditures
Education	26,095.5	81,927.6	3.1	52.7
Health care	0.0	14,333.8	-	9.2
Social protection and social security	1,032.7	7,219.5	7.0	4.6
Culture and art	4,106.3	9,039.9	2.2	5.8
Physical culture and sports	1,003.1	1,986.7	2.0	1.3
Utilities	5,245.0	9,067.5	1.7	5.8
Other activities (including environmental protection)	0.0	0.0	0.0	0.0

Source: Velykoburlutska community (2022).

As Table 3 demonstrates, the indicators for building the BCG matrix are the budget expenditures of the Velykoburlutska community (Kharkiv region) for 2021, related to socio-ecological development. The specified directions are related to the level of development of individual components of the potential of socio-ecological development. These components include education, health care, social protection and social security, culture and art, physical culture and sports, utilities, other activities (including environmental protection). The use of budget expenditures in the analysis will allow to determine the degree of their influence on the potential of socio-ecological development of the ATCs. Figure 2 shows the BCG matrix.

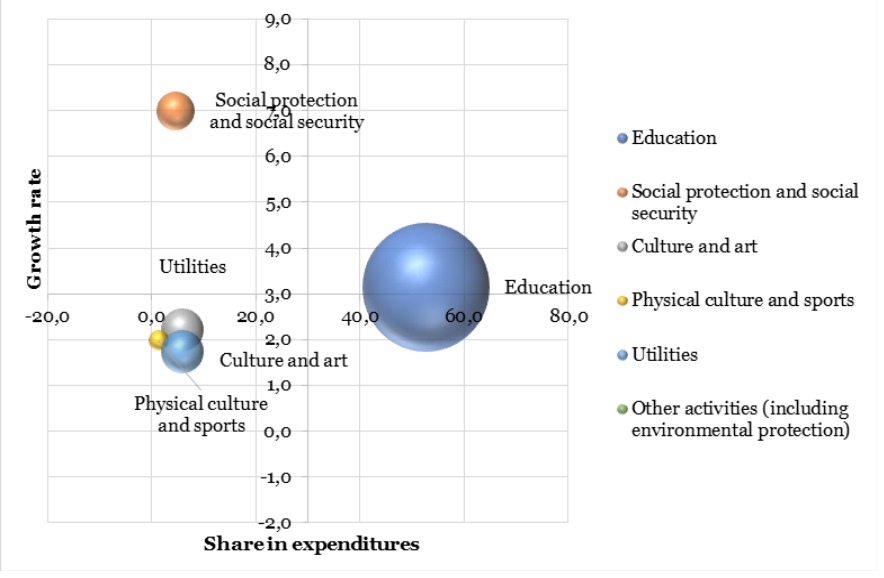

Figure 2. Determining the potential of socio-ecological development of the Velykoburlutska community (Kharkiv region) using the BCG matrix

Source: built by the author.

As Figure 2 shows, "Social protection and social security" as component of the potential of socio-ecological development has the highest growth rates of expenditures. But it is characterized by low shares in the total expenses like "Culture and art", "Physical culture and sports" and "Utilities".

The last three directions also have low growth rates, being found in the lower left part of the matrix. "education" has MEDIUM growth rates, because it is located at the intersection of the upper and lower right parts of the matrix, but it is the undisputed leader in terms of the share

of expenditures. The matrix should also contain "Health care" and "Other activities (including environmental protection)", however, the growth rate for the former cannot be calculated because of zero expenditures in 2019, and the expenditures for the latter equal to zero in both periods.

The distribution obtained in Figure 2 means that education is the most priority component of the potential of socio-ecological development. The strategic objective in relation to education is to support the existing trend and further investment in this area. It can also be noted that the direction of social protection and social security is developing rapidly, but further investment in the area are recommended.

Culture and art, physical culture and sports, and utilities are insufficiently financed, and the growth rate of spending on these areas is also low. Therefore, the development of these areas requires close attention from the local self-government. However, the biggest problem is the lack of spending on the environment and (in 2019) on health care. This requires additional research and establishing the reasons. The conducted analysis is an example of the application of the method of determining the socio-ecological potential using the BCG matrix. It can be adjusted depending on the specifics of a particular ATC and the priority of indicators determined by the researcher.

3.3. Justification of the choice of strategic areas of socio-ecological development of the territory through SWOT analysis

The statistical analysis of indicators of ATCs of Ukraine as a whole and the analysis of the potential of socio-ecological development of ATCs carried out in the article on the example of Velykoburlutska community determined the main strengths and weaknesses, opportunities and prospects of the ATC with regard to socio-ecological development. These aspects are presented in the form of a SWOT matrix (Table 4).

Table 4. SWOT matrix of the ATC regarding the potential of socio-ecological development (developed by the author on the basis of the conducted analysis and research

Strengths	**Weaknesses**
1. Favourable conditions for the development of agriculture 2. Natural resources and production potential of the ATC 3. Active participation of the population in the life of communities, cohesion of residents 4. Historical, natural and cultural monuments 5. Development of organic agriculture 6. Increasing the level of autonomy in decision-making	1. Extinction of villages 2. Poverty and unemployment 3. Low level of well-being of citizens 4. Insufficient attention to the development of physical culture and sports 5. Weak support for the development of culture and art 6. Poorly developed infrastructure (road, utility, etc.) 7. Slow pace of introducing innovations 8. Inadequate quality of medical services 9. Insufficient state support
Opportunities	**Threats**
1. Introduction of the decentralization reform 2. Increasing demand for environmentally friendly and organic products 3. Integration with the EU, international programmes to support the development of territories 4. Development of rural and green tourism 5. Expanding the use of renewable energy sources	1. Full-scale military invasion 2. The outflow of youth due to labour migration 3. Problems with ecology, insufficient environmental awareness of residents

Source: Korkuna et al. (2020), Tkachuk et al. (2019), Sodoma et al (2022), Senyshyn and Kundytskyj (2018).

The conducted SWOT analysis determined the main priority areas of increasing the potential of socio-ecological development the ATCs of Ukraine:

- development of agriculture (including organic) in order to increase competitiveness, income level, create new jobs and reduce unemployment and poverty;
- the use of historical, cultural and natural potential for the development of rural and green tourism, which will increase investment attractiveness and contribute to the improvement of infrastructure, increase in income and employment of the population;
- introduction of environmental programmes and measures to increase public awareness of environmental issues, which will

ensure the improvement of ecology, strengthening of health of residents, increase in demand for ecological products, etc.;

- introduction of innovations (including the use of renewable energy sources) in order to increase the energy efficiency of production, product quality, efficiency of organizational processes, environmental friendliness, etc.

Special attention should be focused on the post-war recovery, which will require the use of all the potential of the ATCs, in particular the socio-ecological development potential, because the consequences of the war and the war crimes of the enemy affect all aspects of community life. Therefore, the post-war strategy should cover a wide range of objectives — from the need to build infrastructure to ensuring a decent standard of living for community residents and restoring the environment.

4. Discussion

The academic literature provides many approaches and points of view regarding the definition, classification, and structure of the potential of territorial communities. Often, such views not only do not coincide, but are also opposite to each other. Therefore, it is appropriate to consider several points of view and compare them with the view provided in this article in order to determine advantages, disadvantages, omissions, opposites, etc. This will improve the general understanding of the concept of the potential of territorial communities and its structure.

Savchuk (2018) deals in his research with the resource potential of territorial communities. The analysis of the author's conclusions gives grounds to state that it is the resource potential that is the broadest in terms of the coverage of components, because it contains natural resource, production, technical, demographic, financial, investment and innovation potentials. Bil and Leshchukh (2019) believe that the endogenous potential of a territorial community contains economic, financial and human components.

The researchers include production, entrepreneurial, natural resource, managerial, organizational, infrastructural, innovative, scientific and informational components to the economic potential. Financial potential includes budgetary and tax potential, investment potential, the potential of the real sector of the economy, financial and credit institutions, and households. Human potential is a reflection of the possibilities of society, including physiological, labour, intellectual, etc.

The researcher did not single out socio-ecological development potential, but considered in terms of its separate components: social and

natural resource potential. This article expresses the opinion that social and natural resource potentials have a high degree of mutual influence, so they should be considered in combination.

Besides, there are differences in the essence of the concepts "natural resource potential" and "ecological potential", and the latter is defined in the works of researchers very rarely, being reduced to certain ecological aspects. However, it is the ecological potential that indicates the degree of implementation of ecological initiatives in the region, its ecological condition as a whole, and opportunities for improving ecology — in contrast to the natural resource potential, which mostly characterizes only the available natural resources.

The relevance of the views provided in this article is confirmed by the fact that researchers often pay attention to social and ecological aspects in the course of revealing the content, components, indicators of various types of potential of territorial communities. When identifying the determinants of the growth of the financial and economic potential of the territorial communities of Ukraine, Vdovenko *et al.* (2021) identified the indicators which can be used to evaluate its social and ecological components.

Indicators characterizing the social component include: population income, labour market strength, total residential area. The researchers included the following indicators of the environmental component: the total amount of accumulated waste per 1 resident, the number of waste disposal centres, the volume of emissions of pollutants into the air, capital investments in environmental protection per person.

Zinchuk and Patynska-Popeta (2019) distinguish the following areas of management of the financial potential of territorial communities: economic, social and environmental. The economic direction provides for ensuring economic growth, which involves achieving financial self-sufficiency and capacity; social direction includes measures to improve the quality of life of the population, infrastructure development; ecological direction is aimed at protecting the environment through its protection and ensuring the appropriate use of natural resources.

Boyko and Bozhenko (2020) include the indicators characterizing the well-being of community residents and natural resources in the indicators that form the assessment of the financial potential of the territorial community. Lysiak *et al.* (2021) emphasizes the role of financial potential in ensuring socio-economic development.

Bulavynets and Karpyshyn (2020) reveal the importance of the financial potential of territorial communities in relation to all aspects of the lives of their residents. Researchers note the possibility of compensating for the lack of financial resources by introducing specialized programmes of the European Union, being part the European Neighbourhood Instrument.

Such programmes are implemented in some border communities of Ukraine and are aimed at developing medicine, improving road infrastructure, improving environmental safety, improving recreation, supporting culture, etc.

Shchur (2018) identifies the budgetary, investment, and tax potential when determining the components of the financial potential of territorial communities. The researcher emphasizes that the investment component is especially important in the current conditions, but does not examine the need to invest in the potential of social and ecological development.

Vitenko (2021) characterizes the resource potential of ATCs, emphasizing that one of the main roles belongs to the intellectual resources of people. Matseliukh (2022) also focuses on resource potential, confirming his opinion that post-war recovery is impossible without the availability of the appropriate number of necessary resources and skills to effectively manage them.

So, the need for close attention to the potential of socio-ecological development of the ATCs and further studies in this direction was confirmed as a result of the discussion. The issue of increasing the potential of socio-ecological development is especially acute in the context of post-war recovery, which will be a relevant topic for future research.

Conclusions

A selective review of general statistics regarding the development of the ATCs gives grounds to draw the following key conclusions:

- the number of ATCs in Ukraine continues to grow, and their area in many regions (seven regions — as of 2019) occupies more than 50%;
- the priority directions of infrastructure subvention are education, road infrastructure, special transport, culture and energy supply;
- Dnipropetrovsk, Zhytomyr, Khmelnytskyi, Chernihiv and Volyn regions are the leaders in terms of the amount of infrastructure subvention received;
- Dnipropetrovsk, Kyiv, Poltava, Lviv, and Odesa regions have the highest income levels;
- the personal income tax prevails in the structure of revenues of the general fund of local budgets of the ATCs;
- all communities in at least four regions fall under the category of being located in areas of hostilities or under temporary occupation, encirclement (as of the end of November).

The used method of determining the potential of socio-ecological development of ATCs using the BCG matrix makes it possible to estimate this type of potential based on the calculation of the growth rate and the share of individual types of expenditures in the total number of expenditures related to socio-ecological aspects. This enabled determining the directions that require close attention, namely: culture and art, physical culture and sports, utilities, ecology and health care.

The conducted SWOT analysis determined the main priority directions for increasing the potential of socio-ecological development of the ATCs in Ukraine, in particular, the development of agriculture (including organic); the use of historical, cultural and natural potential for the development of rural and green tourism; introduction of environmental programmes and measures to raise public awareness; introduction of innovations (including the use of renewable energy sources). Besides, the article emphasizes the need and importance of using all resources of socio- ecological potential during post-war recovery, which should be the direction of further research.

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Social and legal protection of orphans and children left without parental care under martial law

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Abstract

Using general scientific methods such as cognition and reflection of legal philosophy, the article is devoted to the study of peculiarities of legal protection of orphans and children deprived of parental care in Ukraine. In this connection, the definition of orphanhood is formulated, as well as the socio-legal protection of children, the main stages of the socio-legal protection of children are defined, the general principles of ensuring the family rights of children in the system of their protection are established. It was also emphasized that the social and legal protection of orphans and children left without parental care should take into account the state approach and take place in the conditions of a new adoptive, foster and adoptive family. It is concluded that, the optimization of state activities in this area lies in the formation of an effective system, the basis of which is the mechanism of socially coordinated interaction of regional authorities and society as a whole.

Keywords: family rights; orphans under martial law; parental care; social and legal protection; right to education.

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Protección social y jurídica de los huérfanos y los niños privados del cuidado de sus padres bajo la ley marcial

Resumen

Mediante el uso de métodos científicos generales como la cognicacion y de la reflexión propia de la filosofía jurídica, el artículo científico está dedicado al estudio de las peculiaridades de la protección legal de los huérfanos y niños privados del cuidado de los padres en Ucrania. En este orden de ideas, se formula la definición de orfandad, así como la protección sociojurídica de la infancia, se definen las principales etapas de la protección sociojurídica de la infancia, se establecen los principios generales para garantizar los derechos familiares del niño en el sistema de su protección. Tambien, se enfatizó que la protección social y legal de los huérfanos y los niños que quedan sin el cuidado de los padres, debe tener en cuenta el enfoque estatal y tener lugar en las condiciones de una nueva familia adoptiva, tutelar y adoptiva. Se concluye que, la optimización de las actividades del Estado en esta área radica en la formación de un sistema efectivo, cuya base es el mecanismo de interacción socialmente coordinada de las autoridades regionales y la sociedad en su conjunto.

Palabras clave: derechos de familia; huérfanos bajo ley marcial; cuidado de los padres; protección social y jurídica; derecho a la educación.

Introduction

The modern stage of Ukraine's development is characterized by the implementation of a socially oriented policy aimed at protecting and protecting families with children, providing them with comprehensive assistance and support. Special treatment of the family, priority protection of the rights and interests of its members, provision of a wide variety of support measures are defined as priority directions in national normative acts devoted to issues of family policy implementation. The growing role of the family in society, raising the authority of parenthood in the family and society, preventing and overcoming family adversity, improving conditions and improving the quality of life of families are of great social importance for Ukraine.

The fundamental provisions aimed at the implementation of social guarantees for families with children, ensuring conditions for decent upbringing of children, are formulated in Art. Art. 1 3 of the Constitution of Ukraine (Constitution Of Ukraine, 1996), which reveals the social nature of the Ukrainian state, directs state bodies, parents and families to create

proper (decent) conditions for the upbringing of the young generation, which contribute to achieving such a standard of living, when the basic needs of children will be fully satisfied.

At the same time, it is necessary to take into account the social value of Art. 3 of the Constitution of Ukraine, which declares the highest value of the rights and freedoms of every person, the observance of which is the duty of the state. Also in Part 3 of Art. 52 states that the maintenance and education of orphans and children deprived of parental care is entrusted to the state (Constitution Of Ukraine, 1996).

The state's close attention to the family, concern for the needs of families with children was clearly manifested in the conditions of the war in Ukraine, because the society was faced with previously unknown life circumstances, when every family found itself in conditions that violate the usual way of life: many parents were left without work, no income, children do not attend preschools and educational institutions, they are forced to study at home.

There is no doubt that under such conditions families with children suffer the most. In addition, due to the war in Ukraine, thousands of children remain orphans, lose contact with their relatives and find themselves in difficult life circumstances. Therefore, the problems of social orphanhood are more relevant today than ever.

A difficult economic situation has developed in the country during the war, which affects all spheres of life (Tolkachova, 2015). According to the latest sociological research, Ukraine is on the verge of a demographic crisis, as its population is shrinking not only due to a drop in the birth rate, an increase in mortality, but also in connection with the forced migration of the Ukrainian population to other countries due to the Russian invasion of the territory of our country.

Therefore, the state creates a wide legal field for social service workers and social work specialists to successfully fulfill their duties in solving tasks of social support for children who are in a difficult life situation. These tasks lead to the achievement of the main goal - the preservation and multiplication of the gene pool of Ukraine (Barabash, 2022).

During the war in our country, every Ukrainian child, without exception, in any case suffered violations of their legally enshrined rights. Even if the child is not physically harmed, the child has not been subjected to exploitation prejudicial to any aspect of the child's well-being, sexual abuse, torture or other cruel, inhuman or degrading treatment or punishment, there is a violation of the child's fundamental rights (Drobyazko, 2023).

Under such conditions, it is necessary to determine the key role of the state in providing assistance and support to poorly protected and

unprotected sections of the population, in particular through the adoption of various normative acts that regulate the support of families in conditions of military aggression and volunteer movements.

The state's activities should be aimed at protecting various spheres of family life, providing them with the necessary information about specific types of assistance, methods of their provision, etc. In view of this, it is important to outline the main directions of social security for orphans and children deprived of parental care, especially in the conditions of war and internal migration through the territory of Ukraine.

1. Methodology of the study

Theoretical knowledge about the socio-legal protection of orphans and children left without parental care in the conditions of martial law reflects the subject of research in the perspective of universal internal essential connections and regularities that are highlighted by the rational processing of normative legal acts and scientific views. The validity and reliability of scientific results was ensured by the use of philosophical, general scientific, special and specific scientific methods of cognition.

In particular, the formal-dogmatic method became the basis for the scientific elaboration of normative legal acts, the disclosure of their essence, the formation of ways of improving legislation in the researched area. Scientific-legal, practical information, as well as the prospects of socio-legal protection of orphans and children left without parental care, are clarified by applying the methods of analysis, synthesis and logical approach.

2. Analysis of recent research

Protecting the rights of children and ensuring their full development is a problem of national importance, which is studied in various contexts: historical, cultural, demographic, sociological, pedagogical and, of course, legal. We are talking about the establishment by certain laws and other normative legal acts of certain rules, norms, provisions, standards and requirements regarding the organization of the child's life.

The problem of the development of legislation on children's rights has received the attention of many scientists who were engaged in research in the field of law and in other fields of knowledge. In particular, it should be noted the works of O. Barabash, K. Drobyazko, V. Marchuk, N. Lucić, E. HendersonDekort, V. Chernega (Barabash, 2022; Drobyazko, 2023; Marchuk, 2022; Lucić, 2021; HendersonDekort *et al*., 2021; Chernega *et al*., 2021) and others.

In view of the subject of the research, the scientific positions of the mentioned scientists are used in the article as those devoted mainly to the issues of the general normative legal framework in the field of state policy on the protection of children's rights, certain aspects of the development of juvenile law, and the civil legal basis of the regulation of issues related to the protection orphans and children left without parental care.

3. Results and discussion

Childhood is the stage when fundamental qualities and personality traits are formed in an individual, which ensure psychological stability, positive moral orientation towards people, vitality and purposefulness. The mentioned spiritual qualities of the personality are not formed spontaneously, they are formed in the conditions of parental love, when the family creates in the child the need to be recognized, the ability to empathize and rejoice with other people, to be responsible for himself and others.

In recent decades, the protection and well-being of children during conflict has become an important part of the international community's agenda. In this way, a number of norms and standards were developed that form a legal framework for the protection of children in armed conflict.

Children growing up in the conditions of war are protected by the norms of international humanitarian law as part of the civilian population. However, given the vulnerability and developmental needs of children, children have special protections. Some guarantees provided by international legal acts have become part of customary law.

The UN Convention on the Rights of the Child (Art. 20) provides for special assistance and protection provided by the state to a child temporarily or permanently deprived by his family of normal living conditions and development of interests (Convention On The Rights Of The Child, 1989). The rights of the child at the international level, which regulate and guarantee the protection of its interests, are enshrined in the Declaration of Human Rights and the Convention on the Rights of the Child, recognized by most countries of the world.

Also, the Convention orders all states to take all necessary legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, insult or abuse, lack of care or negligent and rough treatment, exploitation, including sexual abuse by parents, legal guardians and guardians. The main provisions of this document of the international level are also reflected in the legal acts of the countries that have signed it, regulating the rights of children within these countries.

An important area of activity in the field of protection of children's rights is the improvement of national legislation, the ratification of conventions, in particular the implementation of the provisions of international law. Ukraine is a party to a number of international documents in the field of ensuring children's rights, however, it is worth admitting that in the conditions of martial law it is extremely difficult to implement the functions entrusted to the state to ensure the protection of children's rights.

The structure of social and legal protection of childhood consists of four stages: local, regional, state, international. This system is a complex of social institutions that regulates their work, regulatory documents, children's rights, mechanisms for the implementation and protection of these rights.

Children's rights cover two areas: personal rights (name, citizenship, private life, inviolability of housing, rest and leisure, health care, etc.) and the right to education. Legislative, administrative, social and educational reforms are proposed among the main measures to protect childhood (Kolomoets, 2018).

At the state level, the protection of the rights of children left without parental care is carried out by the Constitution - the highest legislative act of the state. One of its fundamental principles is the protection and protection of motherhood, childhood and the family, which are entrusted directly to the state. All children have the right to protection and special care from state authorities and local self-government bodies (Constitution Of Ukraine, 1996).

At the same time, there is a special category of children that needs increased care from the state these are orphans and children left without parental care. Such protection should really ensure the full development and life of children, their place in society.

In connection with hostilities, terrorist attacks by Russian troops on the civilian population and mass evacuation, the number of children whose parents have died or whose fate and whereabouts are unknown is increasing. The current regulations did not provide an opportunity to accommodate such children to family forms of upbringing.

Moreover, the procedure for placing children under guardianship or guardianship of relatives requires the provision of such a large number of documents that, under martial law, their collection requires extraordinary efforts. At the same time, it is very important for children traumatized by war and loss of contact with their parents to be in conditions as close as possible to family ones.

Therefore, in March 2022, the Cabinet of Ministers of Ukraine worked out a decision that allows such a child to be temporarily placed in a foster family or a family-type orphanage or under the guardianship or care of

relatives under a simplified procedure during martial law. This will ensure the best interests of the child until it is known for sure what happened to their parents.

State support measures for orphans and children left without parental care in Ukraine are regulated by the Law of Ukraine «On Ensuring Organizational and Legal Conditions for the Social Protection of Orphans and Children Deprived of Parental Care», which defines guarantees that apply to almost all aspects of life minors and persons equated to them (On Ensuring Organizational And Legal Conditions For Social Protection Of Orphans And Children Deprived Of Parental Care, 2020).

By exercising the right to education for children who need social assistance, the state fully or partially covers the cost of their maintenance during the education period. The law provides for the admission of orphans and children left without parental care to educational institutions of all levels without competition, but on the condition of successfully passing entrance exams.

This category of children is enrolled in full state support until they graduate from primary, secondary and higher education institutions. In addition, they are paid a social stipend, regardless of their performance. Therefore, the state gives children the opportunity to realize themselves in education, without thinking about how to feed themselves.

Employment is equally important for a child. The main task of the state in this direction is to provide orphans and children left without parental care, equal opportunities in the right to work and in choosing a profession. For this purpose, they are provided (in the form of special bodies) with a whole set of various measures regarding professional training, quotas and incentives for employers to hire such persons, preservation of certain types of professional activities for former children of orphanages and boarding schools.

Also, at the constitutional level, the duty of the state to raise and educate harmonious individuals who also have good physical health is determined. In this regard, orphans and children left without parental care are provided with free medical care and prompt treatment in any medical and preventive institution (Yarygina, 2016). Regular medical examinations (dispensary examinations) and the necessary rehabilitation of children are carried out with the funds of the budgets of all levels. They are provided with free tickets to school and student sports and health camps, to sanatorium-resort facilities in the presence of medical indicators, free travel to the place of rest, treatment and back is provided.

One of the most important issues faced by graduates of institutions for orphans and children left without parental care is the issue of providing housing. Protection of housing rights of minors consists in securing and

providing housing to each ward. State bodies monitor the actual use of the housing stock intended for this category of persons until they come of age, and control is also carried out during the conclusion of agreements with such residential premises belonging to minor graduates.

According to Art. 252 of the Family Code of Ukraine, guardianship over a child is temporary care, upbringing and rehabilitation of a child in the family of a foster carer for the period when the child, his parents or other legal representatives overcome difficult life circumstances (Family Code Of Ukraine, 2002).

The purpose of patronage is to ensure the protection of the rights of a child who, due to difficult life circumstances, is temporarily unable to live with his parents/legal representatives, to provide him and his family with services aimed at reintegrating the child into the family or providing the child with an appropriate status for making further decisions taking into account the best interests of the child in ensuring his right to upbringing in the family or in conditions as close as possible to family ones.

Issues arising in connection with the establishment, implementation and termination of guardianship and care of orphans and children left without parental care are regulated by the Family Code of Ukraine, the Civil Code Of Ukraine, the Law of Ukraine «On State Assistance to Families with children» (Family Code Of Ukraine, 2002; Civil Code Of Ukraine, 2003; On State Assistance To Families With Children: Law of Ukraine, 1992) and normative legal acts adopted in accordance with this Law, which specify and clarify the provisions of the law and other

In view of the introduction of martial law in Ukraine on February 24, 2022, the Rules for crossing the state border by citizens of Ukraine clarify and clarify the provisions of the law). One of these documents is the Resolution of the Cabinet of Ministers of Ukraine «Some issues of protection of children's rights and provision of child guardianship services» No. 893 dated 20.08.2021, which approves the Procedure for the creation and activity of a family of a foster parent, placement, stay of a child in the family of a foster parent educator, as well as a list of types of activities and services provided by organizations for orphans and children left without parental care (Resolution Of The Cabinet Of Ministers Of Ukraine No. 893, 2021).

Important documents in this direction are also: Decree of the Cabinet of Ministers of Ukraine «Some issues of mentoring a child» No. 465 of 04.07.2017 (Decree Of The Cabinet Of Ministers Of Ukraine No. 465, 2017), Order of the Ministry of Social Policy of Ukraine «On approval of the Model procedure for the transfer of documentation regarding children orphans, children deprived of parental care, and persons from their number, children who are in difficult life circumstances, from services for children's

affairs of district state administrations to services for children's affairs of executive bodies of city councils, village and settlement councils» No. 48 dated 06.02.2021 (Order Of The Ministry Of Social Policy Of Ukraine No. 48, 2021), Resolution of the Cabinet of Ministers of Ukraine «Some issues of providing housing for orphans, children deprived of parental care, persons from their number and support of small group homes» No. 615 dated 26.05.2021 (Resolution Of The Cabinet Of Ministers Of Ukraine. No. 615, 2021) and others.

It should also be noted that the Rules for crossing the state border by citizens of Ukraine, approved by Resolution of the Cabinet of Ministers of Ukraine No. 5737 of 01.27.1995, are supplemented by provisions on the peculiarities of crossing the state border in the event of the introduction of a state of emergency or martial law on the territory of Ukraine.

In particular, orphans, children deprived of parental care, who have not reached the age of 18 and live or are enrolled in institutions of various types, forms of ownership and subordination for round-the-clock stay, may leave Ukraine accompanied by a legal representative or another person authorized by him and in the presence of relevant documents.

That is, the departure of orphans, children deprived of parental care, who have not reached the age of 18, outside of Ukraine is carried out accompanied by one of their legal representatives, subject to the written consent of the children's service at the place of application or the children's service of the regional military (military -civil) administration for departure with an indication of the state of final stay of the children (Resolution Cabinet Of Ministers Of Ukraine No. 5737, 1995).

In addition, on March 17, 2022, the Resolution of the Cabinet of Ministers of Ukraine «On the Formation of the Coordination Headquarters for the Protection of Children's Rights in Martial Law» No. 302 entered into force, according to which the main tasks of the Coordination Headquarters, as a temporary advisory body of the Cabinet of Ministers of Ukraine, created for facilitating the coordination of the activities of central and local executive bodies, other state bodies, local self-government bodies on the protection of children's rights under martial law, are:

- coordination of actions of executive authorities, local self-government bodies regarding the organization of evacuation of children, in particular children with disabilities, orphans, children deprived of parental care, minors living or enrolled in institutions of various types, forms of ownership and subordination for round-the-clock stay, who are arranged for upbringing and cohabitation with a foster family, a family-type orphanage, who are under guardianship, care, who are arranged with families of foster carers, from dangerous areas, as well as creating safe conditions for their stay;

- coordination of the actions of the executive authorities regarding the placement and satisfaction of the needs of children evacuated to safe regions of Ukraine and those relocated to states of temporary stay;
- control over the consular registration of children in the state of their temporary accommodation and determination of ways, mechanisms and methods of solving problematic issues that arise during the consular registration of children, and ensuring the return of children to Ukraine after the cessation of hostilities;
- determination of ways and means of solving problematic issues regarding the protection of children's rights in the conditions of martial law;
- informing citizens of Ukraine and the international community about the situation and needs for the protection of children under martial law, etc. (Resolution Cabinet Of Ministers Of Ukraine No. 302, 2022).

An important step for the protection of children during martial law was the introduction by the Office of the President of Ukraine together with the United Nations Children's Fund UNICEF Ukraine and the Ministry of Social Policy of the national program «The child is not alone».

The program is a chatbot – a resource for helping children in wartime, thanks to which you can get answers to any questions about the temporary shelter of a child in a family, the search for a lost child; and also every concerned person can report cases known to him of a child being unattended. Also, the mentioned resource contains useful information for people who are not aware of how to protect the rights of children in the conditions of martial law (Drobyazko, 2023).

There is no doubt that solving the problem of orphans requires taking into account the relevant social, political and economic aspects of the current state of the country, since these aspects have changed for the worse during the war. Experts and statistics indicate that these negative factors now outweigh the positive ones, so the number of children who ended up in orphanages, residential institutions or were left without parental care continues to grow (Myronova, 2020).

Of course, an effective fight against the problem of orphans and children left without parental care requires finding out the reasons that cause it. In our opinion, these should include: a general decline in the standard of living of society and its degradation; disruption of family functions and structure; increase in the number of single-parent families and divorces; unemployment, which affects the family's ability to maintain and raise a child in favorable conditions; sublimation of children's negative emotional states; child abuse in the occupied territories.

These factors make it harder for children to socialize, make friends, and join a culture that suits their interests. It is also worth noting that some of these factors directly or indirectly affect not only the deterioration of the situation in the context of the problem of orphans, but also negatively affect the quality of life of such groups of people as pensioners, large families, people with disabilities, etc.

Effective development of the state is impossible without solving this set of problems. Along with the mentioned threats, it is worth highlighting the one that is a natural consequence of the long stay of the Ukrainian state in the conditions of war. Children who grow up in unfavorable (sometimes even dangerous) conditions are the generation that will be forced to enter society in one way or another. Referring to history and statistics, as well as taking into account the current situation in Ukraine, we can conclude that, most likely, children will face serious difficulties in the process of socialization. Therefore, along with global social modernization, the state needs to solve this problem as well.

Measures of state support for children left without parental care are divided into: material (provision by the state of free accommodation in residential institutions, clothing, food, school supplies, means of arranging life and housing after graduation from a social state institution, free travel in all types transport) and non-material (right to education, housing rights of orphans, right to medical care, declaration of employment).

The organizational basis of the state policy regarding the social protection of orphans and children left without parental care is also provided by state authorities and local self-government bodies that carry out activities related to the protection of children's rights and legitimate interests.

In order for an orphan child, as well as a child left without parental care, to feel protected not only materially, but also spiritually, he is endowed with personal rights. First of all, the right to respect for one's own dignity, the right to protection from abuse by the guardian (guardian), if the child is under guardianship (guardianship), the right to live in the family of the guardian (guardian), the right to ensure the necessary conditions for living, upbringing, education and all-round development at the expense of the state.

Guided by the main international documents and normative acts of Ukraine, which regulate activities in this direction, state authorities should direct their work on the protection of children's rights to: identify and register orphans and children left without parental care; work with orphans and their patronage in guardian families; implementation of state guarantees regarding orphans, providing them with appropriate pensions, payments and other subsidies provided for by law; work in court regarding the protection of children's rights; work to provide housing for orphans; methodical work with social teachers and public organizations.

Currently, state bodies, pedagogical science and practice are making significant efforts to solve childhood problems. New types of educational institutions (gymnasiums, lyceums, colleges), psychological services in educational institutions, centers of socio-pedagogical and psychological rehabilitation are being created.

However, in our opinion, a prospective view of the organization of social protection of childhood should not focus exclusively on social protection bodies. Such activity requires a comprehensive approach involving the intellectual resources of teachers, psychologists, lawyers, and doctors. Economic support is extremely important, requiring a reasonable ratio of economic care that extends to children's families, welfare centers, etc.

Thus, the social protection authorities are entrusted with a responsible duty – to ensure that orphans and children from socially vulnerable families do not feel deprived in any way, at least in material terms, since it will be very difficult to replace the family and family relationships difficult, almost impossible. That is why, as well as due to the increase in the number of children who need special government and public attention, it is necessary to more actively use positive foreign experience to improve the legislation on social protection of childhood in this area.

In general, we can state that today Ukraine adequately implements the functions entrusted to it to ensure the protection of children's rights. At the same time, it should be emphasized that the moral duty of every citizen of Ukraine is to help protect and implement the rights of the most vulnerable category of persons – children, primarily orphans and children left without parental care.

Conclusions

Social and legal protection of childhood is a direction of international and state policy, which provides children, in accordance with their needs, with normal conditions for life and development, protection of honor and dignity, health care, education, active participation in all spheres of life. The main stages of social and legal protection of childhood are defined as: local, regional, state, international, which represent a complex of social institutions, regulatory documents, mechanisms for the implementation and protection of children's personal rights (name, citizenship, personal life, inviolability of housing, rest and leisure , health care, etc.) and the right to education.

Ensuring the child's family rights in the system of their protection is based on the following general principles: non-discrimination, respect for the child's views, consideration of the child's interests, the child's right to life, survival and development.

In general, the state properly takes care of the interests of children in the conditions of martial law, which is evidenced, in particular, by such factors as: a simplified procedure for transferring a child to custody/care; enabling children who were left without parents during martial law to be temporarily placed with families for upbringing; «prohibition» of the simplified adoption procedure.

Orphanage is a social phenomenon caused by the existence in society of children whose parents have died, or children who have found themselves without parental care due to deprivation of parental rights, recognition of incapacity, missing persons, etc. The primary task of civil society during the war in Ukraine is to ensure maximum protection of children's rights and interests.

The socio-legal protection of orphans and children left without parental care should take into account not only the state approach, but also take place in the conditions of a new family (foster, foster, adoptive), changing the attitude of biological parents towards their own children. Systematic analysis of Ukrainian legislation in this area led to the conclusion that the legal position of the family, its status covers not only social, but also labor guarantees.

Optimizing activities in the field of providing social support to orphans and children left without parental care lies in the plane of forming an effective system, the basis of which is the mechanism of socially coordinated interaction of regional authorities and society. Various forms of implementation of social programs and projects require active development: social order, tenders, contests for social projects, contests for non-profit public organizations from various nominations, regarding social support for orphans and children left without parental care.

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Environmental Relations in Armed Conflict (War) Conditions: Assessment of Damage to the Environment and People

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Abstract

The purpose of the article was to outline a framework of instructions to determine the amount of damage caused to the environment and people during the armed conflict, and to determine the consequences of such impact on the environment in Ukraine and, internationally. The theoretical and methodological basis of the research is a system of philosophical, general scientific and special methods aimed at obtaining objective and reliable results, in particular: ontological, axiological, integrative and prognostic. It was found that the events of military nature on the territory of Ukraine extremely exacerbated the problem of effectiveness of international and national legal documents. It was established that at the international level since 2014, the state of Ukraine has been defined as an ecological disaster zone. It was determined that there are economic and "environmental" components in the composition of environmental damage. The environmental component is equivalent to moral damage. It is proposed to create (1) special associations for environmental impact assessment after the return of territories under Ukrainian control; (2) an international financial institution to overcome

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the environmental consequences of armed conflict and occupation; (3) to create a comprehensive system of collecting information on the state of the environment.

Keywords: political responsibility; human rights; environmental regulation; non-property rights; compensation.

Relaciones ambientales en condiciones de conflicto armado (guerra): evaluación del daño al medio ambiente y a las personas

Resumen

El propósito del artículo fue esbozar un marco de instrucciones para determinar la cantidad de daño causado al medio ambiente y las personas durante el conflicto armado, y determinar las consecuencias de tal impacto en el medio ambiente en Ucrania y, a nivel internacional. La base teórica y metodológica de la investigación es un sistema de métodos filosóficos, científicos generales y especiales destinados a obtener resultados objetivos y confiables, en particular: ontológicos, axiológicos, integradores y pronósticos. Se encontró que los eventos de naturaleza militar en el territorio de Ucrania exacerbaron extremadamente el problema de la efectividad de los documentos legales internacionales y nacionales. Se ha establecido que a nivel internacional desde 2014, el estado de Ucrania se ha definido como una zona de desastre ecológico. Se determinó que existen componentes económicos y "ambientales" en la composición del daño ambiental. El componente ambiental es equivalente al daño moral. Se propone crear (1) asociaciones especiales para la evaluación del impacto ambiental después de la devolución de territorios bajo control ucraniano; (2) una institución financiera internacional para superar las consecuencias ambientales de los conflictos armados y la ocupación; (3) crear un sistema completo de recopilación de información sobre el estado del medio ambiente.

Palabras clave: responsabilidad política; derechos humanos; regulación ambiental; derechos no patrimoniales; compensación.

Introduction

In the conditions of war on the territory of Ukraine, the protection of the rights of individuals and legal entities in the field of environmental protection and the use of natural resources involves the coverage and

consideration of some aspects. The first is the loss of natural resources or the deterioration of their quality due to the action of certain natural phenomena (water or wind erosion, flooding, flooding, soil salinization, fires, etc.), including their depletion as a result of extensive, irrational use.

The second is pollution, clogging of objects of the natural environment, which leads, if not to the loss of property, then makes the normal use of natural resources impossible, requires significant material costs for their restoration, bringing them to a normal state for further safe and effective economic and other use.

The third, no less important, and perhaps even more socially threatening, aspect is related to the protection of property rights of subjects, which is caused by the negative impact of a polluted environment on human life and health. After all, for example, when a citizen consumes polluted water and/or breathes polluted air, he, firstly, is forced to bear financial costs for the purchase of appropriate devices for its purification, and secondly, he bears financial costs for improving his health from the consumption of polluted water and food, breathing polluted air. In addition, an individual or legal entity may suffer significant property losses from harmful emissions into the atmosphere due to the complete loss of the crop or its part, the death of forest, fruit and other green plantations, and the deterioration of product quality.

The purpose of the article is to outline directions for determining the amount of damage caused to the environment and people during the armed conflict, and the consequences of such an impact on the environment in Ukraine and at the international level.

1. Methodology of the study

The article is based on the empirical data of international organizations based on monitoring the state of the environment in the territories controlled and not under the control of the Ukrainian authorities in order to develop directions for assessing the damage caused by the armed conflict (war) in Ukraine.

The theoretical and methodological basis of the research is a system of philosophical, general scientific and special methods designed to obtain objective, reliable results, in particular: ontological, axiological, integrative, prognostic and others. The ontological method was used when determining the essence and forms of assessment of the state of the environment. The integrative method contributed to the study of interdisciplinary and interdisciplinary approaches to understanding legal norms. The prognostic method made it possible to identify directions for assessing the damage caused by the armed conflict (war) in Ukraine.

2. Analysis of recent research

Environmental relations in the conditions of war are studied by researchers of various scientific fields: national law, economics, ecology, international law.

Juan M. Dabezies in the work "Human-environmental relations, planning and conservation. "Doing nothing" and "doing something" in the protection of local knowledge" (2021) emphasizes that the protection of relations between man and the environment is a subject that includes various legal frameworks that cross the sphere of environmental management. At the same time, he talks about the global logic of protecting private property.

Compensation for environmental damage as a condition for ensuring the economic security of the state is discussed in the work of the same name by Kireeva (2020). She emphasizes that, among other damages, unearned profits for the time necessary to restore the quality of the natural environment, to restore natural resources to a state suitable for their intended use, should be subject to compensation.

The Ukrainian Helsinki Union for Human Rights (Blaha and Zahorodnyuk, 2017) made a comprehensive analysis of the state of the natural environment in conditions of armed conflict. She characterized the international legal obligations of states to protect the environment during armed conflict. The specifics of prosecution for environmental damage caused during the war were outlined.

A number of researchers talk about the protection of human rights in case of environmental pollution in Ukraine, which is, first of all, a constitutional right of a person and a citizen. R. Stefanchuk (2007) in the monograph "Personal non-property rights of natural persons (concept, content, system, features of implementation and protection)" outlines the range of personal non-property rights that require primary protection. Kostruba (2020) also talks about similar aspects in his work "Personal non-property rights" and also Orel in hers work "Personal non-property rights of legal persons" (2021).

3. Results and discussion

3.1. Assessment of the impact of unstable situations on the environment

After gaining independence, Ukraine had the highest indicator of negative anthropogenic loads on the environment among European countries in almost its entire territory. Moreover, in two-thirds of the regions, the

ecological situation and the quality of the environment were characterized as acutely critical and unfavorable for human health. According to the data provided in the report "The most polluted places in the world - 2013" of the Swiss organization "Green Cross" (Shpet, 2013), the fourth place was given to Ukraine (a 30-kilometer exclusion zone around the Chernobyl reactor).

At the same time, the third and tenth steps are occupied by the Russian Federation (the city of Dzerzhinsk as a center of the chemical industry and the city of Norilsk, where almost 500 tons of copper and nickel oxide are emitted into the air every year, as well as two million tons of sulfur oxides).

After the annexation of the Crimean Peninsula, the seizure of part of Donbas and the full-scale invasion of Ukraine, the Russian Federation does not care about environmental protection of the occupied territories. This issue has been kept quiet for quite a long time in Ukraine and the world (Grozovsky, 1997). Only recently, some experts began to warn that environmental pollution could cause a new wave of refugees from the occupied territories, and the future reintegration of the territories affected by military actions should take place taking into account the ecological component. The need to solve these and other environmental problems was determined in the legislation of Ukraine at one time.

In particular, it was determined that in order to solve the problems of technogenic and environmental safety, it is necessary to carry out a number of measures that are relevant even after the end of the war.

In our opinion, overcoming the consequences of armed aggression on the territory of Ukraine should be guided by the same Main directions of the policy of Ukraine in the field of environmental protection, use of natural resources and ensuring environmental safety, since they have not lost their relevance.

Currently, the strategic goal of Ukraine is the development of comprehensive cooperation with Western and Central European states with the acquisition of full membership in the European Union, and therefore it is necessary to reach European standards in both political and legal, socio-economic, and environmental aspects. At the current stage, the environmental factor is becoming more and more relevant and one of the priorities in international relations, economic and scientific and technical cooperation of almost all countries of the world.

Hence the conclusion - Ukraine should move towards the harmonization of national environmental protection legislation, requirements and standards of environmental safety of economic activity and comprehensive adaptation of them to the Western European ecological space. Along with this, the ecological state of the environment, the level and nature of nature use and nature protection measures, the ecological safety of technologies must also meet Western European standards and regulations to the maximum extent.

At the international level, the status of our country has been determined as an "ecological disaster" zone (Blaha and Zahorodnyuk, 2017). Only a consistent policy of state authorities in cooperation with local authorities, as well as other interested persons of private and public law, will help to prevent and eliminate the enormous impact of armed aggression on the ratio of all components of the environment.

According to the assessment of the I. I. Schmalhausen Institute of Zoology of the National Academy of Sciences of Ukraine (Vasylyuk, 2017), the main consequences of the armed conflict for the state of the environment and the health of living beings today are (1) the destruction of unique landscapes, including significant steppe areas; (2) destruction of populations of red-listed animal species; (3) large-scale burning and felling of large forest areas, mostly purposefully planted around large industrial centers to partially neutralize the negative impact of enterprises (in particular, the Regional Landscape Park "Donetsk Kryaz" and the National Nature Park "Holy Mountains"); (4) the results of chemical processes specific to the zone of armed conflict (the concentration of harmful substances – explosion products (Sulphur oxides, nitrogen, etc.) in the air increases sharply, exceeding the maximum permissible values by 5-8 times); (5) accumulation in the soil of not only metal, but also sulfur, etc.; (6) damage to sewage treatment plants and flooding of mines, causing the formation of salty shallow water unfit for human habitation, and part of the population of the region will be forced to become ecological refugees; (7) pollution of the environment by leaks from mines of radioactive substances that require special chemical treatment; (8) ingress of toxins – the results of decomposition of unburied bodies.

According to OSCE reports, the military conflict in eastern Ukraine has led to a number of dangerous impacts on soils and landscapes, surface and underground water, vegetation and wildlife, and the hostilities have significantly increased the risks of emergency situations at industrial enterprises and infrastructure facilities (Denisov and Averin, 2017). The armed conflict practically paralyzed many aspects of environmental protection activities in the east of Ukraine. The consequences of the destruction of the environmental protection system in the conflict zone will be significant.

In 2017, the Cabinet of Ministers of Ukraine approved the program for the restoration and building of peace in the eastern regions of Ukraine (Resolution CMU No. 1071, 2017), but environmental issues are represented there by only 2 items out of 44. This program is a vivid example of Ukraine's work for the future. Trust funds of many partners formed in accordance with the Memorandum of Understanding on cooperation between the Cabinet of Ministers of Ukraine, the UN and the World Bank became an additional source of funding for the tasks and activities of this Program.

According to the proposals of the OSCE, it is necessary to implement political measures to prevent hostilities in areas where sources of increased ecological danger are located, to carry out international monitoring of the situation, and also to carry out possible preventive measures in relation to sources of increased danger.

In our opinion, in addition to what was proposed above, the Law of Ukraine "On Environmental Impact Assessment" should be applied as widely as possible in this area, which will provide an opportunity to identify any impact on the environment, alternative options for eliminating such impact, and the connection between the use of natural resources and maintaining (improving) productivity for the future (even in the occupied territories).

3.2. Environmental and derivative rights of citizens

In the Constitution of Ukraine and the norms of environmental legislation, the protection and protection of human health have only a declarative nature, it is more related to the object of this right. Constitutional requirements for an environment safe for life and health are fully reproduced in the Civil Code of Ukraine.

Today, the prevailing opinion is that the object of the right to health is the non-property good "health of an individual" (Stefanchuk, 2007). At the same time, despite the apparent simplicity of this issue, it should be noted that today there is actually no clear and legally applicable concept of "health", i.e., the concept of "health of a natural person" precisely as a non-property good. In addition to such a general understanding, the concept of "health" also has its own special legal meaning, in which it acts as a certain object of relevant legal relations. This is necessary under several basic circumstances.

First of all, such an understanding will provide an opportunity to consider "health" not simply as a general philosophical substrate, but, first of all, as a special object of relevant social relations. Secondly, such an approach will provide an opportunity to consider health as a certain social value, which, despite its general nature, has a specific legal nature.

Thirdly, the specified value of health will also determine its special-branch (civil-law) belonging to the category of personal non-property goods, which makes the specified category acquire signs of legal indifference (Orel, 2021). Agreeing with the first two theses, we believe that the third thesis is debatable.

When one or another producer, as a result of his production activities, using outdated, inefficient, high-waste technologies, pollutes and depletes land, water, forest resources, subsoil, atmospheric air, plant and animal

life, belonging to a citizen by right of ownership, general or special use, he pollutes the environment, thereby violating the rights of this citizen to safe natural resources and health care.

We emphasize once again that every person bears significant financial costs for the restoration of impaired health, and it is practically impossible to prove in court that the deterioration of health is connected with one or another case of environmental pollution. And in the event of an armed conflict, the subject has almost no chance to defend his right to compensation for loss of health (except for obvious physical losses).

Scientists, analyzing various circumstances regarding the definition of the concept of human health, often note that if such a good as health can undergo dynamic changes and differentiate depending on the factors that affect the state of vital activity of the organism, then it, accordingly, can also be measured (estimates) according to various indicators (Kostruba, 2020). In our opinion, this very correct and relevant topic deserves further in-depth study in relation to environmental protection and rethinking the concept of "non-property" and "property" law in this area in relation to human health.

Protection of human rights in case of environmental pollution in Ukraine is, first of all, a constitutional right of a person and a citizen. Article 50 of the Constitution of Ukraine clearly defines that everyone has the right to an environment safe for life and health and to compensation for damage caused by violation of this right. Article 116 of the Constitution of Ukraine obliges the Government of the country to ensure the implementation of policies in the field of nature protection, environmental safety and nature management.

In accordance with Part 4 of Art. 68 of the Law of Ukraine "On the Protection of the Natural Environment", enterprises, institutions, organizations and citizens are obliged to compensate the damage caused by them as a result of the violation of the legislation on the protection of the natural environment, in the manner and in the amounts established by the legislation of Ukraine. At the same time, the legislation of Ukraine does not have a clearly defined punishment for environmental damage caused by the aggressor state. Such issues can be settled only at the level of international legislation by filing lawsuits in international courts.

But when the occupied territories are returned to the control of Ukraine, it will also be possible to apply civil liability. Its feature is that the damage caused as a result of the violation of the legislation on environmental protection is subject to compensation in full (Law of Ukraine No.1264-XII, 1991: art. 69), i.e., without applying the rules for reducing the amount of fines and regardless of the fee for pollution of the natural environment and deterioration of the quality of natural resources. Persons who have suffered

such damage have the right to compensation for lost profits for the time necessary to restore health, the quality of the natural environment, and the reproduction of natural resources to a state suitable for their intended use.

Persons owning sources of increased ecological danger are obliged to compensate for the damage caused to citizens and legal entities, unless they prove that the damage occurred as a result of spontaneous natural phenomena or intentional actions of the victims. Damage caused to the environment in connection with the implementation of the agreement on product distribution is subject to compensation in accordance with the requirements of Art. 29 of the Law of Ukraine "On Product Distribution Agreements". In particular, such damage is subject to compensation (compensation) in full at the expense of the investor, regardless of fees for environmental pollution and deterioration of the quality of natural resources.

The investor is released from compensation for damage caused to the environment only if he proves that the damage was caused as a result of spontaneous natural phenomena or intentional actions of the victims.

Article 394 of the Civil Code of Ukraine stipulates that the owner of a plot of land, a residential building, or other buildings has the right to compensation in connection with a decrease in the value of these objects as a result of activities that led to a decrease in the level of ecological and noise protection of the territory, deterioration of the natural properties of the land.

As a general rule, applying criminal or administrative liability to guilty persons does not exempt them from compensation for damage caused by violation of environmental protection legislation. This damage is characterized by both general signs of "damage" and special ones that are characteristic only of environmental damage. The general definition of damage comes down to attributing to it any depreciation, deterioration, reduction, destruction of a good protected by law, or to understanding it as adverse consequences arising from the violation of property or personal non-property rights of the victim.

In accordance with this, environmental damage is defined as a set of negative changes in the quality and structure of the natural environment or its individual elements: deterioration, destruction, destruction of natural objects, disruption of ecological relationships and systems, general deterioration of the natural environment, etc.

According to scientists, one of the most controversial issues is the structure of environmental damage (Komarnytskyi *et al.*, 2006). Yes, there is an idea that damage caused to natural objects is divided into two independent parts (Muntyan, 1982). The first part consists of the cost of material and monetary costs for nature protection measures to restore the disturbed state of nature.

The second part of the damage includes losses in the natural environment that resulted from the exclusion of vital functions of its individual elements or complexes. Such losses, being non-recoverable, relatively non-recoverable or difficult to recover, do not have a monetary value. This damage was called ecological, as opposed to economic, which can be expressed in monetary value.

In the development of this idea, it is considered that the damage caused by the violation of environmental legislation is divided into economic and ecological. The economic one manifests itself in the death, damage, destruction of material values, in the failure to receive income from the use of a natural object, and the ecological one - in the depletion of the natural environment, violation of its ecological connections.

In contrast to economic damage, which is manifested in the cost of losses of material values and expected income, environmental damage is a complex structural entity that has two independent parts: the cost of material and monetary costs used to protect the natural object that was damaged, costs for restoring the disturbed state of the natural environment, etc.; the cost of ecological losses of the natural environment, which occurred as a result of the complete or partial exclusion of life-sustaining functions performed by the environment or a separate component of it.

Such losses are divided into recoverable as a result of economic activity, relatively recoverable when the restoration of natural objects is associated with long periods (restoration of forest vegetation), and non-recoverable. Environmental damage and anthropological damage, as well as economic damage caused to the material interests of nature users, are also distinguished.

Often attention is focused on the consequences of damage, which combines different types of damage - nature, people, economic structures (Havrysh, 2002). Accordingly, biological damage (damage to ecosystems, the natural environment) is distinguished, which is primary, as well as personal damage (damage to human life and health), economic damage (to the material sphere of people's lives).

In fact, all the mentioned estimates of damage caused to the surrounding natural environment differ among themselves, mainly, in the degree of differentiation of the consequences of this damage. At the same time, they all agree that the assessment of this type of damage must be comprehensive, taking into account all aspects of its impact on the state of the environment, people directly, and the material interests of nature users.

Given the above, the following key points of assessment and compensation for damage caused by violations of environmental legislation can be identified. The most significant are the ecological consequences of damage to the natural environment. For example, the destruction or

damage of forest crops on large areas of the forest has a negative impact on forest ecosystems, on the performance of climate-regulating, water-saving and other functions by forests. As a result, the environmental conditions of human life may deteriorate, and the condition of other natural objects may deteriorate.

Only damage that can be calculated and expressed either in kind or in value is subject to compensation. Taking into account the circumstances of the case, the court, at the choice of the victim, may oblige the person who caused the damage to compensate it in kind (hand over an item of the same type and quality, repair the damaged item, etc.) or to compensate the damage in full (Civil Code of Ukraine No. 435-IV, 2003: p. 1 art. 1192).

Compensation in kind consists in the fact that the guilty person is obliged to eliminate the negative consequences of the damage (reforestation, land reclamation, etc.) by his own efforts and means. However, imposing on the offender the obligation to indemnify the damage in kind is possible only in the case when he has the appropriate qualifications, experience, material and technical base for carrying out the relevant nature restoration works, or the specified conditions are irrelevant in certain cases (for example, when restoring forestry signs).

If the offender cannot be obliged to compensate the damage in kind, then he is responsible for full compensation (damage compensation). When calculating the amount of compensation, the following should be taken into account: unused costs of material resources and labor previously invested in a natural object (land plot, forest, water body), costs of reproduction of natural resources (fish, forest, water supply sources, etc.), and also the incomes not received by nature users.

An important role in calculating the amount of compensation is performed by special taxes, their use is due to the complexity of calculating losses caused by the destruction or damage of forests and other natural resources, the need to ensure uniformity of compensation for damage in typical cases.

As a rule, such fees are approved by resolutions of the Cabinet of Ministers of Ukraine in accordance with objects (1) forest; (2) plants from the number of species listed in the Red Book of Ukraine, the European Red List of animals and plants under threat of extinction on a global scale; (3) territorial and internal sea waters of Ukraine; (4) territories and objects of the Nature Reserve Fund of Ukraine; (5) green spaces within cities and other settlements and others.

Conclusions

Summarizing the presented material, it should be noted that the territory of Ukraine has long been subjected to external intervention and aggression, which caused negative consequences in the field of ecology and caused economic losses. With the development of technology, such influence becomes more significant and transboundary. Direct assessment of the impact on the environment in armed conflict can only be carried out by international organizations, and the state suffering from aggression can only indirectly assess the impact and calculate damages from environmental damage.

At the same time, when the territories are returned to the control of Ukraine, the national legislation provides an opportunity to determine the amount of damage to the environment and individuals caused during the armed conflict, and the consequences of such an impact on the environment within Ukraine and at the international level.

To do this, it is necessary to (1) initiate at the regional and/or international levels the creation of an association that will have the authority and access to the occupied territories in order to assess the impact on the environment; (2) create an international financial institution to overcome the environmental consequences of armed conflict and occupation; (3) create a system that will ensure the collection of information for indirect (cross-border) strategic assessment of damage to the environment and people.

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Constitutional law and judicial guarantees: their structure and interpretation at the national and international level

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Abstract

The article is devoted to the study of the essence of constitutional law, together with judicial guarantees, their interpretation and normative consolidation in international legal acts and national regulations, as well as to the clarification of the place of the right to a fair trial in human rights. Thanks to the use of a system of general scientific and special scientific concepts and methods, it was established that the conceptualization of the right to a fair trial was given by the European Convention for the Protection of Human Rights and Fundamental Freedoms and, moreover, is reflected in the precedent practice of the European Court of Human Rights. In this context, characteristic features of the right to judicial guarantees are defined, its procedural and functional components are distinguished, and procedural and substantive justice are characterized. Everything allows concluding that, the characteristic features of the constitutional right to a fair trial in a state governed by the rule of law are defined as: the perceived ability of a person to exercise the specified

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right; the presence of a special subject-object structure; appropriate actions in specially created state judicial institutions to restore violated rights.

Keywords: constitutional rights; fair trial; judicial proceedings; European Court of Human Rights; legal hermeneutics.

El derecho constitucional y las garantías judiciales: su estructura e interpretación a nivel nacional e internacional

Resumen

El artículo está dedicado al estudio de la esencia del derecho constitucional, junto a las garantías judiciales, su interpretación y consolidación normativa en los actos jurídicos internacionales y normativos nacionales, así como tambien, a esclarecer el lugar del derecho a las garantías judiciales en los derechos humanos. Gracias al uso de un sistema de conceptos y métodos científicos generales y científicos especiales, se estableció que la conceptualización del derecho a un juicio justo se dio gracias al Convenio Europeo para la Protección de los Derechos Humanos y las Libertades Fundamentales y, además, se refleja en la práctica precedente del Tribunal Europeo de Derechos Humanos. En este contexto, se definen rasgos característicos del derecho a las garantías judiciales, se distinguen sus componentes procesales y funcionales y se caracteriza la justicia procesal y sustantiva. Todo permite concluir que, los rasgos característicos del derecho constitucional a un juicio justo en un Estado de Derecho se definen como: la capacidad percibida de una persona para ejercer el derecho especificado; la presencia de una estructura especial sujeto-objeto; acciones apropiadas en instituciones judiciales estatales especialmente creadas para restaurar los derechos violados.

Palabras clave: derechos constitucionales; juicio justo; procedimientos judiciales; Tribunal Europeo de Derechos Humanos; hermenéutica jurídica.

Introduction

The right to a fair trial, being an integral part of the principle of the rule of law, appears today as a fundamental legal value of any democratic society (Matat, 2016). With the ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (hereinafter referred

to as the Convention), Ukraine also undertook obligations under this international legal document, which requires the need to organize its legal system in such a way as to ensure the real guarantee of the right provided for by the Convention to a fair trial.

However, according to the statistical data of the European Court of Human Rights (hereinafter referred to as the ECtHR), Ukraine is consistently among the top five countries in terms of the number of appeals to the ECtHR. At the same time, almost half of the decisions of the ECtHR relate to the violation of the right to a fair trial (Boyko, 2020).

Under such conditions, one of the key issues of modern Ukraine, on the territory of which martial law has been introduced, is whether the modern national judicial system is able to ensure the administration of justice and the right of citizens to a fair trial, which is a fundamental and primary duty of the state. Unfortunately, in the conditions of special legal regimes, these aspects of the right to a fair trial are not always fully implemented, and the state faces a number of problems, the complex solution of which is one of the priority directions of a modern democratic state (Rogach *et al.*, 2022).

1. Methodology of the study

The methodological basis of the research combines general scientific and special scientific concepts, theories and methods of scientific knowledge of objective reality, in particular: dialectical, formal-legal, historical-legal, method of classification and grouping, analysis and synthesis, comparative analysis, formal-logical method, modeling and abstraction, system, complex and others.

Thus, the dialectical method is used to learn the content and structure of the constitutional right to a fair trial. Historically, the legal method was used during the analysis of the patterns of formation and development of the principle of justice as a key principle of justice in the modern legal state. The system method was used in the analysis of the implementation of European standards into national legislation as a single, mutually agreed and mutually conditioned system.

The formal-logical method made it possible to develop and form the main definitions, and the systemic-structural method contributed to distinguishing the elements of the right to a fair trial. Modeling and abstraction methods were used in the process of formulating conclusions. General epistemological methods of cognition are also widely used - induction, deduction, analysis and synthesis, which made it possible to study the theoretical and logical essence of the application of the principle of justice in the judiciary of a modern European state.

2. Analysis of recent research

Many scientists (Guyvan, 2019; Adygezalova, 2022; Rogach, 2022; Boyko, 2020) are devoted to the question of effectiveness and efficiency of the right to a fair trial in the context of its implementation on the basis of legal certainty in international and national law.

At the same time, it should be noted that although these scientists made a significant contribution to the development of the theoretical aspects of the studied issues, the question of modern understanding of the guaranteed Art. 6 of the Convention on the right to a fair trial, as well as the state of its implementation in Ukraine, and the problems associated with it, insufficient attention has been paid.

The purpose of this article is to clarify the essence and define the main structural elements of the right to a fair trial; analysis of the modern understanding of the right to a fair trial in the practice of the European Court of Human Rights (hereinafter referred to as the ECtHR); determination of the conceptual basis for improving the process of implementation into the national legal system of the practice of the Court regarding the application of Art. 6 of the Convention.

3. Results and discussion

The right to a fair trial is one of the fundamental rights of every person, thanks to the functioning of which it is possible to talk about the development of democratic, legal principles of state formation, because it is a guarantee of the protection of violated rights, freedoms and legitimate interests of a person. Proper and effective implementation of this right is impossible without a clear understanding of its concept and structure.

That is why the terminological awareness of the concept of the right to a fair trial and the definition of its structural elements has important theoretical and practical significance, as it will ensure its meaningful implementation in the best possible way. Moreover, it covers an extremely wide field of various categories, because "it concerns both institutional and organizational aspects, as well as specifics of the implementation of individual court procedures" (Koval, 2006: 129).

First of all, we note that part of the guarantees that make up the content of the right to a fair trial are not mentioned in Art. 6 of the Convention. They are developed and interpreted by the precedent practice of the ECtHR. Indeed, it is quite difficult without the application of such decisions to unambiguously identify and outline the meaning of the terms "reasonable term", "legal certainty", "justice", "independence of judges", "impartiality", etc. (Guyvan, 2019).

At the same time, it should be noted that in accordance with Part 1 of Art. 32 of the Convention, the interpretation of its norms is assigned to the exclusive competence of the Court. Therefore, the practice of the ECtHR, which under the specified circumstances is recognized as the basis of the official international interpretation of the 1950 Convention, is decisive for the formation of the legal relationship of the legislator of the countries participating in the Convention and the relevant law enforcement institutions.

The ECtHR interprets the concept of the right to a fair trial quite broadly, in particular, based on the fact that it is of fundamental importance for the functioning of democracy and the principle of the rule of law. Thus, in the decision of 17.01.1970 in the case "Delcourt v. Belgium", the ECtHR noted that a restrictive interpretation of the right to a fair trial would not correspond to the purpose and meaning of the provisions of Art. 6 of the Convention on the Protection of Human Rights and Fundamental Freedoms (Case of Delcourt v. Belgium, 1970).

Based on the fundamentality and multifacetedness of the right to a fair trial, a uniform understanding of it is not possible without a comprehensive understanding of the three interrelated constituent legal categories (definitions) – "law", "justice" and "court".

Being a "regulatory norm of political communication", the law should serve as a "criterion of justice". And in order to know what law is, one should understand what phenomena it is connected with and where it comes from. As noted in the scientific literature, first of all, it got its name from justitia – "truth, justice", that is, law is the "art of goodness", "equality and justice". That is why, like any regulatory norms, legal relations are a manifestation of what is fair and proper. And it is no coincidence that the word "right" in the Ukrainian language has a common root with the word's "truth", "right", "justice" (Murashyn, 2014).

Currently, the questions regarding the interpretation of the concept of «law», the definition of its features and approaches to understanding are sufficiently described in the legal literature. Without resorting to an in-depth polemic on this matter, we share the point of view of scientists who indicate that the term «right» is widely used in various spheres of social life, is polysemic in its meaning and is used in such meanings as: the presence of a person of a certain interest; the possibility of committing an act; as a guarantee of one's own behavior; a requirement for the behavior of other persons; compliance with the criteria of correctness and justice; justification, truthfulness, etc. In view of this, law should be distinguished from the point of view of two meaningful components:

a) objective law, that is, a set of legal norms expressed (externally objectified) in relevant legal sources - regulatory legal acts, court decisions, legal customs

etc; b) the right is subjective, which belongs to individual persons (subjects) and consists in the presence of certain legal opportunities for each of them» (Petryshyn *et al*., 2015: 87-88).

As noted in the scientific literature, «the term «right» comes from the root «rights», which means truth, justice» (Skakun, 2001). However, the concept of «right» does not have a legal meaning in all cases. Legal law, in contrast to customs, is also called «legislative law», which, in turn, is often defined as «positive law», that is, what comes from the state and society, expressed in written norms, contained in normative legal documents, in particular, laws, court precedents, acts of the executive power, etc. (Skakun, 2001).

With the development of the state and social relations in general, there was a need for normative consolidation of the rules of behavior and customs formed in one or another sphere of life. Undoubtedly, this is the way in which the necessary system of guarantees for the protection of the rights, freedoms and legitimate interests of the participants in legal relations, including in the field of criminal justice, is being formed in the state.

And as history shows, this is done taking into account the socio-cultural, economic, political and legal features of the state's development. It is thanks to the legal norms enshrined in the law that various legal conflicts and disputes are resolved in democratic states governed by the rule of law. And in this aspect, the right to a fair trial is of great importance, which is clearly evidenced by the norms of Art. 55 of the Constitution of Ukraine, according to which the rights and freedoms of a person and a citizen are protected by the court (Constitution Of Ukraine, 1996).

So, it is axiomatic that in the modern world, law is a social institution that expresses the objective will, the degree of freedom and equality, allows the realization, survival and reproduction of both an individual and society as a whole. As the main regulator of joint actions, the law requires individuals to focus on the main criterion – justice, which reflects the basic values of society that ensure its self-survival.

In scientific literature, law is interpreted in an objective and subjective sense. In the context of our research, the subjective understanding of the concept of law plays an important role, which is interpreted in two meanings: 1) in a broad sense - everything that follows from legal norms (objective law) for a person and characterizes him as a subject of law; the right to specific opportunities; 2) in the narrow (proper) way – the possibility of a certain behavior of a person provided by a legal norm; the measure of a person's possible behavior is defined in legal norms (Shestopalova, 2011).

It should be noted that in the national judiciary, the subjective right of each participant is realized through such principles as access to justice, competition, ensuring the right to defense and the right to appeal procedural

decisions, actions or inaction, dispositiveness, etc. In particular, a person is given a legal opportunity to use a certain right provided for by law at his discretion; require other participants in the trial to act within the limits of the law; apply to state bodies and officials for the protection of their rights, etc.

For this purpose, the state is entrusted with the obligation at the legislative level to establish effective and efficient legal mechanisms and guarantees for the realization of the subjective right of an individual.

An important definition that is part of the researched construction is «justice», which has a more moral and philosophical orientation, while it is also used in modern legal science. In this context, it is worth noting that:

> Rules for judicial review of disputes, conflicts, and prosecution occupy a prominent place in the Bible. Actually, its provisions are aimed at ensuring the correctness and justice of the relevant decisions. In particular, it is about the equality of people before the court, the responsibility of a person for his actions, ensuring the justice of the court decision (Murashyn, 2014: 193).

Therefore, based on the evolution of the judiciary and law in general, it can be argued that the modern democratic principles of ensuring the protection of human rights and freedoms cannot exist without the functioning of a fair judiciary.

After all, in modern judicial proceedings, the court itself, being an independent and impartial arbitrator, puts the «final point» by considering the case on its merits and making a final decision, thereby resolving contradictions between the parties to the conflict, who are participants in the relevant procedural legal relations.

As the American philosopher J. Rawls rightly points out, the main idea embedded in the concept of justice is the idea of honesty. Justice should not be confused with a comprehensive view of the goodness of society, for it is only part of any such conception. For example, it is important to distinguish the meaning of equality, which is one aspect of the concept of justice, from the meaning of equality, which belongs to a larger social ideal (Rawls, 1999).

U. Koruts notes that «the conceptualization of the sociological-legal category «justice» today is in a state of permanent transformation of both its substantive and methodological content. As a social phenomenon, justice is becoming an increasingly amorphous and unattainable characteristic of social development, since economic processes contribute to the concentration of public goods in rather limited social strata, which generates property inequality, and therefore, inequality of opportunities for individuals to realize their rights and freedoms, regardless of their formal legislative consolidation (Koruts, 2015).

Understanding the category «justice» ensures its universality both from the point of view of the philosophical context of the legal foundations of social relations regulation, and the purely legal content of social relations. In the context of a trial, «justice» appears simultaneously as an axiological category; as a means of achieving a balance of public interests and expectations; as a basis for the formation of legal value; as the main category in establishing the right to a fair trial» (Koruts, 2015: 38).

Making a fair decision (both a decision and a sentence) directly depends on the substantive trial procedure itself. That is, the adoption of a fair final decision directly depends on the conduct of a fair trial. Therefore, in the legal sense, justice should be considered as a property of the law, expressed, in particular, in «an equal legal scale of behavior and in the proportionality of legal responsibility to the offense committed or as a dimension, equality in the legal status of subjects» (Berezhanskyy, 2017).

In the modern world, as J. MacBrayd quite rightly points out, justice cannot be achieved where the prosecution and the defense in criminal proceedings are in an unequal position. Such procedural inequality can be seen, for example, when the testimony of experts is not actually neutral, but incriminating, when the defense is deprived of full access to the materials of the court case, when the prosecution can make submissions to the first or appellate instance, and the defense cannot react (MacBrayd, 2010), and the right to a fair trial involves an internal balance of the interests of the parties, taking into account the specifics of a specific case, the evidence presented, and the possibility of appealing the decision.

The external manifestation is disclosed through the rules on the publicity of the proceedings within a reasonable period of time by an independent and impartial court. The discretion of the judge in this regard acquires special importance, since the criteria of justice are subjective. Justice should be characterized as a property (quality) of law. Accordingly, the objectivity of the decision depends on the extent to which the court will correctly understand the circumstances of the case and bring them into compliance with the legislation (Vylova, 2014).

Defining justice in a narrow sense, the ECtHR singles out such requirements that are not specified in paragraph 1 of Art. 6 of the Convention: proper notification and hearing, taking into account by the court only evidence obtained by legal means, issuing a reasoned decision, the principle of equality of parties in the adversarial process, the prohibition of interference of other branches of government in the process of administration of justice, the principle of legal certainty.

From such positions, «justice» in the procedural sense is an analogue of «due judicial procedure», which, in our opinion, includes a number of requirements in its content: proper notification and hearing, taking into

account evidence obtained only by legal means, reasonableness of the decision; the principle of «competitiveness and equality of parties»; the principle of legal certainty; prohibition of interference of other branches of government in the process of administration of justice.

It should be emphasized that in the context of the conceptual reformation of national legislation, the issue of judicial protection of human rights, freedoms and legitimate interests is in constant focus among international institutions, lawyers - scientists and practitioners, as well as civil society. After all, every person wants to be sure that his constitutional rights and freedoms will be protected in case of falling into the sphere of judicial proceedings, and in the case of their violation, they will be restored.

That is why all legislative acts, which are adopted at the state level and regulate a certain sphere of legal relations, must meet the requirements declared in international legal acts and the Constitution of Ukraine. And although the principles of justice are not directly recognized in the norms of the Constitution of Ukraine, the specified category, being a norm-principle of a democratic, legal society, practically permeates all its provisions.

According to the correct statement of N. Gren, in modern society, justice is the basis of the right to a fair trial. The state and civil society create competent bodies of state power to ensure the rights and freedoms of citizens and to implement the functions of the state. One of the most important functions of the rule of law is the administration of justice, therefore this right is an important principle of the rule of law and the basis of democratic transformations in society (Gren, 2016).

Another structural element in the construction under study is the category «court». First of all, it should be noted that according to Art. 124 of the Constitution of Ukraine, the function of justice at the national level is carried out exclusively by the courts, which, among other things, are entrusted with the duty of ensuring control over the legality and reasonableness of making procedural decisions and conducting actions in criminal proceedings (Constitution Of Ukraine, 1996).

In its activities, on the one hand, the court protects public interests from encroachments by individuals, and on the other hand, the interests of an individual from threats emanating from other individuals or the government itself. Indeed, in a legal, democratic state, the court occupies a special position regarding the protection of the rights, freedoms and legitimate interests of the individual and society in general.

As evidenced by the analysis of doctrinal studies, among lawyers there is no single point of view regarding the understanding of the concept of «court». It is likely that the scientific controversy is caused by the lack of legislative (official) clarification of the concept of court. For example, in Art. 17 of the Law of Ukraine «On the Judicial System and the Status of Judges» only states

that the judicial system is built according to the principles of territoriality, specialization and instance, while the highest court in the judicial system is the Supreme Court.

In general, the judicial system in Ukraine consists of: «1) local courts; 2) appellate courts; 3) Supreme Court. At the same time, higher specialized courts operate in the judicial system to consider certain categories of cases in accordance with this Law» (On The Judicial System And The Status Of Judges: Law of Ukraine, 2016).

In the precedent practice of the ECtHR, the concept of «court» should not necessarily be considered as «a court of the classical type, integrated into the standard system of state courts» (Case of Campbell and Fell v. The United Kingdom, 1984). So, as rightly emphasized in the doctrine, the very term «court» used in Art. 6 of the Convention is interpreted by the ECtHR in a broad sense, and the concept of «court», in addition to actual judicial bodies, may include arbitrations, professional disciplinary bodies, bodies dealing with land issues, authorities of the permit system, etc. (Tregubov, 2010).

Based on this, E. Tregubov defined the following system of criteria (characteristics of such bodies), laid down by the ECHR as the basis for recognition of this or that body by a «court» in the sense of Art. 6 of the Convention: «1) the ability to make binding decisions; 2) mandatory legislative regulation of the functioning and activity of the «court»; 3) the presence of a function established by law regarding consideration of legally significant issues; 4) guaranteed independence from other branches of state power and participants in the case» (Tregubov, 2010).

Today, at the national level, the specified criteria are enshrined in the Law of Ukraine «On the Judiciary and the Status of Judges» dated June 2, 2016, which defines «the organization of the judiciary and the administration of justice in Ukraine, which operates on the principles of the rule of law in accordance with European standards and ensures the right of everyone to fair court» (On The Judiciary And The Status Of Judges: Law of Ukraine, 2016).

Also, the court must be independent and impartial, and its activities must be legal, that is, carried out in accordance with the law. A legal court is the necessary basis for the consideration of a case by a competent court, which, on the principles of the rule of law and according to a defined procedure, resolves legal disputes based on the law. Therefore, the state should not interfere in the results of the trial, because otherwise such principles of judicial proceedings as legality, equality of parties, etc. will be violated.

As can be seen from the analysis of scientific sources, the legal doctrine pays close attention to the definition of the concept of the right to a fair trial, which is due to several main, generally related factors. First of all, this conceptualization is due to Ukraine's ratification of the Convention on the Protection of Human Rights and Fundamental Freedoms, in Art. 6 of which

this right is guaranteed. Also, in the norms of Art. 55 of the Constitution of Ukraine enshrined the right of everyone to a fair trial (Constitution Of Ukraine, 1996), and in Art. 2 of the Law of Ukraine «On the Judiciary and the Status of Judges» dated 02.06.2016 defines that the court, administering justice on the basis of the rule of law, ensures everyone the right to a fair trial (On The Judiciary And The Status Of Judges: Law of Ukraine, 2016).

In addition, in paragraph 9 of the decision of the Constitutional Court of Ukraine dated 30.01.2003 No. 3-рп/2003 it is stated that justice in its essence is recognized as such only if it meets the requirements of justice and ensures the effective restoration of rights (Case on consideration by the court individual resolutions of the investigator and prosecutor, 2003).

So, as we can see, the practice goes by considering the constitutional right to judicial protection as a component of the right to a fair trial. At the same time, it is worth supporting the point of view expressed by N. Sakara, that it is more appropriate to distinguish the concept of «fair trial» in a broad and narrow sense.

> In a broad sense, this concept includes both institutional and procedural aspects, that is, all the elements provided for in Article 1. 6 of the Convention, since it cannot be a question of a fair trial if the case is considered, for example, in violation of the principles of the administration of justice only by the court, the independence of judges and their submission only to the law, publicity, and others. In a narrow sense, this concept applies only to the requirement of «fairness» of the procedure, which in the text of the article of the Convention is used along with the procedural requirements of publicity and reasonableness of the trial period (Sakara, 2010: 133).

Therefore, the right to a fair trial in the broadest sense should be considered as a fundamental subjective right of a person, enshrined in international and national legal acts, recognized by the international community, endowed with a complex complex structure and including a system of general standards of a fair trial in international and national judicial institutions.

The right to a fair trial includes a set of not only procedural elements-rights, but also institutional and functional ones, in particular, access to justice, independence and impartiality of the court, publicity and openness of court proceedings.

In our opinion, the characteristic features of the constitutional right to a fair trial in a state governed by the rule of law should include: the perceived ability of a person to exercise this right; special subject-object composition; as a result, appropriate actions in specially created state judicial institutions aimed at restoring violated rights.

Today, the right to a fair trial is enshrined and guaranteed both at the international and national levels, while not disclosing its content. This,

of course, determines the existence of scientific polemics regarding its legal understanding. However, in the conditions of a radical reform of the judiciary, the issue of a uniform understanding and enforcement of this right becomes particularly relevant, because the ECtHR has repeatedly stated the violation of the right to a fair trial in its various aspects.

Taking into account the existing doctrinal developments regarding the definition of the structure of the right to a fair trial, we consider it expedient to distinguish two interrelated elements of the right to a fair trial, regardless of the scope of the judiciary, as functional elements of the right to a fair trial (access to justice; independence and impartiality of the court; publicity and openness of judicial proceedings) and procedural elements of the right to a fair trial (competition of the parties; reasonableness of terms; appeal of procedural decisions, actions or inaction).

Conclusions

The constitutional right to a fair trial is a self-sufficient procedural right – a guarantee of ensuring, protecting and restoring all other human rights by applying to the court, which will make a fair decision on the basis of fair procedures. Characteristic features of the constitutional right to a fair trial in a state governed by the rule of law are defined as: the perceived ability of a person to exercise the specified right; the presence of a special subject-object structure; appropriate actions in specially created state judicial institutions aimed at restoring violated rights.

The right to a fair trial in a broad sense should be considered as a fundamental subjective human right, enshrined in international and national legal acts, recognized by the international community, endowed with a complex complex structure and including a system of general standards of fair trial in international and national courts institutions.

The right to a fair trial includes a set of not only procedural elements (competence of the parties; reasonableness of terms; appeal of procedural decisions, actions or inaction), but also a functional component (access to justice, independence and impartiality of the court, publicity and openness of court proceedings).

The term «trial justice» encompasses the unity of procedural and substantive justice. Procedural justice consists in the implementation of judicial proceedings in accordance with the procedural form established by law, which in its essence meets the requirements of justice. Substantive justice is characterized by the content of the decision made by the court during the resolution of a specific dispute or case.

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Clusters as a Mechanism for Solving Socio-Economic Problems of Post-Conflict Ukraine

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Abstract

The purpose of the article was to analyze the cluster strategy in various countries of the world and to highlight the legal instruments that can be used in the process of creation and operation of clusters in Ukraine, taking into account the existing post-conflict socio-economic problems. The research methods used were: analysis, synthesis, consistency, comparison, generalization and prognosis, etc. The main models of cluster development in the world practice are analyzed. The characteristics of the state strategy in the field of regional clustering in the USA, Canada, Italy, Germany, Austria, France, Finland, Japan and China are studied. The authors focused on the legal instruments used in the process of creation and operation of clusters in different countries of the world, which it is advisable to borrow and implement in the Ukrainian legislation. Finally, the following problems of cluster creation in Ukraine have been identified: the lack of a legislative framework; a state strategy to support clusters, as well as incentives for investors. It is concluded that clusters in a difficult socio-economic situation in Ukraine should help to attract investments and develop the economy of regions affected by hostilities.

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Keywords: cluster; state strategy; socio-economic problems; world economic experience; investments.

Los clústeres como mecanismo para resolver los problemas socioeconómicos de la Ucrania posterior al conflicto

Resumen

El propósito del artículo fue analizar la estrategia de clústeres en varios países del mundo y resaltar los instrumentos legales que se pueden utilizar en el proceso de creación y operación de clústeres en Ucrania, teniendo en cuenta los problemas socioeconómicos existentes del posconflicto. Los métodos de investigación empleados fueron: análisis, síntesis, consistencia, comparación, generalización y pronóstico, etc. Se analizan los principales modelos de desarrollo de clúster en la práctica mundial. Se estudian las características de la estrategia estatal en el campo de la agrupación regional en EE. UU., Canadá, Italia, Alemania, Austria, Francia, Finlandia, Japón y China. Los autores se centraron en los instrumentos legales utilizados en el proceso de creación y funcionamiento de clústeres en diferentes países del mundo, que es recomendable tomar prestados e implementar en la legislación ucraniana. Finalmente, se han identificado los siguientes problemas de creación de clústeres en Ucrania: la falta de un marco legislativo; una estrategia estatal para apoyar los clústeres, así como incentivos para los inversores. Se concluye que los clústeres en una situación socioeconómica difícil en Ucrania deberían ayudar a atraer inversiones y desarrollar la economía de las regiones afectadas por las hostilidades.

Palabras clave: clúster; estrategia estatal; problemas socioeconómicos; experiencia económica mundial; inversiones.

Introduction

The study of the strategy of clustering in foreign countries demonstrates that clusters are a significant impetus for the development of the region, and therefore it is advisable to apply this mechanism to solve the problems of the post-conflict regions of Ukraine. Clusters in Ukraine can become an effective mechanism for attracting investments from national and foreign investors, as well as for the integration of Ukrainian manufacturers into the world market of high-tech products and technologies.

Clusters will make it possible to increase the efficiency of the potential of post-conflict regions of Ukraine, to activate entrepreneurial activity especially in the innovative sphere. However, to accomplish this, it is necessary to provide an incentive mechanism for entrepreneurs:

> The advantages of the processes of clustering for participating countries are also as follows: a more efficient use of the potential of individual regions, diversification of the regional economy, growth in the number of taxpayers and expansion of the tax base, activation of the partnership dialogue "business - authorities", reduction of the budget dependency on some monopolistic business units (Kochanska *et al*., 2016: 26).

Clusters are an effective mechanism for increasing the level of competitiveness of certain regions of Ukraine. As a result, the formation and development of clusters in Ukraine, particularly in the post-conflict period, is a necessary condition for increasing the socio-economic level of the state. In this regard, the process of clustering is multifaceted, the cluster policy of the state must be elaborated taking into account specific features of the socio-economic and political development of the state.

The purpose of the article is to analyze the cluster strategy in the world countries and to distinguish legal instruments that can be used in the process of creating and functioning of clusters in Ukraine taking into account the existing socio-economic problems of post-conflict Ukraine.

Based on the specified purpose, the following tasks have been solved in the article: the main aspects of implementing the state strategy in regard to the creation and functioning of clusters in such countries as: USA, Canada, Germany, Austria, Italy, France, Finland, Japan, China are analyzed; legal instruments that can be used by the Ukrainian legislator while creating clusters in Ukraine and that will contribute to the solution of socio-economic problems existing in Ukraine are studied.

1. Methodology of the study

The authors of this study used the dialectical method of cognition and a number of general scientific special methods of scientific research. Thus, the method of monographic analysis has assisted to clarify those issues that are relevant and are being researched by scholars and covered in scientific publications. The method of analysis and synthesis has made it possible to generalize the existing definitions of clusters, which has made it possible to single out the peculiarities of clustering in the region.

The application of the system method has made it possible to systematize the state strategies that are used in global practice regarding the clustering of regions. The method of economic and legal analysis has been applied to

single out the legal instruments that are used in the process of creating and functioning of clusters in world practice and that make sense to implant in the legislation of Ukraine to solve the socio-economic problems of post-conflict Ukraine. The method of generalization has made it possible to draw conclusions based on the conducted research.

2. Results and Discussion

2.1. Analysis of the concept and features of clustering in the world practice

There is no single approach in the scientific literature to define a cluster, which is due to the lack of a single, generally accepted model of clustering of the territory, but there are common features that unite different types of clusters.

> There is no one cluster model as each is exceptional in its own way and managed differently, with other relations between associated entities, as well as each of them requires an individual scope of supporting actions. Notwithstanding various perspectives that define this issue, following the presentation of various approaches, we can indicate three basic areas as the structural core of the idea of clusters, which relate to: spatial concentration of entities, their mutual competitiveness, as well as mutual interactions of relations between participants (Piątkowski, 2015: 316).

M. Porter, who is believed to be an ideologist of cluster development, introduced the concept of a cluster defining it as a group of interrelated companies and related organizations concentrated in a certain area in a relevant industry (Porter, 1990).

T. V. Tsihan offers three definitions of clusters, each of them demonstrates the main feature of cluster functioning: 1) regionally limited forms of economic activity in adjacent sectors, which are mainly associated with one or another scientific institution (research institute, University); 2) vertical production chains. These are rather narrowly defined sectors, where adjacent stages of the production process make up the core of the cluster; 3) industries defined at a high level of aggregation (e.g. “chemical cluster”) or a set of sectors at an even higher level of aggregation (e.g. “agro-industrial cluster”) (Tsihan, 2003).

Clusters are local concentrations of horizontally or vertically connected companies that are specialized in related areas of business together with supporting organizations (Business clusters: promoting enterprise in central and Eastern Europe, 2005).

O. Sölvell defines cluster initiatives as organized efforts aimed at increasing the growth and competitiveness of clusters in a region, which includes cluster companies, government and/or research institutions (Sölvell *et al.*, 2003). Clusters, on the one hand, create cooperation, and on the other, stimulate competition at the market, which benefits all participants. Therefore, innovation clusters provide an impetus for further development of regional centers of excellence and primarily serve as a tool for the development of existing strong points (Mauroner, 2015).

Summarizing the existing definitions of clusters, it is possible to single out the peculiarities of region's clustering:

- territorial localization of the cluster;
- clusters unite manufacturers, suppliers, research organizations, consulting companies, credit organizations, infrastructure companies and other participants;
- the presence of a leading enterprise that determines the economic strategy and directions of economic activity of the entire cluster system;
- the stability of economic relations of cluster participants;
- availability of relationships and coordination of the interaction between cluster participants.

The conducted research shows that three main models of cluster development have been formed in the world practice: North American (for example, the USA, Canada); European (for example, Germany, Austria, Italy, France, Finland) and Asian (for example, Japan, China).

> When implementing a cluster strategy in the North American region, the state and business separate themselves from each other, in Europe the state interacts with entrepreneurs, and in the Asian region the state tries to penetrate directly into the structures of large private companies" (Karpenko, 2011: 45).

Examples of successful clusters in the USA are: Silicon valley, where computer technologies and other high-tech products have been developed; Detroit, which is known for manufacturing cars; New Mexico, which is a center of nanotechnology, biotechnology, renewable energy sources; Medical Alley, where medical technologies have been developed; Nuclear Energy Modeling & Simulation Energy Innovation Hub, which is known for the development of nuclear technologies; Magnolia Business Alliance, where the energy industry is being developed.

Most of the relationships in the USA are mediated by the market, developed competition between companies is the main factor in the development of clusters of the North American model. Scientific and technological partnership has been widely developed in the US clusters,

there is provision of loans and preferential taxation of companies that carry out scientific research and development programs.

Canada has experience in implementing the following cluster initiatives: biotechnology cluster (Montreal, Toronto, Vancouver, Ottawa, Halifax); information and telecommunications cluster (Vancouver, Calgary, Quebec, etc.); high-tech clusters (Montreal, Ontario, etc.); multimedia cluster (Montreal, Toronto, Vancouver); winemaking cluster (Niagara) and others.

Support for business cluster initiatives is provided in Canada at all government levels – federal, regional and municipal. However, specific forms of support vary at each level. There is no single concept of cluster policy implementation at the federal level in Canada.

The main role of the government should be to establish general rules, and the implementation of specific cluster initiatives can be entrusted to the administrations of provinces and municipalities. At the same time, the cluster strategy is part of the country's national innovation strategy. This strategy is coordinated by the National Research Council (NRC), the leading federal agency for research development.

A distinctive feature of regional cluster initiatives formed with the participation of the NRC is that all clusters are included into networks that go beyond their regions. In addition to the NRC Technology Cluster Initiatives at the federal level, the Canadian government provides support to clusters in the implementation of investment attraction policies, promoting the sale of company products at foreign markets, regulating the labor market, investing into promising scientific research and development projects, creating educational programs, protecting intellectual activity, etc.

Canada's cluster policy varies on the basis of priorities of federal, provincial and local authorities and often ranges from tax incentives for the private sector to such projects as the "Innovation Supercluster Initiative". Canada is now globally recognized for its extraordinary investment of 950 million US dollars into five superclusters, which consist of a series of related clusters and industries (So *et al.*, 2019).

Consequently, clusters in Canada have been widely developed and have support at all government levels: federal, regional and municipal. There are tax incentives for the private sector and large investments by federal agencies in the development of innovation superclusters.

Studying the European model, it can be argued that there is an active development of cluster policy, which has a positive effect on the competitiveness of regions and contributes to the creation of technological chains. An example of a successful European cluster is The Software Cluster in Germany, which involves Universities and research organizations in software development.

The German government has been paying more and more attention to cluster initiatives since 2003. First of all, it is applied to projects on the creation and development of clusters in the field of high technologies, where the state supports the consolidation of efforts of industry and scientific centers (Sölvell *et al*., 2003).

Financial incentives are provided for clusters in Germany and there is a merger of private and public cluster participants, which allows achieving high results.

> In Germany, for example, a very interesting experiment was launched in the early 1990s with the BioRegio-Competition. The federal government offered financial support for the three regional biotech clusters that could most convincingly demonstrate that they had the critical assets, the plan, and the willingness to upgrade their cluster. Much beyond the financial incentive the mere process of getting the relevant private and public cluster participants together proved to be an important step in getting Germany to become the leading European location – alongside the UK – for biotechnology (Ketels, 2004: 3).

Analysis of cluster activity in Germany allows us to state that there is state support for the consolidation of industry and scientific centers, the unification of private and public cluster participants, as well as financial stimulation of cluster activity.

The cluster policy gave a significant impetus to the economy of Austria, where cross-border clusters with Germany, Italy, Switzerland, and Hungary began to operate, and relations with France and Great Britain were intensified. The key factor was the policy of stimulating the development of relationships between research institutes and the industrial sector, reducing regulatory barriers within innovation programs, specialization of clusters and the formation of competitiveness centers (Kyzym *et al*., 2011).

Consequently, cross-border clusters have developed in Austria, the development of relationships between research institutes and the industrial sector is stimulated, and regulatory barriers in the process of implementing innovation programs are reduced.

The widely known Cosmetic Valley cluster was founded back in 1994 in the Aire-et-Loire region in northern France. The cluster includes such market giants in the field of cosmetics and perfumery as Maybelline, Yves Saint-Laurent, Shiseido, Christian Dior and Guerlain (Sylvie, 2017). Cluster policy in France is implemented by bringing together business, the scientific community and educational centers.

At the same time, all organizations develop their own strategy, which does not contradict the regional development strategy. Close interaction with the regional authorities plays an important role in this process. Thus, France has the interaction between large, medium and small enterprises and the consolidation of efforts of industrial enterprises and scientific

centers, as well as the system of incentives for the development of high technologies is also applied.

The Italian model envisages a cluster that creates small and medium-sized enterprises of a similar volume of production and a high level of specialization. This model has no leader and all enterprises are both contractors and competitors (Gorynia and Jankowska, 2008).

The strategies of Italy's clusters – the biomedical cluster in Mirandola and the ceramics cluster in Sassuolo – are based on innovation and internationalization. The biomedical cluster in Mirandola is characterized by internationalization through alliances with external leaders. Innovation and investments in tangible and intangible assets play their role in both processes: production processes and distribution strategies in Sassuolo, as well as research capacity and collaboration with Universities and research centers in Mirandola made it possible for both clusters to integrate global markets. It demonstrates the variety of strategies available to industrial regions and clusters to address competitive challenges (Labory and Prodi, 2014).

Thus, the promotion of clusters in Italy is essentially the support of small and medium-sized businesses in the industrial regions of the country; a distinctive feature of clusters in Italy is the system of incentive mechanisms for attracting investments, which is enshrined in legislation.

The cluster approach is popular in Finland. The most developed cluster and the basis of exports of the Finnish economy is the woodworking cluster. The supporting industries for it are mechanical engineering and the chemical industry, which are also clustered. All key industries, where the main volume of added value is created, are clustered.

The peculiarity of the Finnish economy is the fact that it does not have a large stable demand at the domestic market. Therefore, clusters in the country are export-oriented.

> The forest, information and telecommunication clusters are currently the most important for the Finnish economy, providing the main volume of exports and forming a significant part of the country's gross domestic product. The pulp and paper, wood processing companies of the forest cluster have long implemented a global development strategy, actively buying companies abroad, and have one of the highest levels of labor productivity in the industry both domestically and in the world (Pyatinkin and Bykova, 2008: 27).

Finland clusters are most represented by business internationalization – there are dense relationships with neighboring companies, such as Sweden, the Baltic Sea countries. On this basis, clusters in Finland's economy are not exclusively national. The basis of economic growth of the country's economy that does not have significant reserves of natural resources is a high level of innovation, which appear due to the widely developed educational and

scientific sectors that is also the result of effective state support (Kyzym *et al*., 2011).

Finland's experience testifies about the positive role of cluster economy, not isolated companies. The cluster system is the driving force for the development of Finland's economy, where both national and international clusters are present, there is a state policy of cluster support and there is an export cluster orientation.

European countries use different legal instruments, including stimulating cluster enterprises, at the state and at the local levels. This allows you to attract investors to develop the regions that need help.

Governments in Central, Eastern and South-Eastern Europe have realized that in order to achieve sustainable economic growth and to promote balanced regional economic development, it is important to encourage entrepreneurship at the local level. Clusters that require interaction between entrepreneurs and local institutions, cooperation at both local and federal government levels, and coordination between different political spheres can dynamize their local economy. As a result, cluster policies and initiatives have recently increased (Business Clusters: Promoting Enterprise in Central and Eastern Europe, 2005).

The Asian region has developed its own special type of clusters, which is characterized by the features of the European approach, but at the same time there is also a purely Asian specificity. The development of regional clusters in the Asian model occurs both at the expense of investments and through active state support. One of the first and largest clusters in Japan – Sapporo Valley was created on the basis of the University community engaged in software development.

The Japanese model is formed around a leading company with large-scale production that integrates many suppliers at different stages of the chain; it is used for the production of technologically complex products. Product development requires high stable expenses, which can pay off only with a large volume of sales (Prokhorova *et al.,* 2018).

One of the examples of the process for creating clusters in the Japanese economy is the Toyota cluster, which was founded by creating the system of subcontracting relationships between a number of large, medium and small enterprises.

The "Knowledge cluster initiative" Program is active in Japan, which stimulates the development of clusters in 18 regions of the country. Support is provided to joint projects, where regional Universities act as the core of clusters formed by a network of small innovative companies and large industrial companies (Lenchuk and Vlaskin, 2010).

Therefore, Japan has a concentration of medium and small enterprises around a large company, a mechanism for stimulating the development of highly specialized regions is provided, and the import of modern technologies is also encouraged.

Different industry clusters have been developed in China. For example, investment in China's automobile industry has resulted in the formation of motor transport clusters with a wide network of suppliers in the country, research base, engineering companies and innovation centers. The process of creating and developing clusters in China involves three government levels: central, regional and municipal.

A municipality can create a zone for the development of high-tech industries on its territory with the approval of the central government. The central government also has the function of selecting companies worth of special preferential measures. Besides, cooperation between business and Universities is encouraged in every possible way, which is of great importance for the emergence of own technological innovations and raising the technological level of products.

Specific features of the state strategy in the field of regional clustering in different countries of the world are shown in Table 1.

Table No.1. Peculiarities of the state strategy in the field of regional clustering in different countries of the world

Country	State strategy regarding clusters
USA	1. Provision of loans; 2. Prederential taxation of companies that carry out research and development programs within the framework of the cluster;
Canada	1. Support at all government levels: federal, regional and municipal; 2. Tax incentives for the private sector; 3. Large investments by federal agencies in the development of innovation superclusters
Germany	1. State support for the consolidation of industry and scientific centers; 2. Unification of private and public participants of the cluster; 3. Financial stimulation of clusters
Austria	1. Development of cross-border clusters; sector; 2. Stimulation of relationships between research institutes and the industrial sector; 3. Reduction of regulatory barriers in the process of implementing innovative programs
France	1. Interaction of large, medium and small enterprises; 2. Consolidation of efforts of industrial enterprises and scientific centers; 3. Application of the system of incentives for the development of high technologies

Italy	1. Support of small and medium-sized business in the industrial areas of the country; 2. The system of stimulating mechanisms to attract investments through the system of clusters
Finland	1. Presence of both national and international clusters; 2. State policy of supporting clusters; 3. Orientation of clusters on export
Japan	1. The mechanism for stimulating the development of highly specialized regions; 2. The import of modern technologies is encouraged
China	1. Three levels of government are involved in the creation of clusters: central, regional and municipal; 2. There are special privileged measures; 3. Cooperation between business and Universities is encouraged

Source: compiled by authors.

Thus, the experience of the USA, Canada, Italy, Germany, Austria, France, Finland, Japan, and China shows that cluster initiatives have proved their positive contribution into the economic development of regions, since success in the modern instability conditions can be achieved only through integrations. The creation of clusters encourages the economic development of the region, starts the process of synergy and allows the effective use of the natural and human potential of the region.

The interaction of manufacturing enterprises and scientific centers, state and private enterprises within clusters contributes to the growth of employment, investment attractiveness, accelerates the process of spreading advanced technologies in the national economy. At the same time, state support and incentive mechanisms are used for the development of the cluster system, which helps to attract entrepreneurs and investors, promotes the creation of clusters in various regions.

Stimulating and supporting clusters are important programs for governments and other public entities. Cluster development initiatives are actually an important area in economic policy considering the previous efforts in regard to macroeconomic stabilization, privatization and market opening, as well as reducing the expenses on business operations (Mauroner, 2015).

2.2. Specific features of cluster policy in Ukraine

Clusters are also created and function in Ukraine. For example, the "Podillia First" Program has been implemented since 1998; regional clusters of sewing, agricultural and processing enterprises, as well as construction companies and manufacturers of building materials were created in the Khmelnytskyi region within the framework of this Program. A clustering process of the regional economy was observed in Odesa, Kherson, Ivano-

Frankivsk, Zakarpatska and Lviv regions at the beginning of the XXI century.

This process took place with the support of local authorities by combining the efforts of business and science in such sectors of the economy as tourism, construction, agricultural activity, and consumer goods industry.

The functioning of clusters has led to positive structural changes in different regions of Ukraine. However, the lack of a legislative framework, a state strategy to support clusters, incentive mechanisms and other reasons did not allow clusters to become a driving mechanism for attracting investors to Ukraine.

The analysis of world experience regarding the implementation of the cluster strategy allows us to single out a number of features that are useful for increasing the efficiency of cluster activities in Ukraine. The formation of a cluster is a natural stage in the development of a country's economic activity, since the use of a cluster approach is perceived as the main characteristic of countries with a highly developed economy.

There is no single cluster management model. Therefore, it is necessary to adapt the management of the cluster to the specifics of each country and each cluster by creating a highly effective environment for the cluster's functioning.

The cluster system is able to develop business relations not only within the borders of one state, but also at the international level. This allows exchanging experience, technologies, and developing interaction between clusters.

The cluster promotes competitiveness through innovation, helps coordination and integration of all interested participants. The integration of business structures can be carried out in various forms by using various mechanisms, whose choice depends on the specifics of production, the market situation, economic conditions, etc.

To solve existing problems that Ukraine has at the present time according to the difficult socio-economic situation, it is necessary to use legal instruments that have proved positively themselves in the world practice. It is advisable to borrow and implement into the legislation of Ukraine those positive developments in the field of creation and functioning of the system of clusters that exist in various countries of the world, namely:

1) in the USA – the system of providing loans, as well as stimulating mechanisms for the taxation of companies that carry out scientific research and development programs within the cluster; 2) in Canada – the system of tax incentives for the private sector; 3) in Germany – the system of financial stimulation of clusters, the mechanism for uniting public and private cluster participants; 4) in Austria – the procedure for reducing regulatory barriers

in the process of implementing innovation programs; 5) in France – the system of incentives for the development of high technologies; 6) in Italy – methods of supporting small and medium-sized businesses, stimulating mechanism for attracting investments; 7) in Finland – the mechanism of state support for clusters; 8) in Japan – the system of incentives for the import of modern technologies; 9) in China – the mechanism for encouraging cooperation between business and Universities inside the cluster.

In our opinion, the further development of the system of clusters in Ukraine should be carried out in the direction of the formation of a highly effective favorable environment for scientific and technical progress, which is adequate to the modern problems of Ukraine. The cluster system is aimed at the interaction between state authorities, local self-government agencies, business and research institutes.

Strong relationships between business structures and research institutes characterize regional clusters. Research institutions can play an important role in promoting the transparency needed to foster innovation and to attract investments. This makes it possible to strive for excellence and raise the level of all participants.

Therefore, we believe that the use of a cluster approach to solve existing socio-economic problems in Ukraine will allow solving many accumulated problems. It is necessary to use intensive factors to ensure the efficiency of the use of clusters, increase competitiveness and increase the innovative direction of the development.

Implementation of the suggested conceptual principles of creating cluster structures will allow developing both the regional economic system and the economy in general. The ability to continuously evaluate will provide an opportunity to ensure the improvement of the cluster's operation.

Conclusion

The conducted research allows us to make the following conclusions:

1. Clusters have received development in various countries of the world, including the USA, Canada, Germany, Austria, Italy, France, Japan, China and others, and have positively proved themselves at the regional and state levels.
2. Clusters have assisted to revive the economy of regions, to encourage investors, to develop high-tech industries, and to create new jobs.
3. In terms of a difficult socio-economic situation in Ukraine, clusters can become a mechanism, which helps to solve a complex of problems,

namely: attraction of investments, development of the economy of regions affected by hostilities.

4. Clusters are currently being created in Ukraine. However, there is no legislative framework, a state strategy for supporting clusters, incentive mechanisms for investors not allowing clusters to become a driving mechanism for the recovery of Ukraine's economy.
5. It is necessary to borrow various mechanisms, which allow using clusters to attract investments and activate economic processes in the region, from different world countries and implement them into Ukrainian legislation.

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Legislative Support Standards in the European Union in the Field of Building a System of Local Self-Government

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Abstract

Through a documentary research design that combined induction and deduction, comparison and systematization, synthesis and analysis with abstract-logical thinking. The main objective of the study was to identify the key aspects of the legislative support rules in the countries of the European Union, in the field of building a system of local self-government. The European Union during the history of its existence has developed a set of rules on which the systems of local self-government of member states and applicants for this status are built. The complexity and importance of legislative regulation of the functioning of this system is evidenced by the fact that the legislation and principles of international law used by the union in the field of local self-government are among the "youngest". It is concluded that this is due to the role of local self-government in the development of a democratic political system, as well as the search for an optimal balance between centralization and decentralization. As a result of the study, current trends and prerequisites for legislative support standards in European Union countries were investigated.

Keywords: European Union; legislative support; democratic political system; local self-government; local authorities.

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Normas de apoyo legislativo en la Unión Europea en el ámbito de la construcción de un sistema de autogobierno local

Resumen

Mediante un diseño de investigación documental que conjugo la inducción y deducción, comparación y sistematización; síntesis y análisis con el pensamiento abstracto-lógico. El objetivo principal del estudio fue identificar los aspectos clave de las normas de apoyo legislativo en los países de la Unión Europea, en el campo de la construcción de un sistema de autogobierno local. La Unión Europea durante la historia de su existencia ha desarrollado un conjunto de normas sobre las cuales se construyen los sistemas de autogobierno local de los Estados miembros y solicitantes de este estatus. La complejidad y la importancia de la regulación legislativa del funcionamiento de este sistema se evidencia en el hecho de que la legislación y los principios del derecho internacional utilizados por la unión en el campo de la autonomía local se encuentran entre los "más jóvenes". Se concluye que esto se debe al papel que juega el autogobierno local en el desarrollo de un sistema político democrático, así como a la búsqueda de un equilibrio óptimo entre centralización y descentralización. Como resultado del estudio, se investigaron las tendencias actuales y los requisitos previos para los estándares de apoyo legislativo en los países de la Unión Europea.

Palabras clave: Unión Europea; apoyo legislativo; sistema político democrático; autogobierno local; autoridades locales

Introduction

Local self-government as self-organization, regulation, and management of territorial communities, independently solving important issues of local life, is one of the most striking phenomena of European civilization.

Among a large number of common assets of mankind, among which respect for the choice of peoples of state forms of their existence, the desire for peace between states, and respect for human rights, local self-government occupies a special place. Local self-government, firstly, is the original and natural form of existence of human communities; secondly, it made the main contribution to the formation of statehood, since it historically preceded the development of a state-organized society, which borrowed and raised many organizational and organizational-legal forms of interaction between government and society to the state level; thirdly, it plays an important role in the formation and functioning of modern democratic statehood based on the principles of democracy and the

priority of human rights over the rights of the state; fourthly, today it is included in the list of issues that are the subject of not only national but also international legal regulation. Proceeding from this, the phenomenology of local self-government is based on the synergy of national and international legal order.

All these features also apply to the institution of local self-government functioning in the territory of the European Union. Let us consider in more detail these features of local self-government in the context of the national and international components.

Regarding the national component of local self-government, it should be noted that in the modern world it acts as a complex and multifaceted social phenomenon and legal institution, enshrined in the constitutions of the vast majority of member states of the international community, as well as member states of the European Union. However, despite the constitutional legalization of local self-government in these sovereign entities, there is an ambivalent approach to it on the part of the state, manifested in the presence of a constant dichotomy of "centralization - decentralization" regarding the competent powers of the institution of local self-government, its subjects and bodies.

1. Materials and methods

For a more detailed study of the development of the legislative support standards in the countries of the European Union in the field of building a system of local self-government, the following methods were used: induction and deduction, comparison and systematization; synthesis and analysis; abstract-logical - for theoretical generalizations and conclusions of the study.

To more accurately reflect the main aspects of legislative regulation and the development of local self-government in the European Union, we used the IDEF0 functional modeling method.

2. Literature review

According to modern scientific research, the source of European legal standards of local self-government are international treaties concluded under the auspices of the Council of Europe. The solemn ceremony of Ukraine's accession to the Council of Europe took place on November 9, 1995, in Strasbourg. The Council of Europe has always recognized the importance that democracy plays at the local and regional levels.

Protection and strengthening of local and regional authorities, and local self-government as a whole has gradually become one of the key activities of this organization. Back in 1957, the Permanent Conference of Local and Regional Authorities of Europe was founded in the structure of the Council of Europe for local authorities (Asheim *et al.*, 2011; Green *et al.*, 2013; Durmuş, 2020).

The Council of Europe is working to ensure that local authorities are properly represented. On January 14, 1994, by the decision of the Committee of Ministers of the Council of Europe, the Congress of Local and Regional Authorities of Europe was established, which replaced the Permanent Conference. In 2003, the name "Congress of Local and Regional Authorities of Europe" was changed to "Congress of Local and Regional Authorities of the Council of Europe".

According to scientific sources, one of the sources of European law is the European Framework Convention on Transfrontier Cooperation between Territorial Communities or Authorities of May 21, 1980 (Kemeny and Storper, 2014; Droniv, 2018).

This convention governs any joint action aimed at strengthening and deepening good neighborly relations between communities, authorities, or bodies of neighboring states exercising local and regional functions, and are recognized as such in accordance with the internal legislation of each of the states.

The Convention recognizes the right of local and regional authorities to cooperate beyond national borders within the limits of their powers established by domestic law on the creation of common public services, the construction of common facilities, or environmental protection with the same-name subjects of foreign countries that are adjacent. It creates a regulatory framework for the emergence of the so-called European regions and a clear teleological direction - the establishment of interaction between regions of different countries in order not only to improve the welfare of the population but also to improve the system of regional governance and self-government (Kryshtanovych *et al.*, 2021).

Two additional protocols were signed by the member states of the Council of Europe in Strasbourg to the Framework Convention of 1980. The first of these is the Additional Protocol to the European Framework Convention on Transfrontier Cooperation between Territorial Communities or Authorities of November 9, 1995 (Sylkin *et al.*, 2021).

Analysis of scientific publications (Adusei-Asante, 2012) on foreign experience of decentralization shows that for countries in transition, the most effective way to profoundly change social relations and improve the living standards of the population, increase the potential of local development is expanded decentralization. The experience of developed European countries is a confirmation.

3. Research Results and Discussions

Analyzing the experience of international practice of organizing local self-government, we see completely different types, models and systems of local self-government. Most of the politically and socio-economically stable European states have gone through generally similar stages of their development and, in this regard, have many common features.

In particular, the general nature of the powers of local self-government and their officials, a similar mechanism of interaction between state and municipal bodies in the process of local self-government. Common and fundamental for all is that the state controls the exercise of powers by local self-government bodies (Kryshtanovych *et al.*, 2020).

Other charters and conventions of the Council of Europe are of particular interest in the issue of Local Self-Government (Table 1).

Table 1: Charters and conventions of the Council of Europe which are of particular interest in the issue of Local Self-Government.

№	Charters and conventions
1	The European Charter for Regional or Minority Languages, which was signed in 1992, but entered into force only in 2006
2	European Local Charter
3	The European Charter for the participation of young people in public life at the local and regional level 2003, although not have the status of a convention, but the main provisions of which provide an increase in the ability of young people to integrate into the local community and to realize their abilities at the national level

Source: authors.

But, of course, the main attention should be paid to the European Charter of Local Self-Government of October 15, 1985, as one of the main sources that should be used for the development of capable local self-government in Europe. This document was adopted by the Council of Europe on October 15, 1985, as a result of many years of work on various European structures and is evidence of the importance of local self-government as a necessary attribute of a democratic society. The Charter has been in development for 17 years (Gawłowski *et al.*,2020).

An analysis of the principles enshrined in the Charter of Local Self-Government shows that modern Europe sees the most important

element of democracy in local self-government. First of all, we are talking about reducing the role of the state to the necessary minimum, limiting bureaucratic pressure from the bureaucracy, which contributes to the involvement of people in the values of democracy. The experience of self-government, and most importantly, the skills developed by it, instill in the population a sense of civic responsibility for making decisions on local development (Hidalgo,2021).

The Charter of Local Self-Government consists of a preamble, three parts, and 18 articles. Consequently, a small Charter of Local Self-Government defines a set of basic principles, the presence of which in the legislation and their observance in practice in a given country allows us to conclude the presence, absence, or degree of development of local self-government.

The very concept of local self-government is spelled out quite clearly in the Charter because we are talking about the widespread involvement of citizens in the management of their territories and the independent resolution of issues of local importance in the interests of the territorial community. Local self-government thus becomes a special form of "public power", whose activities are regulated exclusively by law (state power is removed directly from public power, which is formed by the territorial community) (Sylkin *et al.*, 2021).

Also, thanks to the introduction of the principles of local self-government into the real social practices of individual countries, mechanisms for equalizing the development of all territories of the state are used. The European Charter requires the protection of financially weak «local authorities», and the introduction of procedures to eliminate financial imbalances in order to overcome the consequences of an unequal distribution of potential sources of funding. Local self-government is thus guaranteed by the Constitution because the conformity of the volume of its financial resources and functions is guaranteed by law.

Article 4 of the European Charter fixes the requirement of a separate law or the Constitution of the country regarding the real implementation, completeness, and exclusivity of the powers of local self-government, which cannot be influenced by government bodies. The powers vested in local self-government bodies, as a rule, must be complete and exclusive. They cannot be canceled or limited by another, central or regional authority unless this is provided for by law. According to article 10 of this document, local governments are granted the right to cooperate with local governments of other states (Kryshtanovych *et al.*, 2021).

Especially that the obligations assumed by the participants of the convention are clearly defined. But at the same time, it is possible to adapt the Charter to the legal and organizational-administrative features of the member countries of the Council of Europe. This is achieved by the

possibility for the parties to the Charter to exclude certain provisions from those that may be considered binding on them, but such exceptions cannot affect the basic principles of the Charter.

Thus, a certain compromise is assumed between the recognition of the fact that local self-government affects the system-structural organization of the state as a whole, which is quite specific for each individual country, and the need to ensure a minimum set of principles that must be respected and observed in any democratic state.

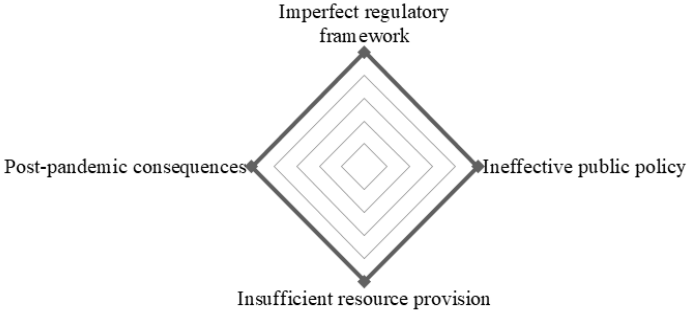

Fig.1. The main obstacles and difficulties that negatively affect building a system of local self-government. Source: authors.

The presence of local governments' own sources of financial income is usually enshrined in the constitutions and current legislation of foreign countries, and federative states - in the constitutions and legislation of the subjects of the federation. For example, in Italy, the constitution provides for financial autonomy for the regions «in the forms and within the limits established by the laws of the Republic, which bring it into line with the finances of the state, provinces, and communities.» The revenues of the regions are the share of state taxes (depending on the needs of the regions); special funds allocated by the state to perform certain tasks and local taxes (Kryshtanovych *et al.*, 2022).

There are 13 thousand of local budgets in Great Britain. Top-level budgets of administrative units are not consolidated against lower-level budgets. In Germany, the consolidated state budget is not approved but published as a statistical indicator. In Italy, local budgets are not included in the state budget. Regions, provinces, and communes have independent budgets. In addition, local governments of European states conduct specific economic activities, operate the relevant companies and services, and manage their property.

This corresponds to the corporate status of municipal bodies, the institution of municipal property, and the contractual form of economic relations of the municipality with private entrepreneurs. Municipalities are endowed with the status of corporations of public law, and their property is treated as public property.

Since the subject of municipal property rights is not the state as a whole, but individual municipal bodies, this property is singled out as an independent type of public property along with state property. Acting as a public law corporation, municipalities have the right to acquire property, own, use, and dispose of it, act in civil law relations, and also bear civil liability.

Taking into account the experience of European countries in reforming individual institutions and local self-government as a whole, it is also necessary to take into account the direction of pan-European trends and the dynamics of the evolution of local self-government. Such trends indicate that there is a gradual decrease in quantitative and qualitative differences in the powers of local governments.

The decisive influence, in this case, is exerted by the universalization of the principles of self-government on the basis of international legal acts, in particular the European Charter of Local Self-Government, which has developed a common policy for Europe in the field of local government. The next dynamic feature of the evolution of self-government is a significant expansion of the powers of its bodies. This can be explained by the active development of democracy, the complication of life on the ground, and the improvement of the material and financial capabilities of local power structures.

The experience of public administration reforms in European countries has shown that the boundaries of decentralization are determined by the specifics of relations between the center and individual territories. The political decentralization and commercialization of public services in the UK, the increasing role of communes and the gradual transition to market relations in management in Germany, administrative reforms, and the activation of local communities in France - all these measures reflect one or another type of decentralization, which other European countries are guided by.

Another trend is to strengthen the role of integration of local self-government into state mechanisms of political governance. This trend is manifested through the coordination of the legislation of different countries on local self-government, including electoral legislation, through increased influence on the functioning of national systems of local government, as well as increased control by state authorities in the field of local government.

But no less important sign of the dynamics of the development of self-government is the rethinking of the traditional view of municipalities as the main providers of local goods and services. The provision of services to the population is gradually ceasing to be the main function of local authorities (the scientific literature speaks of the "pluralization" of this process). At the forefront are such tasks as management, supervision, inspection, and coordination.

The role of municipal authorities is increasingly seen as the so-called «providing» authorities, solving the following fundamental tasks: identifying the urgent needs of the population; setting specific priorities; defining the standards of services provided, and finding the best ways to ensure these standards; cooperation with central and regional authorities in solving problems of local importance; inspection and coordination of the activities of various organizations operating at the local level, cooperation with them (mainly on a contract basis); lobbying for local communities; implementation of feedback between service consumers and their direct providers using democratic mechanisms.

For a better understanding of the process of introducing and reforming local self-government, we used the methodology of functional modeling IDEF0.

Yes, the first step of our model will be the formation of a primary tree of goals, where the ultimate goal will be marked with the symbol A0 (Implementation of an effective system of local self-government in the European Union), and the main stages of its achievement will be marked with the symbols A1-A3 (Fig. 2).

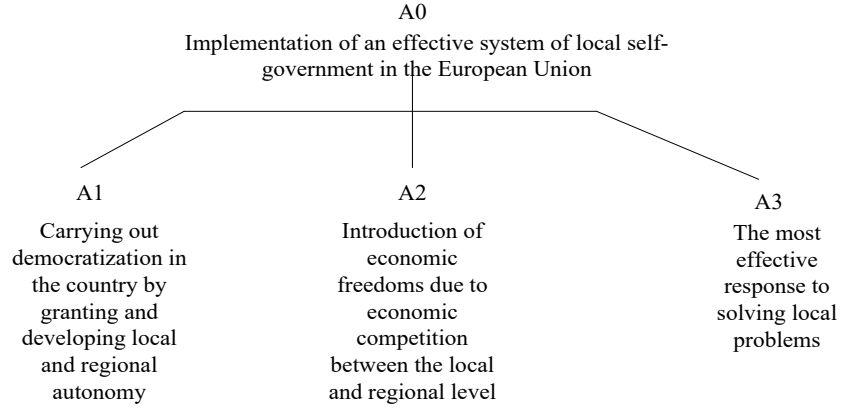

Fig.2. The tree of goals of the process of achieving the final goal A0 - Implementation of an effective system of local self-government in the European Union. Source: authors.

So, as we see from Figure 2, as a result of the analysis of scientific literature, we identified three main elements for the successful implementation of the local self-government system, which was formed on the basis of the experience of these processes in the European Union (Kryshtanovych *et al.*, 2022).

The next step in the implementation of the functional model IDEF0 we have chosen will be to determine the main components of the successful implementation of the main goal A0. For a better understanding, these components were divided into four groups: control elements, mechanisms, input and output elements. To do this, we have formed a context map of the process of ensuring the goal A0 (Fig.3.).

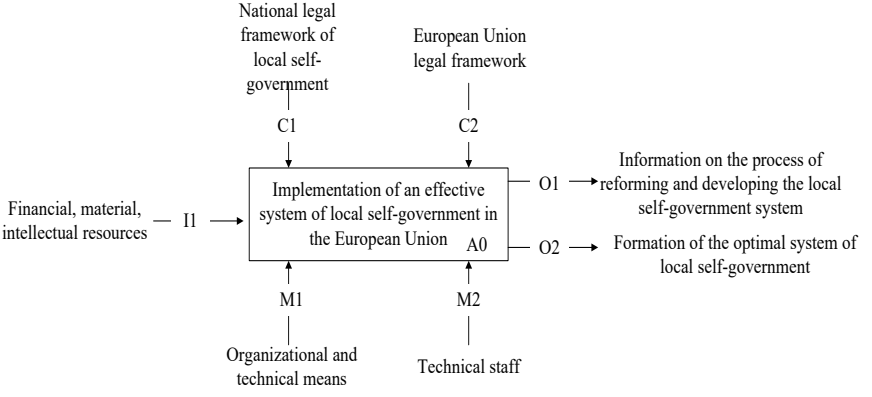

Fig.3. Context map of the process of ensuring the goal A0 - Implementation of an effective system of local self-government in the European Union. Source: authors.

As we can see from Figure 3, for the effective formation of legislative support for local self-government, there is a need for both input and intermediate resources that will provide this process throughout the entire period of achieving the A0 goal.

The final step of our functional modeling model IDEF0 will be the formation of Decomposition of achieving the final goal A0 - Implementation of an effective system of local self-government in the European Union (Fig.4).

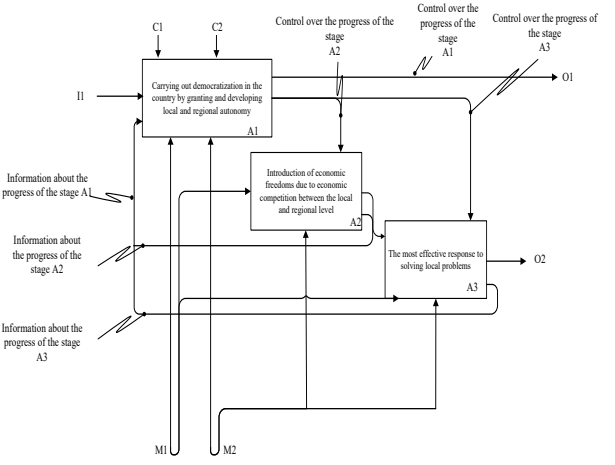

Fig.4. Decomposition of achieving the final goal A0 - Implementation of an effective system of local self-government in the European Union. Source: authors.

The experience of the countries of the European Union testifies to the plurality of approaches to the organization of self-government. The most common of these are the introduction of models of local autonomy and decentralization. It was decentralization that became the main slogan of the reform of local self-government in Europe. The difference in the conceptual forms of decentralization is explained by the peculiarities of historical development, geographical location, national and religious characteristics, and the development of culture.

Conclusions

Thus, it can be noted that the legislation of the EU itself does not have specific requirements for building a system of local self-government. The founding documents of the EU guarantee support to local authorities when their activities are related to the functioning of the EU. At the same time, the documents of the Council of Europe contain the most complete system of standards for the activities of local governments, the purpose of which is to protect human rights, traditional European values of democracy, and the rule of law. As a rule, all conventions of the Council of Europe are ratified by European countries, and all EU members and are considered the most advanced in their field.

Today, the leading document, which is the standard for democratic local government in Europe, is the European Charter of Local Self-Government (ECHLA). The process of its creation began at the initiative of the Council of Europe as early as 1968; this document was opened for signing by the member states of the Council of Europe on October 15, 1985, and entered into force on September 1, 1988.

According to the results of the study, scientific novelty involves the use of a methodological approach with modeling elements to achieve the goals. The study has a number of limitations, primarily related to modeling limitations. Modeling is more theoretical and methodological. Further research should be devoted to expanding the modeling and practical application of the proposed decomposition.

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Interpretation of legal norms in modern jurisprudence

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Abstract

The purpose of the research was to consider appropriate forms of interpretation of legal norms in modern jurisprudence. In the main content it has been established that the interpretation results in a general conclusion or a sum of conclusions reached by the subject of interpretation in the process of clarification of the rule of law (legal norms), using the whole set of methods of interpretation, which is appropriate to the legal reality. The methodological basis of the research was presented as comparative-legal and systematic analysis, formal-legal method, as well as hermeneutic method, method of analysis and synthesis. It has been concluded that the procedure for achieving the purpose of interpretation should be as follows: grammatical interpretation - teleological interpretation - clarification of the conformity of the essence of the content of the legal norm with the principles of law - systematic interpretation - special legal interpretation - logical interpretation - functional interpretation - historical interpretation - repeated application of the interpretation procedure upon receipt of new data. If this procedure is properly followed, it is possible to achieve the conditions for the achievement of an adequate legal hermeneutics, which places the texts in their context of meaning.

Keywords: modes of interpretation of legal norms; hermeneutic purpose; legal understanding; criminal liability; types of legal understanding.

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Interpretación de las normas jurídicas en la jurisprudencia moderna

Resumen

El propósito de la investigación fue considerar formas adecuadas de interpretación de las normas jurídicas en la jurisprudencia moderna. En el contenido principal se ha establecido que la interpretación da como resultado una conclusión general o una suma de conclusiones a las que llega el sujeto de interpretación en el proceso de clarificación del Estado de derecho (normas jurídicas), utilizando todo el conjunto de métodos de interpretación, que es adecuado a la realidad jurídica. La base metodológica de la investigación se presentó como análisis comparado-jurídico y sistemático, método formal-jurídico, así como método hermenéutico, de análisis y síntesis. Se ha concluido que el procedimiento para lograr el fin de la interpretación debe ser el siguiente: interpretación gramatical - interpretación teleológica - aclaración de la conformidad de la esencia del contenido de la norma jurídica con los principios del derecho - interpretación sistemática - interpretación jurídica especial - interpretación lógica - interpretación funcional - interpretación histórica - aplicación repetida del procedimiento de interpretación al recibir nuevos datos. De seguirse adecuadamente este procedimiento se pueden lograr las condiciones de posibilidad para el logro de una adecuada hermenéutica jurídica, que sitúa los textos en su contexto de significación.

Palabras clave: modos de interpretación de las normas jurídicas; finalidad hermenéutica; entendimiento jurídico; responsabilidad penal; tipos de entendimiento jurídico.

Introduction

Practice of law enforcement shows that it is absolutely impossible to find out the actual content of a legal norm just by means of simply reading its text. This is due to peculiarities of legal norms themselves, forms of their functioning and external expression. Study of these features and forms, as well as disclosure of the essential content of a norm necessarily require the use of ways for interpretation of legal norms. Interpretation itself provides the process and results of clarifying and explaining contents of legal norms.

A subject of interpretation of legal norms can use ways for interpretation in an arbitrary sequence based on his/her own experience. The following question arises: how can one perform interpretation of legal norms in an optimal way, harmoniously taking into account requirements set in principles of law? (Buha *et al*., 2022).

Urgency of the topic is determined by importance of democratic transformations in Ukraine which are aimed at formation of a harmonious legal state, and which put forward the latest requirements for functioning of the national legal system, the process of implementing law, which is inextricably linked with such a type of intellectual activity as interpretation of legal norms. (Bezpalova *et al.*, 2021).

1. Literature review

Analysis of publications and research works on the subject of interpretation of legal norms shows that scientists working in the sphere of the theory of the state and law, constitutional law, civil law, economic law and other legal sciences considered and are considering the problem of interpretation of legal norms in their works. In particular, the matter of interpretation of legal norms and the interpretation of legal norms of law in Ukrainian legal science was studied by Halaburda Nadiia, Leheza Yevhen, Chalavan Viktor, Yefimov Volodymyr, Yefimova Inna (Halaburda *et al.*, 2021).

The theory of interpretation developed yet in ancient Greek jurisprudence under the name "hermeneutics" (from the Greek hermeneutike - "art of interpretation"). Nowadays, legal hermeneutics has developed as a field of knowledge of the philosophy of law. The process of interpreting legal norms is related to both assessment of actual circumstances and clarification of contents of legal norms applied to these circumstances.

Clarification of contents requires interpretation of legal norms. Sometimes interpretation of a norm is not difficult, but in many cases this procedure requires a high level of professionalism, knowledge not only in a certain field of law, but also in the sphere of formal logic, philosophy, legal theory, linguistics and history (Kobrusieva *et al.*, 2021).

2. Materials and methods

The research is based on work of foreign and Ukrainian researcher on methodological approaches to understanding public relations from the point of view of the theory of law, administrative law, civil law, etc.

With the help of the epistemological method, the methods of protecting rights of individuals in administrative proceedings, etc., were clarified; thanks to the logical-semantic method, the conceptual apparatus was deepened, and the methods of protecting the rights of individuals in administrative proceedings were determined from the point of view of the theory of law, administrative law, etc. Thanks to the existing methods of law,

we managed to analyze the essence of ways (methods) used for protecting rights of individuals in administrative proceedings, etc.

3. Results and discussion

Let's consider the main definitions of the interpretation of a legal norm, which are adhered to by modern domestic researchers of the theory of law and the civil law, and let's find out what elements (stages) it consists of.

V.K. Antoshkina defines the essence of interpretation of legal norms as follows:

> In general, interpretation of legal norms is defined as the intellectual and volitional activity of a person aimed at establishing the valid content of a legal precept for its further effective application with the aim of increasingly securing rights and interests of legal subjects (Antoshkina, 2011: 30).

The following definition is proposed by T.P.Kudlai: "Interpretation of a legal norm is an activity of subjects aimed at clarifying contents of the legal norm for the purpose of its correct application and implementation" (Kudlai, 2009: 59).

Skakun O.F. defines interpretation of legal norms in the following way:

> Interpretation of legal norms is an intellectual-volitional cognitive activity, which consists in establishing the exact content (meaning) of legal norms and is carried out with the help of certain methods (techniques) with the aim of their correct application and direct implementation" (Skakun, 2012: 49).

The scientist distinguishes two stages of law interpretative activity:

clarification - disclosure of the contents of legal norms (their separate elements) "for oneself" with the aim of their correct implementation and application (it does not go beyond the consciousness of the interpreter himself/herself and does not have external forms of expression: the "will" of the interpreter combines the "will of the legislator" and the "will of the law");

explanation - disclosure of the contents of legal norms (their separate elements) "for others" in order to eliminate ambiguity in its understanding and ensure correct application in the circumstances these norms are intended for. Sometimes it is enough to understand contents of the law for correct solution of a specific case (Skakun, 2012).

According to D.M. Mykhailovych:

> Interpretation in the proper sense of this word should be understood as awareness of the contents of legal norms, since awareness itself reflects the epistemological nature of the interpretation process, its focus on learning

> the meaning of legal phenomena. As for explanation, it is the next stage after interpretation (Mykhailovych, 2003: 68).

Based on the definitions mentioned above, it can be concluded that the first stage of interpretation of legal norms is awareness (clarification) of the contents of legal norms "for oneself", and the second stage consists in clarification, disclosure of the contents of legal norms (their separate elements) "for others" for the purpose of correct implementation and application of these legal norms.

Let's analyze the first stage of interpretation of civil law norms. Awareness (clarification) of the contents of legal norms "for oneself" is an internal mental process that does not go beyond the interpreter's consciousness, and this is nothing but legal understanding.

K.G. Volynka notes that the issue of legal understanding belongs to the main ones in the theory of the state and law and it defines legal understanding as:

> The process and result of a person's mental activity aimed at learning the law, its perception (evaluation) and receiving attitude towards it as towards an integral social phenomenon. When studying various theories and views on law the following circumstances should be taken into account: first of all, the historical conditions of law existence the researcher lived in; secondly, the fact that the result of legal understanding always depends on researcher's religious, ideological, moral position; thirdly, which side of the law is taken as the basis of this or that concept" (Volynka, 2003: 320).

Let's consider the main provisions of the natural-law scientific approach and positivistic scientific approach to the understanding of law and let's determine their place and significance in interpretation of legal norms by modern scientists.

The positivist approach determines that law is a hierarchy of norms, a normative regulator of social relations. Law and right are equated. Legal norms must be subordinated to legal force. The state is a purely legal phenomenon that ensures a legitimate legal order. Human rights are considered as gifts of the state. The theory is characterized by Latin phrases: "The law is hard but it is the law" and "The law is in force" (Kotiuk, 1996: 66).

The natural-law approach to understanding determines that the original form of existence of law is social consciousness, an idea (concept) of law with natural rights of a person being an important component of it (such natural rights of a person are inalienable and belong to a person starting from his/her very birth - the rights to life, free development, work, etc.).

The notions of law and right are distinguished; primacy is given to natural law as an expression of justice (morality). The theory of natural law

can be described by the phrase: "Law is the science of what is good and fair" (*Jus est ars boni et aequi*).

The next step is to examine how the main methods of interpretation are determined by modern domestic legal theory researchers.

Based on the analysis of the studied sources, we can classify the main ways for interpretation of legal norms and give them a brief description as follows. Grammatical interpretation is a method that includes awareness of individual words and terms of the entire sentence and the group of sentences. Systematic interpretation - makes it possible to reveal the content of a legal norm in connection with other norms, with general regulatory provisions, with the principles of law. This way makes it possible to reveal the content of a legal norm in connection with other norms, since it does not act in isolation.

The norm is compared with other norms, its place in this regulatory act, in the field of law, in the legal system is established. Teleological (targeted) interpretation is interpretation aimed at researching the purpose of issuing the corresponding regulatory and legal act.

Historical interpretation is a way of interpretation based on the awareness of the contents of legal norms based on the study of the specific historical conditions these norms were adopted under as well as the purpose of those norms determined at that period of time.

Functional interpretation means clarification of the content of legal norms based on the analysis of specific circumstances, conditions the respective legal norm functions in. It considers the effect of legal norms in the dynamic plane (the will of the "actual legislator"), alternative valid legal norms contained in the precept of other sources (forms) of law.

Logical interpretation is a way of interpreting the contents of legal norms based on the laws and rules of formal logic. Special-legal interpretation presupposes clarification of the content of a norm, based on achievements of the legal science and practice, knowledge of legal technique, technical-legal methods and ways.

O.F. Skakun notes that all ways for legal interpretation are used together, as a single set. It is not necessary to single out logical and special legal ways (methods) of interpretation separately, since the laws of logic (formal and dialectical) are used in all determined methods, and lawyer's interpretation cannot be other than specifically legal one, because it constitutes an internal professional valuable side of the interpreter and other ways for interpretation will not take place without it.

Therefore, logical and special legal analysis are not methods for interpretation of legal norms, but rather "fundamental" principles and qualitative characteristics of the interpreter, and as such they are included

in the system of his/her intellectual activity being the basis of this activity (Skakun, 2012).

One should agree with the opinion of O.F. Skakun about logical interpretation, but in our opinion special-legal interpretation should be singled out in a separate way for interpretation because a lawyer needs to interpret terms not only in the field where he/she is a highly qualified specialist, but also in other fields of law where he/she is only an ordinary specialist.

According to D. M. Mykhailovych, historical interpretation is an optional method, as it is used only when in order to establish a valid content of a normative precept, it is necessary to refer to the socio-political circumstances of its adoption, the content of the previous normative act, and other relevant "external sources" - alternative projects, explanatory notes, reports, speeches of deputies, etc., (Mykhailovych, 2003).

We cannot agree with this position, because if we do not take into account the historical way for interpretation of legal norms, the result will not be correct. It will be impossible to correctly interpret, apply and accordingly implement the goal that the "ideal legislator" laid down in the norm of law in the past, without studying the specific historical conditions the norm was adopted under.

Based on the analysis of the specified definitions of the ways for interpretation of legal norms, the following conclusion has been made, namely: among the seven ways of interpreting the norms of law, none of them mentions a direct requirement to check the norms of law for compliance with the signs of the natural-law approach to understanding the law. In the system way (method), only the need to check the contents of legal norms for compliance with the principles of law is established (Villasmil Espinoza *et al*., 2022).

The principles of law include the principle of social freedom, justice, equality (equality of all before the law), unity of subjective rights and objective duties, humanism, liability for faulit, and the principle of legality (Matviichuk *et al*., 2022).

Therefore, qualitative interpretation of legal norms requires application of ways (methods) for interpretation of legal norms, revealing the principles of law in accordance with the requirements of the systematic method for interpreting legal norms, and finding out whether the respective legal norm meets the requirements put forward by the natural-law and positivist approaches to understanding law (Nalyvaiko *et al*., 2022). Let's try to identify common features when interpreting legal norms. To do this, let's examine the sequence proposed by modern scientists for applying ways used for interpretation legal norms (Tylchyk *et al*., 2022).

M.H. Bratasiuk notes that the 17th-18th centuries gave birth to works by such authors as Eckhart, Wittich, Sammet and especially to the work by F. Savigny "Yuristische Methodenlehre". These works mentioned alternation of grammatical, logical, historical and systematic research of exposition of legal precepts. The same works also gave the idea of hermeneutic circle (Patei-Bratasiuk, 2010).

After analyzing the existing approaches in the theory of law regarding the number of ways for interpretation and the sequence of their use, D. M. Mykhailovych concluded that there is a certain "algorithm of interpretation", which has the following schematic form: grammatical interpretation - logical interpretation - systematic interpretation - teleological interpretation - historical interpretation (Mykhailovych, 2003).

Skakun O.F. Investigates ways for interpretation in a certain sequence; and based on this sequence we can determine the following algorithm of interpretation of legal norms: "grammatical interpretation - systemic interpretation - teleological interpretation - historical and political interpretation - functional interpretation - logical interpretation - special legal interpretation" (Skakun, 2012: 42).

Thus, based on consideration of the given examples of sequences of ways for interpretation, we can generalize that the grammatical, systematic and theological ways for of interpretation of legal norms are in the first place. It is worth agreeing with this order of applying ways for interpretation (Leheza *et al.*, 2022).

In our opinion, from the systematic way for interpretation of legal norms it is advisable to separately single out verification of compliance with the principles of law. Because research of the issue of whether a legal norm has a legal content is extremely important (Kolinko *et al.*, 2019).

So, for example, M.H. Bratasyuk rightly points out as follows: "Ukrainian jurists are still looking for the "letter of the law", but why should one look for it, if the law is written on a by-order basis? Will the fact that this "letter of the law" is found increase justice in the society? The array of the current Ukrainian legislation contains a significant number of non-legal acts, i.e., acts that deny natural, inalienable human rights, acts created under conditions of an authoritarian regime.

So many people puzzle over them, looking for the "letter of the law". But what does the society have to gain from this? What is added as a result to the common weal, the common good?" (Patei-Bratasiuk, 2010).

Conclusions

Therefore, based on the analysis of the specified definitions and views, the following conclusion has been drawn that the procedure for achieving the goal of interpretation should be as follows: grammatical interpretation - teleological interpretation - clarification of compliance of the essence of legal norm content with the principles of law - systematic interpretation - special legal interpretation - logical interpretation - functional interpretation - historical interpretation - repeated application of the interpretation procedure when receiving new data.

Application of the proposed interpretation procedure will contribute to prevention, overcoming and elimination of some of problems of practical interpretation of legal norms and will open the way to increasing effectiveness of legislation, increasing its importance in reforming Ukrainian society as well as to reducing complaints filed to the European Court of Human Rights (Ukraine takes the first place in terms of the number of complaints against the state from its citizens filed to the European Court of Human Rights) and, as a result, to a more reliable provision of rights and freedoms of a person and a citizen.

It should also be noted that when clarifying the true meaning of terms, obtaining additional or clarified data, it is necessary to apply the procedure of interpretation of legal norms again from the step (way for interpretation) they have an effect on. Interpretation will result in a general conclusion or a sum of conclusions reached by the subject of interpretation in the process of clarifying the rule of law (legal norm) using the entire set of interpretation methods, which is adequate to the actual content of this rule and meets the criteria of truth and correctness of the result of interpretation.

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Legal guarantees of lawyers' activities with respect to the provision of free secondary legal aid in the administrative court system

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Abstract

The research was aimed at ascertaining the content of legal guarantees of the lawyer's activity in terms of rendering free secondary legal aid in administrative proceedings. With the help of general and special methods and cognition, it has been shown that the legal guarantees of a lawyer's activity as a subject of rendering free secondary legal aid have the following characteristics: 1) guarantee the freedom, without hindrance, of the exercise of the rights attributed to the lawyer and the due fulfillment of the duties attributed to the obligations; 2) the set of means, modalities and conditions that make up the content of the guarantees are always set at the appropriate regulatory and legal level; 3) they begin to operate after the occurrence of legal events that are related to the acquisition of special rights and obligations by the lawyer, and; 4) it is a component of the more general legal category "guarantee of defense". By way of conclusion, we can state that the legal guarantees of the lawyer's activity depend for their success on several factors: institutional, legal and contextual, which require particular treatment by future research.

Keywords: lawyer in Europe; legal guarantees; administrative process; legal aid; free legal assistance.

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Garantías jurídicas de las actividades de los abogados con respecto a la prestación de asistencia jurídica secundaria gratuita en el sistema de tribunales administrativos

Resumen

La investigación tuvo por objeto conocer el contenido de las garantías jurídicas de la actividad del abogado en cuanto a la prestación de asistencia jurídica secundaria gratuita en los procedimientos administrativos. Con la ayuda de métodos generales y especiales y de cognición, se ha demostrado que las garantías legales de la actividad de un abogado como sujeto de la prestación de asistencia legal secundaria gratuita, tienen las siguientes características: 1) garantizar la libertad, sin trabas, del ejercicio de los derechos atribuidos al abogado y el debido cumplimiento de los deberes atribuidos a las obligaciones; 2) el conjunto de medios, modalidades y condiciones que integran el contenido de las garantías se fijan siempre en el nivel reglamentario y legal adecuado; 3) comienzan a funcionar después de la ocurrencia de hechos jurídicos que están relacionados con la adquisición de derechos y obligaciones especiales por parte del abogado, y; 4) es un componente de la categoría legal más general «garantía de defensa». A modo de conclusión podemos afirmar que las garantías jurídicas de la actividad del abogado, depende para su éxito de variados factores: institucionales, legales y contextuales, que requieren de tratamiento particular por parte de futuras investigaciones.

Palabras clave: abogado en Europa; garantías jurídicas; proceso administrativo; auxilio judicial; asistencia jurídica gratuita.

Introduction

The professional and special rights and duties of a lawyer, as a subject of provision of free secondary legal assistance, are exercised by him during the consideration and resolution of a public-law dispute in an administrative court. At the same time, it is obvious that a lawyer, receiving the status of a procedural representative of one of the participants in an administrative case (a person who needs secondary legal assistance on a free basis), is additionally granted the procedural rights and obligations specified in Art. 44 the CAP of Ukraine.

In this context, it is worth briefly reminding that all potential subjects of specific administrative-procedural relations must necessarily have such a legal property as administrative procedural legal personality, thanks to

which they become full-fledged participants in the administrative case and realize the constitutional right granted by the state to judicial protection.

By itself, the legal construction "legal entity", performing the function of generalizing the characteristics of the legal status of a natural or legal entity, is used in almost all areas of law. The practical purpose of this category is that it outlines the circle of persons who can be recognized as subjects of law, guarantees their acquisition of a certain legal status and a set of rights and obligations, and also reflects their "legal destiny" (Dzhafarova, 2014).

Therefore, the model of administrative procedural legal personality, which consists of administrative procedural legal capacity, legal capacity and procedural rights and obligations, is also inherent to a representative lawyer who provides free secondary legal assistance to one of the main participants in an administrative case.

By the way, as some administrative researchers rightly note, there is no single administrative procedural legal personality for all participants in the administrative process: for each subject of administrative-procedural legal relations, a specific legal personality is provided, which is characterized by a certain content and scope (Ditkevych, 2011).

Such a conclusion allows us to state the fact that the purpose of participation and the functional appointment of a lawyer as a participant in an administrative case in a judicial process, who provides free secondary legal assistance, directly affects the content and scope of his administrative procedural legal personality.

It is quite logical that the lawyer implements the subjective interest of the person he represents, in order to exercise the functional rights and obligations assigned to him, determined by the norms of substantive law. On the other hand, his interest in an administrative case in the process of providing free secondary legal assistance is always characterized not only by private interest, but also by a state-legal and social component, as it follows from the competence, purpose, functions and professional and special powers entrusted to him by law , defined in the Laws of Ukraine "On Advocacy and Advocacy" (Law of Ukraine, 2012) and "On Free Legal Aid" (Law of Ukraine, 2011).So, today, the professional representation performed by a lawyer in the administrative process at the expense of state funds actually combines the possibility of him performing two functions - the function of direct representation and the function of providing free secondary legal assistance.

As we know, an exhaustive list of procedural rights and obligations of the parties to an administrative case is contained in Art. Art. 44, 47 of the Code of Administrative Procedure Ukraine (Law of Ukraine, 2005). At the moment, the legislator obliges all participants in an administrative case to use their procedural rights in good faith, not to abuse them and to

strictly fulfill procedural obligations (Part 3 of Article 2, Part 2 of Article 44 of the Civil Procedure Code of Ukraine). The above also applies to a representative lawyer who provides free secondary legal assistance within the administrative process, in accordance with Part 1 of Art. 57 and Part 3 of Art. 16 the CAP of Ukraine.

Taking into account the peculiarities of consideration and resolution of a public legal dispute in an administrative court, as well as the range of subjects to whom the legislator grants the right to receive free secondary legal assistance, it becomes obvious that a lawyer can provide this type of legal assistance only to one of the parties to an administrative case, which, firstly, is not a subject of authority and, secondly, mostly declares claims on the subject of the dispute.

Only in certain cases specified by law, the lawyer has the right to provide free secondary legal assistance to low-income and unprotected natural persons who are under the jurisdiction of Ukraine, foreigners or stateless persons who act as a defendant in the following administrative lawsuits: 1) on detention foreigner or stateless person or forced deportation outside the territory of Ukraine; 2) on establishing restrictions on the exercise of the right to freedom of peaceful assembly (meetings, rallies, marches, demonstrations, etc.) (Part 4 of Article 46 of the CAP of Ukraine (Law of Ukraine, 2005), Article 14 of the Law of Ukraine "On Free Legal Aid" (Law of Ukraine, 2011).

Content of Part 3 of Art. 21 of the Law of Ukraine "On Free Legal Aid" (Law of Ukraine, 2011) and part 2 of Art. 59 of the CAP of Ukraine (Law of Ukraine, 2005) indicates that the powers of a lawyer providing free secondary legal assistance in an administrative process must be confirmed by a mandate from the center for providing free secondary legal assistance and a power of attorney drawn up in accordance with the requirements of administrative procedural legislation, which is certified by an official person of the body (institution) that made such a decision.

Restrictions on the attorney's powers to perform a certain administrative-procedural action, again, must be stipulated in the power of attorney issued to him, as evidenced by Part 2 of Art. 60 the CAP of Ukraine (Law of Ukraine, 2005). For the most part, the above refers to the powers contained in Art. 47 of CAP of Ukraine and relate to: 1) refusal of the claim statement; 2) recognition of the statement of claim in whole or in part; 3) changes in the basis or subject of the claim; 4) increase or decrease in claims; 5) filing a response to a claim; 6) achieving reconciliation; 7) filing a counterclaim.

As an example, we will cite separate procedural rights and duties of a lawyer as a subject of providing free secondary legal assistance in an administrative process, based on the norms of the CAP of Ukraine.

First of all, a lawyer who represents the interests of a person against whom administrative proceedings have been initiated has the right to familiarize himself with the materials of the administrative case (Articles 43, 49, 52, 53, 58, 59, 62 of CAP of Ukraine (Law of Ukraine, 2005). If the information provided by a person in need of free secondary legal assistance is not sufficient to clarify all the circumstances of the case, the lawyer, guided by the principle of competition, dispositiveness and official clarification of all the circumstances of the case (Article 9 of the Code of Administrative Procedure of Ukraine), takes all possible measures to obtain such information (collects information about circumstances and facts that can be used as evidence, in accordance with the procedure established by law).

According to Art. Art. 44, 223 the CAP of Ukraine, the lawyer also has the right to submit a petition to postpone the consideration of the case or announce a break in it in the event of the need to study a significant amount of administrative case materials or form a legal position.

If there are legal grounds, the lawyer is obliged to explain to the person to whom he provides free secondary legal assistance the possibility of conciliation with the other party in an administrative case, its conditions, procedure and consequences of conciliation (Article 190, clause 3, part 1 of Article 238, Article 314, 348, 377 of the CAP of Ukraine). In addition, if necessary, the lawyer has the right to submit a petition or statement for securing evidence or securing a claim (Articles 114-117, 150-153 of the CAP of Ukraine), after agreeing on this issue with the person he represents.

The legislator also imposes on the lawyer the obligation to comply with the procedural terms established by law when providing free secondary legal assistance, as well as to respond to their violation by other participants in the manner established by law (Articles 118-123, 173, 295, 309, 329, 342, 363, 376 CAP of Ukraine). In the case of missed deadlines and if there are grounds provided for by law, the lawyer has the right to file a motion to renew the missed procedural deadlines (Article 121 of the CAP of Ukraine).

The lawyer is obliged to notify the administrative court and the person to whom he provides free secondary legal assistance of the impossibility of attending the court session in advance (parts 2, 3 of article 131 of the Code of Administrative Procedure of Ukraine).

The lawmaker also does not prohibit a lawyer from preparing objections against the court's satisfaction of the other party's requests to add evidence to the court case materials after the procedural period established by law (articles 44, 79 of the CAP of Ukraine).

In some cases, the lawyer has the right to object to the satisfaction of the demands, statements and petitions of other participants in the legal process by the administrative court, which are contrary to the legitimate interests

of the person he represents, to express his own arguments, considerations and objections on the merits of the administrative case, based on the legal basis agreed with this person positions (Articles 44, 47, 166 of the CAP of Ukraine).

During the trial, the lawyer is granted the right to participate in the examination of evidence, if necessary, to submit oral and written requests, explanations, to state objections and to submit a request for the involvement of participants in the administrative process who, in his opinion, should be involved in the case, to participate in interrogations, court debates, other procedural actions (Articles 39, 44, 47, 81, 82, 84, 91, 93, 209-226, 243 of the CAP of Ukraine).

If the lawyer believes that the person he represents is, in his opinion, unjustifiably insisting on an appeal or revision of the court decision, then he offers to agree with him on the legal position and draws up a written legal opinion (Articles 13, 293, 328 of the CAP of Ukraine).

In the process of appealing a court decision in an administrative case, the lawyer (if necessary) submits a request for consideration of the case with the participation of the person he represents (Part 3 of Article 296, Part 3 of Article 304, Clause 1, Part 1 of Article 311, Part 3 of Article 330, Part 3 of Article 336, Part 3 of Article 338 of the CAP of Ukraine).

It is clear that these and other administrative-procedural powers of the lawyer in the process of providing free secondary legal assistance cannot be properly implemented in the administrative process in the absence of certain prerequisites, conditions and means to ensure them at an optimal level. In order for their effective implementation to take place, there must be a whole system or set of normatively established methods and conditions. Among the latter are legal guarantees of advocacy, that is, such legal means, as noted by A.V. Ivantsova, which are enshrined in legal norms, and the subject of their influence are the rights and duties of a lawyer, ensure their implementation, protection and renewal in case of their violation (Ivantsova, 2010).

1. Purpose and objectives of the research

The main purpose of the article is to study the legal guarantees of the lawyer's activities regarding the provision of free secondary legal assistance in the administrative proceedings of Ukraine. In order to achieve the goal of the article, the following tasks were solved: first, to investigate the understanding of the term "guarantee" and "guarantee of advocacy"; secondly, to find out the legal guarantees of advocacy by functional purpose; thirdly, to offer one's own understanding of "legal guarantees of the activity of a lawyer as a subject of providing free legal aid" and to form its features.

2. Literature review

The problems of studying free legal aid in Ukraine, clarifying its legal nature and content, the issue of determining the organizational, legal and managerial aspects of the activity of state bodies and institutions that ensure and guarantee the realization of a person's right to free legal aid, as well as various aspects of the organization of a self-governing institute of the bar, which implements the function of providing legal assistance, have not been the subject of a separate comprehensive scientific study to date.

Only fragmentarily, within the framework of studying more general problematic issues of advocacy activities, certain aspects of the raised topic were considered, in particular by the following scientists: E.Yu. Bova comprehensively highlights the problems of organizing, securing and ensuring the right of citizens to receive free legal aid (Bova, 2009); A.V. Ivantsova conducted a comprehensive study of the modern problem of the organizational forms of advocacy (Ivantsova, 2010); M.V. Stamatina examined the organization of activities related to the realization of citizens' right to free legal aid (Stamatina, 2013); A.V. Bitsai clarified the theoretical, organizational and legal principles of a lawyer's participation in mediation, which determine the functioning and further development of mediation in the legal system of Ukraine with the participation of lawyers (Bitsai, 2015); V. V. Zaborovsky revealed at the conceptual level the theoretical and legal provisions of the legal status of a Ukrainian lawyer and developed on their basis and put into practice scientifically based proposals for improving the norms of the current legislation on advocacy, in order to ensure the proper realization of a person's right to professional legal (legal) assistance (Zaborovsky, 2017); P. Valko presents a comprehensive idea of the essence and features of providing free secondary legal assistance by lawyers in administrative proceedings (Valko, 2020), etc.

A general review and analysis of the above-mentioned works shows that they mainly contain separate aspects of the organizational and legal basis for the provision and provision of certain forms and types of legal assistance, while the specifics and features of the legal guarantees of the lawyer's activity regarding the provision of free secondary legal assistance were practically not considered.

3. Research methodology

The methodological basis of scientific work is a set of general scientific and special scientific methods and methods of cognition, which are comprehensively used to solve the tasks set in the dissertation research. The methods of functional and systemic analysis, as one of the main methods of

this work, were used for the purpose of researching the essence and features of the realization of the individual's right to free legal assistance by subjects endowed with the professional status of a lawyer.

The use of terminological, logical-semantic and logical-legal methods made it possible to formulate the author's definition of the concept of "guarantees of advocacy in the process of providing free secondary legal assistance." The methods of classification and grouping provided the possibility of classifying the legal guarantees of the lawyer's activity as a subject of providing free secondary legal assistance in administrative proceedings, taking into account the norms of national legislation and international legal official documents.

4. Results and discussion

Moving on to covering the issue of legal guarantees of a lawyer's activity as a subject of providing free legal aid, (Pohosian *et al*., 2021) we consider it expedient to first clarify in general terms the content of such categories as: "guarantee", "legal guarantees", "guarantees of activity". Undoubtedly, all of them have a significant theoretical and methodological significance for our research, taking into account its purpose and tasks. We will briefly conduct a general review of interpretative editions and legal literature, on the pages of which these categories are considered and their primary importance is revealed.

In legal literature, the term "guarantee" is used in a wide variety of meanings, as it is quite multifaceted and is studied not only by legal theory, but also by other legal sciences in the aspect of researching human rights and freedoms, legal principles or legal regimes, as well as certain areas of activity of state bodies and their officials, etc. Thus, if we are talking about "legal guarantees" or "legal guarantees", we mean legally established means of protecting the rights and freedoms of citizens, ways of their implementation, as well as means of protecting law and order, the interests of society and the state (Busel, 2003).

At the same time, guarantees are not recognized as any conditions for the existence and realization of human and citizen rights, but only those defined by the state to ensure the concrete implementation of a person's legal status, the actual implementation of his subjective right.

V.V. Vvedenska notes that guarantees are a certain obligation of the state to create a system of prerequisites, conditions, means and methods enshrined in legislation, which provide everyone and everyone with equal legal opportunities to discover, acquire and realize their rights and freedoms, their actual implementation, protection and reliable protection

(Vvedenska, 2006). So, on the one hand, guarantees are used to ensure the optimal development of certain legal relationships, and on the other hand, they are designed for negative phenomena and events associated with the presence of a threat to the rights, freedoms and interests of a person (guarantees-protection) or their violation (guarantees- protection).

It is the state, as often emphasized by researchers, that, in the person of its authorized bodies, is obliged to ensure the realization of the guaranteed rights, freedoms and interests of the individual, not to violate them, and to provide the necessary protection and protection. In general, in all the above definitions, a special emphasis is placed on the state's obligation (through a set of legally established methods and means) in terms of creating the necessary conditions for an individual's ability to realize his legal rights, freedoms and interests. After all, such conditions must ensure their actual implementation, adequate protection and protection when necessary.

As for the legal guarantees of advocacy, on the pages of special literature in the specialized field, some researchers emphasize that such guarantees are aimed both at protecting a lawyer from possible manifestations of arbitrariness on the part of the state, attorney self-government bodies and other subjects, and at ensuring the right of an individual for professional legal (legal) assistance, the implementation of which is closely interconnected with the existing system of such guarantees (Zaborovsky, 2017).

R.V. Afanasiyev, for example, sees the assignment of guarantees of advocacy in the implementation of positive conditions for the implementation of advocacy functions, in particular regarding the reality of protection, representation and provision of other types of legal assistance to the client, as well as ensuring the state of protection of the advocate from the influence of objective and subjective negative factors in process of his professional activity. According to the scientist, economic-legal, social-legal, criminal-legal, administrative-legal, criminal-procedural and other types of guarantees are important among the guarantees of advocacy (Afanasiev, 2014).

Instead, the fact that professional rights and guarantees, according to I.V. Golovany, represent a characteristic difference between advocacy and other types of legal practice. And it is precisely around professional rights and guarantees, provided they are actually implemented, that the modern Ukrainian legal community unites without any coercion (Golovan, 2004).

The stated points of view do not cause any complaints and comments, and therefore, extrapolating their content to the term-concept "legal guarantees of the activity of a lawyer as a subject of providing free legal aid" (by analogy), we can formulate the latter as a set of legally established means, methods and conditions by means of which the actual implementation, realization, protection and protection of the rights and obligations of the lawyer as a subject of provision of free legal aid are ensured.

Especially since Art. 23 of the Law of Ukraine "On Advocacy and Advocacy" clearly indicates that guarantees of advocacy are guaranteed and protected by the Constitution and Laws of Ukraine, which regulate legal principles of advocacy and advocacy (Law of Ukraine, 2012).

It is obvious that it is with the help of material-financial, political, organizational-legal and other conditions and means that the unimpeded and effective implementation of advocacy activities, its reliable protection, as well as the functioning of the Ukrainian Bar Association as a self-governing independent legal institution as a whole is ensured.

Violation of the guarantees of lawyer activity defined by the legislator is subject to criminal liability in accordance with criminal procedural legislation (Article 374, Article 397-400 of the Criminal Code of Ukraine (Law of Ukraine, 2012). At the same time, we focus our attention on the fact that the real implementation of the legal guarantees of the lawyer as an entity providing free secondary legal assistance in the administrative process occurs when a number of legal documents are concluded, which certify the administrative and procedural powers of the lawyer to provide free secondary legal assistance.

As can be seen from the above, the legal guarantees of advocacy in general can be conventionally divided into: 1) general guarantees, which are represented by a set of methods, means and conditions that ensure the exercise of the professional powers of a lawyer, granted by law for the implementation of his main tasks and functions; 2) special guarantees that facilitate and guarantee the implementation of the attorney's powers in the process of carrying out a certain type of advocacy (in the process of providing free primary legal assistance, participation as a defense attorney in a criminal trial, etc.); 3) individual (personalized) guarantees that ensure the implementation of the powers of a specific lawyer in certain legal relations with his participation (ensuring the personal safety of a specific lawyer-defender in the process of considering a specific criminal case in accordance with the Law of Ukraine "On ensuring the safety of persons participating in criminal proceedings" (Law of Ukraine, 1993) etc.

The legal regulation of guarantees of advocacy is carried out not only by the norms of national legislation, but also by the norms of international legal official documents (the European Convention on the Protection of Human Rights and Fundamental Freedoms, the Recommendations of the Committee of Ministers of the Council of Europe on the freedom of professional activity of lawyers). In addition, the protection of lawyers' rights is regulated by acts of the United Nations, the Council of Bar and Legal Societies of Europe (SSBE), the International Bar Association, etc. (Migdal, 2018).

First of all, national legislation in the field of organization of legal aid activities guarantees the right to proper payment for the lawyer's activity as a subject of free secondary legal aid, in particular: 1) the right to the correctness of the calculation of the amount of his remuneration; 2) the right to reimbursement of expenses related to the provision of free secondary legal assistance by a lawyer on a permanent basis in accordance with the contract or on a temporary basis in accordance with the contract, which are carried out in the prescribed manner.

At the same time, in part 2 of Art. 25 of the Law of Ukraine "On Free Legal Aid" contains a rule according to which a lawyer in the process of providing free secondary legal aid on a permanent basis under a contract or on a temporary basis based on a contract is provided with the guarantees established by the Law of Ukraine "On Advocacy and Advocacy" and other by the laws of Ukraine (Law of Ukraine, 2011).

Analysis of the content of Art. 23 of the Law of Ukraine "On Advocacy and Advocacy" allows to state that the professional rights, honor and dignity of a lawyer are guaranteed and protected at the legislative level, in particular, it is prohibited to: 1) interfere with and hinder the implementation of advocacy; 2) demand from a lawyer, his assistant, a trainee, a person who is in employment relations with a lawyer, a lawyer's office, a lawyer's association, as well as from a person in respect of whom the right to practice law has been terminated or suspended, to provide information that is lawyer's secret.

These persons may not be interrogated on these matters, unless the person who entrusted the relevant information exempted these persons from the obligation to maintain secrecy in accordance with the procedure prescribed by law; 3) review, disclose, demand or withdraw documents related to the practice of advocacy; 4) to involve the lawyer in confidential cooperation during operative and investigative measures or investigative actions, if such cooperation is related to or may lead to the disclosure of the lawyer's secret; 5) interfere in private communication between the lawyer and the client; 6) submit submissions to investigators, prosecutors, as well as issue a separate decision (resolution) of the court regarding the lawyer's legal position in the case; 7) interfere with the lawyer's legal position; 8) bring to criminal or other liability a lawyer (a person in respect of whom the right to practice law has been suspended or suspended) or threaten to apply liability in connection with his practice of law in accordance with the law; 9) identify the lawyer with the client; 10) to carry out investigative measures or investigative actions against the lawyer, which can be carried out only on the basis of a court decision; 11) hold the lawyer accountable for his statements in the case, including those that reflect the client's position, for statements in the mass media, if the lawyer's professional duties are not violated (Law of Ukraine, 2012).

Let's also pay attention to the fact that separate regulations of the same article establish legal guarantees for: a) equality of rights with other participants in the proceedings, compliance with the principles of competition and freedom in providing evidence and proving their persuasiveness; b) state protection of the life, health, honor and dignity of the lawyer and his family members, as well as their property; c) implementation of disciplinary proceedings against a lawyer in a special manner; d) the right to security during participation in criminal proceedings in accordance with the procedure established by law (Law of Ukraine, 2012).

Thus, the generalization of the legal guarantees of advocacy, defined in the Law of Ukraine "On Advocacy and Advocacy", allows them to be combined according to their functional purpose into the following groups: 1) guarantees of independence of the advocate; 2) guarantees of the lawyer's inviolability, within which it is possible to distinguish: a) guarantees of the lawyer's professional safety; b) guarantees of the lawyer's personal safety; 3) guarantees of inviolability of the lawyer.

Among the most typical violations of the rights of lawyers (of a less serious nature), it is possible to single out failure to provide or untimely provision of access to information and case materials to the lawyer (which, in essence, is an obstacle in the preparation of the defense or representation). In addition, state authorities and law enforcement agencies interfere in every possible way in the lawyer's performance of his activities, trying to maximally control the process of their work, creating certain obstacles that do not belong to the powers of these bodies. There are quite a few cases in which investigators do not ensure the mandatory participation of a defense attorney in the cases provided for by law; restrictions on the right to freely choose a defense counsel; creating obstacles to the realization of procedural rights related to obtaining free legal aid, etc. (Azarov, 2018).

Conclusions

Taking into account the above, we can state that, in general, the legal guarantees of a lawyer's activity, in particular as a subject of providing free legal aid in the administrative proceedings of Ukraine, are characterized by the following characteristics: 1) ensure the unhindered and free exercise of the lawyer's rights and their proper execution duties assigned by him in the process of providing free legal assistance to a person who needs it; 2) the set of means, methods and conditions that make up the content of guarantees is always fixed at the appropriate regulatory and legal level (national and international), in particular defined in the norms of substantive and procedural law and embodied in law enforcement acts; 3) objectively determined by the level of development at this stage of the life

of society and the state, on the one hand, the legal institution of advocacy, and on the other, the institution of free legal aid; 4) begin to function after the occurrence of legal facts, which are associated with the acquisition of special rights and obligations by the lawyer for the provision of free legal assistance; 5) is a constituent part of the more general legal category "guarantee of advocacy".

Therefore, the legal guarantees of the activity of a lawyer as a subject of providing free legal aid should be understood as a set of legally established means, methods and conditions by means of which the actual implementation and protection of the rights and obligations of a lawyer as a subject of providing free legal aid are ensured legal aid.

In turn, it is appropriate to classify the lawyer's legal guarantees depending on the legal status to which he is assigned: 1) general guarantees, which are represented by a set of methods, means and conditions that ensure the exercise of the professional powers of the lawyer granted by law for the implementation of basic tasks and functions; 2) special guarantees that facilitate and guarantee the implementation of the attorney's powers in the process of carrying out a certain type of advocacy (in the process of providing free legal aid, participating as a defense attorney in a criminal trial, etc.); 3) individual (personalized) guarantees that ensure the implementation of the powers of a specific lawyer in certain legal relations with his participation (ensuring the personal safety of a specific lawyer-defender in the process of considering a specific criminal case in accordance with the Law of Ukraine "On ensuring the safety of persons participating in criminal proceedings " etc.).

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Ways to protect the rights of individuals in administrative proceedings: legal regulation and international experience

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Abstract

The objective of the research was to consider the forms of protection of the rights of individuals in administrative proceedings. The methodological basis used is presented as: comparative-legal and systematic analysis, formal-legal method, hermeneutic method, as well as methods of analysis and synthesis. Everything allows to conclude that, in order to clarify the issue of compliance of methods for judicial protection of the rights of individuals, provided by the Code of Administrative Procedure of Ukraine, with the criteria of a rule of law and the needs of establishing at each moment the rule of law in concrete reality, the assessment of provisions of the legislation on administrative procedures of: Azerbaijan, Georgia, Estonia, Latvia, Poland, France and the Federal Republic of Germany. Finally, it has been established that administrative courts in Ukraine have significant human rights powers to make decisions on recovery of funds from an authority to compensate for the damage caused by its unlawful administrative act, if such a claim is filed simultaneously with the application for recognition of such act as unlawful.

Keywords: subjective rights; form of protection; person and claim; administrative procedure; administrative act.

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Vías de protección de los derechos de las personas en los procesos administrativos: regulación jurídica y experiencia internacional

Resumen

El objetivo de la investigación fue considerar las formas de protección de los derechos de las personas en los procedimientos administrativos. La base metodológica empleada se presenta como: análisis comparativo-legal y sistemático, método formal-legal, método hermenéutico, así como métodos de análisis y síntesis. Todo permite concluir que, con el fin de aclarar la cuestión relativa al cumplimiento de los métodos para la protección judicial de los derechos de los particulares, previstos en el Código de Procedimiento Administrativo de Ucrania, con los criterios de un Estado de derecho y las necesidades de establecer en cada momento el Estado de derecho en la realidad concreta, son relevantes la valoración de disposiciones de la legislación sobre procedimientos administrativos de: Azerbaiyán, Georgia, Estonia, Letonia, Polonia, Francia y la República Federal de Alemania. Finalmente, se ha establecido que los tribunales administrativos en Ucrania tienen importantes poderes de derechos humanos para tomar decisiones sobre el cobro de fondos de una autoridad para compensar el daño causado por su acto administrativo ilegal, si tal demanda se presenta simultáneamente con la solicitud de reconocimiento de dicho acto como ilegal.

Palabras clave: derechos subjetivos; forma de protección; persona y demanda; procedimiento administrativo; acto administrativo.

Introduction

In the modern era of the controversial process of establishing the rule of law in the public-authority sphere in Ukraine, the matter concerning ways of private individuals' legal protection of their rights, freedoms, or legitimate interests that have been violated by authorities, their officials, when making official decisions, committing actions or inactions, rights, freedoms, or legal interests remains insufficiently developed.

Definite view of such legal protection in form of claims must be specified in the statement of claim and applied or not applied (depending on the availability of grounds) by the administrative court when deciding the case. Doctrinally, the matter of whether the methods of judicial protection of individual rights provided for by the current provisions of the Code of Administrative Procedure of Ukraine (hereinafter referred to as the CAP

of Ukraine) fully correspond to the criteria of the rule of law and the approaches to the settlement of these essential issues of administrative procedure available in European countries (Bezpalova *et al*., 2021).

It is worth noting that the matter of ways permissible in activities of administrative justice bodies for private individuals to protect their subjective rights, violated, in their opinion, by public administration bodies became relevant simultaneously with the emergence of this institution at the beginning of the 19th century in France and in Germany.

Initially, administrative justice was developed as a procedural mechanism of complaint-based proceedings, and that provided for injured persons a possibility to file only claims to declare illegal acts or actions of administrative and management subjects. S.O. Korf noted that an administrative lawsuit as a way of protecting a violated subjective right or an interest protected by law in an administrative court had historically developed from a complaint against superiors and an instance (Buha *et al*., 2022).

1. Literature review

In the Soviet state, administrative justice was considered as a hostile bourgeois institution, and therefore it was not used. Halaburda Nadiia wrote that:

> The rights and interests of citizens are protected and guaranteed by the entire system of socialist social relations, taking into account absence of antagonism between an individual and the collective, solidarity of interests of the state and citizens, and therefore administrative justice in the Soviet law is unnecessary (Halaburda *et al*., 2021: 95).

However, at the beginning of the 1960s, the authorities of the USSR took the path of partial recognition of possibility for citizens to appeal to civil procedure courts against certain actions of government entities (claims against inaccuracies in voter lists, imposition of fines, as well as some other actions when no other appeal procedure was determined) (Lata *et al*., 2022).

This approach was used in the Civil Procedure Code of the Ukrainian Soviet Socialist Republic 1963 (hereinafter referred to as the CPC) adopted for the development of the Soviet Union legislation. This code, with changes, was in effect in Ukraine until 01 September, 2005 – Code of Administrative Procedure (CAP).

According to Chapter 31-A "Complaints against decisions, actions or inaction of state authorities, local self-government bodies, officials and executives" of the CPC of 1963 (in the edition as of 11 May, 2005) the

procedural means of protecting person's rights consisted in complaints; based on viewing complaints the court had the authority to apply only the following methods of legal protection: 1) recognition of the contested decisions, actions or inactions as illegal and the obligation of the respective state authority, local self-government body, executive officer or official to satisfy the applicant's demand and eliminate the violation; 2) cancel the obligation imposed on the applicant or measures of responsibility applied to him/her; 3) restore the violated rights, freedoms or legitimate interests of the applicant in another way (part 2 Art. 248-7). Therefore, the CPC of 1963 did not provide for the possibility of collecting funds from a subject of power in favor of a person (as a result of the resolution of the case) as a compensation for damage caused by subject of power's illegal decisions, action or inaction (Kobrusieva *et al.*, 2021).

2. Materials and methods

The research is based on work of foreign and Ukrainian researchers on methodological approaches to understanding public relations from the point of view of the theory of law, administrative law, civil law, etc.

With the help of the epistemological method, the methods of protecting rights of individuals in administrative proceedings, etc., were clarified; thanks to the logical-semantic method, the conceptual apparatus was deepened, and the methods of protecting the rights of individuals in administrative proceedings were determined from the point of view of the theory of law, administrative law, etc. Thanks to the existing methods of law, we managed to analyze the essence of ways (methods) used for protecting rights of individuals in administrative proceedings, etc.

3. Results and discussion

In the implementation of part 2 Art. 55 of the Constitution of Ukraine when the CAP of Ukraine was adopted a significantly different approach was implemented in its text The list of permissible methods for legal protection of rights and legitimate interests of private individuals violated by state authorities, local self-government bodies, their officials and executives was expanded (Nalyvaiko *et al.*, 2018).

In terms of options for protection of subjective public rights, the legal form of proceedings for resolution of public legal disputes was established in the CAP. Individuals were given the opportunity to file petitions for compensation of material losses (damages) caused to them by improper management (Kolinko *et al.*, 2019).

According to the Law dated 13 May, 2020 № 590-IX the CAP of Ukraine was amended with a new article 266[i]. This article defines the specifics of proceedings in cases regarding appeal against individual acts of the National Bank of Ukraine, the Deposit Guarantee Fund, the Ministry of Finance of Ukraine, the National Securities and Stock Market Commission as well as against decisions of the Cabinet of Ministers of Ukraine regarding withdrawal of banks from the market.

According to part 7 of this article, based on the results of consideration of administrative cases specified in part 1 of this article, the court may decide on: 1) recognition as unlawful (illegal) and annulment of an individual act / decision specified in part 1 of this article or its individual provisions; 2) recovery of funds from the defendant (defendants) as a compensation for damage caused by his/her unlawful (illegal) individual act / decision, if such a claim is made by the plaintiff at the same time as the demand for recognition as unlawful (illegal) and annulment of the individual act / decision; 3) refusal to satisfy claims (in whole or in part) (Leheza *et al.*,, 2022).

In order to clarify the issue of whether the procedural methods of legal protection of the rights of private individuals (methods provided for in part 1, 2 Art. 5, Part 4 Art. 266, part 2661 of the CAP of Ukraine) are a purely national invention or still correspond to the practice established on the European continent, let us turn to the analysis of the relevant norms of the legislation on administrative proceedings in foreign countries (Tylchyk *et al.*, 2022).

Thus, in § 42 of the Regulation on Administrative Courts of the Federal Republic of Germany (VwGO) it is established that cancellation of an administrative act (appeal action), as well as an award to accept a declined or rejected administrative act (lawsuit for award) can be achieved by filing a lawsuit . In addition, § 43 of the VwGO also allows lawsuits to establish existence or absence of a legal relationship as well as invalidity of an administrative act (Matviichuk *et al.*, 2022).

In France methods of legal protection of individual rights include the following administrative lawsuits: lawsuits for illegality and cancellation of an administrative act (extraordinary suits); lawsuits of full court jurisdiction, allowing both protection and restoration of violated subjective public rights (simple suits); lawsuits regarding interpretation of an administrative act; lawsuits for the use of repression (Leheza *et al.*, 2022).

Lawsuits for illegality of an administrative act are the most famous. This type of lawsuits was formed in the practice of the State Council as early as 1832, when it was recognized as permissible to appeal to this body with objections concerning illegality of an act (actually the right to appeal) (Villasmil Espinoza *et al.*, 2022).

Lawsuits of full judicial jurisdiction or those for recognition of the right of claim allow the authority of the administrative court (as a result of consideration) to make a decision to compensate a person for damages caused as a result of illegal activity of the administration (Nalyvaiko *et al.*, 2022).

They are used to resolve the following disputes: disputes on responsibility of the administration for improper management that caused harm to a person (for example, in connection with the violation of requirements for maintenance of roads, communication routes, unjustified refusal to grant a permit); disputes on execution of public contracts, disputes on electoral, tax legal relations, disputes concerning certain real estate, environmental protection, historical monuments etc. (Vyhe, 2008).

In Azerbaijan, according to part 2 Art. 2 of the Administrative Procedure Code, the following types of lawsuits are allowed in administrative proceedings, depending on the method of protection of violated rights: for appeal (cancellation or change) of an administrative act adopted by an administrative body regarding rights and obligations of a person (lawsuit for appeal); lawsuits for imposing on an administrative body an obligation concerning issuance of an administrative act, and lawsuits for protection against inaction of an administrative body (lawsuits for coercion); lawsuits for commission of certain actions by an administrative body not related to adoption of an administrative act (lawsuits for the fulfillment of an obligation);

claims for protection against illegal interference unrelated to issuance of an administrative act and directly violating rights and freedoms of a person (lawsuits for refraining from committing certain actions); lawsuits for presence or absence of administrative-legal relations, as well as for recognition of an administrative act as invalid (lawsuits for establishment or recognition); lawsuits for verification of compliance with the law of regulatory acts, with the exception of issues referred to the powers of the Constitutional Court of the Republic of Azerbaijan (lawsuits for verification of legality); lawsuits concerning property claims related to resolution of administrative disputes, as well as concerning claims for payment of compensation for damage caused by illegal decisions (administrative acts) or actions (inaction) of administrative bodies; lawsuits filed by municipalities against actions of administrative control bodies or those filed by administrative control bodies against municipalities (Law of Azerbaijan Republic, 2015).

In Georgia, the subject-matter of an administrative dispute in courts may be:

1. Compliance of an administrative-legal act with the legislation of Georgia.

2. Conclusion, execution or termination of an administrative contract.
3. The obligation of an administrative body to compensate for damage, issue an administrative-legal act or perform any other action.
4. Recognition of the act as invalid, establishing presence and absence of a right or legal relationship (part 1 Art. 2 of the Administrative Procedure Code of this country) (Law of Georgia, 1999).

According to the norms of parts 1 and 2 of Art.37 of the Administrative Procedure Code of Estonia, administrative proceedings in this country begin with filing of a complaint to the court (Pryimachenko *et al*., 2018). Such a complaint may contain claims about:

1. Partial or complete cancellation of an administrative act (complaint about cancellation of an act).
2. Issuing an administrative act or taking an action (complaint about imposing an obligation).
3. Prohibition of issuing an administrative act or taking an action (complaint about prohibition of issuing an act or taking an action).
4. Compensation for damage caused in public legal relations (complaint about compensation for damage).
5. Elimination of illegal consequences of an administrative act or action (compensation complaint).
6. Establishing the nullity of an administrative act, illegality of an administrative act or action or another factual circumstance that is important for public-legal relations (institutional complaint) (Law of Estonia, 1999).

The powers of administrative courts based on the results of resolving complaints against administrative acts in Poland are established in Article 145 (§ 1) of the Law "On Proceedings in Administrative Courts", which provides that when satisfying a complaint against a decision or order the court shall:

1. Cancel the decision or order in whole or in part, if it finds: a) a violation of material law that affected the outcome of the case, b) a violation of the law that caused resumption of an administrative proceedings, c) another violation of procedural provisions if it had a significant impact on the outcome of the case.
2. Declare a decision or an order invalid, in whole or in part, if there are reasons specified in Art. 156 of the Administrative Procedure Code or in other normative acts.

3. Note that the decision or order was issued in violation of the law if there are reasons specified in the Administrative Procedure Code or other regulatory acts, in the case specified in Art. 145 (§ 1, paragraph. 1 letter "a" or paragraph 2), if it is justified by the circumstances of the case, the court also has the authority to oblige a body to make a decision or order within a specified period indicating the method of settlement of the case or to settle it, if the decision-making is not left to the discretion of the authorities (Art. 145a (§ 1) of this Law of the Republic of Poland) (Law of Poland, 2002).

Conclusions

Therefore, the methods of legal protection inherent in the full administrative-judicial jurisdiction (regarding compensation for damage caused by unlawful decisions, actions of the public administration) in Latvia, unlike Ukraine, are not directly applied in administrative proceedings.

In this way, the conducted analysis allows us to assert that the list of methods of judicial protection of the rights, freedoms or legitimate interests of private individuals given in part 1 Art. 5, Part 4 Art. 266, Part 7 Art. 266[i] of the Code of Administrative Procedure of Ukraine (the CAP of Ukraine) includes legal protection means, which are typical for both annulment proceedings (contentieux d'annulation), and full administrative court proceedings (contentieux de plein juridication).

Since the permissible methods of legal protection under the provisions of these articles of the CAP of Ukraine also include the authority of the court to make a decision concerning recovery of funds from the defendant (defendants) as a compensation for damage caused by his/her unlawful (illegal) individual act/decision, if such a claim is made simultaneously with a claim for recognition as unlawful (illegal) and cancellation of the individual act / decision.

The approach to determining permissible methods of legal protection of subjective public rights, implemented in the national Code of Administrative Procedure, generally corresponds to the practice established on the European continent for settlement of issues on administrative legal protection.

Therefore, the procedural methods of judicial protection of subjective rights provided for in part 1 Art. 5, Part 4 Art. 266, Part 7 Art. 266i of the Civil Code of Ukraine meet the requirements of the functioning of a law-governed state and the requirements for establishment of the rule of law in Ukraine.

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Court-initiated call for evidence in the Ukrainian economic process

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Abstract

The purpose of the article was to study the actual problems of obtaining evidence on the initiative of the court in the economic process and, at the same time, to substantiate the proposals for reforming the economic procedural legislation of Ukraine. In the research process were used methods of general and special, namely: historical, comparative legal, synergistic, structural systemic, analysis and synthesis, logical and generalization method. It has been shown that evidence is an important part of the judicial process. It is emphasized that the role of the court in ensuring a prompt and thorough consideration of the case cannot be passive. It is concluded that the court, while maintaining objectivity and impartiality, must assist the participants in the trial in exercising their rights, prevent any kind of abuse and take measures to fulfil its judicial duties, as a condition of possibility for the maintenance of the rule of law.

Keywords: evidentiary initiative; evidentiary claim; economic court; economic process; economic procedural law.

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Reclamo de pruebas por iniciativa del tribunal en el proceso económico de Ucrania

Resumen

El propósito del artículo fue estudiar los problemas reales de obtención de pruebas por iniciativa del tribunal en el proceso económico y, al mismo tiempo, fundamentar las propuestas para reformar la legislación procesal económica de Ucrania. En el proceso de investigación se utilizaron métodos de generales y especiales, a saber: histórico, comparativo jurídico, sinérgico, sistémico estructural, de análisis y síntesis, lógico y método de generalización. Se ha demostrado que la evidencia es una parte importante del proceso judicial. Se enfatiza que el papel de la corte para garantizar una consideración rápida y completa del caso no puede ser pasivo. Se concluye que el tribunal, manteniendo la objetividad e imparcialidad, debe asistir a los participantes en el juicio en el ejercicio de sus derechos, prevenir cualquier tipo de abuso y tomar medidas para cumplir con sus deberes judiciales, como condición de posibilidad para el mantenimiento del Estado de Derecho

Palabras clave: iniciativa de prueba; reclamo prueba; tribunal económico; proceso económico; legislación procesal económica.

Introduction

Judicial reforms have been recently carried out in many countries of the world. The reasons for reforming procedural legislation are both internal and external (international) factors. The processes of revising and updating national procedural legislations of various countries are conditioned by the need to bring them in line with modern global practices of regulating economic, political and other relations. The tendency that is also characteristic to Ukraine has been indicated.

The modernization of the procedural legislation of most European countries is aimed at ensuring the right to a fair trial and effective protection of violated rights and legitimate interests of business entities. “The burden of injustice falls too heavily on vulnerable groups, facing the threat of loss of jobs, livelihoods, housing, health and life, the hardest struggle to realize their rights and access to justice” (Teremetskyi *et. al.*, 2021: 3). At the same time, improving access to justice occurs by reducing court expenses, simplifying the rules of court proceedings, etc.

The redistribution of the responsibilities of the parties and the court in Ukraine has reflected a new balance of adversarial and dispositive judicial

principles. The court remains to have authorities to control over the organization of the case, namely: choosing the procedure for considering the case, establishing real deadlines for the execution of procedural actions, etc.

It is well-known that the largest number of comments from scholars and practitioners during the discussion of the draft of the current version of the Commercial Procedural Code of Ukraine (hereinafter referred to as the Commercial Code of Ukraine) were made on the norms regarding the use of means of proving and obtaining evidence, the role of the court in obtaining and verifying case evidence, etc.

Therefore, this article is focused on determining the role of the commercial court through the prism of authorities to demand evidence within the commercial proceedings and to ensure effective protection of the rights and legitimate interests of the participants in commercial legal relations. It is important because the provisions of the Commercial Procedural Code should reflect both private and public legal principles of judicial proceedings aimed at ensuring a balance of private and public interests in the commercial proceedings.

1. Literature review

The issue of determining the role of the court in the process of proving was the subject matter of scientific works by scholars from Ukraine and other countries. However, few scholars considered the expediency of granting the court the authorities to request evidence on its own initiative. This confirms the relevance of studying the role of the court within the procedure of demanding evidence in the commercial proceedings of Ukraine.

We note such scientific works that became the basis for this study. First of all, it refers to G.C. Lilly's work called Introduction to the Law of Evidence, which provides basic ideas about evidentiary law in the Anglo-American legal system (1996). The work called A Digest of the Law of Evidence by J.F. Stephen is also important. It has a great influence on the development and formation of modern evidentiary law in the USA (2015).

The rules of allocating authorities on proving are studied in O. Baulin's dissertation research "Burden of proving in civil cases" (2005). Teremetskyi and Petrovskyi (2021) revealed the legal nature of the concepts "special knowledge" and "special knowledge" is disclosed, defined approaches for determining the legal status of persons with special knowledge are indicated, identified regulatory and procedural obstacles and prerequisites for the participation of a specialist in a certain branch of knowledge as a subject of proof in the civil process are revealed.

Babenko (2007) in the dissertation research titled "Evidence in the commercial proceedings" studies the concept and legal status of the subjects of evidence in the commercial proceedings, namely by analyzing the legal status and rights of the court.

Biletskaya (2013), researching evidence in the commercial proceedings of Ukraine draws attention to the fact that the doctrine on evidence and proving in modern conditions has reached such a level of development that it is allocated to a separate sub-branch "Evidence Law", and proving is precisely the activity of the court and other participants in the proceedings.

Kalamaiko (2019), Melekh (2016), Izarova *et al.* (2018) focused their research on the institution of evidence and proving in foreign countries by paying attention to the role of the court in the proceedings.

Luspenik (2019), Selivon (2021), Demydova and Vasylchenko (2016), Ryzhenko and Rybas (2016), Dzhepa (2017) emphasize the need to leave the court's right to demand evidence while studying the role of the court in the process of proving.

2. Methodology of the study

The research is based on a complex of general scientific and special methods of scientific cognition. The following methods have been used: historical, comparative and legal, synergistic, systemic and structural, analysis and synthesis, logical and generalization methods. Thus, the historical method assisted to determine the stages of the development of the commercial procedural legislation in regard to the court's right to demand evidence on its own initiative. The comparative and legal method was used in researching the legal experience of other countries.

The synergistic method was used to combine the results of scientific research on the role of the court in the process of proving. The systemic and structural method made it possible to study the institution of the demand for evidence as a component of evidentiary law.

The methods of analysis and synthesis were used to analyze the essence of legal norms regulating the demand for evidence at the initiative of the court in Ukraine. The logical method and the method of generalization were used to analyze the data, the legislation of Ukraine and to form own conclusions.

3. Results and Discussion

3.1. Role of the court within judicial proving

An important prerequisite for making a fair and impartial court decision is to establish the factual circumstances of the case – a certain range of facts, which are the legal consequences according to the law. They are established with the help of proving, that is, a special procedural activity carried out by the participants of the case and the court.

The problem of proving occupies one of the central places in the science of commercial procedural law. Prominent scholars who are experts in the procedural issues have been involved in its solution for many centuries. The relevance of this problem is determined by the fact that any commercial case cannot be solved without proving.

The following key issues are important for court evidence:

1) who precisely carries out the activity on establishing legal facts, that is, how the burden of proving is distributed and between whom;
2) who should make efforts to establish the circumstances of the case and to which extent;
3) what is the court's participating extent in proving;
4) what should happen in case of passivity of proceedings participants and in case of insufficient evidence.

Demydova and Vasylchenko (2016) define the ultimate goal of the judiciary as achieving true information about circumstances to be proven and making a reasoned and fair decision on their basis. Thus, the quality of the court decision depends on the completeness and objectivity of studying the evidence.

The importance of proving in a case is emphasized by lawyers of the DLA Paper company in their research Dispute Resolution in the Middle East (2022). It is important to understand the rules related to evidence. Effective evidence management will help to win cases, and poor evidence management will help to lose it.

Evidence Law in the Anglo-American judicial system is allocated into a separate institution, which is interdisciplinary for all types of court proceedings – civil, criminal, arbitration. The rules of evidence dictate how and when facts can be proved or disproved in court. Evidence Law is the end product of century-long effort to make the judicial proceedings as fair, accurate and final as possible (Sklansky and Roth, 2020).

Evidence Law is a part of procedural law, which in certain cases decides: 1) which facts can and cannot be proven in a specific case; 2) what evidence must be provided regarding the fact that can be proven; 3) whom should present the evidence and what is the way of presenting the evidence (Stephen *et al.*, 2015).

The court decision must be based on the rule of law principles, be legal and justified. It is possible only in case of examining all the evidence in the case and establishing all the factual circumstances that are important for the correct solution of the case. But a party to the case does not always have the opportunity to independently provide necessary evidence due to circumstances beyond his / her control, therefore the institution of demanding evidence as a component of proving within commercial proceedings acquires special importance (Selivon and Nykytchenko, 2021).

The persons participating in the court proceedings present facts and arguments justifying their legal position in the case. On the basis of the evidence examined in the court, those persons make a conclusion about the stability of their legal position and continue to participate in the case or withdraw the claim, sign an agreement of lawsuit, plead no defence, etc.

The court analyzes the given facts and arguments of the parties with the help of procedural rules of evidence. As a result of case's consideration, the court makes a decision.

Therefore, during the proving process the persons participating in the case justify the circumstances of the subject of proving and its elements with the help of evidence. It leads to the emergence of new knowledge that is important for detecting the case. Every person participating in the process of proving within commercial proceedings fulfills the procedural duties assigned by law.

Almost all entities of economic and procedural legal relations are subjects of proving. The duties of the court do not include proving, but its task in considering and resolving the case is to ensure that all norms of evidence and proving are correctly applied. The court examines the evidence, evaluates it, makes a conclusion in the case, essentially participates in proving.

It is the parties in the case who are obliged to prove the circumstances of the case. Persons participating in the case perform this duty independently or through their representatives. And in cases established by the procedural law the help of the court is resorted in the form of a request to demand the necessary evidence (Lang, 2018).

Baulin (2005) notes that it is important who carries out the activity of establishing legal facts within court proving, unlike scientific and everyday knowledge, that is, how the burden of proving is distributed and between whom. The importance of the allocation of burdens of proving can be increased due to the strengthening of the role of the adversarial proceedings.

Previously the court had to be active in any case, could dominate and had the duty to fully and comprehensively consider the case. Modern commercial procedural legislation confidently departs from the assignment of investigative duties to the court, giving the main role in the proving process to the persons participating in the case.

Traditionally, two types of judicial proceedings are distinguished – investigative (inquisitorial, searching) and adversarial. The indicated types of proceedings primarily differ in the position of the court and the parties in the proceedings. The parties (not the court) in adversarial proceedings have the initiative during the preparation, hearing and review of the case. But none of the existing proceedings can be called adversarial or investigative in its pure form.

The burden of providing evidence and proving in adversarial proceedings rests with the parties to the dispute. It is on the contrary in the investigative proceedings, the court is responsible for collecting evidence.

There are two main concepts regarding the subjects of court proving in the scientific literature. Proponents of the first one believes that court proving is a way of learning the actual circumstances of the case. They understand court proving as the activity of proceedings subjects to establish the objective truth with the help of procedural means and methods specified by law, the presence or absence of facts necessary for dispute resolution between the parties (Treushnikov, 2004; Biletskaya, 2013; Vasylchenko, 2017; Selivon, 2021).

Proponents of the second approach understand proving as the activity, whose purpose is to convince the court of the truth of the facts under consideration (Osokyna, 2013; Melekh, 2016). Thus, they mean only the procedural activity of the parties, which consists of presenting evidence, refuting the evidence of the other party, filing motions, participating in the examination of evidence.

We believe that such a position is controversial, because some evidence cannot be obtained by the plaintiff without the help of the court. Therefore, both the active position of proceedings participants and the commercial court is important during proving.

The court is not always recognized as the subject of proving in procedural science. We talk about the scholars' position, who understand the court proving as the need to convince the opposite party and the court of their rightness. And since the court does not convince anyone according to such an approach, it is excluded from the subjects of evidentiary activity (Martysiuk, 2001; Butyrskyi, 2019).

Osokyna (2013) distinguishes between court proving and finding of fact and conclusion of law and notes that finding always precedes proving.

The subjects of proving, in her opinion, are persons participating in the case, their representatives, the prosecutor, state authorities and local self-government agencies.

She considers proving as the activity of those subjects related to the court's conviction of the existence or absence of certain facts. Until the court goes to the deliberation room, it is only the subject of finding. The court becomes the subject of proving as a logical mental activity only in the deliberation room after starting to draw up the final procedural document.

Babenko (2007) notes that the commercial court as a justice agency occupies a powerful position. Therefore, it has the right to demand, offer, oblige the participants of commercial proceedings to provide evidence necessary for the correct resolution of the dispute, that is, it exercises coercion.

Biletskaya (2013) states that proving is the activity of the court and other participants of proceedings, whose purpose is to establish and fully clarify all the valid circumstances of the case, which are specified (individualized) depending on the subject matter of the dispute, the parties, as well as those legal relations that take place between the parties in a particular case.

Kalamaiko (2019) refers to the experience of foreign countries and notifies that the activity of the court in the procedural science and legislation in some countries is considered in terms of the so-called "case management", whose one of the elements is the court's authorities within evidentiary activities. The court in Great Britain, who always was an example of classic adversarial model, plays a passive role; the court has certain manifestations of "mandatory activity" such as sending the parties a form with the allocation questionnaire.

The judge in German civil proceedings must administer the proceedings and focus on the decisive issues. Courts also have the right to make requests (for example, regarding an expert's opinion), as well as to study evidence in the case by conducting a video conference.

Therefore, the specifics of implementing the adversarial principle depend on one or another procedural system. For example, a judge in the system of continental law is responsible for collecting evidence, forming a legal position in a case.

A trial in the continental legal system usually consists of a series of short court hearings to collect evidence, which must be presented during the court hearing as the final stage of the analysis and decision-making. In contrast, a trial in common law countries typically has a preliminary or pre-trial stage, where the evidence in the case is sequentially presented (Komarov, 2011).

We note that the role of the presiding judge is important in the Anglo-American legal system, where the burden of proving is responsibility of the

parties according to the adversarial principle. Court lawyers have broad discretion to conduct their cases in their own way, but there are significant limitations imposed by the trial judge. Evidence Law gives the trial judge both great power and broad authorities (Sklansky and Roth, 2020).

A. Shtafan (2015) claims that the court: a) does not take a passive position, allowing itself to be convinced of the existence of certain circumstances; b) is not only an observer over the compliance with the legal norms by the participants; c) facilitates to the collection of evidence in the case, forms the limits of proving, and sometimes the burden of proving. Therefore, the indicated activity belongs to proving. Thus, the court is a full-fledged subject of proving, acting in the interests of justice.

Treushnikov (2004) emphasizes that the implementation of the idea of passive behaviour of the court in the process of proving can lead to difficulties in the practice of consideration and resolution of specific cases. Court proving according to the scholar is a logical and practical activity not only of the persons participating in the case, but also of the court.

The commercial court takes part in establishing the factual circumstances of the case and has the opportunity to directly influence the activities of the persons participating in the case. That is, the commercial court gets to know the circumstances and evidence at all stages of the case by participating in the formation of the subject matter of proving in the case, in the research and evaluation of the evidence in the case, and in exceptional cases – in the collection of evidence in the case.

3.2. Changes in the court's role in reforming commercial procedural legislation

The current duty of the Ukrainian court to collect evidence on its own initiative to objectively clarify all circumstances of the case within commercial proceedongs has been replaced by the function of the court to assist the persons participating in the case in obtaining the evidence necessary to resolve the case on its merits.

Butyrskyi (2019), analyzing the current edition of Part 5 of the Art. 13 of the Civil Procedural Code of Ukraine, concludes that the role of the court has significantly changed after the adoption of new procedural codes. Thus, the court maintaining objectivity and impartiality:

1. manages the course of judicial proceedings;
2. facilitates to the settlement of the dispute by reaching an agreement by the parties;
3. explains, if necessary, to the participants in the court proceedings their procedural rights and obligations, the consequences of taking or not taking procedural actions;

4. assists the participants of court proceedings in exercising their rights provided by the Commercial Procedural Code of Ukraine;
5. prevents the abuse of their rights by the participants of court proceedings and takes measures to ensure that they fulfil their obligations.

Such a procedural position of the court significantly distinguishes it from the one it held under the previous edition of the Commercial Procedural Code of Ukraine. Previously, the commercial court had to create the necessary conditions for the parties and other persons involved in the case to establish the factual circumstances of the case and the correct application of legislation. The commercial court made its decisions based on the results of the evaluation of the evidence submitted by the parties, other participants in the proceedings and which were requested by the court.

The adversarial principle between the parties and their freedom in providing the court with their evidence and in proving their persuasiveness is enshrined in the Art. 129 of the Constitution of Ukraine. The Article 13 of the Commercial Procedural Code of Ukraine specifies the content of this principle within commercial proceedings. Korotenko (2006) defines the adversarial principle as the competition of parties in a case, when the actions of one person participating in the case effectively limit the ability of others to influence the outcome of the court proceedings individually, if there is active role of the court, which is empowered to administer and manage the proceedings.

The adversarial model of civil proceedings is the construction of the procedure of considering and resolving cases, when legally interested persons carry out proving activities in support of their claims or objections at their own discretion with qualified legal assistance. Preparation of the case for consideration is the responsibility of the parties and their representatives, which involves questioning witnesses, applying to expert institutions, etc. The court carries out procedural control while maintaining impartiality.

The principle of adversariality of the parties implies a high level of legal culture, legal awareness and conscientiousness of the participants of court proceedings. Each party must prove the circumstances it refers to as the basis of its claims or objections (the Art. 74 of the Commercial Procedural Code of Ukraine).

Part 4 of the Art. 74 of the Commercial Procedural Code of Ukraine prohibits the court from collecting evidence related to the subject matter of the dispute on its own initiative, except for the demand of evidence by the court in case if it has doubts about the good faith of exercising the procedural rights by the participants of the case or the fulfilment of obligations regarding evidence.

According to E. Martysiuk (2001), the guarantees for implementing the adversarial principle are: 1) the refusal of commercial courts to initiate the collection of evidence; 2) establishing the absolute truth; 3) increasing the degree of responsibility of persons participating in the case, under the threat of a decision unfavourable to them; 4) increasing the general legal awareness for the subjects of legal relations, which corresponds to the tasks of commercial justice system. Such scholar's position is controversial, because the main feature of the adversarial system is that the judge is not obliged to establish the truth in the case.

The court was considered as an active participant in commercial proceedings by collecting evidence in the case on its own initiative before the adversarial principle was established in the procedural legislation of Ukraine. However, there are situations in practice, when the adversarial principle of the parties cannot be followed and the court must have authorities to take active actions. This may be caused by the low level of training of the participants of the court hearing, the tactics chosen by the party in the case, etc.

Vedeneev (2001) singles out two groups of judicial powers, if we consider the powers of the court in proving from the point of view of their impact on the activities of the plaintiff and the defendant in proving:

1) the court takes part in establishing the factual circumstances of the case and has the opportunity to directly influence on the willful activity of persons participating in the case on proving. For example, in the form of determining the subject matter of proving in the case or while checking the relativity, admissibility, reliability and sufficiency of the evidence provided in the case;

2) the current procedural codes also enshrine the powers of the court, whose implementation creates the necessary conditions (preconditions) for persons participating in the case to carry out evidentiary activities in a specific case in accordance with procedural principles.

The mentioned groups of court powers are called in the literature as "administrative powers" and "organizational powers".

The organizational powers of the commercial court enshrined in the current commercial procedural legislation do not directly affect the volitional activity of persons participating in the case on proving, but only create the necessary conditions (preconditions) for a more complete realization of their procedural rights in the case. On this basis one can conclude that the organizational powers of the court are consistent with the adversarial principle and contribute to its implementation within commercial litigation.

The court's demand for evidence belongs to administrative powers, and this procedure must be strictly regulated in the procedural norms in order to develop and strengthen adversarial system in commercial proceedings, to increase the authority of the court and impossibility to make adversarial system to be a fiction.

Melekh (2016), having studied the institution of evidence and proving in foreign countries, concluded that the court in the procedural legislation of a number of foreign countries has powers on proving in the case, which at first glance do not belong to the judicial model built on the adversarial principle.

At the same time, the scholar points out the impracticality of copying the powers of the court on proving in the case based on the legislation of foreign countries. According to her opinion, the active use of such powers by the court in Ukrainian legislation can lead to an influence on the parties' procedural activity on proving, by imposing them own vision and understanding of the essence of a specific commercial dispute.

There is still no unified approach to the issue of judicial control over the process in the European Union. The main tendencies in civil proceedings reforms among the EU member states are to ensure the effectiveness of the process by providing judges with an appropriate level of judicial control. At the same time, there is still insufficient public trust in judges and the judicial system in general in post-socialist countries (Izarova *et al*., 2018).

Provisions of the Art. 81 of the Civil Procedural Code reflect the private law principles of adversarial civil proceedings, according to which the burden of proving rests entirely on the parties (Luspenik, 2019). Therefore, the stated duty on proving is characterized by the specificity and arises when a person exercises his / her right to judicial protection. At the same time, a person has the right to independently choose the range of evidence that he / she refers to and submits to the court, based on the procedural interest and position in the case.

However, this right of the parties has its limits. For example, the parties must not abuse their procedural rights (we mean the use of procedural rights in the field of proving contrary to their purpose, unscrupulous practice that violates the interests of other persons, etc.).

The current edition of the Art. 74 of the Commercial Procedural Code of Ukraine is criticized by scholars and practitioners in view of the fact that it deprives the court of the right to demand independently insufficient evidence submitted by the parties.

One should agree with Vatamaniuk (2011), who notes that the legislator significantly influenced the comprehensiveness and fairness of the court proceedings by determining in the new edition of the Commercial

Procedural Code of Ukraine that the burden of proving rests exclusively on the parties, and the commercial court on its own initiative is deprived of the right to demand evidence from enterprises and organizations regardless of their participation in the case, if submitted evidence is insufficient.

Hence, considering the case on its merits and understanding that the rights of one party have been violated by the illegal actions of the other party, the court has currently no opportunity to establish the truth and justice in the resolution of this dispute in case, in particular, of improper legal support of the interests of the party by its representatives, but as an observer must analyze the evidence presented and resolve the dispute purely on its basis.

Demydova and Vasylchenko (2016) note that the right to demand additional evidence is not a manifestation of judicial interest in the outcome of the dispute, but an additional mean of ensuring the completeness of evidence examination and establishing the valid relations of the parties. The court making a procedural decision to demand this or that evidence cannot be aware in advance about the results of such a procedural action. At the same time, dubious circumstances should in no case serve as the basis for making a decision. The adversarial system of the parties in its absolute meaning is an ideal that should be strived for, but should not be formalized too much.

Ryzhenko and Rybas (2016) suggest to supplement the Commercial Procedural Code of Ukraine with a norm on the court's right to demand evidence on its own initiative in cases defined by law.

According to Yu. Dzhepa (2017), limiting the powers of the court to collect evidence is a tendency that can lead to the fact that the court will be a "hostage" of the parties and other participants in commercial proceedings, especially in cases between related business entities, which due to the relevant norm of procedural law, will be able to tamper the court, which undermines its authority and mitigates the function of an independent arbitrator.

Vasylchenko (2017) considers it positive, scientifically based and practically justified the establishment in Part 4 of the Art. 74 of the Commercial Procedural Code of Ukraine an exception to the general rule regarding the court's right to independently demand evidence, when it has doubts about the conscientious exercise of the procedural rights by the participants of the case or the fulfilment of their obligations regarding evidence.

Such a court right is undoubtedly necessary to ensure effective protection of violated, unrecognized or appealed rights and legitimate interests of individuals and legal entities or the state. However, the judges in the relevant rulings on the demand for evidence on the basis of Part 4 of

the Art. 74 of the Commercial Procedural Code of Ukraine do not always indicate the reasons for such a demand.

The court in accordance with Part 4 of the Art. 74 of the Commercial Procedural Code of Ukraine has the right to collect evidence in case if it has doubts about the conscientious exercise by the participants of the case of their procedural rights or the fulfillment of their obligations regarding evidence. For example, in case if the court comes to the conclusion that the claim is of artificial nature, and the commercial litigation, contrary to the principle of good faith in exercising procedural rights, is not used for its intended purpose, it has the right to demand all the necessary evidence, in its opinion.

Provisions of the Art. 74 of the Commercial Procedural Code of Ukraine reflect the public and legal principles of commercial litigation and are aimed at ensuring the good faith of the procedural behavior of the participants in the case in terms of the adversarial model of the judiciary, based on the principle of proportionality, which is designed to ensure the balance of private and public interests during the administration of justice in commercial cases.

In addition to the mentioned Part 4 of the Art. 74 of the Civil Procedural Code of Ukraine, one can find their other cases when the court can collect evidence on its own initiative (Part 7 of the Art. 82, Part 6 of the Art. 91, Part 5 of the Art. 96, the Art. 99 of the Civil Procedural Code of Ukraine, etc.).

Luspenik (2019) notes that the provisions on the possibility of collecting evidence by the court on its own initiative should be justified not only through the prism of competitiveness, but also taking into account the principle of proportionality in terms of the tasks and purpose of the judicial proceedings.

Conclusion

Having analyzed the current legislation and caselaw, we should point out the need to improve certain provisions of evidentiary law and the theory of evidence. We believe that the role of the court in ensuring a quick and comprehensive consideration of the case cannot be passive. First of all, it is related to ensuring the balance of private and public interests during the administration of justice within commercial disputes.

Therefore, the establishment of an exception to the general rule regarding the court's right to independently demand evidence, when it has doubts about the conscientious exercising the procedural rights by the participants of the case or fulfilling their duties, is precisely the tool that will ensure the conscientious procedural behavior of the participants of the

case, as well as to prevent abuse by the parties of their procedural rights or manipulation of the court, aimed at undermining its authority and leveling the function of an independent arbitrator.

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Prevention of corruption offenses by public officials: Experience from European Union countries

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Abstract

The article analyzes the effectiveness of preventive anti-corruption measures in the countries of the European Union EU. The study involved comparison and forecasting methods. The results showed that the EU is leading its efforts to develop anti-corruption legislative initiatives and their implementation at national and international level. Whistle-blower protection laws adopted in EU countries are important tools for exposing illegal activities committed in organizations. Transparency of public administration in Denmark and Finland contributes to the maintenance of moral and legal standards in society. The Danish Code of Conduct in the Public Sector and the Finnish Anti-Corruption Guide for Small and Medium-Sized Enterprises have become documents that help promote corruption-free business relationships. The Finnish Harmaa (gray) project is an example of how data analytics helps law enforcement agencies process large volumes of data to prevent corruption offenses. It is concluded that the initiatives of EU countries to prevent corruption of officials can become an example for Ukraine during post-war recovery.

Keywords: corruption; whistle-blower protection; international transparency; passive bribery; asset tracing.

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Prevención de delitos de corrupción por parte de funcionarios: Experiencia de países de la Unión Europea

Resumen

El artículo analiza la eficacia de las medidas preventivas anticorrupción en los países de la Unión Europea UE. El estudio involucró métodos de comparación y pronóstico. Los resultados mostraron que la UE dirige sus esfuerzos para desarrollar iniciativas legislativas anticorrupción y su implementación a nivel nacional e internacional. Las leyes de protección de denunciantes adoptadas en los países de la UE son herramientas importantes para exponer las actividades ilegales cometidas en las organizaciones. La transparencia de la administración pública en Dinamarca y Finlandia contribuye al mantenimiento de las normas morales y legales de la sociedad. El Código danés de conducta en el sector público y la Guía anticorrupción finlandesa para pequeñas y medianas empresas se han convertido en documentos que ayudan a promover relaciones comerciales libres de corrupción. El proyecto finlandés Harmaa (gris) es un ejemplo de cómo el análisis de datos ayuda a los organismos encargados de hacer cumplir la ley a procesar grandes volúmenes de datos para prevenir delitos de corrupción. Se concluye que las iniciativas de los países de la UE para prevenir la corrupción de los funcionarios pueden convertirse en un ejemplo para Ucrania durante la recuperación de la posguerra.

Palabras clave: corrupción; protección de denunciantes; transparencia internacional; soborno pasivo; rastreo de activos.

Introduction

Corruption affects both the public and private sectors. Corruption reduces investment, harms productivity and economic growth, which increases obstacles to the efficient allocation of public resources (Ceschel *et al*., 2022). As a result, corruption can increase mistrust of government, weaken the strength of national climate policies, and harm sustainable economic development (Ma *et al*., 2022). Peculiarities of corruption crimes cause difficulties in the course of their prevention.

A number of post-Soviet countries still have considerable legislative uncertainty in the issues of vagueness of law-making procedures, in the presence of norms that create additional opportunities for corruption. This is evidenced by the long-term separation from the closedness and lack of control of representatives of the authorities. This situation inevitably leads to corruption.

The growth of corruption literacy and confidence in the effectiveness of proven solutions harden anti-corruption activity (Matorera, 2022). Against this background, various countries have developed an interest in fighting corruption not only with the help of counter-policies to punish corruption. A preventive policy designed to limit the potential consequences is being developed.

Special attention should be paid to the prevention of corruption crimes during military conflicts. Martial law requires the improvement of preventive anti-corruption measures. The appropriate institutional system must meet international standards and best global practice (Shylo, 2022). It is also important to take into account the peculiarities of the country's legal system.

The results of the prevention and counteraction of corruption in Ukraine are adversely affected by the inadequately developed relevant legislative, organizational and functional component of the state mechanism, the uncompleted anti-corruption reform (Trepak, 2020; Prokopenko *et al.*, 2023). Systemic corruptors skilfully adapt to legislative novelties, new anti-corruption bodies of the country.

In view of the foregoing, the aim of the article is to analyse the implementation of preventive anti-corruption measures in the EU countries. The aim involved the fulfilment of the following research objectives: 1) summarize the main current components of the legislative regulation of the prevention of corruption crimes committed by officials in the EU and Ukraine; 2) analyse the current state and prospects for the prevention of corruption crimes committed by officials in a number of EU countries.

1. Literature review

The work of Trepak (2020) became the main instrument and background for this research. The research was focused on identifying and describing the main types of corruption. Special attention was paid to the types of corruption prevention methods. It was substantiated in the study that the prevention of corruption is the titular (primary and main) form of combating corruption. The work by Matorera (2022) had an influence on the author's position on the issue under research.

The author conducted a comprehensive analysis of corruption, its causes, driving forces, hiding strategies. Attention was paid to the growing anti-corruption activity and the key success factors.

Amendments were taken into account during the study (Duri, 2021; Nikitenko *et al.*, 2023). The importance of using modern tools to prevent and fight corruption and economic crime was emphasized. The author

focused on the need to use the public register of beneficiaries of property rights, the development of international cooperation in the investigation and prosecution of corruption schemes, economic crimes.

Abazi (2020) studied the main components of the EU Whistle-blower Directive. The author concluded that it is based on best practice in many respects. The author emphasized that the Directive contains a broad definition of who can be a whistle-blower, covering a wide range of policy areas.

The findings of Vian *et al.* (2022), who analysed the volume and type of evidence on whistleblowing as an anti-corruption strategy, is worth noting. The author concluded that research on the detection of violations can help increase the effectiveness of efforts to prevent and fight corruption. The work of Berendt and Schiffner (2022) was used when shaping the author's position. It emphasizes that the whistleblowing has a major impact on democracy and business. They concluded that modern technologies can provide a truly anonymous message.

Adam and Fazekas (2021), Halai *et al.* (2021) analysed academic and professional studies in the field of digitalization of anti-corruption activities and substantiated the impact of IT technologies on combating and preventing corruption. The authors summarize modern technological achievements, their implementation in various national legal systems, and provide an idea of information technology as a tool for preventing and combating corruption. The evidence of both the anti-corruption effectiveness of ICT and the misuse of technology for corrupt purposes was carefully studied.

The article by Shylo (2022) analysing changes and amendments to the current legislation of Ukraine regarding the prevention of corruption under martial law deserves attention. The author emphasized that the novelties are aimed at the preventive strike against corruption, which is cooperation with the enemy under martial law. The author carried out an analysis of the implementation of the functioning of the institute of authorized units for the prevention and detection of corruption during martial law in Ukraine.

In their work, Luna-Pla and Nicolás-Carlock (2020) analysed the indicators of the company's corruption risk, in particular, in the ownership and management structures. The authors outlined such relevant vectors as objectivity, subjectivity, implementation in practice. They substantiated the need to expand the exchange of information, with the help of which the public and private sectors can collect relevant data for the creation of effective networks for the prevention of corruption.

An active study of the issues under research confirms the fact that special attention must be paid to the prevention of corruption crimes committed by officials. The diversity of scientific research in this field is also noted.

Therefore, it is urgent to carry out research according to new research criteria.

2. Methods

The conducted research was based on a complex use of a set of methods and research techniques that enabled the coverage of the chosen research topic. Figure 1 illustrates the architecture of applying scientific and methodological tools.

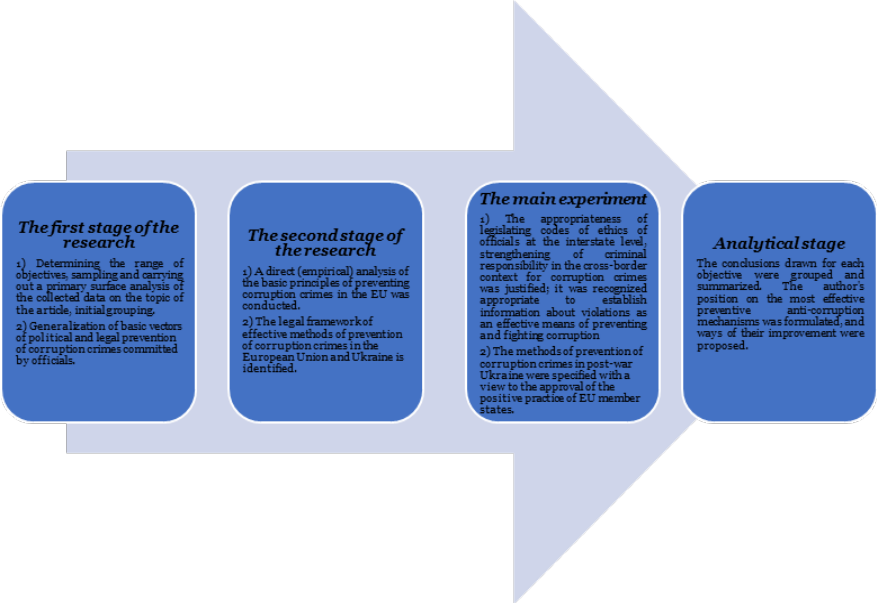

Figure 1. Research design. Source: prepared by the authors.

The authors used the method of comparison to determine the criteria of similarity of preventive mechanisms in the field of eradicating the corruption component from the activities of officials, transforming the discretion of their powers on the territory of Europe. This method made it possible to determine the effectiveness of the mechanisms for preventing corruption crimes committed by officials declared by the EU member states. The method of abstraction was used to track the reformation in the field of corruption crimes in connection with the digitization of the powers of officials, the limitation of communication with those requesting certain services.

The forecasting method was applied to cover the issue of the intensification of corruption crimes committed by officials on the territory of the EU by analysing the retrospective development of this criminal phenomenon. Based on the research results, this method made it possible to build a reasonable assumption about the further need to test the European tools for fighting corruption among officials during the post-war recovery of Ukraine.

The grouping method was used to arrange data and make a ranking based on the level of corruption perception in the EU member states. The historical legal method made it possible to track the formation of the legal framework for combating corruption crimes in the EU in stages. The implementation of anti-corruption declarations and programmes was analysed using a comparative analysis of documents in different jurisdictions.

The universal preventive anti-corruption mechanisms were described through a synergistic approach. The elementary theoretical synthesis was used to establish the basic essence of complex means and methods of preventing corruption crimes on the basis of scientific positions and well-founded assumptions derived by representatives of law schools. The relative and average indicators of the development of the corruption component among officials in Europe were taken into account in the research.

The authors considered the general principles of preventing corruption crimes as a system that involves the competences of different levels of government and informants connected by exchange relations in their various combinations. This approach made it possible to consider the preventive anti-corruption activities through the prism of declared international principles and systemic internal conditions of states.

The statistical method was indispensable at various stages of the research. It was used to analyse the dynamics of various aspects of the implementation of the preventive anti-corruption measures at the national and subnational levels, as well as to study a significant volume of information on the results of the actions of the studied states.

3. Results

According to Eurobarometer (Armstrong, 2022), an average of 68% of 26,509 respondents to a 2022 pan-European survey said that corruption is widespread in their country (Table 1).

Table 1. Corruption Perception Index for 2018-2022 according to Transparency International 2022.

Place in the classification of EU countries	EU country	2018 Corruption Perception Index	2019 Corruption Perception Index	2020 Corruption Perception Index	2021 Corruption Perception Index	2022 Corruption Perception Index
1	Denmark	88	87	88	88	90
2	Finland	85	86	85	88	87
3	Sweden	85	85	85	85	83
4	Netherlands	82	82	82	82	80
5	Germany	80	80	80	80	79
6	Ireland	73	74	72	74	77
6	Luxembourg	81	80	80	81	77
7	Estonia	73	74	75	74	74
8	Belgium	75	75	76	73	73
9	France	72	69	69	71	72
10	Austria	76	77	76	74	71
11	Lithuania	59	60	60	61	62
11	Portugal	64	62	61	62	62
12	Spain	58	62	62	61	60
13	Latvia	58	56	57	59	59
14	Czech Republic	59	56	54	54	56
14	Italy	52	53	53	56	56
14	Slovenia	60	60	60	57	56
15	Poland	60	58	56	56	55
16	Slovakia	50	50	49	52	53
17	Cyprus	59	58	57	53	52
17	Greece	45	48	50	49	52
18	Malta	54	54	53	54	51
19	Croatia	48	47	47	47	50
20	Romania	47	44	44	45	46
21	Bulgaria	42	43	44	42	43
22	Hungary	46	44	44	43	42

Source: Transparency International 2022.

So, corruption is the least common in Denmark and Finland as of 2022. Undue influence on decision-making, poor enforcement of integrity guarantees, and threats to the rule of law continue to undermine the effectiveness of lower-rated EU governments.

On June 24, 2021, Denmark passed the Whistleblower Protection Act (Retsinformation, 2021). This law requires private and public employers with more than 50 employees to set up a hotline for reporting violations. It is worth noting that the Act (Retsinformation, 2021) does not state that whistleblowers may be able to report information anonymously. Reports can be about violations of EU law, Danish national law, and violations related to bribery, corruption, sexual harassment. Therefore, the scope of the Directive on the protection of persons who report breaches of Union law (European Parliament, 2019) is expanded.

The Government of Finland adopted the first National Anti-Corruption Strategy in May 2021. The short-term goal of the strategy is to strengthen the prevention and fight against corruption. The long-term goal of the strategy is to build a society in which corruption cannot take hold. Prevention and fight against corruption in Finland should focus on such forms of corruption as favouritism of friends and acquaintances, unethical mutual aid, conflicts of interest.

Companies, especially small and medium-sized enterprises, should promote good business practices and corruption-free business relations both in Finland and abroad (Figure 2). This can be implemented with the help of the developed anti-corruption guide for small and medium-sized enterprises (Ministry of Economic Affairs and Employment of Finland, 2020).

Figure 2. The mechanism of combating corruption at enterprises (grouped by the author on the basis Finnish Anti-corruption Guide for SMES).

In Finland, the Whistleblower Protection Act (Finlex, 2022) also entered into force on January 1, 2023. Small private sector organizations

from different groups of companies with less than 250 employees can share resources related to whistleblowing channels. Organizations with fewer than 50 employees are exempt from the obligation to establish a breach notification channel, but may create one voluntarily. The new law applies to reports of serious violations of EU law.

The Finnish Harmaa (Grey) project (Finnish Government, 2020) developed as part of the National Strategy and Action Plan for Combating the Shadow Economy and Financial Crime for 2020-2023 is worth noting. The main goal of the Finnish Harmaa (Grey) project is to develop methods based on data analytics.

The project was created to process large data volumes for law enforcement systems, and identify cases that require more detailed information for investigation. The data analysis tool was created to strengthen Finland's capacity to prevent corruption, fight the shadow economy and financial crimes.

Non-transparent rules for financing political parties and insufficient enforcement of foreign bribery laws remain problematic points in Denmark. Structural corruption still exists in Finland. High-risk sectors include the construction sector, public procurement, public planning and politics. Enforcement of foreign bribery laws is also inadequate in Finland.

According to the 2022 Corruption Perception Index (CPI), the level of corruption in Ukraine is assessed at 33 points (Transparency International, 2022). This shows that there is still a high level of corruption in the country. One of the reasons for this situation in the country is the legislation that was created according to Soviet approaches. Ukraine still has parallel structures of administrative and criminal responsibility for corruption-related offenses.

This results in the duplication of anti-corruption measures and their reduced effectiveness. For example, there was a difficult situation regarding the differentiation of the composition of the administrative offense provided for in Article 172-2 of the Code of Ukraine on Administrative Offenses and the composition of the crime provided for in Article 368 of the Criminal Code of Ukraine (Verkhovna Rada of Ukraine, 1984; Verkhovna Rada of Ukraine, 2001). Both articles establish responsibility for receiving benefits or bribes for the commission or omission of actions using the official position.

The result was the exclusion of Article 172-2 from the Code of Ukraine on Administrative Offenses. The introduction of this change was justified by the need to bring national legislation into compliance with the standards of the EU Criminal Law Convention on Corruption ratified by Ukraine. Corruption in Ukraine should be fully criminalized taking into account the international experience in this field.

The sanctions of Part 3 of Article 172-4, Part 2 of Article 172-5, Part 3 of Article 172-6, Part 2 of Article 172-9-1 of the Article provides for the imposition of penalties in the form of a certain amount of fine with confiscation of the received income or remuneration. Deprivation of the right to hold certain positions or engage in certain activities for a period of one year is also provided. In other words, establishing enhanced liability for qualified offenses, the legislator implies the imposition of three types of sanctions on persons.

This situation conflicts with Part 2 of Article 25 of the Code of Ukraine on Administrative Offenses. It contains the provision that a person may be charged with a basic or basic and additional penalty for one administrative offense. So, the inconsistency of the provisions of the Code on Administrative Offenses leads to a violation of the principle of legality.

The National Agency on Corruption Prevention (NACP) was established in Ukraine. The NACP is responsible for the development of anti-corruption policy and prevention of corruption. As of February 2023, there are 44,891 entries in the Unified State Register of Corrupt Officials or corruption-related offenses. They include 14,147 records for criminal offenses, 28,897 for administrative and 1,783 for disciplinary offenses (National Agency for the Prevention of Corruption, 2023).

In June 2022, Ukraine adopted the Anti-Corruption Strategy for 2021-2025 (Verkhovna Rada of Ukraine, 2022a). The main principles of anti-corruption policy are to optimize the functions of the state and local self-government in order to minimize corruption risks. They also include the digital transformation of the exercise of powers by state authorities and local self-government bodies.

In 2014, the National Anti-Corruption Bureau of Ukraine (NABU) was established in Ukraine, which is the central executive body with a special status. The NABU is tasked to combat corruption and other criminal offenses committed by high-ranking officials authorized to perform the functions of the state or local self-government. As of December 31, 2022, 716 proceedings are in progress, 413 persons have been notified of suspicion, 799 persons have been charged, 414 indictments have been issued, and 99 guilty verdicts have been issued (NABU, 2023).

Under martial law, there was a need to make the necessary changes to the anti-corruption legislation. Targeted anti-corruption gift restrictions were introduced (Verkhovna Rada of Ukraine, 2022b). The provision became necessary for the participation of public servants in charitable, volunteer, other activities aimed at helping the Armed Forces of Ukraine and affected persons. Provision is made for the introduction of a temporary regulatory model of behaviour of a public servant, only on the condition that the purpose of the gift itself and the subject of its receipt are combined.

In 2021, separate issues of whistle-blower protection were legislated in Ukraine (Verkhovna Rada of Ukraine, 2021). In addition to the head, the whistle-blower can now report a violation to an authorized division (person) of the body, legal entity in which the whistle-blower works, is serving or training, or on whose behalf he performs work. It is worth noting that whistle-blowers can use internal, regular or external channels to report possible facts of corruption or corruption-related offenses. The possibility of sending anonymous messages is legislated.

It was not possible to complete several tasks that were important for the implementation of the anti-corruption reform in the pre-war period. As of February 2023, Ukraine has not reformed the Constitutional Court with a view to the amendments of the Venice Commission. The state anti-corruption programme for 2023-2025 has not been adopted. The obligation of political parties to submit reports to the NACP has been suspended.

The risk of the adoption of draft laws that remove procurement from the scope of the Law of Ukraine "On Public Procurement" is being minimized in part. The scandal with overpayments for food for the military indicates the existence of such abuses. It is necessary to restore the declaration of officials, to strengthen the autonomy of the SAP. Military aggression on the part of the Russian Federation has suspended the implementation of the Unified Portal for Whistle-blowers of Corruption or Corruption-related Offenses.

In July 2022, the National Council for the Recovery of Ukraine from the War developed the Draft Plan for the Recovery of Ukraine (Anti-corruption policy, 2022). It provides for the development and application of a comprehensive anti-corruption policy. The Plan envisages fulfilment of Ukraine's international anti-corruption obligations, independence and effective work of anti-corruption bodies. Efforts will also be aimed at promoting a culture of integrity, eliminating corruption risks during the martial law and the post-war reconstruction of Ukraine.

4. Discussion

It can be stated that the reform on the prevention and counteraction of corruption should be aimed at combating the forms, manifestations, and dynamics of corruption in particular countries. It must correspond to the country's institutional mechanisms and procedures. UNCAC reports from different countries can help identify good practices that can be spread and adopted (Huter and Scaturro, 2021). The researchers also emphasize that the supporting documents of the UNCAC can be a guide to ensure an effective anti-corruption policy.

Current studies on corruption should focus on defining, measuring and forecasting this phenomenon. This must be done in such a way that the mechanisms and methods of its prevention can be implemented adequately (Luna-Pla and Nicolás-Carlock, 2020; Petkov, 2020). According to researchers, these goals, organize the strategies that should be implemented to study this phenomenon. They also serve as a guide for evaluating previous approaches to corruption prevention, their limitations, and their potential for further improvement.

The EU Whistle-blower Protection Directive fills an important gap in legislation. Its adoption is the result of several decades of gradual change in Europe aimed at strengthening the whistle-blower protection. The EU Whistle-blower Directive is an important legal development, but it is only on the way towards real protection, rather than changes the rules for whistle-blowers in the EU (Abazi, 2020).

The interpretation of whistle-blower definitions of reported abuse is important. There is also a need to reduce the burden of proof on whistle-blowers. The imposition of strong sanctions to protect whistle-blowers against retaliation is necessary for their effective protection (Iwasaki, 2023; Kopotun, 2023). Whistleblowing and anonymous reports should be based on the three pillars of whistle-blower protection and incentives (Berendt and Schiffner, 2022). They should combine anonymity in a formal and technical sense, whistle-blower protection through laws, other norms and practices, including organizational culture. Documents on policies, factors associated with whistleblowing, and whistleblowing outcomes should be spread (Vian *et al.*, 2022). According to the researchers, this can help countries make whistleblowing a sectoral strategy to prevent and fight corruption.

The considered corruption prevention instruments include innovative tools for reporting violations, transparency portals, and distributed ledger technology. Information and communication technologies can also provide new opportunities for corruption through the dark web, cryptocurrencies or misuse of such technologies as centralized databases (Adam and Fazekas, 2021).

According to the researchers, the impact of using such tools depends on their relevance to the local context, including support and skills to use technology. A list of factors that should be taken into account when implementing relevant innovative systems was made as a result of studying the anti-corruption experience of countries with different legal systems (Halai *et al.*, 2021).

The need for further implementation of measures aimed at spreading the global anti-corruption standard of behaviour in Ukraine was stated. It is advisable to create expert groups with the interaction of the scientific community, government agencies, business and representatives of civil

society (Topchii *et al*., 2021). They should deal with the detection of corrupt practices, their assessment and classification.

The targeted nature of anti-corruption gift restrictions is directly related to the legal regime of martial law. This confirms the innovative nature of such restrictions. They provide for maintaining a "filter" for possible illegal acts by public officials even during martial law in Ukraine (Kolomoets *et al*., 2022).

It can be concluded that the prevention and the fight against corruption offenses should be effective. But the public authorities should not act through violating the principles and rights of a person who is brought to administrative responsibility (Solovyova, 2022).

Conclusions

International conventions, standards and guiding principles adopted by the UN, OECD, and the Council of Europe to govern the prevention of corruption are global cooperation tools. The EU corruption prevention initiatives are similar because of the legislation integration processes, active international coordination of corruption prevention measures.

Information and communication technologies can contribute to the prevention of corruption crimes by influencing public control in various ways. They enable reporting of corruption, promote transparency and accountability, facilitate citizen participation and interaction between government and citizens.

The public administration and data transparency in Denmark and Finland ensure that citizens have the opportunity to participate in the development of society and preventing corruption. The public administration bodies of EU countries, such as Denmark and Finland, realize the importance of their actions for the welfare of society in implementing their powers. They consider management activities prestigious, and value their reputation.

Ukraine failed to complete several tasks that were important for the implementation of the anti-corruption reform before the war. The necessary changes to the legislation on the prevention of corruption are being made under martial law in the country. At the same time, the initiatives of the EU countries in the field of prevention of corruption crimes committed by officials can become an example for Ukraine in the post-war recovery.

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Crime prevention in special (free) economic zones

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Abstract

The objective of the study was to determine the specific aspects and prospects of crime prevention in special economic zones as special economic and geographical entities. In the course of the research a set of practical methods was applied: doctrinal, comparative and prognostic approach. The risk of crime in the zones depends on the particular economic activity and the actors involved. The current criminal structure in free trade zones is dominated by illegal trade and infringement of intellectual property rights. However, the structuring of crime commonly depends on two factors: a) the division of zones into external/internal; and b) characteristics of the economic system of the country where the zone is located. The entities dedicated to crime prevention are classified as special and non-special, with international entities and representatives of the private sector standing out. It is concluded that the prospects for crime prevention in this area are related to the involvement of the capacities of international actors and the action of representatives of the private sector, taking into account the particular characteristics and conditions of countries with a transitive economy and a particular legal system.

Keywords: crime prevention; organized criminal activity; special economic zones (free trade zones); criminal risks; entities dedicated to crime prevention.

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Prevención del delito en zonas económicas especiales (francas)

Resumen

El objetivo del estudio fue determinar los aspectos específicos y las perspectivas de la prevención del delito en las zonas económicas especiales (francas) como entidades económicas y geográficas especiales. En el transcurso de la investigación se aplicó un conjunto de métodos prácticos: enfoque doctrinal, comparativo y pronóstico. El riesgo de delincuencia en las zonas depende de la actividad económica particular y los actores involucrados. La estructura criminal actual en las zonas francas está dominada por el comercio ilegal y la infracción de los derechos de propiedad intelectual. Sin embargo, la estructuración del delito depende comúnmente de dos factores: a) la división de zonas en externo/interno; y b) características del sistema económico del país donde se ubica la zona. Las entidades dedicadas a la prevención del delito se clasifican en especiales y no especiales, destacando las entidades internacionales y representantes del sector privado. Se concluye que, las perspectivas para la prevención del delito en esta área están relacionadas con el involucramiento de las capacidades de los actores internacionales y la acción de los representantes del sector privado, teniendo en cuenta las características y condiciones particulares de los países con una economía transitiva y un sistema legal determinado.

Palabras clave: prevención del delito; actividad delictiva organizada; zonas económicas especiales (francas); riesgos penales; entidades dedicadas a la prevención del delito.

Introduction

Special (free) economic zones (SEZs) are an economic tool, the main feature of which is regulatory liberalization in a certain geographic area (OECD Legal Instruments, 2019). The idea of C(F)EZ is to stimulate trade and investment by simplifying/minimizing customs, tax and other regulatory regimes (Moiseienko, 2021). Prospects for economic growth determine the development of S(F)EZ: a) there were more than 3,500 by the middle of 2022, and almost a third were created in the last five years (Basquill, 2022); b) in the pre-pandemic period, 2,200 S(F)EZ provided approximately 70 million jobs.

S(F)EZ are created in the territories of both economically developed countries and those with transitive economies. In the latter case, these zones are created as an important factor in solving a number of systemic

economic problems (Hussain and Rao, 2020), including in the territories adjacent to such zones (Veselovska *et al.*, 2022).

Moreover, proper customs procedures/control in S(F)EZ become an economic factor even for those countries that do not have such zones (WCO, 2020). This gives grounds to talk about the synergistic effect of the functioning of S(F)EZ for the development of a state that applies a regional or multilateral approach to the regulation of economic processes (Manjiao, 2021; McPherson-Smith, 2022). As a result, the integration of certain parts of state territories into the global economy is ensured through differentiated regulation (Holden, 2017).

However, the functioning of S(F)EZ also has a negative side — the active development of organized crime. Weakly controlled S(F)EZ become attractive for trade in counterfeit products, smuggling and money laundering, which results in the increased volume of the shadow economy (OECD/EUIPO, 2018; ICC, BASCAP, 2020).

A separate threat is the negative environmental impact of S(F)EZ because of the criminal depletion of environmental resources (Aung *et al.*, 2022). It is clear that various types of criminal activity can exist both in the S(F)EZ and outside their borders. However, the attractiveness of these zones for crime is explained by their main feature — maximum liberalization of state regulation (Kopotun *et al.*, 2020; Moiseienko, 2021).

In this regard, the modern theory of economic geography pays attention to the spatiality of illegal industries as an important socio-economic factor (Hall *et al.*, 2021). Accordingly, international experts offer the results of complex studies on the anti-criminal security of the S(F)EZ (for example, OECD Legal Instruments, 2019; WCO, 2020; ICC, BASCAP, 2020; Chase *et al.*, 2021).

However, it is considered appropriate to include crime prevention in S(F)EZ in a wider criminological context. This is determined by the fact that:

- crime in S(F)EZ can be considered as a separate component of the phenomenon of economic organized crime. The production and distribution of illegal goods and services dominates the profits of organized crime. Sometimes the act of organized crime is aimed at power or intimidation. But these actions are a way to ensure the main activity, because they are designed to ensure the survival and profitability of the criminal enterprise (Albanese, 2021);
- due to the peculiarities of economic activity, crime in the S(F) EZ is transnational in nature, which requires the coordination of preventive activities at the global level;

- crime in S(F)EZ is a global threat to security. It creates conditions for, in particular, the financing of terrorism, increased instability and violence around the world (OECD Legal Instruments, 2019).

Accordingly, the provisions of the Kyoto Declaration (UNODC, 2021) regarding the elimination of the economic aspect of crime can be considered conceptual for crime prevention in S(F)EZ.

Thus, the analysis of crime in S(F)EZ is an urgent issue both for sustainable economic development and for preventive activities in individual states and the world as a whole.

Aim. The above gives grounds for formulating the aim of this study as determining the features and prospects for improving crime prevention in S(F)EZ in view of their specifics as an economic and geographic entity. The aim involved the following research objectives:

a. identify the specific signs of S(F)EZ and their correlation with the criminal situation in the zones;

b. determine the peculiarities of the crime structure in S(F)EZ and the regularity of this structure determined by the specific features of the zones;

c. classify entities engaged in crime prevention in S(F)EZ, taking into account the most effective preventive measures;

d. outline the prospects for the development of crime prevention in S(F)EZ.

1. Literature review

A feature of crime analysis in S(F)EZ and its countermeasures is high latency due to the limited sources of statistical accounting (Windle and Silke, 2019; Aung *et al*., 2022), as well as the specifics of detecting facts of criminal acts and arresting offenders, which often occurs outside the zones (Holden, 2017).

Therefore, the study of the problem is partly theoretical. In this context, it is possible to form a logical sequence of aspects of research: risks causing crime in zones — typical types of crime in S(F)EZ — development trends and harmful consequences of crime in S(F)EZ — peculiarities of crime prevention in zones.

1. The following studies of risks that cause criminal activity in S(F)EZ can be distinguished: a) purely applied, which are aimed at determining specific organizational and legal defects in the functioning of zones (for example, ICC, BASCAP, 2020: 5; Kovalchyk, 2020; Basquill, 2022); b) broad

economic and criminological ones, including the issue of criminogenic risks in S(F)EZ in the general context of economic crime (for example, Holden, 2017; Hall *et al*., 2022); c) "middle-level" approaches, which are aimed at identifying the features of S(F)EZ that make the zones attractive for transnational organized crime (for example, Moiseienko, 2021; Panagiotis, 2021).

2. With regard to research on the crime structure in S(F)EZ, the ratio of legal and criminological understanding of crime is a prerequisite: although illegal activity in S(F)EZ consists of violations and crimes, it is appropriate to carry out its criminological analysis as "crime" because of the systematic, organized, large-scale, transnational nature of illegal activity (Vestby, 2022).

Violation of intellectual property rights and illegal trade in consumer goods are the main types of crime in S(F)EZ. The share of counterfeit goods from countries in which the 20 largest S(F)EZs are located is twice as large as from countries that do not have any zones. On average, the creation of one S(F)EZ leads to an increased value of counterfeit products by 5.9% (Holden, 2017; OECD/EUIPO, 2018; ICC, BASCAP, 2020; Basquill, 2022).

The crime structure also includes money laundering (OECD/EUIPO, 2018). The origin of "dirty" money is not necessarily connected with the activities of S(F)EZ. The infrastructure of the zones can be used by corrupt government officials (Basquill, 2022; Kopotun *et al*., 2022) and cybercriminals (Hall *et al*., 2021) for money laundering and evading sanctions.

However, the crime structure in S(F)EZ significantly depends on the profile of the zone and the peculiarities of its territorial localization, as the studies of zones in countries with a transitive economy showed (for example, Kovalchyk, 2020; Van Uhm and Wong, 2021mc)39. Besides, differences in the share of particular crimes were established depending on whether the zone is "internal" or "external" for a particular state (ICC, BASCAP, 2020).

As for the specifics of criminal groups that operate in S(F)EZ or use them, law enforcement officers emphasize the threats that come from the subjects of transnational organized crime (Vestby, 2022). Such organizations operate for profit and often choose a modern network structure over a traditional hierarchical one (Breuer and Varese, 2022). The same criminal networks are involved in various crimes: from drug trafficking to fraud (ICC, BASCAP, 2020; Van Uhm *et al*., 2021).

3. As regards crime trends in the S(F)EZ: a) the Internet have contributed by the expansion of circulation of counterfeit goods, diversification of the ways of their movement (ICC, BASCAP, 2020); b) the facts of the establishment of criminal control over the strategic infrastructure of S(F) EZ are noted (OECD/EUIPO, 2021; Basquill, 2022); c) existing threats of

using the zones' capabilities by terrorist groups (for example, Hussain and Rao, 2020).

These trends indicate that criminal use of S(F)EZ opportunities goes beyond causing harm to individual businesses and refers to the macro level of causing social harm (Aung *et al*., 2022; Basquill, 2022).

4. The peculiarities of crime prevention in the zones are considered as a complex of legal and organizational and institutional measures carried out by interstate, state and non-state actors. The analysis of the presented results gives reason to single out a number of prevention blocks:

- regulatory legal block, which provides for the comprehensive improvement of the legal framework for the organization and functioning of S(F)EZ (OECD Legal Instruments, 2019; WCO, 2020; ICC, BASCAP, 2020; OECD/EUIPO, 2021).
- a block of measures to organize the collection and proper accounting of statistical data, including the introduction of the latest Big Data processing technologies (World Customs Organization, 2019; Park and Lee, 2020);
- a block of measures on the organization of cooperation between national and international law enforcement and control agencies, which should take into account the experience of coordinating the fight against transnational organized crime (Customs Co-operation Council, 2008; OECD Legal Instruments, 2019);
- a block of measures to involve non-state actors in countering crime in the F(F)EZ (OECD Legal Instruments, 2019; Panagiotis, 2021; Wu *et al*., 2021).
- The appropriateness of introducing general standards for the administration of S(F)EZ and cooperation with law enforcement agencies in combating crime is separately emphasized (OECD Legal Instruments, 2019; Chase *et al*., 2021; Moiseienko, 2021).

So, the following gaps can be identified in the existing studies: a) intelligence and recommendations are mainly applied in nature and are not included in the context of transnational organized economic crime prevention; b) conclusions are generalized and do not always take into account the localization of the zone (in developed countries or in transitive economies); c) preference is given to measures of state coercion, rather than incentives for cooperation between the public and private sectors.

2. Methods

The literature and sources that cover the economic, legal and organizational issues of the functioning of S(F)EZ were selected in order to achieve the aim and fulfil the research objectives set in the article.

The data on the practice of functioning of S(F)EZ as an economic geographic entity, the criminological situation in the zones, and the specifics of combating crime in them were summarized in the course of the study. Analytical reports and recommendations of international organizations, projects and initiatives regarding the set of measures to combat crime in the S(F)EZ were used. Particular attention is paid to the experience of Ukraine as a country with a transitive economy and legal system.

This made it possible to a) generalize the features of S(F)EZ and find out the relationship between these features with crime in the zones; b) identify the peculiarities of the nature and structure of crime in S(F)EZ; c) determine the specifics of the entities engaged in crime prevention in S(F)EZ; d) outline the main prospects for increasing the effectiveness of preventive activities in this area (Figure 1).

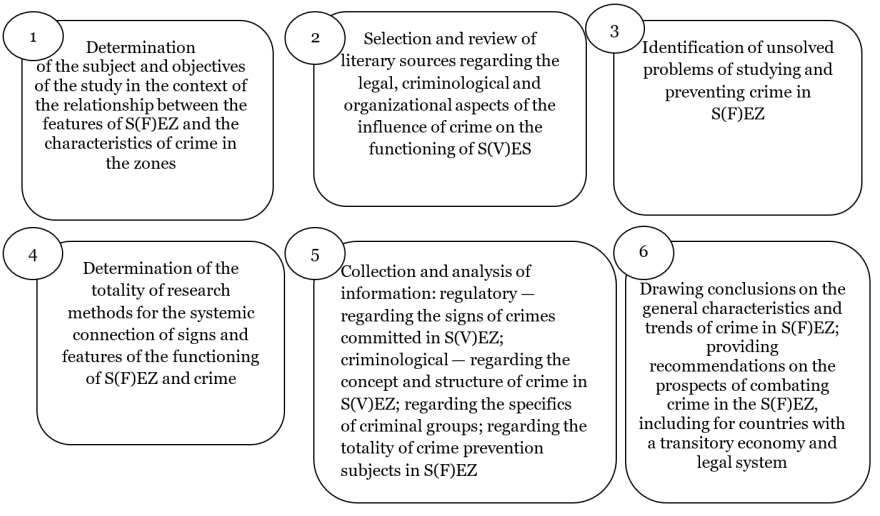

Figure 1. Research design.
Source: prepared by the authors.

The following methods were used in this study:

- *systemic approach* was used to determine crime: a) as one of the security threats to the functioning of S(F)EZ in the legal field; b) as

a result of the establishment of criminal control over the strategic infrastructure of S(F)EZ;

- *descriptive analysis* was used to identify and study the specifics of criminal threats to the functioning of S(F)EZ and the consequences of criminalization of acts committed in the zone;
- *systematic sampling* and *doctrinal approach* were used to identify and describe illegal acts, the totality of which constitutes crime in S(F)EZ, as well as signs of criminal structures that commit these acts;
- *comparative method* was applied to compare the recommendations of international experts and the experience of Ukraine as a country with a transitive economy and legal system regarding the organization of preventive activities;
- the forecasting method was used to determine the prospects for improving the effectiveness of combating crime in S(F)EZ.

3. Results

It is appropriate to refer to the generalization of the features of zones as an economic and geographical areas in order to identify the specifics of crime in S(F)EZ and understand its trends (see Figure 2).

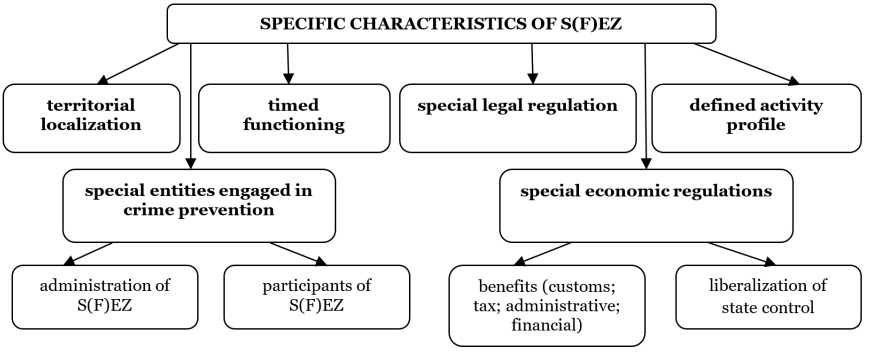

Figure 2. Specific features of S(F)EZ as an economic and geographical area.
Source: prepared by the authors.

Such systematization means an opportunity to specify criminogenic risks and their implementation in the activities of S(F)EZ. It is believed that the signs most associated with criminal activity are:

- special economic regulations in S(F)EZ, as the combination of various benefits and the liberalization of state control is very attractive for organized criminal groups;
- special entities engaged in crime prevention can pose a danger to the normal functioning of S(F)EZ in the event that organized crime establishes ties with S(F)EZ administrators or controls them. It is obvious that such a risk increases when the administrator of the S(F)EZ is a private company (domestic or foreign). However, even when the zone is administered by a state-owned company, organized crime can operate in S(F)EZ through corruption mechanisms.

As for the position on profiling S(F)EZ as a criminogenic factor, the profile of S(F)EZ can determine the structure of crime, but not the very fact of criminal activity in the zone. This statement directly follows from the approach to the main criminogenic risks inherent in S(F)EZ: regardless of the type of activity of the zones, they always have special economic regulations and special entities engaged in crime prevention. Figure 3 presents the classification of zones by types of activity.

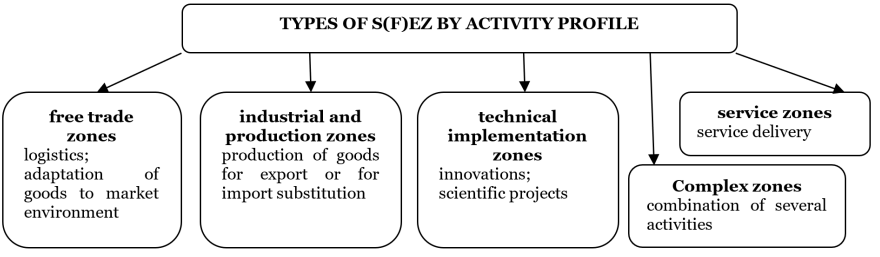

Figure 3. The main types of S(F)EZ by activity features (zone profiles).
Source: prepared by the authors.

At the same time, the experience of combating organized crime shows that any economic sector can be attractive to criminal structures. However, a number of areas of activity in the S(F)EZ which are the most attractive for organized crime were identified during the pandemic and in the post-pandemic period, to (RUSI, n.d.) (see Figure 4).

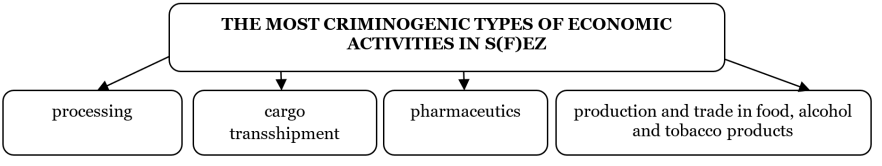

Figure 4. Types of activities in S(F)EZ with the highest risk of crime.
Source: prepared by the authors.

Accordingly, the risk of crime increases when operations with the most liquid goods (medicines, food, alcohol and tobacco products) or activities derived from the production of products are carried out on the territory of the C(F)EZ. In the latter case, the increased criminal vulnerability is determined by the relatively small financial and organizational costs of conducting business activities, as well as the possibilities of using the existing infrastructure of S(F)EZ.

It was mentioned regarding the peculiarities of the crime structure in S(F)EZ that it differs depending on the zone location— within the state or outside it. The ICCBASCAP (ICC, BASCAP, 2020) report presented a summary of responses from representatives of countries facing crime in the S(F)EZ. In our study, the generalization of this information is illustrated with an approximate ranking of the most common crimes: significant spread — from 8 to 10 points; medium spread — from 4 to 7 points; insignificant spread — from 1 to 3 points (see Figure 5).

Along with this, it is appropriate to clarify the given features of the crime structure in S(F)EZ for countries with a transitive economy and legal system. For example, no facts of wildlife smuggling were found in the Crimea S(F) EZ — an internal zone for Ukraine. However, money laundering and tax evasion were widespread.

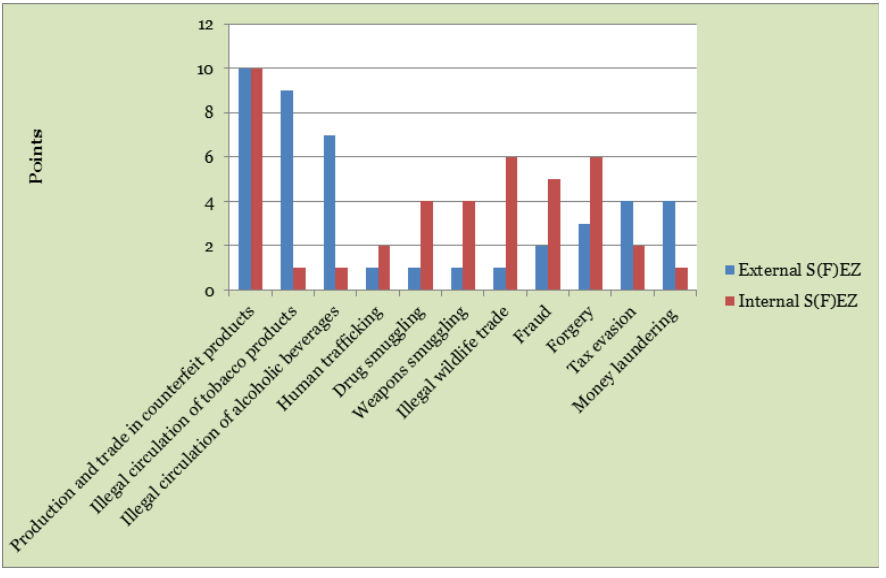

Figure 5. The ratio of types of crimes in the crime structure in S(F)EZ depending on the zone location.

Source: ICC, BASCAP (2020)

Accordingly, the classification of types of crime in S(F)EZ is complex and involves two grounds: a) division of zones into external/internal; b) taking into account the peculiarities of the economic and legal system of the country where the zone is located. The indication of the transitivity of the legal system is determined by such a feature of S(F)EZ as a special legal regulation —a separate legal act, which is the basis for the creation and functioning of the zone.

In general, the given data provide grounds for seeing crime in S(F)EZ as a system of criminal actions, and not isolated, albeit numerous, violations of the law. At the same time, crime in S(F)EZ has an economic and organized nature. The activities of such criminal structures are aimed at obtaining surplus profits.

The structuring of crime in S(F)EZ determines the peculiarities of the construction of the preventive system. In particular, the negative trends of crime cannot be currently overcome only by the efforts of state bodies. Accordingly, a constant dialogue between the public and private sectors can ensure effective crime prevention, taking into account the peculiarities of the zones.

Along with this, the peculiarity of crime prevention in S(F)EZ is the active role of international actors. This is determined by the transnational nature of criminal activity in the zones. Accordingly, international intergovernmental and non-governmental organizations are of great importance, in particular, the World Free Zones Organization, the International Coalition Against Illicit Economies, the European Union Intellectual Property Office, the Task Force on Countering Illicit Trade, etc.

In turn, the EU law enforcement agencies — Eurojust, Europol, Frontex — take a direct part in the prevention of transnational economic crimes, ensure the coordination of the activities of national law enforcement agencies, provide technical, methodical and legal assistance in the investigation of organized criminal activity, bringing the guilty to criminal liability.

The above makes it possible to classify the entities engaged in crime prevention in S(F)EZ with their division into specialized and non-specialized ones. For specialized entities, crime prevention is the main type of activity, for non-specialized ones this activity is complementary. Besides, the effectiveness of crime prevention is an indicator of the activity of specialized entities (see Figure 6).

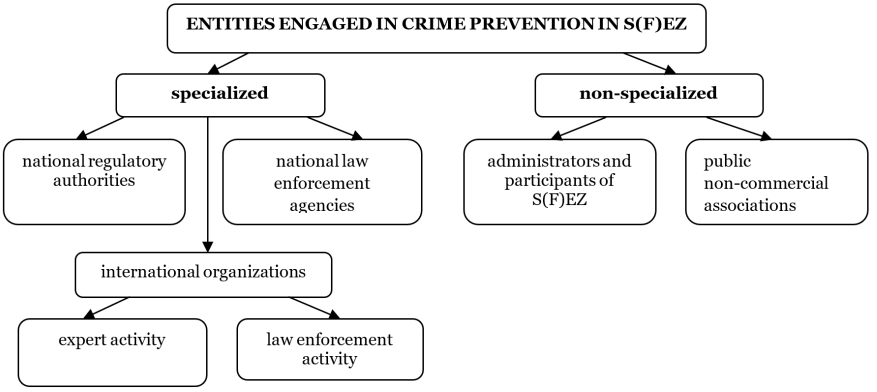

Figure 6. The system of entities engaged in crime prevention in S(F)EZ.
Source: prepared by the authors.

The complexity of the phenomenon of organized economic crime and the number of criminal manifestations in the S(F)EZ determine the variety of countermeasures. At the same time, international recommendations and national policy in this area are based on the need to maintain a balance between the freedom of economic activity and the effectiveness of crime prevention.

In view of the forgoing, it is informative to compare the conceptual directions of crime prevention in S(F)EZ with the main entities engaged in crime prevention. At the same time, in addition to the proposals of RUSI (n.d.), it is proposed to include anti-corruption activities in the list of such directions (see Table 1). For S(F)EZ located in countries with a transitive economy and legal system, corrupt practices of customs officials are quite widespread.

However, corruption is a more global problem than a set of specific crimes. It is the basis for increasing the volume and territorial spread of organized economic crime. With regard to transnational criminal activity, combating corruption should be considered an independent direction of international cooperation in the field of combating crime.

Table 1. The matrix of correspondence of conceptual directions of crime prevention in S(F)EZ to entities engaged in crime prevention

Directions of prevention	Entities engaged in crime prevention					
	international		national		Civil society	
	experts	law enforcement officers	regulatory authorities	law enforcement officers	commercial entities	non-commercial associations
Physical security				+		
Monitoring of operations	+	+	+	+		
Inspection of economic entities		+	+	+		
Control over transparency of final beneficiaries	+	+	+	+	+	+
Publication of crime statistics		+		+		
Anti-corruption activities	+	+	+	+	+	+

Source: Oliinyk (2018: 33-34), RUSI (n.d.)

The presented matrix shows that two directions — control over transparency of final beneficiaries and anti-corruption activities — are common to most of the entities engaged in crime prevention in S(F)EZ. This is an anticipatory activity that reduces the possibilities of establishing control of criminal structures over companies in the zones.

It is important that the implementation of these directions does not contain significant restrictions on business activity and provides for the active involvement of a wide range of entities in crime prevention.

The directions given in the matrix can be considered general for all zones. They constitute the current activities of the entities engaged in crime prevention, and can also become the basis for improving preventive activities. However, it is advisable for countries with a transitive economy and legal system to discuss more differentiated proposals. This is related to the formation of effective state mechanisms and adoption of international experience (see Table 2).

Table 2. Promising areas of crime prevention in S(F)EZ for countries with a transitive economy and legal system (based on the Ukraine's experience)

Promising areas	Expected result	Systemic implementation difficulties	Ways of overcoming
Legal	1. An effective legal framework for the regulation of economic activity in the country, in particular, S(F)EZ. 2. An effective legal framework for countering economic offences in the S(F) EZ (customs, tax and criminal legislation).	Excessive legal regulation of economic relations and a large volume of discretionary powers of government entities.	1. Study of foreign experience in regulation of S(F)EZ. 2. Implementation of international standards and recommendations regarding the activities of S(F)EZ.
Organizational	1. Formation of a coordinated system of the entities engaged in economic policy implementation. 2. An economically sound and politically independent system of control and law enforcement agencies.	1. Lack of balance between public and private entities engaged in economic policy implementation. 2. Imbalance in the system of control and law enforcement agencies as a result of its long-term reformation.	1. Exchange of work experience of control and law enforcement agencies of different states in preventing transnational crime. 2. Cooperation with international and intergovernmental organizations involved in crime prevention in S(F)EZ.
Resource	1. Adequate staffing and financial support of economic crime countermeasures. 2. Economic stimulation of fair participants in economic activity to prevent the commission of offences.	1. High corruption rate among customs officials. 2. Insufficient technical support of controlling and law enforcement agencies.	1. Involvement of international expert and advisory institutions in the field of economic crime prevention, in particular, in S(F) EZ, forecasting and programming of this activity. 2. Involvement of material and technical assistance, implementation of the latest methods for detection and investigation of economic crimes.
Informational	1. Organization of information and communication links between subjects of activity for combating economic crime. 2. Informing all interested parties regarding the state of economic crime and its prevention, including in S(F)EZ.	High latency of economic crimes.	Reforming the system of statistical accounting with due regard to the transnational nature of economic crimes.

Source: Rieznik (2019: 245-246), Hrytsyshen (2021: 175-176).

The given directions, the expected results of the implementation of these measures, the difficulties of implementation and ways to overcome them can both intensify against crime prevention in S(F)EZ and strengthen the economic system of the transitive states.

In view of the foregoing, there are prospects for the development of the principles of crime prevention in S(F)EZ at the current stage.

This should be facilitated by the improvement of the system of statistical record of economic crimes, introduction of new sources of information about organized criminal groups. Along with this, it is important to involve non-state actors in combating organized economic crime — members of S(F)EZ and non-commercial associations, as well as international participants in preventive activities.

4. Discussion

The theoretical and methodological principles of the study of crime prevention in C(F)EZ determine the understanding of zones as an economic geographic area, which is widespread in the modern globalized economy. Based on the generalization of the results of economic surveys (Kovalchyk, 2020; Moiseienko, 2021), this study presents a summary of the specific features of S(F)ES. However, the position about the zone profile or the liberalization of regulatory regimes as the main feature determining the greatest criminogenic risks is considered inaccurate (Moiseienko, 2021; Panagiotis, 2021).

This article shows that it is appropriate to attribute special economic regulations in the zones and the entities engaged in crime prevention to the signs with the highest criminogenic factor. At the same time, the position of singling out a number of spheres of activity in S(F)EZ mainly exposed to crime is supported (RUSI, n.d.). This made it possible to clarify the understanding of crime in S(F)EZ as a transnational activity.

In general, the thesis that S(F)EZs make countries vulnerable to crime because the expansion of economic strategies generates new complex forms of criminality (Hall *et al.*, 2022) was generally supported. Accordingly, the consequences of crime in zones become a significant factor in socio-economic tension in society (Aung *et al.*, 2022; Basquill, 2022).

Along with this view, this study develops a vision of crime in S(F)EZ as a component of economic organized crime (Albanese, 2021), and supports an approach in which economic crimes and other offences are seen as a complex threat (Vestby, 2022). In the context of organized criminal groups, the position regarding the proliferation of network structures that tend to the production and distribution of illegal goods and services.

(Prokopenko *et al.*, 2023) is supported. This study emphasizes the multidimensional nature of criminal groups and the social and power dynamics between crime, consumers of illegal goods and services, and corrupt officials.

There is also a shared view that acts related to the production and circulation of counterfeit goods prevail in the structure of crime in S(F) EZ (OECD/EUIPO, 2018; Basquill, 2022). The position that the share of certain types of crime varies significantly depending on the localization of the zones was supported in this research (ICC, BASCAP, 2020).

This work also proves that the structuring of crime should take into account the peculiarities of countries with a transitive economy and legal system. Accordingly, it is proposed to classify types of crime in S(F)EZ taking into account: a) the division of zones into external/internal; b) features of the economic system of the country where the zone is located.

International experts offer the results of comprehensive research on the anti-criminal security of S(F)EZ, for example: a) Recommendation of the Council on Countering Illicit Trade (OECD Legal Instruments, 2019); b) Practical guidelines of the World Customs Organization (WCO) Practical Guidance on Free Zones (WCO, 2020); c) the International Chamber of Commerce's Business Action to Stop Counterfeiting and Piracy (ICC BASCAP): Controlling the Zone: Balancing facilitation and control to combat illicit trade in the world's Free Trade Zones (ICC, BASCAP, 2020); d) RUSI project Criminal Risks in Free Trade Zones (Chase et al., 2021). In general, the vision of a set of crime prevention activities in S(F)EZ carried out by certain entities was confirmed (OECD/EUIPO, 2018; Chase *et al.*, 2021).

However, this study proposes a classification of entities engaged in crime prevention into specialized and non-specialized. It also emphasizes the leading role of international actors and the active participation of the private sector. This further confirms the importance of the global exchange of law enforcement information and increasing the effectiveness of interagency cooperation (OECD Legal Instruments, 2019).

In general, it was established that not enough attention is paid to crime prevention in S(F)EZs, which are located in countries with a transitive economy and legal system. This is why, in addition to the analysed professional developments, this study proposes promising directions for crime prevention in the S(F)EZ for countries with a transitive economy and legal system (using the example of Ukraine).

Ukraine, as a state with a transitive economy, had experience in the functioning of the Crimea S(F)EZ during 2014 - 2021. The analysis showed that this zone was vulnerable to the violation of intellectual property rights, money laundering, tax evasion, illegal trade in tobacco products and

corruption (Kovalchyk, 2020). Therefore, the study of similar experience seems to be appropriate, which gives grounds to develop more differentiated approaches of preventive policy in S(F)EZ.

Conclusions

The conducted research gave grounds to draw a number of conclusions on crime prevention in S(F)EZ.

It was established that research in this area lacks statistical data. The existing studies are mainly applied in nature and are not included in the context of economic crime prevention, and they also do not fully take into account the peculiarities of the localization of zones in countries with a transitive economy and legal system.

The appropriateness of combining economic crimes and other offences into one criminological concept "crime in S(F)EZ" was confirmed based on the generalization of the specific features of S(F)EZ as an economic geographical entity. The need for understanding crime in the zones as an economic organized criminal activity of a transnational nature is shown. The connection between the economic regulations, the entities engaged in crime prevention in the zone and the risk of criminal damage to the activities of the S(F)EZ is emphasized.

It was confirmed that, in general, illegal trade and infringement of intellectual property rights prevail in the crime structure in S(F)EZ. However, the elaboration of statistical generalizations and the experience of Ukraine as a state with a transitive economy and legal system gave grounds for additional structuring of crime in the S(F) EZ depending on: a) the division of zones into external/internal and b) features of the economic system of the country where the zone is located.

It was showed that the specifics of crime in S(F)EZ determine the peculiarities of the entities engaged in crime prevention. It is proposed to divide those entities into specialized and non-specialized depending on the degree of involvement in crime prevention. At the same time, the leading role of international actors and the active participation of the private sector in preventive activities were emphasized.

Promising areas for combating crime in the S(F)EZ for countries with a transitive economy and legal system, which take into account the identified features of the entities engaged in crime prevention, were identified. This should be facilitated by the improvement of the system of statistical record of economic crimes and the introduction of new sources of information about organized criminal groups.

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Differences between the service in the national police and military service of law and order

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Abstract

By combining the dialectical and systemic structural method, the purpose of the article was to determine the peculiarities in the differences between the service in the National Police of Ukraine and the Military Public Order Service. As for their practical significance, there are three main types of service: civilian, militarized and specialized. It is shown that the service of the National Police of Ukraine, like the Military Public Order Service, is a militarized state service, but the Military Public Order Service is purely military and the service of the National Police of Ukraine is "paramilitary"; although both institutions perform relatively similar law enforcement functions and tasks. The research assessed the international experience of police and military institutions. It is concluded that, among the ways to improve the current administrative and legal support for the regulation of social relations in the sphere of law enforcement service and, order in the army, in the territories where war hostilities are actively developing, the institute of civilian service should be realized on the issue of differentiation of types of service, namely: the division into civilian and militarized.

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Keywords: public service; military service; military public order service; national police; public control.

Diferencias entre el servicio en la policía nacional y el servicio militar de orden público

Resumen

Mediante la combinación del método dialéctico y estructural sistémico, el propósito del artículo fue determinar las peculiaridades en las diferencias entre el servicio en la Policía Nacional de Ucrania y el Servicio de Orden Público Militar. En cuanto a su significado práctico, hay tres tipos principales de servicio: civil, militarizado y especializado. Se demuestra que el servicio de la Policía Nacional de Ucrania, al igual que el Servicio de Orden Público Militar, es un servicio estatal militarizado, pero el Servicio de Orden Público Militar es puramente militar y el servicio de la Policía Nacional de Ucrania es "paramilitar"; aunque ambas instituciones realizan funciones y tareas de aplicación de la ley relativamente similares. En la investigación valoró la experiencia internacional de las instituciones policiales y militares. Se concluye que, entre las formas de mejorar el soporte administrativo y legal actual para la regulación de las relaciones sociales en la esfera del servicio de protección de la ley y, el orden en el ejército, en los territorios donde se desarrollan activamente las hostilidades de la guerra, el instituto del servicio civil debe concretarse en el tema de la diferenciación de los tipos de servicio, a saber: la división en civil y militarizado.

Palabras clave: servicio público; servicio militar; servicio de orden público militar; policía nacional; control público.

Introduction

There are different systems of public service building in the world, its classification, approaches to its types, etc. These differences are due to the different historical paths taken by States, legal family, the form of government, the State system, established traditions, etc. The institution of militia has been existing for a long time in Ukraine, which we «got» as the Soviet heritage. Currently the National Police of Ukraine has undergone significant reforms, especially in the general philosophy of activity.

Thus, the National Police differs from the militarized Soviet militia by its emphasis on the civilian component and the provision of police services,

the priority of cooperation with civil society, etc. Nowadays, this agency is very specific social institution, the aim of which remains the same – to protect human rights and freedoms, provide property security, be perceived by society and support the government (Panova *et al.,* 2020).

At the same time, law enforcement relations also exist within the Armed Forces of Ukraine, which is handled by the Military Law and Order Service. However, the need to create a full-fledged Military Police institution within the Ministry of Defense of Ukraine has long been overdue. This has been repeatedly emphasized by different researchers; for example, in the recommendations and conclusions of the international scientific and practical conference "Military Justice System in Ensuring the National Security of Ukraine" the need to amend existing legislation on the main components of the national military justice system was noted, and one of them has a special status as a state law enforcement agency in the military sphere (Military Police of Ukraine).

Besides, it was proposed to establish State law enforcement agency with a special status in the military sphere on the basis of the Military Law and Order Service of the Armed Forces of Ukraine (Petryshyn, 2019). Aspects of differences in service are being updated against the backdrop of increased hostilities and the need to maintain law and order in the territories of Ukraine in conditions close to or under combat.

The purpose of the article is to determine the peculiarities of the differences between the service in the National Police of Ukraine and Military Service of Law and Order, to determine the prospects for improving the administrative and legal support for the regulation of public relations in the area of rule of law in the army, in the territories where active combat operations are conducted.

1. Methodology

The use of dialectical and system and structural methods allowed to analyze modern scientific approaches to the essence of the concepts of civil, militarized and specialized service, to clarify the legal status of Military Service of Law and Order as a special law enforcement formation within the Armed Forces of Ukraine.

Historical method made it possible to investigate legislative attempts to create the institution of the Military Police of Ukraine by examining the relevant Bills.

Logical and semantic method was used in the process of researching the characteristics of military and paramilitary service, mechanisms of organization and functioning, competence, tasks and functions of the Military Service of Law and Order.

Formal and logical method was applied in the analysis of the content of national legal instruments governing the activities of the National Police and Military Police.

Systematic approach helped to provide classification of police organization models, as well as features of militarized civil service and public service.

Forecasting and modeling method was helpful in outlining necessary amendments to the legislation of Ukraine on the Military Service of Law and Order in the Armed Forces of Ukraine in view of the continuation of the development process of the Draft Law of Ukraine "On the Military Police".

2. Literature Review

Military law and order are an objective necessity and regularity of the development of the Armed Forces, which serves as a model for military personnel in their choice of behavioral decisions. Military service is a special type of public service, where lifestyle and activities of officers are regulated in detail by the provisions on military service.

Members of the armed forces have a special status and the exercise of their rights is subject to certain restrictions. A necessary stage of strengthening military discipline in the army is the creation of a unified system of military law enforcement and other bodies ensuring support for military discipline and crime prevention (Kovaliv and Drozdova, 2016).

Let us note the approach to the classification of law enforcement agencies of Ukraine by the scientist Muzychuk (2009), who proposed to distinguish two main groups in the system of law enforcement bodies: 1) indirectly law enforcement (Security Service of Ukraine, State Customs Service of Ukraine, State Tax Service of Ukraine (now – State Fiscal Service), State border service of Ukraine and others, including the Military Service of Law and Order); 2) direct law enforcement, which includes the relevant subdivisions of the specified indirect law enforcement agencies, which were specially created to protect the rights and freedoms of citizens, the interests of society and the State, primarily from criminal acts.

We consider this classification to be successful, because the law enforcement agency in the Armed Forces of Ukraine and its units perform not only direct law enforcement tasks, but also have other functions provided for by the legislation of Ukraine.

Instead, Shoptenko (2017) attributes the Military Service of Law and Order to the group of direct security forces that comprehensively implement law enforcement activities in various directions. The researcher assigned

bodies and units that implement separate law enforcement functions to the second group.

The ancient process of creating the Military Police Corps took place in the United States – more than 200 years ago. Its role is to provide the Army with soldiers – professionals in investigations to protect, preserve and promote the rule of law. The discipline of police operations and the methodology of military police operations shape the military police approach to the operational environment and provide a framework for which police operations are conducted. The basis of all activities of the Military Police Corps is six principles, providing, at the same time, operational concepts and an operational environment (Department of the Army, USA, 2019).

The Military Police of Canada provide a variety of operational, law enforcement, investigative and security services at bases and units in this country and around the world wherever the Canadian Armed Forces are deployed. There are currently over 2,000 military police officers in the Canadian Armed Forces. In addition, the military police are an integral part of the military justice system and, like the civilian police, operate within the framework of civil and criminal justice. Members of the military police are given certain powers to carry out their police duties. For example, they are entitled to arrest, detain and search, bring charges in civil criminal courts (Military Police Complaints Commission of Canada, 2018).

The main tasks of the Lithuanian military police are prevention of crimes and other violations of legal acts, investigation and detection of offenses, ensuring law and order in military territories and in the Armed Forces, and supporting safety of military traffic. Military police searches for servicemen who are suspected or accused of committing crimes and violations of legal acts, or missing soldiers, and act on instructions from prosecutors, judges and courts. Military police maintain military discipline and order by patrolling, guarding military transport, escorting convoys of military vehicles (Lithuanian Armed Forces, 2023).

3. Results and Discussion

There are different views on the division of public service in general. Thus, three basic types can be distinguished: civil service in the form of service in State authorities, in the apparatus of such bodies where there are no special titles, such as in the National Guard of Ukraine, the National Police, the State Border Guard Service of Ukraine, etc., militarized public service, in which employees perform labor activities in paramilitary or those that have signs of paramilitary structures, receive military or special ranks equivalent to military ones, have specific powers to exercise state coercion; their activities are regulated by separate laws (for example,

according to Article 3 of the Law of Ukraine No. 889-VII (2015), the scope of the Law does not apply to servicemen of the Armed Forces of Ukraine and other military formations; personnel of law enforcement agencies and other bodies, to which special ranks are granted; the third type appears in the form of specialized public service, that is, those employees who hold positions in state authorities with a special status; at the same time, they also hold special ranks and exercise certain specific powers, which may be related not only with state coercion, as this can be attributed to prosecutors, customs officials, as well as diplomats, judges, employees of the State Emergency Service (Mamchur, 2014).

In this regard, Strelchenko (2019) points out that militarized state service should be divided into military, that is, service in the Armed Forces of Ukraine, in the Security Service of Ukraine, and law enforcement or paramilitary State service, which should include the police, State Border Service, etc. Based on this separation, the service in the National Police of Ukraine, like Military Service of Law and Order, is a militarized state service, but the latter is purely military, and the first one is paramilitary, although both institutions perform similar law enforcement functions and tasks.

We, in turn, fully agree with the following list of features of militarized civil service: 1) it contributes to the State's performance of protection (defense) functions from external and internal threats; 2) real possibility of using coercion; 3) carried out by armed groups of people; 4) entry into service has a number of special requirements; 5) is based on a strict hierarchical principle combined with the obligation to follow orders; 6) specific legal status of employees, which implies special benefits and special accountability (Pysmennyi and Lypovska, 2015).

Some foreign researchers also distinguish three main groups of public service abroad: organizational models (divided into centralized and decentralized); group of models on the level of openness (career or closed and official or open); regional models of civil service (according to relations between the state as the employer and civil servant – Anglo-Saxon and continental (Sydorenko, 2016).

If we talk about classifications of models of police organization, Rukolainina and Lemish (2017) highlight the following: centralized, decentralized and combined (integrated). It is important that researchers divide the centralized model into subspecies, namely the functioning of the civil police (Sweden, Denmark, Norway, Ireland, Finland), as well as the civil police with special units – the gendarmerie (France, Spain, Italy, Portugal, Belgium, Holland, Poland). The combined (integrated) model of police management, which is characteristic of Great Britain, Germany, Japan, and the Netherlands, provides, in addition to the "ordinary" police, for the possibility of special institutions with police functions (transport police, nuclear power police, military police, etc.).

Parkhomenko-Kutsevil (2015) stresses on the specific example of France and distinguishes three main types of the French civil service system: political civil service in the form of ministers and their deputies; civil, which includes administrative employees of ministries, departments, local state authorities and their employees, who are appointed mostly on a competitive basis and have guarantees against dismissal); paramilitary or militarized (military personnel, gendarmes and policemen). A fairly original division into five categories of civil servants exists in Hungary, one of which is called "agents in uniform" (policemen, military, firemen, customs officers and others).

Babych (2019) states that law enforcement agencies with military status operate in NATO countries in the field of defense and allocates military police, carabinieri and gendarmerie; he emphasizes that such services are endowed with broad powers to detect, cease and investigate war crimes. The experience of using military police in Italy in the matter of subordination to this institution is quite interesting; thus, Melnyk (2019) points out that such function is performed by Military Carabineros, who in matters of defense are subordinate to the Italian Ministry of Defense of Italy and in matters of public order – to the Ministry of internal affairs.

As for France, their military police in the form of the National Gendarmerie have dual subordination: to the Minister of Defense of France (as a component of the Armed Forces) and to the Minister of Internal Affairs (as a component of the police system). The Gendarmerie is headed by the General Director. The number of the National Gendarmerie is about 110,000 employees, it also includes the Republican Guard, mobile gendarmerie, units deployed outside France, etc.

According to Art. 1 of the Law of Ukraine No. 3099-III (2002), Military Service of Law and Order is a special law enforcement formation within the Armed Forces of Ukraine, designed to ensure law and order and military discipline among servicemen of the Armed Forces of Ukraine in places where military units are deployed, military educational institutions and organizations, military towns, on the streets and in public places; to prevent criminal and other offenses in the Armed Forces of Ukraine, their termination; to protect life, health, rights and legitimate interests of servicemen, conscripts during trainings, employees of the Armed Forces of Ukraine, as well as to protect the property of the Armed Forces of Ukraine from theft and other illegal encroachments and to counteract sabotage and terrorist acts at military facilities.

As can be seen from this provision, a number of functions and tasks, such as precautionary measures, crime prevention, protection of public order, etc., are inherent in the police functions of the National Police of Ukraine.

It is worth noting that in 2019, at the international scientific and practical conference "Military Justice System in Ensuring the National Security of Ukraine", a number of tasks were put forward that should be referred to the proposed new State law enforcement agency:

- protecting rights, freedoms and legitimate interests of military personnel, reservists and persons liable for military service, as well as their family members;
- ensuring law and order in the Armed Forces of Ukraine and other military formations established in accordance with the laws of Ukraine;
- prevention, detection and cease of offenses, combating crimes and corruption in the Armed Forces and other military formations, as well as in the defense and industrial complex of the State;
- carrying out pre-trial investigations in criminal proceedings in accordance with the specified jurisdiction;
- participation in the introduction and implementing measures of the legal regimes of martial law and state of emergency;
- ensuring rule of law in the areas of hostilities, operations of joint forces, peacekeeping and anti-terrorist operations, and in countering sabotage and terrorist acts at military facilities;
- providing road safety of vehicles and military equipment of the Armed Forces of Ukraine and other military formations;
- ensuring the execution of criminal penalties and administrative fines imposed on military personnel in accordance with the legislation and protection of military facilities determined by the Cabinet of Ministers of Ukraine (Petryshyn, 2019).

Clearly, granting pre-trial investigation powers and other powers to such a body power of pre-trial investigation and other powers is the subject of considerable discussion. Currently, the Verkhovna Rada of Ukraine has registered and included in the agenda the Draft Law No. 6569-1 (2022) "On the Military Police", which defines such it as the central body of executive power with a special status providing the interests of the State in the sphere of defense and national security of Ukraine by performing law enforcement activities on the prevention, detection, termination, investigation and solving crimes, offenses assigned to its jurisdiction, as well as implementing preventive measures to ensure law and order in the Armed Forces of Ukraine, other military formations in the Ministry of Defense of Ukraine, forces and resources involved in the performance of territorial defense tasks, State clients in the sphere of defense, individual performers of the State contract (agreement) on defense procurement and

protection of the country's in the field of defense and national security in the manner determined by law.

The authors of the said draft law on the scope of the mandate went far beyond those recommended at the international scientific and practical conference "Military Justice System in Ensuring the National Security of Ukraine".

At the same time, among the tasks proposed in the bill there are none to take under hostilities across large parts of Ukraine, areas of operations of joint forces, peacekeeping and anti-terrorist operations. We suppose it is quite a valid thesis that near or directly in active theatre of combat operations, the civilian National Police, having no priority and no emphasis on military training in combat, is somewhat unsuitable for the performance of tasks of supporting law and order in the areas of hostilities.

The project also states that the activities of the Military Police are directed and coordinated by the Cabinet of Ministers of Ukraine, as well as the Minister of Defense of Ukraine within the limits set by law, and the independence of the Military Police is guaranteed by: 1) the special status of the Military Police, specific procedure for determining its general structure, financing and organizational activity support; 2) particular process for appointing and dismissing the Chief of the Military Police, the Deputy Chief of the Military Police, the Director of the Department of Investigations and Special Prevention, and the Deputy Chief of the Military Police, the Director of the Department of the Military Police, the Deputy, as well as an exhaustive list of grounds for terminating their mandate, etc.

Probably, among the priority tasks of the Military Police should be the maintenance of law and order in the areas of hostilities; besides, interaction or even direction and coordination of some issues related to public order should be legislated.

An important aspect remains the question of the controllability of such a structure, namely aspects of civil or public control, as official activities of law enforcement agencies is under careful attention on part of society (Sirokha et al., 2020). For example, there have been decades of implementation of standards and control regulatory support in European states (Yunin, 2021a). Democratic civil control should be carried out in the manner specified by the Law of Ukraine "On the National Security" (Law of Ukraine No. 2469-VIII, 2018).

According to it, citizens of Ukraine participate in the implementation of civil control through public associations, deputies of local councils, personally by applying to the Commissioner of the Verkhovna Rada of Ukraine for human rights or to the State agencies in the manner established by the Constitution of Ukraine and other legal instruments. The sphere of public supervision can be limited exclusively by the Law of Ukraine "On State Secret" (Law of Ukraine No. 3855-XII, 1994).

Instead, there is a separate section dealing with public control in the Law "On the National Police" (Law of Ukraine No. 580-VIII, 2015), but, unfortunately, the concept of such control is not defined there. Instead, Yunin (2021) proposes valid definition of public control over the activities of the National Police of Ukraine; thus, it is a complex of measures carried out by the representatives of the public (individual citizens and/or public associations) aimed at verification (observation, supervision) over the observance of legality by the National Police units or its individual officers during the performance of the tasks assigned to this body and the powers of the policemen, as well as at the interaction of the police with the public for the preparation and implementation of joint projects, programs and measures to meet the needs of the population and improve the effectiveness of the performance of the tasks assigned to the police.

Another Draft Law No. 1805 (2015) proposed to create such police in the form of law enforcement body subordinated to the Minister of Defense of Ukraine, appointed to ensure law and order in the Ministry of Defense of Ukraine and the Armed Forces of Ukraine; military police investigators should have become pre-trial investigators.

Among the arguments was that in the vast majority of the leading countries of Europe and the world, law enforcement agencies with military status (Military Police, Carabinieri, Gendarmerie) function within the structure of their armed forces, are subordinate to the Minister of Defense or have dual subordination, endowed with broad powers to detect, cease and investigate crimes committed by military personnel, as well as perform police and administrative functions in the interests of the entire country (Kuzmych, 2020).

Clearly, it raised a number of questions regarding the independence and effectiveness (in terms of impartiality) of the Military Police, which should be directly subordinated to the Ministry of Defense of Ukraine, so we consider additional guarantees in the 2022 project regarding its autonomy to be fully justified and proper. The modern Military Law and Order Service needs to be reformed into a full-fledged body of executive power in the form of the Military Police.

Conclusions

Thus, according to the set goal and the conducted research, we came to the following conclusions:

Civil service can be divided into civil, militarized and specialized. In turn, the militarized state service includes the Armed Forces of Ukraine, the National Police, the Military Service of Law and Order, etc. According

to current legislation, the Military Law and Order Service belongs to such a subtype of militarized service as the military, and the service in the National Police to the law enforcement or paramilitary state service as a subtype of militarized, although both institutions currently perform some police law enforcement functions.

Therefore, among the ways of improving the current administrative and legal regulation of social relations in the field of law-and-order protection service in the army, in the territories where hostilities are actively taking place, it is worth concretizing the institute of civil service in the matter of differentiation of types of civil service, namely the division into civil and militarized;

Militarized state service has a number of specific and inherent features: 1) law enforcement focus; 2) use of coercion method; 3) special criteria for admission, passing and dismissal; 4) availability of uniform and ceremonial; 5) a centralized system based on subordination; 6) regulation by special legislation.

Service in the National Police and the Military Law Enforcement Service has a number of differences, among which belonging to either the military or one that only has some features of military service. In the National Police, despite the militarized component, the civilian component is the main one in the issue of interaction and provision of police services to civilians, i.e., citizens of Ukraine, while the Military Law and Order Service is aimed primarily at the implementation of law enforcement functions among military personnel.

If we talk about draft laws "On the Military Police", the differences are in the subordination, coordination and direction of the activities of the National Police of Ukraine or the Military Police, in the legal regulation of the issue of public control or civil democratic control over the activities of institutions.

We note that among the priority tasks of the Military Police should be the maintenance of law and order in the areas of hostilities, it is also worth legislating the order of interaction or even the direction and coordination of some issues related to public order, etc., which is more inherent in the functions of the National Police of Ukraine, by the Ministry of Internal Affairs.

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The role of the USA in the Western Europe's security policy making

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Abstract

The article aimed to determine the role and place of the United States as a key factor influencing the definition of Western European security policy, in the context of existing threats. The research methodology was based on the determination of the general geopolitical situation in the countries of the European Union EU and the United States, a comprehensive analysis of existing risks, a graphical analysis of the total defense costs, an analysis of the main approaches to the security policy of the European Union, with a view to the influence of the United States. Everything indicates that the U.S. is basing its position on the construction of an autonomous system to ensure the defense capability of the European Union. It is concluded on the need to strengthen the EU security implementation system based on the expansion of military potential will enhance the capabilities of NATO, which will allow the U.S., radically respond to other global threats.

Keywords: security policy-making; Western Europe; military threats; transatlantic relations; geopolitics in the 21st century.

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El papel de los Estados Unidos en la elaboración de políticas de seguridad en Europa Occidental

Resumen

El artículo tuvo como objetivo determinar el papel y el lugar de los Estados Unidos como un factor clave que influye en la definición de la política de seguridad de Europa Occidental, en el contexto de las amenazas existentes. La metodología de investigación se basó en la determinación de la situación geopolítica general de los países de la Unión europea UE y Estados Unidos, un análisis exhaustivo de los riesgos existentes, un análisis gráfico de los costes totales de defensa, un análisis de los principales enfoques de la política de seguridad de la Unión Europea, con miras a la influencia de los Estados Unidos. Todo indica que EE.UU., basa su posición en la construcción de un sistema autónomo para asegurar la capacidad de defensa de la Unión Europea. Se concluye en la necesidad de reforzar el sistema de implementación de la seguridad de la UE basado en la expansión del potencial militar mejorará las capacidades de la OTAN, lo que permitirá a los EE. UU., responder de manera radical a otras amenazas globales.

Palabras clave: formulación de políticas de seguridad; Europa occidental; amenazas militares; relaciones transatlánticas; geopolítica en el siglo XXI.

Introduction

Until recently, the prevailing opinion was that the end of the Cold War would stop devastating conflicts, and the main issues would be related to climate change, the fight against infections or the control over terrorist activities. The regional security in Western Europe was ensured by the alliance with the USA for a long time, which was gradually expanding.

Accelerating globalization, the emergence of new rival contenders, and uncertainty about US global leadership have made concerns about the permanence of the US international order-maintaining role more acute. A superficial understanding of the nature of modern threats has led to a decline in the defence capabilities of European countries and underfunding of military expenditures.

Russian military aggression against Ukraine caused radical changes in the security policy of the North Atlantic Alliance. Leaders of states and military agencies drew attention to the inadequacy of collective defence and the need to build resilience to threats in the context of a military conflict on the European continent.

The need to develop an integrated concept of a sustainable society in NATO, as well as in the European Union, suggests that this should become a key concept in the development of European and Atlantic security policy. The recent events have urged the need to prepare for both non-military (cyber threats, pandemics) and military threats associated with Russian military aggression against Ukraine, and the use of military tools in international relations (Wywiał, 2022).

The academic literature has a certain gap on issues of changing the nature of alliances or the orientation of individual state strategies, including the EU. The existing studies address issues of alliances in conflict and cooperation (interaction between exclusive mechanisms of collective defence and inclusive institutions of collective security) (Prokopenko *et al.,* 2023; Rynning and Schmidt, 2018). Many other studies of alliance politics focus on US activities. Separate studies examine the security activities of US allies in determining the nature of the changing regional order and US influence on security dimensions.

The aim of the article is to determine the role and place of the United States in Western Europe's security policy making based on real modern threats. This implies the need to identify the main threats that individual countries represent; determine the list of allied countries; comprehensive identification of potential threats to EU countries; analysis of the state of defence financing of individual countries and associations; identification of the problems of the US and EU defence policy; selection of the main approaches to resolving contradictions that have arisen in the relations between the US and the EU in the field of security policy.

1. Literature review

Signing of the Joint Declaration in July 2016 has marked a new phase in the EU-NATO relations, as the EU launched several defence initiatives. Closer relations with NATO were a necessary step for the EU in order to strengthen the security environment. The EU published its Global Strategy in June 2016, which prescribed the association to implement autonomous defence and deterrence capabilities of its member states (European Council, 2016).

In June 2020, EU defence ministers agreed to develop a Strategic Compass to set operational objectives and identify capabilities. But these discussions caused the differences between the USA and the EU. NATO has positively perceived the EU defence initiatives (PESCO) in the case of their addition to the NATO potential (NATO, 2020). NATO's agenda has been extended to 2030 (Ringsmose and Rynning, 2021). Unfortunately, the UK's withdrawal from the EU has made the problem of coherent dialogue more acute (Ewers-Peters, 2021).

In the face of the growing power of some countries, the US are expected to work together with the EU to balance the rising powers and maintain its global and regional power. On the other hand, the behaviour of Russia and China could potentially also challenge EU unity and therefore weaken their relationship (Riddervold and Rosén, 2020).

In 2021, with D. Biden's accession to power, the issue of European ambitions as a NATO competitor begins to subside. In turn, NATO members reached a compromise on PESCO, maintaining a dialogue with the EU. The combination of the NATO mission and the EU security policy is a complex issue of forming a certain model. It should be expected that international organizations with significant institutional potential and autonomy will also be able to establish separate duplicative entities (Schuette, 2022).

Most American presidents followed the effort of US geopolitical accents to define NATO as a basis for internal changes in the EU to serve as a guarantee of continental stability (Poast and Chinchilla, 2020). NATO's capability to create an integrated Europe and spread democratic foundations in post-communist countries could unite Eastern and Western European states into a single security system. Article 42 of the Treaty on European Union is the basis of the Union's Common Security and Defence Policy (CSDP), which obliges to provide assistance to victims of armed aggression on its member state territory.

The creation of new defence entities is problematic as all major EU member states are also NATO members. This strengthens the possibility of providing NATO's protection everywhere it is assigned a key role. But the European Union lacks the NATO level of operational activity. So, the USA and NATO supplemented by EU security entities remain the key actors in European defence (Virkkunen, 2022; Colbourn, 2020).

Maintaining order on the European continent, which is based on regional integration through the EU and NATO, remains an important driving force behind Germany's joining the USA. Germany's foreign policy is based on the need for European strategic autonomy. Only Poland seeks to create an alliance with the US to ensure its survival among neighbouring countries. The Baltic states are wary of Western Europe's attempts to be autonomous from US-led arrangements.

Allies and partners are trying to use the US to achieve their own national goals. Besides, the network of alliances is likely to become fragmented as disagreements between allies and partners grow over the role of the US and the changing international order. The choices and actions of allies can affect regional dynamics and order. More countries want to form their autonomies, revise their relations with the US, and shape regional and global orders (Goh and Sahashi, 2020).

The events of 2022 evidence that the founding principles of the OSCE, including refraining from the threat or use of force, the inviolability of borders, the territorial integrity of states and the peaceful resolution of disputes, are more important than ever. There should also be an institutional connection with NATO — an important guarantor of the continent's security with the USA (Jones, 2022).

2. Methods

The research methodology is based on several stages. The first stage involved determining the general geopolitical situation of the EU countries and the United States based on the analysis of the general policy regarding the acceptance of other countries as threats or allies of the EU countries and the United States in accordance with the Munich Security Report (Bunde *et al*., 2023). The next stage was a comprehensive analysis of existing risks based on the use of international indices (GPI — Global Peace Index, Global Risk Report, Fragile States Index) (Institute for Economics & Peace, 2022; The Fund for Peace, 2022; World Economic Forum, 2023). This was followed by a graphical analysis of the total defence spending in 2014-2021 of the main geopolitical players — EU, USA, Russia, China (European Defence Agency, 2022b). The last stage provided for the analysis of the main approaches of the European Union to security policy taking into account the US influence on the basis of current research and international agreements in the field of security. The research methods used primarily included the analysis of source materials (documents of international institutions), studies and publications of government bodies on security issues.

3. Results

Considering the general perception of individual countries as a threat or an ally, it should be noted that the year 2022 caused major changes in the security system of the European Union and its partners (the USA). Russian military aggression against Ukraine identified Russia as one of the biggest threats, while Ukraine significantly strengthened its perception as an ally by other countries (Table 1). In the table, the "-" sign reflects an increased threat compared to November 2021, the "+" sign reflects a strengthening of the position as an ally relative to November 2021. The BICS countries include Brazil, India, China and South Africa. At the same time, China is also positioned by the EU countries and their partners as a significant threat.

Table 1. Perception of other countries as threats or allies (change between November 2021 and October–November 2022), group average (Bunde *et al.*, 2023).

Global perception		Perception among G7 countries		Perception among BICS countries	
Ukraine	+22	Ukraine	+29	Ukraine	+10
Poland	+11	Poland	+12	Estonia	+10
Estonia	+8	United Kingdom	+8	USA	+9
USA	+7	Estonia	+7	Poland	+9
United Kingdom	+7	USA	+6	Hungary	+7
Finland	+6	Finland	+6	United Kingdom	+6
Germany	+5	Germany	+5	Finland	+6
Italy	+5	Italy	+5	France	+5
Hungary	+4	Hungary	+3	Germany	+5
China	-4	China	-12	Italy	+5
Russia	-20	Russia	-30	Russia	-3

In France, the perception of Russia as a threat has risen sharply from 25th place to first. However, French respondents are less concerned than their European counterparts about the risks posed by nuclear, biological and chemical weapons. In Germany, Russia is similarly seen as a threat and received a risk index of 78 points, which is higher than in any other European country. Other risks (use of nuclear, biological, chemical weapons) rose by 20 points or more.

The risk posed by Russia to Italy has increased by 22 points, but with an index of 67, it still ranks only sixth among Italian respondents. This is the second lowest score among all the G7 countries surveyed, after the US (where it has 66 points). Great Britain ranks only second after Ukraine in perceived inevitability of the Russian threat. Russia has jumped to the top of US respondents' perceived risk, having risen 13 positions in just one year (Bunde *et al.*, 2023).

NATO published its new Strategic Concept at the Madrid Summit of 2022, where it calls Russia a direct threat to the security of the Alliance members, as well as to peace and stability in the Euro-Atlantic region. NATO members also announced the strengthening of military measures on the eastern flank, as well as an increase in the high-alert force from 40,000 to 300,000 servicemen. The 2023 Munich Security Index is evidence of significant changes in security policy marked by a sense of insecurity (Bunde *et al.*, 2023). Such a change in threats involves the implementation of immediate measures to adjust the security policy, which should be

combined both in the system of cooperation between NATO countries, and in the adequate response by the European Union directly.

For a more detailed analysis of the security situation and response, the security situation in the countries of Western Europe according to the Global Peace Index (Institute for Economics & Peace, 2022), the Fragile States Index (The Fund for Peace, 2022) and the global risk report (World Economic Forum, 2023) will be considered comprehensively (Table 2).

Table 1. Comprehensive indicators of the state of security of EU countries.

	Fragile States Index	Global Peace Index	Global Risk Report, ranking of importance/substance
Austria	25.4	1.3	4 Geoeconomic confrontation 5 Geopolitical competitions for resources
Belgium	31.9	1.526	5 Geoeconomic confrontation
Bulgaria	51.6	1.541	4 Interstate conflict 5 Disintegration of the state
Czech Republic	39.9	1.318	4 Geopolitical competitions for resources 5 Interstate conflict
Denmark	18.1	1.296	4 Geoeconomic confrontation
Finland	15.1	1.439	1 Geoeconomic confrontation 4 Interstate conflict
Estonia	37.7	1.662	2 Geoeconomic confrontation 3 Interstate conflict
France	30.9	1.895	3 Social cohesion erosion
Greece	55.8	1.838	5 Interstate conflict 5 Geoeconomic confrontation
Spain	44.4	1.603	5 Geopolitical competitions for resources
The Netherlands	22.1	1.522	3 Geoeconomic confrontation 3 Geopolitical competitions for resources
Ireland	20.8	1.288	3 Geoeconomic confrontation
Lithuania	38.6	1.724	2 Interstate conflict 4 Geoeconomic confrontation
Latvia	42.8	1.673	2 Interstate conflict
Romania	50.8	1.64	2 Geoeconomic confrontation 3 Interstate conflict
Slovakia	37.1	1.499	4 Interstate conflict

Germany	23.6	1.462	3 Interstate conflict 4 Geopolitical competitions for resources
Poland	42.2	1.552	3 Geoeconomic confrontation 5 Interstate conflict
Slovenia	27.7	1.316	2 Geoeconomic confrontation 5 Geopolitical competitions for resources
Sweden	20.9	1.564	5 Geoeconomic confrontation
Hungary	50.8	1.411	3 Geoeconomic confrontation
Italy	43.4	1.643	2 Interstate conflict

(Institute for Economics & Peace, 2022; The Fund for Peace, 2022; World Economic Forum, 2023)

As the results show, despite the relatively satisfactory indicators of the Global Peace Index and the Fragile States Index, almost all EU countries have risks related to interstate conflict, geoeconomic confrontation, and geopolitical competition for resources. Moreover, all the specified risks occupy positions from 1 to 5 in terms of the degree of threat.

EU defence spending increased to €214 billion in 2021 (up 6% from 2020) and is estimated to increase by a further €70 billion by 2025 (European Defence Agency, 2022a). Compared to the 26 EU member states, other international players, namely the US, Russia and China, consistently allocate a larger share of their economic resources to the defence sector. The share of GDP allocated by EU member states has fluctuated between 1.3% and 1.6% over the past two decades.

During the same period, US defence spending ranged between 3.4% and 5.2% of GDP, Russia spent up to 4.8% of GDP, China — from 1.6% to 2.3% of GDP. In absolute terms, the US spent €686 billion on defence in 2021, China — €241 billion, the EU 26 Member States — €214 billion, and Russia — €56 billion (European Defence Agency, 2022b). European policy has led to certain problems in the development of the armed forces, and this is evidenced primarily by the level of defence spending in the EU. Figure 1 presents data on the share of GDP allocated to defence by individual countries and interstate associations.

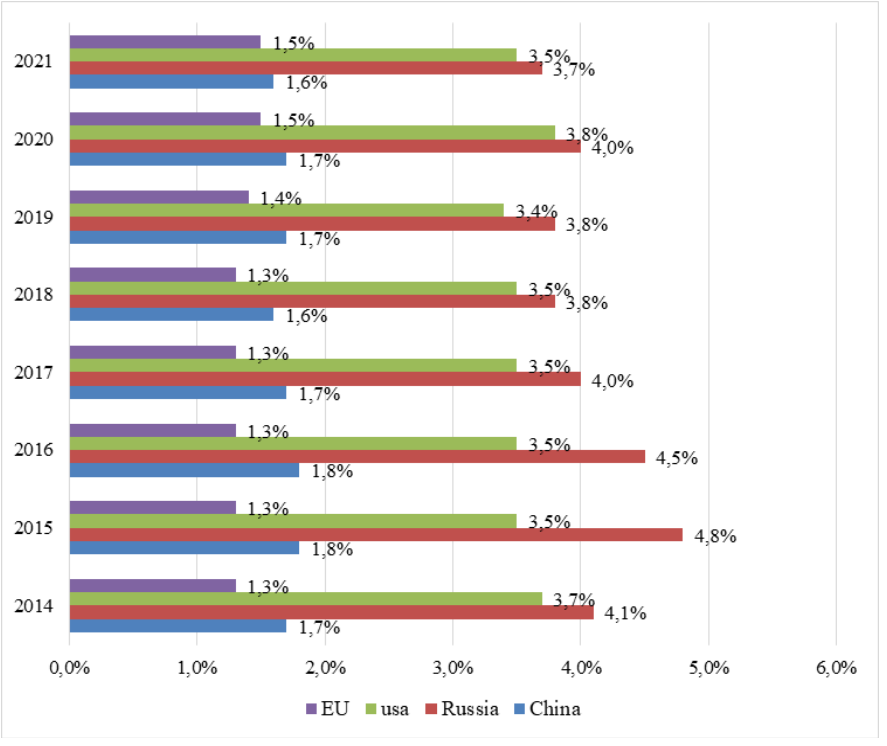

Figure 1: Total defence spending as % of GDP, 2014-2021 (European Defence Agency, 2022b).

The level of European defence spending and the size of its collective forces should make it a global power with one of the strongest armies in the world. But Europe does not act as a single entity in defence. This was the defeat of the American strategy towards Europe after the Cold War. Europe's dependence on the US for its security means that the US has a de facto veto power to block the European Union's defence ambitions. This political approach was a strategic mistake that weakened NATO in military terms, and contributed to the relative decline of Europe's global influence. As a result, one of America's closest allies is not as powerful as it could be.

The US response to a certain military incapacity of the EU involved encouraging the majority of European NATO member states to increase defence spending. For several decades, the US has tried to force European countries to expand NATO's technical and financial capabilities.

Accordingly, making a coherent security and defence policy would be a balanced approach to the integration of defence capabilities in the EU. It should be noted that these actions are implemented quite slowly. NATO's key role is to unite the armed forces of the Allies in a military alliance for the purpose of joint action.

Unfortunately, qualitative changes in the security system cannot be achieved due to a simple increase in costs, which are distributed among the participating states. Moreover, the transformational processes of Europe require certain adaptations from NATO. US policy reflects the need for greater activation of the EU in the field of defence, although the defence system of the EU and NATO should strengthen each other. The tasks of the US and NATO should be to focus on the integration of the defence efforts of the European Union into NATO and the integration of the EU into the Atlantic model.

But the enormous activity of the USA in European defence matters is also undeniable. The USA opposes the fragmentation of European foreign and defence policy at the EU level. The American support for European proposals initiated the European project.

A united and strong Europe is needed in the era of renewed US geopolitical competition. Today, Europe remains partially dependent on the US military for the purposes of ensuring security in Europe. Continued US support and involvement in EU defence can lead to real progress.

Russia's armed attack on Ukraine has raised more concerns about the state of European security. Back in 2014, the NATO summit decided on defence spending at the level of 2% of GDP (U.S. Department of Defense, 2016). Given the prerogative of European countries to ensure their own security within NATO, problems arise regarding significant duplication of functions, fragmentation and inefficiency of spending by EU member states. The essential dependence of European countries on the USA for any active defence activity is manifested.

Russia's military aggression in Ukraine has radically changed the EU's approach to intensifying defence initiatives and actions related to military support for Ukraine. Recent years have demonstrated the EU's ability to create security institutions, which have strengthened the overall capacity and contributed to the expansion of autonomy. One of the significant results of the EU in the field of security was the creation of PESCO in 2017 for defence cooperation between member states, and the European Defence Fund (EDF).

Control over PESCO is exercised by the European Commission, as well as by an intergovernmental body (EU Council), which includes EU member states. Commitments on investment income and the implementation of joint defence initiatives have been agreed by 25 member states (PESCO,

2023). A security assistance programme — the European Peace Facility (EPF) — has also been created, which should ensure that the EU acquires and supplies weapons to partner countries. This programme provides for the allocation of €5 billion during 2021-2027.

Further development of the EU's military potential may lead to the duplication of certain NATO actions. Although the active actions in the field of security could improve the EU coordination with NATO. Strengthening the defence capabilities of the EU will allow NATO to focus on existing global threats (for example, China, Russia). It may seem to the American partners that the manifestation of the EU as an active participant will complicate transatlantic relations and cause problematic relations in NATO. In fact, the strengthening of the EU will be a positive moment for the US in light of the expanding geopolitical struggle against the ambitions of autocratic states.

In case of intensifying competition with China, the US should redistribute resources not in favour of European interests. This could weaken the alliance, given the refocusing of US actions, and European NATO partners will turn to finding options for guaranteeing security. The Asian interests of the EU are not fundamentally established, therefore, barring of NATO members belonging to Western Europe from US policy is possible. In the case of increased US demands for assistance from European partners in the confrontation with China, it is possible to assume that the alliance will end.

US policy towards NATO is currently creating significant instability and unsustainability in a region that is poised for an unprecedented level of stability, in part due to previous US efforts. In this regard, the J. Biden's administration should consider the possibility of developing directions with the aim of significantly reducing the US presence in the security sphere through NATO.

Against the background of growing calls to strengthen the alliance's presence on the eastern flank because of deteriorating relations with Russia, the US government should encourage European NATO members to bear the primary responsibility for defence commitments, shifting the burden of defence in Europe to high-powered states in the region to reduce US defence commitments.

It should be realized that the implementation of US policy aimed at ensuring European security must be of a fundamental nature in the current difficult conditions, because threats to European allied countries directly or indirectly affect the US security. The joint statement of the leaders of NATO countries at the end of 2019 regarding the danger of Russian aggression for the entire Euro-Atlantic bloc confirms that. As long as the debate on the need for a strategic vision of European defence autonomy continues, an understanding of the current state, when European and American positions

on actions in the field of security are similar, is emerging more and more clearly. This causes the need for the US to eliminate the existing weak points of the joint security policy with due regard to complex geopolitical challenges.

4. Discussion

The study of the general state of risks and dangers associated with military conflicts in the countries of Western Europe has certain limitations and reservations. As an example, the perception of other countries as threats or allies relies on the answers of respondents engaged in different types of activities, which are mostly not related to either political or military analysis. That is, it has a certain percentage of subjective result. Besides, the available data contain only a limited number of countries (21), which primarily does not show the full picture regarding the EU countries and NATO member states.

The problems of European security have a structural nature, which requires a comprehensive consideration when shaping US policy in the field of European security. There are critical structural problems that hinder the development of European defence capabilities and weaken NATO. Improving the situation of the transatlantic alliance requires concerted action to solve structural problems.

The US must shape new models in the defence system of Western Europe, which will involve stimulating the EU's defence efforts by directing it to adopt innovative approaches and promoting closer cooperation between NATO and the EU. The goal of the US strategy should be to create a strong European support within NATO, organized and led by the EU and included in the global Euro-Atlantic structure.

The study confirmed the assertions of researchers (Ringsmose and Rynning, 2021; Colbourn, 2020) on the need for continued US defence efforts to develop the EU's common defence potential. This could strengthen the current state of European defence and the EU. The main strategic reason for supporting the EU's defence efforts is that the US needs the EU as a strong global actor in the security system, adjusting its own approaches to security policy.

Given the need for a significant military capability in geopolitical conflicts, US policy should encourage the EU to strengthen its own role as a defence player while anchoring it in NATO and the transatlantic alliance. The US position regarding actions to activate and encourage the EU to build a modern powerful model of its own defence seems to be important. As certain actions, the US can use its own influence on the countries of Eastern

Europe, with which it closely cooperates and can influence the support of EU initiatives.

As the EU strengthens, it becomes expedient for the US to reorient its diplomatic influence on ensuring strategic alignment between the US and the EU. The leading strategic goal of US foreign policy should be to ensure close cooperation between the US and the EU. This will ensure that the EU's defence achievements lead to both a stronger EU, and a stronger transatlantic alliance. The study proves that the constant coordination of security issues between the USA and the EU gradually weakens the mentioned activity, taking into account a certain policy of autonomy towards the USA on the part of the EU member states. A similar conclusion was drawn in the work of Riddervold and Rosén (2020).

At the same time, attention should also be paid to the opinions of other researchers who show a different side of the US security policy. A review of possible models of US actions in choosing strategic areas of security demonstrates an orientation to events related to China's policy (actions around Taiwan or the South China Sea).

This could direct US efforts to the Eastern region, which would lower the level of US interaction with Europe and reduce the role of European actions in relations. The development of relations with the EU, apart from China-related issues, would not find support in the US. Faced with this position, EU member states will need to independently resolve political differences regarding strategic autonomy (Martin and Sinkkonen, 2022).

The US position provides for further actions to strengthen the EU's institutional capacity and transform it into a more significant global participant in security activities. For the EU to become a stronger geopolitical player, it must develop its powerful military potential, which will not pose any threat or challenge to NATO.

The EU working to strengthen European defence could strengthen NATO and transatlantic relations. In fact, taking into account the new challenges, the EU, becoming a powerful defence force, could gradually secure a central place in NATO and the transatlantic alliance.

There is a need to expand the political responsibility and actions of the USA in Western Europe. The United States have undertaken certain obligations, both domestic and international, and there is a certain disappointment of the European members of NATO with the political actions of the United States.

This becomes one of the factors regarding changes in the EU's defence initiatives to strengthen its own capabilities. At the same time, this strengthening of the EU will enable reducing the active patronage of the USA. The problems of US defence issues should also shift to other regions,

where there is a need for appropriate influence and control, which will rationally distribute resources and allow more globalization of NATO's influence in the world.

Conclusions

The research on the implementation of strategic and current security policy objectives has become extremely relevant in view of the unprecedented change in the situation in the field of defence, in which the NATO and the countries of the European Union found themselves because of the Russian military aggression against Ukraine. The complex roles distributed between NATO allies and EU member states have caused certain inconsistencies and inefficiencies in the performance of the collective security and defence functions of the EU countries.

The results of the study confirmed the thesis that the concept of sustainability occupies a very important place in NATO's security policy. This is primarily their response to the aggressive policy of the Russian Federation (military aggression against Ukraine, NATO threats, attempts to destabilize the situation in other regions of the world). NATO realized the need to build effective mechanisms of collective defence and resistance to military and non-military threats.

So, the research covered the problem of determining the role and place of the USA in the Western Europe's security policy making based on real current threats. Analysis of changes regarding potential allies and countries that represent threats, determination of potential risks in EU countries demonstrated existing geopolitical problems, which primarily come from Russia and China. Against this background, the problems of underfunding of the EU defence system, substantial duplication of functions, fragmentation and inefficiency of EU member states' expenditures were revealed.

In turn, the US position regarding the organization of the EU's security sphere is based on constant stimulation of the EU countries to create a more autonomous system in ensuring their own defence capabilities. Strengthening the EU as a geopolitical player by expanding its military potential can improve NATO's capabilities, and enable the US to significantly focus on existing global geopolitical threats.

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Financial responsibility of the state: a comparative analysis of the European countries' approaches in peacetime and wartime

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Abstract

The aim of the article was to unveil the essence of the financial responsibility of the State within a comparative analysis of the approaches of European countries, in times of peace and war. The complexity of the subject led to the complex application of research methods, in particular: dialectical, systemic, comparative, synergistic, normative and logical analysis, synthesis. The practice of the implementation of State responsibility in some European and Asian countries was studied and it was concluded that it had been established particularly in times of peace. However, it is argued that such experience of public finance could also be useful in the Ukrainian realities of reconstruction and recovery. Ukrainian legal instruments concerning the financial responsibility of the state were also examined and the respective court decisions were researched. Among other things, it is concluded that, the financial liability of the subjects of public administration and their officials or employees is to be understood in terms of compensation of damages for wrongful acts in the form of decisions or actions that led to infringement or disregard of the rights and legitimate interests of the payers.

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Responsabilidad financiera del estado: un análisis comparativo de los enfoques de los países europeos en tiempos de paz y de guerra

Resumen

El objetivo del artículo fue desvelar la esencia de la responsabilidad financiera del Estado dentro de un análisis comparativo de los planteamientos de los países europeos, en tiempos de paz y de guerra. La complejidad del tema condujo a la aplicación compleja de métodos de investigación, en particular: análisis dialéctico, sistémico, comparativo, análisis sinérgico, normativo y lógico, síntesis. Se estudio la práctica de la implementación de la responsabilidad del Estado de algunos países europeos y asiáticos y se concluye que esta se había establecido particularmente en tiempos de paz. De cualquier modo, se afirma que dicha experiencia de finanzas publicas también podría ser útil en las realidades ucranianas de reconstrucción y recuperación. También se examinaron los instrumentos jurídicos ucranianos relativos a la responsabilidad financiera del Estado y se investigaron las decisiones judiciales respectivas. Entre otras cosas se concluye que, la responsabilidad patrimonial de los sujetos de la Administración Pública y de sus funcionarios o empleados, ha de entenderse en términos de indemnización de daños y perjuicios por ilícitos en forma de decisiones o actuaciones que condujeron a la vulneración o desconocimiento de los derechos e intereses legítimos de los pagadores.

Palabras clave: política financiera; integración orden jurídico; globalización socio tecnológica; ley marcial; administración pública.

Introduction

Effective legal system is an important component of a democratic, social and legal State. Law-making activity should be based on the constitutional principles of the rule of law, social orientation of market relations, effective legal regulation in the sphere of public finances, since it is the sphere of public finances that is the basis, on which all components of the economic security of the state are built.

Strengthening the rule of law in Ukraine and ensuring its supremacy in all spheres of public life remains a priority direction of State construction. And this implies both deepening the State's responsibility for the performance of their duties to the person, and the responsibility of each individual to the State and society. However, a significant number of issues in the area of legal responsibility remain debatable. Many of its aspects, covering, in particular, the problems of financial law and financial and legal responsibility, are not sufficiently or not at all researched. The latter issue is one of the most controversial in the legal science of Ukraine.

This is caused both by the very fact of the existence of this type of liability, and by the problems related to the nature of financial and legal sanctions, the order of their application, the definition of the signs and composition of a financial offense. In this regard, the analysis of the problems of the formation and development of financial legal responsibility as an independent type of legal liability is one of the priority areas of science necessary to increase the role of financial law as a branch of law at this stage.

Thus, the purpose of the article is to reveal the essence of a financial responsibility of the State within a comparative analysis of the European countries' approaches in peacetime and wartime conditions.

1. Methodology

The complexity of the topic led to the complex application of research methods, each of which allows to investigate financial and legal responsibility from a certain perspective. The main ones are:

Dialectical method contributed to the examination of financial responsibility from different perspectives, to its studying as a separate phenomenon.

System method was used for comprehensive characterization of financial responsibility as a system of legal responsibility in the broad sense and as a set of separate components in a narrow sense.

The method of comparative analysis took place during the study of domestic and foreign experience of the topic under consideration.

Synergetic method was useful in the research of the materials of court practice, which made it possible to compare individual phenomena of the investigated problem and to identify both general and special features in them.

The method of normative and logical analysis was applied to identify the legal basis governing the problem of financial responsibility of State authorities.;

The method of synthesis helped to consider the State's financial liability in the unity of its elements and their interrelation.

2. Literature Review

The institutional dynamics of the formation of the integration legal order regarding the financial responsibility of the state is oriented towards establishing mechanisms and strategic models for overcoming the transformational crisis corresponding to the new conditions of the challenges of globalization (Cherleniak and Mashiko, 2017). The defined environment has a basis and framework, as well as institutions that traditionally develop in an evolutionary way (Liakhovets, 2015). Definitions of integration law could be grouped based on the following criteria regarding its dimensions:

- in institutional manifestations: a legal entity formed as a "superstructure" of a supranational nature, when national legal systems continue to function within the borders of each individual state, preserving its own independence and identity (Pisov, 2016);
- functionally: as the interaction of legal systems – the result of the interaction of national legal systems and the legal field formed as a result of legal integration, which arises on the basis of overcoming international barriers and contradictions; as the implementation of relations – a system of legal relations that includes international legal principles and norms, but also institutions that form organizational means and mechanisms, with the use of which these norms and principles are implemented (Pisov, 2016).

The goals of such institutional development are to ensure the perspective of the system in the context of investments, economic growth, and democratization of relations (Moiseienko, 2015), creation of an appropriate institutional environment that accepts innovations, by changing the institutional structure, could strengthen and qualitatively improve the basis through the formation of appropriate conditions of activity, determination of directions for further transformations (Nykyforuk and Berezhnytska, 2021).

The existing definitions of legal policy, particularly considering the financial responsibility of the state, could be grouped according to the following content areas:

- conceptual approach: as a set of ideas of a strategic orientation, developed by subjects of public and private law, introduced into specific programs for the development of the legal life of society and the state (Ternavska, 2018);

- axiological approach: as a state policy of organization and management of social relations to achieve the common good on the basis of law by legitimate means, satisfaction of public interests (taking into account private interests), solving tasks determined by real societal, public (inherent to both the state and the people) needs and interests (Ternavska, 2018);
- functional approach: as a well-founded and consistent activity of state authorities and local self-government, based on fundamental legal principles, for the effective implementation of the mechanism of legal regulation of social relations, in particular, in the conditions of a hybrid war, embodied in ideas, measures, tasks, programs, instructions, which are implemented in the legal area and thanks to the law (Iliashko, 2017);
- integration approach: as a static element of the legal system, as well as a special dynamic interdisciplinary legal category, which defines the principles, strategic directions and ways of creating and implementing legal norms based on general and specific laws of the development of the national legal system, aimed at strengthening the regime of legality and security, formation of a developed legal culture, ability to use legal means to satisfy one's interests, protection of rights and freedoms (Zhelezniak, 2003).

In the doctrine, this term is considered as: the activity of the state, classes, political parties, social groups, which is influenced by their goals and interests; issues and events of state and social life; a way of behavior aimed at achieving a set goal, which establishes the order of interaction between people (Zhelezniak, 2003). It has been clarified that politics is power in dynamics, as well as law and legislation are static power (Mynkovych-Slobodianyk, 2012). Politics is a manifestation of state and law-making.

3. Results and Discussion

An important institution of financial delictology is the State responsibility. We are dealing with discretion, norm interpretation and factual assessments, interest appraisals and technical assessments, judicial and non-judicial paradigms. It is important to form a standard procedure for bringing the state to this type of liability, to unify the grounds for responsibility of the actors of public administration and their officials or employees, taking into account the globalization of such relations.

We can talk about socio-technological globalization in the context of establishing an integration legal order regarding the financial responsibility of the State, appearing as an objective and inevitable phenomenon,

an imperative requirement of contemporary society and scientific and technological progress (Kulishov, 2013). We are dealing with a cross-border public administration (Melnyk and Barikova, 2019), establishing a relevant civil service pattern (Drozd, 2017) in terms of implementation of the law enforcement function of the State under the legal regime of law, including martial one (Drozd *et al.,* 2022), regarding certain types of legal liability (Drozd *et al.,* 2017).

It is about the technical and technological transformation of society into the information and technogenic one within the global socio and techno-natural megasystem, which is beginning to replace the biosphere (info-technosphere), as well as a new type of culture in the world of techno-noosphere civilization, when technologies will have the main properties of a biological organism, and computer networks will resemble the autonomous nervous system of a living organism. Such a complex socio-technological network is characterized by the stability of the organization, based on the desire for the most disordered state (chaos) in closed shemes and for forms of order (under certain conditions) in open systems (Voronkova, 2017).

Asian countries have a peacetime practice considering the implementation of State responsibility. In India, such process is a discretion based and takes place in implementing surveillance tools which could potentially contribute to the theoretical understanding of the importance and fallouts of building in discretion in the writing of rules and laws in relevant financial regulation in terms of the effectiveness of such measures (Aggarwal *et al.,* 2020).

The Indonesian experience is related to public accountability; two types of expenditures often indicated for misappropriation: (1) grant / social assistance discretionary in nature, making it subjective, as well as (2) procurement budgets being non-discretionary, when budget determination is based on the need of the local government to support operations and sustainment of the government (Febrian and Rossieta, 2019).

It is important to pay attention not only to the discretionary characteristics of the activity of the controlling bodies, but to the essence of the activity that might be subject to responsibility, taking into account the peculiarities of the budget process.

The practice of European countries regarding the implementation of State responsibility has been established in peacetime conditions. In Recommendation No. R (84) 15 (Council of Europe, 1984) regarding public legal responsibility for the damage caused, the right of a person to compensation for damage in case of its wrongful infliction by the State, authority or employee has been enshrined.

The emphasis has been placed on the rational elements of a decision-making process as an aspect of legality and on the verification of the conditions when a norm attaches to the exercise of discretion, as well as the check issues of legal nature in terms of the evidence.

As a result, electronic dimension of law enforcement considering the financial responsibility of the state arises within a new 'Lex Ex Machina' concept (Pečarič, 2021) during technological disruption (Brownsword, 2022), leading to discretion in applying provisions of law with linguistic prospects for AI and machine learning with the aim to minimize negative practices with the following model standards (Barikova and Bernaziuk, 2022):

- classification of points is possible when an event that is only a cause (only ribs emanate from it, not fit) becomes a 'pure cause' of true chance. True coincidence has consequences, but no causes. Depending on the interpretation, pure consequences might be possible;
- model stands for pure reasons at the 'beginning' of the graph, i.e. initial conditions. Rules for continuing the graph from the available points, including the rules for the appearance of pure causes, except for the initial conditions, are physical laws. Physical laws and initial conditions are enough to model the universe. Or any of its independent parts;
- convolution means graph points that could be interpreted as nodes. Each node is a 'collapsed' section of the graph, all the consequences of the section go from the node, all the reasons from the section lead to the node. An infinitely unfolding graph is possible. You could collapse the universe into one node, not only the discretion in applying provisions of law:
- freedom of will is by definition not a pure cause (true coincidence). Free will is by definition not a consequence (something predetermined). A graph could represent the evolution of a structure of any possible complexity with arbitrarily complex laws. Consequently, free will in the world of cause and effect is impossible by definition;
- structure represents the graph which could branch into causally incoherent parts. The graph could self-copy and/or have cycles, might be completely closed to itself and not include pure reasons (true coincidence) at all. Each node of the graph could have an innumerable number of edges. Sets of edges, graph nodes and their relation could be considered from the point of view of set theory. It could be considered algorithmically, from the point of view of the theory of computability. The set of properties mapped to any event could also be viewed differently. The same applies to the set of rules for continuing the graph and the rules for generating initial conditions, if any. Each approach provides an opportunity to construct a graph in some other way.

For example, in Germany, liability is possible for official wrongdoing (in the narrow sense), as well as for activities or their results, regardless of their legality ("the right to State compensation" in a broad sense). In case of causing damage, it is allowed to ensure this liability by creating a fund (association) of non-profit insurance organizations, based on the system of joint and several liabilities (Demkova *et al.*, 2007).

For Ukraine, the implementation of the outlined insurance practice could be useful for the prompt implementation of compensation to payers and the restoration of justice, with the further implementation of a special procedure for compensation of damages by guilty entities to the fund of non-profit insurance organizations.

The Republic of Poland refers to the right to compensation for damage caused by the illegal action of a public authority, when the application of norms that have the character of legis specialis forms a system that covers the principles and method of execution (amount of damage, nature of illegality, the procedure for protecting the right to compensation, etc.) (Demkova *et al.,* 2007).

In France, Albania and Latvia, compensation for both material and non-pecuniary damage is allowed (Chapus, 2001), and in Estonia – damages and lost profit, with a separate section of the relevant Law with amendments to the legislation on public service regarding the grounds and procedure for filing a claim in the order of recourse against the official for whose fault the state paid compensation (Demkova *et al.*, 2007). Such practice could also be useful in Ukrainian realities of the reconstruction and recovery, provided that the procedure for proving damage is carried out effectively, because similar provisions are presented in the national legislation.

Similar provisions are presented in the national legislation of Ukraine. The Article 56 of the Constitution (Law of Ukraine, No. 254K/96-VR, 1996) indicates the right to compensation, at the expense of the State or bodies of local self-government, for material and moral damages inflicted by unlawful decisions, actions or omission of bodies of state power, bodies of local self-government, their officials and officers during the exercise of their authority. Article 3 of the Basic Law also contains provisions on the State's responsibility to a person for its activities. Article 128 of the Tax Code of Ukraine (Law of Ukraine, No. 435-IV, 2010) enshrines the concept of tax offences of control authorities, which is illegal decisions, acts or omission by controlling bodies, their officials, the commission of which is the basis for compensation for damage to a person whose rights have been violated, in accordance with the law. The prerequisites for establishing such liability also existed in the Clause 21.3 of the Article 21 of this Code.

The doctrine of financial law defines the grounds for holding the State and its agencies accountable: in case of damage caused by illegal decisions

or acts; failure to fulfill their contractual obligations, in which they act as one of the parties; underfunding of managers and/or recipients of budget funds, if the allocation of funds was established by law or a decision on the relevant budget (Muzyka-Stefanchuk, 2012). Clause 114.3, Article 114 of the Tax Code of Ukraine (Law of Ukraine No. 435-IV, 2010) details a non-exhaustive list of types of such damage subject to compensation, in particular:

- the value of the lost, damaged or destroyed property of the taxpayer, determined in accordance with the requirements of the law;
- additional expenses incurred by the payer as a result of illegal decisions or actions of the control authorities, their officials or employees (fines paid to the payer's counterparties, the cost of additional work, services, additionally spent materials, etc.);
- documented expenses (the sum of which should not exceed 50 amounts of minimal salary set upon January 1 of the accounting (taxable) period, in which the corresponding court decision or decision by another body is taken, in cases established by law), related to administrative and/or judicial appeals (except for amounts subject to reimbursement in the order of distribution of court costs in accordance with procedural legislation) of the specified decisions or actions of the controlling bodies, their officials or employees (legal support not related to the protection provided by a lawyer; employees or representatives of the taxpayer obtaining the necessary evidence, engaging experts, making copies of documents, etc.).

The Tax Code of Ukraine (Law of Ukraine, No. 435-IV, 2010) does not establish a detailed procedure for bringing control bodies, their officials or employees to financial responsibility. At the same time, Clause 114.2, Article 114 and Clause 128.1, Article 128 of this Code allow the use of "legislation on compensation for damage" as the category "in accordance with the law". According to the second part of the Article 1 of the Civil Code of Ukraine (Law of Ukraine, No. 435-IV, 2003), civil legislation does not apply to property relations based on administrative or other authority subordination of one party to another party, as well as to tax and budget relations, unless otherwise established by law.

Regarding financial responsibility of the State, the law expressly allows the blanket application of special regulations, which in this context are the provisions of the Articles 1173, 1174 of the Civil Code of Ukraine. The aforementioned approach is due to the gap in the relevant tax legislation of Ukraine, as well as the contextual similarity of the described regulatory approaches regarding the responsibility of the state, in particular, and without fault for the implementation of this procedure.

A similar approach to the interpretation of the regulatory body regarding the procedure for bringing the state to financial responsibility has been presented in the decision of the Supreme Court in the case No. 260/576/19 (2023), which also states that during the consideration of cases for damages claims, caused by the actions / inaction of the revenue and collection authorities, the co-defendants are the relevant bodies of the State Treasury Service of Ukraine, which are responsible for the treasury service of budget funds.

It is not required that the specified bodies have violated the rights and interests of the payer protected by law. The Decision of the Constitutional Court of Ukraine (Case No. 1-36/2001, 2001) specified that compensation for damage caused by illegal decisions or actions of state bodies is not allowed with the funds allocated for the maintenance of these bodies.

The decision of the Supreme Court (Case No. 280/4506/18, 2021) indicated that the fact of voluntary elimination by the controlling body of an admitted violation of the rights of the payer does not indicate the unconditional absence of grounds for meeting the legal requirements for the recognition of such behavior as illegal, if specific negative consequences arose for the latter.

The outlined policy in Ukraine is affected by war or the threat of force, other external challenges and international factors; socio-political and economic circumstances, public expectations, positions of the ruling party, balancing between literacy and populism of politicians, which should be reflected in the national Concept of Legal Policy (Kravchuk and Matola, 2018). Such circumstances determine the implementation of the principles of the legal policy of Ukraine (Zhelezniak, 2003) with the following focus, in particular, on the basics of the financial responsibility of the public administration subjects and their officials or employees:

- fundamental: humanity and moral principles; democratic character; justice; stability and predictability; publicity;
- normative: legitimacy; compliance with the main provisions of international law, legislation of the European Union;
- social: the combination of the interests of society and the state; the priority of human rights as the highest social value; social conditioning;
- doctrinal: scientific validity.

Conclusions

Thus, the financial responsibility of the public administration subjects and their officials or employees is to be understood in terms of compensation for damages for illegal torts in the form of decisions or actions that led to the violation or failure to recognize the rights and legitimate interests of the payers.

The institutional environment of the financial responsibility of the State is one of the conditions for reforming the economy (Liakhovets, 2015) as a process of evolutionary development with relatively normalized restrictions (Kornieiev, 2002), quantitative and qualitative essential transformations and the formation of relevant social and economic institutions (Katyhrobova, 2013), constant transformational process (Rudenko, 2018), in particular, regarding the resolution of conflict situations.

Thus, the issue of holding responsible regulatory bodies and their officials arises is quite problematic in financial law. Properly justified State financial policy on this matter will contribute to the creation of an economic basis for filling the state and local budgets.

The procedure for bringing the state to financial responsibility is to have the following stages: 1) documenting the damage; 2) legal qualification with assessment of the amount of compensation; 3) adoption of an administrative act on bringing the controlling body, its officials or employees to financial responsibility; 4) the optional stage of contesting the specified act; 5) compensation for damage from the established budget.

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Measures to prevent state default under martial law

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Abstract

Debt security is especially relevant for developing countries, because they recover from economic shocks longer than developed countries, and the consequences of such shocks are catastrophic for them. Default is one of the most undesirable consequences of defaulting on a debt security, which determines the relevance of the topic under investigation. The aim of the study was to assess the current condition and state policy on the provision of debt security in Ukraine under martial law and to generalize measures to increase debt security and minimize the risk of default. The article used the following methods: economic statistical analysis, structural system approach and abstract logical method. The study found that, with the onset of a large-scale invasion, the share of public debt in Ukraine exceeded the recommended value by about 47 % and increased by more than 58 % compared to 2021. The conclusions of the research propose measures to increase debt security, divided into domestic and international measures.

Keywords: public debt; debt security; debt policy; debt strategy; public administration.

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Medidas para prevenir el incumplimiento del Estado bajo la ley marcial

Resumen

La seguridad de la deuda es especialmente relevante para los países en desarrollo, porque se recuperan después de shocks económicos por más tiempo que los países desarrollados, y las consecuencias de tales shocks son catastróficas para ellos. La mora es una de las consecuencias más indeseables del incumplimiento de un título de deuda, lo que determina la relevancia del tema investigado. El objetivo del estudio fue evaluar la condición actual y la política estatal sobre la provisión de seguridad de la deuda en Ucrania, bajo la ley marcial, y generalizar las medidas para aumentar la seguridad de la deuda y minimizar el riesgo de incumplimiento. En el artículo se utilizaron los siguientes métodos: análisis estadístico económico, enfoque estructural del sistema y método lógico abstracto. El estudio encontró que, con el comienzo de una invasión a gran escala, la proporción de la deuda pública en Ucrania superó el valor recomendado en aproximadamente un 47 % y aumentó en más del 58 % en comparación con 2021. En las conclusiones de la investigación se proponen medidas para aumentar la seguridad de la deuda, divididas en medidas nacionales e internacionales.

Palabras clave: deuda pública; garantía de deuda; política de deuda; estrategia de deuda; administración pública.

Introduction

A large-scale military invasion of the sovereign territory of Ukraine had a disastrous effect for the population, infrastructure and economy of the country. The national security becomes especially important during this period, in particular, financial and debt security require increased attention. Breach of debt security is accompanied by a debt crisis, which is associated with exceeding the permissible amount of public debt and the inability to service and repay it (Fominykh and Parfenyuk, 2021).

The concept of public debt is closely related to the concept of budget deficit. The Budget Code of Ukraine defines that the budget deficit is an excess of the budget expenditures over the budget revenues for a certain year. The public debt is the total amount of the country's debt obligations for the repayment of received and outstanding loans (Verkhovna Rada of Ukraine, 2023).

Excessive growth of the budget deficit and the amount of public debt negatively affects economic growth (Law *et al.,* 2021; Semenyshyn *et al*., 2020) and can lead to default in the country, which in the most general

sense means the inability to fully or partially meet obligations. According to the IMF and the World Bank criteria, the fact that a country has declared default is the main sign of a debt crisis along with negotiations on debt restructuring (Bogdan, 2021).

A possible declaration of default in Ukraine was repeatedly discussed in the scientific and political sphere even before the war. The underlying reason is the growth of threats to debt security because of the increased budget deficit, excessive borrowing and irrational use of funds, an unstable political situation, the financial and economic consequences caused by the COVID-19 pandemic, etc. (Sytnyk and Shutko, 2022).

However, the military invasion and its devastating effects on the economy brought default preventing to the fore. At the same time, public debt has a number of advantages (Hilton, 2021; Rahman *et al.,* 2019). It is an important source of financing, in particular during martial law, because it provides support for the economy and fulfilment of specific tasks that appear in this time before the government (Prokopenko *et al*., 2023). Therefore, the issue of balanced borrowings and their rational use for the needs of the state during the war with the simultaneous minimization of the risk of default is a relevant objective.

So, the aim of the study is to assess the current condition and state policy on debt security in Ukraine under martial law, as well as generalize measures to increase debt security and minimize the risk of default. The aim involved the following research objectives:

- assess the current state of debt security in Ukraine;
- study the legal support of the budget process under martial law;
- analyse the effectiveness of the main areas of public debt security and default prevention policy.

1. Literature review

Most Ukrainian researchers focus on the current state of debt security in the country and developing relevant recommendations. Fominykh and Parfenyuk (2021) assess the main indicators of debt security and identify the main problems of debt management and the use of borrowings. Sytnyk and Shutko (2022) assess the debt security of Ukraine under martial law and determine the positive and negative aspects of debt in the country.

As a result of the conducted research, the researchers develop measures to increase the level of debt security. In their articles, Rudyk *et al*., (2022), Liamzina and Harbinska-Rudenko (2022) also study debt security in wartime and outline the reasons for the rapid increase in the amount of debt.

Researchers found a number of positive aspects of public debt: it is a source of investment, reduces the negative effects of a budget deficit, and accelerates economic growth. Hobela *et al.*, (2022) conduct an assessment of debt and budget security, identify the main threats and provide recommendations for improving these types of security. Kubakh and Riabushka (2022) identified the factors influencing the state of debt and financial security of countries, and also noted the lack of a unified approach to the definition of debt security and the absence of the definition in legislation.

Foreign researchers also actively study debt security aspects and the probability of default in countries with different levels of development. Aguiar and Amador (2021) note in their work that debt crises and defaults are mostly characteristic of low-income countries and developing countries. However, as the authors note, negative trends are increasingly spreading to developed countries.

Eichengreen *et al.*, (2021) substantiate the need for public borrowing, as well as the main advantages and disadvantages of using borrowed funds. It is noted that public debt opens up additional opportunities, in particular, during a crisis, such as a pandemic or the need to defend the state.

Abbas *et al.*, (2019) covers a number of theoretical aspects related to public debt, in particular: historical facts of the development of debt relations, basic definitions and concepts, motives for borrowing, debt sustainability, public debt management, sovereign default, debt restructuring, etc.

Meier *et al.*, (2021) assess the effectiveness of policy measures and reforms in ensuring the safety and soundness of the global financial system, in particular debt security. The study summarizes the causes of the crisis, the reactions to the adopted reforms, as well as whether the reforms correspond to the set goals.

Stiglitz and Rashid (2020) study the risks to the debt security of developing countries. Researchers note that the developing countries can suffer a disastrous effect from the realization of threats generated by the simultaneous effect of the pandemic and the deepening of the economic crisis. At the same time, developed countries will suffer losses, but will be much more capable of recovery.

So, it can be noted based on the results of the literature analysis that a large number of studies are focused on determining debt security indicators. However, the data for 2022 are missing in the works of Ukrainian researchers, the year that causes the most concern in the context of the breach of debt security and the probability of default. Therefore, it is appropriate, first, to update statistical debt security indicators, and, second, structure recommendations and measures to improve the state of debt security with their distribution according to the directions of future debt strategy.

2. Methods

2.1. Research design

The study was conducted in three stages, the first of which was an assessment of the public debt of Ukraine. An economic statistical analysis of the structure and dynamics of public debt indicators was carried out.

The following indicators were analysed: the dynamics of the national debt of Ukraine for 2017-2022, the dynamics of internal and external debt as part of the public debt for 2017-2022, the dynamics of internal and external debt as part of the state-guaranteed debt for 2017-2022, the ratio of the total volume of state and state-guaranteed debt to GDP for 2017-2022.

The second stage involved the study of the legal regulation of the budget process under martial law. For this purpose, the most important changes implemented in the budget legislation by the government after the beginning of the military invasion were identified, in particular, changes directly related to the repayment and servicing of the national debt of Ukraine.

The third stage provided for summarizing measures to improve debt security and prevent default. It is proposed to generalize, arrange and divide the specified measures, or directions of their implementation, into two levels — national and international.

2.2. The research methods used

The following scientific methods were used during the research: economic statistical analysis to assess the dynamics and structure of the public debt of Ukraine and determine debt security indicators; system structural method and abstract logical method in the course of arrangement and generalization of measures to increase debt security.

2.3. Research limitations

The research limitations are related to the lack of accurate official data on the GDP of Ukraine for 2022. This is why an approximate value of GDP was determined during the study, calculated based on preliminary data provided by the Ministry of Economy of Ukraine (Slovo i Dilo, 2023).

2.4. Information background

The information background of the study is academic periodicals of Ukraine and foreign countries, as well as data that are publicly available on the resources of the Ministry of Finance of Ukraine, the State Statistics

Service of Ukraine, and the Decentralization Portal. Besides, the study considered a number of legislative acts: the Budget Code of Ukraine, Law No. 2120-IX of 15 March 2022, Law No. 2134-IX of 15 March 2022, Law No. 2134-IX of 15 March 2022, Law No. 2135-XX of 15 March 2022, Law No. 2142-XX of 24 March 2022, Resolution No. 252 of 11 March 2022, Resolution No. 590 of 9 June 2022, Resolution No. 165 of 28 February 2022, Resolution No. 267 of 13 March 2022.

3. Results

3.1. Evaluation of the public debt of Ukraine

The national debt of Ukraine consists of public debt and state-guaranteed debt, each being, in turn, divided into internal and external. Figure 1 shows the trend of changes in the volume of the national debt of Ukraine for 2017-2022, with its distribution by the amount of public debt and state-guaranteed debt.

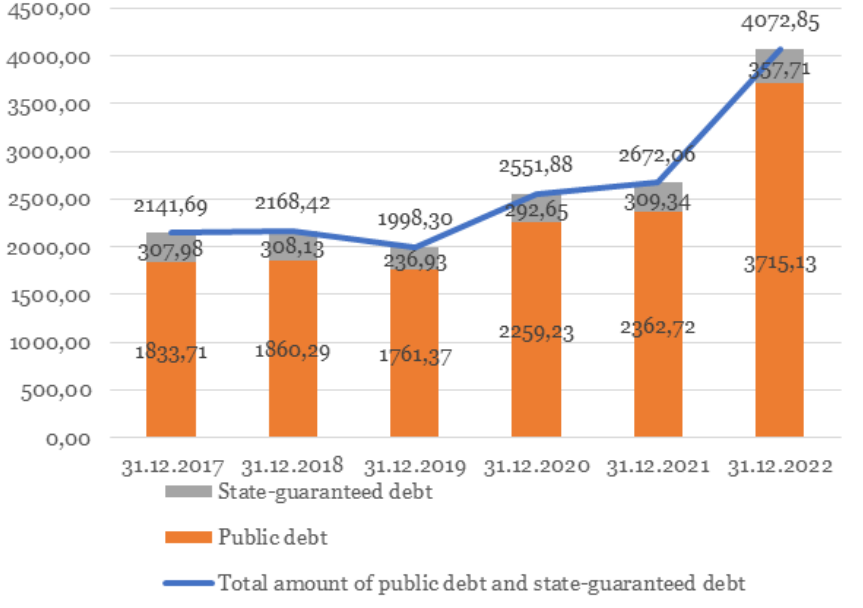

Figure 1. Dynamics of the public debt of Ukraine for 2017-2022 (billion UAH) (Ministry of Finance of Ukraine, 2023).

The trend shown in Figure 1 indicates a relatively moderate increase in the volume of public debt from 2017 to 2021. In 2019, there was some reduction in the amount of debt, but according to the results of 2020, when the world was shaken by the COVID-19 pandemic, the public debt increased by more than UAH 500 billion. However, according to the results of 2022 — the year when the war in Ukraine began — the highest jump in the amount of the state debt was recorded during the period — it increased by about UAH 1,400 billion.

For the most part, the increase was due to a significant increase in the amount of public debt – it increased by more than UAH 1,350 billion, while the state-guaranteed debt increased by UAH 50 billion. Figure 2 shows the dynamics of internal and external debt as part of the public debt for 2017-2022.

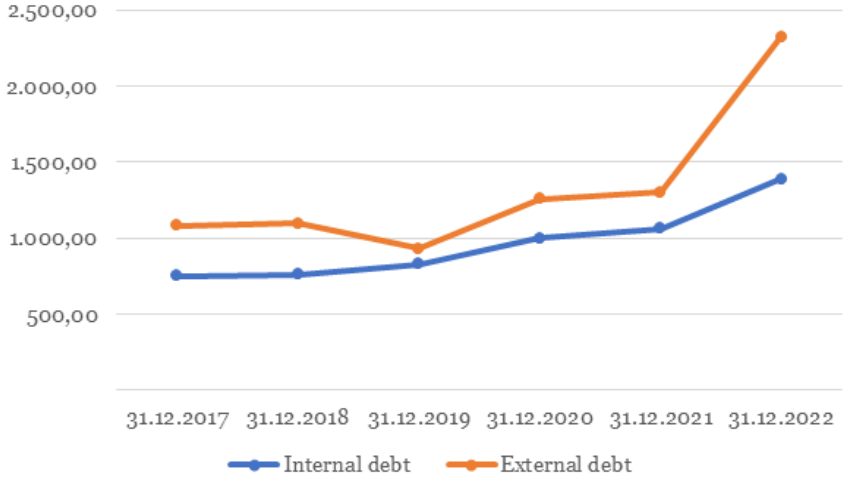

Figure 2. Dynamics of internal and external debt as part of the public debt for 2017-2022 (billion UAH) (Ministry of Finance of Ukraine, 2023)

Figure 2 gives grounds to conclude that the growth of the public debt was mostly determined by an increased external debt — by more than UAH 1,000 billion. The highest increase is characteristic of debt for loans received from international financial organizations (the increase of this element is more than UAH 637 billion compared to 2021) in the structure of the external debt (Ministry of Finance of Ukraine, 2023).

Figure 3 shows the dynamics of internal and external debt as part of state-guaranteed debt for 2017-2022.

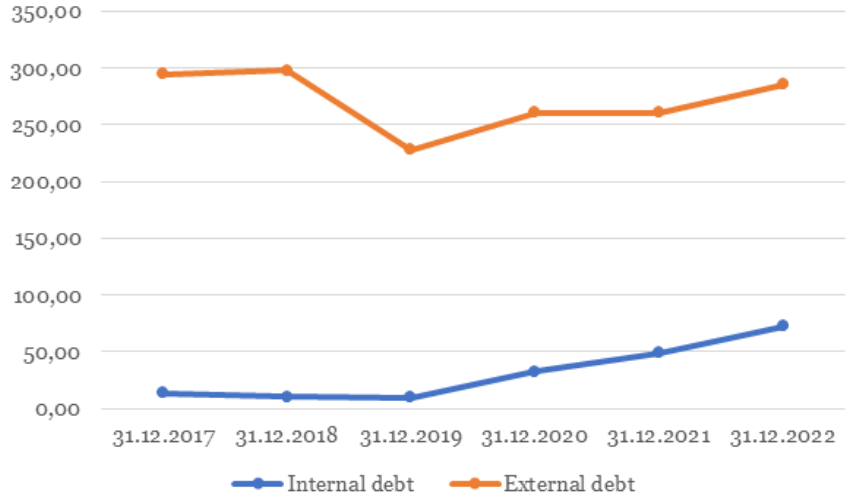

Figure 3. Dynamics of internal and external debt as part of state-guaranteed debt for 2017-2022 (billion UAH) (Ministry of Finance of Ukraine, 2023)

Sharp leaps are not characteristic of the growth of internal and external debt as part of the state-guaranteed debt for 2017-2022. The volume of internal debt as part of state-guaranteed debt in 2022 is even lower than at the beginning of the period under study.

Therefore, the analysis of the trend of the volume of public debt as a whole indicates its significant growth in 2022, however, more information can be obtained by studying the dynamics of the share of public debt in the GDP of Ukraine and comparing it with the recommended value. The ratio of the total volume of public and state-guaranteed debt to GDP is one of the main and most important indicators for assessing the country's debt security. The optimal value of this indicator is 20%, and the critical value is 60% (Fominykh and Parfenyuk, 2021). Table 1 contains the calculated values.

Table 1. Ratio of the total volume of public and state-guaranteed debt to GDP.

	GDP (Million UAH)	The total amount of public and state-guaranteed debt (Million UAH)	The ratio of the total volume of public and state-guaranteed debt to GDP (Million UAH)	Debt growth rate (Million UAH)
31.12.2017	2,983,882	2,141,690.59	71.78	-
31.12.2018	3,560,596	2,168,421.57	60.90	1.25
31.12.2019	3,978,400	1,998,295.90	50.23	-7.85
31.12.2020	4,222,026	2,551,881.73	60.44	27.70
31.12.2021	5,459,574	2,672,060.21	48.94	4.71
31.12.2022	3,799,863.504	4,072,846.62	107.18	52.42

Source: calculated by the author based on the data from (Ministry of Finance of Ukraine, 2023; State Statistics Service of Ukraine, 2023; Slovo i Dilo, 2023).

Analysing the information in Table 1 based on the available data, it can be noted that the GDP of Ukraine had a characteristic upward trend until 2021 inclusive, while it experienced a catastrophic decrease of 30.4% (+/- 2% according to preliminary data) according to the results of 2022. At the same time, the amount of public debt has increased significantly, as already noted. So, the ratio of the total volume of public and state-guaranteed debt to GDP in 2022 is 107.4%, and is significantly higher than the recommended critical value of 60% – not to mention the optimal 20%.

It should be noted that even before the war, the ratio of the total amount of public and state-guaranteed debt to GDP approached, and sometimes exceeded (71.78% in 2017), the critical value. However, in 2021, this value began to decline because of a significant GDP increase. Therefore, the debt growth rate in 2022 is more than 50% (before that, the maximum growth rate for the period under study was characteristic of 2020 — the period of introduction of quarantine restrictions — and was almost 28%).

It can be concluded based on the results of the analysis that debt security in Ukraine was broken before the war, but the large-scale invasion caused the most significant threat to debt security. To date, the threat of default has increased significantly, further increasing because of the high uncertainty regarding the further development of the conflict, however, international support and a balanced policy of the Ukrainian authorities can contribute to reducing this threat. In this context, it is advisable to reveal the aspects of legal support of the budget process in Ukraine under martial law.

3.2. Legal regulation of the budget process under martial law

The budget policy should be aimed, among other things, at regulating the state debt. In turn, the imprudent management of the public debt can lead to its unjustified growth beyond the recommended norms. The growth of debt increases debt risks if the government is unable to service and repay it, which can cause a debt crisis and default. So, increasing or decreasing possibility of default in the country directly depends on the effectiveness of the budget process.

The budget process has its peculiarities during the war. In Ukraine, this process underwent a number of significant changes after the beginning of the military invasion, which is connected with the need to restructure revenues and expenditures for national security and defence.

In view of the significant decrease in budget revenues because of war, the government was forced to oblige state-owned enterprises and the National Bank to transfer profits ahead of time, which helped to fulfil the plan for the budget revenues for the first month of the war by 93%. Besides, most of the budget revenues during the war are formed by borrowing in the form of military bonds, borrowing from international financial organizations, the European Union, grants and free aid from other countries (Korobtsova, 2022).

In view of the foregoing, it is appropriate to outline the main changes made by the government to the budget legislation after the full-scale invasion began (Figure 4).

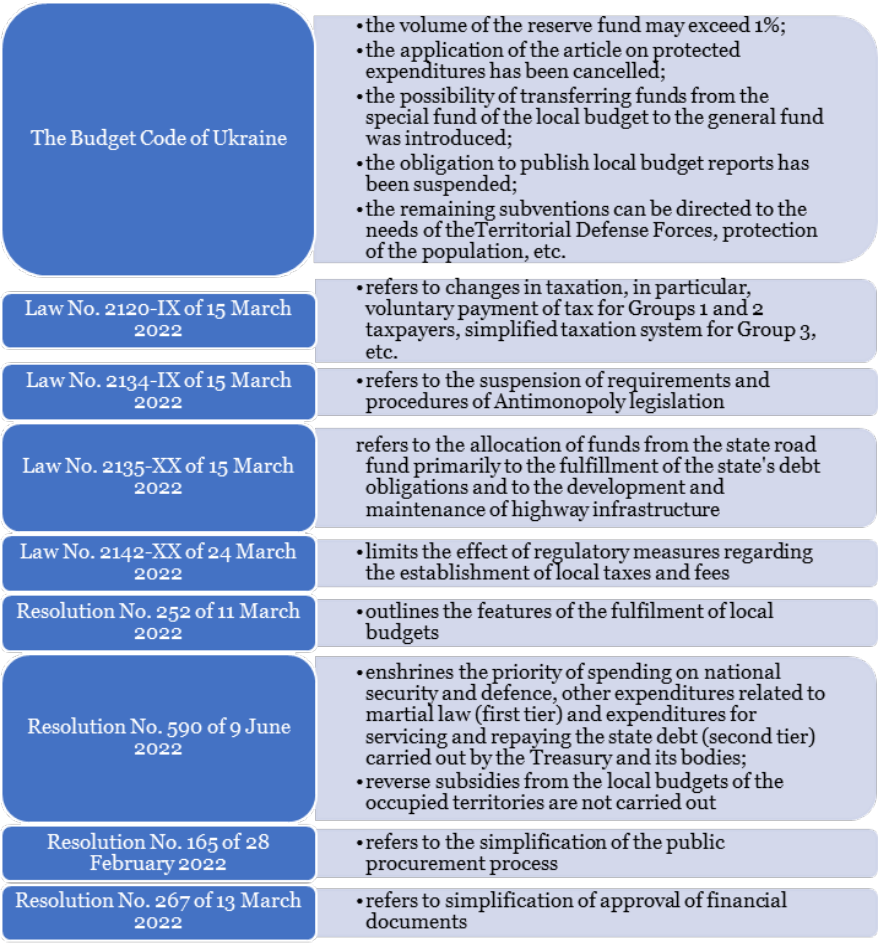

Figure 4. Changes in budget legislation introduced in connection with martial law (Decentralization, 2022).

Figure 4 does not provide a complete list of the implemented changes, because there were 248 individual changes to the budget process on the official resource (Decentralization, 2022) as of August 2022. Summarizing, we can say that the changes implemented in the budget process contribute, first of all, to the simplification of the fulfilment of budget obligations, transfer of funds between budgets, and also expand the powers of local authorities.

Besides, among the outlined changes are those related to the repayment and servicing of the state debt. In particular, expenditures on the repayment and servicing of the national debt are the second priority after the expenditures on national security and defence, and the funds of the state road fund should primarily be directed to the repayment and servicing of the public debts, as well as the development and maintenance of the road network. Other expenditures from this fund should be allocated only after fulfilling all obligations specified in Article 24 (III)(3) of the Budget Code.

3.3. Generalization of measures to increase debt security and prevent default

The assessment of the actual state of the state debt and changes in the legal regulation of the budget process in Ukraine enable us to proceed to making a number of recommendations regarding further courses of action. They should be aimed at increasing the country's debt security and preventing default and, in view of the results obtained in the previous sections, are divided into two levels — national and international (Figure 5).

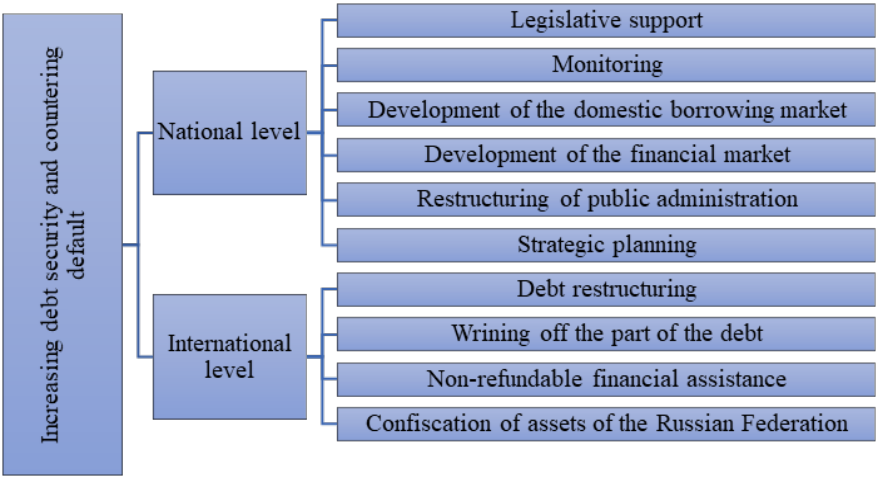

Figure 5. The main directions of increasing debt security and countering default (created by the author).

Therefore, the results of the analysis of the legislative framework carried out in the study indicate the need to strengthen work on improving the legal provision of servicing and repayment of the national debt (both external and internal). The assessment of the national debt carried out in

the article necessitates the need for constant monitoring of debt security indicators, which will allow making more balanced decisions for further debt management. The determined structure of the national debt indicates the need to stimulate the development of the domestic borrowing market, in particular, military bonds.

Besides, measures to stimulate the development of the financial market are appropriate in order to reduce the cost of borrowing for the state. It is also advisable to consider the possibility of restructuring the public administration sector, the activities of which are related to the redistribution and use of budget funds, which will increase the transparency of this process. These and other measures should form directions for building the strategy of the state debt policy, therefore the development of strategic planning and management are important.

In addition to measures at the domestic level, the strategy of state debt security should also be shaped by directions for increasing debt security at the international level. As it was established during the analysis, since the beginning of the war, the situation regarding the national debt in Ukraine has significantly worsened, reaching the limit of default. However, Ukraine has every right to count on international support in the fight against the aggressor, because it defends not only its interests, but also the interests of the entire democratic society.

Therefore, the country can expect a positive result, at least partial, when implementing such measures as: debt restructuring negotiations with the aim of changing payment terms, the total amount of debt or the interest rate; writing off part of the debt by submitting a special application to the IMF and the World Bank; appeals for non-refundable financial assistance from international partners, etc. Besides, Ukraine has the indisputable right to demand compensation for damages from the aggressor by appealing to the countries of Europe and the United States of America regarding the confiscation of the assets of the Russian Federation to repay part of the foreign debt.

4. Discussion

The article determined that the volume of Ukraine's public debt as a percentage of GDP in 2022 significantly exceeds the recommended value — by about 47%. Although the country's debt security was at risk in certain periods even before the war, it was within the norm by the end of 2021 according to the indicator of the share of public debt in GDP. So, a significant growth of the national debt is determined by the full-scale military invasion of the Russian Federation on the sovereign territory of Ukraine, and occurred mostly at the expense of foreign borrowing.

The article examines the changes in budget legislation after the start of the war, and notes which of them relate to the national debt. It can be argued that the issues of improving the debt policy were not paid enough attention. Based on the results of the research, recommendations for increasing debt security are proposed and reasonably divided at the national and international levels.

Fominykh and Parfenyuk (2021) study the debt security of Ukraine in the period before a full-scale military invasion, therefore the measures to increase it suggested by the researchers are more general. The researchers recommend introducing restrictions on borrowing in foreign currency on the domestic market and regarding the total amount of public debt at the level of 50%, optimizing the ratio of short-term and long-term borrowing, measures to strengthen control, improve debt management, etc. Sytnyk and Shutko (2022) provide a number of recommendations for increasing debt security, which correspond to the directions proposed in this article: improving legal security, monitoring, building a debt security strategy, etc.

Liamzina and Harbinska-Rudenko (2022) mostly focus on the international direction, in particular, achieving financial support from other countries and organizations, restructuring or writing off part of liabilities, etc. Hobela *et al.*, (2022), in addition to the directions specified in the article, propose the reduction of debt service costs, as well as the de-offshorization of the economy as effective measures. Kubakh and Riabushka (2022) emphasize the need to increase the efficiency of the use of borrowed funds, take measures to prevent corruption, and optimize public administration.

Foreign scholars study the problems of growing public debt in both developed and developing countries, mostly in the context of aggravating conflicts, increasing crisis phenomena, and the COVID-19 pandemic. Aguiar and Amador (2021) found that debt markets are prone to frequent and repeated defaults, leading to a prolonged and costly restructuring period, with debt re-accumulating during "quiet" periods, which can lead to a new default. Stiglitz and Rashid (2020) emphasize that the consequences of a debt crisis, which is the main feature of default, are always devastating, and such consequences harm not only the country where the default occurred, but also affect the entire world society.

The researchers note unrest in the country, which is especially characteristic of countries with ethnic or other divisions or social conflicts, among the main and most frequent consequences of the debt crisis. Such disturbances often spread beyond the borders of the country, which also affects developed economies. These findings correspond to the opinion expressed in this article: Ukraine has the right to count on international support, because the fight against the aggressor, as well as ensuring the country's debt security, is a global issue.

Eichengreen *et al.,* (2021) identify the advantages of public debt: it allows the state to continue to provide the population with basic social services during periods when state revenues decrease; make effective investments; improve the country's defence in the event of a military threat; stabilize the banking system in the conditions of the financial crisis; help victims of pandemics or emergencies, etc. At the same time, public debt can cause harm if it is used irrationally.

Abbas *et al.,* (2019) summarize that, regardless of the reasons for borrowing, high levels of public debt can have a negative impact on the economy by limiting the government's ability to conduct countercyclical fiscal policies, displacing private sector investment, increasing credit constraints, and creating conditions for fiscal imbalances. Meier *et al.*, (2021) offer a number of general recommendations for increasing financial stability and debt security, including the introduction of appropriate fiscal stimulus packages, strengthening the consolidation of international cooperation and harmonization of the legal framework in the banking and insurance sectors, etc.

The combination of recommendations provided in this article and measures proposed by other researchers can become an effective basis for the further development of the strategy of public debt policy. The further research should focus on the development of an adaptation mechanism of the state debt policy to the conditions of military operations in 2023, which should contain alternative scenarios in accordance with a high level of uncertainty.

Conclusions

The article outlined the structure and dynamics of the national debt of Ukraine, as well as debt security indicators. The conducted analysis found that even before the beginning of the full-scale invasion, the share of public debt in the GDP of Ukraine, as one of the main indicators of debt security, exceeded the recommended value for certain periods. However, this indicator significantly decreased in 2021, and was within the normal range.

But martial law caused the rate to increase by more than 58% compared to 2021, or 47% above the maximum allowable value. This increases the risks for the country's debt security and necessitates the development of measures to combat default in the country. A study of the legal framework for changes in budget legislation after the start of the full-scale invasion made it possible to determine that the issue of debt security was not paid enough attention.

The assessment of the national debt and the legal framework regarding changes in the budget legislation became the basis for generalizing and arranging the directions of the state policy regarding the improvement of debt security in the country and the prevention of default. Such directions are proposed to be divided according to the implementation level — national and international.

The national-level areas include: legislative support, monitoring, development of the domestic borrowing market, development of the financial market, restructuring of public administration, strategic planning. The international-level directions include: debt restructuring, partial debt write-off, non-refundable financial assistance, confiscation of Russian assets.

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Features of the Functioning of the Legal System in the Context of Digitalization Processes

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Abstract

Using a documentary-based methodology, the aim of the study was to identify the key features of the functioning of the legal system in the context of digitization processes. The rapid growth of information volumes, the formation of information sets and databases, the intensive development of digital technologies, their widespread introduction in various spheres of public life, their mediation in a growing number of areas and types of social interaction, the activities of state and public institutions are a significant factor in the development of modern society, forming a "digital" reality. It is concluded that, in the conditions of the new reality, the law becomes not only a means, a tool ensuring digitalization of economy, management and other segments of social life, but also, an object of influence of "digitalization", by virtue of which it undergoes changes in its form, content, system, structure, mechanism of action and shows tendency to intensify emerging transformations. As a result of the study, the current trends and prerequisites for the characteristics of the functioning of the legal system in the context of digitization processes were investigated.

Keywords: legal system; legislative support; jurisprudence; digital sphere; legal digitization.

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Características del funcionamiento del sistema jurídico en el contexto de los procesos de digitalización

Resumen

Mediante una metodología de base documental, el objetivo del estudio fue identificar las características clave del funcionamiento del sistema legal en el contexto de los procesos de digitalización. El rápido crecimiento de los volúmenes de información, la formación de conjuntos y bases de datos de información, el desarrollo intensivo de las tecnologías digitales, su introducción generalizada en diversas esferas de la vida pública, su mediación en un número creciente de áreas y tipos de interacción social, las actividades de las instituciones estatales y públicas son un factor significativo en el desarrollo de la sociedad moderna, formando una realidad "digital". Se concluye que, en las condiciones de la nueva realidad, el derecho se convierte no solo en un medio, una herramienta que asegura la digitalización de la economía, la gestión y otros segmentos de la vida social, sino también, en un objeto de influencia de la "digitalización", en virtud de la cual se sufre cambios en su forma, contenido, sistema, estructura, mecanismo de acción y muestra tendencia a intensificar las transformaciones emergentes. Como resultado del estudio, se investigaron las tendencias actuales y los requisitos previos para las características del funcionamiento del sistema legal en el contexto de los procesos de digitalización.

Palabras clave: ordenamiento jurídico; soporte legislativo; jurisprudencia; ámbito digital; digitalización jurídica.

Introduction

Modern conditions for the development of digitalization form fundamentally new technologies for the work of the state and municipal service. The inconsistency of the moment of realizing the practical possibilities of introducing digital technologies lies in the fact that there may be duplication in the work of state bodies.

The main task of digitalization is to create conditions for an efficient, mobile, flexible system of work that improves the quality of services and reduces unreasonable government intervention, which would be significant for external beneficiaries - citizens, businesses, non-profit organizations, etc. and increase the effectiveness and efficiency of public administration. This may lead to a change in the mechanisms and tools of management, stages of the management cycle. We believe that e-government is the key to high-quality public administration.

The main requirements for the digital transformation of state and municipal services are:

1. expectation of the introduction of breakthrough technologies (for example, a registry model for the provision of services, proactivity in their provision);
2. the development of primary digital technologies (the principle of multi-channel and extraterritoriality in the provision of public services).

In the context of the modern development of technologies such as blockchain, there is an urgent need to study the features of social relations, complicated by information, communication and digital elements. The definition of these features is important from the point of view of the formation of legal regulation of such economic and technical phenomena as cryptocurrency, smart contracts, tokens. At present, the existing legal regulation does not fully allow to effectively regulate new forms of economic turnover due to the lack of appropriate legal terminology, the lack of development of optimal legal regimes for mediating public relations, the lack of a systematic approach that takes into account the economic, social, political, technological consequences of legal impact on the newest spheres. public life. Thus, the currently emerging digital reality is de facto not included in the scope of legal regulation.

1. Materials and methods

For a more detailed study of the features of the functioning of the legal system in the context of digitalization processes, the following methods were used: induction and deduction, comparison and systematization; synthesis and analysis; abstract-logical - for theoretical generalizations and conclusions of the study.

To more accurately reflect the main features of the functioning of the legal system in the context of digitalization processes, we used the IDEF0 functional modeling method.

2. Literature review

Based on the results of the theoretical analysis, we will reveal the content of the basic categories of our study (Catterwell, 2020; Kryshtanovych *et al.*, 2021).

The digital economy is an economic activity in which the key production factor is information in digital form and the result of collecting, storing,

analyzing, and exchanging such information, aimed at maximizing the satisfaction of the needs of all its participants. In the digital economy, the most significant is the provision of services, including social and public ones.

Digitalization is the process of introducing and using innovative technologies and principles of the digital economy in the socio-economic spheres of society, accompanied by total automation, robotization and the introduction of artificial intelligence (Sylkin *et al.*, 2021).

In the field of public administration, digitalization also means the development and application of new technologies and management tools that influence the formation of digital public administration in order to increase the effectiveness of management decisions and public services provided to the population (Kazanchian, 2020).

The digital economy and the process of digital transformations in the sectors of the economy and social spheres are new factors in the development of the state, and therefore the conceptual apparatus has not been formed and is not fully detailed. The definitions of the basic categories of research are constantly supplemented and adjusted in direct proportion to the intensive development of innovations in the modern world (Howe Vial, 2019).

Digitalization is a global phenomenon with transformational potential. Accordingly, law, being the regulator of relations, experiences its influence. Modern jurisprudence does not stand still, and is actively developing in the period of informatization. Also, such a concept as Legal Tech is becoming more and more common.

It includes various legal bases, programs, technologies with which lawyers can perform their professional activities. For example, thanks to legal databases, one can not only see a selection of jurisprudence, publications on a specific topic, but also to make a contract. Another developing term is Law Tech, which includes not only access to programs, solutions, tools (for example, the calculation of the state fee) of consumers of legal services, but also provides an opportunity to receive various kinds of legal advice (Kryshtanovych *et al.*, 2022).

Of particular importance in modern conditions is the need to identify trends in the field of law, manifested under the influence of digitalization, to develop forecasts for the further development of law, the socio-economic sphere, and the public administration system. The main role in the development of these phenomena is assigned to the law, which is being transformed in the formation of digital technologies, renews its regulatory potential, enhances its effectiveness and social orientation.

3. Research Results and Discussions

The rapid development of revolutionary transformations has led to a new technological order based on digital technologies (digital revolution), which consistently forms a new social, economic, political and legal reality, which is based on the so-called «digitalization» of production and social processes in general. Digital technologies create a new reality, different from the physical world in which we live. Often the gap between the real and digital world prevents us from using all the available information produced by the multitude of smart devices around the world.

Digital technologies, together with advanced data and process analytics, serve as technological drivers of digital innovations that determine the global transformations of the modern world, form the vector of the main technological, economic and social development in the modern era. The digital space is becoming not only an information field for the exchange and receipt of information on the Internet, but also turns into a tool for regulating the economy and law, public administration. We can talk about the "digitalization of law", i.e. the use of new technologies in order to optimize processes and legal relations using digital technologies, as well as the creation of a new digital reality, which also requires legal regulation or the presence of a state-authorized regulator (Sylkin *et al.*, 2021).

The current stage of the development of human civilization is significantly different from all previous stages. Starting with the creation of the first tools and ending with the post-industrial era, human progress was based on the development of the material world: natural resources were developed, new physical laws were discovered and used, new production technologies and ways of moving people and goods were created.

The apogee of this trend, from the point of view, was the creation of orbital technologies and the first flight of man into space. At the same time, it should be noted that at all the mentioned stages of human development, the technologies for regulating social relations remained quite conservative, since from the time of the invention of writing until today, the main instrument of such regulation is a written legal act containing a list of rules of behavior (Droniv, 2018).

The digitalization of legal reality implies the need to immerse in the virtual legal place of numerous state functions, areas of activity of city bodies, the electronic role of people in lawmaking and the examination of draft regulatory legal acts (Gomes, 2018).

The public need for the digitalization of public administration has increased on the basis of the formation of algorithms for public decisions both at the state and regional levels. With digitalization, the sphere of law should be assessed as the basis for the emergence of a modern form

of relations between state power and civil society in accordance with the moral principles of public life management. Of particular importance is the reform of the system of state control in the field of security of the individual and society, in the fight against manifestations of corruption, as well as control of processes occurring in cyberspace, based on the use of all modern information technologies (Bloshchynskyi, 2022).

The objective processes of legal digitalization give rise to the need to improve regulations in the field of civil, administrative, labor, criminal and other branches of law, as well as to transform regulatory complexes in the field of information, medicine, and education. In the modernization of law, the adoption of separate regulatory orders, which determine the possibility of realizing the most significant interests and needs of society, their implementation in existing regulatory complexes, as well as the reorientation of the legislative system towards the implementation of social programs, acquires importance.

In Fig.1. the main obstacles to the process of digitalization of the legal system are shown

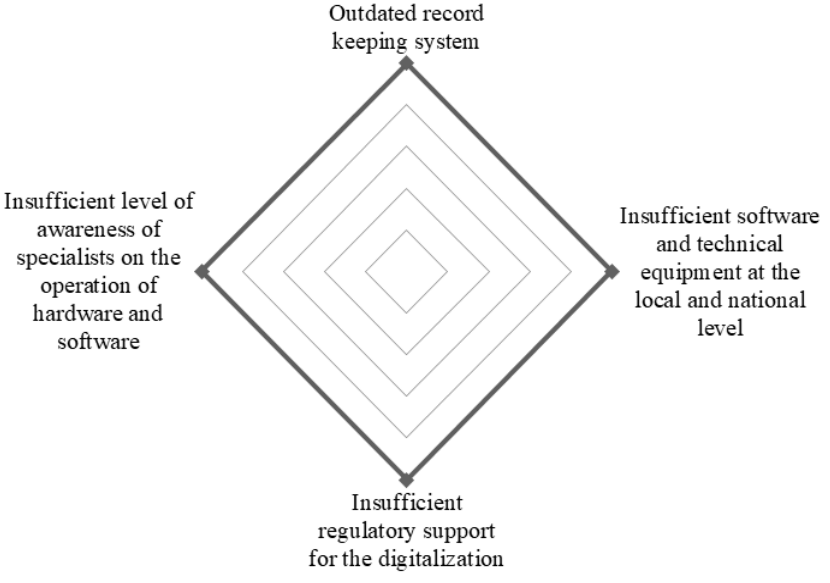

Fig.1. The main obstacles to the process of digitalization of the legal system. Source: own elaboration.

Modern situation is increasingly switching to digital methods of management in the form of "electronic government" under the influence of the need to reduce administrative costs and improve the efficiency of programs being implemented, as well as due to the increasing demands of citizens for the quality and availability of public services in cooperation with government agencies through Internet technologies as easy as with banks or online stores (Barry and Wissenburg, 2011).

The leaders of e-government (Great Britain, Singapore) are currently moving to the next stage of the transformation of the public service delivery system - to the so-called «digital government» stage, which implies the complete transfer of services to digital format from applying for these services to their execution and achieving such a position case where departmental processes rely primarily on data rather than documents (Castanho *et al.*, 2021).

Using the methodology of functional modeling IDEF0, we have formed a model for stimulating the process of digitalization of the legal system (Fig.2).

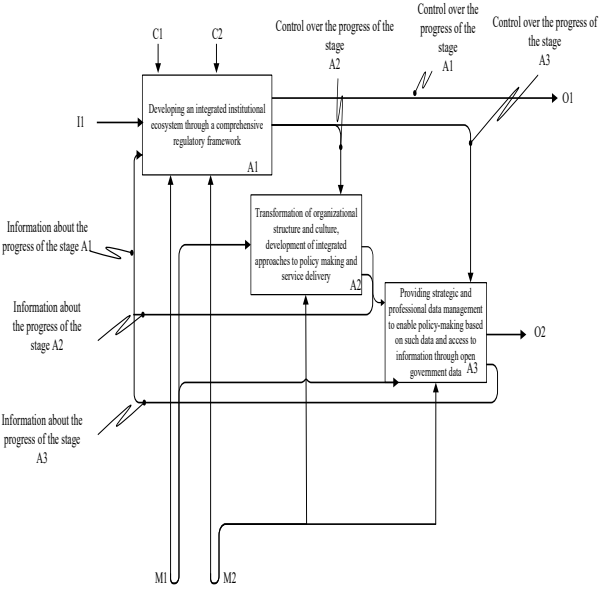

Fig.2. A model for stimulating the process of digitalization of the legal system. Source: own elaboration.

The forecast for the development of the legal system in the context of

digitalization affects its various aspects. The following areas of development of the legal system under the influence of digitalization, the introduction of artificial intelligence and other modern scientific technologies seem to be the most relevant for scientific and practical analysis (Serhieiev *et al.*, 2022).

- in the context of changing the essence of law, it is necessary to assess the threats to the transformation of the law of humanism into the law of transhumanism and to find ways to counter these threats;
- from the point of view of the development of the system and structure of law, it is important to pay attention to the emergence of branches of law and branches of legislation of a new generation, in particular, to the separation of digital law from information law as an independent branch of law;
- in the structure of legal regulators, it is important to decide on the recognition of such new tools as an algorithm, program code, operating system, etc., and to understand the limits of their convergence with the classical regulators of law - principles and norms;
- when identifying a trend towards expanding the list of objects of legal regulation, it is important to assess the emergence of a fundamentally new object of legal regulation - the relationship between a person and a machine endowed with artificial intelligence;
- it is necessary to determine the boundaries of the expansion of subjects of law under the influence of digitalization and artificial intelligence processes;
- it is necessary to determine the legal status of artificial intelligence, which is introduced into the system of public relations and performs political, economic, social, spiritual, cultural, environmental and other functions, the responsibility for which lies with the state, public authorities, individuals and legal entities, people and other traditional subjects' rights.

The possibilities of digitalization also find their expression in the areas of private law, civil circulation, lawmaking and law enforcement. There are opportunities to use artificial intelligence in conducting forensic examinations, in the process of obtaining electronic evidence, organizing court activities using electronic document management. New opportunities for the implementation of electronic litigation are opening up. But we must not forget that the main guideline in this area should be constitutional principles and norms.

Conclusions

Thus, the formation of the newest rules of law requires a rethinking of the actions of their implementation in law enforcement practice, within which legal qualifications, interpretation of the rules of law, overcoming legal gaps, and resolving legal conflicts are of particular importance. Digitalization determines the processes of formation of the content of law, which is undergoing significant changes, as new social relations are being formed that arise between digital virtual entities.

These processes contribute to the development of international legal relations, the unification and standardization of law, as well as the formation of domestic legal standards that meet the specifics of the national legal system. Digitalization includes the processes of emergence, change, termination of legal relations that arise in the modern virtual space, the implementation of subjective rights and legal obligations of subjects of legal relations.

The digitalization of law can be manifested both in the adaptation of existing legal norms to emerging new types of social relations, and in the development of a fundamentally new concept of a regulator of social relations based on a virtual digital environment (machine-readable law).

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Reflexión política de la competitividad en los emprendimientos de Ecuador: Una mirada retrospectiva hasta la actualidad

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Resumen

El presente trabajo estuvo orientado analizar la influencia de la competitividad en torno a los emprendimientos del Ecuador desde la perspectiva política. La competitividad es una variable estratégica para las empresas en el sentido de lograr trascendencia en el mercado, para lo cual es importante estimular la innovación, que el caso de los emprendimientos se constituye como elemento clave frente a los competidores. La metodología de esta investigación se sirvió de un diseño no experimental de tipo exploratorio y fundamentación bibliográfica de fuentes especializadas en áreas del contexto empresarial, además se aplicó el análisis PESTEL. Se utilizo una muestra de 130 emprendedores de la zona rural de la provincia de El Oro, en Ecuador. Los hallazgos de investigación permiten concluir principalmente que la difícil situación económica del país como resultado de la pandemia ha derivado en un clima de inestabilidad en la competitividad de los emprendimientos, pues los mismos se consagran por ofertar propuestas repetitivas con escenarios poco prometedores de su trascendencia a través del tiempo, todo esto a pesar de que los emprendedores son conscientes de la importancia de aplicar una política de adecuados mecanismos de administración de sus negocios.

Palabras claves: competitividad empresarial; innovación; emprendimiento; negocios rurales; reflexión política.

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Political reflection of competitiveness in the ventures of Ecuador: a retrospective look to the present

Abstract

This paper was oriented to analyze the influence of competitiveness in Ecuadorian enterprises from a political perspective. Competitiveness is a strategic variable for companies in the sense of achieving transcendence in the market, for which it is important to stimulate innovation, which in the case of entrepreneurship is a key element against competitors. The methodology of this research was based on a non-experimental design of exploratory type and bibliographic foundation of specialized sources in areas of the business context, and the PESTEL analysis was also applied. A sample of 130 entrepreneurs from the rural area of the province of El Oro, Ecuador was used. The research findings allow us to conclude that the difficult economic situation of the country as a result of the pandemic has led to a climate of instability in the competitiveness of enterprises, as they are consecrated by offering repetitive proposals with scenarios that are not very promising for their transcendence over time, despite the fact that entrepreneurs are aware of the importance of applying a policy of appropriate mechanisms for managing their businesses.

Keywords: business competitiveness; innovation; entrepreneurship; rural business; political reflection.

Introducción

Alcanzar el desarrollo económico para algunos países se refleja como aspiración apremiante de sus Gobiernos, especialmente en los países que están en vías de desarrollo, bajo esta perspectiva aparece el emprendimiento como mecanismo ideal para alcanzar los ideales de bienestar, pues se endilga el hecho que la creación de nuevas empresas trae consigo la generación de fuentes de empleo e incremento de la productividad.

En este sentido a nivel de la región se ha visto los esfuerzos desplegados por el vecino país de Colombia, que a través de planes de programas estatales se ha encaminado a motivar a su población en la tendencia de crear nuevas empresas, escenario visible también en Ecuador, país que de acuerdo a los estudios del Global Entrepreneurship Monitor es un país con las tasas más altas de emprendimiento en comparación a otros naciones de la región, pues hasta el año 2019 registro un Índice de Actividad Emprendedora Temprana (TEA) de 36.2%, es decir, aproximadamente 1 de cada 3 adultos gestiona la creación de un negocio, resultado que deja que se constituye como una de las tasas más altas en América Latina en los últimos años.

La experiencia de los emprendedores latinos por lo general inicia sus actividades económicas bajo propuestas de similares características y ofertas repetitivas, lo cual deriva a la mortalidad de sus negocios en los primeros años de vida (Cajigas *et al*., 2017). La fragilidad de su nacimiento conlleva a la facilidad de que sean absorbidas en el mercado.

El Estado ecuatoriano ha buscado a través de algunos programas fomentar el emprendimiento, sin embargo, su impacto ha sido de poca trascendencia, pues la mayoría se constituyen como pequeños negocios, con pequeños márgenes de ventas y carentes de conocimientos técnicos en materia de gestión empresarial.

Es así que en este entorno, se constituyen los emprendimientos algunos de los cuales no superan su tamaño como de pequeñas y medianas empresas, que son resultados de modelos de negocios ya existentes en el mercado, con escasa innovación y muy por debajo de los límites de la innovación, lo cual se representa como poco favorecedor cuando relacionamos con la competitividad, pues aquello implica hacer frente a otras empresas mediante ofertas atractivas de sus productos y servicios de valor diferenciado y que se ajusta a las condiciones y exigencias de los consumidores, lo cual se puede intuir que escasamente cuidan este detalle y por ello el saldo de su temprana mortalidad.

Si bien es cierto, las distintas localidades ejecutan acciones para fortalecer la dinámica de los emprendimientos, la experiencia en Ecuador en su creación es de efervescencia, pero con pocas posibilidades de mantenerse en el mercado, más aún en territorios cuando los mismos se ubican en zonas alejadas de periferia urbana.

1. Semblanzas teóricas

1.1. Reflexiones desde la competitividad

La prosperidad de los países y crecimiento económico de las empresas se adjudica a la competitividad, la cual se abre pase en el escenario de la globalización, pues el mismo como marco de interconexión mundial de las distintas economías ha propiciado que las empresas actúen de manera estratégica, en el sentido de desarrollar la capacidad para crear nuevos productos a menores costo y en menor tiempo (Vázquez *et al.,* 2014). Acorde a esta referencia Arroyo *et al.,* (2016) complementa al referir la competitividad empresarial, demanda de la innovación, marco legal y entorno político estable como factores que tributan al crecimiento sostenido de las economías en los países.

En este marco de referencia es visible, que la apremiante innovación tecnológica se constituye en un elemento relevante a la hora de generar ventaja competitiva, pues cada día aparecen nuevos productos que buscan sustituir a los que ya se encuentran existentes, es allí donde el conocimiento juega un papel trascendental (Zayas *et al.,* 2015), pues el capital intelectual es un referente en las organizaciones a la hora de forjar presencia en el mercado (Limache, 2017) el cual al fusionarse con la utilización de las Tecnología de la información y la comunicación (TICs) tiende a elevar la productividad cuando efectúan acertados procesos del manejo de la información (Arguello, 2017) lo cual implica formular planes de comunicación que permitan la fluidez de datos que tributen a fortalecer las actividades operativas de la empresa de manera efectiva (Hoyos y Lasso, 2017).

Las Tics se constituyen como el puente que encamina a forjar la satisfacción en el cliente, pues a través de las misma se alcanza que la comunicación fluya de manera directa a los consumidores, actores principales de la demanda y sobre los cuales se opera en razón de generar espacios de comodidad y es allí donde el comercio electrónico se presta como herramienta esencial que mediante el manejo de la web, exista un acercamiento más preciso en cuanto a la comercialización de productos o servicios, la cual se logra alcanzar plenamente cuando los compradores cuentan con datos referentes a beneficios, precios de los productos, así como de la ubicación de la empresa (Sanabria *et al*., 2016).

Además, es importante precisar que la implementación o la inversión en tecnología adecuada para la empresa, permite disminuir los costes de producción, sin afectar la calidad de los productos y los beneficios en lo económico saltan a la vista en los resultados de los estados financieros, todo esto es visible es un escenario de ventaja competitiva y (Ospina *et al*., 2014) la cual parte de los métodos de producción y su organización con incidencia en los precios y calidad del producto (Parody *et al,* 2016). Es por ello que, muchas empresas comienzan a competir por calidad y desempeño, pero en este sentido resaltan varios factores determinantes siendo uno de ellos el servicio el cual se ha convertido un elemento agregador de valor sustentado en la diferencia frente a las demás ofertas (González y Manfredi, 2016)

Por ende, es importante tener en cuenta que la competitividad no sólo hace referencia al producto, sino también evalúa distintos procesos aplicados en la empresa, en donde la comercialización es una aspecto de bastante atención y se mantienen bajo la lupa en el sentido de alcanzar niveles de posicionamiento en el mercado (Zamora y Navarro, 2015) lo cual se alcanzará siempre y cuando se ponga a disponibilidad del consumidor productos y servicios competitivos, siendo un mecanismo viable la obtención de certificaciones internacionales como la ISO 9000, la misma que deriva a mejorar procesos internos en las organizaciones y mitigar

las limitaciones de entrada al mercado internacional a través de la oferta calidad (Lizarzaburu, 2016).

Es preciso indicar, que la competitividad no solo depende de los directivos de la empresa, también incluye a todo el recurso humano que labora dentro de la empresa, así como también ocupan un espacio de participación agentes externos como los clientes (Gutiérrez y Almanza, 2016). Bajo la referencia de la responsabilidad directiva de las organizaciones, los Gerentes son conscientes que el sostenimiento de la empresa depende su gestión (Mora-Riapira *et al.,* 2015) la cual en gran medida corresponderá a estar atentos al crecimiento de los niveles de competitividad, los cuales dependen de la dinámica de los factores endógenos y exógenos, los primeros en el aspecto de saber tomar decisiones en el timón empresarial en el sentido de emplear medios de salvedad ante los segundos que se pueden representar a través de imprevistos generados y que en algunos casos son difíciles de prever por las entidades (Mora-Riapira *el al*., 2015).

Casa adentro en las organizaciones, es importante evaluar la rentabilidad generada, para efectuar la comparación con empresas de similar tamaño, pues si la misma es mayor indica que la unidad económica se está posicionando en el mercado, pues deja entrever que sus productos están siendo reconocidos, sea por marca o por su contenido, lo cual deriva a ocupar un espacio entre las entidades que generan ventaja competitiva, empero alcanzar este resultado requiere de establecer políticas y estrategias internas, que se conviertan en el hilo conductor hacia la innovación y generación de valor agregado, por lo cual es factible aplicar la planificación programada porque la misma representará la ruta hacia la eficiencia (Tarapuez *et al*, 2019).

El direccionamiento empresarial, en pro de la competitividad implica efectuar un diagnóstico situacional, pues a partir de la misma los directivos logran identificar el punto de partida para empezar a delimitar acciones (Bravo *et al.,* 2019) para diseñar estrategias que propendan a la creación de valor basada en el conocimiento (Ahumada y Perusquia, 2016) mismo que como factor intangible es un activo que no tienen una identidad material como tampoco no son susceptibles de tocarse o percibirse, pero permiten mayor productividad en las empresas que al lograrse en las empresas su radio de acción se expande al desarrollo de sus naciones, cuando la fórmula combina a los factores como la inversión, mejoramiento de sistema, investigación, capacitación e innovación tecnológica (Didriksson, 2015).

Es por ello, que la estimulación de la creatividad y la innovación se reflejan como una necesidad porque contribuyen al mejoramiento de los procesos productivos y en el resultado final de los productos y/o servicios, en donde el responsable directo es el hombre, por ende, las organizaciones deben de establecer mecanismos efectivos para el aprovechamiento de habilidades y conocimientos (Ravina *et al.,* 2017) lo cual implica apostar

por una reingeniería de procesos, donde la tecnología ocupe un espacio para elevar los niveles de productividad, en donde el sentido de cambio hacia una tendencia de innovación debe de ser el eje orientador de las estrategias empresariales (Acosta, 2019).

En un mercado globalizado, las exigencias de los actores que intervienen en la cadena de comercialización se vuelca cada vez con mayores exigencias, lo cual se constituye como un verdadero desafío para las empresas pequeñas y medianas, pues ante tales circunstancias se ven obligadas a incorporar novedosos sistemas logísticos para alcanzar un nivel de competitividad que esté por encima de las demás (Olivos *et al.,* 2015) más aun conociendo que uno de los pilares fundamentales para el desarrollo competitivo empresarial sin lugar a duda es la innovación que no solo involucra empresas, sino también a naciones o países, por lo tanto es uno de los puntos donde la empresa contemporánea destina muchos recursos para lograr ubicarse por encima de las demás (Arredondo-Trapero *et al*., 2016).

Referir a la competitividad sistémica implica enrolar una mirada desde los niveles micro (empresas y redes), meso (Estado y actores sociales que impactan la organización), macro (el entorno y los niveles de desempeño y productividad requeridos) y meta (asociada a los patrones organizacionales) (Lis-Gutiérrez *et al*., 2017)**.** También se vincula con la calidad, la cual esta endilgada a las exigencias del cliente en el sentido de su aporte de valor, por ende, es importante tener referencia de la misma en los procesos de producción y planeación estratégica de las organizaciones, pues aquello implica a matizar con mayor énfasis este factor relevante en los entes productivos.

Sobre lo anterior, es preciso indicar que son pocas las pymes empresas que emplean sistemas de aseguramiento de la calidad, porque consideran que sus costos son altos y además que su talento humano escasamente está preparado (Saavedra *et al*., 2017). Además se contextualiza el hecho de que estructura empresarial de América Latina mayoritariamente se compone de mipymes, con debilidades en el tema de la gestión empresarial, fragilidad en el sentido de sostenibilidad en el mercado (Larios-Francia, 2017), realidad compartida así mismo por las pymes, las cuales en el transcurso de su crecimiento hasta la maduración, enfrenta adversidades sobre la privación de la información al respecto sus competidores, así como los posibles proveedores, el uso de las Tecnologías de Información y Comunicaciones (TIC) permite la obtención de la información de fuentes principales por la afluencia de las redes tecnologías del internet (Cepeda *et al*., 2017).

Empero, ante estas situaciones de desventaja las medianas empresas han sabido desarrollar sus procesos, aunque con incipientes modelos de liderazgo, el cual es fundamental porque deriva a delinear estrategias que impacten de manera directa a cada una de las áreas para que los colaboradores realicen funciones predeterminadas para el cumplimiento

de los objetivos, la figura del gerente debe mostrar el dominio de destrezas que aseguren a los empleados al cumplimiento de la misión lo cual es una herramienta clave para que la empresa cuente con la competitividad necesaria dentro del mercado (Pedraza *et al*., 2015).

1.2. Un punto de vista de la concepción de emprendimiento

Se asocia al crecimiento económico con el emprendimiento, en razón de la creación de fuentes de empleo e incremento de la producción (Mendoza y Loja, 2018) su aplicabilidad demanda de innovación, pues a través de la misma se busca disminuir la inseguridad y minimizar recursos (García *et al.,* 2018). El emprendimiento debe de orientarse en la creación de proyectos innovadores con incidencia en el desarrollo económico, pues por medio de la misma se busca superar situaciones falta de empleo, dependencia económica (Castiblanco, 2018).

La cultura del emprendimiento se concibe como una manera de lograr el desarrollo de las regiones, por esta razón las instituciones fomentan la creación de empresa, que según su motivación pueden ser de dos tipos: por necesidad y oportunidad en ambos casos se pretende dinamizar al crecimiento económico, sin embargo, el emprendimiento por oportunidad es el que genera un mayor impacto, esto se puede observar mayormente en los países latinos (León-Mendoza, 2019).

Para lograr una buena idea de negocio, es necesario mantener un lineamiento entre los conocimientos de las personas y la idea de emprendimiento, se debe identificar las actividades en las que estas personas se destacan para tomarlas en cuenta a la hora de determinar la opción más factible. De esta manera se podrá presentar un plan de negocio que posiblemente sea más viable y que genere beneficios para todos (Cepeda *et al.,* 2019).

Es importante destacar, que el surgimiento de emprendimientos fomenta el desarrollo y productividad de las naciones. Teniendo en consideración la participación de la mujer en el mundo empresarial. El continente americano tiene ventaja por el gran número de mujeres que deciden emprender, teniendo como influencia principal los factores de cultura y motivación familiar; además en los países sudamericanos la mayor parte de emprendedoras son casadas, considerando que tienen menos posibilidades para llegar al éxito (Mayorga y Carvajal, 2020)

Pero para quienes apuestan a la carrera de crear nuevos proyectos referidos con oportunidades de negocios, se fortalecen habilidades, aptitudes competitivas y desarrollo del conocimiento, elementos esenciales para establecer tácticas en rol operativo del negocio (Barragán y Ayaviri, 2017).

El nivel de emprendimiento de una localidad está directamente relacionado con el entorno empresarial, cuyo nivel de conocimiento se puede fortalecer mediante la conformación de redes o alianzas de cooperación (López *et al*., 2019) las cuales pueden estar presentes desde el inicio para ayudar a la constitución de la nuevas empresas, mediante conexiones entre instituciones, así como también para facilitar de conocimiento del entorno en el que se va a desarrollar la iniciativa con la finalidad de generar una inducción previa antes de estar presentes en el mercado (García y Díaz, 2018).

Sin embargo, pese a los esfuerzos mancomunados de algunas entidades en pro del fortalecimiento de la dinámica emprendedora, existen ciertos elementos que pueden impedir el desarrollo de esta actividad, entre los cuales se evidencian la formación y experiencia que tiene el emprendedor, nivel económico, entre otros (Reina *et al*., 2018).

El propósito de surgir emprendimientos es para proporcionar soluciones innovadoras a problemas existentes en la sociedad, que están esperando sean considerados a través de las diversas iniciativas y que, a su vez, si resulta factible en su ejecución podrá mejorar el nivel económico de las personas como también de la empresa y con ello el bienestar también para la economía (Huilcapi *et al*., 2018).

Con la finalidad de impulsar el emprendimiento los gobiernos han buscado de manera incesante promover e impulsar el desarrollo empresarial para lo cual han llevado a cabo planes emprendedores que tienden a la asesoría y formalidad de los nacientes negocios (Cortés *et al.,* 2016). Bajo esta óptica, es menester tener en cuenta a los emprendimientos que surgen en comunidades rurales, porque los mismos también contribuyen al desarrollo de las comunidades (Merino-Murillo y Mora, 2022).

De acuerdo a Arias *et al.,* (2022) el emprendimiento rural puede constituirse por actividades agrícolas o de distinta actividad económica, el cual muestra limitaciones en sus gestores la formación como emprendedores en tendencias de ruralidad y sustentabilidad (Jurado, 2022) además de dificultades ante excesiva tramitología en la apertura, cierre y funcionamiento (Vargas y Uttermann, 2020) sumado al acceso de financiamiento lo cual se constituye como elemento clave en los inicios de la actividad (Penarreta, 2017; Segura *et al*., 2020).

1.3. La competitividad como motor de crecimiento en los emprendimientos

Es importante tener en cuenta que las pequeñas y medianas empresas contribuyen con la generación de fuentes de empleo y producción, por lo tanto, su funcionamiento dentro de las economías en los países de América Latinas es muy importante por lo que son consideradas como peldaños

para desarrollo económico, por ende, demandan de apoyo a través de políticas gubernamentales para seguir mejorando sus procesos y generar su expansión (Gálvez y García, 2015).

Considerando que la diversidad de pymes es amplia en el mundo, conlleva a la exigencia de proveer productos de calidad, por la referencia de la competencia, pues en el plano mundial las empresas compiten entre sí para acaparar mercados, en donde también intervienen empresas de mayor tamaño y estructura, por ende, para entidades pequeñas les puede resultar más amigable conformar alianzas estrategias para operar entre sí, es decir propiciar a un trabajo asociativo para satisfacer la demanda y aprovechar más oportunidades de mercado, una de las cuales, seria reducir las brechas e incertidumbre en operar con grandes empresas (De Castro *et al*., 2013) que podrían llevar a superar dificultades en torno a la viabilidad de algunas empresas, pues la sinergia tributará a trabajar sobre puntos estratégicos que les esta permita obtener más demanda y énfasis a diferencia de su competencia (Granados *et al*., 2016).

2. Metodología

La presente investigación se sustentó de la revisión de la literatura, para lo cual se efectuó la selección de publicaciones en revistas de divulgación científica de referentes teóricos en torno a la competitividad y emprendimiento. Se corresponde a un tipo de investigación no experimental, pues se realizó indagación sin la manipulación de variables, es exploratorio porque busca generar hallazgos relacionados sobre la competitividad y el emprendimiento bajo el matiz de la pandemia, contexto de poca trayectoria; además se utilizó el fundamento bibliográfico, para sustentar el trabajo del aporte documental que registran hechos comprobados con validación científica.

Conjuntamente, se empleó el análisis PESTEL para evaluar el panorama políticos, económicos, sociales y tecnológicos que afectan a los emprendimientos en torno a la competitividad. Así mismo se aplico la investigación a una muestra de 130 emprendimientos de las zonas rurales de la provincia de El Oro, para indagar la dinámica de su gestión.

3. Evaluación PESTEL del emprendimiento en función de la competitividad del Ecuador. Una mirada retrospectiva hasta la actualidad

Desde inicios del 2020 el mundo ha estado enfrentando momentos de dificultad a consecuencia del COVID-19, un escenario que en enero del

referido año era visto de manera distante, sin imaginar que la situación de China muy pronto se extendería hacia otras naciones y generaría un remezón, pues la referida pandemia obligaría a los gobiernos a tomar medidas restrictivas de movilidad en sus territorios para evitar de cierta manera la proliferación de contagios, propia de esta enfermedad.

Es así que, la emergencia sanitaria oriento a delinear estrategias que impliquen continuar con el desarrollo de actividades bajo la modalidad online, medida que se aplicable como una salida temporal en la mayoría de los casos. En el caso de Ecuador, en el mes de marzo del 2020 se declaró la cuarentena y con ello la paralización de actividades que derivo en afectaciones de distintas formas para las personas, pero que de cierta manera en la actualidad están tratando de sobresalir aun cuando la emergencia no ha concluido, pues aún se está ejecutando el plan de vacunación en el territorio ecuatoriano.

En este sentido, a continuación, se presenta un diagnóstico de la realidad del Ecuador con un breve hilo conductor que trata de evaluar de manera bastante general la situación del país desde finales del Gobierno de Rafael Correa, dirección en el mando de Lenín Moreno y con la elección del reciente mandatario Guillermo Lasso.

3.1. Análisis político

En el plano político, el Ecuador atraviesa situaciones de inestabilidad más visibles desde la presidencia de Lenín Moreno, pues desde la asunción del mando del expresidente los ecuatorianos han sido testigos del viraje en la administración del país, y con ello el sentido de traición de la población que confió en la continuidad del proyecto de revolución ciudadana impulsado por el mandatario Rafael Correa (Correa, 2019) aquello derivo al sentir de inconformidad de los ciudadanos a la gestión de Moreno en el sentido que aducen que régimen político estuvo alineado a corrientes neoliberales, debido al notable acercamiento con los grandes grupos empresariales y empresas de intermediación financiera (Dávalos, 2018).

Aunque es reciente la llegada al mando de Guillermo Lasso al Palacio de Carondelet, las tendencias se mantienen similares a las de su predecesor y el clima de inconformidad está empezando a salir a flote en un país que confió en promesas de campaña que hoy en día se visualizan de forma cada vez más lejana y con ello el malestar empieza a tomar forma en climas de protesta de los sectores económicos que antes del diálogo buscan manifestarse en las calles ante la advertencia del primer mandatario de llegar a ser encarcelados de por vida, afirmación que contradice a las normas de sanción establecidas en el Ecuador.

Entre los cambios ejecutados en este país y que causaron gran controversia, acaeció en agosto del 2018 con la expedición del proyecto

de Ley Orgánica para el Fomento Productivo, Atracción de Inversiones, Generación de Empleo, y Estabilidad y Equilibrio Fiscal, el cual se lanzó con el objetivo de alcanzar la estabilidad económica, cuyos efectos estarían materializados en la captación de inversión tanto nacional como extranjera para dinamizar la economía ecuatoriana (Asamblea Nacional República del Ecuador, 2019), la definición se mostraba optimista pero creó desconcierto porque el referido marco normativo según el Centro Estratégico Latinoamericano de Geopolítica (CELAG) fue la pauta para perdonar intereses y multas tributarias al sector privado (CELAG. ORG, 2018).

Igualmente, en el gobierno de Lenín Moreno el país pudo apreciar proyectos de leyes que encaminaron a la flexibilidad laboral, liberalización de los precios de combustibles, convocatoria a una cuestionada Consulta Popular para efectuar enmiendas constitucionales y renovar autoridades de control, que bajo la lupa de quienes son llamados correístas catalogaron a Moreno como "el peor gobierno de la historia" de quién aducen que su plan de gobierno estuvo bajo las influencias del programa del partido político de CREO cuya máximo representante ha sido Guillermo Lasso y quién se menciona ha sido parte del gobierno desde antes del 24 de mayo del 2021, quien asumió un gobierno con una crisis sanitaria activa y tiene la imperiosa responsabilidad de llevar adelante al país ante varios desafíos que se presentan en un clima que demanda de urgentes intervenciones ante las necesidades de su población.

3.2. Diagnóstico en lo económico

En materia económica, con la llegada al poder de Moreno, quienes se mostraban contrarios a su administración alegaban que la crisis financiera respondía a los beneficios otorgados a los grupos de poder (Ecuador Inmediato, 2019) percepción de sus detractores, quienes además alegan que la administración del ex Presidente Correa la dirección económica se realizó de manera apropiada tanto así que el mismo Fondo Monetario Internacional (FMI) en noviembre del 2017 al referirse al Ecuador, puntualizo que el manejo económico los sorprendió, pues supero resultados esperados (El Comercio, 2017).

Sin embargo, esta afirmación se dilapido cuando el ex Gobierno de Moreno, manifestó que la deuda contraída en la década de Rafael Correa ascendió a USD 75 mil millones (El Comercio, 2019), empero el analista económico David Villamar considera que esta cifra resulta exagerada al comparar con la que fue declarada en el Ministerio de Finanzas que ascendió a USD 43 mil millones de dólares (Ecuador Inmediato, 2019).

Bajo la tesis de Moreno, era necesario atender el déficit fiscal, para lo cual se aplicaron ajustes para incrementar la recaudación tributaria, en

donde los contribuyentes pertenecientes al régimen de microempresarios debieron cancelar el 2% de impuesto a la renta sobre los ingresos, sean de utilidades o pérdidas del año 2020, año cargado de notable conflicto económico que por tema de la pandemia la actividad económica mostro una contracción por la paralización de actividades en los meses de cuarentena.

El panorama económico de Ecuador, desde el 2019 mostro posturas de inestabilidad, pues según el Fondo Monetario Internacional vaticinaron una caída del crecimiento económico del 0,5% (Weisbrot y Arauz, 2019) sin embargo según las referencias del Banco Central del Ecuador (BCE) al cierre del mismo año notifico un 0,1% de crecimiento (BCE, 2020) un resultado incipiente que demandaba de intervención en plano de las decisiones económicas, además para el siguiente año en el 2020 marcado por la emergencia sanitaria según referencias de la misma entidad (BCE) el Producto Interno Bruto (PIB) fue de USD 66.308 millones en el año 2020, lo cual represento una caída del 7,8% en relación al 2019, lo cual tuvo incidencia en la en la Balanza Comercial, pues tanto las exportaciones con el 2,1% e importaciones con el 7,9% reflejaron disminuciones frente al año anterior (BCE, 2021) con estos antecedentes económicos Guillermo Lasso asumió la presidencia del Ecuador, cuando todavía está latente la pandemia y que frente aquello tiene la tarea de reactivar la situación económica en perspectivas similares a otras economías.

3.3. Evaluación en lo social, tecnológico, ecológico y legal.

Según Weisbrot y Arauz (2019) el paquete de reformas que el FMI exigió preparo el camino a para la difícil situación económica que ha venido enfrentando el país, siendo un resultado directo uno de los indicadores los niveles pobreza y desempleo, pues la receta implico eliminar políticas que han tributado al crecimiento económico y por ende estimularon a disminuir la concentración de la riqueza y elevar los niveles de insatisfacción de las necesidades básicas de la población.

Tanto así que, a finales del año 2019, en Ecuador la pobreza alcanzó el 15% en territorio, en donde la pobreza extrema ocupo el 8,9%; además en el área urbana reflejo el 17,20% siendo la extrema el de 4,3%, resultados de mayor representatividad en las zonas rurales, pues el 41,8% de sus habitantes vivían en condiciones de pobreza, en donde los casos más extremos abarcaron el 18,7% (INEC, 2019). Mientras que, en diciembre 2020, la tasa de desempleo a nivel nacional fue de 5,0%, donde las mujeres ocuparon las mayores situaciones de desventaja en este aspecto (INEC, 2021). Acorde a lo expuesto, la dinamia económica es poco alentadora en la perspectiva de los emprendimientos, porque el sentido de supervivencia deriva a crear maneras de trabajar y los ecuatorianos se destacan este plano, pues muchos de los nacientes negocios se nacen en un radio de informalidad lo cual escasamente genera impacto en el medio (Maldonado, 2019).

Paralelamente, a pesar de que en Ecuador muestra altas tasas en la actividad de emprendimiento, el sentido de innovación es incipiente, pues generar una visión del medio claramente permite identificar que las nacientes propuestas son el resultado de las mismas que ya son existentes en el mercado, esta situación queda en evidencia al referir que de cada 4 nuevos negocios, 3 son ofertas repetitivas y que aquellas tendencias que evidencian innovación corresponde a personas que cuentan con estudios universitarios, vinculados en áreas de tecnología. Situación que poco favorecedora debido al poco desarrollo de la creatividad, cuya ventana permite abrir espacio a la innovación, un elemento clave para generar estrategias empresariales y mitigar la desventaja de competitividad del país en el mercado mundial, pues la tecnología cada vez se abre más espacio en la competencia global y ello incide en el emprendimiento, es allí donde surge la necesidad de potenciar los conocimientos de la población (Jaramillo *et al.,* 2020).

Un detalle importante a considerar, es que la economía del país es altamente dependiente de la producción primaria, plataforma que fue aprovechada por el actual gobierno de Lasso en campaña electoral, al ofrecer conceder en su gobierno préstamos de 30 años al 1% de interés para las actividades agrícolas, ganaderas y pesca. Estos tipos de producción implican la explotación de los recursos naturales, más aún con el modelo de desarrollo aplicado en el país en donde se ha dado lugar a las concesiones a las empresas mineras y petroleras en zonas protegidas de la Amazonía (Vizueta, 2020) lo cual de una u otra forma ha derivado en generar afectaciones al medio ambiente; en este aspecto es necesario puntualizar que hasta el 2017 entre los sectores económicos con mayor incidencia ambiental, principalmente se identifica al comercio con el 37, 87%, seguido de la manufactura con el 26,82%; además el 67,62% de las empresas carecen de permisos ambientales con ello se refleja la incipiente formalidad ambiental (INEC, 2017); es importante considerar que los emprendimientos del país mayoritariamente aplican al sector comercial, el cual según los resultados genera mayor impacto ambiental.

Es innegable que la figura de emprendimiento ha estado muy activa en el país y pese a su notable presencia hasta antes del 2020 la misma no contaba con un marco normativo específico, realidad que cambio desde el año pasado con la vigencia de Ley Orgánica de Emprendimiento e Innovación, regulación que norma aspectos relacionados con la creación de una nueva figura de empresa, denominada como Sociedades por Acciones Simplificadas (SAS) que deriva a optimizar tiempo para constitución de una organización y que para quienes tengan la iniciativa puedan generar desde la formalidad de sociedades unipersonales sin la necesidad de contar con capital mínimo; así mismo aparecen nuevas formas para la obtención de financiamiento a través de crowdfunding, mediante plataformas de promoción de fondos de colaboración, entre otros aspectos.

4. Evaluación de la gestión de los emprendimientos de las zonas rurales de la provincia de El Oro

Tomando como referencia la actividad de emprendimiento en las zonas rurales de la provincia de El Oro, en relación con la gestión administrativa se pudo evidenciar los siguientes resultados.

- Del 100% de los encuestados, el 93,88% indicaron que los objetivos planteados en referencia a su actividad económica, han sido posible cumplirlos, lo cual es punto favorable para los emprendimientos, dado que, la declaratoria de una intencionalidad previa de lo que se aspira a lograr, trae consigo resultados favorables en referencia al impacto del negocio sea en el corto o largo plazo (Cristancho *et al.,* 2021).
- El 60,66% señalaron tener establecidas las jerarquías de cada colaborador. En la investigación se pudo constatar que los emprendimientos de las zonas rurales, suelen estar conformadas por asociaciones de producción agrícola, lo cual los lleva a realizar actividades de manera colectiva, frente a esta circunstancia, ellos hacen referencia de la importancia de establecer la organización de las personas que son parte de la actividad; en este sentido la necesidad de la estructura organizacional rige como medio que permita en algún momento aplicar la formalidad para la el mejor direccionamiento de sus unidades económicas (Alba y Rivera, 2020)
- En referencia al nivel de confianza del 95% de nivel de significancia permitió identificar la existencia de una relación entre la formación y contar con los fondos necesarios para la solvencia de costos y gastos. Según Pino (2022) uno de los aspectos claves de la cultura de emprendimiento es la educación, pues a partir de la misma se puede enseñar a ser emprendedores (Fernández y De la Riva, 2014), más aún cuando se requiere de desarrollar competencias relacionadas con la administración del negocio.
- En las etapas de inicio los emprendimientos demandan de la necesidad de capital, para poder canalizar recursos de inversión que permitan la puesta en marcha de los emprendimientos, es allí donde sale a flote la necesidad de la educación, pues la necesidad de dar forma a la idea, implica diseñar un plan de negocio para determinar la viabilidad de la iniciativa.
- El 59% destacan la importancia de la innovación de la oferta de productos y servicios de los emprendimientos de las zonas rurales. En Ecuador desde el año 2003 se ha prestado especial atención a fortalecer la dinámica de fortalecer la innovación, bajo el tinte de mejorar las capacidades de manejo de herramientas tecnológicas

(Artieda *et al.*, 2018) empero en las comunidades rurales es incipiente esta la gestión en este aspecto.

Conclusiones

Fortalecer el camino a la competitividad implica elevar los niveles de innovación en las empresas, tanto en los productos como en los procesos de producción, lo cual implica destinar recursos de inversión para el desarrollo de competencias en el talento humano, pues son ello quienes con su creatividad tributan a forjar valor agregado a las organizaciones en donde la gestión empresarial se conjuga de manera relevante para hacer frente a eventualidades del entorno.

Sobre esto último, es importante mencionar que el coronavirus tomo de sorpresa a las distintas economías y para aquellas empresas carentes de planes de contingencia la afectación se presento con mayor fortaleza.

En el caso del Ecuador, país de emprendedores la emergencia sanitaria derivo que las cifras de desempleo aumenten y con ello ante las situaciones de desocupación gran parte de su población estuvo inclinada a emprender, solo que las nuevas propuestas son carentes de innovación, dado que son resultado de la improvisación ante la necesidad de generar recursos financieros para solventar necesidades básicas de manera apremiante.

Esta perspectiva de iniciar un negocio de un momento a otro, escasamente contribuye a la competitividad, pues por la premura de la situación es evidente que los nacientes negocios se crean en un ambiente de fragilidad con pocas tendencias de sobrevivir en el mercado y aunque en el país actualmente cuente con un instrumento legal que oriente hacia el fortalecimiento de la actividad de emprendimiento, requiere de un contexto económico más saludable que en la actualidad difícilmente es visible de superar en el corto plazo.

En el caso de los emprendimientos rurales de la provincia de El Oro, se denota la concepción de importancia que rigen en cuanto a establecimiento de objetivos, educación para emprender, organización, lo cual permite inferir la relevancia otorgada en aspectos de índole administrativo para llevar a adelante sus negocios, pero que en la práctica son necesarios fortalecerlos.

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Legal principles of polygraph use in the field of corruption prevention: international experience

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Abstract

The objective of the research was to consider the international experience of legal regulation of the use of polygraph in the field of corruption prevention. In this regard, the experience of the use of polygraph and polygraph studies in the activities of law enforcement agencies in various countries as one of the methods of preventing corruption was analyzed. The methodological basis of the research is presented as comparative-legal and systematic analysis, formal-legal method, method of interpretation, hermeneutic method, as well as methods of analysis and synthesis. It was concluded that the main areas of application of the polygraph are both the investigation of crimes (including criminal ones) and the fight against organized crime and also as one of the valid methods to prevent corruption, as well as to verify the reliability and integrity of applicants for positions in the police, prosecutors' offices, courts and other law enforcement agencies and, as far as possible, to ensure the seriousness and integrity of public servants who wish to occupy higher positions in their career path.

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Principios legales del uso del polígrafo en el ámbito de la prevención de la corrupción: experiencia internacional

Resumen

El objetivo de la investigación fue considerar la experiencia internacional de regulación legal del uso del polígrafo en el ámbito de la prevención de la corrupción. En este sentido, se analizó la experiencia del uso de estudios de polígrafo y poligrafía en las actividades de los organismos encargados de hacer cumplir la ley, en variados países como uno de los métodos para prevenir la corrupción. La base metodológica de la investigación se presenta como análisis comparativo-legal y sistemático, método formal-legal, método de interpretación, método hermenéutico, así como métodos de análisis y síntesis. Se llegó a la conclusión de que las principales áreas de aplicación del polígrafo son tanto la investigación de delitos (incluidos los criminales) como la lucha contra el crimen organizado y además como uno de los métodos válidos para prevenir la corrupción, así como para verificar la confiabilidad e integridad de los solicitantes de puestos en la policía, fiscalías, juzgados y demás organismos encargados de hacer cumplir la ley y, para garantizar en lo posible, la seriedad e integridad de los servidores públicos que deseen ocupar cargos superiores en su trayecto profesional.

Palabras clave: prevención de la corrupción; experiencia internacional en poligrafía; examen poligráfico; investigación de delitos de corrupción; verificación.

Introduction

Today, when the process of law-making activity in Ukraine is gaining rapid development, there are positive trends in bringing the legal system of Ukraine in line with international standards. Application of instrumental detection based on polygraph in various spheres of social relations is now a common phenomenon (Buha *et al.,* 2022).

Since law enforcement agencies are representatives of state power, their goal is to ensure well-being of each individual by combating crimes that encroach on the rights and freedoms of citizens (Bezpalova *et al.,* 2021).

The purpose of the article is to study experience of foreign countries in implementation of psychophysiological studies with the use of polygraph and to determine the place, role and possibilities of its use for obtaining evidentiary and guiding information in the activities of law enforcement agencies of Ukraine.

1. Literature review

The issue of the use of polygraph in law enforcement activities is not new in domestic science. Halaburda Nadiia, Leheza Yevhen, Chalavan Viktor, Yefimov Volodymyr, Yefimova Inna and others devoted their works to research of it (Halaburda *et al.*, 2021).

Obtaining information relevant to investigation of criminal offenses is the goal of law enforcement activities of any law-governed state. Search for new means and ways of obtaining and using evidential and orienting information is one of the urgent tasks of our state and is directly related to the use of modern achievements of the natural sciences and humanities.

Nataliia Volodymyrivna Ivanchuk notes: "... in foreign practice, one of the main areas of application of polygraph is the activity of law enforcement agencies in investigation of crimes" (Ivanchuk, 2015: 133). Polygraph as a means of obtaining and assessing reliability of such information received from an interviewed person by recording person's physiological reactions to questions has become an integral attribute of law enforcement agencies in many countries. Dozens of European countries and the USA use the polygraph both for crime prevention and for investigations and crime detection (Kobrusieva *et al.*, 2021).

However, due to the fact that the use of polygraph in law enforcement activities of Ukraine is not new, but the scope and possibilities of its use are continuously expanding, the study of the experience of foreign countries remains relevant and requires research.

2. Materials and methods

The study is based on works of foreign and Ukrainian researchers devoted to methodological approaches to disclosure of foreign experience in the legal regulation of using polygraph in the sphere of corruption prevention, etc.

With the help of the epistemological method, disclosure of the foreign experience in legal regulation of the use of polygraph in the sphere of corruption prevention, etc. was clarified; thanks to the logical-semantic

method, the conceptual apparatus was deepened, the foreign experience of the legal regulation of the use of polygraph in the sphere of corruption prevention, etc. was determined. Thanks to the existing methods of law, we managed to analyze disclosure of foreign experience in legal regulation of the use of polygraph in the sphere of corruption prevention, etc.

3. Results and discussion

Today, polygraph is used in more than 75 countries of the world, and the USA is the recognized leader among these countries. Investigations, tests and examinations with application of polygraph are used in the activities of law enforcement agencies in Belgium, Belarus, Bulgaria, Israel, India, Kazakhstan, Canada, China, the Baltic countries of Latvia, Lithuania and Estonia, South Korea, Poland, Serbia, Singapore, Slovakia, Slovenia, Finland, Croatia, the Czech Republic, Montenegro, Japan, Turkey, etc. At the same time, the use of the polygraph is prohibited in such countries as Australia, Austria and Germany.

Effectiveness of the use of the polygraph in activities of law enforcement agencies has been convincingly proven by the practice of activity in many countries of the world. These technologies have proven their feasibility and have been successfully used for a long time in the USA, Israel, Turkey, Poland, the Baltic States and other states, in particular during selection of a certain group of civil servants, internal investigations, pre-trial investigations as well as for disclosure and investigation of high-profile crimes (Cherniei, 2015).

Relying on the experience of law enforcement agencies of foreign countries domestic scientists single out three main approaches to determining the legal status of the results of applying polygraph for detection and investigation of criminal offenses. First of all, it is the categorical non-recognition of the results of applying polygraph for detection and investigation of criminal offenses as evidence in court (Estonia, the State of Israel, the Former Yugoslav Republic of Macedonia, Moldova, Singapore and Slovakia).

Secondly, it is the indirect recognition of the results of applying polygraph for detection and investigation of criminal offenses as evidence in court (India, Canada, Lithuania, Poland and Hungary). Thirdly, it is recognition of the results of applying polygraph for detection and investigation of criminal offenses as evidence in court (Latvia, Russia, Romania, the USA and Japan) (Povstianyi, 2014).

As noted by Y. I. Kholodnyi, in India, despite the restrictions set by the Evidence Code regarding the acceptance of polygraph results by the court,

the courts do not deny the possibility of conducting a polygraph examination by a polygraph examiner who is not a police officer, and sometimes they accept the results of such polygraph examinations for consideration.

In the beginning of the 21st century. in the forensic laboratories of the Japanese prefecture police departments, tests were carried out with the help of about 70 polygraph examiners, while about two-thirds of the said laboratories were provided with specially equipped rooms for polygraph testing. Police units in Japan have a long-standing practice of using polygraph. Inspections by law enforcement officers with the use of this scientific and technical device began in this country in the early 1950s. (Ivanchuk, 2015).

In the procedural aspect, data obtained during such inspections have begun to be taken into account in the Japanese judicial system since 1959. In 1968 The Supreme Court of Japan was the first one in the history of legal proceedings to approve the opinion of an expert based on the results of a polygraph examination as evidence in an investigation.

In its decision, the Supreme Court of Japan systematized the requirements for information obtained with the help of a polygraph so that this information could acquire the status of admissible evidence in court proceedings; in particular these requirements include the following: examinations should be carried out using a standard device, by means of the established and approved testing methodology; the mental and physiological conditions of the person being examined must meet the pre-established requirements; examinations must be performed only by a qualified polygraph examiner; the results of polygraph examinations must be presented in a qualified way.

These and other similar requirements are characteristic of law enforcement systems in other foreign countries.

The practice of applying polygraph by the Japanese police has allowed their National Police Agency to define a mandatory standard for its use (Ivanchuk, 2015)

The main constitutional principle of using polygraph in Ukraine and foreign countries in any sphere consists in the voluntary nature of the examination procedure. No person may be subjected to a polygraph examination, unless his/her written voluntary consent to this procedure has been previously obtained. Such a consent is drawn up in the form of a statement which filled out by the examined person with his/her own hand. This statement should explain the rights and obligations of the examinee (Leheza *et al*., 2022).

If a person refuses to sign a voluntary consent to a polygraph examination, the reasons for refusal are indicated in the document and, accordingly, a polygraph examination is not conducted.

Foreign experience shows that in law enforcement practice, polygraph examinations are usually used not in the interests of obtaining judicial evidence for making a decision on the respective case, but for the purpose of assisting the investigator in choosing a more promising and somewhat justified direction of his/her work (Ivanchuk, 2015).

In the USA, Canada, Israel and European countries, the traditional tasks solved with the help of polygraph examinations include the following: narrowing down the circle of suspects, establishing the fact of the commission of a crime, creating conditions for obtaining truthful testimony, gathering additional information about the crime under investigation.

Most often, the results of such studies are not used for the purpose of obtaining evidence, but for gathering orientation information that can help in choosing the most promising and justified direction of investigation.

A polygraph examination during investigation of criminal offenses gives the following opportunities: acquit persons who are not guilty of the event and are not involved in it; determine the circle of persons involved in the event; find out the location of stolen property; in some cases - to induce the guilty person to testify.

Application of a polygraph makes it possible to objectify those external manifestations of a person's mental processes, which are usually overlooked by an operational or investigative officer, etc. The approximate nature of polygraph application results allows us to talk about the possibility of considering the specified measure in the context of investigative activities and the struggle against crimes (Povstianyi, 2014).

In modern practice, the use of a polygraph during detection of crimes is based on the physiological reactions of the interviewee, it provides psychological conclusions about his/her awareness or lack of awareness, involvement or non-involvement in the crime, etc. (Tylchyk *et al.*, 2022).

The main areas of using polygraph examinations in the activities of law enforcement agencies are as follows: identification of a person involved in the commission of a crime from among several known suspects; establishing the corpus delicti; establishing the roles of accomplices in the commission of the crime by a group of persons; establishment of separate circumstances of the crime commission; detection of hiding places of corpses, money and valuables obtained by crime, detecting instruments of crime and objects of criminal encroachment and vehicles, establishing the location of the missing and wanted persons; detection of facts of false testimony etc.

The use of polygraph is not a new direction in the activity of law enforcement agencies of Ukraine. The Security Service of Ukraine has been using polygraph examinations for more than fifteen years. Experience of applying polygraph has proven its high efficiency and usefulness not only

for detection and investigation of criminal offenses, but also in the sphere of personnel work (Povstianyi, 2014).

The collected empirical material of domestic and foreign investigative and judicial practice based on the results of using polygraph during investigation of crimes gives grounds for asserting the need to use this scientific and technical support during the procedure of investigation. The investigator must entrust the psychophysiological polygraph examination and, in particular, the expert conducting this examination, a clear task which will become the basis for building his/her logically based tests of interviewing individuals.

On the basis of a comprehensive, complete and objective examination, the expert will further form his/her expert opinions in such a way that they are of significant importance as a source of evidence at the stage of the criminal case trial (Motliakh, 2011).

Investigations with a use of a polygraph in Ukraine are conducted on the basis of the provisions of a number of regulatory acts. However, there is no single legal act in Ukraine that would provide for a definite procedure for applying this device, methods and techniques of conducting examinations, conducting interviews, etc. Despite the absence of laws on the use of polygraph, it is more actively used by law enforcement agencies of Ukraine in the context of combating crime (Kolinko *et al.*, 2019).

In many countries, there are laws that regulate the use of polygraph. Since Ukraine is entering the world market and world organizations, we believe that our country should have laws that would provide for the procedure for the use of this device precisely by law enforcement agencies. This will contribute to ensuring the well-being of Ukrainian citizens, as the state will be rich only when the legal rights, freedoms and interests of members of its society are protected and satisfied; and this will also serve to building a united Ukraine (Matviichuk *et al.*, 2022).

The experience of the Ministry of Defense of Ukraine is that candidates for leadership positions in the Ministry of Defense, as well as volunteers at this Ministry, are examined with the help of polygraph in accordance with the approved Anti-corruption program; according to this program all employees and applicants for positions in the Ministry of Defense of Ukraine must undergo mandatory examinations (Villasmil Espinoza *et al.*, 2022).

In many foreign countries, the training of polygraph examiners is provided for in the departmental education system, which is also characteristic of the National Academy of Internal Affairs, which has the appropriate potential, has gained experience in this field and provides training of polygraph examiners with the involvement of employees of practical divisions of internal affairs bodies and instructors of specialized officially registered private companies (Cherniei, 2015).

Conclusions

Summarizing, it is worth noting that a long-standing practice of using polygraph is typical for countries such as: Japan, the USA, Canada, Israel. The main tasks solved with the help of polygraph examinations are as follows: narrowing down the circle of suspects, establishing the fact of the commission of a crime, creating conditions for obtaining truthful testimony, gathering additional information about the crime under investigation.

Most often, the results of such studies are not used for the purpose of obtaining evidence, but for gathering orientating information that can help in choosing the most promising and justified direction of investigation. Foreign experience shows that in law enforcement practice, polygraph examinations are usually used not in the interests of obtaining judicial evidence for making a decision on the respective case, but for the purpose of assisting the investigator in choosing a more promising and somewhat justified direction of his/her work.

The practice of applying polygraph in various spheres of life in Ukraine is still relatively new. However, the use of polygraph in activities of law enforcement agencies of Ukraine has prospects for application of this device both for investigation of offenses (including criminal ones) and fight against organized crime, and for checking reliability and integrity of applicants for positions in the police, prosecutor's offices, courts and other law enforcement agencies, as well as for checking reliability and integrity of civil servants who want to occupy higher positions.

We believe that it would be appropriate to regulate the procedure for conducting polygraph examinations (interviewing or check) and for using materials of such examinations in criminal proceedings.

The issue of training polygraph specialists and staffing law enforcement agencies with such specialists should be resolved separately. The legislation must clearly regulate the requirements for persons who have the right to conduct psychophysiological examinations using a polygraph, as well as the procedure and grounds for obtaining permission to carry out the above-mentioned actions. After regulatory settlement, it will be possible to use polygraph in law enforcement practice alongside with other technical means, which improve the effectiveness of law enforcement agencies in achieving their goals.

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Políticas educativas para la enseñanza del inglés en la educación superior de Ecuador

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Resumen

Los procesos de enseñanza-aprendizaje de contenidos y las capacidades humanas que de ellos emergen cotidianamente, están "determinados" por las políticas, planes y proyectos concretos que regulan la materia y, la enseñanza del inglés no es la excepción; de modo que, son las políticas nacionales, regionales, locales e institucionales las que producen o retrasan, según el caso, las condiciones de posibilidad para el logro de los objetivos programáticos de una asignatura de uso estratégico como el inglés**.** Mediante una metodología de base descriptiva, analítica y documentada, se llevó a cabo el objetivo del presente artículo el cual fue revisar algunas políticas educativas para la enseñanza del inglés en la educación superior de Ecuador. Los resultados obtenidos permiten concluir que, aunque las políticas educativas se diseñan regularmente de forma asimétrica, desde un centro institucional hegemónico (Estado, Magisterio, Universidad, entre otros) y se impone de forma relativamente consensada al resto de los actores del proceso educativo, en los casos conocidos por esta investigación, la enseñanza exitosa del inglés depende también significativamente de la capacidad creativa del profesor y profesora y, más aún, del compromiso de los estudiantes en el desarrollo de sus capacidades idiomáticas de cara al logro de un aprendizaje significativo.

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Palabras clave: políticas educativas; enseñanza del inglés; educación superior en Ecuador; aprendizaje significativo; desarrollo de capacidades idiomáticas.

Educational policies for the teaching of English in higher education in Ecuador

Abstract

The teaching-learning processes of contents and the human capacities that emerge from them on a daily basis are «determined» by the policies, plans and concrete projects that regulate the subject and the teaching of English is no exception; thus, it is the national, regional, local and institutional policies that produce or delay, as the case may be, the conditions of possibility for the achievement of the programmatic objectives of a subject of strategic use such as English. By means of a descriptive, analytical and documented methodology, the objective of this article was to review some educational policies for the teaching of English in higher education in Ecuador. The results obtained allow us to conclude that, although educational policies are regularly designed asymmetrically, from a hegemonic institutional center (State, Teachers, University, among others) and imposed in a relatively consensual way to the rest of the actors of the educational process, in the cases known by this research, the successful teaching of English also depends significantly on the creative capacity of the teacher and, even more, on the commitment of the students in the development of their language skills in order to achieve meaningful learning.

Keywords: educational policies; English language teaching; higher education in Ecuador; meaningful learning; language skills development.

Introducción

El dominio de una segunda lengua o idioma es una ventaja profesional notoria, es especial si esta se encuentra entre las principales lenguas comerciales del mundo y de mayor uso en actividades académicas, relaciones internacionales, culturales y medicas en el mundo. Debido a que el uso del inglés permite mejores oportunidades a nivel laboral y el acceso a información actualizada a nivel académico, lo que su inclusión en el sistema educativo a nivel universitario permite profesionales más eficientes, con mejores posibilidades de acceso que les permite enriquecer

sus conocimientos. Hoy día la enseñanza del inglés es el segundo Idioma más común en América Latina (ocupa el segundo lugar, mientras que en Brasil es el tercer idioma más demandado como lengua extranjera después del español) (Cantero, 2011).

Por lo que su importancia comercial, financiera y comunicacional es un recurso adicional casi obligatorio para todo profesional, de manera que el presente articulo pretende formular la siguiente interrogante: ¿Cómo son las políticas educativas para la enseñanza del inglés en los centros de educación superior en Ecuador? Premisa fundamental que busca describir y analizar si la enseñanza del inglés a los futuros profesional del país es adecuada a nivel de las competencias internacional para la enseñanza de un segundo idioma y si estas políticas se encuentran estandarizadas en todo el Ecuador o si son variables según la región en la que se ubican los centros educativos.

El presente articulo pretende revisar algunas políticas educativas para la enseñanza del inglés en la educación superior de Ecuador. A la vez que busca exponer como son las políticas educativas; describir la enseñanza del inglés como idioma extranjero en el país y exponer a nivel cognitivo como se desarrolla el proceso de aprendizaje significativo en los estudiantes.

Este estudio se compone de cinco momentos en los cuales se desarrolla un momento especifico de la investigación, el primero de ellos describe la problemática y objetivos a analizar, para luego dar paso a las principales referencias teóricas a utilizar de las cuales se formulará el análisis documental de los textos. el tercer punto será la metodología empleada por el texto para luego proceder al análisis concreto de las políticas educativas para la enseñanza del inglés en la educación superior de Ecuador; para finalmente desarrollar las conclusiones y recomendaciones del artículo.

1. Términos teóricos empleados

1.1 Políticas educativas

La educación es un factor primordial para el desarrollo de una persona por lo que el Estado tiene un rol activo en el diseño y desarrollo del sistema educativo que compone sus centros de enseñanza. las políticas educativas podrían definirse como el conjunto de procesos colectivos entre el Estado y la sociedad que en vista de sus necesidades planifica y diseña un modelo en el cual se desarrolla el proceso educativo de sus ciudadanos, en todos sus niveles de formación (Pita, 2020).

Asimismo, Reimers (1995), las define como todo el conjunto de decisiones y acciones que toma el Estado en materia de transformar

el sistema educativo. este puede ser un cambio de contenido como la información que el docente debe dar a sus alumnos o de competencias, las cuales determinan que es lo que se quiere desarrollar en el infante, joven o adulto con la formación que se le da en las aulas.

Por último, Pineda (2005), explica que la política educativa es un proceso en el cual se establecen las bases normativas, estratégicas, procedimentales y situacionales en las cuales el Estado aborda el hecho educativo, bajo las cuales emplea el análisis de las políticas públicas para regular y medir el éxito de las decisiones tomadas en ese ámbito vital para la sociedad y sus intereses.

En líneas generales puede apreciarse que las políticas educativas son directrices que toma el estado con la estrategia educativa que desea llevar a cabo con sus ciudadanos, lo cual hace que estas sean la continuación de las políticas públicas en materia de educación, a su vez esta puede ser aplicada de forma específica a algún segmento de los diferentes niveles de instrucción como puede ser la educación primaria o básica, secundaria y universitaria.

Este tipo de políticas se caracterizan por ser de dos tipos: publicas o privadas y dependen de la organización que las formule y desarrolle ya que hay centros educativos con directrices muy diferentes y cuyos intereses se basan en fomentar otro tipo de competencias diferentes a los programas regulares de educación pública. Autores como: Pita (2020), Pineda (2005) y Reimers (1995), señalan que las políticas educativas poseen una importancia estratégica para el crecimiento, progreso y desarrollo de un país.

1.2 Aprendizaje significativo

Se habla de aprendizaje significativo aquel que toma significado cuando quien aprende puede relacionar lo aprendido con su estructura cognitiva preexistente, el background o marco referencial individual, marca la manera como se le da significado a nuevos conocimientos. “A toda experiencia que parte de los conocimientos y vivencias previas del sujeto-las mismas que son integradas con el nuevo conocimiento y se convierten en una experiencia significativa- se le conoce como aprendizaje significativo” (Rivera, 2004: 27).

El padre del aprendizaje significativo es Ausubel, el investigador refiere que el aprendizaje no es un proceso neutral, cada individuo, en todas las etapas posee un cumulo de experiencias y saberes que llama estructura cognoscitiva de la cual se extrae aspectos relevantes conocidos como subsumidores o ideas de anclaje que se relacionan con los nuevos conocimientos y se convierte así en nuevo aprendizaje internalizado y significativo (Rodríguez, 2004).

Esta teoría, enmarcada en el constructivismo, destaca como principio general que: "Las personas aprenden de modo significativo cuando construyen sus propios saberes, partiendo de los conocimientos previos que estos poseen" (Doménech, 2012: 06), en este sentido, la realidad tiene significado en la medida en que se construye y se relaciona la estructura cognoscitiva personal con los nuevos conocimientos que se adquieren en el proceso de aprendizaje.

La estructura cognoscitiva o conocimientos previos, tienen un papel principal en el aprendizaje significativo, lo que sabe el alumno tiene un gran peso ya que orienta lo que se debe enseñar, el proceso suele darse por asimilación, específicamente, inclusión, en el caso de que no existan conocimientos previos sobre algún tema, es responsabilidad del maestro, crear un organizador previo o puente que acerque el conocimiento actual del estudiante con el nuevo conocimiento para que se convierta en significativo.

Lo anterior se reconoce como aprendizaje mecánico, resultado de la ausencia de subsumidores o subsunsores, ante un conocimiento nuevo este es almacenado de forma arbitraria sin el uso de conocimientos previos como es el caso de las fórmulas físicas o matemáticas, los nuevos datos se memorizan en la estructura cognitiva del sujeto y se crea un conocimiento por asociación arbitraria (Delgado, 2012).

En perspectiva, el inicio de todo proceso de enseñanza aprendizaje debe explorar los conocimientos existentes, con técnicas tales como, lluvia de ideas, preguntas directas, discusiones, entre otras que facilitan la exploración del alumno o grupos de alumnos para, partiendo de allí, someter los nuevos conocimientos, su éxito depende entonces de relacionar los conocimientos nuevos con los que ya posee el alumno (Doménech, 2012).

Cabe señalar, la actitud también tiene peso en el aprendizaje significativo, este solo es posible, si el alumno está motivado, si quiere aprender, si presta atención, si tiene la disposición le otorgará significado propio a los contenidos que asimila; por otro lado, el aprendizaje significativo es posible, cuando el conocimiento es relevante tanto para la lógica de la disciplina como para la psicología del estudiante. Esta teoría también contempla que el conocimiento se puede adquirir por descubrimiento y por recepción, lo primero ocurre en la etapa de preescolar y primaria, lo segundo, el conocimiento receptivo, es propio de niveles superiores, como el universitario.

Asimismo, todos los contenidos del aprendizaje deben estar enmarcados en el ser, saber y saber hacer. Por lo tanto, los aspectos básicos involucrados en el aprendizaje significativo, son: los conocimientos previos (conceptos, contenidos, conocimientos); el docente que actúa como guía y orienta el proceso de aprendizaje; que permita a los alumnos realizar por su cuenta un juicio sobre lo que han aprendido (Rivera, 2004).

Conviene subrayar, las experiencias previas se refieren a la estructura cognitiva, es decir, a los referentes existentes previamente en el alumno que se constituyen en el punto de partida del aprendizaje significativo. Existen tres tipos de aprendizaje significativos según Ausubel de representaciones, conceptos y de proposiciones. El aprendizaje de representaciones, se da cuando el alumno asigna cualquier significado al que sus referentes (objetos, eventos, conceptos) aludan, se trata del significado de símbolos o de lo que representan para el alumno, no es una asociación simple, sino una relación real entre lo que comprende el alumno y su cognición para interpretar su realidad (Delgado, 2012).

Todo lo anterior permite comprender la importancia del aprendizaje significativo como proceso que analiza y explica la manera como los humanos adquieren el conocimiento, almacenando información a través de ideas, símbolos, conceptos, entre otros niveles de asimilación que permiten generar el conocimiento en todos los niveles, con la característica que los seres humanos solo pueden aprender y recordar algunos ítems en determinados momentos y el aprendizaje mecánico, listas, formulas, entre otros datos que no ameritan compresión, solo serán confiable en cuanto a conocimiento significante en la medida que se utilice frecuentemente (Ausubel, 1976).

Por lo anterior, el aprendizaje significativo tiende a convertirse en la mejor manera de procesar y almacenar la información, el atribuir significado a la información que se adquiere y relacionarlo con los referentes propios permite al ser humano construir conocimiento permanente que se manifiesta y se entrelaza a lo largo de la vida, la intencionalidad y la sustancialidad propia del aprendizaje significativo es lo que permite que se pueda relacionar premeditadamente esos conocimientos e ir reforzando y ampliando la estructura cognoscitiva.

Al respecto, el estudiante puede explotar en su totalidad los conocimientos y organizarlos para emplearlos en el proceso de adquisición de nuevos conocimientos por medio de la asociación (Ausubel, 1976). De manera que la capacidad de adquirir nuevo conocimiento y relacionar con el anterior produce nuevos significados que se fijan a través de palabras, conceptos y proposiciones y que pueden ser rescatados de la memoria y utilizarlos con poco esfuerzo.

El aprendizaje significativo se asienta en la memoria a largo plazo y queda disponible ante cualquier activador, de allí su importancia ya que se convierte en el cumulo de símbolos, conceptos y proposiciones que son usados a lo largo de la vida. El aprendizaje es acumulativo y como tal evoluciona y aumenta en la medida que los conocimientos se convierten en significativos y se relacionan con los referentes existentes, sumando y consolidando nuevos conocimientos en los alumnos que se convierten en la estructura cognitiva activa para adquirir nueva información y procesarla.

1.3 Enseñanza del inglés como idioma extranjero

Desde principios de los años 90, la enseñanza del inglés se convirtió en una materia obligatoria para todos los niveles de estudios del sistema educativo ecuatoriano, con el objetivo de promover el conocimiento de este idioma y desarrollar las competencias lingüísticas de sus estudiantes desde temprana edad.

Este se define como el proceso de enseñanza y aprendizaje del inglés como segundo idioma bajo el cual se lleva a cabo el proceso de enseñanza-aprendizaje entre el docente y el alumno haga que alcance las competencias básicas de dominio del idioma en un nivel A2 o B1 según el estándar del marco común de referencia de la lengua, el cual determina el nivel de habilidad que posee una persona para comunicarse por vía oral y escrito con una lengua no nativa (Beltrán, 2017).

Para el aprendizaje del idioma inglés es necesario construir una serie de competencias asociadas al dominio de las destrezas del lenguaje. Por lo que los docentes encargados de la enseñanza del inglés deben tener una adecuada formación teórica y pedagógica que les permita llevar cabo sus actividades de forma eficiente. Es un hecho que el lenguaje es en sí mismo comunicación. Como el lenguaje permite principalmente la comunicación entre las personas, es necesario tomar como referencia un método que permita contextualizar la enseñanza de un idioma extranjero, en este caso el inglés dentro del contexto de lo que significa el uso del lenguaje

Para su enseñanza existen múltiples enfoques los cuales pueden ser de interacción integración orgánica, motivacional entre otros, en los últimos años tiene un mayor protagonismo el enfoque comunicativo, el cual nació a partir de la adopción de métodos relacionados con la teoría constructivista del aprendizaje.

Las primeras acciones que apuntaron hacia la adopción de este método surgieron de la necesidad de otorgar un contexto como idioma extranjero, es decir, desligarlo de la obtención de competencias estrictamente relacionadas con las reglas ortográficas y gramáticas del idioma, acercándolo al concepto de comunicación envuelto en un contexto significativo. De esta forma, se comenzaron a conformar estrategias pedagógicas que permitieron enfocar la enseñanza de la lengua extranjera desde el punto de vista de las necesidades del estudiante (García *et al.*, 2009).

2. Metodología

El presente trabajo pretende revisar algunas políticas educativas para la enseñanza del inglés en la educación superior de Ecuador. Por medio

del cual se pretende describir las principales políticas educativas de la enseñanza de este idioma extranjero, que permitirá describir su nivel de aplicación y las formas bajo las cuales está diseñada su implementación a nivel universitario.

El estudio a realizar tendrá un enfoque cualitativo, de diseño descriptivo y transversal. Comprenderá un estudio de tipo no experimental en el cual se realizará un análisis documental de las políticas educativas más importantes sobre la enseñanza del inglés en educación superior (Sampierí *et al.,* 2015).

Como instrumento de recolección de datos se ha seleccionado el análisis documental de textos, publicaciones y trabajos académicos relacionados con la enseñanza del inglés como política educativa, en este contexto se aplicará un análisis hermenéutico de las publicaciones revisadas a fin de elaborar la revisión de las políticas educativas de la enseñanza del inglés en educación superior para luego formular las respectivas consideraciones finales del estudio.

3. Políticas educativas para la enseñanza del inglés en la educación superior de Ecuador

De acuerdo a Peña y Ortega (2019), desde inicios de los años 90, las políticas educativas para el inglés como lengua extranjera estaban diseñadas en sincronía con las pautas pedagógicas y didácticas del instituto cultural público del Reino Unido, el cual fue una de las primeras instituciones internacionales en validar certificados de suficiencia de idiomas para su uso profesional y académico dentro y fuera del país. con el paso del tiempo estos modelos de enseñanza se modificaron y cambiaron al estándar del MCER, que es a nivel internacional la modalidad que más se emplea para medir el nivel de comprensión y expresiones verbales o escritas de una lengua se basan en el marco común europeo de referencias para las lenguas, su aprendizaje, enseñanza y educación conocido mundialmente como MCER.

Asimismo, la Universidad Técnica Particular de Loja (2020), menciona un estudio elaborado por el instituto Education First que señala que la enseñanza del inglés en Ecuador se mantiene como niveles de suficiencia muy bajos, lo que posicionan al país en uno de las regiones con menor nivel educativo del inglés como segundo idioma. esto imposibilita el acceso de estudiantes ecuatorianos a becas de posgrado en otros países. para transformar este panorama, se debe hacer una serie de cambios en la enseñanza para mejorar las destrezas del idioma en el alumno maximizando el provecho de las TIC`s, los métodos de formación bajo modalidades en línea, presencial y abierta; por último, se deben desarrollar políticas educativas encaminadas a la creación de laboratorios de idiomas a nivel público en las universidades más importantes del país.

Otro elemento a destacar es la falta de acceso de los centros universitarios a materiales didácticos de enseñanza del inglés como lengua extranjera (ILE) actualizados, dado que estos son en su mayoría importados de otros países; estos poseen un costo elevado con lo cual se propone preparar materiales y textos propios adaptados a las personas de cuya lengua materna es el español.

Con lo antes expuesto, la enseñanza del inglés posee como principal referente metodológico y pedagógico, el Plan Curricular del MCER para el aprendizaje y enseñanza del inglés como lengua extranjera, ya que establece los contenidos y funciones comunicativas necesarias que deben adquirir en diversos niveles los estudiantes. Dicho plan precisa ser concretado en un material didáctico culturalmente pertinente y enfocado en el desarrollo de la competencia comunicativa. Por lo que se deben habilitar políticas que regularicen a un estándar nacional de la enseñanza del inglés como idioma extranjero y que sus políticas promuevan su enseñanza basada en enfoques y la inclusión.

Asimismo, Beltrán (2017), señala que se debe tener en cuenta la función motivadora del docente en educación de lenguas extranjeras, la cual, Desde este punto de vista, el profesor debe plantearse tres objetivos en su ejercicio motivador: promover el interés de los alumnos; dirigir y mantener el esfuerzo de los estudiantes y lograr el objetivo de aprendizaje prefijado por los enfoques del nivel a tratar. Si bien la escuela tradicional llamábamos motivación solamente a la inicial, aquí vemos que la motivación debe mantenerse hasta el final y ser el punto de partida, si el proceso de aprendizaje tiene éxito, da nuevas motivaciones para nuevos procesos.

Cada profesor conoce a sus alumnos, y debe tener en cuenta que cada alumno tiene su propia personalidad; así pues, el profesor deberá descubrir qué tipo de motivación requieren sus alumnos. Algunas formas de motivar a los alumnos pueden ser: potenciar sus valores y procesos de aprendizaje, promover una dinámica de retroalimentación en clase, mostrar interés personal en los alumnos, entre otras estrategias que les permitan a estos tener un aprendizaje significativo en el aula.

Por su parte el trabajo de Ortega y Auccahuallpa (2017), señal que en los últimos años las políticas educativas en materia del inglés como lengua extranjera han mejorado su nivel de implementación acreditando a docentes en dicha materia según diversos estándares internacionales lo que permite señalar que hay un nivel de mejora considerable en comparación con lo señalado por el estudio llevado a cabo por el Education First. Su investigación establece que los retos de la enseñanza del inglés en educación superior deben estar enfocados en disminuir la brecha existente entre los centros universitarios rurales y urbanos, mejorando las políticas de inclusión educativas actuales, que permitan el acceso de estudiantes indígenas y se mejoren los mecanismos de formación y actualización docente en esta materia.

De manera general, se aprecia que los autores de los materiales revisado coinciden en la situación de crisis de las políticas educativas para la enseñanza del inglés en la educación superior de Ecuador a inicios del siglo XXI, sin embargo se ha presentado una mejora en comparación con décadas pasadas por lo que se requiere es un mayor criterio de homogeneidad en las políticas de inclusión educativa, a la vez que los enfoques por competencias son la estrategia de enseñanza de este idioma que mejor se adapta a las necesidades nacionales.

Conclusiones y recomendaciones

Tras la revisión y análisis de la documentación consultada en el estudio, se procede a elaborar las conclusiones del mismo. En primer lugar, se resalta la importancia de la enseñanza del inglés como segunda lengua en los centros de educación superior del país ya que es un aspecto clave para la formación de las competencias profesionales de los futuros egresados en sus diferentes áreas de conocimiento. Autores como Peña y Ortega (2019), Ortega y Auccahuallpa (2017) y Beltrán (2017), señalan que a nivel pedagógico y didáctico en la educación superior se lleva a cabo de manera satisfactoria a un nivel adecuado según criterios y estándares internacionales. Sin embargo, a nivel nacional no hay una estandarización suficiente en la calidad de los contenidos y de formación docente en la enseñanza del inglés, estas diferencias se enmarcan en aquellos centros de educación superior nacionales, regionales y locales en los que el nivel difiere por las políticas internas de cada centro educativo.

Sin embargo, el dominio de competencias por nivel no posee el mismo patrón en el país, ya que según el estudio de Ortega y Auccahuallpa (2017), el nivel y la calidad de la enseñanza del inglés como segundo idioma difiere de las regiones urbanas y rurales del país por lo que hay una significaba perdida de la calidad de la enseñanza de este idioma en los centros de educación superior. Aunque las políticas educativas se diseñan regularmente de forma asimétrica, desde un centro institucional hegemónico como lo es la dirección del Estado, el Magisterio, la dirección de los centros universitarios, entre otros) y se impone de forma relativamente consensuada al resto de los actores del proceso educativo.

En la revisión documental-bibliográfica realizada para la elaboración del estudio, se expone que la enseñanza exitosa del inglés depende también significativamente de la capacidad creativa del profesor y profesora y, más aún, del compromiso de los estudiantes en el desarrollo de sus capacidades idiomáticas de cara al logro de un aprendizaje significativo, tal como es establecido por Doménech (2012) y Rivera (2004) en sus estudios. Por último, a modo de recomendaciones se identifica la necesidad de hacer

un estudio a nivel cuantitativo del nivel de competencias logradas por los estudiantes de los centros de educación superior del país en materia de inglés; a su vez se deben unificar las políticas de enseñanza de los centros universitarios de las regiones periféricas con aquellos de las zonas capitales.

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Influence of Religious Myth on National and Political Formation Across Cultures

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Abstract

As a research objective, the article presents a classification of myths and scientific orientations of world mythology, as a condition of possibility to explain the national and political formation of cultures, for which the historical and cognitive method was used. Myths are part of the primitive religious imaginary. The political sphere, in which the principles and technologies of management of society are developed, is the one most in need of producing effective means of influence, so that its results have an intense load of mythogenesis. In the space of the political most of the characteristics of myth are the perception of accessibility and openness of empathy, regardless of a person's age, gender, nationality. Everything allows to conclude that, the history of the search for the underlying essence of the universe also goes back to the distant past of science. For example, some philosophers of ancient India and China, Egypt and Babylon, ancient Central Asia and Greece, among others, believed that some substance or certain element lay at the base of the universe.

Keywords: national formation; mythology; politics and culture; political imaginaries; historical method.

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Influencia del mito religioso en la formación nacional y política en todas las culturas

Resumen

A modo de objetivo de investigación, el artículo presenta una clasificación de los mitos y las orientaciones científicas de la mitología mundial, como condición de posibilidad para explicar la formación nacional y política de las culturas, para lo cual se hizo uso del método histórico y cognitivo. Los mitos forman parte del imaginario religioso primitivo. La esfera política, en la que se desarrollan los principios y tecnologías de gestión de la sociedad, es la más necesitada de producir medios eficaces de influencia, de modo que sus resultados tienen una intensa carga de mitogénesis. En el espacio de lo político la mayoría de las características del mito son la percepción de la accesibilidad y la apertura de la empatía, independientemente de la edad de una persona, el género, la nacionalidad. Todo permite concluir que, la historia de la búsqueda de la esencia subyacente del universo también se remonta al pasado lejano de la ciencia. Por ejemplo, algunos filósofos de la antigua India y China, Egipto y Babilonia, la antigua Asia Central y Grecia, entre otras, creían que alguna sustancia o cierto elemento yacía en la base del universo.

Palabras clave: formación nacional; mitología; política y cultura; imaginarios políticos; método histórico.

Introduction

Myths and legends, which symbolize the ancient religious beliefs and traditions of the world peoples play an important role in the study of ancient religious ideas, their essence, and philosophical interpretations. After all, myths, which are a set of ancient people's primitive ideas about the world of existence, include beliefs about the creation of the universe, the creation of man, plants and animals, the appearance of heavenly bodies, the causes and essence of natural phenomena, legendary heroes, gods and goddesses.

Religious sources may be verbal, pictorial, or otherwise in religious beliefs based on myths, narratives. Mainly, ancient myths and legends are found orally. This caused diversity. For instance, a narrative belonging to one religious faith may come across differently in a particular region than in another. It indicates differences in the interpretation of religious narratives and myths spread orally. There are several versions of the "Flood" narrative, which is widespread among the peoples of the world, depending on the region. However, the similarity of content means that the basis of these narrations was once the same.

Myths are part of primitive religious imagination. The scientists of antiquity were the people, who made the first attempts to understand the essence of mythological images and their scientific interpretation.

As a result of ethnic and religious diversity in the regions of the world, which have become a permanent contact area of different nations and peoples, as well as religious views and beliefs, such a situation has arisen that, despite the disappearance of many primitive religions, it has been preserved in the traditions of the peoples living in a certain region. To study of the history of religions in different countries is extremely significant for a complete understanding of the culture and history of the peoples of the world today, as well as their religious and national origin based on their diversity and unity at the same time (Karimova *et al*., 2022).

Studying religion means studying humanity. The reason is that religion is closely connected with the spiritual world of a person and is always with him in his social life. The science of religious studies provides the ability to draw correct scientific conclusions about religion, its various forms, doctrines, directions, and sects, to form a correct worldview capable of reasonable analysis of religious and secular relations, to think objectively about religion, that is, to have conscious personal opinions about concrete events and phenomena based on the knowledge they have acquired.

When communicating with different peoples of the world, it is very important to know their outlook, customs and values. In order to know them, it is necessary to study the ancient and current religious beliefs of these peoples. If we look at the history of mankind, we can notice that the important activities related to his daily life, including birth, foraging, hunting, ensuring his safety, burial, etc., have been associated with various religious thoughts and beliefs.

According to the information about the life of a primitive man, the religious ideas that originated in his life were manifested in primitive religious forms such as totemism, animism, fetishism, shamanism, and sorcery.

The complex of imagination and beliefs of primitive man, their difficulties, problems and achievements in real life are reflected in oral creation. This thing remained in the minds of people and caused the creation of various legends (Alimova, 2020).

In religious beliefs based on myths and legends, religious sources may be verbal, pictorial, or in a different way. Basically, ancient myths and legends are found orally. This caused variety. For example, a narrative within one religious faith may come across differently in one area than in another. It indicates that there are differences in the interpretation of orally spread religious narratives and myths. For example, there are several versions of the "Flood" narrative, which is one of the common narratives for the peoples

of the world, depending on the regions where they are spread. It shows that once the basis of these narratives was one (Alimova, 2019a).

1. Literature Review

Myth (Greek mithos - myth, narrative, legend) is a set of primitive ideas of ancient people about the universe, the creation of the universe, the creation of man, plants and animals, the appearance of heavenly bodies, the causes and essence of natural phenomena, legendary heroes, gods and included religious views about the gods.

Mythology – 1) a coherent system of mythological imaginations created by a certain people, a set of myths. For example, Greek mythology, Indian mythology, Uzbek mythology; 2) a science that studies myths, mythology. The first attempts to understand the essence of mythological images and their scientific interpretation were made by scientists of antiquity.

Myths are part of primitive religious imagination. In the book "Encyclopedia of Pagan Gods. Old Slavic Myths" written by Bychkov (2001), the following information was provided: "Thousands of years ago, various tribes, who made a living by hunting, fishing and gathering wild plants, lived in the Eurasian region. Human life was closely connected with nature, its forces, success in hunting. A successful hunt means the well-being of the tribe (there is food to eat), on the contrary, its unluckiness, catching the prey less than the target, and the hunters falling ill cause the crisis and famine of the tribe. In such cases, people helped each other, lived for the benefit of the community, based on mutual solidarity.

In some cases, people find their prey - animals. Hunting a wild bull or a bear was one of the most difficult tasks, and by eating their meat, people believed in acquiring the strength and dexterity of that animal. In this regard, the bull, the wolf and the bear were in special "respect". Over time, the bear in particular received more attention and was finally transformed into a deity of wealth and prosperity.

In the ancient Slavs, the bear was embodied as the deity of Veles - the bear-God. In the Volga region, Bear graves, amulets made of claws, and metal bear paws were found. According to the imagination of the population, bear paws protected the herd from wild animals. Therefore, they hung it in stables and fortresses. Man worshiped the forces of nature - sun, moon, wind, water, stones. He divided the forces of nature into the forces of good and evil.

2. Methods

In the process of research, general scientific methods of cognition were used, including the principle of objectivity, consistency. The disclosure of the topic was also carried out from the standpoint of such methods as: historical, comparative, logical research methods.

The source base of the study includes published articles on the issue, as well as examples of the myths of different nations. On the basis of myths, the formation of national, political and cultural identity could be traced.

3. Results

Mythology was a way of understanding the universe for ancient peoples. Myths were used to explain why the sun rose and set, why people got sick or died, why summer alternated with winter. The section "Religion and Mythology" of Anatoly Gorelov's book called "History of World Religions" (2006) states that myths are the main part of widespread religions. It links Robertson Smith's process from mythology to religion as follows: ritual---myth---belief.

There are following types of myths:

1. myths about the beginning (myths about the creation of the universe and the emergence of life on earth);
2. heavenly myths (myths about the appearance of heavenly bodies and natural phenomena);
3. anthropogenic myths (myths about legendary wrestlers with unusual characteristics, for example, Heracles, Gilgamesh, etc.);
4. cult myths (related to certain religious beliefs, for example, myths about the worship of fertility, water, plants, fire);
5. ethnogenetic myths (myths related to the origin of clans and tribes; for example, the emergence of 92 Uzbek clans, the myth about Alankuva in Mongols);
6. calendar myths (myths related to the calculation of the year, month, day, for example, myths related to the calculation of "ayamajuz", "chilla", ninety);
7. eschatological myths (the myth of the end of the world, for example, the end of time).

The researchers have also studied various myths and legends about the creation of the world among the peoples of the world. They include

"Creation stories around the World" (2000), "Classic Chines myths" (Walls and Walls, 1984: 55), "The Masks God: Oriental Mythology" (Campbell, 1962), "The Babylonian Genesis" (Heidel, 1952) and other books.

Most creation myths are similar. It is well-known that the sacred sources of world religions also provide information about the creation of the universe. In particular, in the "Genesis" part of the Bible, it is explained that the creation of the world took place in 6 days. It is said in it that God first created light (day 1), sky and water (day 2), land and plants (day 3), heavenly bodies (day 4), animals (day 5), man (day 6). day). In some sources, there is a difference in the sequence.

Other peoples have different ideas about the creation of the universe. According to the Oceania peoples, Heaven is finally separated from his wife, Earth. However, love between them remained. The heavy sigh of the earth, its breath reaches the sky over the valleys and forests. People call it fog. The sky, in its turn, shed tears for its beloved. People call these tears dew.

In the ancient Hebrew language, "Adam" is a word man, "earth" is derived from "Adam", referring to creation from the soil. In the Babylonians, the god Bel cut off his head, and the rest of the gods created people from his blood and clay. Khnum, the father of Egyptian gods, created people on the potter's wheel.

Prometheus also created people from dust. Among the inhabitants of the Pacific Islands, it was believed that man came into the world from a mixture of soil and the blood of various animals. They believed that a person's character depended on which animal blood flowed in his veins. For example, whoever had rat blood was a thief, snake blood was a coward, rooster blood was brave (Alimova, 2022).

After several periods, especially the bear, a physically strong animal, received more attention and was finally transformed into a god of wealth and prosperity. As time passed, religious views also changed. The content of religious legends and the practice of religious beliefs have also altered.

In the Philippine Islands, there is a legend that God created the sea, land and plants, and then man. People were distinguished by the color of their skin, good or bad humanity, depending on what kind of soil they were made of. The Maydu Indians of California believe that the first man was created by a being, who descended from the sky on a rope made of bird feathers. According to the legend, the body of that Being was shining like the sun, and his face was hidden from view. This narrative helps ufologists to enrich their imagination about extraterrestrials (Alimova, 2019b).

There was a classic Chinese narrative about the creation of the world in the book "Creation stories around the world". This narration is called "Pan Gu and Nu Wa" and it was expressed as follows: Long ago, when the Sky and

the Earth were one, the whole Universe was surrounded by an egg-shaped cloud. The whole universe revolved inside this egg. The root of the rotation was Pan Gu. He developed and slept in the egg for 18 thousand years. After all, one day he woke up and cracked open the egg to realize existence. Light, pure things went to Heaven and the Sky, and impure things feel down to Earth.

Then Pan Gu worried that the Throne and the Earth would be reunited and decided to separate them, holding the sky above his head and the Earth under his feet. Pan Gu held them for another 18 thousand years without changing, and during these years he also grew. When the sky was 30,000 miles away from the earth, he realized that it was all stable, and soon he died. Earth gained special importance after his death. His hands and feet became mountains, his blood became rivers, and his sweat became rain and dew.

His voice turned to thunder and his breath to wind. His hair became grass and his veins became roads. His teeth and bones turned into minerals and rocks. From his flesh came dust. Above, his left eye became the Sun and his right eye became the moon. In this way, Pan Gu created the world as it is today (Creation stories around the World, 2000).

The creation of the Universe in the myth spread in Mesopotamia is described as follows: "There was no name for either the sky or the Earth in the past. Aspu, the goddess of fresh water, Tiamat, the goddess of the oceans, and Mummu, the goddess of radiance emanating from them, were still united together.

There were not even mountains rising to the surface of the water, pastures, reeds-swamps. Gods began to be born from Song, Aspu and Tiamat. This continued until the birth of the god of rivers, Ea. Tiamat gathered an army of dragons and creatures and made the god Kingu its leader. Marduk, son of Ea, controlled the gods in order to win this battle. When the other gods agreed, Marduk was given a royal robe and a scepter. Marduk fought with Kingu's army of creatures.

In battle, Marduk overcame Tiamat and threw half of her body into the sky and created the heavens, while roaming the heavens he created the stars and the moon. From the second part of Tiamat's body, Marduk created the earth above the pure water of Aspu. From his eyes, he created tigers. As he roamed the earth, he created seeds and herbs, pastures and fields, rain and seeds, cows and sheep, forests and orchards. Then Marduk brought Kingu, Tiamat's commander, to the gods and executed him. Nintu created a human being from his blood, earth and elements of other gods (Creation stories around the World, 2000).

The history of the search for the underlying essence of the universe also goes back to the distant past of science. To illustrate, some philosophers in

ancient India and China, in Egypt and Babylon, in ancient Central Asia and Greece believed that there is some substance or certain element at the base of the universe. Some of them considered this element to be fire, others to be water or air, and some to be earth. According to some philosophical teachings, it is said that fire, air, water and earth were the basis of the Universe, and all things were formed from the combination of these four elements (Turaeva, 2017).

Religious conceptions of the world interpret complex issues related to its future, creation, or past, mainly as a product of divine power. In religion, the world is divided into "this world" – "transitory world" and "the other world" – "eternal world". It is based on the idea that in return for someone's hardships in this world, a person will enjoy the pleasures of another world.

Science has its own way of thinking about the universe. It tries to prove complex issues related to the Universe based on logical arguments from practical experiences. Events that deviate from existing scientific logic are not explained. For this reason, some miraculous phenomena are not included in the object of scientific research (Abdullaeva, 2019).

The visions of the world are one of the visions of the peoples of the world for all times. These visions are sometimes religious and sometimes scientific. Some people, based on their knowledge and experience, interpreted the visions of the universe differently from religious views. In human history, there were also periods when religious views prevailed, scientific hypotheses and scientific results were negatively treated (Ernazarov, 2014; 2018).

Such periods took place in medieval Europe, and the church dominated every aspect of life. In those times, like other issues, the creation of the universe was approached from a religious point of view. It is known from historical sources that the Church declared those who opposed its beliefs as "heretics" and burned them at the stake (Alidzhanova, 2019).

According to Islamic sources, Allah the Almighty created the Earth and sky from Sunday to Friday, that is, in six days. If the Jews say that they rested on the seventh day, that is, on Saturday, Christians claim that they finished Saturday from Monday and rested on Sunday. According to the creed of Islam, such claims are wrong. After all, Allah the Almighty never gets tired and He does not need rest, sleep, or pleasure. He was able to create everything he created in six days in an instant, but he wanted to create in six days to be an example to his servants, to encourage patience, and with other wisdom unknown to humans.

According to the teachings of Islam, the creation of the Universe was by God and all things in existence praise God. The wisdom of God's creation of the Universe is known only to God, but scholars say that the wisdom of this is to introduce oneself to the things that God has created. The fact that God created the world in six days, the throne, the chair, and the arrangement

of all affairs is in the will of God are among the things that muslims must believe (Isakdjanov, 2019). In this regard, it is said in "Aqida al-Nasafi": "The world with all its objects is a joint phenomenon.

That is, it was created at some time. So, the universe consists of complex and uncomplicated independent bodies and bodies that are not independent, but are dependent on other bodies... The creator of the universe is Allah." God created mankind only to worship God and provided all the blessings on earth for mankind. God created Adam in Paradise, then he came down to Earth and saw a lot. God sent prophets to people and called them to guidance. The movement of bodies in the universe, the movement of the Sun, the Moon and the planet Earth, night and day, water and air - the movement and process of all this is by the will of God. Allah has made all these signs and signs to reveal Himself.

The scientific directions of world mythology can be classified as follows:

- "Anthropological school" built on the basis of the achievements of English comparative ethnography (E. Taylor, E. Lang, G. Spencer, J. Fraser).
- The "ritualist school" of Cambridge mythologists (D. Harrison, F. M. Cornford, A. B. Cook, G. Murry) who studied myths and rituals in their interrelationship.
- "Social school" of French ethnologists, who studied the spiritual foundations of primitive culture (E. Durkheim, L. Levi-Bruhl).
- "Symbolist school" (E. Kassier, W. Wundt, K. G. Jung-Germany), which highlighted the uniqueness of mythological thinking as an intellectual phenomenon.
- "Structural school", which analyzed myths from different points of view in the works of representatives (K. Lévi-Strauss-France).
- Uzbek mythology was researched by G'. Akramov, B. Sarimsakov, T. Haydarov, T. Rahmonov (myth and epic), M. Joraev, Sh. Turdimov (series of images and genetic basis of Uzbek mythology), Sh. Shomusarov (comparative analysis of Uzbek and Arab mythology).

Mirca Eliade (1996) gives the following information on the issue of sacrifice to the gods: "Agreeing to sacrifice according to one's own will is called Mariah. He could live a full life among people, build a family, have children. A few days before the sacrifice, he was deified. Others bowed to him and danced around him. Then they asked for salvation from the Earth and prayed: "O Goddess (Mother-Earth), we offer you this sacrifice. Give us abundant harvest, good seasons, good health!".

Then they turned to the victim and said: "We did not take you by force, we bought you. Now we offer you as a sacrifice, and there is no sin against us". Finally, Meriah was drugged with opium, made unconscious and strangled. Then they cut his body into pieces and spread them around the villages. Those parts were buried in the fields. The rest of the body was cremated and its powder was scattered on the ground."

In the study of primitive religions, epics are of great importance. Epos (Greek epos — word, story) – 1) a type of fiction (along with lyrics and drama); 2) a work reflecting the heroic past of the nation. Initially, the epic meant the works in which the struggle of the heroes against the evil forces and people with corrupt intentions in the world was described (Turdiyeva, 2020). The interpretation and description of the events in the ancient epics was based on the people's worldview and beliefs of that time.

As the oldest examples of the epic, "Gilgamesh", then "Ramayana" and "Mahabharata" of Indians, "Iliad" and "Odyssey" of Homer, "Alpomish", "Goroghli" of Uzbeks, "Manas" of Kyrgyz, "Qoblandi botir" of Kazakhs, "Koroghli" of Azerbaijanis, "Song about the Nibelungs" of the German, "Song about Cid" of the Spanish also belong to folk heroic epics. The legends of "To'maris" and "Shirok", "Zarina and Striangiya", and "Zariadr and Odatida" about the people's heroes, who fought heroically against the Iranian invaders who invaded Turan, are also examples of folk heroic epics (Mukhamedov and Turambetov, 2021).

Conclusions

The epic appeared in the early stages of the development of society, not because of the change of class relations, but when the national spirit of a particular ethnic group awakened and began to imagine itself as an ethnic unit living by inviolable moral and spiritual rules, and not just a group of people.

In the study of primitive religions and mythology, ancient religious beliefs and epics of African and American peoples, "Religions and mythology of the peoples of the Ancient East, Ancient Greek and Roman religions: pantheon of gods, mythology, peculiarities of religious beliefs of Slavic peoples, Germano-Scandinavian religions and mythology , religions and legends of the peoples of ancient India, aspects of the religious system of ancient China and Japan, ancient religions and mythology of the peoples of Central Asia and other such topics can be studied.

In these topics, information is given about the first religious ideas, ancient legends and narratives, their general description, classifications, the history of their creation, their essence, and their specific aspects. The systematic

description of primitive religions and mythology greatly contributes to the humanization of the consciousness of the growing generation, helps to have a new attitude to the monuments and achievements of world culture, increases the independence of young people's worldview, increases their spiritual level and interests.

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Legal Regulation of Employment of the Population of Ukraine

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Abstract

The main objective of the study was to identify the key legal norms and aspects of employment of the Ukrainian population The method that has been applied is the functional modeling methodology. In this regard, the purpose of the study was to propose a model of the legal support system to stimulate the demand for labor. In the conditions of the market economy, the employment factor of the population is a determining factor in shaping the socio-economic situation of any country as a whole and, of each individual in particular. Therefore, one of the most important functions of the public administration is the study and proper application of the legal regulation of labor activities. It is concluded that the labor market, as an important and multifaceted area of the economic and socio-political question of society, requires qualified regulation to increase the efficiency of its functioning. Thus, the creation of an effective system of regulation of the sphere of employment is needed as one of the main social measures for the development of society in the XXI century.

Keywords: labor standards; labor market; state policy; social laws; legal regulation.

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Regulación jurídica del empleo de la población de Ucrania

Resumen

El objetivo principal del estudio fue identificar las normas y aspectos legales clave del empleo de la población de Ucrania El método que se ha aplicado es la metodología de modelado funcional. En este sentido, el propósito del estudio fue proponer un modelo del sistema de apoyo legal para estimular la demanda de trabajo. En las condiciones de la economía de mercado, el factor empleo de la población es determinante en la conformación de la situación socioeconómica de cualquier país su conjunto y, de cada persona en particular. Por tanto, una de las funciones más importantes de la administración pública es el estudio y adecuada aplicación de la regulación jurídica de las actividades laborales. Se concluye que el mercado de trabajo, como área importante y multifacética de la cuestión económica y sociopolítica de la sociedad, requiere de una regulación cualificada para aumentar la eficiencia de su funcionamiento. De modo que se necesita la creación de un sistema eficaz de regulación de la esfera del empleo como una de las principales medidas sociales para el desarrollo de la sociedad en el siglo XXI.

Palabras clave: normas laborales; mercado de trabajo; política estatal; leyes sociales; regulación jurídica.

Introduction

In any society, there is a relationship between the number of able-bodied population and the nature and degree of its participation in social production. The totality of public relations associated with the provision of work can be considered as employment. This category reveals one of the most important aspects of the social development of a person to meet his needs for work (Brammer and Walker, 2011). As a socio-economic category of employment, it characterizes the activities of citizens related to the satisfaction of personal and social needs, which does not contradict the current legislation.

The right of citizens to employment and employment assistance is a guarantee of the right to work. This comprehensive right consists of the rights to: employment; free professional training and retraining; professional activity abroad; appeal against unlawful actions of the employment service, including in court.

In general, the institution of employment of the population is complex, since it covers not only the norms of labor, but also administrative law, as

well as social security rights. For example, the procedure for the activities of state bodies engaged in employment is regulated by administrative and legal norms, and the provision of social protection in the event of unemployment is regulated by social security. Everyone has the right to a freely chosen employment (Bidwell *et al.*, 2013).

Realization of the right to choose a place, type of activity and type of occupation is carried out by independently providing a person with his employment or applying for employment to an employer or with the assistance of a central executive body that implements state policy in the field of employment and labor migration or a business entity that provides services for employment mediation. Forced labor in any form is prohibited (Bray and Waring. 2005; Brewster and Bennett, 2010).

Voluntary unemployment of a person cannot be a basis for holding him liable. The nature of unemployment can vary. Unemployed persons can be conditionally divided into "actively unemployed" (unemployed, registered with the state employment service, actively looking for a suitable job and ready to start it) and "passively unemployed" (citizens not engaged in socially useful activities - as such, who do not want to work for any reason (non-working pensioners and persons with disabilities) (Cotton, 2015).

Thus, the theoretical foundations of the legal regulation of employment in the system of state economic policy are based on the study of two interrelated areas - social and economic. Obviously, the most important criterion for the social orientation of the economy is the attitude towards employment, which should be considered as an integral part of a comprehensive social policy.

This should take into account the following social aspects of employment; indivisible connection of employment with the most important constitutional human right - the right to work; the determining role of employment in shaping the standard of living and decent living conditions; the formation of a new motivation for highly efficient work as the basis for the growth of the welfare of everyone and society as a whole; it is labor activity that transforms a person, reveals and multiplies his professional capabilities, stimulates the development of personality.

1. Materials and methods

For a more detailed study of the legal norms and aspects of employment of the population of the country, the following methods were used: induction and deduction, comparison and systematization; synthesis and analysis; abstract-logical - for theoretical generalizations and conclusions of the study.

To more accurately reflect the legal norms and aspects of employment of the population of the country, we used the IDEF0 functional modeling method.

2. Literature review

Based on the results of the theoretical analysis (Chung *et al.*, 2014; Kryshtanovych *et al.*, 2022), the strategic goal of the system of legal regulation of employment of the population is to achieve full, productive, freely chosen employment, which will allow each citizen to provide himself and his family with comfortable living conditions with his work, will contribute to the growth of the efficiency of social production, and create appropriate conditions for the development of the personality of the worker.

According to scientific research (Sylkin *et al.*, 2022), the main areas of legal support in the field of employment include:

1) creating conditions for the development of the economy and promoting the creation of new jobs;
2) meeting the demand of priority sectors of the economy in highly skilled workers;
3) strengthening the motivation for legal and productive work;
4) activation of entrepreneurial initiative and self-employment of the population;
5) improvement of the vocational training system, taking into account the interests of the individual, the needs of the economy and the labor market;
6) assistance to enterprises, institutions and organizations, regardless of the form of ownership, type of activity and management in the professional development of employees;
7) balancing supply and demand in terms of the volume and skill level of the labor force in the labor market by systematically forecasting the needs of the economy;
8) promotion of employment of citizens.

Increased scientific and practical interest is observed in changes in the legal order regarding the transformation of the labor market in the conditions of market relations, since they directly affect all categories of the country's population (Cortés-Sánchez, 2018; Pencea and Curteanu, 2020). Under these conditions, a new model of labor relations is being formed, which has a different effect on different categories of workers, on their

relationships with different social groups. That is why the organizational and economic mechanism for managing the employment of the population in the current conditions of transition to the market is an urgent scientific problem.

3. Research Results and Discussions

It should be noted that the mechanism of legal regulation of employment of the population, in addition to the general characteristics of its constituent elements, must be dynamic and effective in terms of the implementation of norms related to employment of the population (Dencker and Fang, 2016).

The legal framework for employment and employment is currently an integral system of normative legal acts, which includes: on the one hand, normative legal acts that directly regulate employment and employment issues, on the other hand, acts regulating other social relations, but containing separate norms affecting employment relationship.

Methods and measures to regulate employment are divided into active and passive, ideas about which are formed by the practice of using methods of state regulation of the labor market. The list can be differentiated as follows (Broschak and Davis-Blake, 2006):

- according to the objects of influence. The objects can be the population and its separate groups, workers and separate groups, as well as entrepreneurs and their separate groups. The objects of labor market regulation can also be labor relations, including wages, working hours, working conditions, etc., social relations;
- directions of influence. These include measures to increase (decrease) the supply of labor in the labor market; measures to increase (decrease) demand in the labor market; measures to influence the structure of demand and supply of labor; measures to increase the matching of supply and demand;
- according to the form of influence, methods are divided into direct and indirect;
- according to the nature of the impact, regulation methods can be divided into encouraging, restrictive, protective and prohibitive;
- according to the content, the methods are differentiated into economic, administrative and administrative-economic.

Economic methods include, for example, supporting economically viable jobs, organizing public works, specialized investment to create new jobs, supporting small businesses, etc.

Administrative methods include reducing the retirement age and the length of the working period, limiting the number of jobs and the possibility of combining jobs for one person (Cullinane *et al.* 2014; Crouch, 2015).

- according to the level of influence, the methods of labor market regulation are divided into national, regional, sectoral, intra-company;
- by sources of financing the state budget, extra-budgetary funds, funds of commercial organizations.

It should be noted that the regulation of employment reaches its highest effect in those countries in which, firstly, the employment policy is built into the general economic mechanism for the functioning of the public economy; secondly, the measures of the state employment policy are focused not only on the territorial level of implementation, but also take into account the industry level, that is, they are carried out not only by the state employment service, but also provide for the activity of industry organizations and events; thirdly, the main lever of the employment policy is laid down in the general economic mechanism - the stimulation of demand, including demand for labor; fourthly, the sphere of employment policy includes the most significant aspects of wage regulation, strengthening labor motivation, etc. In other words, a government active employment policy should not be limited to employment promotion activities (Sylkin *et al.*, 2021).

In our opinion, the most important lever of employment policy is the regulation of labor demand, which, as you know, can be individual and aggregate. Individual demand (the demand of an individual employer) depends on the several factors (Table 2.)

Table 1. Factors affecting the implementation of legal regulation of individual employment in the country.

Factor	Meaning
1	demand for the company's products, because the employer needs the labor force, first of all, as a production resource for creating new goods and services. The demand for labor, in other words, is derived from the demand for the firm's product
2	the state of production (the size and efficiency of capital, the features of technology, the perfection of methods for organizing production and labor)
3	the qualities of the individual labor force (education, professionalism, productivity, ingenuity, versatility, universal human qualities: diligence, discipline, attentiveness, thoroughness, etc.).

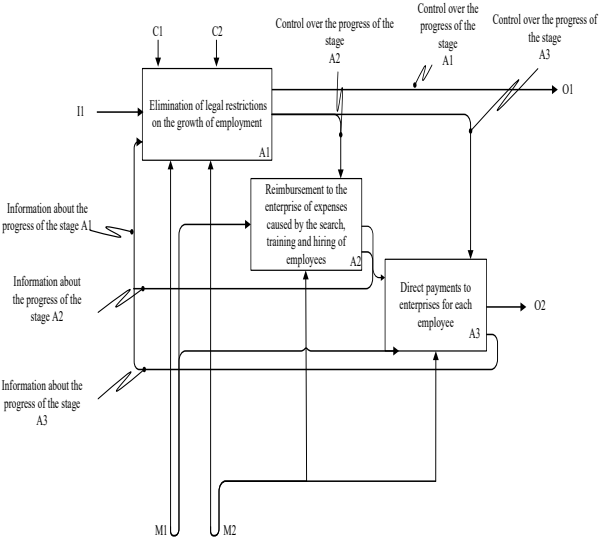
Source: own elaboration.

The implementation of the rights of citizens in the field of legal regulation of employment is carried out taking into account the following principles (Rodriguez *et al.,* 2017):

1. the priority of ensuring full, productive and freely chosen employment in the process of implementing an active socio-economic policy of the state;
2. the responsibility of the state for the formation and implementation of policies in the field of employment;
3. ensuring equal opportunities for the population in the implementation of the constitutional right to work;
4. promoting the effective use of labor potential and ensuring social protection of the population from unemployment.

In our opinion, a number of legal measures can contribute to stimulating the demand for labor (Fig.1.)

Fig.1. Model for improving the legal support stimulating the demand for labor



Source: own elaboration.

The creation of legal conditions for the formation of a flexible labor market is an objective prerequisite for the development of the economy in

recent decades. The need for such an event is due to increased production flexibility, which results in diversification of production, an increase in small production units, an increase in the number of consumer-oriented mobile small enterprises, and the development of contract forms. Within the framework of this system, various flexible forms of wages, employment and organization of working hours are widely used.

Flexibility in the use of labor force, its mobility between enterprises, within enterprises, professions, as well as the involvement of workers in the economic affairs of the company are also important. At the same time, the solution of social problems is becoming more complicated: the instability of the state of temporary workers and those working in conditions of flexible working hours is increasing, the number of workers eligible for benefits and social security payments is decreasing.

Thus, the legal regulation of employment is an integral part of managing the development of society, ensuring sustainable economic growth of the country, since the state economy is an integral system and functions as a single organism.

In this regard, the priority areas of legal regulation of employment of the population should be the legal support of the following state measures:

- employment of the unemployed population and assistance in career guidance, training and retraining of personnel;
- promoting the creation and development of a flexible labor market and non-standard forms of employment;
- legal support of labor relations;
- social protection of the population with the status of the unemployed (material assistance, payment of unemployment benefits, unemployment insurance, etc.);
- conducting economic policy in the interests of employment;
- increasing investment activity in all aspects of the economy;
- curbing the outflow of capital behind the cord, which entails the withdrawal of investment resources from domestic production and the reduction of jobs and stimulation of their influence.

The labor market as a set of social relations, social, legal norms and institutions is designed to ensure the reproduction, exchange, distribution and efficient use of labor. Modern society puts everyone in the framework of the need to provide for themselves, their families, children. In this context, modern society and the labor market dictate new conditions for the formation and implementation of legal support for employment processes. In this regard, the implementation of the above methods and models is a critical process for both workers and the entire state.

Conclusions

The global economic crisis could not but affect the socio-economic development of both the country as a whole and individual region in particular. In the region's economy, there is a decline in production volumes in almost all sectors. This, in turn, affected the reduction in demand for labor force, the level of employment in such sectors as industry, agriculture, and construction, which traditionally determined the structure of the labor market in the region, decreased. The transformation of the labor market in the context of globalization occurs under the influence of a large number of factors and is characterized by a number of features.

The change in demand for labor is determined by structural changes in national economies. The solution of employment problems at the regional level will help an effective state employment policy, which should be based on the principles of priority, ensuring full, productive and freely chosen employment in the process of implementing socio-economic policy. The state should be interested in the efficient use of human capital and ensuring social protection of the population from unemployment.

Thus, the legal regulation of employment of the population depends on the pace and nature of market transformations. It provides for a system of adaptation of different categories of the unemployed population to the requirements of the labor market, as well as a system of social protection for unemployment and persons with limited competitiveness.

The main task of the legal regulation of the processes of employment of the population at present should be the reorientation of the course of solving social problems to the expansion of the labor market, and this requires a clear organization of assistance in providing or finding work to everyone who wants to work. And only a comprehensive solution of these problems can lead to their successful solution.

The entire content of the activities of state administration bodies in implementing the policy of legal regulation of employment of the population should reflect the full range of active and passive measures of the state in the labor market and apply the most effective methods and methods of public administration, taking into account the characteristics of a particular region.

Also, an important factor in reducing social tension between the authorities and the most vulnerable segments of the population at the present time should be the support of small and medium-sized businesses. Government bodies must guarantee to all entrepreneurs, regardless of the organizational forms of entrepreneurial activity chosen by them, equal rights and create equal opportunities for access to material, technical, financial, labor, information, natural and other resources.

As a result of the study, current legal norms and aspects of employment of the population of the country were investigated.

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Automated system of court enforcement proceedings as element of information provision for compulsory enforcement of decisions

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Abstract

The aim of the article was to suggest ways to improve the legislation regulating the scope of operation of the automated system of judicial enforcement proceedings, in order to increase the effectiveness of enforced execution of decisions while respecting human rights. The methodology of the article was based on the application of the following methods of scientific cognition: analytical, deductive, hermeneutic, comparative and synthesis. In addition, the authors analyze the legal regulation of the operation of the automated system of execution of court judgments, as an element of information provision for the forced execution of resolutions and, at the same time, have revealed the gaps in its legal regulation and, consequently, have suggested the ways to eliminate them. It was definitely established that there was no need to amend the legislation concerning the distribution of enforcement documents among private enforcement officers within their districts of jurisdiction. In the conclusions it was offered to improve certain provisions of the Ukrainian legislation regulating the provision of information on compulsory enforcement of decisions, in particular, to give the prosecutor access to information on judicial enforcement proceedings on an equal footing with the parties.

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Sistema automatizado de procedimientos judiciales de ejecución como elemento de suministro de información para la realización obligatoria de resoluciones

Resumen

El objetivo del artículo fue sugerir vías para mejorar la legislación que regula el ámbito de funcionamiento del sistema automatizado de los procedimientos judiciales de ejecución, para aumentar la eficacia de la ejecución forzosa de las decisiones respetando los derechos humanos. La metodología del artículo se basó en la aplicación de los siguientes métodos de cognición científica: analítico, deductivo, hermenéutico, comparativo y de síntesis. Además, los autores analizan la regulación legal del funcionamiento del sistema automatizado de ejecución de sentencias judiciales, como elemento de provisión de información para la ejecución forzosa de resoluciones y, al mismo tiempo, han revelado los vacíos de su regulación legal y, en consecuencia, han sugerido las vías para eliminarlos. Definitivamente se estableció que no había necesidad de enmendar la legislación relativa a la distribución de documentos de ejecución entre los funcionarios privados de ejecución dentro de sus distritos de jurisdicción. En las conclusiones se ofreció mejorar ciertas disposiciones de la legislación ucraniana que regulan el suministro de información sobre la ejecución obligatoria de decisiones, en particular, para dar al fiscal acceso a la información sobre los procedimientos judiciales de ejecución en igualdad de condiciones con las partes.

Palabras clave: procedimiento judicial de ejecución; ejecución forzosa de una resolución; sistema automatizado de procedimiento judicial de ejecución; suministro de información; resoluciones obligatorias.

Introduction

Information provision of enforcement proceedings plays an important role for its effectiveness, because the set of compulsory enforcement measures is closely related to the availability of the subject, who is authorized to compulsory enforcement of decisions, complete and reliable information necessary for execution of enforcement actions.

The study of theoretical and legal problems of information provision of court enforcement proceedings deserves scientific understanding and critical analysis, because it will contribute to the identification of gaps in its legal regulation, to the development of suggestions to eliminate its shortcomings and, as a result, to the increase of the effectiveness of compulsory enforcement of decisions.

The information systems of the Ministry of Justice of Ukraine in the direction of court enforcement proceedings include: Unified Register of Private Enforcement Officers of Ukraine; Unified Register of Debtors; Automated system of court enforcement proceedings (hereinafter – the ASCEP). Their difference is that:

1) the concept of the ASCEP is revealed by the legislation through the category of computer software that ensures the collection, storage, accounting, search, generalization, provision of information about enforcement proceedings, formation of the Unified register of debtors and protection against unauthorized access (Regulations on the Automated System of Court Enforcement Proceedings, 2016: paragraph 2, Section I (hereinafter referred to as the Regulations on the ASCEP).

The charter of the State Enterprise "National Information Systems", which is the administrator of the ASCEP, determines that the purpose of the activity of this enterprise is: "... performing economic activities in the sphere of creation, development, support, accompaniment, improvement, modernization and technical support of Unified and State registers, automated systems, databases and other information systems" (The Chapter of State Enterprise "National Information Systems", 2019 : paragraph 2.1). That is, the legislator distinguishes such concepts as Unified registers, State registers, automated systems;

2) some registers / unified state registers are defined by the legislator as components of the ASCEP, in particular:

- Unified state register of court enforcement proceedings – it is a separate special section that is an archival component of the ASCEP and contains information on enforcement proceedings registered before the introduction of the ASCEP;
- Unified register of debtors is the systematized database of debtors, which is a component of the ASCEP;
- Register of decisions, the implementation of which is guaranteed by the state, is an integral part of the ASCEP, where the accounting of decisions, the execution of which is guaranteed by the state, the inventory of debts due to these decisions and their transfer to the Treasury body, is carried out.

The ASCEP in accordance with the legislation, ensures the solution of a number of tasks, each of them is of great importance for the informational provision of compulsory enforcement of decisions (Law of Ukraine "On Enforcement Proceedings": Part 2, Art. 8).

The authors of this article have studied certain areas that are provided by the ASCEP, namely: the distribution of enforcement documents between state enforcement officers, provision of information about enforcement proceedings to the parties to the court enforcement proceedings, and the display of debtor's personal data in free access.

The purpose of the article is to suggest the ways to improve the legislation regulating the sphere of functioning of the ASCEP, in order to increase the effectiveness of compulsory enforcement of decisions while respecting human rights.

1. Methodology of the study

The methodology of this scientific article is based on the use of various methods of scientific research. The application of the analytical method contributed to the determination of the specifics of legal regulation of certain aspects of the functioning of the ASCEP. Due to the application of the deductive method, it was possible to determine the subject matter of scientific research.

The synthesis method made it possible to generalize the factors that affect the distribution of enforcement documents between state enforcement officers; this method was used in the formation of generalizations of proposals for improving legal regulation of the functioning of certain aspects of the ASCEP as an element of information provision of enforcement proceedings.

The hermeneutic method was used to clarify the content of law norms regulating the functioning of certain aspects of the ASCEP, namely: the distribution of enforcement documents between state enforcement officers, the provision of information about enforcement proceedings to the parties to court enforcement proceedings, as well as regulatory legal acts on the protection of personal data.

The method of comparison was used to compare law norms regulating the functioning of certain areas of the ASCEP, in particular, in regard to the distribution of personal data about the debtor-individual on the resources of free 24-hour access, to compare the judicial practice in cases relevant in terms of subject matter to the topic of this scientific article.

2. Results and Discussion

2.1. Distribution of enforcement documents between state enforcement officers

The ASCEP ensures the objective and impartial distribution of enforcement documents between state enforcement officials. It corresponds to the principles of enforcement proceedings and the principles of state executive service agencies' activities, such as fairness, impartiality, objectivity and openness.

The distribution of enforcement documents between state enforcement officials is carried out in accordance with Chapter III of the Provisions on the ASCEP (see Table 1). Such distribution is carried out in an arbitrary order by observing the order of priority, by the established coefficient and the number of enforcement proceedings that are being executed by the state enforcement official.

Table 1. Distribution of enforcement documents between state enforcement officials.

<table>
<tr><th colspan="4">Factors affecting the distribution of enforcement documents between state enforcement officials</th></tr>
<tr><td colspan="3">1. Arbitrary order of distribution.
2. Observance of order.
3. Considering the established coefficient:</td><td rowspan="5">Exceptions:
- execution of decisions of the European Court of Human Rights, decisions on confiscation within the case of violation of customs rules is carried out exclusively by state enforcement officials assigned by the head of the state executive service agency. Information about state enforcement officials who are entrusted with the execution of such decisions is entered into the ASCEP by the head of the state executive service agency;
- according to the decision of the head of the state executive service agency, other enforcement documents may be distributed to state enforcement officials who execute the decision of the European Court of Human Rights, the decision on confiscation within the case of violation of customs rules.</td></tr>
<tr><td>Coefficient's title</td><td>Coefficient's essence</td><td colspan="2">Notes</td></tr>
<tr><td>Full coefficient</td><td>Distribution of enforcement documents is carried out without restrictions</td><td></td><td></td></tr>
<tr><td>Average coefficient</td><td>Distribution of enforcement documents is carried out at the level of 1/2 of the full coefficient</td><td></td><td rowspan="2">Average, low or zero coefficient is used for the deputy head of the state executive service agency</td></tr>
<tr><td>Low coefficient</td><td>Distribution of enforcement documents is carried out at the level of 1/3 of the full coefficient</td><td rowspan="2">Low or zero coefficient is used for the head of the state executive service agency</td></tr>
<tr><td>Zero coefficient</td><td>Distribution of enforcement documents is not carried out</td><td></td></tr>
</table>

Source: compiled by the authors.

The legislation provides the regulation of the distribution of enforcement documents between state enforcement officials. The law does not provide the relevant procedure for the distribution of enforcement documents between private enforcement officials.

There are proposals in the literature regarding the need to add the list of already existing tasks of the ASCEP with the following ones: "ensuring the distribution of enforcement documents between private enforcement officials within the framework of the jurisdiction districts, where they carry out their activities" (Krupnova, 2017: 127); introduction of the mechanism for fair proportional distribution of enforcement proceedings between private enforcement officials, both that involve a significant reward and those that are socially significant but not profitable (Verba-Sydor and Vorobel', 2016 : 90).

The stated position is controversial, because:

- A private enforcement official initiates enforcement proceedings with compulsory execution of the enforcement document if there are the following conditions: a) there are no grounds for returning the enforcement document to the execution creditor without acceptance for execution; b) a private enforcement official did not exercise the right to return the enforcement document to the execution creditor without acceptance for execution; c) a private enforcement official is authorized to compulsory execution of the decision according to the relevant enforcement document; d) the enforcement document presented for compulsory execution to a private enforcement official in accordance with the Art. 24 of the Law of Ukraine "On Enforcement Proceedings".
- The implementation of the proposal regarding the distribution of enforcement documents between private enforcement officials within their jurisdiction districts may lead to a violation of the principle of discretion as one of the principles of enforcement proceedings. Has reasonably noted that "dispositiveness is inherent in all stages of enforcement proceedings. Thus, enforcement proceedings are initiated on the basis of the execution creditor's application about compulsory enforcement of the decision" (Zolotarenko, 2016: 39).

As an interim conclusion we should note that the distribution of enforcement documents between state enforcement officials is carried out by the ASCEP taking into account the factors clearly defined by law and ensures the objectivity and impartiality of such a distribution. It is not considered appropriate to amend the legislation in regard of the ASCEP distributing enforcement documents among private enforcement officials within their jurisdiction districts.

2.2. Provision of information about enforcement proceedings to the parties of court enforcement proceedings

The ASCEP is computer software, with the help of which the parties to enforcement proceedings can access data about enforcement proceedings. It is special computer software that makes it possible for legal entities and individuals to obtain access to state and territorial information systems of state authorities and local self-government agencies (Lata *et al*, 2022). Therefore, the ASCEP is an element of public information service.

Access to the information of the ASCEP to the parties of enforcement proceedings is provided by using: 1) means of electronic identification with a high level of trust through: the web portal of the Ministry of Justice of Ukraine; Unified state web portal of electronic services in the manner determined by the contract concluded between the holder of the ASCEP and the holder of the Unified state web portal of electronic services; 2) the identifier for accessing information about enforcement proceedings, which is specified in the certificate of registration of the enforcement document and the resolution on the initiation of enforcement proceedings, through the official website of the Ministry of Justice of Ukraine.

Snidevych rightly draws attention to the fact that the parties to enforcement proceedings do not see this information in the ASCEP, despite the fact that the following must be included in the ASCEP: information on the implementation of all enforcement actions and the adoption of all procedural decisions within enforcement proceedings; information on all documents received at the request of the state enforcement official; statements of the parties to enforcement proceedings, responses to them and their scanned copies.

The ASCEP only provides the parties with the opportunity to familiarize with certain resolutions adopted by enforcement official within enforcement proceedings, which is incorrect (Snidevych, 2019). We consider it expedient that such familiarization should be carried out remotely during the Coronavirus pandemic and the war in Ukraine, taking into account the capabilities of the ASCEP. Therefore, we support the conclusions of Snidevych.

The literal interpretation of the provisions of the current Ukrainian legislation makes it possible to conclude that the prosecutor as a participant in enforcement proceedings does not have the same access to the ASCEP as parties to enforcement proceedings (Law of Ukraine "On Enforcement Proceedings": paragraph 2, Part 2; Regulations on the ASCEP: Art. 8, paragraph 2 of Chapter VII).

However, the prosecutor is a separate participant in enforcement proceedings having the right to familiarize himself with the materials of

enforcement proceedings, and upon his application (in case of representing the interests of a citizen or the state in court), the enforcement official may begin compulsory enforcement of the decision (Law of Ukraine "On Enforcement Proceedings": Part 1, Art. 14, Part 1, Art. 19, paragraph 2, Part 1, Art. 26).

Therefore, it is expedient that the prosecutor, as a participant in enforcement proceedings, should be provided with information about enforcement proceedings through the access to the ASCEP on an equal basis with the parties to enforcement proceedings. For this purpose, amendments should be made to paragraph 2, Part 2, Art. 8 of the Law of Ukraine "On Enforcement Proceedings", paragraph 2, Chapter VII of the Regulations on the Automated System of Court Enforcement Proceedings by supplementing with the words "prosecutor as a participant in enforcement proceedings" after the words "parties of enforcement proceedings".

2.3. Displaying personal data of debtors in free access

The Ministry of Justice of Ukraine provides free and non-repayable access to the information of the ASCEP in the Internet on its official website with the possibility of viewing, searching, copying and printing information. Such information includes data on the date, month and year of birth of the debtor-individual.

According to the British Data Protection Act, personal data is defined as any information relating to an identified or identifiable individuals (Data Protection Act, 2018). The concept of personal data in the General Data Protection Regulation (EU) No 2016/679 is defined in much the same way, and there are factors that are specific to physical, physiological, genetic, mental, economic, cultural and social identity of such an individual among the identifiers, which assist to identify an individual (GDPR, 2016: Art. 4). Therefore, the date of birth of an individual should be related to the factors identifying such a person and therefore, should be related to personal data.

It has been concluded in the Law of Ukraine "On Information" (second sentence of Part 2 of the Art. 11), as well as the Decision of the Constitutional Court of Ukraine of 30 October 1997 No. 5-zp (the case of K.H. Ustimenko) that the date of birth is classified as confidential information (The Decision of The Constitutional Court of Ukraine No. 2-rts/2012 1-9/2012, 2012). Therefore, we conclude that the ASCEP contains personal data, including confidential information about individuals.

The Constitution of Ukraine provides the prohibition of collecting, storing, using and distributing confidential information about a person without his / her consent, except cases specified by law, and only in the interests of national security, economic well-being and human rights (Constitution of Ukraine, 1996: Part 2, Art. 32). The Law of Ukraine "On

Information" contains a similar provision (first sentence, Part 2, Art. 11). However, the date of birth of the debtor-individual is displayed on the website of the Ministry of Justice of Ukraine in the free access to the information of the ASCEP in the Internet.

According to the General Data Protection Regulation (EU) No. 2016/679, one of the principles of processing personal data is that such processing of personal data must be carried out in a way that ensures its adequate security, in particular the protection of personal data against unauthorized or illegal processing (GDPR, 2016: paragraph f, P. 1, Art. 5). In this regard, it is rightly noted in the literature that the entity collecting and processing data is fully responsible for implementing security measures that must be commensurate with the risks of certain data entities (Didenko *et al*, 2022).

There is a question: if the date of birth of a debtor-individual is displayed in the free access to the information of the ASCEP in the Internet on the website of the Ministry of Justice of Ukraine, how can such data be protected from unauthorized / illegal processing?

This problem becomes especially urgent in terms of the war in Ukraine, because the enemy may use the collection of personal data of individuals for their illegal activities. Therefore, some scholars rightly point to a cyberattack as one of the main tools of hybrid warfare. A specific feature of cyberattacks is the difficulty in proving the involvement of states in them. Thus, cyber warfare and cyber espionage are ideal weapons of hybrid warfare (Rekotov *et al*., 2022).

We agree with those researchers who point to the overwhelming latency of destructive information activities in the Internet, which is associated with the effort to hide the interest and involvement of the initiating subject in the implementation of such activities (Chernysh *et al*., 2022). Therefore, the conditions of the war exacerbated the problem of the validity of the distribution of personal data in the Internet.

Part 2 of the Art. 11 of the Law of Ukraine "On Information" contains the following wording: "... except for cases specified by law...". That is, we are talking about exceptions to the general rule of preventing the collection, storage, use and distribution of confidential information about a person without his / her consent. In this context: "Horpyniuk notes that "access to private information and its use without a person's consent is possible in cases directly defined by the laws of Ukraine, and only in the interests of national security, economic well-being and human rights" (Horpyniuk, 2014: 42).

Therefore, the Regulation on the ASCEP is a secondary legal act and cannot replace the law of Ukraine, the norms of which sanction the possibility of distribution of confidential data about a person without his / her consent, such as data about his date of birth.

Therefore, it is advisable to supplement paragraph 2, Part 1 of the Art. 8 of the Law of Ukraine "On Enforcement Proceedings" with the second sentence of the following content: "Free and non-payable access is provided to the following data: - last name, first name, middle name (if available), date, month, year of birth of the debtor-individual and last name, first name, middle name (if available) of the execution creditor-individual; – name, identification code in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations for the legal entity-debtor and the execution creditor-legal entity; – number, date of initiating and status of enforcement proceedings; – the name and identification code in the Unified State Register of Legal Entities, Individual- Entrepreneurs and Public Organizations of the State Executive Service, or the last name, first name, and middle name (if available) of the private enforcement official who has (had) enforcement proceedings; – the number of the communication mean, the e-mail address of the state executive service agency (private enforcement official); - details of the account of the state executive service agency (private enforcement official) for paying debt due to enforcement proceedings".

Thus, the provisions of the Law of Ukraine "On Enforcement Proceedings", the Regulation on the ASCEP and the actual state of affairs regarding the free display of data about the date of birth of the debtor-individual in the ASCEP will be corresponded. With regard to the protection and preservation of the ASCEP data, in accordance with paragraphs 1 and 2 of Chapter XIV of the Regulation on the ASCEP, the Administrator of the ASCEP, which is the State Enterprise "National Information Systems", implements a set of programmatic, technological and organizational measures to protect information contained in the ASCEP from unauthorized access, and the Administrator is also responsible for preserving information contained in the ASCEP.

The situation is different regarding the display of data about the date of birth of the debtor-individual in the Unified Register of Debtors. We should note that the data about the date of birth of the debtor-individual must be contained in the Unified Register of Debtors (Law of Ukraine "On Enforcement Proceedings", 2016: paragraph 1, Part 6 of the Art. 9).

At the same time, information about debtors included in the Unified Register of Debtors is open and is placed on the official website of the Ministry of Justice of Ukraine (Law of Ukraine "On Enforcement Proceedings", 2016: paragraph 2, Part 1 of the Art. 9).

We will give two examples from judicial practice regarding the distribution of confidential information about a person. Thus, the court came to the conclusion in the decision of the Sixth Administrative Court of Appeal dated from July 9, 2020 in the case No. 640/3859/19 that neither the decision of the Constitutional Court of Ukraine dated from January 20,

2012 in the case No. 1-9/2012, nor the Constitution of Ukraine, nor the Laws of Ukraine: "On the Access to Public Information" and "On Information" include last names, first names, middle names of persons to the confidential information (The Decision of The Six Administrative Court of Appeal at case No 640/3859/19, 2020).

And the ruling of the same court dated from July 8, 2020, in the case No. 826/13619/18, states that the last name, first name and middle name are information about a certain individual who is identified or can be identified, and therefore this information is covered by the concepts of "information about individuals" and "personal data", which are protected by law (The Decision of The Six Administrative Court of Appeal at case No 826/13619/18, 2020).

The cited court decisions are interesting because similar disputes were heard by the same court with a difference of one day. However, the court provided radically different interpretations to the same regulatory legal acts.

The ruling of the Supreme Court as part of the Panel of Judges of the Cassation Administrative Court dated from April 16, 2020 in the case No. 804/4069/17 stated that the co-defendant violated the Art. 32 of the Constitution of Ukraine, the Laws of Ukraine "On Information" and "On Protection of Personal Data". According to the court, it happened due to the fact that the co-defendant indicated information about the personal data of the plaintiff, namely: address and date of birth in the request that was sent to the hospital institutions (The Decision of The Supreme Court at case No 804/4069/17, 2020).

The court in the ruling of the Supreme Court as part of the Panel of Judges of the First Judicial Chamber of the Civil Court of Cassation dated from June 7, 2022 in the case No. 761/20750/13-ts summarized that the absence of information about the date of birth of the debtor in the executive letter, if there is data about his last name, first name, registration number of the taxpayer's registration card and the residence address does not give rise to reasonable doubts about the identification of the debtor for the purpose of compulsory enforcement of the court decision (The Decision of The Supreme Court at case No 761/20750/13-ц, 2022). This ruling of the Supreme Court is very important for understanding the purpose of using personal data, in particular data about the date of birth of the debtor-individual.

Part 2 of the Art. 6 of the Law of Ukraine "On Access to Public Information" deals with restrictions on access to information. Some scholars rightly point out various components in the issue of restricting access to information, including the "protection of other people's rights", primarily the right to non-interference in personal and family life (the right to privacy). In this

case, we are talking about a conflict between two fundamental rights – the right to privacy and the right to information (Holovenko *et al.*, 2012).

The Constitutional Court of Ukraine in its decision dated from January 20, 2012 in the case No. 1-9/2012 paid attention to the systemic relationship between the provisions of Part 1 of the Art. 32 and Part 3 of the Art. 34 of the Constitution of Ukraine regarding the inadmissibility of violating human right to inviolability of personal and family life and on the realization of the right to free collection, storage, use and dissemination of information by a person (The Decision of The Constitutional Court of Ukraine at case No. 1-9/2012, 2012). Therefore, there is a problem of adequately balancing on the realization of various human rights, which has to be effectively resolved.

Conclusion

Given the purpose of this research, the following conclusions should be made. The ASCEP distributes enforcement documents among state enforcement officials, taking into account the factors clearly defined by law, which ensures the objectivity and impartiality of such distribution. It is not appropriate to amend the legislation so that the ASCEP distributes enforcement documents among private enforcement officials within their jurisdiction districts.

We consider it expedient for the prosecutor as a participant in court enforcement proceedings to provide information about enforcement proceedings through the access to the ASCEP, as well as to the parties to enforcement proceedings. For this purpose, we suggest that paragraph 2, Part 2, Art. 8 of the Law of Ukraine "On Enforcement Proceedings", as well as paragraph 2 of Chapter VII of the Regulations on the ASCEP after the words "parties of court enforcement proceedings" should be supplemented with the words "prosecutor as a participant in court enforcement proceedings".

The ASCEP suggested amendments to the Art. 8 of the Law of Ukraine "On Enforcement Proceedings" in order to correspond the provisions of the Law of Ukraine "On Enforcement Proceedings", the Regulations on the ASCEP with the factual state of affairs in regard to the free display of data on the date of birth of debtor-individuals.

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Población adulta mayor en la agenda de políticas de Ecuador: Una aproximación desde el neoinstitucionalismo

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Resumen

Los retos de la transición demográfica exigen acciones de Estado urgentes que recojan las necesidades y demandas ciudadanas de la población de 65 años y más. En este artículo se aborda la inserción de los problemas de la población adulta mayor en la agenda de políticas del Estado ecuatoriano. A tal efecto, se sigue una orientación cualitativa, bajo el marco teórico del neoinstitucionalismo. Para el análisis se hizo un recorrido de la trayectoria de la acción estatal en la historia reciente de la nación, en la que se identifican tres grandes facetas de la agenda: mínima inserción temprana, apertura neoliberal y de reconocimiento de derechos. La principal conclusión es que se trata de una agenda simbólica, afectada por una suerte de edadismo institucional, que coloca la problemática de las personas adultas mayores en una posición periférica en la política ecuatoriana, a pesar de la gran plataforma normativa con que cuenta el país y de un discurso gubernamental de amplio reconocimiento de este colectivo.

Palabras clave: agenda pública; adultos mayores; política social; neoinstitucionalismo en Ecuador; reconocimiento de derechos.

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Older people into the Ecuadorian policy agenda: A review from new institutionalism

Abstract

The challenges of the demographic transition require urgent State actions that meet the needs and demands of the population aged 65 and over. This article addresses the insertion of the problems of the older adult population in the policy agenda of the Ecuadorian State. For this purpose, a qualitative orientation is followed, under the theoretical framework of neoinstitutionalism. For the analysis, a review was made of the trajectory of state action in the recent history of the nation, in which three major facets of the agenda were identified: minimal early insertion, neoliberal opening and recognition of rights. The main conclusion is that it is a symbolic agenda, affected by a sort of institutional ageism, which places the problems of the elderly in a peripheral position in Ecuadorian politics, despite the great normative platform that the country has and a governmental discourse of broad recognition of this group.

Keywords: public agenda; older adults; social policy; neoinstitutionalism in Ecuador; recognition of rights.

Introducción

Los cambios demográficos que genera la transición a la vejez y los retos que ello supone para los respectivos estados han despertado muchos espacios de discusión pública y académica (Aranco *et al.*, 2018; Osorio *et al.*, 2018; Vila y Moya, 2021), dado el creciente número de personas mayores en las diversas regiones del mundo que demandan más servicios con características específicas. Uno de los puntos de debate se centra en la capacidad o interés con que el sistema público ha asumido (o no) en su agenda esas demandas, históricamente asignadas a la familia (Cohen y Benvenisti, 2020; Gonzálvez *et al.*, 2020).

Aunque América Latina goza de un alto porcentaje de población joven, poco a poco se ha sumado a esa discusión, debido al progresivo envejecimiento poblacional que muestran los datos regionales. De acuerdo con las proyecciones disponibles, para el año 2050 el grupo de personas mayores representará aproximadamente el 22% de la población de la región, que hoy se ubica en alrededor del 12% (Naciones Unidas, 2019; Comisión Económica para América Latina y El Caribe - CEPAL, 2009).

Lo preocupante de ese nuevo contexto demográfico es la difícil situación socioeconómica que experimentan muchas personas de 65 años y más, especialmente en América Latina. En esta región, aproximadamente, el

20% de la población mayor vive en situación de pobreza y extrema pobreza, mientras que un cuarto de ella no tiene acceso a ningún tipo de pensión (CEPAL, 2021).

El peso de esa problemática, sumado a la presión social (local e internacional), han sido el motor que ha impulsado la implementación de políticas públicas (Ashirifi *et al*., 2022; Barrios *et al*., 2018). Sin embargo, en la práctica, el sistema político no es capaz de recoger todas las necesidades del colectivo de personas mayores, no solo porque los recursos son escasos, sino porque la arena política es un escenario de lucha y dominio entre actores (Ostrom, 2011).

Además, para el Estado es difícil procesar todos los requerimientos sociales porque existen unas condiciones institucionales que favorecen o dificultan la participación, las interacciones y acciones públicas (Búa y Escobar, 2018). En esa lucha, no todos los temas de discusión llegan a convertirse en un problema público que amerite entrar en la agenda estatal.

Los adultos mayores en Ecuador tienen muchas demandas sociales que requieren ser abordadas a partir de políticas, pero efectivamente no todos los temas han entrado en la lista de gestión estatal. Bajo ese contexto, en este artículo se propone identificar cómo se insertan los problemas de la población adulta mayor (PAM) en la agenda de políticas del Estado ecuatoriano y qué características tiene esa agenda. Para el efecto se recurre al neoinstitucionalismo y el modelo de dependencia de la trayectoria (*path dependence*), como un esfuerzo para generar un aporte a la literatura existente y al debate sobre el análisis de las políticas sociales.

Para el neoinstitucionalismo, son las instituciones las que moldean el orden social, establecen reglas, visiones, representaciones o valores que constriñen las decisiones de los actores (Ostrom, 2011; Peters, 2019; Mahlmeister, 2021). Enfoque que permite un mejor acercamiento al análisis de las políticas para adultos mayores, pues la realidad ecuatoriana muestra que los mecanismos de intervención responden a las interpretaciones construidas desde la perspectiva estatal. De allí que, el análisis permitió determinar que, desde inicios del siglo XX, el Estado ecuatoriano ha implementado diversas acciones en el marco de políticas públicas acordes a las visiones institucionales a las que los actores y beneficiarios han tenido que adecuarse.

Los datos nos llevan a concluir que, a pesar de los avances, la agenda en cuestión es bastante simbólica, con una amplia declaración de buenas intenciones y una presencia operativa inestable y débil, afectada por una suerte de edadismo institucional. Término utilizado para denominar al conjunto de: "Reglas, políticas o prácticas de las instituciones que perjudican sistemáticamente a las personas en razón de su edad" (Organización Mundial de la Salud, 2021: s/p).

Además, la agenda para la PAM tiene unas características diferentes a lo largo de la historia del país, que pueden interpretarse a través de tres grandes facetas que siguen una trayectoria dependiente de ciertos eventos de la historia ecuatoriana. Ese ejercicio permitió identificar una agenda mínima en una fase de inserción temprana, otra; en un escenario de apertura neoliberal y una tercera en un periodo de amplio reconocimiento de derechos, pero débil gestión de las demandas de las personas mayores. En cada una de esas facetas ha ocurrido un evento que ha configurado la agenda actual.

1. Políticas públicas para la población adulta mayor y su análisis

En un escenario multidimensional de gestión pública encontramos a las políticas para adultos mayores, entendidas como aquellas: "Acciones organizadas por el Estado frente a las consecuencias sociales, económicas y culturales del envejecimiento poblacional e individual" (CEPAL, 2004: 59). Mediante estas políticas se busca generar resultados tendientes al logro de un mayor nivel de bienestar y autorrealización de la PAM, así como optimizar las oportunidades en materia de salud, participación y, seguridad, a través de lo que ha sido conceptualizado como: envejecimiento activo (Amira y Tur-Sinai, 2018; Barbarella *et al*., 2022).

Las políticas para adultos mayores se circunscriben dentro del amplio ámbito de las políticas sociales y tienen entre sus grandes desafíos la implementación de acciones que sean capaces de reconocer a las personas de ese grupo poblacional como sujetos sociales con derechos, con una gran heterogeneidad, que reclaman un tratamiento particular acorde con su edad (Barbarella *et al*., 2022).

Los marcos de análisis e interpretación de las políticas para adultos mayores o de cualquier tipología son diversos y en palabras de Parsons (2007), constituyen las herramientas del aprendiz, los modos de organización del proceso de estudio. Esas herramientas se han mejorado paulatinamente gracias al aporte de los diferentes teóricos, proporcionando un amplio rango de modelos, teorías y enfoques.

En resumen, se puede citar a los enfoques racionalistas, cognitivistas o institucionalistas, que se disputan el primer lugar de referencia en la disciplina de las políticas públicas (Fontaine, 2015; Córdova, 2017; Huang, 2021). Por otra parte, están las teorías de la elección racional (Askari *et al*., 2019) que transformaron totalmente el marco de análisis político, llegando a constituirse en un paradigma de gran influencia, vigente en la actualidad.

Entre ese amplio marco de herramientas se ha seleccionado al neoinstitucionalismo, enfoque con el que se analiza las formas de

representación de los problemas públicos de la PAM dentro de la agenda de gestión del Estado y permite un mejor acercamiento al tema planteado en este artículo. De manera complementaria se aprovecha el modelo de dependencia de la trayectoria (*path dependence*) para caracterizar la agenda pública en el ámbito en cuestión.

El neoinstitucionalismo parte de la premisa de que toda política pública se teje en el marco de un entramado institucional en donde se conjugan normas, creencias, marcos de interpretación, actores, mecanismos de coordinación u organización, recursos, formas de comportamiento o discursos (Roth, 2002). Todos esos elementos condicionan el accionar de los actores racionales, quienes deben ceñir sus intereses o demandas a ese marco institucional (Aligica, 2018; Peters, 2019).

La literatura muestra que hay varios neoinstitucionalismos con diversos nombres y apellidos (Roth, 2002; Fontaine, 2015; Queiroz *et al.,* 2018) que comparten la idea de que las instituciones importan (Skocpol, 2014; Mieleszko, 2021). Desde algunas miradas, se afirma que ese enfoque identifica a las instituciones como espacios en donde se determinan las reglas del juego para los actores racionales, cuyas decisiones y acciones marcan la arena política (Ostrom, 2011; Steinmo, 2019). Las instituciones, especialmente las estatales, revestidas de poder y autoridad, tienen la posibilidad de imponer una visión del problema público y en el marco de la agenda gubernamental, establecer las respuestas o alternativas a esos problemas, a partir de los valores que representan.

2. La agenda de las políticas públicas

La agenda pública en la que se inscriben los problemas y demandas de los actores ha recibido una amplia atención política y académica (Baumgartner *et al.,* 2020; Brasil y Jones, 2020; Niedhardt; 2020); especialmente la identificación de las causales o aspectos que hacen que se prioricen ciertos problemas y no otros, o que se tomen ciertas decisiones, mientras que otras son descartadas. Subirats (2001) y Fontaine (2015) nos recuerdan que aquello es el resultado de la definición del problema que ha resultado triunfante en el debate público y que, lo que finalmente se hace no siempre es la solución racional ni óptima, ni la que responde al problema más grave.

Los elementos causales para la incorporación de un problema dentro de la lista de gestión estatal son múltiples. Por una parte, están los modelos de inscripción en la agenda, determinados por la capacidad de incidencia de los actores (Garraud, 1990). Por otra parte, está la ventana de oportunidades de las políticas o la coyuntura pública que proporcionan las condiciones oportunas para posicionar ciertos temas (Kingdon, 2014; Hawkins y McCambridge, 2020).

De allí que para Elder y Cobb (1993), la formación de la agenda implica un proceso de toma de decisiones, de acuerdo con un contexto específico y podría decirse que, hasta único, que proporciona oportunidades para aplicar ciertas soluciones frente a un problema (siempre variable) que un grupo de personas o actores han definido como merecedor de la atención estatal. No obstante, bajo una tendencia neoinstitucionalista, Casar y Maldonado (2010) ponen énfasis en las estructuras y arreglos institucionales que revestidos de poder tienen la capacidad para agendar ciertos problemas. En esa línea, Barberà y Gerber (2022) reconocen que los actores políticos con capacidad de voto pueden decidir sobre los temas, pero siguiendo las reglas de los cuerpos institucionales.

Aunque no se subestiman las diversas influencias para la creación de la agenda, finalmente es el Estado el que generará ciertas condiciones para la definición de los problemas de acuerdo con las capacidades, intereses, reglas de juego, representaciones, marco normativo y recursos logísticos disponibles para encararlos.

Pero muchos temas han entrado en la lista de gestión y se han quedado allí, por lo que Roth (2002) advierte que la agenda puede tener una posición simbólica, con respuestas que nunca llegan o simplemente se retrasan, concluyendo que un problema entra efectivamente en la agenda cuando se asignan recursos y se concretan acciones. Elementos teóricos que proporcionan una guía para nuestro análisis de la agenda de las políticas para la PAM en Ecuador.

3. Metodología

En este artículo se desarrolla un análisis cualitativo de la agenda de políticas para la PAM. En esa línea, se realiza el seguimiento de la trayectoria de la gestión estatal bajo la perspectiva del neoinstitucionalismo. La revisión empieza con la identificación de las primeras acciones gubernamentales, dirigidas al grupo poblacional en mención, a partir de la década de 1920; y termina en el año 2018.

El modelo de dependencia de la trayectoria analiza las secuencias históricas en donde se han producido eventos contingentes que activan ciertos patrones institucionales (David, 2007; Mahoney, 2000). En esa medida, el ejercicio de revisión de la gestión del Estado ecuatoriano permitió identificar a lo largo del tiempo, ciertos hitos que han configurado esquemas institucionales de acción estatal que caracterizan la agenda de las políticas públicas en cuestión. Complementariamente, para efectos de análisis se recurre a la narrativa de los eventos vinculados a las acciones del Estado.

Cabe indicar que el proceso de revisión se centra en las políticas de carácter nacional implementadas por las respectivas carteras del Estado ecuatoriano y sus instituciones distribuidas en todo el territorio. Esto implica que las políticas y acciones de los gobiernos locales no han sido consideradas en este estudio.

Las técnicas para la recopilación de datos fueron las siguientes:

a. Revisión documental y hemerográfica.

b. Entrevistas semiestructuradas a dos grupos de informantes calificados:

   - Tres representantes de organizaciones de personas adultas mayores
   - Cinco profesionales expertos, provienen de los sectores público, privado y social; con experiencia en diseño e implementación de políticas para la PAM.

c. Un grupo focal con adultos mayores integrantes de una organización social.

d. Quince entrevistas semiestructuradas con adultos mayores.

Para la reconstrucción de la agenda se realizó una línea de tiempo de la gestión estatal en materia de políticas para la PAM, adicionalmente para el procesamiento e interpretación de la información proporcionada, se procedió a la transcripción literal de las grabaciones y una categorización inductiva de las respuestas de acuerdo con las variables de interés para este trabajo.

4. La problemática de los adultos mayores en la agenda pública ecuatoriana

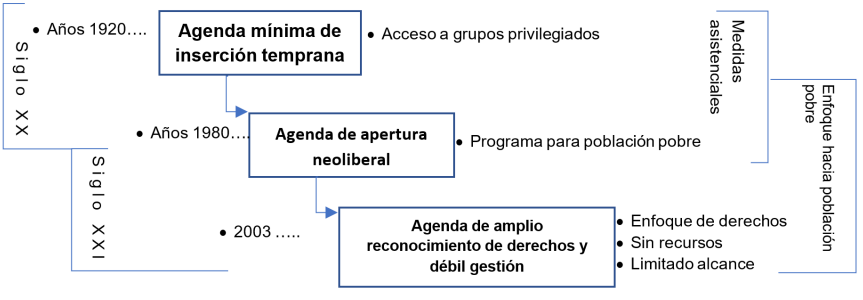
Actualmente en América Latina las políticas sociales y dentro de ellas las relacionadas con los adultos mayores, tienen un papel más protagónico en la gestión pública. Ese hecho corresponde a un fenómeno bastante reciente, que tiene como antecedente la compleja situación de la década de los años 1980 y 1990, en el marco de la gran desigualdad social y la aplicación de medidas neoliberales que caracterizaron esa época. Previamente, las políticas en mención estaban ausentes de las prioridades del Estado o recibían una menor atención (con escasas excepciones en países como Uruguay o Costa Rica).

Las investigaciones documentan que la mayoría de países en desarrollo asignaba una baja prioridad a la población mayor y su situación de pobreza, pues los *policymakers* a menudo asumían que ese colectivo tenía poco que aportar al desarrollo, por lo que sus acciones se encaminaban a la población más joven (Barrientos y Lloyd, 2002; Previtali *et al.*, 2020; Lu y Shelley, 2021), y aún persiste un bajo interés en los tomadores de decisión sobre la implementación de políticas para PAM en diversos contextos del mundo (Ladusingh y Thangjam, 2021; Mesa-Lago *et al.*, 2021; Ashirifi *et al.*, 2022).

Con el transcurso de los últimos años, ese discurso ha ido cambiando, influenciado por el debate internacional proveniente de organismos internacionales como la Organización Mundial de la Salud (OMS) o Naciones Unidas, que en un escenario posguerra, progresivamente fueron posicionando diversos debates mundiales, entre ellos el fenómeno del envejecimiento poblacional (OMS, 2021; Naciones Unidas, 2007). Generando el impulso que permitió que esos temas sean considerados en las agendas de gobierno latinoamericano (Osorio *et al.*, 2018; Riveros *et al.*, 2020). A ello se suman, los procesos sociales y políticos propios de cada país.

En el caso ecuatoriano, la agenda puede identificarse a partir de tres facetas distribuidas a lo largo de la historia. Cada una de ellas con un evento que ha configurado la política actual. En este trabajo, esas facetas han sido denominadas como: a) Agenda mínima de inserción temprana; b) Agenda de apertura neoliberal; y, c) Agenda de amplio reconocimiento de derechos y débil gestión, resumidas en el gráfico I.

Gráfico No. oI: Caracterización por fases de la agenda de políticas para la población adulta mayor en Ecuador



Fuente: elaboración propia

a) Agenda mínima de inserción temprana (1920 - 1970)

El precedente que permite trazar el trayecto de las políticas y reconocer una temprana aparición de los temas relacionados con la PAM en la gestión del Estado ecuatoriano, se puede encontrar a inicios del siglo XX, en un periodo en donde a decir de Paz y Miño (2001) se había institucionalizado la "cuestión social" como política de Estado bajo la herencia del episodio conocido como la Revolución Juliana (1925 - 1926).

En ese contexto, en 1928 se crea la Caja Jubilaciones y Montepío Civil, Retiro y Montepío Militares, Ahorro y Cooperativa (Decreto No. 18 publicado en el Registro Oficial No. 59), entidad que da origen a lo que hoy es el Instituto Ecuatoriano de Seguridad Social (IESS), a la que tenían acceso un mínimo porcentaje de personas; constituido por empleados públicos, civiles, militares y bancarios que, entre otros beneficios, podían acceder a previsiones sociales en el periodo de la vejez.

Si bien paulatinamente se insertaron cambios para ampliar las prestaciones sociales y la cobertura hacia otros sectores como: campesinos o trabajadores agrícolas (Porras, 2015), siguió como un beneficio reservado para un pequeño porcentaje de la población. Para quienes no tenían las condiciones socioeconómicas, o no habían logrado insertarse en la dinámica contributiva, había una suerte de medidas asistenciales y de beneficencia.

Esta configuración institucional de la primera mitad del siglo XX se mantiene como un elemento estructurante de la política actual, pues, aunque ha habido avances en la implementación de medidas dirigidas para la PAM, el derecho a la seguridad social sigue siendo un beneficio que no llega ni a la mitad de ese grupo poblacional, mientras que para los pobres hay pensiones y programas sociales.

b) Agenda de apertura neoliberal (1980 - 1990)

Crisis financiera, dolarización y conmoción social crean el escenario para el establecimiento de un evento que marcó la trayectoria de la actual política para la PAM, el establecimiento de bonos para la población pobre. Todo ello en el marco de dos décadas complejas (1980 y 1990) en las que se producen avances en la política social, como resultado de la inversión impulsada por la bonanza petrolera, experimentada por Ecuador en la década de 1970.

Siguiendo la línea de tiempo, el decenio de los años 1980 corresponde a un periodo muy difícil en términos macroeconómicos, en donde se produce una fuerte recesión, crisis de la deuda, medidas de ajuste neoliberal que significaron un retroceso y estancamiento en la política social impulsada en años previos (Oleas, 2017). Pero a pesar del estancamiento en temas sociales, una apertura reducida a través de la ventana neoliberal dio paso a otras acciones en la década de 1990.

Por ejemplo, en 1991 se expide la Ley del Anciano, en 1998 una nueva Constitución (1998) en la que la PAM es reconocida como grupo vulnerable. Además, en esa década el Ministerio de Salud realiza acciones para impulsar una mayor articulación de servicios para la atención de esa población, entre otras acciones. Sin embargo, los estudios dan cuenta del carácter asistencialista de los servicios, focalizados hacia la población más pobre (CEPAL, Ministerio de Bienestar Social - MBS y Ministerio Coordinador de Desarrollo Social - MCDS, 2007), siguiendo la trayectoria de la agenda de la primera mitad del siglo.

En esta fase de análisis, Ecuador vivió uno de los peores períodos de su historia: la crisis bancaria, ocurrida a finales de la década de 1990. Episodio que sepultó la economía del país, y con ella la moneda nacional, abriendo el camino al proceso de dolarización. En ese escenario de contracción financiera se inserta un sistema de bonos para la población pobre, incluido el grupo de la PAM. La implementación de programas de protección social no contributiva (PPSNC) bajo la figura de bonos para la población, ampliamente estudiados (Ponce y Curvale, 2020; Velasco *et al.,* 2020; Mideros y Gassmann, 2021) marcó un hito en la trayectoria de las políticas sociales dirigidas hacia la población de estudio, caracterizando la agenda hasta la actualidad.

En general, esas dos décadas evidencian una mayor acción pública en relación con la faceta anterior, pero bajo una apertura reducida, en donde se mantiene una visión asistencial de las personas adultas mayores pobres, mínima afiliación al Sistema de Seguridad Social y una Ley del Anciano con bajos niveles de aplicación, acorde al periodo complejo sistematizado por Vásconez *et al.,* (2005).

c) Agenda de amplio reconocimiento de derechos de la PAM y débil gestión

Luego de un periodo de mínima presencia de las instituciones públicas, estas retomaron la batuta en la generación de bienestar social, lo que Theda Skocpol (2014) denominaría como “el regreso del Estado al primer plano”, campo propicio para el neoinstitucionalismo. De ahí que, el periodo comprendido entre los años 2005 - 2017, se caracteriza por una recuperación y fortalecimiento de lo público estatal e inversión social con un paulatino fortalecimiento institucional (Ubasart y Minteguiaga, 2021).

Esa recuperación también se inscribe en un periodo político de surgimiento de tendencias de gobierno con énfasis en la inversión social, que caracterizaron a los gobiernos de Bolivia, Venezuela, Ecuador, Brasil y otros; a inicios del siglo XXI (Ubasart y Minteguiaga, 2021). En ese contexto, la inserción de la problemática de la PAM en la agenda a decir de expertos se produce en el marco de proyectos de gobierno de reconocimiento a grupos

de atención prioritaria. Toda esa dinámica política puede reconocerse como un evento contingente que marcó un escenario característico en la trayectoria histórica de las políticas para adultos mayores.

En este periodo se emiten instrumentos de amplio reconocimiento para la PAM. La nueva constitución, la Ley Orgánica de Régimen Municipal y el Código Orgánico de Ordenamiento Territorial, Autonomía y Descentralización (COOTAD), en donde se establece la obligatoriedad del Estado y los gobiernos locales para impulsar acciones a favor de los grupos de atención prioritaria, pero que en palabras del dirigente social Carlos Ruiz (15 de agosto de 2020), no se cumple.

A pesar de la ejecución de programas de protección social y otros proyectos que marcan mayor protagonismo del Estado, las acciones que tenían como beneficiarios a la PAM eran mínimas y de poca cobertura. De acuerdo con la información recopilada en instituciones de ejecución directa de los proyectos, la implementación de acciones con un carácter más integral, sistematizado y con recursos se produce a inicios de la década de 2010; pero solo para atender a la población en situación de pobreza.

Los entrevistados reconocen que en estos últimos años la temática de las personas adultas mayores se ha insertado bajo unos elementos de mayor reconocimiento, al calor de una nueva constitución con un espíritu garantista de derechos y gobiernos que al menos en intenciones, expresan la predisposición para trabajar por la PAM. Pero esos esfuerzos tienen poco alcance, pues se concentran en una parte de ese colectivo.

5. Articulación de la problemática de la PAM desde la visión institucional

Para Roth (2002) la inscripción en la agenda implica que el sistema político gubernamental reconozca el problema público y decida intervenir en él, de lo contrario, es una acción simbólica. En esa línea, la caracterización realizada previamente evidencia una inserción parcial de las demandas de las personas de 65 años y más, bajo los lineamientos de un Estado que reconoce ampliamente las necesidades de la PAM, pero que desarrolla una intervención débil, diseñada para concentrarse en la población en situación de pobreza. La política se ejecuta de acuerdo con las visiones institucionales que dictaminan quienes deben ser beneficiarios de la gestión, estableciendo un marco que ciñe el accionar de los actores estatales y sociales.

Para uno de los expertos entrevistados, la intensidad con que el gobierno implementa acciones depende de la voluntad política, las tendencias ideológicas, la presión de los grupos de interés y ciertas características macroeconómicas del Estado, como la aplicación de políticas de corte neoliberal o la valoración de las prioridades estatales.

A pesar de que hay un reconocimiento de la problemática de las personas adultas mayores, las respuestas que se dan no son claras, ni integrales, eso sugiere que sus demandas sociales han entrado en la agenda, pero se han quedado allí, ocupando una posición periférica dentro de las prioridades estales, a la espera de que las respuestas del sistema político produzcan mejores resultados.

Esa ubicación puede atribuirse a un edadismo institucional impregnado en las decisiones político-estatales, que coloca los temas de la PAM en los últimos peldaños de la lista de gestión, en consonancia con las evidencias de Barrientos y Lloyd (2002) o, con lo que Córdova *et al.,* (2022) reconocen como *apartheid* o abandono en materia de políticas. Pero si se revisa los discursos gubernamentales hay una abierta voluntad de trabajo en favor de ese grupo, pero las acciones concretas en el territorio están lejos de corresponder con las declaraciones públicas, en donde las condiciones institucionales son las que definen la dirección de la gestión.

El marco de interpretación del problema público de la PAM está permeado por una visión asistencial impregnada en la estructura pública, condicionando el accionar de los actores institucionales hacia la población en situación de pobreza. Ese escenario lleva a representantes de organizaciones de personas mayores a concluir que no hay una atención como ciudadanos con derechos, sino un mecanismo de discriminación que evidencia el abandono del Estado hacia otros sectores de la PAM.

Entonces, si se retoma la reflexión de Roth (2002) se puede expresar que estaríamos ante una agenda simbólica con una posición periférica y limitada, expresada a través de una intervención inestable, sometida a los vaivenes de los ciclos políticos o económicos del Estado y a los recortes presupuestarios que usualmente afectan a la política social en contextos de ajuste macroeconómico.

Es necesario mencionar que la normativa ecuatoriana es bastante amplia en materia de legislación que ampara a la PAM y además cuenta con instrumentos de planificación que establecen políticas o lineamientos de carácter general. Bajo los parámetros de esos instrumentos se han generado algunos programas, proyectos o mecanismos de acción, lo que desde una visión neoinstitucionalista pone en evidencia el papel (al menos nominal) que ha asumido el Estado en la interpretación de las demandas sociales y el diseño de alternativas que respondan a ellas.

Todas esas instancias de gestión e instrumentos de planificación dan la impresión de una gran cobertura de servicios, pero en el territorio la realidad está caracterizada por limitaciones presupuestarias, logísticas y de talento humano, que a decir de los entrevistados coloca a las personas adultas mayores frente a políticas dispersas, demagógicas y de poco impacto.

Conclusiones

Los problemas de la PAM se han insertado en la agenda de políticas bajo condiciones deficitarias y periféricas; de acuerdo a los marcos de interpretación, directrices, normas y visiones del Estado ecuatoriano. Ese escenario ha conducido a una gestión con una dinámica asistencialista, orientada a la población en situación de pobreza, al amparo de programas sociales diseñados según las condiciones institucionales y no de las necesidades ciudadanas de ese colectivo.

La dependencia de la trayectoria de la gestión estatal permite identificar la secuencia de tres facetas de agenda, en donde se establecen decisiones institucionales que estructuran la política actual para la PAM: compuesta por un sistema de seguridad social para quienes lograron insertarse en la dinámica laboral formal, medidas sociales asistenciales para los pobres, más un sistema de bonos. Todo ello en el marco de gobiernos con discursos simbólicos de reconocimiento de la PAM, sin proyectos integrales, ni sostenidos.

La construcción de un sistema de seguridad social para un grupo privilegiado en la primera mitad del siglo XX, debería haber sido superada gracias al fortalecimiento de la inversión social, generada en los últimos años. No obstante, muchas décadas después, en medio de reconocimientos estatales, enfoque de derechos y todo tipo de instrumentos de exigibilidad, el servicio sigue siendo accesible sólo para una parte de la PAM. Sin dejar de reconocer el importante camino recorrido en materia de gestión para la PAM, se advierte que la agenda sigue siendo reducida, en tanto las demandas de los adultos mayores ocupan una posición periférica dentro de la lista de acciones estratégicas del Estado.

El reconocimiento público de las necesidades de la PAM caracterizado por la declaración de buenas intenciones y un amplio marco normativo, que en la práctica no llega a concretarse en acciones integrales, nos hacen plantear que estaríamos ante una agenda simbólica y débil, dirigida a una parte de la población. Bajo ese escenario, la concentración de los esfuerzos institucionales en la población en situación de pobreza no permite la construcción de una ciudadanía universal con pleno ejercicio de derechos.

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Innovative tourism and hospitality marketing strategies through the social ethics and social policy prisms

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Abstract

Through a metrodology close to social philosophy, the purpose of the article was to outline the perspectives for the construction of innovative marketing strategies for the field of tourism on the basis of social ethics and social policy. Business theory and methodology show a tendency to change conceptual approaches - from pragmatic to ethical - and business discourse attests to the activation of innovative business models of management, ethically marked, under the tendency to fill marketing strategies with social accents and the ever wider introduction of the categories of ethics and social responsibility. The concept of socially responsible business is gaining particular importance. It is concluded that the creation of an acceptable ethical marketing concept for the field of tourism and hospitality requires the modernization of the methodological basis. Dealing not with an abstract consumer of services, but with a concrete person, hospitality cannot be limited to generally recognized principles of social responsibility; it needs also, methodological consolidation of human-oriented principles, in addition to the ideas of social ethics by the experience of ethos ethics.

Keywords: ethical marketing; social ethics; social policy; social responsibility; tourism and hospitality policy.

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Estrategias innovadoras de marketing turístico y hostelero a través de los prismas de la ética social y la política social

Resumen

Mediante una metrodologia proxima a la filosofia social, el propósito del artículo fue esbozar las perspectivas para la construcción de estrategias de marketing innovadoras, para el campo del turismo sobre la base de la *ética* social y la política social. La teoría y la metodología de los negocios muestran una tendencia a cambiar los enfoques conceptuales --de pragmáticos a *éticos*-- y el discurso empresarial da fe de la activación de modelos empresariales innovadores de gestión, marcados *éticamente,* bajo la tendencia a llenar las estrategias de marketing con acentos sociales y la introducción cada vez más amplia de las categorías de *ética* y responsabilidad social. El concepto de empresa socialmente responsable está cobrando especial importancia. Se concluye que la creación de un concepto de marketing *ético* aceptable para el campo del turismo y la hospitalidad requiere la modernización de la base metodológica. Al tratarse no de un consumidor abstracto de servicios, sino de una persona concreta, la hospitalidad no puede limitarse a principios generalmente reconocidos de la responsabilidad social; necesita tambien, la consolidación metodológica de los principios orientados hacia el ser humano, además de las ideas de la *ética* social por la experiencia de la *ética* del ethos.

Palabras clave: marketing *ético*; *ética* social; política social; responsabilidad social; politica de turismo y hostelería.

Introduction

In different historical times, at different socio-economic development stages, business gives priority to those activity principles and concepts that correspond as closely as possible to the social, economic, political, etc. demands of society and undergo significant, and sometimes drastic, changes during crises, in periods of sharp social transformations.

The complexity of the current situation lies in the fact that the protracted pan-European socio-cultural crisis, which touched all spheres social life - political, economic, industrial, actually social and cultural - was repeatedly intensified by the COVID-19 pandemic (Bortnykov and Oleksenko, *2021a*), and then by the military conflict, as a result of which there is a drastic drop in the tourist attractiveness in Ukraine (Oleksenko *et al., 2021*) and the possibility of a fully-fledged development of the tourism and hospitality spheres.

However, at the same time, overcoming experience of crises consequences using the example of COVID-19 was accumulated: even minor relaxations of the quarantine regime contributed to the improvement of the situation: for the first half in 2021, the amount of tourist tax to the local budgets of Ukraine amounted to 69,453.4 thousand UAH; for comparison, at the same time in previous years, the specified amounts amounted to 57,914.7 thousand UAH in 2019 and 68,564.49 thousand UAH in 2020) (Oleksenko *et al., 2022*).

Evidence of the general business discourse ethization is a clearly expressed change in approaches of theoretical research - from pragmatic to ethical. Particularly, issues of corporate ethics in the modern organization (Rykhlytska, 2011), corporate social responsibility as a means of forming the enterprise competitiveness (Kozin, 2011), socio-ethical aspects of enterprise management in the conditions of the market relations developement (Kushlyk, 2018), etc., have become the subject of close attention by researchers.

The attention of researchers to the ethical marketing issues is increasing, particularly, the organizational business integrity on the conceptual ethical marketing basis (Moore and Beadle 2016), the theory and methodology of the socially oriented marketing system formation in a commercial enterprise (Pushkareva, 2007), marketing ethics in the context of corporate social responsibility (Wang, 2011), ethical marketing as a marketing activity concept (Reshetnikova 2012), the relationship between social and ethical marketing and corporate social responsibility (Lasukova, 2012), the basics of implementing the social and ethical marketing concepts in terms of the marketing mix elements, the creation of an inclusive marketing strategy based on values (Hongwei and Lloyd, 2020), the influence of marketing ethics and social responsibility on the customer-oriented enterprise strategy formation (Kuvaieva *et al.*, 2021), etc.

The noted tendency to conceptualize the ethical marketing foundations in foreign and domestic literature was accompanied by numerous (even quantitatively excessive) terms such as “social marketing”, “responsible”, “socially responsible”; “socially oriented”, “social”; “social-ethical”, “ethical”, etc., which obviously complicates the understanding process in definitely relevant scientific discussions and practical solutions.

As a result, the development of innovative marketing strategies based on ethical principles for specific sectors of the economy (particularly, for tourism and hospitality enterprises) is hindered by conceptual inconsistency and requires in each specific case a simultaneous analysis of the conceptual apparatus and the agreement of ethical and methodological principles.

1. Materials and methods

The interdisciplinary status of the research requires the use of a wide range of materials and analystic methods, primarily in the field of social philosophy, social policy, economic theory, methodology and practice of tourism and hospitality, marketing research tools.

Philosophical reflections in the field of social ethics served as the methodological research basis: political ethics, economic ethics, discursive, institutional, business ethics, etc., which declares general ethical socially developed principles, set its directions and guidelines, designed to ensure institutional order, and therefore enables normative substantiation of ethical relations (institutional, public, group and individual) in specific economic branches and economic activity spheres, including ethical tourism and hospitality marketing.

For a retrospective analysis of the issue of the ethical marketing conceptual content and their coherence with the basic ideas of the most authoritative socio-philosophical teachings, a comparative analysis and fundamental principle generalization of social policy and the socially responsible business concept, basic ideas of modern economic theory, management theory, social policy, etc., aimed at establishing ethical dimension for marketing research.

In order to clarify the conceptual articulation of ethically marked marketing concepts (the concepts of «social marketing», «responsible», «socially responsible», «socially oriented», «community», «social-ethical», «ethical», etc.), conceptual formative methods were applied - terminological systems.

In order to highlight the ethos aspect of the phenomenality of hospitality and tourism, the socio-ethical standards of socially responsible business are supplemented with the experience of virtue ethics (respect, courtesy, generosity, generosity, benevolence, thoroughness, loyalty, etc.). For the operationalization of ethical marketing concepts in the form of ethical marketing strategies for the field of tourism and hospitality, the toolkit of client-oriented marketing is applied.

2. Discussion of the problem

2. 1. Socio-ethical foundations of marketing activity: Conceptual and conceptual inconsistency

The search for ethically marked and socially acceptable marketing concepts while maintaining economic expediency is vividly illustrated

by Philip Kotler, according to whom the main organization task is: "... to determine the shortcomings, needs and interests of the target markets and ensure their satisfaction more efficiently and productively than competitors', by simultaneously preserving and ensuring well-being means of the consumer and society as a whole" (Kotler, 1998: 66-67).

It is characteristic (researchers repeatedly pointed out this) that in the quoted work Philip Kotler calls such marketing "socially ethical", and in later studies - "socially responsible" (Kotler 998: 64). According to I. Reshetnikova, "... this is where the confusion in terminology and perception of social and ethical marketing as synonyms began" (Reshetnikova 2012: 91).

It is difficult to disagree with this state characterization of affairs ("confusion in terminology"), but it is equally difficult to agree that the responsibility for this rests with the researcher who, in fact, took the first steps in establishing an ethical dimension for marketing research, and not on the numerous followers of Philip Kotler ideas, who did not always handle the conceptual apparatus correctly, and sometimes, when the urgency of the problem reached the fashion level, simply produced scientific novelty simulacra, generating synonymous terms without proper justification of the such innovations expediency.

In addition, in the case of Philip Kotler, it is not about an inconsistent terminologicalization of an already established concept (if it were so, then, indeed, according to the laws of term formation, one concept should ideally correspond to one term). However, we are talking about various and time-varying (our italics) marketing tools, which reflect the constant search for a balance between economic interest, social responsibility and ethical attitude towards the human consumer. After all, "... ethical marketing is not a hard and fast list of rules, but a general set of guidelines that help companies evaluate new marketing strategies" (Kuvaieva *et al.,* 2021).

It should also not be forgotten that ethically marked marketing concepts of business activities in general and tourism and hotel-restaurant activities particularly are impossible separately, by themselves, as something separated from public opinion in its most relevant manifestations.

On the contrary, they develop in its wake, reflecting the general trends of social ethics and social policy and transforming these trends, taking into account the realities of socio-economic life, into practical projects, – let's repeat – economically justified, socially responsible and ethical in relation to the human consumer . Therefore, such searches were not limited to marketing research, but took place against the background of constant searches in the valley of social ethics and social policy and are correlated with them.

In general, the search for grounds construction of a non-hostile "community" and the development of the cohesion experience have reached the fundamental levels for the modern world. The philosophical foundations of social cohesion are rooted in the social integration ideas, solidarity and unity laid down in the works of the sociological thought classics (E. Giddens, E. Durkheim, N. Luhmann, C. Mills, T. Parsons, P. Sorokin, H. Spencer, etc).

The application of the moral dimension to solving social integrative problem brought it from the plane of social practice to the plane of social ethics, which now claims leading role of an integration force in European society. On the other hand, the appeal to social issues by leading philosophers (K.-O. Apel, R. Dworkin, R. Ingarden, Y. Gabermas, V. Hesle, J. Ratzinger, J. Rawls, R. Rorty, etc.) contributed to the saturation of social knowledge with philosophical content, ethnoization of not only theoretical and methodological discussions in the social sciences, but also practical social discourse (Bud'ko, 2015).

Norms and rules of human behavior in new socio-cultural conditions, responsibilities, duties of people towards others in social life became ethical and philosophical reflection subject, and a characteristic feature of modern philosophy was its practical orientation, striving for implementation in social projects. The task of building a society of equal opportunities by counteracting social rejection, overcoming inequality, poverty, marginalization and deprivation was embodied in various concepts and approaches: widening participation, mainstreaming, integration, inclusion, etc., which represent the process of changes in the political, economic, and social spheres aimed at establishing social equality.

The central concept of the new approach to the social system was social integration, the goal of which is to create a "society for all" in which each individual, with his rights and responsibilities, plays an active role. The gradual increase in attention to the interests of an individual as an object of national policies in various spheres culminated in the adoption of the Copenhagen Declaration of the UN on Social Development (1995), which declared care for people as a basic condition for sustainable development, one of the most important goals of European social policy.

Therefore, if we talk about the terminological "inconsistency" of Philip Kotler, then it is not superfluous to emphasize: "social ethics" is a section (here and in our italics) of applied ethics that studies ethical relations (values, goals, duties of a person) in society and makes it possible to normatively substantiate group, institutional and corporate relations, as well as to develop methods of control and assistance in solving social problems; "social responsibility" is a socio-ethical principle (our italics) of social policy, which consists in compliance by subjects of social relations with the requirements of social norms; "social responsibility of business"

is a socio-economic concept, which consists in taking into account in the implementation of public duty in the decision-making process not only the interests of individuals or organizations that make these decisions, but also the interests, values and goals of broad social groups and society in general.

Instead, the term "corporate social responsibility" was introduced to operationalize the general socially responsible business concept, its specification taking into account the specifics of a specific field of activity, industry, organization. Therefore, we are dealing with the terminology of different scientific fields: the first of the terms used belongs to philosophy, particularly social philosophy; the second - sociology, political science and methodology of public administration, the third - philosophy of economics and economic theory, and the fourth is used mainly at the level of applied economic research and at the operational level.

Accordingly, each of these terms implies a proper (specific to a specific scientific field) point of view with the use of appropriate methods, techniques, and analytical procedures. Therefore, it can be assumed that having initially declared in his marketing developments his adherence to the ideas of social ethics in general ("social-ethical" marketing), later Philip Kotler specified it as "socially responsible" in view of the principle of social ethics that finally crystallized in parallel with the research of Philip Kotler and turned out to be the most consistent with his basic instructions.

However, inconsistency in the use of philosophical and sociological concepts in economic research is an old problem (this is a general problem of interdisciplinary research). For example, for decades, there has been a confusion of social responsibility and ethical behavior concepts - this was emphasized by J. Fischer in 2004 study (Fischer, 2004: 381-390), giving four different relationship versions between these terms:

1. social responsibility is ethics in the context of organizations; proponents of this position point out that ethical actions are based on personal beliefs, which by definition cannot exist in an organization;
2. ethics concerns individuals within the organization, and social responsibility concerns the actions of the organization as a whole;
3. these are two completely different concepts;
4. social responsibility is a broad concept that includes ethics particularly (ib.). Let us clarify that in order to clarify the nature of such a relationship, first of all, it is necessary to distinguish between socio-economic analysis and philosophical reflection (the same reason for the terminological confusion as defined earlier).

If we consider the problem from an ethical-philosophical point of view, then the concept of social responsibility is narrower than ethical behavior - it is only one of the principles that determine this behavior.

If we look at it from a socio-economic point of view, then the broadest concept will turn out to be precisely social responsibility (which is the focus of the study) as a system of norms of organizational behavior in society, which includes, in addition to ethical behavior, at least three other aspects (according to the model of A. Carroll 1991): economic (profitability), legal (following the letter of the law) and discretionary / philanthropic (voluntariness and arbitrariness of contribution to the development of society and improvement of the quality of life) (Carroll, 1991).

As for the direct terminological diversity of ethically marked marketing concepts, which was discussed above, in some cases it is fully justified, reflecting the philosophical and methodological position of the researcher (for example, «ethical marketing» as the recognition of ethics as the basic principle of marketing activity, «social» or «social» as recognition of the priority of social/community values, etc.), and in some places, unfortunately, it is evidence of uncritical use of current ideas against the background of the researcher's methodological helplessness or the desire for unfounded terminology. Further in this study, we will use the term «ethical marketing» as a generalization to refer to any ethically labeled marketing concepts.

2. 2. Ethical marketing in the categories of social policy and socially responsible business

Therefore, turning briefly to the main ideas of applied ethics, which had an impact on the development of marketing ideas in recent decades, we cannot but admit that it would be one-sided to reduce the conceptual foundations of ethical marketing exclusively to philosophical and methodological ones.

Here, we cannot overlook (again in passing) the influence on its formation and gradual establishment of social policy priorities, as well as intra-business tendencies to humanize the business environment and more than century-old search for "human-dimensional" grounds in the field of business methodology.

We have in mind, first of all, the already mentioned socially responsible business concept, which implies the need and ability for social government interaction, business and society, which was one of the first to be discussed by the outstanding philanthropist A. Carnegie, formulating two fundamental provisions on which the concept of social responsibility is based: the charity principle (following J. Rockefeller) and the service principle, and resorting to an attempt to theoretically justify the doctrine of capitalist charity in the book "The Gospel of Prosperity" ("The Gospel of Wealth") in 1900, which, in fact, is one of the modern economic philosophical sources and at the same time an ethical philosophy of human relations in the pursuit of harmony, understanding and compassion.

The next significant step in this direction, which is worth drawing attention to in the context of our research, was the combination of "efficiency" and "social responsibility" concepts in a single context in the annual report (1936) of the Sears company by its head, R. Wood. A supporter of solving social problems not so much from a state (macro) as from a managerial (micro) position (Burke, 1999), R. Wood took social responsibility beyond the boundaries of professional ethics and for the first time introduced it into the management and marketing context, opening up to the top - new strategic perspectives by managers of Western companies.

In the future, the incentives for the development and approval of the socially responsible business concept became the cooperation experience between American business and the government during the Second World War, the growth of post-industrial trends in the Western world, and the gradual emergence of "human" and "cultural" factors from the technological shadows and administration, with time - stabilization the development of the world economy, the use of the scientific and technical progress achievements, the general increase in the educational level of the population, the contribution of religion to the social consensus achievement.

As a result, after the Second World War, the main postulates of the concept were actively used in the developed countries of the world, and the doctrine of the businessmen duties, based on the need to develop a strategy, formulated in the work of G. Bowen "Social responsibility of a businessman" (1953) (Bowen, 1953) and make management decisions based on the values and goals of society's development, became the basis of a modern approach to social responsibility of business.

Without delving too much into the history of the issue, let us emphasize, however, that in the society on the 21st century the social business responsibility necessarily implies certain response voluntariness - an unforced obligation to carry out a certain policy, make certain decisions and adhere to certain activity directions in view of the social goals and values. Another thing is that such voluntariness cannot be completely arbitrary, due to the serious pressure of civil society on the government and on business, the changing role of the state, the growing interaction of organizations with the environment, and the need to quickly respond to all changes.

In general, as can be seen, the higher the level of social development on the civilization scale, the stricter the criteria for social business responsibility.

Therefore, modern ideas about the social business responsibility have reached the understanding level in general as a certain value system, measures and processes aimed at spreading the positive impact of activities in the economic, ecological, social, etc. spheres both within the organization and in the environment, and are specified in numerous concepts of

"corporate social responsibility", the criteria of which may vary depending on the organization's sphere of activity, industry, company size, ownership structure, competitive strategy, etc. For example, it can be about investments in environmental protection, about the assessment and nature of the goods and services produced assessment of relations with employees, attitudes towards minorities and society as a whole, philanthropic programs, etc.

Therefore, considering ethical marketing as a socially responsible enterprise activity component and an independent socially oriented marketing concept that combines the interests of producers, consumers and society as a whole (Reshetnikova 2012: 91), I. Reshetnikova follows the general trend of the development of modern marketing concepts. At the same time, the goal formulated by her (the formation of a unified approach to the understanding of the category «ethical marketing» in the direction of ensuring social responsibility of enterprises' activities) seems somewhat fantastic: how can one talk about a «unified» approach when it is fundamentally impossible with regard to «ethical» concept without specifying philosophically - methodological principles, principles and approaches?

In addition, any attempt to unify philosophical concepts invariably threatens their vulgarization and reduction; on the other hand, encroaching on strict regulation violates the principle of voluntariness. Another thing is that it is possible (and definitely necessary) to talk about the ethical content of modern marketing concepts and their coherence in a specific time and space with the basic ideas of the most authoritative social and philosophical students, embodied in the fundamental social policy principles and the socially responsible business concept.

2. 3. Perspectives of conceptualization and operationalization of ethical marketing for the touristic and hospitality spheres

If we talk about ethical marketing not only as a socio-philosophical idea or a fundamental principle of socially responsible business activity in general, but to specify it as a marketing concept for tourism hospitality and operate it in the form of ethical marketing strategies for specific enterprises in the specified field, then it is worth to bear in mind that these fields are already by their very nature global leaders of the social cohesion ideology, social responsibility and justice - a space: "... de convivencia, dignidad y justicia social para la majoria de las personas y no solo para las elites revestidas de autoridad política o poder económico, en definitiva, se profile como una industria capaz de alcansar desarrollo con equidad" (Verkhovod *et al*., 2022: 25).

However, the ethical principle of social responsibility, like the entire experience of social ethics, is clearly not enough here. It is appropriate to

recall the contradictory modern hospitality nature, first of all, the sharp contradiction between its pragmatic principles and humanistic deep nature. On the one hand, as a branch of the economy, hospitality cannot ignore the competitiveness associated with the properties of the service as a product; on the other hand, the quality of services directly depends on the emotional and psychological state of the consumer, which forces again and again, regardless of the time, place and form of hospitality, to turn to its deep humanistic nature (Bortnykov *et al.,* 2021b).

Therefore, despite clearly expressed economic orientations, modern hospitality: "... obviously always derives from the personal hospitality idea and exists in a constant relationship with it as an ideal humanism model" (Montandon, 2004: 64). As for the ethical hospitality foundations, we have already tried to reflect on them philosophically (Bortnykov *et al.,* 2021b), proposing, particularly, to revitalize the concept of "philotechnique" (φιλοτεχνία), introduced by Hippocrates to denote "love of one's art" and applied by Alexandria Clement to hospitality as "the art of caring for the welfare of travelers."

Taking into account the modern trends in the philosophy and hospitality practice, we propose to understand philotechnics as "the art of caring for the well-being of the guest" and consider it as a possible basic concept of the modern philosophy of hospitality, capable of most comprehensively reflecting its nature, including utilitarian and extra-utilitarian functions, not only high the level of service, but also the "human" attitude towards the guest (Bortnykov *et al.,* 2021b).

Let us add that the ethical component of modern marketing ethics (particularly, such virtues as respect, politeness, generosity, generosity, benevolence, thoroughness, loyalty), along with the social and ethical standards of a justice society, finds supporters in wider business contexts as well (Markkula Center).

In our opinion, this approach is the most promising for a possible question consideration of the human-oriented modern hospitality dimension, starting with: «... an expressive conceptual articulation of the ethos of the phenomenality of hospitality» (Vatolina, 2014: 39).

The same can be said about tourism, whose researchers, reflecting on the the industry prospects in the 21st century in economic growth categories and sustainable development, insist not only on the contradiction, but also on the unity of economic and moral relations: «... tourism is a profitable business in any - which country in the world has sufficient and necessary conditions for its development; for its part, the moral issue is conditioned by the historical necessity of the new development paradigm international construction that goes beyond the purely economic and seeks to achieve a certain form of progress with equality and justice in tourism and any other business» (Verkhovod *et al*., 2022: 24).

Let us add that the stated contradiction is partially overcome by client-oriented concepts in view, particularly, of the fact that attracting a new client costs more than five times more than keeping an existing one (Kuvaieva *et al*., 2021), and therefore building a client-oriented strategy of tourism enterprises and hospitality on the basis of marketing ethics and social responsibility turns out to be not only ethically justified, but also economically justified.

Conclusion

Thus, there are reasons to talk about a change in public consciousness in general and business consciousness particularly regarding ethical marketing problem. Numerous theorizing and practical developments of this direction are definitely and timely relevant. Moreover, they are demanded by providers of tourist and hotel-restaurant services and suffered by these service consumers. However, something else is also obvious: the field of tourism and hospitality cannot be satisfied with generally recognized socially oriented ethical marketing concepts due to its human dimension.

Therefore, without a deep methodological foundation (starting with philosophical methodology development taking into account not only social ethics experience, but also ethos ethics), the creation and approval of an acceptable ethical marketing concept for the field of tourism and hospitality is impossible. The search should be aimed at finding such a balance between economic interest, social responsibility and ethical attitude towards the human consumer, which would take into account the deep humanistic nature of modern hospitality and the desire to preserve its human-sized originality embodied in modern forms.

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Abstract

The purpose of this work was to analyze the adequate level of legal support for the implementation of public control over the activities of the State Investigation Bureau through the activities of the Public Control Council. To achieve the objective, general scientific and special scientific methods of cognition were used simultaneously, in particular dialectical, logical-formal, analysis and synthesis, systemic-structural, legal-comparative, legal-formal and prognostic. On the basis of a comparative analysis of the legal regulation of the issues of formation and activity of the Public Control Councils in a number of newly created law enforcement bodies, a system of blocks was highlighted, which were the subject of analysis, namely: 1) control over the activity of the body; 2) powers of the Public Control Council; 3) the name of the main area of activity of the Public Council; 4) the object of approval of the Regulations of the Public Council. Everything allowed to conclude which are the «bad» normative constructions, the contradictory norms in the related normative acts and to locate the need for unification of approaches according to the identified structural blocks, which were the object of analysis. In addition, attention is focused on those directions that require further scientific analysis and regulatory optimization.

Keywords: law and policy; public control; law enforcement agencies; state research office; comparative law.

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El control público de las actividades de la Oficina Estatal de Investigación: Un análisis comparativo

Resumen

El propósito de este trabajo fue analizar el nivel adecuado de respaldo legal para la implementación del control público, sobre las actividades del Negociado Estatal de Investigación a través de las actividades del Consejo de Control Público. Para lograr el objetivo, se utilizaron simultáneamente métodos científicos generales y científicos especiales de cognición, en particular dialéctico, lógico-formal, análisis y síntesis, sistémico-estructural, legal-comparativo, legal-formal y pronóstico. Sobre la base de un análisis comparativo de la regulación legal de las cuestiones de formación y actividad de los Consejos de Control Público en una serie de cuerpos de seguridad de nueva creación, se destacó un sistema de bloques, que fueron objeto de análisis, a saber: 1) control sobre la actividad del cuerpo; 2) facultades del Consejo de Control Público; 3) el nombre del área principal de actividad del Consejo Público; 4) el objeto de aprobación del Reglamento del Consejo Público. Todo permitió concluir cuales son las construcciones normativas «malas», las normas contradictorias en los actos normativos relacionados y ubicar la necesidad de unificación de enfoques según los bloques estructurales que sean identificado, que fueron objeto de análisis. Además, se centra la atención en aquellas direcciones que requieren mayor análisis científico y optimización regulatoria.

Palabras clave: derecho y política; control público; organismos encargados de hacer cumplir la ley; oficina estatal de investigación; derecho comparado.

Introduction

The role of the public and normatively regulated public organizations is currently considered extremely important. In addition, precisely those that have the maximum legitimacy and are mandatory in the activity of the system of new law enforcement agencies of Ukraine received quite powerful powers from the lawmaker. However, it is important to clearly enshrine them in domestic legislation, because, as the research shows, sometimes such powers are not clearly specified at the regulatory level.

Thus, it is the controlling role of the public over the activities, in particular, of bodies that currently perform both preventive and countermeasure functions in the field of offenses committed primarily by officials with significant public powers and civil servants, is quite significant and largely depends on the level of its implementation and the level of efficiency of such state law enforcement institutions depends.

At a time when the state of Ukraine was subjected to large-scale military aggression from a neighboring country, during the year Ukrainians courageously defended their land precisely thanks to the self-organization of civil society in its various manifestations, which, in fact, is what most experts emphasize. And it was the public that became the driving force that caused the cohesion and stability of public institutions in the "face" of the military threat.

At the same time, the legal status of Public Councils/Public Control Councils over the activities of newly created state institutions is not clearly defined. In particular, at the beginning of January 2023, the new composition of the High Council of Justice, when approving the Project of the State Anti-corruption Program for 2023-2025 (for the implementation of the Anti-Corruption Strategy for 2022-2025 adopted at the level of the Law of Ukraine).

Regarding the expansion of the powers of the Public Council of Integrity (permanently operating an independent body in the judicial system of Ukraine, appointed to assist the Higher Qualification Commission of Judges of Ukraine in establishing the compliance of a judge/candidate for the position of judge with the criteria of professional ethics and integrity for the purposes of qualification assessment), it was stated that "current legislation does not clearly define the status of the Public Council of Integrity - it is a subject of authority or an institution of civil society," and "the scope of responsibility of the Public Council of Integrity" is not defined at all. Also, the High Council of Justice once again reminded that "decisions of the Public Integrity Council should have a recommendatory nature" (Judicial and legal newspaper, 2023).

The State Bureau of Investigation (hereinafter referred to as the SBI) is a state law enforcement agency of Ukraine tasked with the prevention, detection, termination, disclosure, and investigation of criminal offenses primarily against high-ranking officials, heads of anti-corruption agencies, the judicial corps, law enforcement officers, and against the established order of wearing a military uniform. service, which, in fact, concentrates in itself perhaps the most significant powers in terms of the system of currently operating domestic law enforcement agencies as a whole.

The changes introduced in accordance with Laws of Ukraine No. 305-IX dated 03.12.2019 and No. 720-IX dated 17.06.2020 add special importance and update the status of the body, according to which the SDB from the status of "central body of executive power carrying out law enforcement activities" was transformed into a "state law enforcement body", which is entrusted with the above-mentioned tasks, which, in fact, strengthened the independence of this body and gave it considerable governmental weight.

In this context, the control function of the public over the activity of the body as a whole and its observance of the principles of objectivity, the maximum possible (within the regulatory field) transparency, compliance with anti-corruption norms and generally accepted principles of the activity of an independent law enforcement body, whose activities are primarily aimed at ensuring rights and human and citizen freedoms, is considered extremely important. In addition, the Council of Public Control under the SBI, whose members undergo a transparent and rather strict competitive selection, is called to implement such functions.

1. Objectives

The purpose of this work is to analyze the appropriate level of legal support for the implementation of public control over the activities of the State Bureau of Investigation through the activities of the Council of Public Control.

2. Materials and methods

To achieve the goal, general scientific and special scientific methods of cognition were used, in particular dialectical, formal-logical, analysis and synthesis, systemic-structural, comparative-legal, formal-legal and prognostic.

The theoretical basis for conducting the research was the scientific output of scientists who dealt with issues of the controlling role of the public over the activities of, in particular, the system of newly created law enforcement bodies, as well as the legal basis of the formation and operation of these bodies as a system, and separately the problems of the functioning of each of them.

Among these, it is worth noting the research of Yara O., Artemenko O. and Lytvyn O. regarding the analysis of legal principles of activities of public administration entities, which carry out measures in the field of prevention and control of domestic violence (Yara *et al*., 2021); Ladychenko V., Bryhinets O. and Uliutina O., who carried out an analysis of the features of the regulatory regulation of state financing of the maintenance of a public institute in Ukraine, as a jury trial (Ladychenko *et al*., 2022); Oleksenko R., Malchev B., Venger O., who studied in more detail the peculiarities of the Ukrainian public using the example of a modern Ukrainian voter (Oleksenko *et al.,* 2021); Ladychenko V., Danyliuk Yu., who studied public participation in ensuring security and law and order at the level of local self-government bodies (Ladychenko *et al.,* 2021); certain aspects of the

legal basis for the implementation of public control over state institutions both in Ukraine and abroad are studied in the works of Mudrolubova N. (Mudrolubova *et al.,* 2022), Kutsevych M. (Kutsevych *et al.,* 2020), Kidalov S. (Kidalov *et al.*, 2020), Golovko L. (Golovko *et al.,* 2022); the problems of the functioning and activity of the system of new law enforcement agencies, whose activities are aimed primarily at combating and preventing corruption, were investigated in the work of Gulak O., Kurylo V., Dubchak L., Golovko L., Holovii L. (Gulak *et al.,* 2015; Gulak *et al.*, 2021; Dubchak and Gulak, 2021; Gulak *et al.,* 2022).

A comparative analysis of the legal support for the formation and activity of both these bodies and public organizations, which are called to implement the control function, became important in the scope of the research. A number of by-laws, reports, online meetings and speeches in the mass media, the specialized committee of the Verkhovna Rada of Ukraine were examined, and a critical look was made at the personal participation of the co-authors of the study in the election of the Council of Public Control at the SBI of the new term.

3. Results and discussion

Currently, in accordance with the requirements of paragraph 3 of the Procedure for the formation of the Public Control Council at the State Bureau of Investigation, approved by the Decree of the President of Ukraine No. 42 of February 5, 2020 and in accordance with Articles 12, 23 and 28 of the Law of Ukraine "On the State Bureau of Investigation", the head of the SBI issued an Order No. 508 of October 5, 2022 on approval of the personal composition of the competition commission specifically for the selection of members of this Council.

In fact, it is her who is called upon to monitor the gaps in the regulatory support for the activities of the SBI itself and to develop appropriate proposals aimed at optimizing the organizational and legal foundations of the body's activities, preventing any corrupt elements.

At the same time, it is worth paying attention to certain conflicting or debatable issues that are fixed in the domestic legal field in relation to the legal regulation of the formation and activity of the Council of Public Control under the SBI.

Among them is the very name of this public body. In particular, the legal correctness of its definition can be formulated by analyzing similar bodies in terms of normative legal acts on the consolidation of such in the system of new law enforcement bodies, which have primarily / including an anti-corruption function.

The National Agency for the Prevention of Corruption (hereinafter referred to as the National Agency for the Prevention of Corruption) should be included among a number of such; National Anti-Corruption Bureau (hereinafter - NABU); Economic Security Bureau of Ukraine (hereinafter - ESBU).

Thus, in the profile laws that regulate the activities of these bodies, the structure of the system of the blocks we have identified is presented in a slightly different way:

1. control over the body's activities;
2. powers of the Council of Public Control;
3. the actual name of the main area of activity of the Civic Council;
4. the subject of approval of the Regulations on the Public Council.

Table 1. Differences in the legislative regulation of public control councils in newly created law enforcement and anti-corruption bodies

Blocks highlighted by us	**Profile Laws of Ukraine**			
	On prevention of corruption/ NAZK	**About the National Anti-Corruption Bureau/NABU**	**About the Bureau of Economic Security/BEB**	**About the State Bureau of Investigation/ SBI**
Control over the activity of the body	**Article 14**. Control over the activities of the National Agency 4 types of control are distinguished, including public control	**Article 26**. Control over the activities of the National Bureau and its accountability Public control as such is not singled out	**Article 35.** Control over the activities of the Bureau of Economic Security of Ukraine and its accountability Public control as such is not highlighted	**Article 23.** Control over the activities of the State Bureau of Investigation Public control as such is not singled out

Powers of the Council of Public Control	***There is no separate article*** 7 clearly delineated powers at the level of the Law of Ukraine (Part 2 of Article 14) are singled out, including: ● membership of competitive and disciplinary commissions; ● expert work; ● legislative activity	**Article 31.** Council of Public Control under the National Bureau There are 3 clearly defined powers at the level of the Law of Ukraine (Part 3 of Article 31), which have a rather limited nature	Стаття **34.** Article 34. Council of Public Control under the Bureau of Economic Security of Ukraine 5 clearly delineated powers at the level of the Law of Ukraine are singled out (Part 2 of Article 34), including: 1) membership of competitive and disciplinary commissions	**Article 28.** Council of Public Control under the State Bureau of Investigation There are 4 clearly defined powers at the level of the Law of Ukraine (Part 2 of Article 34), which are of a rather limited nature, providing, unlike other Public Councils, a requirement for the development and approval of the Rules of Professional Ethics of the State Bureau of Investigation
The name of the main area of activity of the Civic Council	Part 2 of Art. 14. Public control over the activities of the NACP	Part 1 of Art. 31. Civilian control over NABU activities	Part 1 of Art. 34. Public control over the activities of the ESBU	Part 1 of Art. 28. Civilian control over the activities of the SBI
Subject of approval of the Regulation on the Public Council	Part 2 of Art. 14. Regulations on the Public Council under the National Agency are approved by the **Cabinet of Ministers of Ukraine**.	Part 1 of Art. 31. Regulations on the Council of Public Control under the National Bureau and on the order of its formation are approved by the **Cabinet of Ministers of Ukraine**.	Part 1 of Art. 34. Regulations on the Council of Public Control under the Bureau of Economic Security of Ukraine and the procedure for its formation are approved by the **Cabinet of Ministers of Ukraine**.	Part 2 of Art. 28. Regulations on the Council of Public Control and the procedure for its formation are approved by the **President of Ukraine** upon submission of the Director of the State Bureau of Investigation.

Source: authors.

Based on the comparative table developed and presented within the scope of this study regarding the discrepancies in the legislative regulation of the formation and activity of the Councils of Public Control in the newly created law enforcement and anti-corruption bodies, we can state a number of significant discrepancies.

1. In particular, Article 14 “Control over the activities of the National Agency” of the Law of Ukraine “On Prevention of Corruption” (Law of Ukraine, 2014a) defines four types of such control, and the public one - which is actually implemented by the “Public Council under the

NACP" - is one of them. Neither this Law of Ukraine, nor its Chapter II "National Agency for the Prevention of Corruption" contains a separate article regarding the normalization of the function, structure and tasks of the Public Council under the NACP.

Actually, Part 2 of Art. 14 of this Law clearly regulates the name of the main activity of the Public Council, namely: "Public control over the activities of the National Agency is ensured through the Public Council under the National Agency...". At the same time, the Laws of Ukraine: "On the National Anti-Corruption Bureau" (Law of Ukraine, 2014b), "On the Bureau of Economic Security" (Law of Ukraine, 2021) and "On the State Bureau of Investigation" (Law of Ukraine, 2016) to define the main direction the term "public" and "civilian control" are used for the activities of the Councils of Public Control, which, of course, requires unification in the domestic legal field.

It should be emphasized that the current Article 26 of the Law of Ukraine "On the National Anti-Corruption Bureau" entitled: "Control over the activities of the National Bureau and its accountability" quite illegally contains 2 significant regulatory gaps:

2. an incorrect reference to the committee of the Verkhovna Rada of Ukraine "... the subject of which is the fight against corruption and organized crime", because among the 23 currently active committees of the Verkhovna Rada of Ukraine there is only "the committee of the Verkhovna Rada of Ukraine on anti-corruption policy" (Word and Deed, Analytical portal, 2023), and the function of "fighting organized crime" is not inherent in any of these;
3. among the legal bases for ensuring control over the activities of the National Anti-Corruption Bureau, in addition to the Constitution of Ukraine, the Law of Ukraine "On Democratic Civilian Control over the Military Organization and Law Enforcement Bodies of the State", which is invalid as of 07/08/2018, based on the adoption of the Law of Ukraine "On National Security of Ukraine" dated June 21, 2018 under No 2469 (Law of Ukraine, 2018).

Actually, this Law of Ukraine (clause 5, article 1) defines the term "democratic civil control", by which the legislator understands: "a set of legal, organizational, informational, personnel and other measures implemented in accordance with the Constitution and laws of Ukraine to ensure the rule of law, legality, accountability, transparency of the bodies of the security and defense sector and other bodies whose activities are related to the restriction of human rights and freedoms in cases defined by law, promotion of their effective activity and performance of the functions entrusted to them, strengthening of the national security of Ukraine".

However, none of the bodies analyzed by us is directly defined in the Law of Ukraine "On National Security of Ukraine" as being included in the security and defense sector, which also raises the issue of conflicting regulatory regulation regarding the issues outlined by us.

Moreover, and what is most important in the essential understanding of the issues we are investigating, this Law of Ukraine in Section III "Democratic Civil Control" presents its structure, where actually, by making changes to the same Law of Ukraine, "public control" was replaced by an absolutely unacceptable the legal construction "public supervision" (Law of Ukraine, 2020), but it is only the last, namely, the tenth element in the structure of democratic civil control, which includes: "control carried out by the President of Ukraine; control carried out by the Verkhovna Rada of Ukraine; control carried out by the National Security and Defense Council of Ukraine; control carried out by the Cabinet of Ministers of Ukraine, executive authorities and local self-government bodies; judicial control and public supervision" (Part 1, Article 4 of the Law of Ukraine "On National Security of Ukraine") (Law of Ukraine, 2018).

In addition, the analysis of the content of Article 10 of the Law of Ukraine "On the National Security of Ukraine" under the title: "Public supervision" allows us to assert the granting of such powers to all citizens of Ukraine who "participate in the implementation of civil control through public associations."

That is, the lawmaker defined "public supervision" as one of the components of civil control, giving such authority significant legal opportunities, which we actually interpret as "legal ignorance", which causes legal and regulatory uncertainty and leads to both theoretical and law-enforcement conflicts, which definitely need streamlining and clarity in general.

In addition, the blocks we singled out and analyzed: "powers of the Council of Public Control" and "subject of approval of the Regulations on the Public Council", based on the structure of the presented table, are also conflicting from a legal point of view, requiring regulatory arrangement and certain unification.

In addition, the President of Ukraine, according to the exhaustive order of norms defined for him by the Constitution of Ukraine, does not have such powers in relation to the newly created body - the State Bureau of Investigation. Therefore, the norm established in Part 2 of Art. 28 of the Law of Ukraine "On the State Bureau of Investigations", regarding the fact that the Regulations on the Council of Public Control and the procedure for its formation are approved by the President of Ukraine at the request of the Director of the State Bureau of Investigations, do not correspond, in our opinion, to the main Law of our state.

Conclusions

Our analysis of the legal foundations of the formation and activity of the Council of Public Control at the newly created state law enforcement body - the State Bureau of Investigation, which, according to its status, is currently, in our opinion, the law enforcement body with the most powerful powers, showed a number of conflicting norms and contradictions.

In particular, on the basis of a comparative analysis of the legal regulation of issues of formation and activity of Public Control Councils at a number of newly created law enforcement bodies, a system of blocks was singled out, which were subjected to analysis, namely: 1) control over the body's activity; 2) powers of the Council of Public Control; 3) the name of the main area of activity of the Public Council; 4) the subject of approval of the Regulations on the Public Council.

Within the scope of the study, it is pointed out the "inappropriate" regulatory constructions, contradictory norms in related regulatory acts, the need for unification of approaches according to the structural blocks we have identified, which were subjected to analysis, and attention is focused on those directions that require further scientific analysis and regulatory optimization.

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Tensiones y consensos en torno a los fenómenos educación, tics y políticas públicas: reflexiones desde el saber y poder

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Resumen

Los profesores inmersos en el mundo digital deben emplear un conjunto de tecnologías para el logro de los objetivos propios de su actividad docente; no obstante, no cabe duda sobre el hecho de los desafíos que genera la incorporación a la educación de las nuevas tecnologías de información y comunicación (TIC's), que producen además un conjunto de problemáticas típicas de las relaciones asimétricas de saber y poder, en el marco de lo que significa las sociedades del conocimiento en el sur global, espacio identificado por las desigualdades de toda índole. En este orden de ideas, el objetivo del artículo verso en discutir las principales tensiones y consensos en torno a los fenómenos: Educación, Tics y Políticas Públicas, asumidos dicotómicamente como conceptos interrelacionados y fenómenos sociales de alcance mundial. Para el desarrollo de la investigación en lo teórico, se hizo uso del materialismo político y, en lo metodológico, de la técnica de investigación documental y la interpretación hermenéutica de los textos revisados. Se concluye que las TIC's, como parte de la evolución tecnológica y su aporte a las prácticas educativas contemporáneas, tanto en sus modalidades como potencialidades de expansión a otros modelos educativos, deben ser una prioridad en las políticas educativas.

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Palabras clave: tensiones y consensos; políticas públicas en educación; TIC's; saber y poder; educación en el sur global.

Tensions and consensus around the phenomena of education, tics and public policies: reflections from knowledge and power

Abstract

Teachers immersed in the digital world must use a set of technologies to achieve the objectives of their teaching activity; however, there is no doubt about the challenges generated by the incorporation of new information and communication technologies (ICTs) in education, which also produce a set of problems typical of the asymmetrical relations of knowledge and power, within the framework of what knowledge societies mean in the global south, a space identified by inequalities of all kinds. In this order of ideas, the objective of the article is to discuss the main tensions and consensus around the phenomena: Education, Tics and Public Policies, dichotomously assumed as interrelated concepts and social phenomena of global scope. For the theoretical development of the research, political materialism was used and, methodologically, the documentary research technique and the hermeneutic interpretation of the texts reviewed. It is concluded that ICTs, as part of the technological evolution and their contribution to contemporary educational practices, both in their modalities and their potential for expansion to other educational models, should be a priority in educational policies.

Keywords: tensions and consensus; public policies in education; ICT's; knowledge and power; education in the global south.

Introducción

El avance de las nuevas tecnologías y las telecomunicaciones hicieron de la internet una de las principales herramientas de la comunicación en el mundo de hoy, permitiendo la interconexión de las personas y dotándoles de un acceso formidable a diversos canales de información que son una poderosa fuente de conocimiento y permite que el proceso educativo se enriquezca con nuevos recursos multimedia (audios, videos, programas de lenguaje y aprendizaje de diversas materias) que solo son posibles gracias a las ventajas que las TIC`s disponen.

A la par que su potencial no ha sido del todo aprovechado en el campo de la educación, en especial en aquellas regiones con un elevado nivel de desigualdad que impida a la colectividad acceder a un equipo electrónico (smartphones, laptops, computadores de escritorio y tablets, entre otros), capaz de conectarse a la web. Por lo que en el presente artículo se hará una especial referencia a la educación en el sur en donde el acceso a las TIC`s y su potencial en la enseñanza se encuentran limitados por el alto coste de los equipos electrónicos que hacen posible la educación en línea.

Este estudio tiene por objetivo exponer las principales tensiones y consensos en torno a los fenómenos: Educación, TIC`s y Políticas Públicas, asumidos dicotómicamente como conceptos interrelacionados y fenómenos sociales de alcance mundial en el contexto de las desigualdades sociales en el hemisferio sur, más concretamente en la región de América Latina, con el fin de promover el debate y reflexión del uso de las nuevas tecnologías bajo una adecuada planificación publica que permita a los estados invertir en la modernización de las herramientas educativas, en especial aquellas relacionadas con las TIC`s.

El presente articulo esta compuesto en 5 partes, las cuales detallan un momento especifico de su proceso de realización, los cuales se constituyen por su introducción, en donde se desarrolla una breve descripción de la problemática, los Elementos teóricos del estudio, los cuales serán las políticas publicasen materia educativa, el concepto de las TIC`s y una breve exposición del materialismo político en educación; para luego en su segunda parte desarrollar una exposición detallada de la metodología del presente artículo a fin de dar una descripción del siguiente punto el cual será tensiones y consensos en torno a los fenómenos Educación, Tics y Políticas Públicas. posteriormente, las partes finales del estudio estarán comprendidas por el análisis y discusión de los resultados, para luego exponer las conclusiones y recomendaciones de la revisión de la bibliografía relacionada con el tema.

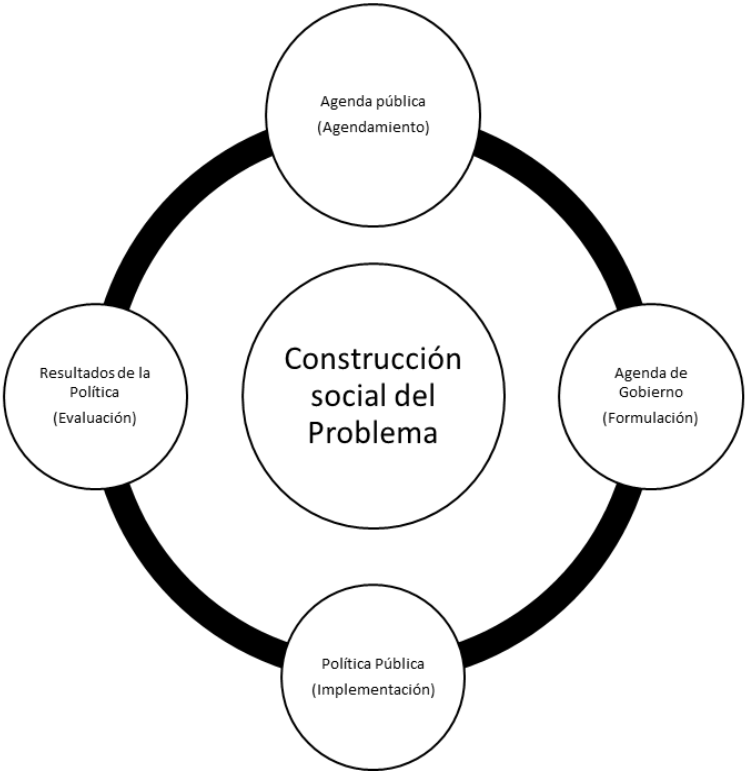
1. Elementos teóricos del estudio

1.1 Políticas publicas

El término políticas públicas, hace referencia al conjunto de políticas desarrolladas por el estado; las cuales se orientan a satisfacer algún tipo de demandas de la sociedad. Por lo que estas se formulan con el objetivo de solucionar un problema que es importante para la sociedad y que se convierte en política pública, al ser de dominio de todos los habitantes de la comunidad, ciudad o nación en la que se encuentren (Maggiolo y Maggiolo, 2007).

Para dar respuesta a esto, el Estado a través de estas cumple con sus funciones como garante de los derechos de los ciudadanos, además de lo anterior las políticas públicas deben responder a los fines que el estado trazo para ellas, por lo que estas se enmarcan dentro del marco institucional y se debe hacer efectiva su cumplimiento, como plantea Torres y Santander (2013), la política pública es el Estado en acción y en ese sentido una política pública adecuadamente estructurada debe facilitar la cooperación y la coordinación entre los actores claves que hacen parte del espacio de política pública.

Figura 1. Ciclo de vida de una política pública.



Fuente: Elaboración propia a partir de Dunn, 2008:19.

Como se muestra en la figura anterior este ciclo comprende las etapas de formulación, implementación, agendamiento y evaluación. Para Dunn

(2008), el método analítico busca responder cinco cuestiones relevantes que constituyen los componentes informacionales de la construcción de una política pública a través de los procedimientos analíticos presentados como la estructuración del problema a tratar. Generando conocimiento relevante acerca de los aspectos de la política como el desempeño de la misma, los resultados que se esperan, la opción de política adecuada y sus resultados observados.

Por tanto, las políticas públicas son una construcción social donde el ente regulador es el gobierno, y es una construcción e interacción de diversos actores tanto sociales como políticos. El Estado como estructura o institución organizada, entre sus normativas está el velar por los intereses económicos, de seguridad y bienestar de la sociedad. Esto se logra a través de tres distintos pasos como la asignación, distribución y estabilidad de los bienes y recursos necesarios para que el gobierno tenga una sociedad armónica.

Hay diversos actores que intervienen en las políticas públicas, por ello es pertinente que se entienda que las políticas públicas son el resultado de una acción colectiva que se desarrolla desde el gobierno, donde la acción colectiva de los ciudadanos lleva sus intereses al desarrollo de una serie de transacciones políticas en donde el gobierno no solo se encarga de ejecutarlas sino también de garantizar que estas se lleven a cabo con la cooperación de todos los actores involucrados. (Torres y Santander, 2013).

Esto quiere decir que la respuesta de una sociedad y la organización de esta, permiten que no solamente haya objetivos con intereses particulares que favorezcan al Estado, sino que actuarán de manera armónica junto con los diferentes actores. Todas estas acciones realizadas serán articuladas por ambas partes, para evitar las ejecuciones aleatorias y así con el mutuo acuerdo alcanzar metas en común.

1.2 Políticas públicas en educación

Estas son acciones que toma el estado para habilitar y gestionar el sistema educativo que prepara a sus ciudadanos para la vida en comunidad, el trabajo y los valores que pretende establecer en la sociedad por medio de su formación. toda política educativa debe orientarse hacia la formulación de planes y programas a ser llevados a cabo en un lapso determinado, la investigación y mejora de procesos educativos, así como la adecuada ingeniería social para mejorar la formación de sus ciudadanos en el futuro (Martínez, 2018).

Debido a que el gobierno tiene una responsabilidad compartida con la sociedad, que regulan y promueven actividades y servicios como del ámbito educativo, transporte, defensa de derechos, entre otros, pues al final estos procesos se vuelven cíclicos. Esto se debe a que los recursos que el Estado

invierte y gasta para el bien de la sociedad, a su vez los adquiere de la misma, lo cual depende de los intereses y valores de cada una de las partes. A su vez, es muy importante recalcar que, en cuanto a la gestión de recursos:

> La Política Publica de Recursos Educativos atiende la necesidad del país de coordinar, armonizar y cohesionar la política educativa en torno a las condiciones de acceso y disponibilidad, y a la pertinencia y calidad de los recursos utilizados para fortalecer la enseñanza y enriquecer los aprendizajes de acuerdo con los currículos escolares (Ministerio de Educación, 2022:01).

Lo antes citado permite comprender el nivel de sistematización que el estado debe desarrollar para planificar y ejecutar una adecuada política de los recursos, que le permita asegurar su calidad y pertinencia; de manera que debe ejecutar estos lineamientos a partir de ciertos principios como disponibilidad, nivel de acceso (si se encuentran habilitadas las infraestructuras, servicios públicos como electricidad, internet, entre otros) y nivel de calidad. por lo que en síntesis puede afirmarse que, una política educativa es aquella que se formula a partir de los intereses del Estado en cómo deben ser administrados los recursos educativos, tanto financieros, como tecnológicos y organizacionales en función de mejorar la calidad de la educación siguiendo un modelo o estándar prestablecido.

1.3 TIC`s

Las TIC's se definen como aquellas tecnologías necesarias para la gestión y transformación de la información, por medio de ordenadores o programas que permiten almacenar, modificar, distribuir y proteger tales datos, siendo capaces de adaptarlas a diversos ámbitos y modalidades (Sánchez *et al.*, 2015).

Otros autores como Nava (2007), explican que las TIC's son una respuesta natural a una sociedad cuyos avances tecnológicos implican una mayor interconectividad e inmediatez, donde las actividades son sintetizadas de manera digital por medio de dispositivos electrónicos, reemplazando aquellas técnicas manuales. estos avances generan una serie de cambios en los ámbitos culturales, sociales, académicos, entre otros, que deriva una inserción de la tecnología en todo espacio de la vida humana.

Entre las principales características de las TIC's, puede señalarse que estos son sistema de información integrados que almacenan grandes volúmenes de datos de manera que la búsqueda de una información en específico sea posible en unas décimas de segundo, ya que cuentan con una infraestructura informática que almacena millones de datos, textos, videos y sonidos en servidores, que se encuentran interconectados por medio de la internet.

Otro de los aspectos claves de este tipo de tecnologías es que cumplen una función de ser herramientas tecnológicas al ser diseñadas para facilitar

el trabajo requerido para transferir la información; por último su alcance comunicativo y de almacenamiento las convierte en herramientas de comunicación a distancia, con una amplia utilidad en el ámbito educativo, donde se desarrolla una modalidad en la cual el acto educativo se desarrolla por medio de métodos, técnicas y estrategias en los que alumnos y profesores se encuentran separados físicamente pero su interacción se produce por medio de dispositivos que les permiten interactuar de manera virtual (Nava, 2007).

En los últimos años las TIC`s han desarrollado una revolución en educación, ya que este es el ya que son herramientas que facilitan la enseñanza y el aprendizaje por medio de un amplio volumen de datos que bajo un gran número de plataformas pueden adaptarse a las habilidades y nivel de formación de los usuarios de este tipo de tecnologías, ya que a diferencia de una clase tradicional, el docente cuenta con material de apoyo de primera calidad como medios audiovisuales o dinámicas interactivas para llevar a cabo con sus alumnos, fortaleciendo el procesos educativo (Marqués, 2013).

1.4 Materialismo político en educación

Este tiene relación con todos los aspectos de la vida diaria del sujeto en su ámbito público y la relación que el Estado posee con este. Le da sentido a la actividad política del sujeto en las estructuras sociales de una comunidad organizada, de manera que este asimila y responde a las directrices de las autoridades, las instituciones y al gobierno (Bueno, 1991).

Por lo que, en líneas generales, puede interpretarse como del materialismo político pueden establecer los lineamientos de como dentro de las políticas educativas se establecen las bases teórico-filosóficas de la educación que lleva en la practica a la transformación del sujeto en el modelo o tipo de hombre que el Estado quiere para el futuro. De esta se desarrolla la posibilidad de establecer entre las estructuras educativas una formación que permita el desarrollo del pensamiento crítico, estableciendo una acción educativa consecuente con una teoría y práctica liberalizadora (Sánchez, 2020).

2. Metodología empleada

El presente artículo se desarrolla en función del paradigma de investigación cualitativa, por medio del cual se emplearon fuentes bibliográficas documentales, tanto virtuales como físicas como principales recursos de información y datos a analizar. De manera que: “El enfoque cualitativo utiliza la recolección de datos sin revisión numérica para descubrir o afinar preguntas de investigación en el proceso de interpretación” (Sampierí *et al*., 2015: 58).

Dada la naturaleza del presente articulo y su enfoque cualitativo, el estudio es de carácter educativo y social puesto que busca exponer las principales tensiones y consensos en torno a los fenómenos: Educación, TIC`s y Políticas Públicas, en el contexto de las desigualdades sociales. por lo que se busca hacer un análisis descriptivo de la temática antes mencionada a fin de señalar las limitaciones sociales de las políticas educativas en materia de TIC´s.

Dicho estudio es de carácter documental-bibliográfico ya que las fuentes a analizar están constituidas por textos, libros, publicaciones especializadas y revistas en materia de educación, TIC's y políticas públicas; a su vez es de diseño no experimental ya que las variables a tratar no sufren manipulación alguna por parte de los autores del estudio (Sampierí *et al.,* 2015).

Por último, es importante señalar las etapas que componen el presente estudio: 1. el eje temático el cual está compuesto por los elementos de tensión y consenso en torno a las TCI´s en la educación como parte de las políticas públicas del estado, a fin de elaborar una contextualización de esta dinámica y describir las ventajas y desventajas en torno a esta a nivel social y político. 2. tras una revisión exhaustiva de la literatura consultada, se procedió a definir la problemática a tratar la cual consiste en exponer los focos de tensión y consenso en cuanto a las políticas públicas en materia de educación relacionadas con las TIC's. 3.

Tras la consulta y análisis de las fuentes consultadas, se procedió a la elaboración del presente articulo científico, con el criterio de ser atractivo para revisar los enfoques en políticas educativas y su pertinencia académica y epistemológica a participar en el debate del desarrollo educativo de los países de Latinoamérica como parte de la comunidad del sur global. 4. Adecuación y publicación del artículo, tras la realización de las etapas previas, se procede a finiquitar detalles de estilo y normativas pertinentes a la revista, para luego promover los resultados del trabajo realizado mediante su publicación digital y física a fin de promover el debate desde una visión holística y critica del desarrollo de la educación desde el sur.

3. Tensiones y consensos en torno a los fenómenos Educación, TIC's y Políticas Públicas

La educación, las TIC's y las políticas públicas están estrechamente relacionadas, al ser partes de un conjunto que atiende dos variables especificas: la modernización del proceso educativo y la necesidad del estado de adaptar el sistema educacional a las nuevas tecnologías. Con ello, se hace preciso señalar primeramente los puntos en común de los autores consultados en torno a la educación y las TIC´s a fin de determinar los puntos que tienen en común para describir los principales consensos presentes en la problemática a tratar.

3.1 Elementos de Consenso con respecto a la aplicación de las TIC's en educación

En la bibliografía consultada, Marques (2013), Nava (2007), Sánchez *et al.*, (2015); coinciden en señalar que las TIC´s han representado una importante innovación en materia educativa, al incluir la didáctica dentro de la revolución digital, haciendo que el proceso educativo tenga herramientas que eran casi imposibles hace 20 años. Esto debido en parte al acceso a las nuevas tecnologías para el ciudadano común, el avance y masificación de las telecomunicaciones como la internet de fibra óptica o conexión vía satélite, entre otros.

Estas ventajas permiten que la interconexión acorte no solo las distancias físicas, sino también el acceso a educación de primera a las zonas rurales o comunidades de regiones con poco desarrollo de infraestructuras como carreteras, puentes y demás vías de acceso terrestre; lo que permite ser un abanico de posibilidades tanto para docentes como estudiantes.

Entre otras características de interés, pueden mencionarse la capacidad de interconexión, instantaneidad e interactividad de las TIC´s le permiten crear nuevas aplicaciones y programas que pueden mejorar la experiencia educativa del alumno y el docente adaptándose a las necesidades del aula o comunidad educativa en las que se desarrollaran (Cacheiro, 2014).

Las TIC`s ofrecen múltiples servicios que potencian la educación y los procesos organizacionales, pedagógicos y didácticos relacionados con estos a través del almacenamiento en la nube, los servicios de educación a distancia, juegos educativos, administración electrónica, búsqueda de información y blogs especializados en diversos contenidos. Asimismo, expande las capacidades del docente al permitirle centralizar y unificar los recursos y contenidos relacionados on los cursos a realizar; automatiza el registro de información y el monitoreo de las actividades del alumno a la vez que expande las capacidades de la organización escolar (Cacheiro, 2014).

3.2 Puntos de tensión con respecto a la aplicación de las TIC's en educación

En lo referente al debate de las TIC´s en América Latina, se presentan varios puntos de tensión entre ellos cuales se desarrollan en los ámbitos de los costes y nivel de infraestructuras necesarias para desarrollar los programas educativos basados en las tecnologías de la comunicación e información, así como el desarrollo de las políticas educativas adecuadas y la formación de los docentes. Al respecto es importante considerar lo siguiente: "La consolidación de procesos que garanticen la socialización del conocimiento académico a fin de suministrar un sistema estandarizado de información que hable un mismo lenguaje con el objeto de ser transferido hacia la colectividad en general" (Nava, 2007:14).

Lo antes citado expresa la necesidad de un sistema educativo basado en las TIC`s estandarizado y debidamente acondicionado a las realidades educativas de la región, tales practicas deben ser diseñadas desde los intereses del Estado en educación y considerando las debilidades y fortalezas de la organización educativa de cada país.

De igual manera, Nava (2007) explica que es importante recalcar que, la educación a distancia y las modalidades de educación en línea, exigen del docente una adecuada preparación en materia de informática y dominio de contenidos digitales, ya que debe adaptar los contenidos de sus actividades a los diferentes niveles de preparación que posean sus alumnos. Por lo que se requiere de una adecuada preparación del personal docente y la inclusión de la formación en materias de TIC`s en sus respectivas unidades curriculares, tales procesos a pesar de ser llevados en marcha no se han masificado en los sistemas educativos de la gran mayoría de los países de América latina, lo que ha llevado a una discusión en torno a si los docentes se encuentran debidamente preparados para su aplicabilidad en la realidad.

El coste de los equipos necesarios para acceder a las TIC´s son costosos. A pesar que hay programas dedicados a la inclusión de las TIC's en escuelas públicas en México, Guatemala, Costa Rica, Venezuela, Ecuador y Brasil, estos no cubren la totalidad de la matricula de alumnos en las instituciones públicas, por lo que puede decirse que son programas pilotos o de ayudas en materia de telemática, más que una política de masificación de las TIC`s, por lo que se aprecia que la educación y sus formas en Latinoamérica es realizada de forma manual en los ámbitos de la educación pública.

En Brasil, Argentina y chile desde la iniciativa privada se encuentran en el mercado software especializados en educación y TIC destinados al manejo de datos y clases virtuales, sin embargo, su coste solo puede ser cubierto por instituciones privadas que cubren altas sumas de dinero por concepto de matrículas estudiantiles, limitando su acceso (Sampaolessi, 2021).

Asimismo, Roth (2002), señala que es importante que las políticas públicas en materia educativa son en cuanto a las prioridades que los países de la región poseen en torno a este ámbito, ya que las políticas públicas dicen sobre el Estado en cuanto a las prioridades que este posee con respecto un ámbito determinado. Esto implica el uso de recursos y la voluntad política de cambiar una determinada situación o las reglas de juego que hasta ese momento se encontraban operantes en beneficio de cumplir una determinada tarea, lo que implica en Latinoamérica un debate sobre el financiamiento y prioridades que la educación posee en la región.

Por lo que lo antes expuesto pone en evidencia los diversos obstáculos que giran en torno a la aplicabilidad de las TIC`s en la región, las cuales debe ser superados para que este tipo de tecnologías prosperen en los sistemas educativos de Latinoamérica.

3.3 Relaciones asimétricas de saber y poder en el marco de las políticas públicas educativas en materia de TIC`s

En torno a las asimetrías entre educación y poder, Sánchez (2020), explica que en las dinámicas del sistema político existen dentro de la planificación publica diferentes criterios bajo los cuales, darles prioridad a determinados ámbitos en materia de inversión y políticas públicas; de manera que se observa como en algunos países la inversión en educación suele ser una prioridad por encima de subsidios u otro tipo de programas. Al identificar la prevalencia de un criterio político por encima de otro se explica que la asimetría entre el saber y el poder obedece entonces a una cuestión de voluntad política de la junta directiva del Estado.

De forma tal, la formulación y diseño de políticas educativas en materias de TIC`s implica que los Estados le otorguen una prioridad a futuro dado la importancia que esta posee para la formación del sujeto en el marco de la sociedad del conocimiento formulada a partir del dominio y predominancia de la tecnología en la economía, formación y cultura del futuro. La UNESCO plantea que toda sociedad para ser exitosa y pueda competir en el mundo de hoy, deba desarrollar una serie de ámbitos los cuales son esenciales para la prosperidad de una sociedad del conocimiento: el acceso a la educación, la información y la libertad de expresión (Foray, 2002).

Por lo que se aprecia que al no desarrollarse una política publica educativa de forma sistematizada y que cumpla con un adecuado criterio de prioridad nacional representa un atraso en materia educativo de los Estados que decidan no llevar a cabo una adecuada inversión y preparación a materia de TIC`s, ya que el sistema educativo y la sociedad en general se verán en desventaja con respecto a los adelantos de una sociedad del conocimiento. Siendo esto un actor clave para diseñar mejores políticas educativas en esta materia y fomentar el debate de una inversión racionalizada.

3.4 Factores a tomar en cuenta para el debate

A continuación, se desarrollan una serie de factores que de acuerdo a Borchart y Roggi (2017), Sánchez (2020) y Cacheiro (2014) deben tomarse en cuenta para el desarrollo de las TIC`s como políticas educativas en Latinoamérica.

- **Desigualdades sociales**

A pesar de su progreso en materia de TIC`s y progresos tecnológicos en materia de educación, existe una brecha económica y social considerable en los países de América Latina y el Caribe, debido a los costos de los equipos informáticos, dispositivos móviles, y cuotas de servicios de internet que son costosos en comparación con el ingreso promedio de los hogares de esta

región; otros factores que influyen de manera negativa es que los contenidos y programas de las TIC`s son realizados en su mayoría fuera de la región, lo que implica que no están adaptados a las verdaderas necesidades educativas; también debe tomarse en cuenta la falta de capital humano debidamente formado en materia de TIC`s tanto para su operación como en su gestión a nivel educativo (Borchart y Roggi, 2017).

- **Prioridades políticas**

Mas allá de la discusión sobre las fuentes de financiamiento en materia de TIC`s la clave se encuentra en la voluntad política de la dirección del Estado para llevar a cabo una política educativa de largo plazo en esta materia y que todos los grupos y partidos involucrados establezcan un acuerdo en donde se diseñen verdaderas políticas de estado en esta área educativa.

Dado que América latina es uno de los continentes con mayores índices de desigualdad social y económica, la integración de las TIC´s y educación deben ser vistas como un factor de equidad en la región, para mejorar la calidad y eficiencia de los procesos de enseñanza y aprendizaje (Borchart y Roggi, 2017).

- **Infraestructuras adecuadas**

Seguin lo señalado por Borchart y Roggi (2017), Sánchez (2020), no siempre las escuelas y centros educativos cuentan con la adecuada infraestructura para los equipos bajo los cuales funcionan las redes de información y comunicación, como computadores, televisores, tablets y demás dispositivos de audio y video, ya que requieren de instalaciones eléctricas optimas sumado a la inversión para adquirir estos equipos por lo que para su implementación todos los centros educativos deben contar con una infraestructura optima y en buenas condiciones, elementos que resultan imprescindibles para que el beneficio sea a largo plazo.

4. Análisis y discusión de resultados

Tras la revisión documental-bibliográfica, los autores coinciden en la apertura tecnológica en materia de TIC`s y sus avances en la región, permitiendo un aporte significativo en este tema que permite englobar un consenso positivo en materia de educación y TIC´s. mientras que en lo referente a la implementación de políticas públicas educativas en la materia, los puntos de tensión se enfocan en la voluntad política de llevar a cabo un programa de inversión y sistematización de la educación bajo este nuevo enfoque en tecnologías de la comunicación e información.

Por ende, los trabajos de Marques (2013), Nava (2007), Sánchez *et al.,* (2015); concuerdan que a nivel académico las TIC`s son un importante recurso para la formación a futuro de los alumnos y que estas deben ser una prioridad de inversión en materia educativa. Siendo sus beneficios y potencialidades aun no explotados y aprovechados del todo por los países de la región.

Por su parte, Borchart y Roggi (2017), señalan que una de las principales fortalezas de los programas educativos en TIC`s en los últimos años es la de darle prioridad a la distribución de dispositivos informáticos a estudiantes y docentes como computadores portátiles, que ha permitido un nivel de crecimiento adecuado, pero en este proceso se evidencian debilidades notables como la falta de capacidad de desarrollar hardware y sistemas informáticos educativos propios y adecuados a las necesidades de cada región y publico educativo, como es el caso de lenguaje de programación y tareas en lenguas indígenas, para discapacitados entre otros.

Conclusiones y recomendaciones

El enfoque sistémico y interpretativo realizado para la revisión de las principales tensiones y consensos en torno a los fenómenos: Educación, Tics y Políticas Públicas, asumidos dicotómicamente como conceptos interrelacionados y fenómenos sociales de alcance mundial, permiten indicar que esta es una problemática regional y hemisférica ya que países de África, medio oriente y sureste de Asia poseen problemáticas similares en materia de TIC`s, dado entonces una falta de desarrollo de programas adaptados a las necesidades locales siguiendo el criterio de cooperación sur-sur.

Entre los principales puntos de conceso se identificaron aspectos como la vanguardia de desarrollo educativo dentro de las tecnologías de la comunicación e información que transforman la realidad de los ciudadanos del mundo a pasos agigantados, que si bien América latina no se encuentra ajena a este proceso en el cual aún queda mucho por hacer. En tanto los principales focos de tensión se vieron enmarcados dentro de la planificación y diseño de políticas publicas por parte del estado señalando que este factor es determinante en cuanto a la voluntad política se refiere, en tanto al interés del gobierno de turno en invertir en educación.

Otros elementos a considerar son los altos costes de equipos informáticos y la falta de capital humano capaz de desarrollar Hardware y Software a nivel local que de cierta manera permita abaratar costes de producción. Asimismo, resalta el éxito de los programas informáticos en la región, pero estos deben fortalecerse con una política educativa diseñada a ser implementada a largo plazo, que se formula desde los intereses estratégicos del Estado.

En lo referente a las recomendaciones pueden señalarse que es necesario levantar un criterio de desarrollo humano en el cual se establezcan pautas clave como lo es la sociedad del conocimiento que permita a los Estados en encaminar sus políticas públicas a las sociedades del futuro otorgándoles una mayor proyección que les otorguen una mejor preparación a sus integrantes para el mercado laboral del futuro.

El análisis de las políticas públicas en materia de educación y TIC`s o el desarrollo de cualquier programa debe contar con una dimensión holística que le permita prever posibles puntos débiles o elementos a fortalecer para tener éxito a largo plazo, ya que aun se mantienen notables distinciones sociales y económicas en la región lo que la hace vulnerable en cuanto a las desigualdades sociales se refiere.

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Environmental crisis overcoming as a factor for achieving economic sustainability in the context of the European green course

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Abstract

By means of the modeling methodology, the object of the study was the theoretical and practical aspects of overcoming environmental crises as a factor to achieve sustainability. In today's world, several crises are combined: social, political, cultural and moral, the crisis of democracy, ideology and the general crisis of the capitalist system. More specifically, the economic and environmental crises are linked to the financial crises and the existing disorientation is due, to a large extent, to the financial risks that have affected the ecological footprint of civilization. As a result of the tasks set, the concept of planetary boundaries has emerged as an effective means of measuring the state of the planet and its threats. In this sense, the concept of an economy in need of transformation has been formed, as environmental growth and technological progress are accompanied and even accelerated by economy and resource efficiency. It is concluded that, current trends on Earth are not sustainable, and traditional responses to these problems often depend on the type of economic growth that is strongly associated, simultaneously, with additional resource consumption and the policies that make it possible.

Keywords: environmental crises; economic sustainability; climate change; carbon dioxide emissions; European green course.

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La superación de la crisis medioambiental como factor para lograr la sostenibilidad económica en el contexto del curso verde europeo

Resumen

Mediante la metodología de modelización el objeto del estudio fueron los aspectos teóricos y prácticos de la superación de las crisis ambientales como factor para lograr la sostenibilidad. En el mundo actual, se conjugan varias crisis de tipo: social, política, cultural y moral, la crisis de la democracia, la ideología y la crisis general del sistema capitalista. Mas específicamente, las crisis económicas y ambientales están vinculadas a las financieras y la desorientación existente se debe, en gran medida, a los riesgos financieros que han afectado la huella ecológica de la civilización. Como resultado de las tareas planteadas, el concepto de límites planetarios se reveló como un medio efectivo para medir el estado del planeta y sus amenazas. Es este sentido, se ha formado el concepto de una economía en necesidad de transformación, ya que el crecimiento ambiental y el progreso tecnológico están acompañados e incluso acelerados por la economía y la eficiencia de los recursos. Se concluye que, las tendencias actuales en la Tierra no son sostenibles, y las respuestas tradicionales a estos problemas suelen depender del tipo de crecimiento económico que está fuertemente asociado, simultáneamente, al consumo adicional de recursos y a las políticas que lo hacen posible.

Palabras clave: crisis ambientales; sostenibilidad económica; cambio climático; emisiones de dióxido de carbono; curso verde europeo.

Introduction

The modern world is in a crisis that is not only cyclical, but also is growing and not limited to the nature around us. In today's society, there are such crises - social, political, cultural and moral, crisis of democracy, ideologies and general crisis of the capitalist system. The economic crisis is compounded by the environmental crisis (Gulac *et al*., 2022). The global population has grown from 1 billion in the eighteenth century to almost 7.6 billion today. At the same time, per capita consumption of energy, water, space and minerals has increased. This dual development has rapidly led us into a "full world" that has begun to demand a new Enlightenment suitable for a "full world".

Civilization has faced a storm of problems caused by overpopulation, excessive consumption by the rich, the use of technologies that are harmful

to the environment, unprecedented inequality. It has been proven by science that nearly half of the topsoil on the earth has been depleted in the last 150 years, with almost 90% of the fishery resources being recovered almost completely. Climate stability is in danger; the earth is now, for the sixth time in its history, experiencing a period of mass extinction.

In addition, the scale of refugees is increasing: in 2017, there were already 60 million refugees in the world. The crisis is linked to the spread of poverty in many countries and the loss of work for a large part of the population worldwide. Billions of people are in such a psychological state that they no longer trust the governments of their countries.

The Oxford Initiative for Combating Poverty and Human Development (ORNI) has proposed the introduction of a Multidimensional Poverty Index (MPI), which focuses not only on income but also on ten other indicators related to health, education and living standards. Using this index, in 2016, the ORNI initiative numbered 1.6 billion people living in "multidimensional poverty" - almost twice as much as people living extremely poorly by income alone (Andriukaitiene *et al.*, 2019).

Boundaries have become apparent and palpable in almost all types of human activity. The model was unable to see the impressive development of pollution controls that allowed many countries to partially avoid the tragedies of air, water and land pollution. Of course, technological advances have their limits. In addition, traditional economic models, and lines or in nature, which are not able to solve the problem of nonlinearity of natural systems, such as the climate system (Eco Forum, 2021)

1. Formulation of the problem

The economic and environmental crises are linked to the financial crisis. Disorientation is largely related to financial risks. Scientists are worrying about the trends of the last 30 years that have grown when considering the explosive bank balance sheet, backed by declining equity and large-scale borrowing.

One of the consequences was a temporary boom caused by the private sector. Another consequence is the significant growth in the global financial sector (finance, insurance, real estate), called "financialization", which led to the financial crisis of 2008-2009.

2. An analysis of the latest research and publications that started this issue and that the authors rely on

The authors are based on works by such authors as: Ernst Ulrich von Weizseker, Anders Wykman "Come On! Capitalism, shortsightedness, population and the destruction of the planet. Report to the Roman Club" (Ernst Ul′rikh fon Vaytszeker and Viykman, 2019; Nikitenko, 2019a); Meadows Donella, Meadows Dennis, Rangers Jørgensen "Growth Limits. 30 years later (Donella, et al., 2018); Naomi Klein "Everything changes. Capitalism against climate" (Naomi, 2016); Maxton Graham, Randers Jorge "In Search of Welfare. Managing economic development to reduce unemployment, inequality and climate change. Report to the Roman Club" (Maxton, Randers, 2017).

An important role for us was played by Appello Jurgen's works "Management 3.0. Agile management. Leadership and Team Management" (Jürgen, 2019), James Wumek, Daniel Jones. How Toyota's production system will help prevent material loss and ensure your company's prosperity" (Woomeck and Jones, 2019: 16), Drucker Peter F. "Challenges for 21st Century Management" (Drucker, 2020), which creates the conditions for a new paradigm management as a factor of sustainable and balanced development.

Co-presidents of the Club of Rome Ernst Ulrich von Weizsäcker, Anders Wijkmann "Come On! Capitalism, short-sightedness, population and the destruction of the planet (Chkheailo *et al*., 2021). Report to the Club of Rome ", under" Come On! "Called the "new Enlightenment 2.0", which means the balance between nature and man, between long-term consequences and tactical tasks. The article was written in the context of the topic conducted by the V Specialized International Zaporizhia Ecological Forum "Eco Forum - 2021" September 14 - 16, 2021 Kozak Palace, in which the authors of the study participated with their developments (Eco Forum, 2021).

The purpose of the study is theoretical and practical aspects of overcoming environmental crises as a factor in achieving sustainability.

Objectives of the study:

- using the system dynamics and modeling method as a method of scientific research
- identifying the idea of planetary boundaries as an effective means of measuring the state of the planet and its threats;
- developing the concept of an economy in need of transformation, as environmental growth and technological progress are accompanied, and even accelerated, by the frugal and efficient use of resources;

- payment for environmental pollution as a factor in achieving social sustainability;
- the problem of global warming and joint development of climate management policy;
- identifying gaps between theory, education and social reality.
- forming the concept of the new Enlightenment 2.0 as a philosophy of balance;
- explore modern ways to reduce carbon emissions, which will serve as an indicator of success;
- to analyze The European Green Deal as a set of policy initiatives put forward by the European Commission with the general aim of making the European continent climate-neutral by 2050.

3. Research methodology

Modeling as a method of scientific research is gaining heuristic importance and spreading in connection with the development of systematic and logical and mathematical approaches in modern science. Modeling in modern scientific knowledge acts as a means of displaying complex systems, as a special form of mediation, when the researcher places between themselves and the object of research, an intermediate link - a model.

The modeling of these processes involves the creation of a mathematical apparatus, through which you can summarize the various characteristics of the global environmental process. Models created using mathematical modeling methods have the purpose to trace the conditions of overcoming crisis phenomena in the interaction between society and the environment, and also have the character of a factor of sustainable socio-economic development (Appello, 2019).

The theory of system dynamics and computer simulation is used to analyze the long-term causes and effects of population growth on the planet and the economy. The World3 computer model used in the MIT study was rather inflexible and assumed that the relationships between various parameters, such as industrial products and pollution, would remain unchanged (Cherep *et al.,* 2019).

4. Discussion of the problem

Outline of the main research material with justification of scientific results (Nikitenko, 2019b).

4.1. Identifying the idea of planetary boundaries as an effective means of measuring the state of the planet

Based on the results of scientific research, the concept of planetary boundaries as an effective means of measuring the state of the planet indicates that since the Industrial Revolution, human activity has gradually become a major driver of global environmental change. In a report to the Roman Club, scientists identify nine planetary boundaries:

1) destruction of the ozone layer in the stratosphere;
2) loss of biological diversity and extinction of species;
3) chemical contamination and release of new chemical objects (new substances of artificial origin, in particular, radioactive materials, genetically modified organisms, nanomaterials that have the potential of undesirable geophysical and / or biological effects);
4) climate change;
5) ocean acidification;
6) landscape changes;
7) fresh water consumption and global hydrological cycle;
8) nitrogen and phosphorus emissions into the biosphere and oceans;
9) concentration of aerosols in the atmosphere (Eco Forum, 2021).

4.2. An economic transformation linked to environmental growth and technological progress, which can be accompanied, and even accelerated, by the economy of resources and efficiency

Almost all trends in resource consumption, climate change, biodiversity loss and land degradation reflect the discrepancy and flaw in the vector of public policy, business strategies and social values that underlie them.

Improving resource efficiency is just a step in the right direction. Equally important is the movement towards an economy based on renewable materials, material circulation and taxes used to balance demand. If it does not work, the benefits of increased efficiency are quickly eliminated and the combination of returns and economic growth combined. Most political projects of the past did not take these ascetics into account and, as a result, failed to fully decapitate these effects, as demand for resources exceeds the pace of economic growth (Hrem and Yorhen, 2017).

4.3. Payment for environmental pollution

Climate capitalism (Ernst Ul'rikh fon Vaytszeker *et al*., 2019). In North America and Europe, the economic crisis that began in 2008 is still being used as an excuse to reduce the costs of helping other countries and curtail their environmental programs. Environmental protection projects are being canceled across Southern Europe. This is especially noticeable in Spain, where subsidies for renewable energy developers are decisively eliminated. Solar and wind power plants are moving towards default and closing. In Britain, David Cameron's filing also reduced funding for green programs (Drucker, 2020).

In order to significantly reduce greenhouse gas emissions, the only rational way is to use the principle already existing in Western legislation - the payment for environmental pollution. A carbon tax should be put in place that will reduce inequalities in society by raising the cost of greenhouse gas emissions.

Funding for environmental programs must come from environmental pollution charges. There is a need for a long-term plan of action by government officials at every level and a desire to withstand the pollutants that put us all at risk. This will not happen until the uncontrolled corporations that shaped our political culture for three and a half decades are destroyed (Kelly, 2018).

4.4. The problem of global warming and joint development of climate management policy

Global warming continues. 2016 has been a record hot year over 2015, which itself exceeded the previous 2014 record. Some 2016 studies have found new evidence for the scale of the ocean's warming. A huge surplus of energy accumulates in ocean waters, which means that much of that surplus will remain on the planet for many more centuries.

In 2017, there were massive tropical hurricanes in Asia and the Americas that caused massive destruction in Texas and Florida. Climate change is a problem to which international agreements are needed. The world is still moving in the direction of at least three degrees Celsius. All this indicates that joint development of climate management policy is needed (Klein, 2016).

4.5. Gaps between theory, education and social reality

The divide between economy and ecology, which has lasted for almost two centuries, is a striking instrument of a common problem. The fragmentation of knowledge leads to the loss of perspective and vision of the interconnections and interdependencies between the elements

and the wider whole to which they belong. This has led to a policy that tries to address highly specialized issues and does not take into account their impact on other areas. It was for this reason that until the 1970s, no one considered environmental studies important when planning new commercial or community projects.

The economic model is not generally designed to reflect the world, but is a way of exploring what theoretical assumptions and abstractions can lead to. The gap between academic study and the needs of the real world leads to even greater gaps in all areas.

The concept of the new Enlightenment 2.0 as a philosophy of balance has been formed. The philosophy of the new Enlightenment (Enlightenment 2.0) must strike a balance between:

1. between humans and nature, namely the use of residues of natural landscapes, water bodies and minerals mainly as resources for ever-increasing human development and consumption;
2. between farsightedness and myopia (in balancing these problems);
3. between speed and stability (today's dependence of civilization on the speed of development destroys the structures, habits and culture that emerged on the basis of sustainability);
4. between the private and the public (history has led to pendulum fluctuations between the dominance of the private and public sectors, but history has not struck a balance between the two spheres);
5. between equality and remuneration for achievement (without remuneration for the achievement of society to lose in competition with other societies, but a system of justice and equality must be guaranteed by the state);
6. between state and religion (one of the enormous assets of the European Enlightenment was the separation of public leadership from religious, with full respect for religious values and communities) (Klein, 2016).

The problem of preventing climate change, in particular global warming, needs to be looked at more broadly, as we are talking about radical changes in the way man lives on this planet. Climate change can lead to various social, political and economic transformations that lead to shock as society's response to cataclysms. Most assumptions about natural disasters as a result of human activity confirm the fundamental changes taking place on our planet. In other words, if the air temperature reaches a certain limit, unpredictable and potentially irreversible changes can begin, which will have a large-scale destructive effect.

After that, the process will not be stopped, even by reducing carbon emissions, the real plan of reduction of which may be based on the achievements of other disciplines - physics, chemistry, biology, engineering, political science, economics. The use of fossil fuels has changed our planet so much that it is now necessary to change the level of its use. As an example, since 2012 there has been an unprecedented melting of the Greenland Ice Sheet, which leads to disastrous consequences and poses a great danger to civilization (Ernst Ul'rikh fon Vaytszeker *et al*., 2019).

The planet is warming and this is due to human activities, which entails serious consequences and one day they will reach catastrophic proportions, as hotter climates create problems (fires in Turkey, Greece), the temperature of our planet rises due to human impact on nature. The increase in the number of forest fires is influenced by climate change, which is the result of human activity (human factor). Excess carbon dioxide and warming affect flora and fauna, as an increase in average temperature of 2 degrees Celsius will reduce the range of vertebrates by 8%, plants - by 16%, insects - by 18% (Graham *et al.,* 2021).

Excess heat will negatively affect livestock, resulting in more expensive meat, eggs and dairy products, as animals will give them less and will die more often at a young age, and as a result of rising temperatures by 2 degrees will disappear and coral reefs that provide seafood more than a billion people.

Twice as many people will not have constant access to clean water. As the temperature rises, these problems will increase in scale, strength and frequency. Mankind has faced droughts, natural disasters, changes in temperature, fires and floods, which also affect human health. Thus, the climate catastrophe will change everything and there is little time left to affect the nature of these changes and the changes caused by man have already begun.

There is nothing we can do without radically changing our way of life, without abandoning our economy and without losing some of the great industries, and civilization must undergo fundamental changes in values (Voronkova *et al*., 2020a).

This requires action in line with the economic paradigm of the state, ie focusing on the political steps that states can take, but each of us can help avoid a catastrophe - the head of government, an entrepreneur, an ordinary citizen. The problem is very complex and affects almost every type of human activity. Mankind already has some tools to reduce emissions, but they should be used to the maximum.

Climate change in public policy should be taken into account, focusing on vulnerable categories (women, youth); help farmers reduce the risks of unpredictable weather conditions; create a government program to

diversify the cultivation of crops and animals; help reduce the risks posed by climate change; find new resources to finance adaptation projects; use geoengineering at the local level; stop emitting greenhouse gases into the atmosphere; pursue sound public policies to help address global warming, air pollution and other global issues; develop a program of adaptation to the effects of climate change (Meadows *et al.,* 2018).

The Parties to the United Nations Framework Convention on Climate Change (UNFCCC, 1992) and the Paris Agreement (2015) recognize that adapting to global climate change in the light of the UN Framework Convention on Climate Change is a global challenge affecting all local, regional, national and regional and internationally. Adaptation is a key component of a long-term global response to climate change to protect people, livelihoods and ecosystems. The UN Climate Change Adaptation Cycle includes four key components:

1. Assessing impacts, vulnerabilities and risks. At the present stage, an initial assessment of the degree of impact of climate change on natural systems, as well as society.
2. Planning adaptation measures. Here, the necessary adaptation measures are developed and evaluated, including the study of the necessary costs and potential benefits. This is necessary to choose the best of the available options. Carrying out comprehensive planning is designed to prevent duplication of measures, their incomplete implementation, as well as to promote sustainable development.
3. Implementation of adaptation measures. Adaptation measures are implemented at various levels, including national, regional and local. Various tools are used, such as the implementation of projects, profile programs or strategies. This can be both individual measures and integrated approaches that are taken into account in strategic decisions and plans for sustainable development.
4. Monitoring and evaluation of adaptation measures. These steps are taken throughout the adaptation process. The knowledge, information and experience gained can be used to ensure the success of further adaptation measures. Progress in the implementation of measures is taken into account during the monitoring. Evaluation also serves to study the effectiveness of actions (Metelenko and Voronkova, 2021).

4.6. Modern ways to reduce carbon emissions as an indicator of success

Reducing carbon emissions by 2030 and reaching 0 on balance is a great global ambitious goal of our time, which cannot be achieved without the use

of modern technology. If we aim to reduce emissions a bit by 2030, we are focusing on measures that could complicate or even break the main goal - zero balance. For example, by reducing carbon emissions by 2030, there is a temptation to replace coal-fired power plants with gas-fired ones, and this will actually reduce carbon dioxide emissions (Klein, 2016). Only every thermal power plant built in the next 10 years will still be in operation and produce greenhouse gases in 2050.

She has to work for decades to pay off. That is, the country will fulfill the item "cut to 2030", but will lose the chance to "get to zero". On the other hand, if we consider "reducing to 2030" as an intermediate stage in reaching "zero in 2050", it is pointless to waste time and money on the transition from coal to gas.

It is better to combine two strategies: to focus on affordable and reliable supply of carbon-free electricity and ensure maximum electrification - cars, industrial processes, heat pumps, as electricity is still produced from fossil fuels. If the country is interested in purely reducing emissions by 2030, this approach will be a complete failure. In 10 years, the figures will decline, but countries will build a bridgehead for long-term success, and every breakthrough in generation, storage and supply will rapidly bring humanity closer to zero (Woomeck and Voronkova, 2019).

Therefore, if experts are looking for a measure of who is successfully resisting climate change and who is not, it is necessary to judge not only by reducing emissions. We should look for countries that are preparing a bridgehead to zero, which may not be showing effective emission reductions at the moment, but deserve praise for choosing the right trajectory. And if countries start today with the power of science and innovation, they will have a chance not to make the same mistakes.

The key is to apply innovations that serve a new method or process, but they demonstrate the ability to offer new approaches to business models, supply chains, markets and regulation that will help the invention come to life and be realized worldwide. Innovation is new tools and new ways of doing things (Voronkova *et al.*, 2021c).

Mankind already has a number of competitive low-carbon solutions at its disposal, but there are not enough of them to achieve zero global emissions. It is necessary to use new technologies that will improve ways to reduce carbon emissions and serve as an indicator of success:

1) carbon-free hydrogen production;

2) batteries that can store energy for the city for the whole season;

3) electric fuel;

4) improved biofuels;

5) carbon neutral cement;

6) carbon neutral steel;

7) carbon neutral fertilizer;

8) a new generation nuclear reactor;

9) nuclear fusion;

10) carbon capture (directly from the air and point);

11) underground power lines;

12) carbon neutral plastic;

13) geothermal energy;

14) hydroaccumulation;

15) accumulation of thermal energy;

16) carbon neutral substitutes for palm oil (Hrem and Yorhen, 2017).

To this end, 1) funding for applied research and development in the field of clean energy and climate should be increased fivefold; 2) bet more on ambitious but risky research; 3) cooperate with the industry; 4) build appropriate infrastructure; 5) change the rules of the game so that new technologies become competitive; 6) set the price for carbon; 7) develop the Renewables Portfolio Standard; 8) develop standards for clean fuel; 9) develop standards for clean products; 10) speed up the process of legislative incentives for taxation and regulation of energy companies; 11) use an integrated approach to accelerate innovation. The path is difficult but reliable (Voronkova *et al.,* 2021c).

4.7. The European Green Deal as a set of policy initiatives put forward by the European Commission with the common goal of making the European continent climate-neutral by 2050

The European Green Deal is a set of policy initiatives put forward by the European Commission with the common goal of making the European continent climate-neutral by 2050 (Voronkova *et al.*, 2021b). Modern civilization depends on extraction, devastating the exhaustive deposits of combustible minerals that will not recover even for a longer period of time than our species exists.

Big companies and free market ideology are blocking already uncertain attempts to combat climate change. Provision of fossil fuels and electricity and their use is the biggest cause of anthropogenic pollution. Of course, the combustion of any combustible minerals involves the oxidation of carbon, resulting in CO emissions. Water pollution is mostly the result of accidental spills of oil or acid my water.

The main changes in water use are caused by surface coal mining, construction of large hydroelectric dams and the formation of reservoirs, and more recently the construction of large areas for wind and solar energy. Most of the current laws and regulations protecting the environment have been developed without taking into account climate change. The challenge of reaching a climate consensus is the difficulty of international cooperation.

It is difficult to reach unanimity from all countries of the world, especially when it comes to the additional costs of stimulating carbon emissions. Hence the extraordinary value of the Paris Climate Agreement: more than 190 countries have pledged to limit their emissions. If everyone keeps their word, by 2030 emissions will fall from 3 to 6 billion tons per year, which is less than 12% of current levels. We already know the number of emissions - 51 billion a year (Voronkova *et al.,* 2021b).

The problem is very complex and affects almost every type of human activity. We already have some tools to reduce emissions, so they should be used to the maximum, and this requires many discoveries and technologies. Thus, hundreds of innovative ideas in science and technology are needed to overcome this problem (Trusova *et al.*, 2021). A global consensus needs to be reached and a political course needs to be developed to drive change.

It is necessary to get rid of the shortcomings of the modern energy problem and preserve its advantages. Decarbonize the grid, making extensive use of clean energy sources and investing in advanced developments and technologies for generating, storing and transmitting electricity. Government regulation and funding need to fill this gap by focusing on areas where new carbon-free technologies need to be invented. Independent political and financial support will unlock the potential of the idea (Cherep *et al.*, 2019).

Thus, the government's task is to invest in applied research that will help solve this complex problem at both the center and regional levels. This will help innovations that will reduce the cost of carbon-free steel production. Barriers arise from a lack of staff information or incentives - and this is where good public policy can change the situation. Markets, technology and legislation are the three levers that can separate humanity from fossil fuels, which should complement each other and, therefore, stimulate innovation, the emergence of new companies and the rapid entry of new products into the market.

And to do this, build an infrastructure that will bring new technologies to market; develop standards for clean electricity, clean fuel, clean products. Develop the European Green Course; local initiatives within the European Green Course; implement the Roadmap for Ukraine's participation in the European Green Course; to promote climate change in the framework of the European Green Course and to adapt to the effects of climate change;

prepare the regulatory framework and market structures by 2030; implement an integrated approach to accelerate innovation in Ukraine and around the world (Voronkova *et al.,* 2021c).

The Kyoto Protocol is an international agreement to limit greenhouse gas emissions. The main purpose of the agreement: to stabilize the level of concentration of greenhouse gases in the atmosphere at a level that would not allow dangerous anthropogenic impact on the planet's climate system.

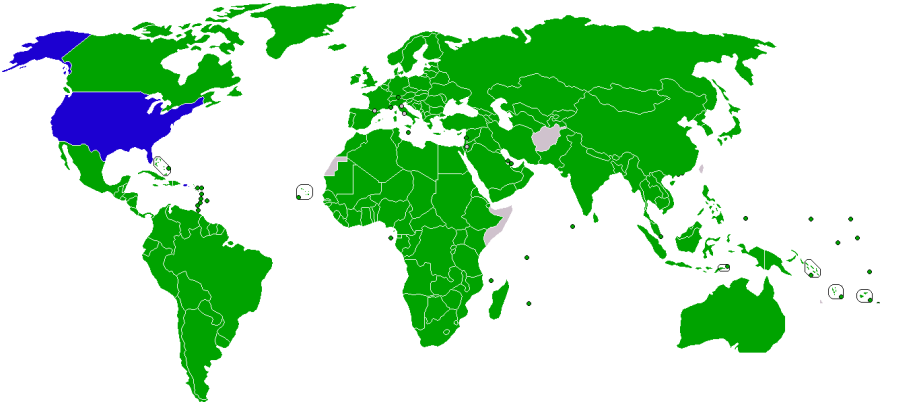

Figure 1 - Member States of the Kyoto Protocol (marked in green).
Source: (United Nation, 1992).

Conclusions of the study

Current trends on Earth are not sustainable, and the traditional answers to these problems usually depend on the type of economic growth that is strongly associated with the additional consumption of resources. Being combined with the continued growth of the population, this fact deprives further today's trends of sustainability. The inevitable result of this process is local and global economic collapse that will completely eradicate the Sustainable Development Goals.

The Declaration accompanying the Goals formulates a vision for the future where the development and use of technology shows its resilience, taking into account climate change, respecting biological diversity. A world in which humanity lives in harmony with nature and in which wildlife and other biological species are protected.

- **Practical recommendations**

Introduce a new taxation philosophy that rewards job creation and fines the consumption of natural resources, while continuing to respect the need for everyone to have access to the resources they need. It is necessary to investigate the consistency between the Goals and the methods by which the stated goals will be realized:

1) the need for urgent action to combat change in goals;
2) the importance of maintaining and moderately using the oceans, seas and marine resources in the context of sustainable development;
3) protecting, reproducing and promoting the sustainable use of land ecosystems, sustainable forest management, combating environmental devastation; stopping land degradation and restoration, as well as halting biodiversity loss. The problem of socio-economic deficits will be addressed by attempts to accelerate growth and trade.

- **Prospects for further exploration in this direction**

Sustainability improvement should be developed as a compromise between socio-economic and environmental goals that will contribute to the achievement of food security, providing humanity with sufficient water, overcoming the effects of biological diversity, and achieving human well-being.

The Human Development Index is a composite indicator of education, health per capita, and is used to measure people's well-being in different countries. However, there is no country in the world that demonstrates a high socio-economic level (the Human Development Index) and at the same time has reached stable indicators (less than 1.8 ha) when measuring its environmental footprint.

This means that there is no country in the world with a high level of productivity on all three pillars (economic, social and environmental).

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La crisis de Ucrania, un conflicto de las grandes potencias

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Resumen

La guerra en Ucrania ha generado un cambio geoestratégico en la región de Europa del este pues además de alterar la paz, se evidencia una crisis de refugiados, recursos e impacto ambiental en el que se incrementa paulatinamente la polarización de las potencias representadas, por un lado, por la Organización del tratado del Atlántico norte OTAN y, por el otro, por la Federación Rusa junto China. Mediante una revisión bibliográfica este trabajo tuvo por objetivo realizar un análisis cualitativo del problema bélico en Ucrania tomando en cuenta el contexto histórico, cronología y de desarrollo de posibles escenarios que podrían poner fin a esta guerra que, desde luego, pueden ir cambiando dinámicamente en la medida que este conflicto se mantenga en el largo plazo. Por lo demás, todo permite concluir que Ucrania carece de recursos militares propios y depende de las ayudas de las potencias europeas y Estados Unidos, en este sentido surgen algunas interrogantes legitimas: ¿Hasta qué punto se puede dar una cooperación militar sostenida en el tiempo y a qué precio para Ucrania?, ya que para nadie conviene que la guerra sea de largo plazo y cada país tiene sus propios problemas que resolver.

Palabras clave: Conflicto bélico Ucrania-Rusia; OTAN; Impacto socioeconómico de la guerra; grandes potencias en el siglo XXI; escenarios cualitativos.

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The Ukrainian crisis, a conflict of the great powers

Abstract

The war in Ukraine has generated a geostrategic change in the region of Eastern Europe since, in addition to altering the peace, a crisis of refugees, resources and environmental impact is evident in which the polarization of the powers represented, on the one hand, by the North Atlantic Treaty Organization NATO and, on the other, by the Russian Federation together with China, is gradually increasing. By means of a bibliographic review, the aim of this work was to carry out a qualitative analysis of the war problem in Ukraine, taking into account the historical context, chronology and development of possible scenarios that could put an end to this war, which, of course, may change dynamically as this conflict continues in the long term. Moreover, it can be concluded that Ukraine lacks its own military resources and depends on the aid of the European powers and the United States, in this sense some legitimate questions arise: To what extent can there be a sustained military cooperation in time and at what price for Ukraine, since it is not convenient for anyone that the war is long term and each country has its own problems to solve.

Keywords: Ukraine-Russia war conflict; NATO; socio-economic impact of war; great powers in the 21st century; qualitative scenarios.

Introducción

En febrero del 2022, Europa del este despertaba con un nuevo conflicto en Ucrania por la invasión rusa, cuando apenas el planeta estaba haciendo esfuerzos por salir de la crisis de la pandemia de covid-19, un hecho inesperado pone a la población ucraniana en una crisis humanitaria. Los bombardeos indiscriminados de la segunda potencia mundial en zonas vulnerables como residencias, infraestructura pública, escuelas, hospitales han dejado saldos negativos en cuanto a decesos provocados de los ataques.

En pleno Siglo XXI cuando se supone que el mundo había aprendido de los errores de guerras pasadas como en la ex Yugoslavia, Chechenia, Afganistán, Irak, Siria, Libia, Yemen y la guerra permanente que el mundo lleva contra el terrorismo, es imposible comprender como todos estos recursos bélicos podrían ser utilizados en la lucha contra el hambre, la desnutrición, la pobreza, el impacto ambiental, enfermedades, las drogas, migración, delincuencia organizada y demás problemas que pueden ser erradicados en un mundo más justo y sostenible.

La incursión militar de Rusia hacia Ucrania ha desencadenado un nuevo éxodo de refugiados que contra su voluntad se ven obligados a dejar atrás

sus vidas y posiblemente empezar desde cero en otro sitio con diferentes lenguas y costumbres, que por muchos analistas es considerada como la peor catástrofe de los últimos 50 años en Europa, mientras tanto que en Rusia pese a esfuerzos de varios líderes mundiales y protestas locales contra la incursión militar, Putin no parece detener la escalada militar y que sin duda no justifican en un mundo civilizado esta actuación, que no trae más que desolación, violencia, polarización de las regiones y sobre todo la toma indiscriminada de amplias áreas de territorio ucraniano a un similar estilo del antiguo Imperio Romano o Macedónico de Alejandro Magno.

1. Antecedentes históricos

La extinta URSS ubicada en el este europeo cuyo límite al sur es con el continente asiático, se extiende hacia la Siberia interrumpida y al norte se encuentra el océano Ártico, al mar Báltico, caracterizado por las bajas temperaturas en invierno tanto de Ucrania y Rusia. Su historia se cree fue influenciada por las colonias griegas, el reino helenístico del Bósforo y otra corriente que indica fue fundada por los eslavos en los pueblos bálticos al inicio de la era cristiana, mientras que la región del Quersoneso estaba bajo la influencia Bizantina (Salvat Editores, 1988).

En el 882 de la era cristiana el Varego conquisto el principado de Kiev y fue San Vladimiro I el Grande (980-1015) quien fundó el estado ruso, en adelante este estado ha tenido continuas batallas contra grandes imperios como en 13 los polacos, en 1223 con los mongoles de Gengis Kan cuando incendiaron las ciudades de Vladimir, Suzdal Rostov y Jaroslalv, cayendo en manos de la soberanía de la Horda de Oro. También se sometió al período lituano (345-1377), además tener malas relaciones en 1825 con Napoleón, guerras contra Turquía y Persia donde le fueron arrebatados los territorios de Besarabia, el Cáucaso, contra los Otomanos en la guerra de Crimea (1854-1865) dando paso a los primeros Romanov alrededor del año 1600 consiguen la pacificación de los territorios con la fundación de San Petesburgo en (1703), aunque pasando por la influencia de consejeros alemanes, mientras que bajo el reinado de Catalina II (1762-1796) Rusia obtuvo la anexión a Crimea, Curlandia, Bielorrusia, Ucrania y las costas del Mar Negro (Salvat Editores, 1988).

En el siglo XIX se insertan las ideas marxistas de Plejánov y luego el aparecimiento de las tendencias bolcheviques y mencheviques, junto con el proletariado industrial experimentaron el descontento de la población. En la guerra contra el Japón se crearon las bases para la revolución de octubre del 22 de enero de 1917 dando lugar a reformas agrarias para dar pequeñas propiedades a campesinos y posteriormente a la participación en la primera guerra mundial contra Alemania.

En este año se crea Kiev como capital de Ucrania de los Soviéts cuyo artífice fue Vladimir Lenin que más adelante fue asediada por Alemania en la segunda guerra mundial y aunque parezca extraño Ucrania apoyó al invasor debido a sus alas relaciones con los soviéticos (Salvat Editores, 1988) en lo que podría ser uno de los motivos por el que el presidente Putin en varias de sus intervenciones cuando es consultado sobre los justificativos de la incursión militar o como él denomina operación especial indica entre otros para desnazificar Ucrania, pues se cree que el nacionalismo nazi persiste en varios grupos militares especialmente del batallón Azov.

Ambos países tienen un pasado compartido pues Kiev en el siglo IX lo llamaban Kyivan Rus consolidada por Vladimiro Sviatoslávich el Grande, cuestión que a decir del presidente Putin, la comunidad internacional desconoce y es precisamente de donde parte al expresar que son un solo pueblo, que ha sido trastocado por las potencias occidentales dando lugar a movimientos separatistas y pro-nazis en el Dombás (Wilson, 2016).

En referencia a la religión en Rusia predominan los ortodoxos mientras que en Ucrania reconocen al papa como cabeza de la iglesia, el idioma representa otro de los enclaves discutidos en este conflicto. Para finales de la segunda guerra mundial Ucrania fue tomada por Lósif Stalin pasando junto con Crimea a pertenecer a la URSS donde este último en todos estos años ha enviado pobladores rusos para ocupar estas regiones con el objetivo de influenciar la rusificación en Ucrania, sin embargo, Ucrania mantuvo cierta autonomía en el aspecto cultural hasta el colapso de la URSS en 1991 y la soñada independencia (BBC News, 2022).

Con el tratado de Belavezha, Ucrania es reconocida como estado en 1991 liderado por Kravchuk, posteriormente Gobernó Víktor Yúshchenko en el 2010 y actualmente Volodímir Zelensky 2019 del partido de extrema derecha hace frente al conflicto bélico.

1.1. Cronología del conflicto

El conflicto entre Ucrania y la Federación Rusa tiene sus inicios en 2014 con la invasión de este último a la Península de Crimea, que trajo como consecuencia una guerra civil entre ucranianos y rebeldes prorrusos apoyados por Moscú para conformar las repúblicas separatistas de Donetsk y Luhansk. La Federación de Rusia inicia la operación especial el 24 de febrero del 2022 cuando el presidente ruso Vladimir Putin, firma por decreto, nombrando como repúblicas a Donetsk, Luhansk y parte de la región ucraniana del Dombás, argumentando que tanto Estados Unidos y la OTAN han generado esfuerzos por occidentalizar estos territorios bajo un sentimiento anti ruso por lo que constituyen una amenaza para Rusia, dando inicio a la invasión de varias regiones como Kyiv y Jaarvkiv, tomándose además la planta de Chernobyl (CNN Español, 2022).

Por su parte, el presidente de Ucrania, Volodymyr Zelensky, moviliza a su ejército a las regiones invadidas, sin embargo, al tratarse de una potencia mundial decide conformar la Legión extranjera para la defensa de Ucrania, a la que acuden miles de combatientes extranjeros para unirse a Ucrania y cuyas procedencias son de la Gran Bretaña, Estados Unidos, Francia, Alemania, Serbia e incluso combatientes Rusos provenientes de Chechenia que nos están de acuerdo con la política de su líder Ramzán Kadírov. Para fines de febrero la repercusión del conflicto impacta en el precio del petróleo y escasez del grano. En el campo deportivo tanto la FIFA como la UEFA deciden suspender a los equipos de Rusia en sus competiciones oficiales

Para los diez primeros días de marzo, Rusia toma las ciudades de Jerson Járkiv, mismas que sufren constantes bombardeos con numerosas bajas, además se inicia el avance de Rusia a la ciudad e Mariupol generando una crisis de refugiados aproximada de dos millones según datos de la ONU, huyendo de los combates hacia Polonia, Hungría y Eslovaquia, mientras que en Bielorrusia aliado de Rusia se dan las primeras reuniones entre delegados rusos y ucranianos para buscar una salida pacífica al conflicto, sin lograr mayores avances, hecho curioso ya que mientras se daban estas conversaciones las hostilidades no cesan pues la central nuclear de Zaporiyia cae en manos del país invasor (CNN Español, 2022).

Pese a varios esfuerzos de potencias extranjeras como Alemania con su canciller Olaf Scholz y Francia con la visita a Rusia del presidente Emmanuel Macron por logar la paz, este hecho no genera frutos, pues Rusia alega varios puntos por resolver entre ellos la desmilitarización de Ucrania, es decir dejar de recibir apoyo militar de las potencias occidentales además de renunciar a la solicitud de ser parte de la OTAN.

A mediados de marzo los ataques rusos no dan tregua y se habla no solo de la participación de soldados rusos en esta contienda sino que intervienen un gran contingente de soldados chechenos y extraoficialmente se habla del reclutamiento de soldados sirios, pues recordemos que en la guerra de Siria del 2012 que dura hasta la fecha, Rusia se mantuvo como aliado del gobierno sirio y este a su vez en agradecimiento coopera con Putin, sin descartar la participación del grupo Wagner como combatientes mercenarios rusos ex miembros de las fuerzas especiales " Spetsnaz" cuyo líder es Dmitry Utkin y Yevgeny Progozhin, que se cree son un ejército paralelo al servicio del presidente ruso, luchando por los intereses de la Federación y como muestra de ello se sospecha se encuentran ahora mismo en Malí-África que anteriormente estaba bajo la seguridad del ejército francés (Walsh, 2022).

Bajo este contexto, la Unión Europea analiza los pedidos de países de Europa cercanos a Rusia como Finlandia, Suecia, Georgia y Moldova para el ingreso a la OTAN y a pedido de Estados Unidos se prohíben las importaciones de gas natural, petróleo y carbón de Rusia, con el objetivo de interrumpir el flujo de dinero mientras se preparan paquetes de sanciones

y el cierre de cuentas del círculo de allegados a Putin ya que estos podrían proveer de recursos económicos.

Por estas fechas se evidencia un hecho sin precedentes, pues familias enteras ucranianas viajan hacia la frontera con Polonia para ponerse a buen recaudo, sin embargo, los varones en edad militar se regresan a defender su país que se encuentra asediada por los invasores. Para la última semana de marzo Rusia exige a Ucrania entregar la ciudad de Mariupol y se da una victoria importante de Ucrania al destruir un barco emblemático ruso en el puerto de Berdyansk en el mar de Azov (CNN Español, 2022).

Un actor crucial en este conflicto es Denis Prokopenko, líder militar para la resistencia de Ucrania y miembro activo del batallón Azóv, cuyos inicios nacen como hinchas del equipo de futbol Dínamo de Kiev, quienes lucharon 86 días en la acería de Azopstal de la ciudad de Mariupol. Esta organización es considerada por Rusia como paramilitares neonazis de ultraderecha conocidos desde el conflicto del 2014 en el Dombas, para luchar contra las fuerzas separatistas prorrusas que en principio tenían el control de las ciudades de Donetsk y Lugansk (La Razón, 2022).

Para finales de marzo la ONU, indica que son más de 3,6 millones civiles que han huido de Ucrania desde que comenzó la invasión rusa y este al no tener resultados concretos para invadir la capital Kiev, deciden retroceder a la primera semana de abril, dejando una estela de caos y asesinatos en la ciudad de Bucha y Kramatorsk que fueron mostrados por varios noticieros a nivel mundial, encontrándose en las calles personas ejecutadas y fosas comunes que según el gobierno de Ucrania fueron realizados por el ejército ruso lo que supone fue un genocidio, denunciado por el presidente Volodymyr Zelensky e investigado por organismos internacionales considerados como crímenes de guerra (CNN Español, 2022).

Mientras se promete ayuda militar por US$ 1.300 millones para Ucrania, las sanciones económicas impuestas a Rusia por parte del a UE, USA y Canadá, impactan en su economía, excluyendo desde el 2 de marzo del 2022 a bancos rusos del sistema financiero Swift, impidiendo las transacciones y el flujo comercial con Rusia, cuestión que debilita a las instituciones de la Federación, exceptuando a Sberbank y Gazprombank al estar directamente vinculados con el petróleo y gas que suministran a la UE, también está el congelamiento de los activos al Banco Central ruso puesto que puede servir al financiamiento de la guerra, sanciones contra oligarcas allegados al Kremlin y Bielorrusia, restricciones del espacio aéreo a las aerolíneas rusas a países de Europa, EEUU y Canadá, exportaciones de tecnología como es el caso de Boeing y Airbus en la logística de repuestos de avión, microprocesadores para la producción e microchips, además de la retirada de operaciones de multinacionales como ExxonMobil, Shell, BP, Eni, Disney, MacDonald, afectando a las plazas de empleo (Eisele, 2022).

Cabe destacar que estas sanciones han hecho poco o nada por detener la invasión rusa, pues el presidente Putin ha puesto en su favor varios componentes estratégicos como es la provisión de gas a los países europeos, recurso importante para sus clientes que lo deben pagar en rublos, caso contrario se vería afectado el suministro situación que preocupa con la pronta llegad del invierno europeo, además de detener en el Mar Negro la salida de granos, maíz y cereales que para junio 2022 se encontraban aproximadamente 30 mil toneladas represadas sin poder ser exportadas, aunque en parte superada al 27 de julio 2022 en tres puertos como son el de Odesa, Chornomorsk y Pivdeni tras el acuerdo firmado por Kiev y Moscú en la última semana de julio supervisado y coordinado por Turquía en el flujo marítimo y control de armas (El País, 2022).

El 14 de abril Ucrania hunde el buque insignia de guerra ruso Moskva, hecho que hace retroceder varios días a la Federación, tiempo utilizado para revisar su estrategia. Cabe mencionar que a pesar de ello es notoria la superioridad de Rusia considerada por expertos militares la primera potencia debido a muestras de su avanzada tecnología militar que fue demostrada en la guerra de Siria entre el 2015 y 2017 cuando pulverizó al Estado Islámico que se había apoderado del país árabe y pese a ello es notable destacar el patriotismo con la que Ucrania es defendida por sus ciudadanos a pesar de estar en desventaja numérica y tecnológica, muestra de ello hay varios y reconocidos personajes como los hermanos Klitschko ex campeones mundiales de boxeo, la Miss Ucrania 2015 Anastasia Lena, otros deportistas como el tenista Vasyl Lomachenko entre otros por la defensa de su país.

A partir del 19 de abril Rusia se concentra en la región industrial del Dombás, en especial atención en la planta siderúrgica de Azovstal, en la tercera semana de mayo los focos de resistencia del batallón Azov se rinden en Mariúpol y son tomados prisioneros. Para el 25 de abril la ciudad de Jerson cae en manos del ejército ruso con lo que se empieza a especular que a falta de armas es imposible que Ucrania pueda sostener los avances de su enemigo que, a pesar de los ofrecimientos logísticos en armas, son insuficientes, mientras que Finlandia muestra deseos de unirse a la OTAN debido a verse amenazada su seguridad por los 1200 kilómetros de frontera que comparte con Rusia (CNN Español, 2022).

A casi tres meses de conflicto el balance al 5 de junio, el 20% del territorio de Ucrania incluyendo Severodonetsk es controlado por Rusia dejando una cifra mayor a cuatro millones de desplazados, tomando en cuenta que el ejército invasor también sufre de cuantiosas bajas en sus filas y que según la inteligencia británica y estadounidense calculan una cifra mayor a 40 mil soldados rusos fallecidos sin descartar las continuas advertencias del presidente Putin de atacar otras posiciones en Ucrania de persistir el suministro de armas a Ucrania (CNN Español, 2022).

Hasta este punto y finalizando junio 2022, parece ser que esta guerra no tendría un fin inmediato, puesto que las intenciones rusas que en principio a decir del presidente Putin no era la invasión de este país, sin embargo, el panorama ha cambiado y a medida que pasan los días más ciudades caen en manos de Rusia y que de acuerdo con el ministro británico Boris Johnson en su visita reciente a Kiev comenta que es notorio la escasez de alimentos en la región y la débil situación de defensa del ejército ucraniano, al punto que veteranos combatientes extranjeros de diversos países como el SAS británico, la Legión Extranjera Francesa, ex marines estadounidenses y canadienses, ex combatientes de la ex Yugoslavia y soldados locales admiten la falta de logística en armas para la defensa.

Al 25 de junio Severodonetsk está bajo ocupación rusa y en paralelo la capital Kiev es atacada, en tanto que el 30 de junio en Madrid se celebra la cumbre de la OTAN para tratar el tema del conflicto y la amenaza de China. Para los primeros días de julio Rusia toma el control de la ciudad de Lysychansk, el presidente Putin genera un decreto en el que ciudadanos ucranianos pueden obtener la ciudadanía rusa y a pesar de ello fuentes de inteligencia occidentales afirman que Rusia ha perdido el 30% de su capacidad bélica lo que hace prever el debilitamiento de la fuerza invasora toda vez que Rusia había solicitado a Irán ayuda militar con aviones no tripulados, mientras que por el lado ucraniano, el envío de armas desde EE.UU., Alemania, Francia les ha permitido recuperar varios pueblos en el sureste del país que para la segunda semana de agosto se afirma que Ucrania intenta recuperar territorios atacando las líneas de base del ejército ruso (CNN Español, 2022).

Para el mes de julio continúan los bombardeos en Odesa y Donetsk. y Rusia se toma la ciudad de Lisichansk y Lugansk. Seguido de ello se abre un corredor marítimo en el Mar Negro, para la exportación de cereales, mientras que días más tarde finalizando agosto y septiembre, Ucrania inicia la contraofensiva en Jerson aprovechando que los suministros rusos son escasos y empieza a recuperar 8500 kilómetros que corresponden a 388 localidades de territorio con lo que se sospecha el debilitamiento del ejército ruso con lo que el presidente Putin solicita el llamado a 300 mil reservistas (EFE, 2022) y tal como fue tomada Crimea en el 2014 a finales de septiembre del 2022 se generó un referéndum por parte de Rusia con el objetivo de anexar cuatro regiones que corresponde al 15% del territorio ucraniano cuyas ciudades incluyen Donetsk, Lugansk, Jersón y Zaporiyia, situación condenada por occidente debido a la ilegalidad del acto ya que viola la Carta de la ONU y el derecho internacional.

2. Estado del arte

Sánchez (2016) analiza en su trabajo los hechos que anteceden al conflicto, donde toma en cuenta la paz reinante en Ucrania hasta antes del 2014, año en el que inicia el problema con desplazados de los territorios y varios miles de fallecidos. Analiza además las posturas de las potencias occidentales y su incidencia en intereses que se persiguen en el conflicto para contener el avance ruso mediante la metodología analítico interpretativo e histórico, cuyo resultado muestra que este problema puede ser ideológico y político, además que desde el lado ruso el inconveniente perpetrado desde el 2013 con violaciones a los derechos humanos a personas que simpatizan con Moscú y las tendencias neofascistas de parte de la derecha ucraniana que han complicado la paz en la región.

López y Morcillo (2022) analizan el conflicto de Ucrania y las tensiones que van en aumento en la región mediante un análisis comparativo de la política del Ártico y China en su papel estratégico en la geopolítica del este europeo en especial del con su papel comercial y de no intervención militar comparado con el caso de Groenlandia y su riqueza en recursos minerales y tecnológicos para el futuro y que, debido a la guerra de Ucrania, el atractivo para la UE va en aumento en la política energética y tecnológica.

Gutiérrez (2017) analiza las causas del debilitamiento de la presencia norteamericana en el este europeo y la significativa presencia de Rusia en Ucrania y los estados Bálticos de Polonia, Hungría, República Checa, Eslovaquia y su constante preocupación al ser aliado de Estados Unidos y la creciente dependencia energética que ha generado Rusia y que juega en favor de sus intereses especialmente con Alemania que ha enfrentado a la UE con Rusia con un posible aparecimiento de otra Guerra Fría y la toma de Crimea por parte del invasor al considerar este territorio ruso y como consecuencia de ello las constantes sanciones al que esta potencia se ve afectada.

Ferrero (2022) estudia las sanciones impuestas a Rusia por parte de la UE derivadas de la guerra en Ucrania y la división en el Consejo Europeo por estas medidas que afectan al pueblo ruso en su economía y generar un comparativo en relación a sanciones impuesta sen otros países pues considera que el impacto de las relaciones con Moscú se encuentran deterioradas entrando en un punto que el conflicto sigue creciendo a otras regiones de Ucrania sin tomar en cuenta la historia y la gran capacidad del pueblo ruso a recuperarse pues Rusia no cederá al objetivo planteado que en situación similar ocurrió con la Alemania Nazi y el imperio Napoleónico.

La Comisión Económica para América Latina y el Caribe (Cepal, 2022a) genera un estudio del impacto económico para América Latina y el Caribe del conflicto, tomando en cuenta la disparidad respecto a las vacunas contra el covid-19, inflación, riesgos inmobiliarios en China pues se argumenta

que el efecto principal es el de tipo comercial, la no sostenibilidad de precios de materias primas derivados del aumento del precio del petróleo que impactan directamente en los combustibles, cuestiones que ya venían debilitadas y que se agravan con la caída del comercio mundial en 16,9% en 2020 y su inquietante recuperación al 8,2% para agosto del 2021, pues está presente que tanto Ucrania, Rusia y Bielorrusia suministran materias primas estratégicas como son los granos y energía correspondiente al 12% de la importaciones mundiales, gas y petróleo principalmente que tienden a empeorar las condiciones de pobreza, empleo, inflación, paridad cambiaria y actividades económicas.

Por otro lado, Navarro (2022) contextualiza las sanciones impuestas a Rusia por parte de la UE, las que se menciona son ineficaces de acuerdo con expertos desde el 2014 y ahora en el 2022 que no terminan por afectar al gobierno de Putin, enfatizando la posibilidad de que la Federación de Rusia se preparó para ello y al contrario tiene capacidad para negociar con el gas y la energía pues tanto rusos como el resto de Europa han salido perjudicados debido a la escalada de precios de los productos y la escasez que ha dado lugar a la polarización de bloques económicos de Europa con Estados Unidos y por otro lado Rusia con China.

Sasse y Lackner (2018:139) rastrean las identidades políticas de habitantes de las regiones del Dombás mediante una encuesta mapean el proceso de polarización de identidades y examinan como se debilita el aspecto cívico de las personas de esta región entre las cuales están el idioma y el sentido de pertenencia hacia la Federación de Rusia, aspectos que fueron trabajados años atrás por los rusos al compartir ciertos rasgos culturales debido a que hace varias décadas fueron un mismo pueblo en la Ex Unión Soviética.

Javanbakht (2022) manifiesta que la guerra en Ucrania genera una de las mayores crisis de refugiados el mismo que impacta no solo en su salud física sino también mental, y esto ha ocasionados graves problemas de depresión y estrés en sus habitantes lo que conlleva que países anfitriones hayan tenido que atender estos casos y una gran cantidad de recursos invertidos en el tratamiento de los desplazados. Este tema representa un problema intrínseco pues la problemática a nivel mundial se contextualiza en función de recursos militares invertidos y poco o nada se habla de la parte psicológica de quienes son afectados por los conflictos.

Desde la óptica empresarial, la guerra trae consecuencias negativas para las corporaciones y es así que Bougias et al. (2020) analizan la dinámica del valor de los activos de las empresas europeas generadas del conflicto mediante el modelo de Merton de 1974 con datos de acciones de las empresas evidencian que el valor de las empresas tienden a la baja y un mayor riesgo de los activos en 2,5% además de tener problemas de pagos en especial de empresas que mantienen transacciones con la Federación de Rusia.

Lo *et al.* (2022) generan un estudio del impacto de la guerra en los mercados financieros con una muestra de 73 países evidenciaron la caída de precio de las acciones haciendo que el mercado sea muy volátil para las inversiones debido a la dependencia de recursos como materias primas de Rusia, las mismas que influyen en las estrategias en el portafolio de inversiones para el análisis de diversificación en los mercados internacionales.

Gaied y Kumar (2022) examinan el impacto de la guerra en Ucrania respecto al comportamiento de las principales monedas del mundo frente al dólar mediante la metodología de estudio de eventos para estimaciones de mercado en el que muestran el debilitamiento del rublo, la corona checa que han sufrido una depreciación respecto al dólar y puede ser por las sanciones contra Rusia, impactando a las monedas de países próximos a Rusia como Polonia, Finlandia.

Adekoya *et al.* (2022) analizan desde el ámbito financiero si el petróleo se conecta con las turbulencias del mercado y activos financieros como bonos, bitcoins, oro, acciones y dólares principalmente cuyos resultados indican que su conexión es indirecta a partir de la invasión rusa, siendo el petróleo el que causa el mayor efecto, hecho que preocupa a los inversores en el coto plazo pues sus precios son elevados haciendo que los derivados se encarezcan.

Steffen y Patt (2022) analizan la importancia del petróleo y el gas procedente de Rusia como punto de partida de los problemas de abastecimiento a países de Europa en cuanto a la política energética y la posibilidad de establecer políticas públicas para el cambio de la matriz energética sobre los combustibles fósiles hacia fuentes de energía limpia, para lo cual se realizó el estudio en Suiza en el que manifiestan su apoyo al cambio de energías alternativas, menos costosas y que ara su logro es importante las acciones políticas.

3. Metodología

La metodología utilizada para este estudio es cualitativa, la misa que se basa en el análisis documental, generando la recopilación de lectura de artículos recientes que versan sobre este tema, además se hace la utilización de información periódica desde inicios de este conflicto en los principales periódicos digitales del mundo y videos que constantemente proporciona la red para generar una cronología de este estudio desde febrero al mes de agosto del 2022, además del uso de textos clásicos con el fin de extraer la importancia del contexto histórico que llevan a estas naciones enfrentadas.

Esta información permitirá analizar un posible denominador común de autores en referencia a la posibilidad de establecer escenarios en el que pudiese terminar el conflicto, es decir en base a la recuperación de información como soporte documental resume una descripción bibliográfica para su respectiva catalogación para decodificar la información pertinente al esquema planteado.

Esta metodología tiene varias características ventajosas para el estudio como la facilidad para encontrar la documentación en orden lógico e histórico, a medida que los hechos vienen ocurriendo, pues ello permiten realizar el análisis, síntesis y deducción de documentos que ayudan a construir nuevo conocimiento, generar recursos en el menor tiempo posible para una base de datos bibliográfica en la elaboración del estado del arte que ayudarán a discutir las ideas en la obtención de óptimas conclusiones (QuestionPro, 2022).

Este tipo de metodología tiene dos vertientes tanto exploratoria como informativa, en este caso la parte exploratoria se utiliza en el momento que se da el proceso de recopilación de fuentes reales en el tema investigado e informativa porque se hace uso de información relevante de diversas fuentes para evitar el sesgo, tratando de comprender el contexto desde las dos posiciones en disputa. La investigación documental llevada a cabo en este trabajo se nutre principalmente de información electrónica, pues la data se encuentra en la red internet y en ciertos casos la información gráfica y audiovisual.

A inicios del conflicto este último es una de las fuentes más diversas que se puede encontrar y en diferentes idiomas de manera ilimitada, por lo tanto, la dinámica de este trabajo será trabajar en la parte histórica, luego realizar una cronología del conflicto, analizar el impacto y la crisis que ocasiona este problema desde el ámbito social, económico y geopolítico, posibles escenarios que se pueden contemplar, derivado de las circunstancias acontecidas hasta la fecha en el que es importante recalcar las diferentes posiciones de los dos frentes.

4. Resultados

a. Impacto económico y ambiental

De manera inevitable la guerra en Ucrania viene generado una crisis internacional cuyo impacto se hace notar en la caída de las inversiones, producción de productos agrícolas que no pueden ser comercializados a nivel internacional pues cerca del 40% de estas exportaciones de productos va hacia Europa Occidental y en consecuencia se puede generar una crisis financiera global por las tenciones indirectas entre Estados Unidos,

y Europa contra la Federación Rusa, ralentizando el crecimiento de las economías emergentes que fueron afectadas desde el 2019 con la pandemia de la Covid 19. Las economías europeas sienten el efecto de no poder receptar materias primas, fertilizantes, gas, energía de los países en guerra, hechos que han impactado a su vez en la paridad cambiaria del euro frente al dólar estadounidense que en términos generales encarecen los productos y servicios (Cepal, 2022b). Se destaca los siguientes escenarios de impacto a nivel de Latinoamérica y el Caribe según la Cepal:

- Afectación del empleo por fallas en las cadenas productivas, frenando la globalización en América del Norte, Asia y Europa por la falta de insumos provenientes de las regiones en conflicto. Esto se complementa con la nueva disputa entre Estados Unidos y China por Taiwán en la producción de microprocesadores vitales para productos electrónicos, computadores, automóviles, aviones, maquinaria industrial y en este contexto les tardaría a Estados Unidos y las potencias de Europa Occidental cerca de una década montar esta industria a un alto costo.
- El petróleo, gas, aluminio y cereales impacta en la industria primaria en la producción de insumos y fertilizantes para la agricultura. En el caso de los cereales que no han logrado salir de los puertos debido al bloqueo producido por Rusia, o pueden ser exportados a Europa occidental y América.

A nivel mundial se estima que el crecimiento de la economía a finales del 2022 estará en el orden del 3,3%, en China ya se ve afectado el sector exportador e inmobiliario, en Estados Unidos se espera un crecimiento anual del 2,7% es decir 1% menos que el 2021 debido a que indirectamente está apoyando a Ucrania con armas, alimentos y recursos financieros, Europa que depende de la energía y gas Ruso crecería al 2,8%, es decir 1% menos que el 2021 pues las políticas de racionalización ya están afectando a sus países con el agravante de que se aproxima el invierno y la supervivencia en estas condiciones son graves lo que implica un alto costo de los servicios energéticos, combustibles que son vitales para el transporte y que podrían acarrear una inflación acelerada de 8,4% en Estados Unidos, Zona Euro 7,6%, América Latina y el Caribe 8,3% al finalizar el año (Cepal, 2022b).

- En términos de impacto ambiental por causa de los bombardeos indiscriminados en sectores industriales, centrales térmicas y depósitos de combustible en la región de Lugansk, han causado columnas de humo negro y fugas de amoníaco tóxico, sus efectos ya se sienten en el agua potable (465 instalaciones de almacenamiento con seis mil millones de aguas residuales), la salud pública y el aire contaminado.

- En este sector hay que tomar en cuenta que se encuentran una de las principales centrales nucleares como Zaporiyia y Chernóbil, esta última afectada hace varias décadas con un impacto ambiental sin precedentes. En el Dombás desde el 2014 no ha sido posible realizar control medioambiental donde se estima que existen 4500 empresas mineras, metalúrgicas y químicas de las cuales el 80% son consideradas peligrosas aparte que en el Dombás existen de 200 a 500 pozos de almacenamiento industrial, sustancias tóxicas y residuos radioactivos que pueden acabar contaminando el agua potable, situación que puede alcanzar hasta el mar de Azov y el mar Negro (Averin *et al.*, 2022).

Como se puede apreciar en la Figura 1, se encentra el mapa de las centrales nucleares de Ucrania, centrales térmicas, los daños en la red de distribución de gas, daños en los desagües en los depósitos de agua, ataques a sectores estratégicos, peligro en áreas protegidas de vegetación, liberación de químicos tóxicos además que nos podemos dar cuenta los efectos medioambientales que pueden causar en países vecinos como Rumanía, Moldavia, Polonia y Rusia.

Figura No. 01: Mapa de los sectores de impacto ambiental en Ucrania

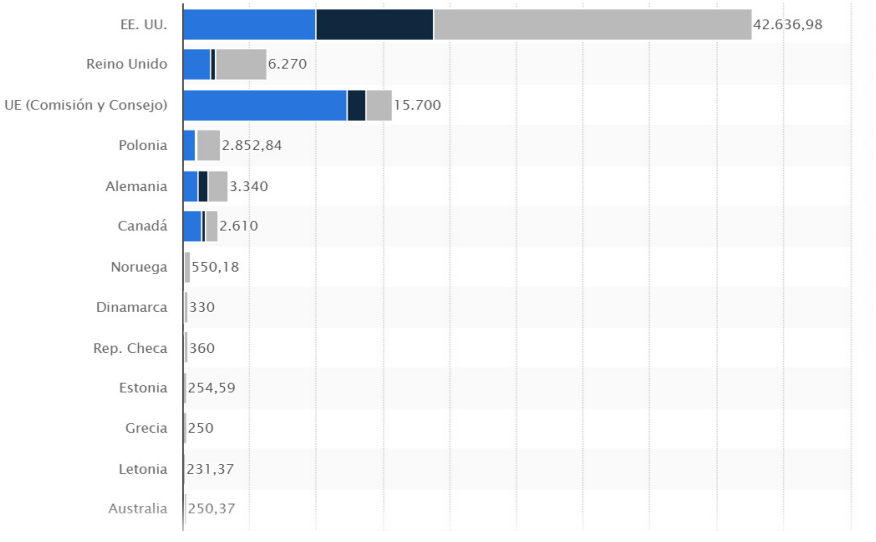
Nota. Esta figura muestra los lugares de peligro de impacto ambiental y posibles efectos en países vecinos (Averin *et al.*, 2022).

b. Crisis de refugiados y alimentaria

En cuanto a los refugiados ucranianos derivados de la guerra de acuerdo con Fernández (2022) se estima que a inicios de septiembre han cruzado las fronteras a países europeos nueve millones de personas, siendo Polonia el país que más acoge a los desplazados ucranianos con 5.439,431; le sigue la Federación Rusa con 2.197,679; Hungría 1.188,983; Eslovaquia 690.337; Moldavia 573.228; Bielorrusia 16.689 principalmente.

A ello se suma el carácter geoestratégico de la guerra en cuanto a recursos naturales pues se conoce que Rusia es el principal proveedor de gas natural de Europa Occidental que junto con Ucrania abastecen a toda Europa y América de trigo, cereales, aceite de girasol, níquel, paladio grafito entre otros, y el problema parece no tener una solución en el corto plazo puesto que sigue el apoyo logístico militar y económico desde Estados Unidos y la OTAN por una cantidad estimada de 43 mil millones y 10 mil millones de euros respectivamente. En la figura 2, se observa la ayuda en millones de euros que occidente ha proporcionado a Ucrania hasta agosto del 2022.

Figura No. 02: Ayuda a Ucrania en millones de euros desde EE. UU. y Europa.



Nota. Se muestra la ayuda a Ucrania durante la guerra hasta agosto 2022 (Fernández, 2022).

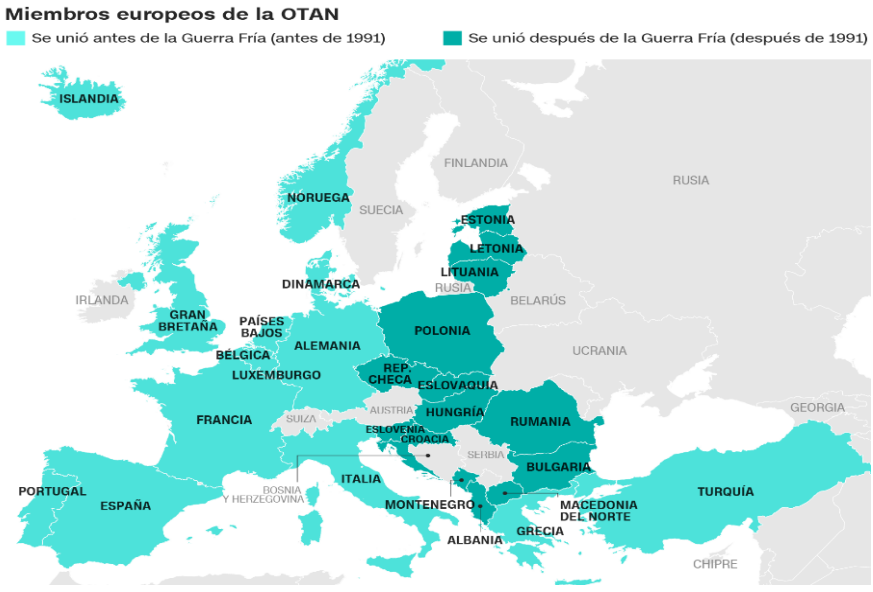
Adicionalmente esta guerra amenaza con iniciar una crisis de alimentos que se encuentran retenidos en los puertos del Mar Negro. A pesar de que en el mes de agosto se llegó a un acuerdo mediado por Turquía para exportar los alimentos retenidos, resulta insuficiente ya que la solución está en detener la guerra y empezar la labor de limpieza de minas en carreteras, tierras cultivables, graneros, almacenes de depósitos de alimentos bloqueando carreteras, puentes entre otros para normalizar las actividades de transporte, educación e industria, además que sea el inicio de trabajar en la lucha contra la hambruna mundial aproximada de 1200 millones de personas y con ello poder cumplir el compromiso establecido en las ODS y el Programa Mundial de Alimentos al 2030 (Borrel, 2022).

c. El papel de la OTAN en la guerra de Ucrania

Según Beketov y Sánchez (2021), Rusia busca suavizar las sanciones impuestas por el conflicto armado, sin embargo, desde finales de enero del 2022 que Moscú instalaba sus tropas cerca de la frontera de Ucrania, este solicitó ser parte de la OTAN, pero dentro del contexto del desarrollo de la guerra no se considera prudente por ahora esta petición pues agravaría el problema. La OTAN como alianza militar está vigente desde el 4 de abril de 1949 entre Europa, Estados Unidos y Canadá, su sede está en Bruselas-Bélgica, que a finales de la segunda guerra mundial fue conformado por 12 países basado en el tratado de Washington con el objetivo de apoyarse en caso de agresión haciendo uso del artículo 51 contra cualquiera de sus miembros, alianza que ha seguido creciendo y en la actualidad son 30 países los miembros debido a la permanente amenaza de Rusia (Ministerio de Asuntos Exteriores, Unión Europea y Cooperación, 2022).

En la actualidad la OTAN ha recibido la solicitud de Suecia y Finlandia al sentirse por la potencia mundial rusa, petición que por ahora no tiene el beneplácito de Turkía. Entre las grandes potencias de la OTAN por lo económico y armas nucleares están en primer lugar Estados Unidos, luego la Reino Unido, Francia, Italia, Turkía, que ya han venido actuando juntos en varias guerras como en el año 2003 la Guerra del Golfo Pérsico/Irak, 2011 en Afganistán tras los atentados de las Torres Gemelas en EE. UU. contra Afganistán donde se cree alberga a grupos terroristas como Al Qaeda y en el 2012 en Siria (CNN Español, 2022).

Figura No. 03: Países Europeos miembros de la OTAN



*Nota***.** Se muestran los países de la OTAN. Estados Unidos y Canadá son los miembros de América del Norte (Kottasová y Jones, 2022).

El papel de la OTAN en esta guerra ha sido de vital importancia para Ucrania, ya que gracias a ello Ucrania se sostiene con asesoramiento, recursos económicos, ayuda humanitaria y medicinas, por lo que se cree sea una de las causas por la que Rusia no ha logrado su objetivo. La OTAN en teoría no puede hacer nada más pues ninguno de sus miembros ha sido agredido para activar el artículo 51, a pesar de que se evalúa la activación del punto cuatro del tratado que indica que si un país miembro se ve amenazado como es el caso de Polonia podrían solicitar ayuda para trabajar en planes de defensa y no experimentar lo ocurrido en el 2014 en Ucrania con la anexión de Crimea a Rusia (Kottasová y Jones, 2022).

d. Posibles escenarios para el término del conflicto

Ante lo complejo que resulta una guerra, los escenarios se tornan imposibles de descifrar y conocer el final sino hasta la rendición de alguna de las partes. Los conflictos bélicos en los últimos 60 años tienen como denominador común el tiempo prolongado de solución y citamos algunos casos como la guerra de Vietnam alrededor de 20 años, las dos guerras de Chechenia 15 años, Afganistán 20 años sin contar con la intervención de

la Ex Unión Soviética, Irak ocho años, Siria desde el 2011 y sigue latente, disolución de Yugoslavia aproximadamente 10 años, entre otras. Varios expertos analizan estos escenarios en función de la capacidad bélica con la que cuentan los países en disputa para poder dar una apreciación de su desenlace, sin embargo, es impredecible ya que las guerras no siguen un guion lógico prestablecido pues se pueden sumar otros actores en la contienda.

En el caso de este conflicto se pensaba que era cuestión de días para que la potencia militar rusa, derrote a Ucrania. A siete meses de contienda los expertos militares consideran que podría tardar años debido al apoyo indirecto que la OTAN por lo que se aprecian los siguientes escenarios que podrían dar fin a esta guerra:

Escenario uno: escenario similar a la guerra de Afganistán y la Ex Unión Soviética de los años 70 del siglo pasado que tuvo un desenlace no favorable de este último con una retirada sin precedentes y una cifra mayor a 20 mil fallecidos. Los afganos resistieron gracias a la participación de los rebeldes guerreros Mujahidin, situación parecida le puede ocurrir a Rusia si Ucrania se mantiene firme con su resistencia apoyado por occidente en cuanto a material bélico y combatientes mercenarios extranjeros, adicionalmente Rusia podría debilitarse por los constantes bloqueos económicos. Este escenario podría darse en un tiempo mayor a cinco años en el que provocaría la retirada de Rusia.

Escenario dos: Al tiempo de cómo va la guerra, Ucrania ha perdido numerosas ciudades y varias de ellas se encuentran destruidas. Aunque el costo de la contienda sea mayor, Rusia podría decidir desgastar a Ucrania hasta lograr su rendición debido a que, para la OTAN y EE. UU., no le interesaría seguir suministrando la ayuda prometida puesto que hay otros frentes de interés como Taiwán y un posible conflicto con China, la guerra de Yemen que mantiene con Arabia Saudita apoyando a este último Estados Unidos y el constante polvorín de varios países africanos, el más próximo Malí. En este sentido una contundente victoria de la Federación Rusa, que debería ser hasta antes de terminar el 2022 y bajo este contexto Rusia debería arriesgar un mayor contingente militar para lograr el objetivo pues ello significaría un triunfo no solo sobre Ucrania sino también lograr mayor reputación y respeto frente a occidente.

Escenario tres: tomando en cuenta que este problema viene desde el 2014, puede darse la posibilidad de que esta guerra no tenga fin, pues como se puede evidenciar por el lado de Ucrania son civiles quienes luchan en el frente y en términos normales ese tipo de intervenciones bajo estos actores suelen alargar los problemas con una guerra de guerrillas y con ello la creación de varios grupos armados del lado ucraniano, similar a lo ocurrido en Siria, o el problema que lleva Israel y Palestina. En este caso Ucrania puede ser el país más afectado ya que seguiría dependiendo de las ayudas internacionales en la medida de que podría perder más territorio.

Escenario cuatro: eliminar al presidente Zelensky, que es el escenario con el que en principio el presidente Putin contaba y para ello extraoficialmente se conoce que había enviado a más de 400 mercenarios del grupo Wagner ruso además de que en sus filas cuenta con cientos de soldados chechenos para esta causa. De darse este escenario, Rusia podría colocar un presidente afín a sus intereses, sin embargo, al no haber sido posible a la fecha, la figura del presidente Zelensky ha ganado mucha notoriedad e importancia en el contexto mundial por lo que no es conveniente para Rusia que esto suceda pues podría provocar que EE. UU. o la Unión Europea. Dentro de este escenario cuenta la posibilidad de que ante el avance ruso el presidente Zelensky abandone el cargo y huya, dejando a Ucrania a la suerte de Rusia quien aprovecharía la oportunidad de colocar un gobierno anclado a sus intereses y política de estado.

Escenario cinco: un escenario poco posible es que occidente se encuentre trabajando en el derrocamiento del presidente Putin en un posible golpe de estado, puesto que para Rusia el costo de la guerra le puede traer consecuencias negativas en su ya golpeada economía además que al presidente Putin le puede costar el rechazo de su nación en una eventual futura contienda electoral. En Rusia desde inicios de la invasión existe en un porcentaje importante del pueblo un sentimiento antiguerra pues entre los fallecidos del lado ruso son jóvenes soldados y con seguridad la población no desea repetir los escenarios de guerras pasadas. Este escenario generaría para el gobierno ruso una pérdida de reputación que podría presentarse en un tiempo mayor a cinco años.

Escenario seis: una salida diplomática como escenario idóneo que en inicio se estaba intentando con la mediación de Bielorrusia a pesar de que el acuerdo sería desfavorable para Ucrania pues en este contexto puede darse la posibilidad de que deba ceder territorio y la pérdida definitiva de Crimea y el Dombás, además de que Ucrania siga adelante o no con su intención de ser parte de la OTAN.

Escenario siete: esta opción puede ser probable, sin embargo, la que no conviene al planeta pues se puede dar el caso de que por el lado ruso reciba el apoyo directo de China, Bielorrusia, Irán, Corea del Norte y por el lado de Ucrania la intervención directa de la OTAN a lo que da lugar una tercera guerra mundial y nuclear a gran escala, aunque no es conveniente para nadie pues sería una autodestrucción en función del tipo de armas que poseen las potencias que tecnológicamente son avanzadas a comparación de la primera y segunda guerra mundial. Afortunadamente este escenario es poco probable ya que los intereses de las potencias son lograr la hegemonía económica.

Escenario ocho: con los resultados de los últimos acontecimientos de septiembre y octubre del 2022 respecto a la anexión de varias zonas de conflicto, es de interés para Rusia continuar con este proceso para cortar

los recursos a Ucrania manteniendo su hegemonía en la región junto a sus aliados, mientras que Ucrania puede toar la posición de recuperar los territorios perdidos con la ayuda intrínseca de la OTAN, escenario que podría no tener una solución sino hasta cinco años o más. Esta situación podría derivar en una escalada del conflicto porque podrían intervenir más países occidentales y tornarse en un episodio de pruebas de armas nucleares tácticas con el fin de mostrar el poderío ruso, situación que empeoraría en términos de desplazados, daños colaterales y destrucción absoluta de la infraestructura ucraniana.

Conclusiones

La guerra en Ucrania acarrea un problema desde el 2014 con la toma de Crimea por parte de Rusia, en este contexto es muy difícil que Moscú retroceda en sus planes puesto que posee varios recursos estratégicos para poner a Europa Occidental en desventaja a vísperas de que se acerca el invierno el panorama o es muy alentador.

Ucrania carece de recursos militares y depende de las ayudas de las potencias europeas y Estados Unidos, en este sentido surge una interrogante y es ¿hasta qué punto se puede dar esta cooperación y a qué precio para Ucrania?, ya que para nadie conviene que la guerra sea de largo plazo y cada país tiene sus propios problemas que resolver. En el caso de Estados Unidos como país que ha generado la mayor ayuda a Ucrania vía congreso, y este necesita argumentos de más peso para aprobar otro presupuesto de asistencia cuyo costo es alto y es latente un nuevo problema con China por la isla de Taiwán donde tendrá que sopesar la conveniencia para la primera potencia del mundo.

En el caso de los países europeos como el Reino Unido, Francia, Italia, Alemania, España, Bélgica deben buscar una alternativa de proveedores de energía y gas ya que las sanciones impuestas a Rusia impactan en los términos de negociación futura para estos servicios a lo que convendría generar entre todos una meza de dialogo como garantes de que Ucrania y Rusia se sienten a firmar la paz y sea Ucrania quien deba ceder posiciones para dar por perdido territorios arrebatados por la Federación y no permitir que en el contexto de un eventual escalamiento del conflicto le sean arrebatados más territorios hasta el punto de que este país desaparezca del mapa político.

Los escenarios planteados en este documento constituyen posibilidades que pueden combinarse, sin embargo, cualquiera que sea el caso y mientras sigan los bombardeos los principales afectados son los cientos de miles de personas que agravan el problema de refugiados, la gran cantidad de recursos que se necesitaran post guerra para la reconstrucción de Ucrania

y el daño al medio ambiente, flora y fauna de estos territorios debido a la gran cantidad de empresas industriales existentes en Ucrania que a causa de los bombardeos emanan toxicidad en grandes cantidades en especial de las plantas nucleares que pueden derivar en un caos ambiental de radioactividad como lo sucedido en la central nuclear de Vladimir LLich Lenin - Chernobil en abril de 1986.

Los efectos macroeconómicos están causando el aumento de precios de las materias primas, bienes y servicios junto con un potencial desabastecimiento de productos que por tradición provienen de los países en conflicto están generando una alta inflación y se detiene el proceso de globalización que ya fue afectado desde el 2020 por la pandemia del covid 19. Esto también afecta a la paridad cambiaria en un hecho sin precedentes del euro frente al dólar suceso que afecta a las tasas de interés e incrementa el riesgo y volatilidad de los mercados financieros que afectan a las inversiones y el empleo. A todo ello de pronto la Unión Europea podría mirar a Groenlandia como alternativa de tener los recursos que necesita como minerales además de poder generar industrias tecnológicas que pueden dar paso a inversiones que garanticen el suministro de servicios.

Las sanciones impuestas a Rusia desde el 2014 y ahora en el 2022 parece no surtir el efecto esperado y la evidencia está en que la Federación no ha retrocedido a Crimea y el Dombás, además el sistema de transacciones financieras internacionales a bancos rusos por medio del Swift impuesto a Rusia, ha terminado por afectar a rusos y europeos sin embargo, los recursos energéticos como el gas natural y el petróleo que sigue comercializando Rusia le permite financiar la campaña militar contra Ucrania.

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The system of political education as an institute for the professionalization of politics

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Abstract

The institutions of political professionalization are: political parties, political education system, political media, institute of representation of group interests, among others. Political education is a powerful tool for the democratization of society and, more specifically, for the professionalization of the political class and political activity in general. This article offers a contribution to the strengthening of the social relevance of political science. It considers the social significance of political science as a matter of (non-)academic professional training and civic education of its graduates. Civic (political) education is teaching people how to live under the conditions of the modern state, how to comply with its laws, but at the same time not to allow the authorities to violate their rights. By reviewing scientific literature the article aimed to identify contradictions in the socio-cultural approach in

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the training of a specialist, as this has not been systematically studied in the training of a specialist in political science. It is concluded that it is in the educational system where the training of specialists takes place, since the effective recruitment of the political elite is a prerequisite for an effective and strong political system.

Keywords: political professionalization; political cience; civic education; democratization; recruitment channel.

El sistema de educación política como instituto de profesionalización de la política

Resumen

Las instituciones de profesionalización política son: partidos, sistema de educación política, medios políticos, instituto de representación de intereses grupales, entre otras. La educación política es una poderosa herramienta para la democratización de la sociedad y, mas especificamente, para la profesionalización de la clase política y de la actividad política en general. Este artículo ofrece un aporte para el fortalecimiento de la relevancia social de la ciencia política. Se considera el significado social de la ciencia política como una cuestión de formación profesional (no) académica y de educación cívica de sus egresados. La educación cívica (política) está enseñando a las personas cómo vivir bajo las condiciones del Estado moderno, cómo cumplir con sus leyes, pero al mismo tiempo no permitir que las autoridades violen sus derechos. Mediante la revision de literaratura cientifica el artículo tuvo como objetivo identificar contradicciones en el enfoque sociocultural en la formación de un especialista, ya que esto no ha sido estudiado sistemáticamente en la formación de un especialista en ciencia política. Se concluye que es en el sistema educativo donde se da la formación de especialistas, ya que el reclutamiento efectivo de la élite política es un requisito previo para un sistema político efectivo y fuerte.

Palabras clave: profesionalización política; ciencia política; educación civica; democratización; canal de reclutamiento.

Introduction

Within the framework of the professionalization of political science, a specific complex of contradictions is resolved, for example, the degree of correspondence between a person and a profession, this correspondence

between concepts, such as readiness for work, is a condition for professional mastery, achieving high efficiency of activity. Two groups of criteria (objective, subjective) are used to assess the level. Subjective ones characterize the effectiveness of activities, that is, quality, reliability, timeliness, productivity.

The development of professional skills and abilities depends on the general level of intelligence, mental abilities, and special abilities. The concept is used in scientific concepts of economics and sociology. The professionalization of political science is a less researched issue. It is partially presented in the works of Ukrainian researchers (Political field of Ukraine in a situation of social crisis, 2020; Political process in independent Ukraine, 2022).

The problem of the professionalization of political science can be important for the formation of the concept of the history of political science, considering it as a criterion for the periodization of political science. The professionalization of science can be called the process of formal institutionalization of science through the formalization of its content.

We understand the professionalization of political science as a stage in the development of political knowledge that took place in parallel with the professionalization of sociology and economics. The content consisted of the formation of external and internal formalization. The external is defined in professional education, the emergence of specialized scientific periodicals, the creation of associative scientific organizations (Association of Political Sciences).

The internal, meaningful side is manifested in the activation of the structuring of science, the formation of a unified system of special scientific concepts, in applied research using formalized (mathematical) methods, and through the formation of a structure, a conceptual apparatus with the consolidation of categories (distinguishing the concepts of ”government”, “state”,” policy”, formation of own research methodology, according to which logical operations with objects are replaced by operations with symbols.

There is a need to note the areas of applied demand for knowledge in the field of political education.

1. Methods and materials

An analysis of the methodological foundations of contemporary political research would be incomplete without an exploration of the role of rationalist assumptions in the discipline. The construction of theoretical explanations must then be subject to the test of confirmation: The state of

political knowledge is paradoxical: existing as specialized and systemic in content, it is not always the property of those who need it.

Even its importance is underestimated not only by ordinary citizens. Does this mean that political science and its subject develop in parallel planes without crossing? Is professional political knowledge really necessary for practicing politicians, given the fact that a reliable relationship between a successful political career and the availability of political science education has not been empirically established? What are the modern approaches to understanding political professionalization?

The scientific literature on the topic can be divided into five four blocks: works devoted to the consideration of the mechanisms of recruitment of the political elite, based on the classic works of elitology by V. Pareto, G. Mosca and R. Michels; studies related to the recruitment of the political elite, in particular, are devoted to the recruitment of ministers, for example, Mills C.R., Oborne P. analyzed in detail the formal legal mechanism for entering the political elite through election or appointment to high public office (Mills, 2007; Oborne, 2008); literature that studies the education system as a channel for recruiting the political elite, determining the configuration of the political elite (W. Hoffmann-Lange, J. Higley, M. Barton, J. Daloz), sources representing the study of the issues of professionalization of certain groups of the political elite H. Best M. Cotta, L. Versicelli (Best, 2007; Cotta and Versicelli, 2002); a study of the political elite by Ukrainian political scientists (Bereza, 2012; Shulga, 2006; Golovaty, 2008; Kochubey, 2010; Kornievsky, 2014; Rudych, 2008; Political Science in Ukraine, 2016; Rudenko, 2018; Batrymenko, 2018).

2. Results

The concept of „professionalization" includes changes that accumulate in social practice as a result of the development of human activity, its acquisition of a professional character. These are changes that are inherent in a person and are formed in society as a result of the conjugation of a person and professional work. For this, the following concepts are used: „human potential", "human factor", "human-centered university", "universal values", "mechanism of human identification" based on a new educational paradigm (human-oriented, in demand by society, subject-personality-oriented).

Citizenship appears as a basic category of civic education and is defined as a quality feature of a citizen, accordingly, the concept of "citizen" denotes the formal status of a person, which implies the acquisition of a certain set of rights and responsibilities. Citizenship indicates whether a person complies with his duties, whether he uses the rights granted and to what extent.

The concepts of "citizen" and "citizenship" are closely related to citizenship, another basic category that forms the basis of civic education concepts. According to V. Tsvikh, "citizenship is a quality feature of a citizen". "Citizen" is the formal status of a person, which provides for granting him a certain set of rights and obligations, and "citizenship" is a qualitative sign of a person that indicates whether he complies with his duties, whether he uses the rights granted and to what extent volumes: "Civil competence is understood as a set of qualifying prerequisites both for exercising rights and for fulfilling duties that are determined by the status of "citizen" (civic education, citizenship education education for democratic citizenship, education for democracy)" (Tsvih, 2002: 104).

Results of good training practice senior management personnel are given: a system of stages, recruitment mechanisms, balancing, quality education, plurality ways, forms, sources recruiting frames. By the terms efficiency models training managerial top-level personnel are with the system, concept, quality education, meritocratically installations, criteria and promotion. For example, such features have practices educational trajectories British politicians. Most of them received education in Oxford or Cambridge for the Humanities character ohm by four m specialty pits: political scientists, jurisprudence, history, economics (narrow quantities).

For countries in transition, it is important to take into account the lesson that for creation quality managerial apparatus and attracting competent personnel to the political elite is necessary so that at least 10 % from Total funding systems higher education went on the socio-humanitarian direction. By experience Great Britain and France representatives this directions are most numerous group political elit. It explained profile political and managerial, legislative activity of faculties.

A conceptual pattern of recruiting the political elite has been formed. Mathematical methods are used in the analysis of the turnover and generations of the political elite in Great Britain and France on the basis of a uniform circulation of the elite. So statistics help to determine that in Great Britain, unlike France, there is not a single cabinet, consisting entirely of members of the previous one.

Thus, it is important for countries in the transitional period with different institutional designs to form mechanisms for effective interaction between the education system and the political system. By applying a theoretical model of interaction between the two systems, the education system becomes a channel for recruiting the political elite based on qualitative criteria: the quality and accessibility of education, education costs, the level of competition among universities, and the effectiveness of the employment policy of graduates.

It is also important to use quantitative indicators in the analysis. Distinguishing the professional academic, non-academic, and civic aspects of political science curricula will help develop assessment tools. The main strength of a political science degree lies in its dual functionality as a professional and civic education. Students highly value the civic dimension of the political science program. This was confirmed by the monitoring of graduates at the University of Innsbruck, which was carried out by IHS in the period from 2011 to 2013 (Gatt, 2021).

In many European countries, the methodology of tracking graduates in higher education (HE) and vocational education (VET) is a practice. For example, there are Destinations of Leavers from HE (DLHE) tracking programs in the UK, Graduate Tracking in Switzerland or KOAB postgraduate studies in Germany. In order to analyze the quality of higher education outcomes for comparison between countries, the European Commission has created the Eurograduate Expert Group, ECTS (European Credit Transfer and Accumulation System), EHEA (European Higher Education Area), ENQA (European Association for Quality Assurance in Higher Education).

Professionalization factor is the promotion of education. Exchanges of students, young scientists, and attraction of foreign students are used as promotion tools. One of the priority areas of work may be to increase the number of scientific publications. At the same time, it seems relevant to establish cooperation with international publications that are indexed in Scopus, Web of Science, which will allow establishing a scientific dialogue.

These proposals may be relevant, taking into account the public demand for the formation of competent managers, the solution of contradictions in the management of professionalization, the regulation of relations, which are caused by qualitative changes in the field of professional work, are elements of the content of personnel policy, personnel management in Ukraine.

Ukraine uses a socio-cultural approach. The result is the effectiveness of the professional training model in the form of increasing the level of socio-cultural competence of students. For this, an evaluation system of criteria and indicators was applied. Competence criteria are: commitment of the specialist's personality to humanistic values that promote dialogue, mutual enrichment of cultures, assertion of integrity, unity of the world; ability to preserve the best traditions, create significant innovations, overcome negative social stereotypes, indicators of specialist competence.

A factor in the professional training of a competent university graduate in the context of sociocultural transformations is the renewal of the sociocultural aspect of the content of education. The sociocultural element of the content of education is a complex of knowledge, skills, values that

form the sociocultural characteristics of a competent specialist who is in demand in the context of multicultural development. The sociocultural approach in vocational education has demonstrated the specificity of not only personality-oriented, but also person-oriented.

The discourse of vocational training is conceptualized in the context of modernization theory. The factors are „political tradition" and „innovation" in their dynamics: from understanding tradition and innovation. They are considered as systems that resist understanding them as mutually enriching systems through overcoming the conflict of values of transitional transits, the role of the mechanism of sociocultural identification.

The Center European Commission Eurograduate is a survey of recent graduates in European countries with the aim of laying the foundation for a pan-European survey graduates, in definition impact of experience European graduates under time stay as students on theirs professional life and theirs life as European citizens; with purpose receiving knowledge to what extent graduates are satisfied his own by learning how they supported yourself or drove they by border and what were engaged in after release, with purpose comparison different systems higher education in Europe (Eurograduate, 2022).

Graduate pathway research is important for higher education leaders to evaluate and improve their programs and teaching methods. This information also helps prospective students make better choices about their studies and career plans. Decision makers will also be better informed when making financial and legislative decisions. At the European level, these data will allow tracking progress towards the European Educational Area and identify areas that require additional investment and resources.

The purpose of the study is to determine the reasons for the formation of the model and highlighting the mechanisms of functioning of education systems as channels of government recruitment. The object is the interaction of the education system and the recruitment system of the highest echelon of executive power. The subject of the study is the functioning of the education system as a channel for recruiting the political elite.

The methodological basis of the approach to the analysis of political professionalization can be the concept of professionalization developed within the sociology of science: "Professionalization determines the rules, rights and algorithms of access, contributes to the combination of individuals into a group of individuals and the isolation of a group from the larger society" (Griffiths, 2010: 734).

The result of professionalization was the formation of a political class – a group of people who work professionally in the field of politics. The significant internal functional and social differentiation of the political class determines the diversity of the composition and the specificity of the professionalization of the categories included in the political class.

This is a complex entity that includes the highest echelon of executive, legislative and judicial power; influential businessmen involved in politics; the few representatives of the aristocracy in modern society; high-level experts; influential representatives of the media sphere. The core of the political class is the political elite – a community of people who make strategic decisions.

Professionalization is a social phenomenon caused by the emergence and development of professional types of human activity; professional development of a person; social level – qualitative and quantitative changes in the professional life of society; the development and complication of the system of social institutions that regulate the process of a person's development of a professional role and provide each member of society with the opportunity to acquire a profession corresponding to his abilities and work in the chosen type of activity; personal level of P. – qualitative changes in a person's activity, related to the content and nature of his work, his acquisition of professional traits.

Professionalism of managerial activity is a set of general theoretical, psychological, special management knowledge, abilities, and skills that a manager must possess for effective implementation; the willingness and ability of the subject of management to apply a set of general, special managerial and psychological knowledge, skills, and abilities necessary for effective management of subordinate civil servants; integral characteristics of individual, personal and subject-activity properties as a whole entity, which enable personnel to solve the tasks set before them at the maximum level of success.

Groups of the political class, which work professionally in the field of politics, but do not make strategic decisions, are presented in the form of "satellites", which are located in the surrounding orbit: middle-level management bureaucracy – central, regional and local; political experts; political consultants; political technologists; party functionaries; professional lobbyists; higher echelon of pressure groups; political journalists. The dominance of the category is determined by the political configuration of the state (form of government, political system, political regime), historical traditions of political development.

Researchers distinguish levels of professionalization: individual (due to the opportunity, attractiveness of a political career); political office (determined by resources – salary, personnel, privileges); political institutes (due to the high specific weight of professional personnel, differentiated internal structure and internal order and a significant budget, which significantly exceeds those that usually exist in amateur associations).

In turn, the institutional context includes the following components that significantly affect the composition and features of the functioning of the

political class: the structure of the state, the role of the national parliament, the internal structure of the parliament, the electoral system, parties and interest groups, and the features of financing the political sphere.

These specialists are equally in demand in the structures of large corporate business, which cannot function effectively without analytical support, without PR services and GR support, without political marketing and political management, without an assessment of political risks. The apparatus and assets of political parties is another field of application of the skills of political comparativism.

These are employment addresses. This list includes think-tanks of various profiles, political advisory and electoral agencies, PR and GR-structures, mass media, the sphere of political and classic advertising – it will become clear that employment is not a problem for political comparativists. The functional and social differentiation of the political class determines the specificity of the professionalization of the political sphere.

Its object (politics and management) dates back several millennia. However, even today, not only ordinary citizens, but high-ranking leaders often do not have specialized training for qualified political participation.

Professional politicians need political knowledge constantly, ”part-time politicians” and ”opportunity politicians” indirectly: they evaluate the activities of politicians, the political courses introduced by them, express their preferences and support and thereby legitimize politics, which implies the need for an educated judgment about policy. The ability to political competence is of particular importance during election campaigns, when citizens make decisions in favor of a candidate (Best, 2007).

The situation has changed under the conditions of modernization. First, among the lords, and then among the contenders for the role of authority, people began to appear who lived ”for” and ”at the expense of” independent leadership. By this, they differed from the lords, for whom independent leadership remained only a part of their status occupations, and from ordinary subjects, involved in politics only forced by circumstances.

Researchers characterize the evolution of the process of professionalization and modern approaches to understanding this process. Politics presupposes internal functional specialization and hierarchy. Formed as a sphere of spontaneous competition for access to vital resources, privileged statuses, with the development of socio-political institutions, functional differentiation, it transformed into a complex organized industry.

A component of the political process was the right to legitimate violence, defined by the state, which assumed the removal of coercive instruments of political competitors of the state, their concentration on the surface of the state pyramid. This process was observed in many countries. The peculiarity

of the Western version of this process was that expropriation was preceded by the existence of prototypes of the modern political class in the form of people who were in the service of various centers of power.

The formation of the political class is connected with the process of formation of political institutions. The priority among them is the state, the core of the political class (proto-political elite) was the rulers who had state (or proto-state) power thanks to physical violence (war), hereditary privileges, and financial status.

The need for power in the ruling apparatus determined the fact that the first type of political class became the administrative apparatus. His task was to implement the decisions made by the higher authorities in the field of domestic and foreign policy. Since power traditionally includes formal and informal institutions, in the early stages of political history a group of advisers and assistants took part. The importance of the political environment was determined by the fact that the success of the leader depended entirely on the functioning of the subordinate apparatus.

The result of the struggle of various socio-political subjects (the configuration of which was diverse in different regions of the world) was the internal diversification of state institutions and the formation of branches of state power (separation of legislative and judicial). Within the framework of legislative and judicial institutes, new categories of management actors (deputies of parliaments, judicial corps, apparatuses of parliaments and courts) have formed; there were auxiliary categories of persons involved in the activity (journalists). The majority of parliamentarians belonged to the category of those who lived ”for politics”, since the work of deputies was either not centrally financed, or the financial support was insufficient.

The internal diversification of the branches of power and public activity in relations with state bodies became the source of the formation of groups that realized the social need for interaction, communication of the state and non-state proto-political and political entities – personalist, clientelistic groups, aristocratic interest and pressure groups, journalists, technical assistants; at more mature stages of social and political development – social and political movements and political parties.

A step in the evolution of the political sphere in Europe was the acceptance of the restrictive rights of monarchies by constitutions, the establishment of public policy as not identical to the administrative management of the sphere, the formation of public-political institutions - parliaments, public and political movements, political parties, non-state mass media, and other non-state actors. The differentiation of political actors, their departure from administrative management was accompanied by the professionalization of the political sphere.

After the emergence of the constitutional state, political journalists, party officials, trade union leaders, and lobbyists became types of professional or semi-professional politicians. The professionalization of politics was accompanied by an increase in the quality of the management bureaucracy. During the formation of the modern state, a rational bureaucracy was formed.

The expansion of suffrage at the end of the 19th and the beginning of the 20th centuries and the development of the institution of elections contributed to the impetus for the creation of new groups that professionally supported election campaigns. The groups offered services to politicians for financial compensation in order to obtain favorable positions.

Professionalization of the political sphere was accompanied by functional differentiation, diversification of types of workers. Thus, a typical figure for the US political class is a "political entrepreneur", while in Germany the backbone of the political class was disciplined officials, party functionaries.

Researchers identify modern approaches to understanding political professionalization. Knowledge of the political class is informative: it can characterize the type of political regime. Although the boundaries of the political class itself are blurred. The common features of the political class and the political elite are localization in the field of politics; the criterion of distinction is functions in the decision-making process: the political elite is the direct subject of decision-making, the task of the political class is to support this process.

The existence of prerequisites is necessary for the functioning of the political sphere in a professional format. Y. Borchert (Borchert, 2003) assumed that the structural prerequisites of political professionalization are: reliable sources of income (parliamentary salary, position in the party apparatus, lobbying activities) (Curasi, 2001).

A prerequisite is real chances to have permanent work in the field of politics. Minimization of the risk of the end of the career – with the help of either reliable re-election, or obtaining another attractive position in the political sphere, or a combination of both career support mechanisms (positions in the parliament, executive power, party apparatus, interest groups at local, regional, national and supranational levels).

A prerequisite is the existence of hierarchies of political positions and the possibility of career advancement – either within the institution (party, parliamentary committee), or due to inter-institutional vertical mobility (including positions in the executive power, parliament, party apparatus, interest groups, at the local, regional, national and supranational levels).

In addition to the need for theoretical argumentation and systematization of data, mathematical and statistical methods of analyzing the state, political

processes, and political behavior of citizens for the purpose of prediction also became the focus of attention.

Political scientists often evaluate the relevance of their discipline from an academic point of view, which is supplemented by the contribution of scientists to the production of knowledge in society. They rarely appreciate the impact of their work on their students and the opportunities their graduates gain from studying political science. At the same time, there is sometimes a lack of empirical evidence that these innovative approaches lead to improved learning outcomes. In other words, do programs facilitate student learning?

An example can be the accumulated experience of the impact of a degree in political science on the career and individual learning outcomes of Austrian graduates. Researchers have shown how graduates benefit from a political science education, what they consider the strengths and weaknesses of the political science program. The researchers analyzed whether the study of political science contributes to the professional and political agency of graduates.

To investigate social significance combined_quantitative and qualitative methods (Senn and Eder, 2018). First, we looked at the career paths of Austrian graduates, using data from Graduate Monitoring for the careers that graduates chose after completing their degree. Second, the researchers presented the results of a pilot study conducted among recent graduates of the University of Innsbruck to illustrate the social relevance of specialization in political science education.

Increasing knowledge about students‘ likely career paths and learning outcomes will help improve or adjust curricula and contribute to a better understanding of the theories, methods, and professional tools political science graduates will use in their future careers. And the emphasis on the social dimension will help to improve assessment tools. The study found that, from the students‘ point of view, both academic and non-academic skills are important for their future careers. In addition, the main strength of the political science degree lies in its dual functionality: professional and civic education. Students highly value the civic dimension of the political science program.

In line with the differentiation between the academic and social relevance of political science, researchers examine the concept through the lens of teaching and learning in higher education. In the academic literature, the relevance of teaching and learning is mainly discussed in two directions: the first focuses on scientists as teachers and discusses the status of teaching in academic circles (Goldsmith and Goldsmith, 2010; Ishiyama, 2010; Trepanier, 2017).

The researchers propose this orientation as a matter of academic relevance. Another line of research focuses on student learning outcomes, which political science researchers define primarily as employment issues and, to a lesser extent, as civic education (Abrandt Dahlgren, 2006; Dominguez et al., 2017; Lowenthal, 2012; Lightfoot, 2015; Nussbaum, 2010; Nyström et al., 2008).

Here social significance is in the first place. The academic and social significance of teaching and learning in higher education is closely related to the issue of professional agency. Research in social relevance mainly focuses on the professional education of students, emphasis on learning outcomes such as the development of skills and knowledge, and the preparation of political science graduates for the academic labor market. At the same time, however, little is known about career preparation within political science curricula (Collins et al., 2012).

A professional education in political science prepares students for work in academia and beyond because only a small percentage choose an academic career after graduation (Lowenthal, 2012), academic and non-academic work may not require the same skills (Nyström et al., 2008).

Graduates of the Faculty of Political Science work in various areas of non-academic work, which complicates the issue of professional training and calls into question the professional relevance of a diploma in political science. In other words, learning should be responsive to the situation. Curricula should consider learning outcomes suitable for both academic and non-academic careers.

T. Collins, G. Gibbs, and J. Shift surveyed departments across the United States to examine how they prepare students for their future careers. They found that: "Political science departments and departments are not doing enough to address the issue of preparing their students for careers" (Collins et al., 2012: 89).

They particularly point to the lack of evaluation tools to determine the effectiveness of different career preparation strategies.

In Austria, previous studies of political science programs include a descriptive analysis of the student population on enrollment and mobility, and a report on a graduate survey on labor market entry requirements (König, 2016). In addition, data on the career paths of political science graduates are rare and have not been used for extensive analysis. Research focuses not only on professional significance, but also on civic significance (Senn and Eder, 2018). In addition to the discourse on employability, studies show that a degree in political science increases students' political awareness and strengthens their ability to participate politically (Dominguez et al., 2017; Nussbaum, 2010).

In other words, a political science degree is to some extent a form of adult civic education and promotes the political agency of its students as a learning outcome. Therefore, researchers attach importance to civic relevance in design and research. A degree can spark an interest in politics and shape an identity as an active citizen (Stuckey et al., 2013).

As a result, civic relevance can be as important as professional relevance to individuals.

3. Discussion

Platform interesting not only for those who looking for work, but and for employers Advertisement on portals are published free, moreover as for large companies and startups. The only limitation is the fee for the internship: the portal does not publish those vacancies and internships for which the student will have to pay, as well as unpaid internships, except for those lasting less than 2 weeks, volunteer programs and charitable organizations. This speaks to the value the university sees in its students.

University are held career activities, which available onlyfor students, graduates and scientific employees Oxford. Others participants they can visit their only by invitation.

Cambridge university carries out big work with employmentgraduates Separate center career provides employment consultations, conducts 14 large career measures in year,many programs trainings with career growth and employment, presentations employers On special section website you can find base data with more than 4 thousand vacancies, examples design resume, according to the board interview and employment, career audio podcasts from 25spheres Annually university prepares and sends out on everyone their own colleges a career directory that provides easy access to employment opportunities in different sectors, as well as existing ones programs.

After entering the National School of Administration French students become interns. They are covered by the duties of civil servants, and their maintenance is paid by the state. They undertake to work for state service during 10 the following years. National school administration prepares state employees by directions: advisor to the Administrative Court and Administrative Court of Appeals, Advisor to the Regional Chamber of Accounts, Advisor on Foreign Affairs.

Studying at the Regional Management Institutes involves a six-month period of study at the institute and a six-month period of service, after which the rank of civil servant is assigned. A specific position and position is selected based on the student's academic rating. The first position offered

to students can be: in the central office of various ministries; in regional branches of executive authorities; in state educational institutions of various levels. Higher normal schools Higher normal schools, as well as Regional Institutes of Management, combine student education with public service.

In France, the process of employment for public service is carried out in higher schools of public service and higher normal schools and has a unique character: students combine studies and public service in various organizational forms. Students become civil service interns immediately after enrollment (with accrual of work experience), they have a contract to work for the state for the next 10 years and a salary is paid.

Sociocultural aspects of world politics and international relations are conceptualized in context professional training of an international specialist (Nye, 2002).

Significant changes in the theory and practice of international relations, which emerged at the beginning of the 21st century, are associated with the turning aside of man, with the growth of interest in socio-cultural and socio-humanitarian aspects of politics and international relations (Kehm, 2010). They state essential being late entering theories of international relations and related fields, including political science, inpost-classical era in which objects scientific study include a subject who learns by acquiring a value-worldview character (Kehm, 2007).

Researchers emphasize necessity cooperation linguistic and cultural studies and philosophy cultures that provides comprehensive study processes intercultural communications, as important direction preparation professionals internationals. Socioculturally competent university graduate is able to: quickly to adapt to socio-economic, socio-political and socio-cultural conditions, developing and implementing your subjective potential; interact with representatives different cultures, successfully deciding contradiction between nationally distinctive and global universal; to build effective communication, harmoniously combining traditional and innovative values, confirming priority their universal, humanistic significance (Nerad and Heggelund, 2011).

As an educational subject, civic education appeared in Ukraine. The development of the first concept was based on the National Program of patriotic education of the population, the formation of a healthy lifestyle, the development of spirituality and the strengthening of the moral foundations of society.

Further development of concepts and approaches in civic education took place thanks to the first large projects on civic education, which were co-financed by international donors, such as: Democratic Education, Ukrainian-Canadian project of Queen's University, Ontario; Ukrainian network of civic education – UCEN, founded by IREX; "Education for

Democracy in Ukraine" as part of the Transatlantic Program of Support for Civil Society in Ukraine. It was these projects that became the basis for the creation of the "Civic Education" course, as well as non-formal education and adult education programs.

Estonians have knowledge and skills that advance life in Estonia and enable them to fulfill themselves in their personal and professional lives, as well as in society. By the way, in Estonia, programming is taught from elementary school. And the civics course has lessons in business and digital education. Estonia has formulated the Education Strategy 2035.

In Sweden, education is focused on mastering disciplines that will help a person grow up confident and happy. Of course, foreign languages, mathematics, science, and the latest technologies are studied here. And they must also teach the ability to learn throughout life, develop initiative and entrepreneurship, and nurture patriotism.

In Poland, education had a centralized character. By 1996, schools were transferred to local self-government, the structure was revised and changed. Here civic education developed along with the changes that took place in political, economic and social life. And the training course was developed in 1995 for primary school, training 1500 civic education teachers for 5 years. Then, a little later, they developed a program for high school.

Norway introduced three priority interdisciplinary themes: democracy and citizenship, sustainable development, health and life skills. The Ministry of Education recommends including these topics in subjects where they are natural. And he emphasizes that teaching should be done through play and research, because this is the best way to learn the material. Children have been talking about personal space and cyber security since elementary school.

Great importance is attached to critical thinking and children are taught this. In one of the Norwegian schools, for example, the project "The boss in your own life" was created, where schoolchildren considered such topics as personal finances, mathematics, economics, consumer rights (Nerad, 2010). The Americans themselves say that the instability of political processes in the country is a consequence of insufficient attention to civic education (Nerad and Evans, 2014).

In Great Britain, a National Citizenship Education Program has been created. The main emphasis during training is on the formation of an active citizen and participatory democracy. And the main goal is to give students knowledge about their rights and freedoms.

Conceptual differentiation between the (academic and non-academic) professional dimension and the civic dimension of political science curricula will help develop stronger assessment tools. The main strength of

a political science degree lies in its dual functionality as a professional and civic education, indeed, studies have found that students highly value the civic dimension of a political science program.

Conclusions

So, it is justified that the political development of society requires a scientifically based solution to the problems of personnel provision and professional opportunities. The analysis of their solution indicates unfavorable trends in the processes that negatively affect the dynamics of political development. Institutions of political professionalization are: parties, system of political education, political media, institute of representation of group interests. Political education is a powerful tool for the democratization of society, it is an institute for the professionalization of the political class and politics.

It has been confirmed that as a result there is a devaluation of professionalism, disdain for professional experience, an outflow of highly qualified specialists from the country, the political system is waking up to unique scientific schools, and lost benefits are increasing. It was determined that the effective recruitment of the political elite is a prerequisite for building an effective social order. Recruitment channels must meet the requirements of political times and public demand. Ukrainian society is interested in the formation of a competent political and managerial elite.

The social significance of political science as a matter of (non)academic career training and civic education of its graduates is considered. Civic (political) education is teaching people how to live under the conditions of the modern state, how to abide by its laws, but at the same time not to allow the authorities to violate their rights. Professionalization as the process of becoming a professional, the process of developing important professionally important qualities of the individual. This is the choice of a profession by a person taking into account his own capabilities and abilities.

It was determined that it is in the education system that the formation of specialists takes place, since the effective recruitment of the political elite is a prerequisite for an effective political system. Recruitment efforts must meet the requirements of political times and public demand through the education system: internships that open promising positions; assistance of educational institutions regarding employment; creation of communities of talented students and teachers.

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Theoretical and legal approaches regarding the administrative activities of the public authority in safeguarding rights of persons with disabilities

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Abstract

The purpose of the scientific research was to examine the essence and content of the modern human-centered concept in the theoretical-applied interpretation of management activities of state authorities, in connection with the implementation and protection of fundamental rights and freedoms of persons with systemic disorders of body function. The following research methods were used in the scientific work: systematization, generalization; analysis and synthesis of the developed ideas. Definitely, it is substantiated that significant reform changes in the system of state authorities of Ukraine and changes in the direction of their activities somehow mean the creation of conditions for the construction of a democratic, social and legal state, as well as the guarantee of subjective rights, in particular of persons with disabilities. The conclusions argue the priority of the formation of administrative and legal doctrine, built on the basis of a humanistic ideology that permeates the Convention on the Rights of Persons with Disabilities in the daily life of society as a whole.

Keywords: administrative activity; public administration; guarantee of rights and freedoms; persons with disabilities; public authority.

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Planteamientos teóricos y jurídicos sobre las actividades administrativas de la autoridad pública en la salvaguardia de los derechos de las personas con discapacidad

Resumen

El propósito de la investigación científica fue examinar la esencia y el contenido del concepto moderno centrado en el ser humano en la interpretación teórico-aplicada de las actividades de gestión de las autoridades estatales, en relación con la implementación y protección de los derechos y libertades fundamentales de las personas con trastornos sistémicos de función del cuerpo. En el trabajo científico se utilizaron los siguientes métodos de investigación: sistematización, generalización; análisis y síntesis de las ideas desarrolladas. Definitivamente, se fundamenta que los cambios de reforma significativos en el sistema de autoridades estatales de Ucrania y los cambios en la dirección de sus actividades, significan de alguino modo la creación de condiciones para la construcción de un Estado democrático, social y legal, así como la garantía de los derechos subjetivos, en particular de las personas con discapacidad. En las conclsuiones se argumenta la prioridad de la formación de doctrina administrativa y jurídica, construida sobre la base de un ideario humanista que permea la Convención sobre los Derechos de las Personas con Discapacidad en la vida cotidiana de la sociedda en su cinjunto.

Palabras clave: actividad administrative; administración pública; garantía de derechos y libertades; personas con discapacidad; autoridad pública.

Introduction

The implementation of the basic provisions of the Concept of administrative and legal reform in Ukraine led to the formation of a new administrative and legal status of public authorities, forms and methods of their activity. These objective changes are determined by the principles of the distribution of power, and therefore by the expansion of the administrative powers of the public authorities.

Most of the tasks of the researched bodies are carried out in the process of administrative activity during the implementation of the prescriptions of administrative legislation, the use of administrative and legal means of influence on the organization of the activities of officials and officials to ensure the rights and freedoms, in particular, of persons with disabilities.

The variety of tasks and functions of state authorities and local self-government bodies determines the use of various modernized forms of their activity, which are specified in laws and other regulatory legal acts that regulate the competence of subjects of power. At the same time, to this day, there are constant discussions among scientists about the main direction of the functionality of these organs in a theoretical and applied sense.

That is why proper clarification of the current legal content of the administrative activities of public authorities will contribute to the creation of optimal and proper conditions for the realization and protection of the rights and freedoms of persons with disabilities in society by the state.

Taking into account the above, it is worth stating that the level of effectiveness of administrative and legal provision of the subjective rights of the specified category of people directly depends on the qualitative formation and application of appropriate legal means at the national and regional levels. The key role belongs to the construction of administrative legislation on disability issues and legitimate activities of public administration subjects, taking into account international human rights standards. They should be implemented in the context of the spread of human-centric ideology on the development of the national doctrine of administrative law.

1. Objectives

The purpose of the article is to formulate the concept and definition of the content of the administrative activities of state authorities and local self-government bodies in ensuring the rights and freedoms of persons with disabilities, due to the priority of the formation of a new administrative-legal doctrine built on the principles of a human-centered ideology, in accordance with the provisions of the Convention on the Rights of Persons with Disabilities.

2. Materials and methods

The article is based on a legal analysis of the key provisions of the Convention on the Rights of Persons with Disabilities, the Concept of Administrative and Legal Reform in Ukraine, the current legislation of Ukraine, which define the competence of national state authorities to ensure the implementation and protection of rights, fundamental freedoms and legitimate interests people with persistent disorders of body functions.

Scientific publications, the key idea of which is the need to develop a new concept of legal means to ensure an appropriate social environment for persons with disabilities, are reviewed and summarized. It should be

based on the provisions of the human rights model of disability, organically combined with a human-centered approach in public administration.

The methodological basis of the article is formed by a number of general scientific and special methods of scientific knowledge. The dialectical method and the formal-legal method were aimed at revealing the essence and general features of the implementation of the administrative activity of public authorities through the application of a set of legal means in the field of ensuring the rights and freedoms of persons with disabilities in various areas of the social sphere. Synergistic and system-functional methods contributed to a broader disclosure of theoretical and methodological approaches to understanding the specifics and features of the application of human-centered ideology in the doctrine of administrative law.

The structural-analytical method, the methods of analysis and synthesis, system analysis were aimed at revealing the generalization of the essence of the practice of public service use by public authorities of legal means of ensuring the rights and freedoms of persons with disabilities. In this case, the priority component of the public service activity of the public administration, along with the managerial one, where, in addition to the dispositive principle, the administrative-legal method should have an equal, and in some directions priority, value.

3. Results and discussion

The modern definition of the concept of administrative activity is mostly considered by scientists as the general implementation of the competence of state bodies, regulated by the norms of administrative law, their specific law-making and law-enforcing activities.

However, for many decades, it has been associated with the functioning of law enforcement agencies in the form of organizational-management and executive-authority activities regulated by current legislation, aimed at ensuring the personal safety of citizens, protection of their rights and freedoms, legal interests, rights and interests of legal entities, public order , public safety, fight against crimes. According to this approach, administrative activity was reduced to the executive activity of the relevant state bodies aimed at the formal protection of the rights and freedoms of citizens.

In the aspect of the above, a number of scientists believe that the administrative direction of activity is identified exclusively with police activity, which begins to manifest itself when the task of ensuring compliance with the norms of social behavior goes beyond the control of law-abiding citizens of society and is redirected to those members who are authorized

as a result of the distribution of social duties to perform this function and act on behalf of the society itself.

Implementation of this type of activity takes place in the case of preventing the violation of some rules and norms of society, with the necessity of coercive intervention and the use of force (Melnyk, 2013).

The police orientation of the activities of the subjects of power presupposes public administration in a narrow sense, i.e., the work of executive authorities at various levels. This understanding of administrative activity takes into account only its managerial nature, and therefore does not fully, and most importantly, does not accurately reflect the purpose of this type of activity. Moreover, the focus of views on the use of such a limited approach to the implementation of the law enforcement mechanism of the state remains unclear to the end.

The outlined interpretation is more characteristic of states with a totalitarian regime, however, the priority of the modern direction of activity should be the effectiveness of ensuring individual rights. Let's consider the current interpretation of the term «administrative activity», where the administration (from the Latin administratio - management) is an institution that performs administrative functions in various spheres of social life. Activity is a system with numerous and diverse functional and material components and connections between them.

The internal content of the «activity» category covers the constituent components of the system, which include the process, etc.In scientific works, the concept of administrative activity is often equated with public administration. Thus, it is a type of state-authority activity of executive authorities and covers a wide range of social relations that are formed both within the system of state authorities and outside of it.

The existence of such a position can be explained by the fact that administrative activity is only a separate subtype of state-authority activity; secondly, the presence of internal and external system activities, primarily aimed at the settlement of organizational issues within the relevant structural departments regarding the realization and protection of the rights of persons with disabilities. At the same time, not all actions of the executive power bodies are properly managerial, but the main, profile direction is proper managerial activity, that is, public administration as a special type of state activity.

In general, the activity of subjects of power is broader than management and consists in performing many other powerful or public actions - such as concluding administrative contracts, conducting explanatory work, implementing state regulation, etc. These areas of activity, which go beyond administrative ones, significantly affect the implementation and protection of the rights and freedoms of persons with disabilities (Kondratenko, 2020).

The identification of administrative activity with state administration is refuted by some scientists by defining common and distinctive features of public administration and state executive power, distinguishing areas of activity that are carried out outside the scope of the activities of executive authorities.

Summarizing, we should note that public administration is a broader category than executive power, since the latter originates from public administration, and the effectiveness of its activity depends on the level of organization of public administration. At the same time, as state management can be realized within the scope of activities not only of executive power bodies, so executive power can be realized not through state management.

In addition, in modern administrative and legal doctrine, the tendency to reduce the use of the term «state administration» and, on the contrary, the active introduction of the term «public administration» is increasingly visible. At the same time, there is not an unjustified emphasis on the implementation of public administration by scientists, but a renewal of approaches to the activities of subjects of public authority, aimed at the implementation of public authority and the implementation of current legislation in the public interest, where publicity is interpreted as common, accessible to all, serving all , combines state national and self-governing territorial openness (Fedoruk, 2019).

Public administration is a type of socially useful activity, which is carried out by a certain set of subjects, in particular by state authorities, among the subtypes of which are favorable, providing, executive, administrative, delegated public administration. The priority goal of these types of public administration is to assist private individuals in realizing their rights, freedoms, and legitimate interests.

This activity involves the delegation of certain powers to local self-government bodies, public organizations of persons with disabilities, the adoption of subordinate legal acts aimed at the implementation and protection of their rights and freedoms, the payment of social benefits, the provision of benefits, the restoration and conversion of transport infrastructure taking into account special needs, creating access to social infrastructure, ensuring equal opportunities in the context of the European formula: human rights and freedoms are equal to equal opportunities to realize the rights and freedoms of persons with disabilities, taking into account their special needs (Sobol, 2017).

Therefore, the views of scientists regarding the identification of «administrative activities of public authorities» with state management actually coincide with the Soviet approach to administrative law, which was mainly characterized as administrative law, that is, as a means of the

power-organizing influence of the state on social relations and processes and «jurisdictional law». which ensured the application of administrative responsibility and coercive measures in relations with citizens.

However, significant reformed changes in the system of authorities and modification of their activities, creation of conditions for the construction of a democratic, social, legal state, affirmation and provision of human and citizen rights determined the priority of the formation of a new administrative-legal doctrine built on the principles of human-centric ideology (Concept of Administrative of Legal Reform in Ukraine, 2006). Moreover, the advantage of the transformation of administrative law should be given to its non-management orientation, which covers the relationship between public administration and persons with disabilities.

It is expedient to define this non-management component of the subject of administrative law as «public service», which will be a priority component of the public service activity of the public administration, along with the managerial one, where, in addition to the dispositive principle, the administrative-legal method should have equal, and in some areas, priority value (Sobol *et al.,* 2020).

It is about the fact that the conceptual foundations of the new role of administrative law, which serve the interests of man, does not deny its focus on the regulation of management relations. On the contrary, the managerial orientation is preserved, along with this, the regulation of relations between the public administration and individuals acquires a new meaning. Optimization of management and legal regulation are ultimately aimed at securing human interests.

Currently, the main characteristics in the understanding of administrative law should not be administrative, but such new functions as law enforcement, which is related to the provision of human rights and freedoms, and human rights protection, which is related to the protection of violated rights. They most fully reproduce the public purpose of administrative law in the context of the administrative activity of the public administration regarding the implementation and protection of the rights and freedoms of persons with disabilities.

Therefore, taking into account the practical orientation of these functions of administrative law, it is expedient to determine not only the consolidation of their subjective rights and freedoms, but also the provision of their implementation and the creation of appropriate protection in cases of violation, as a priority area of activity of the public administration. Only through these aspects does the constitutional definition become clearer: «the establishment and provision of human rights and freedoms, their legitimate interests, is the main duty of the state».

It is worth noting that today the consolidation of the rights and freedoms of persons with disabilities in normative legal acts, their list and content, the proper implementation of rights and freedoms in relation to equality and non-discrimination, accessibility, the right to life, equality before the law, access to justice, freedom from torture and cruel, inhuman or degrading treatment and punishment, freedom from exploitation, violence and abuse, freedom of movement, adaptation and rehabilitation, etc. does not mean that such a person can actually exercise these rights and freedoms, i.e., that they can actually be implemented by public authorities.

In the conditions of reforming domestic administrative law and changing approaches to public administration, more and more attention of scientists is directed to the practice of wide application in these processes of the principles of people-centrism, which has been used for a long time in the functioning of European public institutions. It is planned that the new administrative-legal doctrine will be aimed at changing the understanding of the social value of the specified field of law.

Currently, in the generally accepted sense, the main thing for public management is to achieve the most rational way of planned results of power and organizational influence on managed objects. At the same time, ensuring the subjective rights of citizens is not one of the priority tasks. Therefore, administrative law should acquire the status of the main regulator of harmonious relations between public administration and citizens. Comprehensive provision of the priority of human rights and interests, guarantees of their effective implementation and protection will come first.

Therefore, in this case, the key is the partnership interaction of civil society institutions and subjects of power, which are obliged to promote and create the necessary conditions at the normative and law-enforcing levels for the realization of the rights and freedoms of a person and a citizen, to implement democratic procedures of public service activity.

It is natural that the most active strata of the population, within their legal status, seek to influence the processes of state formation, the fair redistribution of budget funds for social needs, and the proper performance of official duties by subjects of power at the national, regional, and local levels. Persons with disabilities are full-fledged members of society, who also wish to properly exercise and protect their rights and freedoms, directly be the main participants in the management of state affairs (Convention on the Rights of Persons with Disabilities, 2006).

In general, we share our views on the functioning of public power, taking into account a people-centered position, close and equal interaction with the population, since the need to completely depart from the Soviet administrative-legal heritage and reform domestic administrative law has

come. In fact, there are no remaining valid outdated legislative acts in this area, instead, the state approach regarding the secondary nature of citizens as subjects of law still resides in the sphere of activity of subjects of public administration.

Instead, the democratic development of public administration also requires respect for the rights and freedoms of a person and a citizen, not of a formalized nature, but with real consideration of international human rights standards and official recommendations regarding the appropriate functioning of public structures (Kondratenko *et al.,* 2022).

Conclusions

Taking into account the above, it is worth concluding that the administrative activity of public authorities in ensuring the rights and freedoms of persons with disabilities must be understood as the power-organizing and power-management activity of state authorities and local self-government bodies regulated by the norms of administrative legislation, which is based on a people-centered, humanistically oriented ideology and is aimed at affirming, ensuring and realizing the rights and freedoms of people with systemic physical, mental or sensory disorders of body functions. Administrative activity in terms of ensuring the rights and freedoms of persons with disabilities is carried out through specific actions of officials and officials of public authorities.

Taking appropriate actions and making management decisions is carried out within their competence and corresponds to the forms and methods of administrative activity of public authorities, as well as in the system of organizational measures carried out by public authorities to create conditions for the realization and protection of the rights and freedoms of the specified category of persons at their individual request or by the initiative of a competent subject of authority in terms of providing administrative services.

Administrative and legal support for the realization and protection of the rights and freedoms of persons with disabilities is based on two interrelated theoretical and legal ideas. First of all, we are talking about the relevant law-making and law-enforcement activities of executive authorities and executive bodies of local self-government, which express the national specificity of the development of the legal system, as well as historically formed socio-economic and humanitarian traditions in key areas of public life.

This allows to implement the mechanism of legal protection of a person at the national and regional levels, which has absorbed only those specific

measures, means, ways and methods of power influence that are inherent in a specific country. As a result, the risk of creating an ineffective legal instrument, which will be difficult to use in practice, is reduced.

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Modern methods of crime prevention related to the excess of official power or authority in the law enforcement system

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Abstract

The general objective of the article was to discuss modern methods of crime prevention related to the excess of official power or authority in the system of public order. The methodological basis of the study was the dialectical method of scientific knowledge. Thanks to its application, legal and social phenomena influencing the actions of law enforcement officers were analyzed. In the interconnection, the statistical data of the survey, on the judicial practice concerning the issues of abuse of power by law enforcement officers, were also studied. Over the past eight years, 391 judgments were rendered in Ukraine, 4258 decisions on procedural actions during the consideration of offenses under Article 365 of the Criminal Code of Ukraine. It is concluded that measures to prevent crimes related to abuse of power should be comprehensive. In particular, they must be effectively correlated with the legislative framework of the policy of protection and prevention of abuse of power of the state.

Keywords: law enforcement officer; excess of power; official powers; legal principles; preventive measures.

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Métodos modernos de prevención de delitos relacionados con el exceso de poder o autoridad oficial en el sistema del orden público

Resumen

El articulo tuvo por objetivo general discutir los métodos modernos de prevención de delitos relacionados con el exceso de poder o autoridad oficial, en el sistema del orden público. La base metodológica del estudio fue el método dialéctico del conocimiento científico. Gracias a su aplicación, se analizaron los fenómenos jurídicos y sociales que influyen en la actuación de los agentes del orden. En la interconexión, se estudiaron también los datos estadísticos de la encuesta, sobre la práctica judicial relativa a las cuestiones de abuso de poder por parte de los agentes del orden. En los últimos ocho años, en Ucrania se dictaron 391 sentencias, 4258 decisiones sobre actuaciones procesales durante el examen de los delitos previstos en el artículo 365 del Código Penal de Ucrania. Se concluye que las medidas para prevenir los delitos relacionados con el abuso de poder deben ser integrales. En particular, deben estar efectivamente correlacionadas con el marco legislativo de la política de protección y prevención de abusos de poder del Estado.

Palabras clave: agente de la ley; exceso de poder; poderes oficiales; principios jurídicos; medidas preventivas.

Introduction

Law enforcement officers have a wide range of functions and powers to use force, detain or arrest offenders, conduct undercover investigative actions to investigate crimes. During the execution of such powers, law enforcement officers are given considerable freedom of action. However, the granting of broad discretionary powers leads to the question of the extent to which law enforcement agencies use their functions and the legality of exceeding their powers.

The current situation in the state has caused an increase in various types of crimes. At the same time, economic circumstances force the authorities to reduce the number of law enforcement agencies through layoffs, despite the obvious growth in the need to protect the population. Protection of public order and protection against this type of threats, such as meetings, demonstrations, gatherings, requires employees to be prepared to risk their own lives. A modern law enforcement officer must protect against the enemy in difficult conditions.

Crimes committed by law enforcement officers are one of the most dangerous social phenomena that have a negative impact on all spheres of social relations and processes taking place in the state, as a result of which stability and security in society is undermined.

Different attitudes of the public to the fact of excesses of power by law enforcement officers increase mistrust, hostility and violence among the population.

Today, the problem of criminal acts of officials becomes a transnational problem and ceases to have a purely national aspect. Thus, the purpose of this article is to conduct a study of crimes related to the abuse of power or official authority by law enforcement officers and to determine the main ways to avoid and prevent their commission.

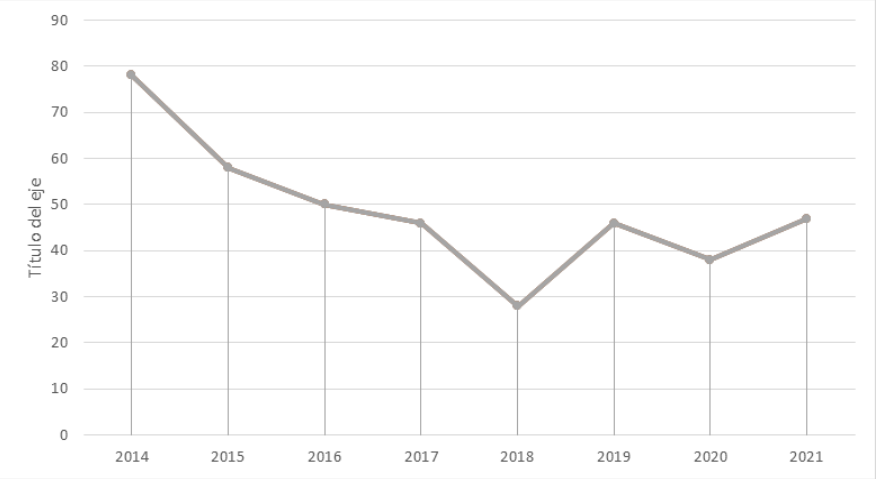
1. Materials and methods

The methodological basis of the research was the dialectical method of scientific knowledge as the main method of objective and comprehensive analysis. Thanks to its application, legal and social phenomena affecting the actions of law enforcement officers were analyzed in relation to each other, statistical survey data, judicial practice related to issues of abuse of power by law enforcement officers were studied.

2. Analysis and discussion of results

Over the past eight years, 391 verdicts were handed down in Ukraine, and 4,258 decisions were made regarding procedural actions during the consideration of crimes provided for by Article 365 of the Criminal Code of Ukraine. The study of the Unified State Register of Court Decisions shows that the largest number of sentences was pronounced in 2014 - 78, in 2015 - 58, in 2016 - 50, in 2017 - 46, the smallest number in 2018 - 28, in 2019 twice more compared to the previous year – 46, in 2020 – 38, in 2021 – 47 (Figure 1) (Unified State Register of Court Decisions, 2022).

Fig. 1 (developed by the author)



In recent years, it has become obvious that the abuse of authority by law enforcement officers is a widespread phenomenon and requires effective methods of combating it. Such methods may depend on a number of political, legal, and social factors.

The fight against this type of crime is one of the serious problems in countries all over the world. Every law enforcement officer must be aware of the importance of due process. Abuse of power directly contradicts the concept of proper legal behavior.

The activities of law enforcement officers within the framework of their functions are aimed at ensuring national security at all levels, ensuring law and order, as well as protecting human rights, freedoms and interests in society. Each state has its own structured system of law enforcement agencies, which is clearly regulated by the current national legislation (Smernytskyi, 2021).

Abuse of power or official position is interpreted as intentional, with the aim of obtaining any unlawful benefit for himself or another natural or legal person, the use of power or official position by an official against the interests of the service, if it caused significant damage to the rights, freedoms and interests of individuals protected by law citizens or state or public interests, or the interests of legal entities (Chubenko *et al.,* 2018).

Until 2014, the subjects of the specified type of crime could be any officials who were entrusted with the duties of implementing the functions

of state authorities. Such persons were defined as representatives of state authorities or local self-governments who held positions related to the performance of organizational-administrative or administrative-economic functions in state authorities, local self-governments, state or communal enterprises, institutions or organizations, and the excess of power or official powers, the actions of an official who does not have official powers and goes beyond his powers during the performance of his administrative and economic functions, or the actions of an official who has powerful powers, but in this case exceeds not them, but his other powers, were recognized , or exceeds its authority over persons who are not its subordinates (Information and consulting platform, 2018).

The question of the specificity of the definition of the subject of the crime provided for in Article 365 of the Criminal Code of Ukraine was repeatedly raised. Discussions among academics raised the question of why the specified article stipulates responsibility specifically for law enforcement officers, bypassing other officials whose actions can have no less dangerous social consequences. The legislator explained such measures by the fact that in 2013, most of the crimes stipulated by Article 365 of the Criminal Code of Ukraine were committed by law enforcement officers (Paseka, 2017)

E. Havroniuk (Havroniuk, 2014) claim that the intentional commission of actions that obviously go beyond the limits of the given powers by another public official in any field, except for law enforcement officers, can have only administrative, disciplinary and civil legal responsibility, the possibilities of which should be used to the full extent in all necessary cases through the mechanisms provided for in the relevant normative legal acts.

In view of the above, the main differences in the distinction between the concepts of «exceeding power or official authority» and «abuse of power or official position» are that an official illegally and contrary to the interests of the service uses the rights and powers granted to him by law, as defined in Article 364 The Criminal Code of Ukraine stated that the crime provided for in Article 365 of the Criminal Code refers to the commission of actions by a person who is superior to this department or an official of another department.

In addition, the actions must be performed under those conditions, if their performance is allowed only in special cases, that is, with a special permit or an appropriate order. As for the subject, in this case, actions are supposed to be performed individually, which should have been performed only collegially. In addition, no one has the right to perform or allow such actions.

From the moment of the initial codification until the entry into force of the Criminal Code of Ukraine, the domestic criminal law did not contain a legislative definition of a special subject of the specified type of crime.

However, the doctrinal analysis demonstrates that this concept was developed by the science of domestic criminal law.

A special subject of a crime is a person who, in addition to general features, has special features. They usually include: position, official duties, demographic characteristics, membership in the service (Makarov *et al.*, 2019).

In the scientific literature, the term «law enforcement officer» refers to a person who puts the interests of society above his own. Legal and professional training is an important prerequisite in the formation of law enforcement culture (Sushytska *et al.,* 2021). As mentioned earlier, law enforcement officers can exercise their own powers at their own discretion. This practice sometimes leads to too much freedom of action, which ultimately exceeds the limits of the necessary defense in critical situations.

Some scholars consider the necessary defense in two manifestations. In the first, as an individual way of protecting oneself or other persons, the state from socially dangerous encroachments. In the second, as a way to protect oneself during active actions from the side of law enforcement officers: offensive movement forward, and therefore, in the hands of law enforcement officers, there must be an appropriate and accessible toolkit capable of meeting the ever-increasing demands of everyday criminal reality (Miliukov, 2021).

Law enforcement officers are usually empowered to detain persons who have committed a crime. In those cases, if the detainee was harmed, which clearly does not correspond to the nature and danger of the committed act, law enforcement officers must bear responsibility for this on an equal basis with all citizens, and their position cannot be burdened only because they are representatives of the authorities. Because police officers' risk their lives while performing their duties.

The unconditional prosecution of representatives of law enforcement agencies who, in the course of their duties, exceeded the limits of necessary harm, to criminal liability under Articles 365 of the Criminal Code of Ukraine, in fact, may lead to increased liability for exceeding the measures necessary to detain the person who committed the crime. Under such conditions, criminal liability may arise for causing any light damage, regardless of the degree of the offense committed by the criminal.

According to sociological research, the level of trust of citizens in law enforcement agencies in Ukraine in 2020 is 40.8%. Compared with other European countries, this indicator reaches 39% in Hungary, up to 94% in Finland. Compared to 2019, the number of cases of inappropriate behavior by law enforcement officers decreased from 20.2% to 9.6% (Klymenko, 2020).

In 1979, the United Nations General Assembly adopted the Code of Conduct for Law Enforcement Officials (Resolution GA 34/169), which was the main instrument providing normative guidance to states on the implementation of the role of the police in society. The articles of the Code mark a significant departure from the traditional, narrow definition to a more «legal», broad understanding of the police as officials who «serve» the community.

In practice, the human rights approach to law enforcement involves an obligation to refrain from unjustified restrictions on human rights; take reasonable measures to ensure the exercise of human rights and take positive measures to promote the exercise of human rights. For example, this approach requires that law enforcement officers do not unlawfully restrict the right to assemble, and take the necessary measures to protect those who organize a demonstration (United Nations Digital Library System, 2019).

The excess of power can manifest itself in the form of the use of force, manifestations of cruelty. One cannot fail to note that the use of force is a necessary and legal tool for the work of a law enforcement officer, given the specifics of his activity. Instead, the manifestation of «cruelty» is already a conscious act of employees, who usually make great efforts to hide their misconduct. At the same time, the use of force can occur by chance, which is explained by the problem of the lack of special professional skills. Thus, "excessive force" can be cruel, involve malicious intent, or simply accidental (Lourens, 2022).

Legislation of foreign countries differently distinguishes such corpus delicti as abuse of power or official position and abuse of power and official authority, as evidenced by the analysis of the criminal legislation of foreign countries (French Republic, Republic of Latvia, Georgia, Republic of Estonia, Russian Federation, Republic of Estonia, Italian Republic) (Nesterenko, 2021).

The American Police Foundation conducted a nationally representative survey that revealed the attitudes of America's police officers on important issues related to police overreach. As a result, it was established that American law enforcement officers believe that extreme cases of excess of authority by the police do not happen often. At the same time, some respondents confirmed that sometimes they have to use more force than is allowed by law.

Despite a responsible attitude to legal norms that recognize the limits of the powers of law enforcement officers, the survey showed that it is not unusual for police officers to ignore the inappropriate behavior of their colleagues. Most police officers in the United States disapprove of the use of excessive force.

Therefore, more than 30% of respondents expressed the opinion that law enforcement officers do not have the right to use as much force as is often necessary when making arrests. Almost 25% believe that it is sometimes permissible to use more force than is allowed by law in order to control a person who physically assaults a police officer.

Also, 22% of respondents indicated that officers in their department sometimes (or often) use more force than necessary, and only 16% reported that they never did. Some respondents, almost 4 out of 10, reported that constant compliance with the rules is incompatible with doing the job. It is worth noting that American police officers believe that training and educational programs are an effective means of preventing the excess of power by officers (Weisburd *et al.,* 2015).

Exceeding the powers of law enforcement officer's contrary to the principles of legality, necessity and proportionality can lead to serious violations of human rights. For example, illegal and arbitrary use of violence may lead to violation of the right to life, arbitrary detention violates the right to freedom and integrity. In addition, a warrantless personal search can be a violation of freedom. Illegal actions can also manifest in the form of arbitrary use of information obtained as a result of the investigation, which is a gross violation of the right to privacy.

Values in law enforcement agencies are formed not only from normative acts, but also from traditional culture. The management's position regarding the excess of power can significantly affect the attitude of law enforcement officers to their powers. Mutual respect and cooperation between state law enforcement agencies and the public are essential to ensure that security needs are effectively met.

In recent decades, international and regional documents have paid more attention to police accountability as a system that requires the involvement of a variety of external and civilian oversight actors. In this regard, the European Code of Police Ethics stipulates that: "The police should be accountable to the various independent bodies of a democratic state, i.e. the legislature, the executive and the judiciary" (Council of Europe, 2021: 16).

In the United States of America, there is a dedicated unit that employs experts in police practice to help review law enforcement incidents, documents and policies. These experts are involved in developing remedies and evaluating compliance actions (Department of Justice, 2022).

Therefore, in the case of the use of force, the actions of a law enforcement officer must comply with the following principles:

1. Necessity. This principle contains mandatory interrelated elements: the obligation to use non-violent means where possible; the obligation to use force only for the legitimate purpose of law enforcement

agencies; and the duty to use only the minimum necessary force that is reasonable under the circumstances. Whenever possible, law enforcement officers should use reasonable means to achieve a legitimate law enforcement objective before resorting to physical force. Such permissible means must be non-violent in nature and may include the use of symbols of police authority: uniform, vehicle, educational conversation, physical presence.

2. Legitimate purpose. The use of force must be carried out with a corresponding purpose for the implementation of the functions assigned to law enforcement agencies. That is, officers must use such force as is reasonably necessary under the circumstances to prevent a crime or to effect or facilitate the lawful arrest of offenders.
3. Limitation. Impossibility of applying force to a person who does not resist. Unnecessary use of force is obviously not legal.
4. Rationality. This principle is explained by the fact that the force used should not exceed the minimum reasonably necessary under the given circumstances, that is, be only to the extent necessary for the performance of the duties of officials.
5. Proportionality. This principle establishes a boundary between what is considered the legal use of force and the threat posed by the offender. That is, proportionality does not mean that force must be used by the law enforcement agency in strict accordance with any continuous use of force (where the level of force increases in stages) or as a similar response to violence by the suspect (UNODS, 2019).

Measures to prevent crimes related to abuse of power should be comprehensive. In particular, they must be effectively correlated with the legal framework of protection and prevention policy on the part of the state.

State measures, which consist in conducting a policy on the prevention of offenses in the field of law enforcement agencies, can affect the structure and behavior of law enforcement officers. Conducting internal audits at local levels and strengthening reporting can have a positive impact on employee accountability. Law enforcement officers must pass expert checks during internal disciplinary commissions. In addition, it is important to ensure transparency during their conduct, so that the public can be sure that the internal procedures are effective and fair.

The work of structural subdivisions should also take into account the continuous training of employees, their evaluation and certification.

In addition to these measures, law enforcement officers can also be prosecuted in a civil lawsuit. These lawsuits can be filed against persons who, as a result of exceeding their authority and official duties, caused a violation of the rights of citizens. Civil lawsuits are the main mechanism for holding law enforcement officers accountable for causing moral damage.

Provisions of the special Law of Ukraine «On the Procedure for Compensation for Damage Caused to a Citizen by Illegal Actions of Bodies Carrying Out Operative-Investigative Activities, Pretrial Investigation Bodies, Prosecutor's Office and Court» dated December 1, 1994 No. 266/94-BP (The Law of Ukraine, 1995) and the Regulations on the Application of the Law of Ukraine «On the Procedure for Compensation for Damage Caused to a Citizen by Illegal Actions of Bodies Carrying Out Operational-Investigative Activities, Pretrial Investigation Bodies, the Prosecutor's Office and the Court», approved by the order of the Ministry of Justice, the General Prosecutor's Office and the Ministry of Finance of Ukraine dated 03.04.1996 r. according to No. 6/5/3/41 (Order of the Ministry, 1996) the right of a person to apply for compensation for damage caused by illegal actions of employees of state authorities is determined.

In our opinion, the specified normative legal acts are outdated and do not take into account all important aspects of the legal relationship arising between the victim and the law enforcement officer as a result of the latter exceeding his powers.

An important measure is to strengthen community rights to record police actions to promote accountability and encourage good law enforcement behavior.

The provisions of the previously effective Order of the Ministry of Internal Affairs of April 24, 2009 № 177 «On the organization of initial training of employees of the internal affairs bodies of Ukraine» regulated the procedure for applying mentoring. Therefore, a new employee was initially attached to a specific mentor (Order of the Ministry, 2009).

The Order of the Ministry of Internal Affairs of Ukraine dated 16.02.2016 №.105 approved **"** Regulations on the organization of initial professional training of police officers who have been recruited for the first time in police service" according to which "a mentor from among the members of the management of the police body (institution, institution) is assigned to the police officer, where he serves, who monitors his performance of tasks, organizes for him individual practical training in fire, physical and tactical training, which is provided for in the individual curriculum" (Order of the Ministry, 2016).

The use of the mentoring institute is also followed in the provisions of the Order of the Ministry of Internal Affairs of Ukraine dated 29.01.2018 No. 51, which approved the Concept of the introduction of a three-level model of training of police officers, which provides that after the end of the initial professional training as a police officer, for the next six months, police officers serve in junior police positions under the guidance of mentors (Order of the Ministry, 2018).

O.M. Karpenko and E.S. Zelenskyi (Karpenko and Zelenskyi 2020) also emphasize the need to introduce a mentoring institute in the system of law enforcement agencies. According to scientists, the content of mentoring is broad, and therefore should not be limited to the transfer of professional knowledge, skills and abilities. The mentor should be an example for the trainee to follow. Such imitation can concern not only professional, but also personal, moral-willed qualities, civic and life position, conscious attitude to official duties, etc. Also, the task of the mentor may be to help the intern adapt to the conditions of service.

Mentoring in law enforcement agencies today is an important event that affects the personnel system as a whole. This practice makes it possible to adapt new law enforcement officers to the specifics of the profession, reduce psychological pressure on them, and establish the correct values of the chosen professional activity.

The experience of international states shows that cases of abuse of power by law enforcement officers are more common in developing countries.

For example, in the Republic of Kenya, abuse of power by law enforcement officers is commonplace. For a long time, there was a negative practice that police officers received bribes, unjustly accused and restricted freedom, sometimes even took the lives of citizens, without fearing any consequences, which clearly indicated abuse of power. The Kenyan population complains of helplessness and inability to protect themselves and their loved ones. Between 2019 and 2021, nearly half a thousand police killings were recorded in Kenya (IGM, 2021).

Given the powers vested in law enforcement agencies, it is undeniable that the police are both the primary protection and threat in a democratic society.

A law enforcement officer cannot be a law in itself. Despite the strong pressure, they should not act exclusively in accordance with the interests of the authorities, since it is important to maintain neutrality between political sentiments and the protection of citizens' rights. For example, in cases of rallies, demonstrations, and other disturbances, law enforcement officers should not take sides.

The universal attitude of law enforcement officers to citizens indicates equal law enforcement, which is a guarantee of a democratic society. Their personal attitude should not differ from the requirements of the positions they hold. The neutrality of a law enforcement officer is when he simply enforces the rules, regardless of the characteristics of the individuals or groups who violate them.

However, there is another side to such a situation, where law enforcement officers cannot stand aside and be neutral, since they are a special body entrusted with the functions of ensuring compliance with state legislation.

Police in the UK are distinctly non-military and local, although more standardized than in the US. Responsibility for its control is shared between the Ministry of the Interior of the national government, the local police authority and the local police chief. There is no official bill of rights, but generally the police do not exercise powers beyond their authority over the average citizen, and the police are not armed. It is worth noting that the state clearly emphasizes the need to observe internal organization and self-control.

It is believed that citizens are responsible for participating in the maintenance of law and order in their localities. Much attention is paid to the symbolic value of law enforcement officers as representatives of the nation, and they are taught to see themselves as a model of moral behavior. The development of British policing has been accompanied by constant debate about how to protect democratic freedoms while remaining effective in fighting crime and disorder. The Home Office and the College of Policing are working together to develop relevant national standards aimed at improving the effectiveness of policing (Home Office, 2022).

France's law enforcement system is highly centralized, so it is less focused on providing services to serve the population. The unified national police system includes two components: the gendarmerie, which is part of the armed forces, and the national police, which is part of the Ministry of Internal Affairs. They are controlled at higher levels. Prosecutor's offices play an important role mainly in criminal proceedings. On the other hand, the specific judicial system is not adversarial, so it is difficult for citizens to file a complaint against the actions of the police. According to the French, in order to protect democracy, the rights of society should prevail over the rights of the individual (Gary, 1995).

In the Republic of Kazakhstan, the General Prosecutor's Office developed a draft Concept and a draft Law of the Republic of Kazakhstan «On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan in connection with the introduction of a three-level model with the separation of powers and spheres of responsibility between law enforcement agencies, the prosecutor's office and the court».

The essence of this draft law is to coordinate all key procedural decisions that are taken regarding the rights and freedoms of the citizen with the prosecutor, as well as the adoption of procedural and final decisions in criminal cases at all stages of the pre-trial investigation, including the election precautionary measures (Kulbaeva and Akhpanov, 2022).

Perhaps this practice will speed up the pre-trial investigation process, however, in our opinion, the fundamentally important functions of the procedural statuses of the subjects will not be demarcated in this case, which will significantly affect the powers of each of the aforementioned participants.

O.M. Boboshko (Boboshko, 2018) emphasizes the need to distinguish powers between special subjects. Taking into account the fact that the current legislation does not clearly regulate the activities of pre-trial investigation bodies when conducting investigative actions, there are cases in practice when the rights and freedoms of citizens are violated. Under such conditions, court bodies and prosecutor's offices must definitely exercise their supervisory and control functions.

The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders concluded that state governments should develop the widest possible range of legal remedies and arm law enforcement officers with various types of weapons and ammunition that will allow differentiated use of force and firearms. Employees should be equipped with non-lethal weapons that can stop an offender, but are not capable of causing death or injury.

In addition, law enforcement officers should be given the opportunity to have self-defense equipment, such as shields, helmets, body armor, and bulletproof means of transportation, so that there is no need to use weapons. It was rightly noted that states should implement rules and regulations regarding the use of force and firearms by law enforcement officials. In developing such rules and regulations, governments and law enforcement agencies must constantly consider ethical issues related to the use of force and firearms (United Nations, 1990).

Conclusions

1. When applying criminal responsibility, each case of committing a crime has its own individual characteristics, taking into account those that individualize the person guilty of committing the same crime. Each personality has specific characteristics that make up its individuality. Such individualization is manifested in biological, psychological, social and professional characteristics.
2. The threat to the life and safety of law enforcement officers should be considered as a threat to the stability of society as a whole, taking into account that law enforcement officers play a vital role in protecting the right to life, liberty and personal integrity, guaranteed by the Universal Declaration of Human Rights and confirmed in the International Covenant on civil and political rights.
3. In the case of the use of force, the actions of a law enforcement officer must comply with the following principles: necessity, legitimate purpose, limitation, reasonableness, proportionality.
4. Measures to prevent crimes related to excess of power should be comprehensive. In particular, they must be effectively correlated

with the legal framework of protection and prevention policy on the part of the state. As a result of the study, taking into account international recommendations and the practice of foreign countries, the following measures are proposed:

- conducting internal audits at local levels and strengthening reporting.
- strengthening the rights of the community to record police actions to promote accountability and encourage proper behavior of law enforcement officers.
- the active development of the institute of mentoring in law enforcement agencies, which is currently an important measure that affects the personnel law enforcement system as a whole. This practice makes it possible to adapt new law enforcement officers to the specifics of the profession, reduce psychological pressure on them, and establish the correct values of the chosen professional activity.

The experience of international states shows that cases of abuse of power by law enforcement officers are more common in developing countries.

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Analysis and priorities of state regulation of the labor market in crisis conditions

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Abstract

The main objective of the study was to analyze the characteristics of state regulation of the labor market in a crisis. Structural changes in the labor market are due, among other reasons, to the transformation of public and economic relations in today's globalized world. Increased competition, the development of the knowledge economy, information technology, changes in the content and forms of work require updating the system of labor market regulation. The research methodology of the study involved the use of cognition methods such as: induction and deduction, comparison and systematization to characterize the understanding of the essence of the addressed problem. In addition, the structure developed included a basic documentary study, together with IDEF modeling. It was concluded that the labor market is subject to market, corporate, state and interstate regulation, the combination of which depends on a number of dialectical factors that are formed as a function of time and space. On the other hand, market regulation is spontaneous, and corporate, state and interstate regulation, unlike market regulation, is rather biased and strictly regulated by specific policies.

Keywords: state regulation; labor market; market crisis; crisis conditions; public policy.

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Análisis y prioridades de la regulación estatal del mercado laboral en condiciones de crisis

Resumen

El objetivo principal del estudio fue analizar las características de la regulación estatal del mercado laboral en una crisis. Los cambios estructurales en el mercado laboral se deben, entre otras razones, a la transformación de las relaciones públicas y económicas en el mundo globalizado de hoy. El aumento de la competencia, el desarrollo de la economía del conocimiento, la tecnología de la información, los cambios en el contenido y las formas de trabajo requieren actualizar el sistema de regulación del mercado laboral. La metodología de investigación del estudio implico el uso de métodos de cognición como: inducción y deducción, comparación y sistematización para caracterizar la comprensión de la esencia del problema abordado. Además, la estructura desarrollada incluye un estudio documental básico, junto al modelado IDEF. Se concluyo que el mercado laboral está sujeto a una regulación de mercado, corporativa, estatal e interestatal, cuya combinación depende de una serie de factores dialecticos que se forman en función del tiempo y el espacio. Por su parte, la regulación del mercado es espontánea y, la regulación corporativa, estatal e interestatal, a diferencia de la del mercado, está bastante sesgada y estrictamente regulada por políticas específicas.

Palabras clave: regulación estatal; mercado laboral; crisis de los mercados; condiciones de crisis; política públicas.

Introduction

The labor market and employment of the population occupy a special place in the system of market relations. Most of the economic, social, demographic phenomena taking place in a market economy, directly or indirectly, fully or partially reflect the processes taking place in the labor market. Being an integral part of the modern economy, the labor market plays an important role in the reproduction system. It is in the labor market that the labor force is bought and sold, its usefulness and social significance are evaluated.

In this regard, the scientific search for ways to solve problems related to the creation of favorable conditions for increasing the human potential is relevant and of great theoretical importance. Particular attention should be paid primarily to the regulation of employment and the labor market as a whole. Deep knowledge of the fundamentals of labor economics plays a key role in understanding many social problems and phenomena.

Reforming the processes of labor market regulation should be aimed at overcoming the negative impact of the socio-economic crisis, taking into account the peculiarities of modern forms of involving labor in the social reproduction process, ensuring the optimal ratio of state and market levers of influence in order to strengthen the vector of European integration, implement the postulates of the strategy for sustainable development of the domestic economy, the exit of the national economy to a new level of socio-economic development and technological structure.

A systemic crisis is a kind of crisis that is generated by the system itself and which cannot be overcome on the basis of the totality of the system's own resources. A systemic crisis is expressed in the fact that the principles on which it is based, through a chain of cause-and-effect relationships, give rise to phenomena in the system itself and (or) in the environment, which contribute to the unsuitability of the system or can completely destroy it.

The labor market regulation mechanism is a set of normative, legislative or collective agreements that guide partners in the implementation of employment policy. The labor market regulation mechanism covers a list of economic, social, psychological factors that determine the functioning of the labor market. In the domestic scientific literature devoted to the problems of labor market regulation, there is no single approach to this direction.

The main purpose of the study is to analyze the features of state regulation of the labor market in a crisis.

1. Materials and methods

To characterize the features of state regulation of the labor market in crisis conditions, the following methods were used: induction and deduction, comparison and systematization to characterize the modern understanding of the essence of the features of state regulation of the labor market in crisis conditions, synthesis and analysis of the development trend of the features of state regulation of the labor market in crisis conditions; morphological analysis - to clarify the significance of the features of state regulation of the labor market in crisis conditions; abstract-logical - for theoretical generalizations and conclusions of the study of state regulation of the labor market in a crisis.

To more accurately reflect the main features of state regulation of the labor market in a crisis. Structural shifts in the labor market are due to the transformation of public and economic relations in today's globalized world, we used the IDEF0 functional modeling method.

2. Literature review

Among scientists there is no unanimity of opinion regarding the definition of the essence of labor market regulation. It is generally recognized that it should be aimed at stimulating the growth of the quality of the labor force and providing it with jobs (Holubnycha *et al.*, 2019). The main discrepancies relate to the definition of its scope and leverage.

He believes that the state mechanism for regulating the employment of the population in the conditions of the formation of a socially oriented economy is a system of measures (social, economic, financial, legal, organizational, psychological) of the state to ensure effective employment, normal working conditions and rational use of labor force (Bentolila *et al.*, 2019).

According to modern scientific research (Anelli and Peri, 2017; Kryshtanovych *et al.*, 2022.), the mechanism for regulating the labor market in a systemic crisis should include a goal, functional support for the implementation of the goal, subjects, objects, principles, methods (means), tools of influence. Given the theoretical achievements in setting the goal of labor market regulation in a systemic crisis, it is necessary to structure a combination of regulatory mechanisms, self-regulation and contractual regulation of the labor market.

Then the goal of labor market regulation in the conditions of a systemic crisis can be formulated as a clear definition of the proportions of state regulation, self-regulation and contractual regulation of the labor market, justification of the maximum level of state intervention in the processes of regulating the solution of multifaceted issues of employment and social protection of the unemployed (Grenčiková *et al.*, 2018).

The objects of labor market regulation are social and labor relations between an employee and an employer on the basis of current legislation and contractual regulation of these relations. The principles of the state regulatory policy in the labor market, methods and tools for their implementation are carefully considered by domestic scientists in numerous works devoted to this problem.

Functional support for the implementation of the goals of labor market regulation is not considered in the scientific literature as an integral system. Only the functional subsystems of labor market regulation are studied, namely: the formation of the labor market, the management of production, distribution and use of labor (Drebot *et al.*, 2019).

3. Research Results and Discussions

In a systemic crisis, it is necessary to correctly find the functions of regulating the labor market. The most correct approach is to consider the regulation of the labor market as a set of management functions carried out by state bodies and entrepreneurs in order to balance the demand and supply of labor. Since the goal of labor market regulation is to achieve full, productive and freely chosen employment, in the process of regulation within the framework of the socio-economic crisis, it is necessary to solve the following planned tasks (Sylkin *et al.*, 2021).

The infrastructure of the labor market as a set of its constituent elements and links between them functions in a certain political and socio-economic space, is influenced by factors of the external and internal environment. The external environment is determined by macroeconomic factors (the state of the country's budget, the investment activity of economic entities and their financial condition, the behavior of sellers and buyers of labor, etc.) (Hennadii *et al.*, 2022).

The main threats that negatively affect the system of state regulation of the labor market are shown in Figure No. 01.

Own elaboration. Fig.1. The main threats that negatively affect the system of state regulation of the labor market.

In contrast to the approach to market infrastructure that is common in theory and practice as a set of elements that ensure the conditions for the functioning of the market, it is a set of relations that develop between subjects regarding the organization of the exchange of labor services on an equivalent basis. The aggregates of organizational and legal forms and institutions that ensure the interaction of hired workers and employers in the process of employment and employment policy are only forms of organizing relations in the labor market. The emphasis on economic relations, and not on organizations and, moreover, not on objects, as is common in economic literature, corresponds to the disclosure of the content of such a complex phenomenon as market infrastructure.

In addition, with this approach, infrastructural relations in the labor market are mediated and produce substantive relations. Finally, attention is drawn to the most important distinctive feature of the infrastructural process, its products - the exchange of labor services and employment. Moreover, along with the commodity nature of labor services, which manifests itself in equivalent exchange, and determines the market elements of infrastructure, the latter also has non-market components (Chlivickas *et al.*, 2010).

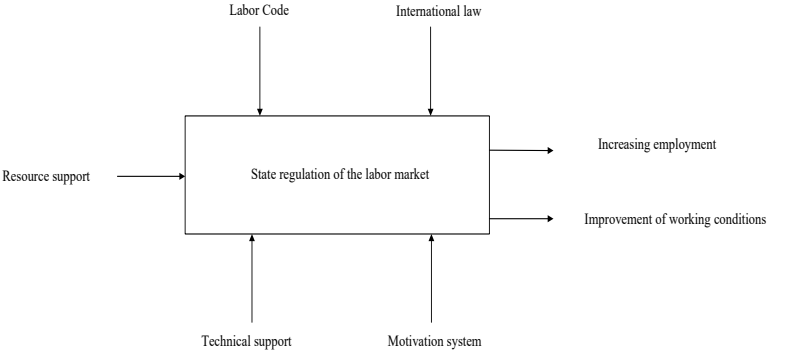
The mechanism for regulating the safe development of the labor market involves the observance of a number of principles: consistency, complexity, fairness, reliability, optimality, functionality, efficiency, stability, well-known (Maidyrova and Mamedova, 2013).

Thus, the infrastructural arrangement of the labor market plays an important role in the formation of a mechanism for its regulation. It is a factor in the development of the labor market and an indicator of the transition to the market in the field of labor relations.

The infrastructure of the labor market is designed to coordinate the interests of its participants and absorb the emerging disproportions between supply and demand in its local areas, and therefore transform tense social well-being into prosperous, and prosperous - into comfortable. The final result of the employment policy, which is an integral part of the general socio-economic policy pursued by the state, will largely depend on the effectiveness of the functioning of the labor market infrastructure (Kryshtanovych *et al.*, 2021).

The model of state regulation of the market in a crisis is shown in Figure No. 02.

Fig.2. The model of improving of state regulation of the market in a crisis.



Own elaboration.

In the context of the globalization of the world economic space, aspects of the formation of the domestic labor market are becoming important. By delimiting the work of people in accordance with the needs of society, this market covers all sectors of the economy, activities, forms of ownership, and the ratio between supply and demand determines the stability of the state economic development. Therefore, in modern economic conditions, the issues of comprehensive research and monitoring of the processes taking place in the labor market are extremely relevant (Rembeza and Radlińska, 2021).

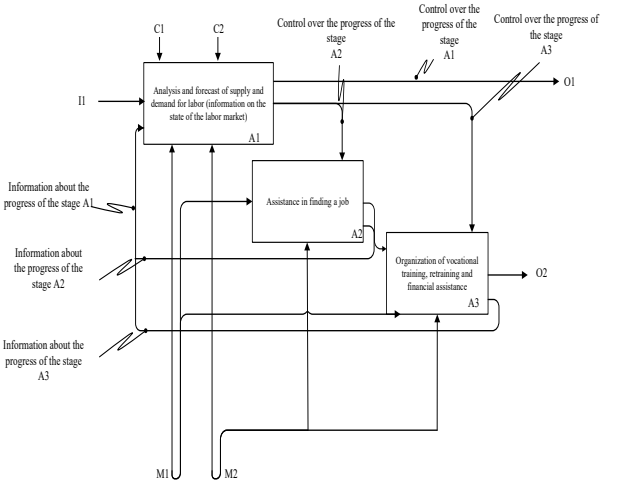
The structural elements of the labor market are the demand for labor, supply, price and cost of labor. Demand is created by employers who hire labor; it reflects the general structure of the country's needs on the part of companies, institutions, organizations. The offer on the labor market depends on the social and demographic situation in the country, age, gender, education, qualifications of the worker.

Like any product, labor power has its price and price. The wages of the wage worker is the price at which he sells his labor power. The worker defines wages as labor income necessary to create conditions for the reproduction of labor power; the enterprise considers wages as a structural element of production costs and a determining factor of material interest in obtaining the effect from activities (Acemoglu and Autor, 2011).

The subjects of state regulation are individuals and legal officials, collective legislative and administrative bodies, state authorities at all levels, local governments, associations that form state policy; contractual regulation - the parties of social dialogue; self-regulation - state and

territorial authorities, trade unions, associations of entrepreneurs (Radlińska *et al.*, 2020).

The final step of our functional modeling model IDEF0 will be the formation of Decomposition of achieving the final goal A0 – Improving of state regulation of the market in a crisis (Fig.3).



Own elaboration. Fig.3. Decomposition of achieving the final goal A0 - Improving of state regulation of the market in a crisis.

Functional support for the implementation of the goal of labor market regulation is not considered in the scientific literature as an integral system, only its functional subsystems are studied. The most adequate approach is to consider the regulation of the labor market as a set of management functions carried out by state bodies and entrepreneurs to balance the demand and supply of labor (Sylkin *et al.*, 2021).

This suggests that: planning should include the reorganization of the labor market planning system in accordance with the challenges of society, competitive subsidies for employers to create new jobs and maintain existing ones; organization - restructuring the work of employment centers at all levels into national employment agencies, restructuring social institutions in accordance with the challenges of society, developing progressive social guarantees and standards, using modern HR technologies.

Conclusions

Summing up, it should be noted that the problem of regulating the national economy and strengthening the national security of the state also involves the regulation of the safe development of the labor market. Ensuring a balance between the supply and demand of the labor force of the country's citizens with decent paid work can ensure: the growth of personal security, both economic and social; overcoming poverty and stratification of society; prosperity growth; decrease in unemployment; reducing social tension in society and avoiding political conflicts based on dissatisfaction with the standard of living, etc. Since market mechanisms are not always able to solve urgent problems of the labor market, corporate, state or interstate mechanisms should come to its aid.

The labor market is subject to market, corporate, state and interstate regulation, the combination of which depends on a number of factors that are formed depending on time and space. Market regulation is spontaneous, and corporate, state and interstate regulation, in contrast to market regulation, is quite biased and strictly regulated.

Modern trends in world development shift the problem of ensuring the efficiency of the labor market to the priority tasks of economic science, raising it to the level of a nationwide, strategically important problem, the solution of which has allowed many countries to claim a worthy place in the world community as a competitive partner. This formulation of the question indicates the relevance of this study and its practical significance. The analysis of the features of state regulation of the labor market in crisis conditions is carried out. A decomposition model for improving the system of state regulation of the labor market in a crisis was formed.

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Principle of application of the judge's internal beliefs under the conditions of international rules of evidence and corruption factors

DOI: https://doi.org/10.46398/cuestpol.4177.47

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Abstract

Using an interpretative methodology, the objective of the research was to analyze the most complex and subjective principles of justice: the principle of the judge's internal beliefs at the time of decision making under a system of democratic checks and balances. Definitely, the judiciary is an important element in ensuring the protection of human rights and the legitimacy of the supremacy of the law. The rusting of the judiciary inevitably leads to the gradation of basic constitutional provisions on the essence of the rule of law, as well as fundamental rights and freedoms. The principles of justice play a fundamental role in the administration of justice. The correct construction of the given principles is the key to proper and application of the law in accordance with legal and ethical standards. In this sense, it is concluded that the internal beliefs of the judge as a person authorized to execute justice, must be impartial, objective, consistent and independent. At the same time, the formulation of his "internal beliefs" still allows for subjectivity, since the criteria for the evaluation of evidence by the Court are described without detailing or standardizing the requirements of the judicial process.

Keywords: principles of justice; evidence; judge's internal beliefs; corruption factors; international rules.

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Principio de aplicación de las convicciones internas del juez en las condiciones de las reglas internacionales de la prueba y de los factores de corrupción

Resumen

Mediante una metodología interpretativa, el objetivo de la investigación consistió en analizar los principios de justicia más complejos y subjetivos: el principio de las creencias internas del juez en el momento de la adopción de la decisión bajo un sistema de pesos y contrapesos democrático. Definitivamente, el poder judicial es un elemento importante para garantizar la protección de los derechos humanos y la legitimidad de la supremacía de la ley. La oxidación del poder judicial conduce inevitablemente a la gradación de las disposiciones constitucionales básicas sobre la esencia del Estado de derecho, así como de los derechos y libertades fundamentales. Los principios de justicia juegan un papel fundamental en la administración de justicia. La construcción correcta de los principios dados es la clave para una adecuada y aplicación de la ley de acuerdo con las normas legales y **éticas**. En este sentido, se concluye que las creencias internas del juez como persona autorizada para ejecutar justicia, deben ser imparciales, objetivas, coherentes e independientes. Al mismo tiempo, la formulación de sus "creencias internas" sigue permitiendo la subjetividad, ya que los criterios de evaluación de las pruebas por parte del Tribunal se describen sin detallar ni estandarizar los requisitos del proceso judicial.

Palabras clave: principios de justicia; prueba; creencias internas del juez; factores de corrupción; reglas internacionales

Introduction

Upon condition check and balance system is valid, the judiciary is essential in ensuring the protection of human and civil rights, legitimacy, and the supremacy of law. The primary function of the courts is even-handed enforcement of the law to many disputes. This function is closely connected to the stability and legitimacy of judicial power and the constitutional system (Hedling, 2011).

Law enforcement, criminal investigation and prosecution are essential components of an approach guided by the ideals of the supremacy of law (Sanjay, Mishra, 2020). When the judicial authorities order equitable decisions, those decisions establish an insightful precedent for the future settlement of disputes between individuals or between the state and individuals. On this basis, the at-trial procedure ensures effective law enforcement and protection of the rights of individuals and groups and sets the standard for further equitable law enforcement.

Consequently, human rights are effectively protected in the courts (Fahed, 2002). It is worth pointing out that the rust of judicial power inevitably leads to the grading of the introductory constitutional provisions on the essence of our state. Namely, Art. 1 of the Constitution of Ukraine proclaims Ukraine a sovereign and independent, democratic, social, and legal state, as well as fundamental rights and freedoms of man and citizen. For example, all people are free and equal in their dignity and rights, human rights and freedoms are inalienable and inviolable (Art. 21 of the Constitution of Ukraine), and citizens have equal constitutional rights and freedoms and are equal before the law.

Furthermore, there shall be no privileges or restrictions based on race, the colour of skin, political, religious, and other beliefs, sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics (Art. 24 of the Constitution of Ukraine) (Constitution of Ukraine, 1996).

The principles of justice play a vital role in the administration of justice. These are the fundamental guiding ideas and regulations that every judge should follow in administering justice. Most of these principles are outlined in international conventions, the Constitution of Ukraine and other normative documents. At the same time, detailed and clear explanations of the principles of justice, unfortunately, are only provided for some of them. Incredibly ambiguous is the principle of the judge's inner beliefs on the legal content of which, the peculiarities of implementation in Ukraine and the factors that may level it, the authors propose to focus on.

1. Results and Discussion

1.1. Principle of Judge's Inner Beliefs in Accordance with International Standards of Proof

Rendering the decision by a judge based on one's own beliefs is critically essential. The judge's inner beliefs are not an unconscious impression, a feeling that cannot be controlled, but confidence in the correctness of his conclusions, which form the basis of the cognition. Inner beliefs are an element of mental activity for the study and evaluation of evidence and express the actual situation of the legal relationship established in the case. The judge's inner beliefs are a subjective part of his activity, which is described in the objectively adopted decisions when the Court investigates the circumstances of the case. Consequently, a judge cannot incur liability for their in a case, but only an issue lawful, ex delicto option in the administration of the law of evidence (Marchak, 2013).

On the other hand, according to Chinn Stuart, the judge's inner beliefs cannot be absolute because a certain degree of impartiality is inevitable in the judicial role; judicial impartiality is best understood as a sign of consistent, fair interaction with the claims and interests of those outside social groups (Chinn, 2020). Such an ambiguous perception and attitude to this principle of justice necessitates its detailed analysis.

1.2. Legislative Consolidation of the Principle of Judge's Inner Beliefs

In Ukrainian law, the principle of decision rendering based on one's beliefs is not enshrined at the constitutional level or even in the relevant law "On the Judiciary and the Status of Judges". Instead, for unknown reasons, it is duplicated in all procedural codes. Identical interpretations of this principle are contained in Part 1 of Art. 86 of the Code of Commercial Procedure of Ukraine, Part 1 of Art. 89 of the Civil Procedure Code of Ukraine, and Part 1 of Art. 90 of the Code of Administrative Judicial Procedure of Ukraine.

According to these articles, the essence of decision rendering based on one's own beliefs is revealed as the need for the Court to weigh the evidence according to its inner beliefs based on a comprehensive, complete, objective, and direct examination of the evidence in the case. A more detailed explanation is contained in Part 1 of Art. 94 of the Criminal Procedure Code of Ukraine because it interprets the judge's decision based on his own beliefs, as an assessment of the evidence based on a comprehensive, complete and impartial examination of all circumstances of criminal proceedings, guided by law, evaluate each piece of evidence in terms of relevance, admissibility, reliability, and the set of evidence collected - in terms of sufficiency and relationship for the relevant procedural decision (Criminal Procedure Code of Ukraine, 2013).

Unfortunately, the legislator, disclosing the essence of a judge's decision based on his own beliefs, does not disclose the procedure for considering and agreeing on the inner beliefs of several judges in the case of legal investigation collegially. Therefore, the place of this principle in the process of knowing the truth is unclear.

In our opinion, it is inadvisable and illegal to evener this principle during the legal investigation by the panel of judges. At the same time, it raises the question as to whether judges should reach four all founders in their inner beliefs. That is why there is a need to provide a generalisation or ruling of the Supreme Court of Ukraine. The absence of these documents necessitates recourse to scientific doctrine.

1.3. Doctrinal interpretation of the inner beliefs as to the evidence and the circumstances they support

Regarding the scientific interpretation of the principle of rendering a decision by a judge based on their own beliefs, scholars are primarily unanimous about the legal content of this principle but choose relatively different forms of presentation of its conceptual and categorical essence. For example, V. Marchak believes that forming a judge's inner beliefs relates to eliminating doubts that arise during the legal investigation.

The judge's inner beliefs are influenced by all the evidentiary information that is examined following the general rules of the at-trial procedure – directly, orally and continuously, chaired by the presiding judge and with equal rights of the participants in the process. In the psychological aspect, it is essential to form the judge's inner beliefs and the growth of doubt (because of probable knowledge) in the judge's beliefs (Marchak, 2013).

Yu. Groshevoy believes that a judge's inner beliefs are a conscious need of a judge, his use of his thoughts, views and knowledge. It is related to the legal consciousness of the judge, a form of social consciousness that combines a system of opinions, ideas, perceptions, theories, feelings, emotions, and experiences.

They characterise the perception of people and social groups (including through actual behaviour) of the existing and desired legal system. In the structure of legal consciousness, there are worldviews (views, ideas, theories), psychological (feelings, emotions, experiences) and behavioural (lawful behaviour, behaviour, etc.), which characterise the actual human reaction to the functioning of elements of the legal system. its development) parties (Groshevoy, 1975).

According to A. Belkin, although the category of inner beliefs is subjective, it has objective principles that constitute a system that contains such elements as professional qualities, facts, characteristics and properties of objects to be studied by the judge; the circumstances of the case, which indicate the origin and real conditions of existed actual of the objects to be studied; things process of research, its conditions, intermediate requirements results, their evaluation in terms of completeness, logical and scientific validity, reliability as exceptionally possible in specific conditions (Belkin, 1969).

Analysis of the positions of scientists allows us to conclude that the category of inner beliefs is subjective and depends on the characteristics of education, worldview, and life experience if it can be read out objectively and independently. At the same time, this can be deformed by the influence of external factors. Can be circumstances, it is impossible to hope for a complete coincidence of judges' beliefs, and therefore the inner beliefs are essentially even erred and transformed into consensus and coherence.

1.4. Judges' opinions of the different legal systems on the essence of decision rendering based on inner beliefs

According to a judge of the Supreme Court of Canada, McDowell (F.H. v. Mcdouga, 2008), in a situation where the evidence is on the verge of sailing close to the wind, there are no clear rules as to when a judge may have an inner belief as to the incorrectness or inadmissibility of the evidence. Therefore, the judge hearing the case should consider the evidence in collaboration with the simultaneous assessment of any doubts about their reliability and credibility. The position of the judge of the Constitutional Court of Ukraine, N. Shaptala, is of particular interest.

The judge is a bet that the formation of the judge's inner beliefs in the constitutional proceedings is influenced by objective (to establish the facts established in Court) and subjective (traits of character, consciousness, professionalism, legal awareness, justice of each judge) factors. Therefore, the inner beliefs of one individual judge from all eighteen judges of the Constitutional Court of Ukraine cannot be a standard of objective truth (Shaptala, 2019).

1.5. Explanation of inner beliefs concerning case law

The desire to find the essence of the principle of the judge's inner beliefs, caused by its inadequacy and imperfection of legislative presentation, necessitates recourse to case law. Since 2006, the phrase "The court has critically weighed the evidence" has been increasingly used in court decisions of Ukrainian judges. At the same time, no explanation is given as to why the Court rejected or assessed the evidence.

The task of the Court is to establish whether the fact took place. Establishing the presence or absence of points, the Court must motivate its actions and consider that following Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms; everyone has the right to a fair trial, including an independent and unbiased court. According to legal procedure, everyone charged with a criminal offence shall be presumed innocent until proven guilty (European Convention on Human Rights, 1950).

Therefore, the Court cannot assume that a particular circumstance has been proved. The fact either happened or it did not exist. If the Court still has doubts, the rules on the distribution of the burden of proof should be applied. If the party on whom the obligation is imposed does not fulfil it, the fact is unproven, and vice versa (Tomarov, 2019).

2. The concept of the standard of proof: compliance by courts with standards of human rights and justice

In terms of proof, it is vital to maintain a certain standard. The category of the standard of proof has only relatively recently begun to be applied in the domestic doctrine of procedural law and case law. The term standard of proof denotes the level of probability to which a circumstance must be proved by evidence to be considered valid derives from the doctrine of standard law legal systems, from which it was borrowed from the theory and practice of proof (Pilkov, 2016).

At the same time, until recently, this category was often opposed to the principle of the Court's assessment of the evidence based on inner beliefs and was even criticised as an attempt to establish an artificial framework for applying this principle. It can now be argued that the debate over whether the category of the standard of proof is artificial, uncharacteristic of Ukrainian procedural branches of law, and even devoid of practical significance has gradually lost its relevance (Pilkov, 2019).

2.1. Standard of proof in civil and commercial disputes: the practice of customary and continental law states

Common law countries use the term "standard of proof", which intrinsically allows uncertainty in establishing the facts. This notion emphasises that to recognise facts as proven, one does not need to be one hundred per cent convinced of a particular fact.

The standard of proof is the degree of credibility of the evidence provided by a party. The Court must recognise the burden of proof removed and the factual circumstance - proven. It is an issue of a sufficient level of admissible doubt at which the burden of proof is considered fulfilled.

British courts use the standard of a balance of probabilities in civil cases: it must be proved that the fact was rather than not; subjective confidence can be measured as 51% or higher.

The balance of probabilities is estimated in absolute terms, so in a situation where the evidence is estimated as 50*50 (plaintiff/defendant), the dispute wins for the defendant (Rhesa Shipping Co SA v Edmonds 1, 1985).

A score of decisions can be found in the case law of the European Court of Human Rights, where the Court refers to the "balance of probabilities" to weigh the evidence of the case. For example, in the decision of Benderskiy v. Ukraine on November 15, 2007, the Court applied a "balance of probability".

The decision of J.K. and others v. Sweden on July 23, 2016, of the European Court of Human Rights notes that this standard is inherent in civil

cases (Tomarov, 2019). Regarding the resort to this concept in domestic law enforcement, the authors would like to note the decision of the Supreme Court of Ukraine on June 14, 2017, in case № 923/2075/15, where the latter criticised the Court of Appeal for refusing to recover lucrum cessans on the sole grounds that its size cannot be established with a reasonable degree of credibility.

Thus, the fact of proof occurs in the case when, after analysing all the evidence and circumstances, the judge, based on inner beliefs, is inclined to believe that the fact instead took place. Although, in our opinion, the very possibility of the existence of "probability" in the process of judicial evidence is unacceptable. After all, any doubts must be interpreted in favour of the person, but the opposite happens.

2.2. Beyond a reasonable doubt - for the criminal process: the practice of the European Court of Human Rights

There is another known standard of proof – beyond a reasonable doubt. Mention of him can be found in several European Court of Human Rights decisions. Thus, judge Bonello, in his personal opinion on the case Sevtap Veznedaroğlu v. Turkey, pointed out that: "Proof beyond a reasonable doubt" reflects the maximum standard relevant to the issues to be addressed in the determination of criminal liability. No one shall be deprived of his freedom or subjected to any other punishment by a court decision unless the guilt of such person has been proved "beyond a reasonable doubt".

In spades, the authors consider the rigidity of this standard to be justified. However, in other areas of legal regulation, the standard of proof must be proportionate to the aim pursued: it must have the highest degree of certainty in criminal cases and a working degree of probability. In considering opposing versions of events, the Court is obliged to establish: 1) to whom the law places the burden of proof, 2) whether the statutory assumptions are in favour of one of the parties, and 3) the "balance of probabilities", which in the presence of versions contrary to the statements of the opposing party, seems more acceptable and credible. In our view, the standard of proof "beyond a reasonable doubt" is incorrectly applied in the "civil" proceedings in the cases before the Court.

As far as the authors know, the Court is the only Court in Europe that requires evidence "beyond a reasonable doubt" in non-criminal cases (Rhesa shipping company v. Edmunds, 1985). For example, in Kobets v. Ukraine, the Court reiterates that, per its case law, it is guided by the reference point of proof "beyond a reasonable doubt" (Avshar v. Turkey). Such proof should follow from a set of signs or irrefutable presumptions, sufficiently weighty, clear, and consistent with each other (Sevtap Veznedaroğlu v. Turkey, 2000).

The European Court of Human Rights subsequently recognised that this standard should indeed be higher in criminal cases than in civil cases (§ 38 of the judgment on February 11, 2003, in Ringvold v. Norway, Kobets v. Ukraine, 2008). It could be said that from this position, it logically follows that in civil (commercial) cases, the standard of proof should be lower than in criminal ones.

The authors hope that, based on the ruling of the European Court of Human Rights, the Supreme Court of Ukraine will also lift the veil of secrecy over the words "inner beliefs" and explain that the standard "balance of probabilities" (or "reasonable degree of reliability") should be applied in civil and commercial matters. Instead, it is essential to use a higher standard "beyond a reasonable doubt" in criminal proceedings. Perhaps the most acute is the unjustifiably high standard of proof of damages in civil and commercial cases (Tomarov, 2019).

3. Factors that may affect the judge's inner beliefs and measures to eliminate them: an example of Ukraine as one of the former states of the Soviet Union

The authors are convinced that no matter what standard of proof a judge is guided by, adherence to the principle of inner beliefs must be mandatory. At the same time, unfortunately, Ukraine's judicial system is exceptionally corruption-ridden. The problem of corruption in the judiciary is a typical phenomenon in developing countries.

For them, such corruption is more damaging than any other, as even the presumption of corruption in the judiciary raises broad doubts about the success of anti-corruption activities and the effectiveness of judicial remedies (Moskvich, 2015). Currently, the influence of the judge is perceived as an everyday phenomenon. For example, the escalation of distrust in the judiciary in 2020 was caused by the Constitutional Court of Ukraine, which effectively dismantled an essential element of Ukraine's anti-corruption infrastructure. He provided that those who supplied false information in the declarations of a person authorised to perform state and local self-government functions would no longer be subject to criminal liability.

The Court stripped the National Agency for the Prevention of Corruption of almost all powers and removed the system of property declarations from public control. These steps were against the law. The decision was not justified. The Court exceeded the scope of the constitutional submission and even repealed some anti-corruption norms, which it did not ask to consider (Zhernakov, 2020).

The possibility of such situations is due to several factors that adversely affect the Court's impartiality, independence, and impartiality. Therefore the decision-making process is not based on the inner conviction of the judge but under the influence of corruption factors.

4. Corruption during the selection process of judges

Today, although the process is formally complex and overly bureaucratic, consisting of fifteen stages, it still leaves options for corruption. It is as if the central place is given to the High Judicial Qualifications Commission of Ukraine, then the High Judicial Council, which considers the recommendations and directly analyses the candidate's identity, and the President of Ukraine benches for the first time. The possibility of tampering with the High Judicial Qualifications Commission of Ukraine and the High Judicial Council is significant.

In addition, the reforms of these institutions need to be improved. Analysis of the Transparency International recommendation for Ukraine testifies to a downward course of annual non-fulfilment of one condition – forming an independent and professional judicial power. According to Transparency International experts, this recommendation is an extremely high priority. In addition, no changes have occurred over the years of judicial reform. During 2019, the President and the Verkhovna Rada of Ukraine tried several times to initiate a painful change process. Even though people's deputies adopted the first law of the President in 2019, the Constitutional Court of Ukraine declared the main provisions of this law unconstitutional.

The next attempt to implement the reform was also initiated by the President of Ukraine through bill draft No. 3711 on Amendments to the Law of Ukraine, "On the Judiciary and the Status of Judges" and some laws of Ukraine on the activities of the Supreme Court and judicial authorities. However, it has been criticised by the Venice Commission and the expert community and is awaiting a conclusion and a second reading.

The virtuous composition of the High Judicial Council, elected with the participation of the international community and public experts, remains a valid requirement of the International Monetary Fund, a recommendation of the Venice Commission and the public. However, this did not affect the steps to restart this body. The composition of the High Judicial Qualifications Commission of Ukraine is also awaiting renewal. Still, it is unknown when such reformatting will finally occur and whether the experience of independent competition procedures will be considered (Corruption Perceptions Index, 2020).

In general, the critical issues in judicial reform are:

1. low trust in the judicial power mainly due to corruption, dishonesty of many judges, dependence and patronage;
2. inefficiency of activity and even boycott of reforms by the High Judicial Council;
3. failure to restart the High Judicial Council and the High Judicial Qualifications Commission of Ukraine to clean up and renew the judicial power;
4. chaos in the restructuring of local and appellate courts, filling positions not through competitions but by transferring current judges to new courts;
5. poor access to justice due to a shortage of staff in the courts, a heavy workload on judges and delays in the trial;
6. lack of motivation and orientation of judges to meet the needs of parties that are users of justice services;
7. weak development of electronic services and digital Court;
8. lack of proper jury instruction;
9. the lack of procedural consolidation of the procedure for implementing the principles of justice and their detailed normative interpretation (Successful judicial reform is impossible without the involvement of all stakeholders – politicians and experts, 2020).

All these conditions necessitate a change in Ukraine's approach to forming judicial power. Three main judicial selection models are currently used: assignment, by-election and so-called "hybrid" selection systems. (Berkson, 1980). All plans require a high level of legal culture, objectivity and impartiality. At the same time, when selecting the judge, he must have unquestionable authority and trust among the population.

In addition, tampering when making a selection is also complicated. Citizens tend to be guided not only by the candidate's professional qualities but also to consider his personality. At the same time, such guidelines can allow the sending of fairer but less professional candidates. In these circumstances, it only makes sense that judges are motivated to collect dues and seek voters' approval. While such steps may seem harmless, they can lead to campaigns and interest groups involved in dirty cases and sometimes teach a judge to make decisions based on political beliefs (Odland, 2016).

If the authors talk about Ukrainian society, the legal consciousness of citizens is just beginning to take shape, so it is too early to talk about their readiness to elect the judiciary. That is why it is now advisable to adhere

to the existing system of assignment of judges, improving it through mandatory interviews with candidates.

It is appropriate to involve representatives of public anti-corruption organisations in this interview, which can provide comprehensive financial monitoring of the applicants' lifestyle and check their social networks for illegal enrichment or hidden wealth. In addition, it is essential to conduct a polygraph examination to prevent persons prone to committing corruption offences from accessing judicial power (Kulish *et al.,* 2020).

5. Corrupt influence on judges

The second probable corruption factor that can level decisions based on inner beliefs is the possibility of influencing judges. Ensuring the complete independence of the judiciary in the format that exists in most European countries is quite problematic. In the absence of state regulation of this problem, full integration of Ukraine into European national structures, especially accession to the EU, is impossible (Grinyuk, 2004). Judicial corruption is specific because, in the case of receiving an illegal benefit in exchange for the use of his powers, the judge makes a decision or sentence on behalf of the state.

Hence, the rule of law covers the corruptor. Another feature of corruption in judicial power is its latent nature. The situation is practically excluded when the judge personally hints at the need to offer him some illegal benefit, and even more so, personally receives it from the person directly interested. Another feature of judicial corruption is its corporatism, which can be explained by the absence of criminal cases initiated on corruption in the courts (Gladiy, 2014).

Illegal corruption influence can be both external and administrative. External influence is the influence of some politicians, government officials, businesses and criminal elements to obtain the desired outcome of the case. Thus the judge can be interested in such corrupt relations, and on the contrary. At the same time, fear for one's work, and in some cases for one's safety and the safety of one's relatives, encourages corruption. The subject of such corrupt practices does not always have the form of money or property. After all, the essence of corruption is much broader and therefore includes other so-called soft forms of corruption.

In particular, the indicators of non-political ties in the judicial power indicate their transformation into family businesses (Matsievsky and Matsievsky, 2014). Patronage is support, encouragement, privileges, and the possibility of financial incentives provided by a person or organisation. Patronage is manifested in the misuse of state resources to promote the interests of a particular individual or collective actors (Babkina, 2011).

Counteraction to such corruption factors is possible by:

1. ensuring the unity of judicial practice by the more active and detailed implementation of generalisations of judicial approach and decisions of the plenum of the Supreme Court of Ukraine;
2. strengthening public control by creating specialised public organisations that will specialise in disclosing corruption risks in the judiciary;
3. equipping courtrooms with video cameras and microphones capable of recording the behaviour of all present.

As for the administrative pressure on a judge, which distorts the inner conviction, it is manifested in undue pressure from the chairman of the Court or influential groups within the judicial system. For example, in 2020, the National Anti-Corruption Bureau of Ukraine released cassettes allegedly recorded in the office of the head of the Kyiv District Administrative Court, P. Vovk.

These records seem to capture P. Vovk and other judges who plan to influence different courts and judicial authorities while boasting that they "own two courts - the district and the constitutional". Despite public outcry and further criminal investigation, the High Judicial Council unanimously refused to remove these judges. The people involved in the case (Zhernakov, 2020) constantly delay the pre-trial investigation of these acts. To eliminate this corruption factor, it is essential to:

1) ensure the unity of judicial practice through the more active and detailed implementation of generalisations of judicial practice and resolutions of the plenum of the Supreme Court of Ukraine;
2) provide appropriate funding for the independent operation of the judiciary;
3) expand guarantees of support for the independence of judges and take measures to prevent actual dependence of judges on higher courts.

6. Lack of an effective mechanism for bringing a judge to responsibility

Another negative factor that allows judges to make decisions during the distortion of inner beliefs is the lack of an effective mechanism for bringing a judge to justice. One of the elements of a judge's punishment for the administration of justice is that judges, due to their special status, belong to specific subjects of criminal responsibility. In particular, a separate Law of Ukraine, "On the Judiciary and the Status of Judges determines their legal

nature. Only those persons who comply with the legislation requirements are admitted to the position of a judge; most of the measures to ensure criminal proceedings cannot be applied to them.

At the same time, there are certain peculiarities characteristic of criminal cases in which judges are suspects. Criminal and ethical offences related to violating the principle of the judge's independent beliefs negatively affect the image of the judicial power, reduce public confidence in the judiciary, and create public distrust in the ability to protect violated rights by a fair, independent and fair court. That is why, in our opinion, it is necessary to abolish the inviolability of the judiciary as an archaism, an attribute of the privileged status of judges, compared to other citizens, and hence the distorted application of Art. 21 of the Constitution of Ukraine, which insists on the equality of all citizens.

Conclusions

Summarising the above, the authors emphasise that the judge's inner beliefs as a person authorised to execute justice must be impartial, objective, fair and independent. At the same time, the formulation of "internal beliefs" still allows for subjectivity, as the criteria for evaluating evidence by the Court are described without detailing and standardised requirements for such a process.

Moreover, it has been established that inner beliefs depend on the type of proceedings and the standard of proof. It was found that especially harmful factors that can affect the process of evaluating evidence by a judge and distort his inner beliefs include corruption factors: the imperfection of the process of selection for the position of a judge, illegal corruption influence on a judge (internal and external) and the lack of an effective mechanism for bringing a judge to justice. These factors can distort a judge's inner beliefs (legal and ethical guidelines). Emphasis is placed on the need to take narrowly oriented measures to eliminate these corruption factors.

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Peculiarities of representative authorities functioning in ukraine under conditions of war

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Abstract

The large-scale invasion of the Russian Federation into the territory of Ukraine has significantly destabilized the processes of functioning of representative authorities in Ukraine and, moreover, has led to destructive changes due to the annexation of the country's territories. The article aims to study the theoretical and applied foundations of peculiarities of functioning of representative institutions in Ukraine, during the war. The methodological basis of the study consists of general and special scientific methods of cognition and economic and legal analysis, in particular: systems analysis, synthesis, abstraction, comparison, analogy, statistical analysis, functional analysis, clustering, cluster analysis (based on the k-means method), correlation and regression analysis, graphical, tabular, generalization and systematization. The results of the theoretical studies carried out allow us to establish a significant impact on the destabilizing factors of the external and internal environment, the most important of which are the military factors. In conclusion, significant imbalances have been revealed in the process of ensuring the implementation of the principles of democracy in the activities of representative institutions.

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Peculiaridades de las autoridades representativas que funcionan en Ucrania en condiciones de guerra

Resumen

La invasión a gran escala de la Federación Rusa en el territorio de Ucrania ha desestabilizado significativamente los procesos de funcionamiento de las autoridades representativas en Ucrania y, además, ha provocado cambios destructivos debido a la anexión de los territorios del país. El artículo tiene como objetivo estudiar los fundamentos teóricos y aplicados de las peculiaridades del funcionamiento de las instituciones representativas en Ucrania, durante la guerra. La base metodológica del estudio consiste en métodos científicos generales y especiales de cognición y análisis económico y legal, en particular: análisis de sistemas, síntesis, abstracción, comparación, analogía, análisis estadístico, análisis funcional, agrupación, análisis de conglomerados (basado en el método de k-medias), análisis de correlación y regresión, gráficos, tabulares, generalización y sistematización. Los resultados de los estudios teóricos realizados permiten establecer un impacto significativo en los factores desestabilizadores del entorno externo e interno, los más importantes de los cuales son los factores militares. A modo de conclusion, se han revelado importantes desequilibrios en el proceso de asegurar la implementación de los principios de la democracia en las actividades de las instituciones representativas.

Palabras clave: poderes públicos; autoridades representativas; democracia hibrida; administración pública, condiciones de Guerra.

Introduction

Increasing challenges of globalization, geopoliticization, and integration into the world's socio-political and socioeconomic space necessitate strengthening the role of the state and its ability to effectively counter the dangers and threats of our time. Ensuring the fundamental principles of democracy, the rule of law and justice, protection of human and civil rights are among the priorities of the state policy of any state. Moreover, it is a very difficult task in the conditions of instability, global uncertainty, and military confrontation of armed aggression of one country against another.

The modern period of Ukraine's functioning is characterized by the presence of significant and weighty destabilizing factors that cause significant imbalances between European standards and norms and the existing state of their compliance. In such circumstances, the need to ensure the effective functioning of representative authorities and their unimpeded performance of legislative, judicial, constituent, foreign economic, budgetary, and control functions, which is quite problematic in the conditions of war, is becoming more urgent. The outlined trends require detailed research of the peculiarities of the functioning of representative institutions in Ukraine, identification of the main problematic aspects, and search for effective methods of counteracting destabilizing factors.

1. Literature review

The historical conditionality of the development of the state and society and the rapid growth of the population have led to complications in interstate relations. It became impossible to involve the entire population in solving problems of national importance. As a result, there is an urgent need to authorize specific individuals and electoral bodies to represent the interests of the public and implement the principle of democracy in the state, because active public participation in the political life of society is one of the priorities of democracy development, and the formation of representative institutions is an integral component of its establishment.

Meanwhile, the institutions of representative authorities are of great importance, because they perform the function of decision-making, however, they are controlled by the public and are responsible to the people for their actions. The system of interrelations between the public and the institutions of representative authorities and their political responsibilities provides for the formation of a certain political regime, namely: (1) full democracy; (2) imperfect democracy; (3) hybrid democracy, and (4) authoritarian regime.

The existence of various political systems indicates the ambiguity of the principles of the functioning of representative institutions in different countries of the world. As for Ukraine, as noted by Averchuk (2018), there are significant imbalances of constitutional authorities in the political system, which are especially acute in the interaction between the legislative and judicial institutions. Analyzing the works of leading national and international scholars, the scientist found that judicial reform is necessary for Ukraine because its judicial system does not meet international standards and public expectations.

In this context, Béteille (2012) notes that the legislature and the judiciary should be considered the fundamental institutions of representation in a

country, as the level of democratic development depends on the state of their functioning. Equally important is the study of parliamentary activity in the context of the functioning of representative institutions, as it is one of the key forms of popular representation, the democratization of society, and the sovereign development of the state.

Parliamentarism in Ukraine, as an institution of normative and legal consolidation of democracy, combines the functions of representative and legislative power. The Parliament is the only collegial body of legislative authorities. It performs its activities under the rights granted to it, and not based on certain orders.

Zelenko *et al.,* (2014) propose to attach great importance to the institutional sustainability of Ukrainian parliamentarism. The interaction of its formal and informal functions is affected by destructive factors of socio-political instability and military confrontation with the unprovoked armed aggression of the Russian Federation against Ukraine. As a result, we can state the crisis of parliamentarism in the country.

Moreover, Russia's full-scale war against Ukraine and its annexation of significant Ukrainian territories have reformatted the existing state of the political system. Moreover, these circumstances necessitated the adoption of decisions to ban the activities of certain political parties that promoted a pro-Russian position and posed a significant threat to the state sovereignty of Ukraine. This situation is significantly aggravated by the impossibility of conducting the electoral process. In turn, this complicates the mechanism of decision-making on legislative initiatives in the conditions of martial law.

Given the significant problems of the functioning of representative institutions in Ukraine during the war, Sachko (2022) proposes to pay the most significant attention to the activities of the Verkhovna Rada of Ukraine.

As established, it is the highest representative and legislative body in the country. In-depth research allowed the scientist to identify the main problems and shortcomings of the functioning of this representative body, the most important of which the author proposes to include (1) the principle of parliamentary independence is implemented concerning other branches of power; (2) significant dependence of political parties on external sources of funding, which are often representatives of clan-oligarchic structures; (3) growing risks of violation of the rule of law through lobbying of individual interests; (4) weak institutionalization of the opposition.

Evaluating the main trends in the functioning of representative institutions, Claassen and Magalhães (2022) found that ensuring its effectiveness is a very difficult task, on the solution of which the development of the state based on democracy depends. Scientists argue that socio-political and economic turmoil, the intensification of transnational crime,

which extends to the political system, significantly destabilizes the activities of representative institutions and the level of public confidence in them.

The growing indicators of democracy correlate with the indicators of the effectiveness of the functioning of representative institutions. The hypothesis is supported by Fisher (2022), who also believes that the functioning of representative institutions significantly depends on the level of development of the country and compliance with the standards and principles of democracy.

A similar position is held by Kundnani (2020), who established the complexity of the functioning of representative institutions in the European Union and its dependence on the type of political system. At the same time, Seifter (2022), while studying the activities of public institutions, revealed negative trends in the implementation of democratic principles of their activities in different countries of the world in recent years, which leads to an increase in active threats to representative institutions from anti-democratic forces.

In this context, Pavlenko (2022) argues that the full-scale invasion of the Russian Federation into the territory of Ukraine is an unprecedented challenge of our time, which led to the introduction of martial law, resulting in significant destabilizing changes in the political processes in Ukraine.

They manifested themselves in the suspension of elections to all levels of government, the formation of military administrations, and the prohibition of public rallies, demonstrations, and referendums. The scientist proves that the war in Ukraine has reformatted the conditions of functioning of the institutions of representative power, however, the main branches of power continue to work in the country and exercise their powers based on democracy. Moreover, there is a partial decline in public confidence in the national institution of parliamentarism and the role of the Parliament against the background of the growth of such confidence of citizens in the security forces.

Obviously, under such conditions, the effectiveness of the Verkhovna Rada of Ukraine, the quality of lawmaking, and the image of this representative institution are significantly reduced. At the same time, it is worth noting in the context of the war in Ukraine the deepening crisis of the party system, which was exacerbated by the ban on the activities of pro-Russian parties and those that pose a threat to state sovereignty.

The presence of significant challenges and dangers of the present plays a significant role in the system of ensuring the democratic development of the state, the peculiarity of which is the effective functioning of representative institutions. Therefore, it is reasonable to implement such a direction of state policy as the reform of the regional governance system and the development of local self-government. In this context, the remarks

of Nikitenko and Hrabar (2021), who insist on preserving the democratic principles of the functioning of representative institutions at the regional level, are appropriate.

It is necessary to pay attention to the fact that Ukraine is actively implementing the reform of decentralization of power, which is due to the urgent need to transfer the powers of central-level public authorities to regional ones, which also form the institution of representative authorities, the functioning of which in the conditions of the current situation is subject to significant destabilizing factors of the external and internal environment (Pavlovich-Seneta and Lepish, 2022). Hedulianov (2022) considers this concept to be an integral component of the system of development of representative democracy in Ukraine and a direction of modernization of the activities of representative government institutions.

However, Kuleshov (2020a) emphasizes the importance of exercising public control over the activities of representative institutions and argues that in Ukraine it is quite limited and ineffective due to the lack of a significant number of methods for exercising such control. At the same time, the scientist is convinced that the role of public control is extremely important, as it is one of the indicators of the level of democracy development in the country. Therefore, Ukraine should consolidate at the legislative level the organizational and legal mechanism for exercising public control over the activities of representative institutions (Kuleshov, 2020b).

Summarizing the studies of the theoretical aspects of the functioning of representative institutions in Ukraine during the war, it can be stated that the existing scientific approaches are distinguished by their originality and versatility. Moreover, they also allow us to assert that the activities of such institutions are carried out in conditions of instability and significant influence of destabilizing factors of the external and internal environment.

The article is aimed at the theoretical and applied foundations of the study of the peculiarities of the functioning of representative authority institutions in Ukraine during the war.

2. Methods and materials

The methodological basis of the study consists of general scientific and special methods of scientific knowledge and economic and legal analysis. To determine the essence of the institutions of representative authorities in Ukraine, the method of system analysis, synthesis and scientific abstraction has been used. To assess the current state and trends in the functioning of representative institutions in Ukraine during the war, methods of comparison, analogy, and statistical analysis have been applied.

The method of functional analysis, grouping, and cluster analysis (based on the k-means method) have been adopted to clarify the peculiarities of the functioning of representative authorities' institutions in the conditions of war and to compare them with the existing practice of foreign countries.

Correlation and regression analysis have been chosen to identify the relationship between the main indicators of assessing the performance of representative institutions and their impact on the quality of life in society. The results of applied research are displayed using graphical and tabular methods. The method of generalization and systematization has been used to formulate scientific hypotheses and draw conclusions based on the results of the study.

To conduct the necessary research, the following countries were selected: Ukraine, Poland, Czech Republic, Slovakia, Hungary, Romania, Moldova, Belarus, and Russia, which are most affected by factors of military nature.

The information base of the study consists of the works of leading domestic and foreign scientists, as well as reporting data of international organizations for 2019-2022: Democracy Index; Fragile States Index Annual Report; Quality of Life Index by Country.

3. Results

The state and main trends in the functioning of representative authorities' institutions in Ukraine cannot be called stable, since, throughout the entire period of the country's existence as an independent and sovereign state, its political system is characterized by the influence of significant destabilizing factors of the external and internal environment.

It disrupts the balance of functioning and interaction of representative authorities and institutions. The problem of the functioning of the institutions of representative authorities became especially acute in 2022 after the deployment of active hostilities by Russia on a large part of Ukraine and as a result of the annexation of large Ukrainian territories by the aggressor country. In the conditions of war, it is very difficult, and sometimes even impossible, to ensure the effectiveness of public authorities.

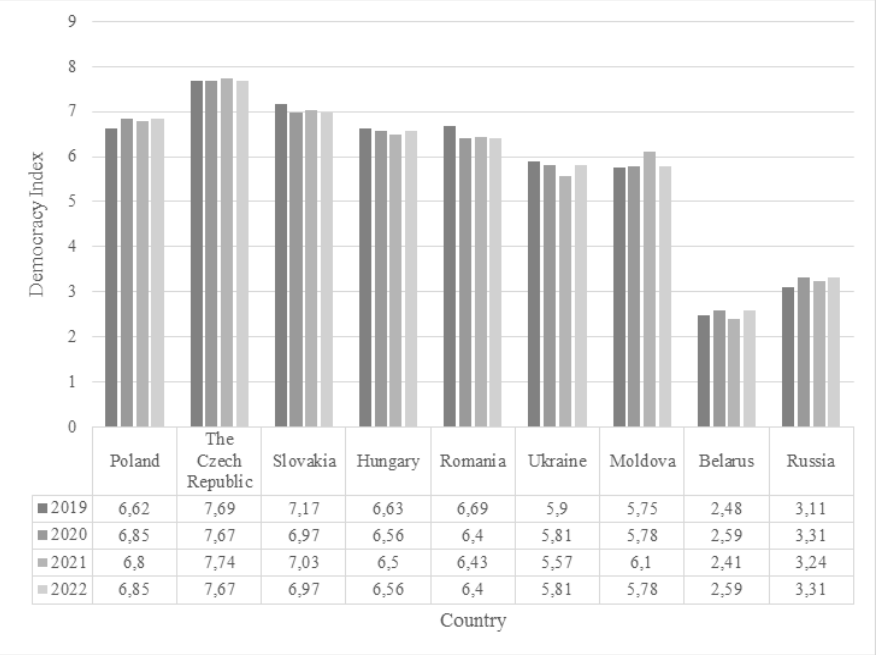
Similar trends can be traced in terms of empirical assessments of the peculiarities of the functioning of representative institutions in Ukraine during the war. However, despite significant difficulties, the international community has made significant efforts to identify the main indicators based on which we can talk about the state and main trends in the functioning of representative institutions.

Therefore, we propose to deepen the research in this section and analyze Ukraine's position during 2019-2022 on the main indicators and compare their values with individual European countries that have signed both positive and negative relations with Ukraine, namely Poland, Czech Republic, Slovakia, Hungary, Romania, Moldova, Belarus, and Russia.

The most important indicator that shows the level of democracy in the country and the functioning of representative institutions is the democracy index. The international community has proposed methodological tools for assessing democracy indicators, which are used in European countries and Ukraine.

According to this methodology, the calculation of the democracy index is based on determining the parameters of the electoral process in the country and ensuring pluralism, assessing the quality and effectiveness of the government, ensuring civil liberties, as well as analyzing the level of political participation and political culture in the country. Meanwhile, the gradation scale of the democracy index ranges from 1 to 10 points, and the value of each country characterizes the type of democracy.

In particular, full democracy is considered to be inherent in a country when it scores between 8.01-10; imperfect democracy - in the case of 6.01-8 points; hybrid democracy is inherent in such countries that can provide 4.01-6 points; authoritarian regime - when scoring less than 4 points. Assessing Ukraine's trends in changes in the democracy index in 2019-2022 and comparing its values with those of individual European countries (Fig. 1), it is possible to find out that Ukraine has a hybrid democracy throughout the analyzed period, as the democracy index value in 2019 was recorded at 5.9 points, in 2020 - at 5.81 points, in 2021 - 5.57 points, and 2022 - 5.81 points. This situation indicates the presence of significant problems in the functioning of representative institutions, a low level of implementation of democratic principles, and growing trends in legal nihilism.



	Poland	The Czech Republic	Slovakia	Hungary	Romania	Ukraine	Moldova	Belarus	Russia
2019	6,62	7,69	7,17	6,63	6,69	5,9	5,75	2,48	3,11
2020	6,85	7,67	6,97	6,56	6,4	5,81	5,78	2,59	3,31
2021	6,8	7,74	7,03	6,5	6,43	5,57	6,1	2,41	3,24
2022	6,85	7,67	6,97	6,56	6,4	5,81	5,78	2,59	3,31

Fig. 1. Dynamics of the democracy index in Ukraine and selected European countries in 2019-2022. Calculated based on: Democracy Index, 2019–2022.

At the same time, studies of the democracy index in individual European countries reveal ambiguity in ensuring democratic principles of functioning of representative institutions. In particular, it was found that the countries that belong to the European Union (Czech Republic, Slovakia, Poland, Hungary, and Romania) have significantly higher democracy index scores and can ensure higher standards and conditions for the functioning of representative institutions.

Instead, developing countries (Moldova, Russia, and Belarus) face significant destabilizing factors of democratic development and are unable to achieve minimum European standards of democracy. It is worth noting that such countries as Belarus and Russia position an authoritarian regime, and democratic principles of functioning of representative institutions are, in fact, completely leveled.

Another, no less important indicator used to study the state and trends in the functioning of representative institutions is the fragile states index, which shows the effectiveness of public authorities, the degree of

vulnerability of representative institutions to the risks and threats of our time, to conflicts and risks of a possible collapse of the state.

It should be noted that in the context of Ukraine's military confrontation with the armed aggression of the Russian Federation, this indicator is extremely important, as it allows us to assess the possibility of losing state sovereignty and the role of representative institutions in its preservation. Furthermore, the fragile states index provides grounds for assessing the state of the security environment, the legitimacy of public authorities, the quality of public services provided by public authorities, the rule of law, and the level of protection of human and civil rights.

The results of the study of Ukraine and other European countries according to the fragile states index in 2019-2022 (Fig. 2) indicate critical values of the analyzed indicator in transitional countries, in particular: Ukraine (FSI: 68.6-71.0), Moldova (FSI: 64.5-67.1), Belarus (FSI: 67.8-68.2) and Russia (FSI: 72.5-74.7). As for the countries of the European Union, there are much lower values of the fragile state index: in Poland (FSI: 41.0-43.1), Czech Republic (FSI: 35.7-39.3), Slovakia (FSI: 38.2-40.5), Hungary (FSI: 47.6-51.1), and in Romania (FSI: 46.7-51.0). It shows significant differences in the functioning of representative institutions in the European Union and in countries that seek to integrate into the European space.

The growth of the Fragile States Index indicates the deepening of crises in the state and the increase of its vulnerability to conflicts, including military ones, which is currently observed in Ukraine, Moldova, Belarus, and Russia.

An important indicator of assessing the effectiveness of the functioning of representative government institutions in the state is public satisfaction with living conditions, a high level of protection of their rights and freedoms, a decrease in social tension, and an increase in the quality of life of the population.

According to the results of the study of the dynamics of the quality-of-life index in Ukraine and individual European countries in 2019-2022 (Fig. 3), a higher level of efficiency in the functioning of representative institutions is recorded in the European Union countries (Czech Republic, Slovakia, Poland, Hungary, and Romania), where the standard of living is much higher than in transitional countries (Ukraine, Moldova, Belarus, and Russia).

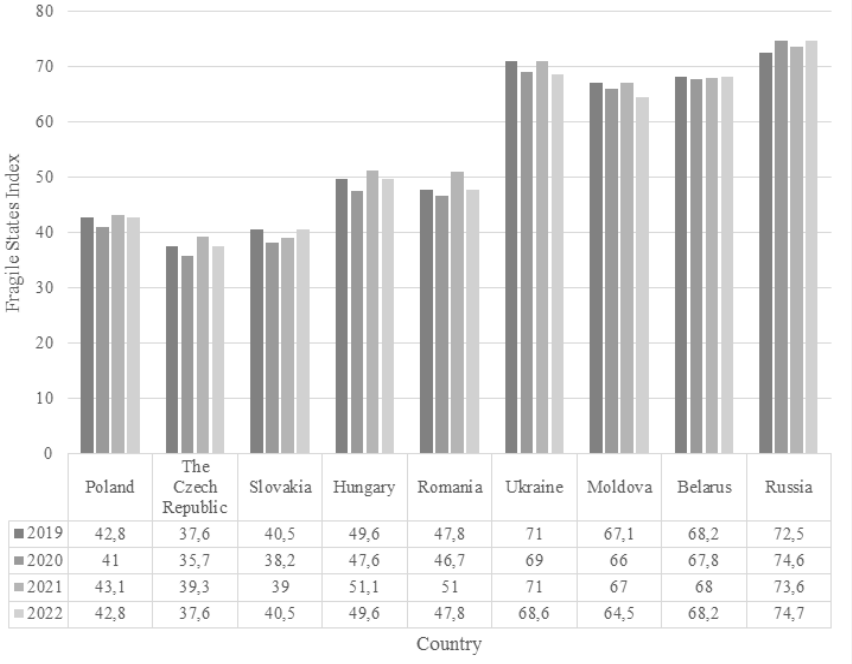


Fig. 2. Dynamics of the Fragile States Index in Ukraine and selected European countries in 2019-2022. Calculated based on: Fragile States Index, 2019–2022.

Nevertheless, it should be noted that during the entire analyzed period, the quality of life index was not calculated in Moldova. In addition, the events of 2021-2022, which were observed in Belarus and related to the deepening of the authoritarian regime and the leveling of the principles of democratic development of the state, and, consequently, the interference of certain law enforcement agencies in the activities of representative institutions, led to a significant decrease in the quality of life of the population by 19.75% in 2021 and 17.91% in 2022 compared to 2020.

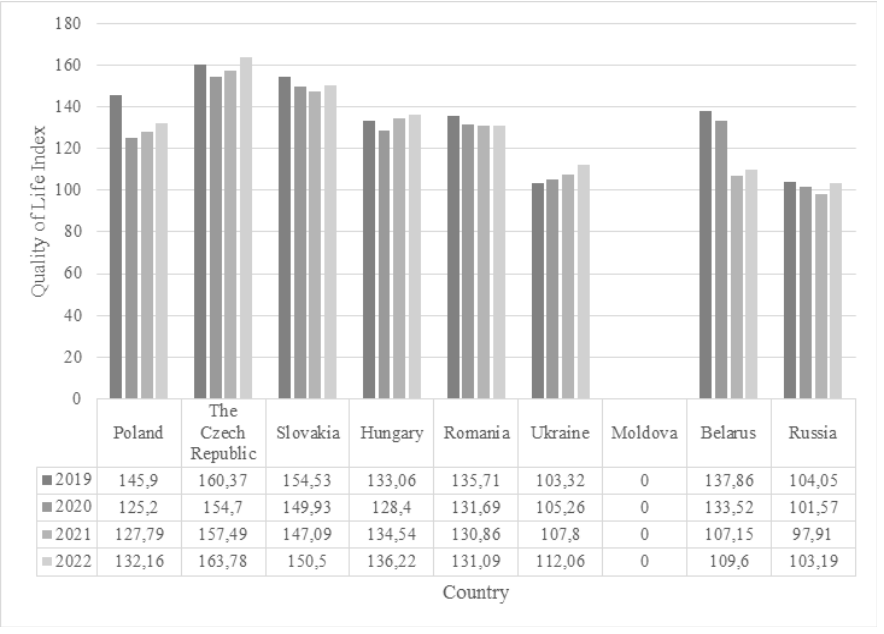


Fig. 3. Dynamics of the Quality-of-Life Index in Ukraine and selected European countries in 2019-2022. Calculated based on: Quality of Life Index by Country, 2019–2022.

The functioning of representative institutions in the countries selected for analysis has certain peculiarities, which make it advisable to distinguish certain common groups. We consider it expedient to group these countries according to the indicators of the Democracy Index and the Fragile States Index in 2019-2022. To do so, we suggest using cluster analysis technology (k-means method). The results are presented in Table 1.

The results of the clustering confirmed our hypothesis about the existence of two groups among the analyzed countries, characterized by common and various parameters: (1) the countries belonging to the European Union (Poland, Czech Republic, Slovakia, Hungary, and Romania), where higher indicators of efficiency of the functioning of representative institutions are recorded, and (2) countries of the transitional type (Ukraine, Moldova, Belarus, and Russia), which have significant problems in implementing the principles of democracy, ensuring the effective functioning of public authorities. Human and civil rights and freedoms there are leveled by the authorities, resulting in the growth of social tension in society and a decline in the quality of life of the population.

Table 1. Grouping of selected European countries by Democracy Index and Fragile States Index in 2019-2022.

Democracy Index and Fragile States Index							
2019		2020		2021		2022	
Poland	1	Poland	1	Poland	1	Poland	1
The Czech Republic		The Czech Republic		The Czech Republic		The Czech Republic	
Slovakia		Slovakia		Slovakia		Slovakia	
Hungary		Hungary		Hungary		Hungary	
Romania		Romania		Romania		Romania	
Ukraine	2	Ukraine	2	Ukraine	2	Ukraine	2
Moldova		Moldova		Moldova		Moldova	
Belarus		Belarus		Belarus		Belarus	
Russia		Russia		Russia		Russia	

Calculated based on: Democracy Index, 2019–2022; Fragile States Index, 2019–2022.

Meanwhile, the identification of the impact of the democracy index and the fragile states index on the quality-of-life index in Ukraine and some countries of the European Union was carried out using correlation and regression analysis (software package Statistica, 7.0) (equation 1), allowed to establish that the impact of the democracy index and the fragile states index on the quality-of-life index is significant.

The growth of the democracy index leads to an increase in the quality-of-life indicators (regression coefficient r=0,997). As for the Fragile States Index, its impact is also tangible and inversely proportional, and a decrease in its value leads to an increase in the quality of life of the population (regression coefficient r= –0,091).

Y = 65,33 + 0,997 – 0,091 (1)

R = 0,916; = 0,838; p<0,5000.

Where: Y – Quality of Life Index; – Democracy Index; – Fragile States Index.

The results of the study confirm the existence of a strong link between the selected indicators, as evidenced by the correlation coefficient R=0,916 and the statistical significance of the model value of the F-test F (2,2) = 5,190.

Thus, the conducted studies of the peculiarities of the functioning of the institutions of representative authorities in Ukraine in the conditions of war have revealed the existence of significant problems that need to be addressed immediately.

4. Discussion

The results of the study of the peculiarities of the functioning of representative institutions in Ukraine allow us to state that there are significant problems in the activities of various branches of state power at the national and regional levels. In particular, in the process of analysis, it was found that the most significant impact on the functioning of the representative authorities institutions is the military factors and armed aggression of the Russian Federation against Ukraine, which threatens the territorial integrity of the country and the preservation of its sovereignty.

At the same time, the negative trends in the functioning of the institution of parliamentarism were revealed, which testify to the deepening of the crisis in the country's legislative activity, the growing influence of oligarchic and clan structures on this institution, and the violation of the norms and principles of democratic development of the state.

In the process of conducting research in this direction, the expediency of reforming the system of regional governance and the formation of a powerful institution of representative authorities on the ground is substantiated.

Empirical calculations allowed us to compare the indicators of efficiency of the functioning of representative institutions with similar indicators of individual countries of the European Union. As a result, it was found that the countries that belong to the European Union (Poland, Czech Republic, Slovakia, Hungary, Romania) are characterized by a higher level of development of representative institutions than the countries of transitional type (Ukraine, Moldova, Belarus, and Russia), and the principles of democracy are implemented more responsibly.

Moreover, throughout the analyzed period, Ukraine has been experiencing a hybrid democracy, which necessitates the need to take appropriate measures to achieve European standards to strengthen its provision.

To increase the effectiveness of the functioning of the institutions of representative authorities in Ukraine in the conditions of war, it is suggested

1. to strengthen public control over the activities of the institutions of representative authorities;

2. to form a set of measures to effectively ensure the implementation of the principles of democratic development of representative institutions;
3. to enhance the transparency of the electoral process and increase the level of political participation and political culture in the country.
4. The proposed measures will allow for the desired effect and increase the efficiency of the functioning of the institutions of representative authorities in Ukraine during the war.

Conclusions

Thus, the conducted research of theoretical and applied principles and peculiarities of the functioning of representative authorities institutions in Ukraine in the conditions of war gives grounds to assert that the activity of representative authorities institutions at the present stage is subject to significant destabilizing influence of threats, risks, and challenges of the external and internal environment, the most dangerous of which are military factors.

The results of the conducted research prove that in Ukraine there is a significant problem in ensuring the implementation of the principles of democracy in the activities of representative institutions, and the public administration system needs to be revised and improved.

It is revealed that during 2019-2022 in Ukraine the development of democracy of a hybrid regime is recorded, and the insufficient level of efficiency of the functioning of representative institutions significantly reduces the quality of life of the population.

The results of correlation and regression analysis show that an increase in the democracy index leads to an increase in the quality of life of the population (regression coefficient r=0,997), and the decrease in the fragile states index leads to an increase in the quality of life of the population (regression coefficient r= –0,091).

To increase the effectiveness of the functioning of representative institutions in Ukraine in the conditions of war, the necessity of forming measures to strengthen public control over the activities of representative institutions, ensuring the implementation of the principles of democratic development of representative institutions, enhancing the transparency of the electoral process, increasing the level of political participation and political culture is substantiated.

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Presentation of legal norms of the anti-corruption policy in order to form the professional competence of higher education students

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Abstract

Using the scientific method, the main objective of the study was to identify key legal norms and aspects of anti-corruption policy in order to form the legal and professional competence of students of higher education institutions. One of the most pressing issues is corruption in public authorities and administration, which to a greater or lesser extent affects almost the entire system of public administration. A small number of criminal cases of bribery indicates a high level of latency of these crimes. The spread of this negative phenomenon is facilitated by the imperfection of legislation, in particular, economic legislation. A large number of laws, departmental instructions, orders, etc., which often contradict each other and thus create significant difficulties for the officials themselves and deprive them of any opportunity to understand the legislation regulating the matter. It is concluded that, many laws contain ambiguous language in the text, which allows officials to interpret their content in their favor.

Keywords: legal norms; anti-corruption policy; education; corruption; anti-corruption laws.

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Presentación especial de normas jurídicas y aspectos de la política anticorrupción del Estado para formar la competencia profesional de estudiantes de instituciones de educación superior

Resumen

Mediante el uso del método científico, el objetivo principal del estudio fue identificar normas y aspectos legales clave de la política anticorrupción para formar la competencia legal y profesional de los estudiantes de instituciones de educación superior. Uno de los temas más apremiantes es el de la corrupción en los poderes públicos y la administración, que en mayor o menor medida afecta a casi todo el sistema de la administración pública. Un pequeño número de casos penales de cohecho indica un alto nivel de latencia de estos delitos. La propagación de este fenómeno negativo se ve facilitada por la imperfección de la legislación, en particular, la legislación económica. Una gran cantidad de leyes, instrucciones departamentales, órdenes, etc., que a menudo se contradicen entre sí y crean, por lo tanto, dificultades significativas para los propios funcionarios y los privan de cualquier oportunidad de comprender la legislación que regula la materia. Se concluye que, muchas leyes contienen lenguaje ambiguo en el texto, lo que permite a los funcionarios interpretar su contenido a su favor.

Palabras clave: normas legales; política anticorrupción; educación; corrupción; leyes anticorrupción.

Introduction

Among the main processes of modern social development, most scientists distinguish globalization. However, government officials, politicians and scientists need to be aware of the many obstacles that inevitably accompany phenomena so important to society. And perhaps the most dangerous threat to the development of society is corruption. Today there is not a single country where corruption has been completely eradicated.

None of the socio-political and economic systems had, does not have and cannot have complete immunity to corruption. Corruption can exist for a long time even in developed democracies and open market economies. The difference lies not in the presence or absence of corruption as such, but in its scale, the nature of corruption manifestations, the impact on economic, social, political, legal and other processes (Kryshtanovych *et al.,* 2022).

On the one hand, corruption characterizes the main social relations carried out in the state and society, and on the other hand, it affects the

economy, politics, law, ideology, social psychology, etc. Corruption manifests the inefficiency of power, the imperfection of more important state and public institutions (Hutchinson *et al.*, 2018).

Thus, taking into account the analysis of the situation, we will determine the main problems that give rise to a high level of corruption in the world (Sylkin *et al.*, 2021):

1. Consistency, functionality of corruption and tolerance for it in society. The spread of corrupt methods of solving political, economic and social issues and legal disputes allows us to conclude that corruption is systematic and functional in all spheres of state and public life, even about the formation of such a phenomenon as a "corruption culture".
2. Legal nihilism and ineffectiveness of the principles of the rule of law. Corruption at the level of the formation of public authorities, the development and implementation of managerial decisions ceases to be a type of deviant behavior, acquiring the character of a social norm and turning into a kind of instrument of public administration. This undermines the legitimacy of government institutions, provokes the further spread of corruption at lower levels of government, and contributes to the establishment of legal nihilism and disbelief in the effectiveness of the principle of the rule of law in society.
3. Lack of significant results of anti-corruption policy. The rate of spread of corruption in the country indicates that the efforts of the state in this area do not provide tangible results, and individual targeted measures do not give grounds for deducing the adequacy of the fight against this social threat. The effectiveness of anti-corruption decisions made at the highest state level is reduced due to their deliberate blocking or ignoring.
4. Passivity of civil society institutions. The absence of powerful anti-corruption public organizations at the national level, which would effectively deal with the problems of preventing and combating corruption and would be influential partners of state authorities, reduces the effectiveness of the anti-corruption fight. This situation is exacerbated by the factor of "corrupt loyalty" of civil society institutions. A significant part of the population considers corrupt behavior quite justified. Citizens who have experienced corruption usually do not try to defend their own rights in a legal way because they are sure that such attempts will be in vain.

Despite the increased attention of the authorities to issues related to the prevention and counteraction to acts of corruption, their possible manifestations and conflicts of interest that may arise in the professional activities of a civil servant. The theoretical and legislative aspect of the

coverage of this problem is so perfect and polished that there are doubts about the presence of corruption offenses. However, the practical plane of the issue indicates the opposite - there are facts of corruption, although they contain many features, depending on personal connections, work contacts, scope, level of social significance, etc.

1. Materials and methods

For a more detailed study of the legal norms and aspects of the anti-corruption policy of the state, the following methods were used: induction and deduction, comparison and systematization; synthesis and analysis; abstract-logical - for theoretical generalizations and conclusions of the study.

To more accurately reflect the main norms and aspects of the anti-corruption policy of the state, we used the IDEF0 functional modeling method.

2. Literature review

Based on the results of the theoretical analysis, corruption as a basic concept of scientific knowledge belongs to the theoretical constructions of the highest level. Its theoretical (abstract) essence explains the inevitability of deploying its content in a system of subordinate concepts. To date, the conceptual apparatus on the problems of corruption has already been sufficiently developed and adapted to modern conditions (Gaitonde *et al.*, 2016). This was facilitated by the fact that the scale of the spread of corruption in the modern world makes it possible to classify it as one of the most dangerous phenomena for public administration and public life.

Studies of the problem of corruption in public authorities have now been updated and cover various areas - institutional and legal (sufficiency of legislative and regulatory means and methods of combating corruption), organizational and managerial (functionality in the distribution of power and control over their use by officials), an axiologist of the orientation of public employees), ethical and cultural (the moral state of the socio-professional environment of the public service), etc (Fisman and Gatti, 2002).

Based on the analysis of the literature, it is possible to identify a certain matrix model of counteracting dynamic and gravitating towards a certain universality of corruption, regardless of the type of legal family, the form of the state, the existing (previous) model of anti-corruption policy in the state for a certain time (Ivashova *et al.*, 2022). At the same time, the fundamental

basis of such a model is the institutional approach, according to which the determination of the expediency of creating a specialized body (structure) to combat corruption dominates. In general, the presence of specialized anti-corruption bodies is not in itself a guarantee of reducing corruption.

In general, the theoretical and methodological problem of the formation of a national anti-corruption policy in modern conditions is characterized by a combination of institutional, organizational, legal and administrative aspects of public administration. In the modern science of public administration there is no single approach to the formation of the concept of national anti-corruption policy (Navickas *et al.*, 2016).

After all, the need to form a conceptual framework for public administration (in this case, in the field of anti-corruption policy) is characteristic only of complex, dynamic systems, the internal characteristic of which is the presence of legal acts that characterize the content of anti-corruption policy, determine the subjects of corruption prevention and establish standards for management activities.

3. Research Results and Discussions

The current state of society, its socio-economic and political system, the presence of various forms of ownership, many social movements and political parties necessitate a revision of the basic legal concepts related to the sphere of service relations, which are understood as purely state, or are interpreted in a broad sense. It is clear that representatives of various related branches of scientific knowledge and social technologies can interpret its concepts in different ways.

Sociologists, for example, might argue that corruption is the abandonment of expected standards of behavior by government officials for illicit personal gain. According to the definitions offered by a certain part of specialists in the field of public administration, corruption is an unsanctioned, as a rule, condemned act with the aim of obtaining some significant personal gain (Sommersguter-Reichmann *et al.*, 2018).

Textbooks on criminal law have the following definition: in a broad sense, corruption is a social phenomenon that has struck the public administration apparatus, expressed in the decomposition of power, the deliberate use by state and municipal employees, other persons authorized to perform public functions, of their official position, status and authority of the position held for mercenary purposes for personal enrichment or in group interests (Kryshtanovych *et al.*, 2022).

In almost any case, we are talking about the interaction of the legal apparatus and society in the person of its citizens, groups or organizations.

It is also important that today many researchers realize that corruption is not only a subject of criminal law or criminological analysis, but a full-scale object of social phenomenology, a significant social phenomenon (Huss *et al.*, 2010).

Among the most common motivations for corruption are (Wierzynska *et al.*, 2020):

- feeling of instability and social insecurity;
- wages that do not correspond to the qualifications and nature of the service;
- career injustices;
- incompetence of the management and a negative example of the top bosses.

Systemic corruption leads to many negative consequences. Ultimately, all of them have serious political consequences - democracy becomes ineffective, trust in government decreases, the country's prestige in the international arena falls, and real political competition is distorted. To eliminate the causes and conditions conducive to the spread of corruption in public authorities and administration, it is necessary to take the following measures (Sylkin *et al.*, 2021):

- review laws and by-laws. Reduce their number to the necessary minimum, eliminate the existing contradictions, ambiguous wording, and provide for specific liability for non-compliance in the law itself.
- to create the necessary conditions for the population to get acquainted with the most important regulations. Oblige ministries and departments to publish by-laws in the media that affect the interests of the general population.
- to ensure observance of the principle of collegiality in all cases of making decisions vital for the population, to provide for the possibility of appealing these decisions to higher authorities and the court.
- to revise upwards the remuneration of employees of the apparatus of representative and executive power.
- the selection of candidates for public authorities and administration is carried out on a competitive basis with a thorough study of not only professional, but also personal qualities of the applicant.
- limit the immunity from justice of representatives of the legislative and executive authorities.

- to strengthen the work of law enforcement agencies in the fight against corruption, having previously created the necessary conditions for this, in particular, by providing in the new legislation the possibility of using the necessary additional means and the most difficult to detect methods of proving this category of crimes.

The guiding principle of all anti-corruption policy should be the constant increase in risks, cost of losses and levels of instability for government officials, business representatives and citizens involved in corruption (Kordík and Kurilovská, 2017). Otherwise, corruption will be perceived in society as a low-risk and highly profitable activity, in the sense that it is corruption relations that make it possible to solve problems reliably and quickly. Countering corruption by prohibiting relevant actions or large fines for their commission, including changing legal norms, is and will be ineffective due to the possibility of circumventing prohibitions, non-compliance with these legal norms or their use for personal or corporate interests, that is, for corrupt purposes (Mouselli *et al.*, 2016).

This guiding principle can be implemented in three main blocks of anti-corruption activities that could help reduce corruption in general and in some areas.

To do this, using the methodology of functional modeling, we have formed a contextual model for improving the legal aspects of anti-corruption activities at the country level. In Fig.1. the basic model for achieving the A0 goal is depicted - effective legal support for anti-corruption activities at the country level. This model demonstrates all the processes and resources necessary to achieve the ultimate goal A0.

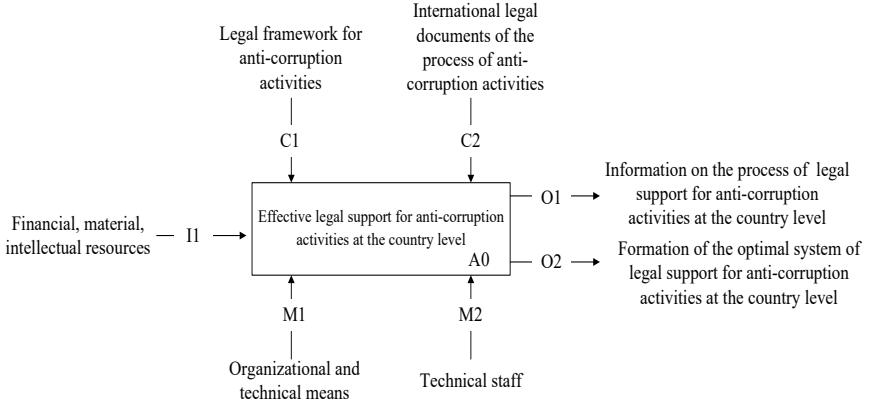

Fig.1. Basic model for achieving the A0 goal is depicted - effective legal support for anti-corruption activities at the country level. Source: prepared by the authors.

Having formed the basic model for achieving the A0 goal, the next step will be the formation of a contextual model for improving the legal aspects of anti-corruption activities at the country level (Fig. 2).

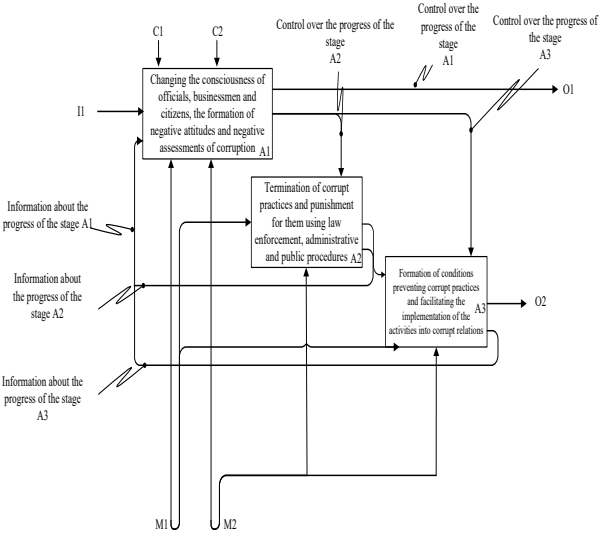

Fig.2. Contextual model for improving the legal aspects of anti-corruption activities at the country level. Source: prepared by the authors.

In addition, when determining the anti-corruption policy strategy, it is advisable to take into account the following fundamental principles (Kryshtanovych *et al.,* 2022): 1) the direction of the anti-corruption policy and the coordination of the activities of the authorities for its implementation; 2) systematic analysis of corruption risks; 3) conducting anti-corruption expertise of projects and existing regulatory legal acts; 4) a combination of efforts and ensuring effective interaction at the central and regional levels between executive authorities, their territorial divisions, other state authorities, local governments, enterprises, institutions and organizations, associations of citizens to implement the state anti-corruption policy.

Conclusions

Thus, the problems in the area under study require an integrated approach to their solution - a combination of theory and practice, because the level of corruption can be considered as a powerful de catalyst of reforms in any area.

The main goal of the anti-corruption policy should be the dismantling of the still quite powerful corruption system that has developed in the country through the implementation of effective legal norms and mechanisms. Next, there should be a change in the general priorities of state policy: the general interests of the majority of citizens should not be put in the first place. Anti-corruption activity of the state can be effective only if it is systematic. That is why we talk about anti-corruption policy as a system of interrelated priorities and anti-corruption measures that include political, organizational, economic, ideological and legal components.

Success in the implementation of anti-corruption policy and the formation of appropriate regulatory and legal norms should be the opening of opportunities for the growth of the national economy, improving the quality of life of the population and ensuring the fairness of public policy. It is these problems that should be the subject of further scientific research.

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Criminal liability for humanitarian aid embezzlement during war: The case of Ukraine

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Abstract

The aim of the article was to reveal the content of the controversial elements of the illegal use of humanitarian aid, provided for in Article 201-2 of the Criminal Code of Ukraine; to clarify the validity of the introduction of this prohibition and, moreover, to discuss its impact on law enforcement. All of which in order to be able to determine the prospects for the development of criminal law in the field. Several research methods have been used in the article, such as: comparative, systemic-structural and legal-formal. Referring to the appropriate methodological basis has made it possible to delve into the issues of criminal liability for embezzlement of humanitarian aid funds in Ukraine. Based on the results of the comparative analysis, it has been noted that there are no special provisions on appropriation and embezzlement of humanitarian aid items in the legislation of certain European states. As a conclusion it has been argued that the introduction of article 201-2 in the Criminal Code, is an example of excessive criminalization because: in this case, the act, which is inherent in the social harmfulness necessary for criminalization, did not require criminalization, since criminal liability for it has already existed and is broadly typified in the law.

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Keywords: humanitarian aid; charitable donations; misappropriation of humanitarian aid; embezzlement; criminal liability for embezzlement.

Responsabilidad penal por malversación de ayuda humanitaria durante la guerra: el caso de Ucrania

Resumen

El objetivo del artículo fue revelar el contenido de los elementos controvertidos del uso ilegal de la ayuda humanitaria, previsto en el artículo 201-2 del Código Penal de Ucrania; aclarar la validez de la introducción de esta prohibición y, además, discutir su impacto en la aplicación de la ley. Todo lo cual para poder determinar las perspectivas de desarrollo del derecho penal en la materia. En el artículo se han utilizado varios métodos de investigación, tales como: comparado, sistémico-estructural y jurídico-formal. La remisión a la base metodológica adecuada ha permitido profundizar en las cuestiones de la responsabilidad penal por malversación de fondos de ayuda humanitaria en Ucrania. Basándose en los resultados del análisis comparativo, se ha observado que no existen disposiciones especiales sobre la apropiación y malversación de artículos de ayuda humanitaria en la legislación de ciertos Estados europeos. Como conclusión se ha argumentado que la introducción del articulo 201-2 en el Código Penal, es un ejemplo de criminalización excesiva porque: en este caso, el acto, que es inherente a la nocividad social necesaria para la criminalización, no requería la criminalización, puesto que la responsabilidad penal por ello ya ha existido y está ampliamente tipificada en la ley.

Palabras clave: ayuda humanitaria; donaciones caritativas; apropiación indebida de ayuda humanitaria; malversación de fondos; responsabilidad penal por malversación.

Introduction

Throughout its history, humanity has encountered various manifestations of military conflicts, disasters and other extraordinary events. Only in modern times realizing its liability to those affected by such events, global community has learned to cope with their consequences. It was from this collective awareness that the modern understanding of humanitarian aid as a manifestation of solidarity has developed; later on, a block of legal norms designed to regulate such activities has been created.

Today, international humanitarian organizations operating in many countries of the world enjoy recognized authority and are actively supported. We refer primarily to the International Federation of the Red Cross and Red Crescent, the World Health Organization, the United Nations Children's Fund, the World Food Program, "Doctors without Borders", as well as dozens of other funds and organizations of similar profile.

The Russian invasion of Ukraine on February 24, 2022 has led to approximately sixteen million people being either displaced from their homes or struggling to survive in the extreme conditions of the conflict and in urgent need of humanitarian assistance. This emergency has caused serious challenges for the international humanitarian aid system (Issues, 2022). Also, Russia's armed aggression against Ukraine has put on the agenda the need to solve a number of issues related to this event, including the adaptation of national criminal legislation to the conditions and challenges of martial law.

In a short period, more than ten laws were adopted in the emergency mode, designed to improve the mechanism of criminal law regulation of social relations in the relevant sphere. Among other things, based on the Law of Ukraine of March 24, 2022 "On Amendments to the Criminal Code of Ukraine Regarding Liability for Illegal Use of Humanitarian Aid" (hereinafter – the Law of March 24, 2022) the Criminal Code of Ukraine (hereinafter, if no other reservations are made – Criminal Code) has been supplemented by Art. 201-2 "Illegal use of humanitarian aid, charitable donations or gratuitous aid for profit".

Since not only the military, but also ordinary people currently need help, humanitarian aid to Ukraine from the international community is of particular importance. Along with powerful economic and political aid, it has become an important component of support for Ukraine, which generally demonstrates a decent level of management of international humanitarian aid and does everything to increase transparency in this area (Kostin *et al.,* 2022). At the same time, the National Agency for the Prevention of Corruption identifies a number of factors, which can lead to a loss of trust by international donors and a decrease in the amount of humanitarian aid provided to Ukraine.

Among such factors is the lack of a proper response by the state to the facts of the illegal use of humanitarian aid and communication policy to take effective measures to prevent such cases, due to which law enforcement agencies are faced with the issue of monitoring compliance with laws and preventing possible cases of embezzlement and misuse of humanitarian aid as one of the priority tasks under conditions of martial law and armed aggression against Ukraine (Corruption, 2022).

Offenses related to humanitarian aid distribution, including its embezzlement, not only violate provisions of the criminal law, but are also a manifestation of shameful, immoral behavior directed against persons who are already *de facto* in a vulnerable state (because they are victims of a military conflict or other emergency events). The social inadmissibility of such abuses is caused both by assaults on other people's property and by a cynical violation of the fundamental right of recipients of humanitarian aid to receive it.

Based on the decision of the Parliament of Ukraine of September 20, 2022, the Temporary Investigative Commission of the Verkhovna Rada of Ukraine has been established to investigate possible violations of the legislation of Ukraine in the field of receiving, distribution, transportation, storage, use for the intended purpose of humanitarian and other aid, as well as inefficient use of state property, which may be used for temporary accommodation of internally displaced persons as well as provision of other needs of the state. In addition, law enforcement agencies of Ukraine have actively "joined" in combating schemes of illegal use of humanitarian aid, which is delivered from both international and domestic donors. This has led to the formation of a significant body of the practical experience in applying Art. 201-2 of the Criminal Code.

According to the information provided by the Minister of Internal Affairs of Ukraine, today law enforcement officers record the most cases of theft of humanitarian aid in the capital city of Kyiv, as well as in Lviv, Kharkiv and Kirovohrad regions. In most cases offenders' appropriate cars, fuel, medicines, body armor and food products – all items purchased for the army. Moreover, some of the schemes exposed by law enforcement officers have been organized by citizens of the Russian Federation, in particular by creating fictitious "charity" Telegram channels for the purpose of obtaining and then illegally appropriating items of humanitarian aid (Most cases, 2022).

We believe that the law making and law-enforcement experience of Ukraine in terms of criminal law countermeasures against the abuse of humanitarian aid can be potentially useful for other countries, in which armed conflicts or other emergency situations may become factors, which trigger such illegal abuses.

1. Methodology

While working on this research paper, several methods of research have been employed extensively. They include the following. The comparative law method has enabled to research embezzlement statutes in several European jurisdictions and then to compare foreign models with relevant

Ukrainian statutes. Such comparative analyses have revealed that, unlike in Ukraine, there are no specific humanitarian aid embezzlement statutes in European legislation. It should be added that currently the comparative law method is widely used when researching various issues of white-collar crime (Pidgorodynskyi *et al.,* 2021; Reznik *et al.,* 2020).

The system-structural method has been used to describe applicable statutes and their location within the structures of the national Criminal Codes. By referring to this method, components of scientific approaches to understanding problematic issues and ways of developing the "war-related" block of the criminal law of Ukraine in the context of European integration have been discussed.

The formal-legal method has enabled us to analyze in detail the legal meaning of the provisions of regulatory legal acts, which cover operation of charity (humanitarian) foundations as well as distribution of humanitarian aid.

Overall, extensive use of appropriate methodological base has allowed to look deeper into the issues of criminal liability for humanitarian aid embezzlement in Ukraine, even more so in the context of the unprovoked military aggression against this country.

It is worth adding that general principles of criminal law have also remained in focus while working on this research – namely, the principle of legality, the principle of equality of citizens before the law, the principle of humanism, and the principle of justice (Danylevskyi *et al.*, 2020).

2. Recent research and findings

Though being a rather new statute (enacted in March of 2022), the issues of criminal liability for the illegal use of humanitarian aid in Ukraine have been studied, in particular, by A. Aydinyan (2022), O. Kolb (2022), M. Kutsevich (2022), O. Kryshevich (2022), O. Marin (2022), M. Havronyuk (2022), A. Shevchuk and O. Bondaruk (2022). Works by these researchers contain a lot of meaningful and interesting (sometimes controversial) positions regarding the legal analyses of the offense under Art. 201-2 of the Criminal Code, as well as regarding ways of improving the statutory language.

We have also previously addressed some problematic issues of the criminal law characteristics of the offense provided for in Art. 201-2 of the Criminal Code (Dudorov and Movchan, 2022). In particular, we have found out the fallacy of placing this prohibition among the articles of the Criminal Code on liability for economic criminal offenses.

For their part, such scholars from other countries (Ukraine excluded) as G. Corn (2010), E. Engle (2012), B. Jakovljević (1987), J. Lyall (2018), F. Schwendimann (2011), R. Stoffels (2004) and some other have also addressed provisions of international humanitarian aid law in their works. Looking ahead, we note that the works of foreign authors are devoted to various aspects of international humanitarian law, as well as the issues of observance and protection of human rights and fundamental freedoms in the territories of military conflicts as well as in the occupied territories.

Such works do not deal with the abuse of humanitarian aid provided to the local population by international donors, and, even more so, with the criminal law assessment of such abuses. As will be shown below, in other states, particularly in European countries, the issue of illegal use of humanitarian aid practically does not exist, which is indicated by the absence of both relevant criminal law prohibitions and the coverage of such issues in scientific research.

However, from the standpoint of law-making and law-enforcement realities in Ukraine, Art. 201-2 of the Criminal Code requires an in-depth scientific analysis both from the point of view of clarifying its effectiveness and consistency with the provisions of regulatory legislation and other criminal law prohibitions, and in the context of using the comparative method.

3. Results and discussion

We will start with a brief reference to the international law aspects, which partially relate to the problem under review. Nowadays, humanitarian aid can be provided both at the national and international levels; this also applies to legal norms, which regulate humanitarian activities. International humanitarian assistance becomes necessary where a separate state is involved in a humanitarian mission and faces difficulties in individually assuming this responsibility, and when it believes that coordinated international actions are able to successfully complement national efforts, while recognizing all components of the state sovereignty (Jakovljević, 1987).

Based on the norms of international law, the state must ensure the basic needs of the population living on its territory. This thesis stems primarily from the well-established principle of state sovereignty enshrined in international law. In particular, Resolution 46/182 (1991) of the UN General Assembly (Guiding Principles of Humanitarian Assistance) contains the following requirement: each state is obliged to take care of the victims of natural disasters and other emergency situations, which occur on its territory. Thus, the affected state plays the main role in initiating,

organizing, coordinating and implementing humanitarian aid on its territory (UNGA, 1991).

Humanitarian aid can be provided if it is prescribed by a treaty and only under the conditions specified in such a treaty, as is the case, for example, in armed conflicts. In particular, the Geneva Conventions for the Protection of War Victims of August 12, 1949 and Additional Protocols to these conventions dated June 8, 1977 are international documents, which create imperative obligations for the participating countries to provide humanitarian assistance and establish specific conditions for such assistance.

With reference to Art. 23 of the Geneva Convention on the Protection of the Civilian Population in Time of War of August 12, 1949, each High Contracting Party allows the free passage of all parcels with medicines and sanitary materials, as well as items necessary for the performance of religious rites, which are intended exclusively for the civilian population of the other High Contracting Party, even if that Party is a hostile one.

In accordance with Part 1 of Art. 18 of the Additional Protocol to the Geneva Conventions of August 12, 1949, relating to the Protection of Victims of Armed Conflicts of a Non-International Character (Protocol II), of June 8, 1977, relief societies located in the territory of the High Contracting Party, such as the Red Cross Crescent, Red Lion and Sun), may offer services to fulfill their traditional functions for victims of an armed conflict.

If the local civilian population suffers extreme hardship due to the insufficient supply of essentials for its survival, such as food and medical supplies, then with the consent of the High Contracting Party concerned, operations to provide assistance to the civilian population are carried out, which are of an exclusively humanitarian and impartial nature and are carried out under any unfavorable difference (Part 2 of Article 18). Obviously, various issues of logistics and transport related offenses, which include delivery of humanitarian aid items, also can rise as a practical matter (Minchenko *et al.,* 2021).

As the Swiss author F. Schwendimann observes, today the number of humanitarian organizations has increased significantly. This means that one needs to coordinate one's actions even more during the implementation of humanitarian projects. In addition, in practice, the boundaries between military, political and humanitarian operations often become blurred – such processes are intertwined. If a party to the conflict or part of the local population begins to use the humanitarian mission for its own political purposes, access to those who really need help can be seriously hampered. What is more: volunteers and representatives of humanitarian organizations on the ground may themselves become objects of armed attacks or other aggressive actions (Schwendimann, 2011).

The Spanish commentator R. Stoffels points out that modern approaches to understanding the mission of humanitarian aid during armed conflicts create a confusing picture. Currently, there are many public and private humanitarian organizations operating in the world.

Their ongoing activities contribute to saving lives and alleviating the suffering of those, who do not take part in armed conflict and those who are deprived of the basic life necessities because of hostilities. Organizations responsible for compliance with international humanitarian law and international human rights, and under certain circumstances, persons responsible for fighting threats to international peace and security, also take serious measures when parties to the conflict impede efforts to provide humanitarian assistance (Stoffels, 2004).

We will not further emerge into the international legal aspects of the issue of humanitarian aid, given the other, mainly "national law" direction of our research, as stated in the title of this paper.

Turning to Ukrainian legislative realities, we note that in Art. 1 of the Law of Ukraine of October 22, 1999 "On Humanitarian Aid" (hereinafter – the Law of October 22, 1999) reflected such a broad approach, because humanitarian aid is defined here as targeted free aid not only in monetary or in-kind form, in the form of non-refundable financial assistance or voluntary donations, but also in the form of performing certain works or providing services.

However, since within the text of Art. 201-2 of the Criminal Code of Ukraine (hereinafter – Criminal Code) only "goods (items) of humanitarian aid" and "such property" appear, non-targeted use of humanitarian aid, which is provided in the form of performing works or providing services, does not form part of the criminal offense provided for in Art. 201-2 of the Criminal Code. This applies to free aid (a type of humanitarian aid), which can also be provided in the form of work and services.

Hence, there is inconsistency between the analyzed criminal law prohibition and the prescriptions of the regulatory legislation, and therefore, a violation of the principle of systemic and legal consistency of the criminalization of the act. Another similar inconsistency must be stated due to the fact that Part 1 of Art. 201-2 of the Criminal Code refers to charitable donations and at the same time does not mention those, which appear in the Law of Ukraine of July 5, 2012 "On Charitable Activities and Charitable Organizations" (hereinafter – the Law of July 5, 2012) along with charitable donations, charitable grants (targeted assistance in the form of currency values, which must be used by the beneficiary within the period determined by the benefactor).

On the one hand, approach according to which the use or disposal of charitable grants for the purpose of obtaining profit can be qualified under

Art. 201-2 of the Criminal Code, indicates the disclaimer made in Part 2 of Art. 6 of the Law of July 5, 2012: provisions on charitable donations apply to charitable grants, unless otherwise specified by law. On the other hand, such approach can be criticized as the one violating the prohibition on the application of the law on criminal liability by means of analogy (Part 4 of Article 3 of the Criminal Code).

Failure of the title of Art. 201-2 of the Criminal Code is such that it does not cover all possible forms of committing a criminal offense for which this article provides liability. As an option, the improved title of this article of the Criminal Code could be like this: "Illegal actions regarding humanitarian aid, charitable donations or free aid", since the construction "illegal actions..." has already been successfully tested in the names of articles 169, 200, 313, 388 of the Criminal Code. At the same time, we would like to note that under Art. 201-2 of the Criminal Code such actions, for example, cannot be addressed as destruction or damage of the relevant property (in such cases, the "general" articles of the Criminal Code dedicated to criminal offenses against property are applicable), violation of the procedure for writing off goods (items) of humanitarian aid, which have a certain term of operation (here, in particular, articles of the Criminal Code on criminal offenses in the field of official activity should be used).

Since the untargeted use of humanitarian aid, charitable donations, other than the disposal of such property for the purpose of obtaining profit, does not form the criminal offense under review, *de lege ferenda* Art. 201-2 of the Criminal Code (provided the expediency of its future existence or that of its analogue) should provide for liability, among other things, for the unintended use of goods without signs of theft, which are currently the subject of the analyzed offense.

It should be understood that criminal liability for the combined use of humanitarian and gratuitous aid, charitable donations, and disposal of such property for the purpose of obtaining profit existed even before the adoption of the Law of March 24, 2022. In other words, introduction of Art. 201-1 into the Criminal Code can be characterized as excessive criminalization.

The result of the desire to "establish criminal liability" for actions that were previously recognized as criminally illegal was the appearance of a special norm in the Criminal Code (Article 201-2), which represents inappropriate humanization of criminal liability. It is another matter that today the shortcomings inherent in the punishment of the researched offense are eliminated by incriminating part 3 of Art. 201-2 of the Criminal Code on the grounds of committing acts during martial law.

We believe that in the vast majority of cases actions listed in Art. 201-2 of the Criminal Code, in its absence would be recognized under Ukrainian law as embezzlement, and more specifically, such "classical" encroachments

on property as: 1) embezzlement, when someone else's property ceases to exist in its previous physical form; embezzlement can take the form of consumption of goods and material values, spending money, alienation of property in one way or another – its sale, gift, exchange, loan or loan repayment, etc.; 2) appropriation – turning to one's own benefit or to the benefit of other persons the property which is in the legal possession of the culprit, having been entrusted to him or handed over to him; in case of appropriation, the property retains its existence in physical and tangible form; 3) taking possession of someone else's property by abusing official position (Art. 191 of the Criminal Code).

If the elements of this criminal offense could not be seen in what was committed (in particular, due to the absence of a special subject), then almost all actions specified in the current wording of Art. 201-1 of the Criminal Code, subject to the establishment of illegality and gratuity, would receive an assessment on the basis of other articles of the Criminal Code on liability for criminal offenses against property. Moreover, these would be both provisions on embezzlement – encroachments related to the conversion of someone else's property to one's own benefit or the benefit of other persons, and Art. 192 of the Criminal Code "Causing property damage by deception or abuse of trust" (the criminal offense provided for by this article of the Criminal Code, in particular, may differ from theft or other illegal use of someone else's property (including entrusted property), as well as disposing of it with the purpose of obtaining profit.

Law enforcement practice confirms our thesis that we are dealing with excessive criminalization in this case. For example, it has been stated in the decision of the investigating judge of the Rivne city court of the Rivne region on the application of a preventive measure that a person has been notified of the suspicion of committing a crime under Part 3 of Art. 201-2 of the Criminal Code.

It was established that this person, while having the intention of selling humanitarian aid goods in a significant amount for the purpose of obtaining profit, illegally sold to another person four passenger cars for the total amount of UAH 666,533.29. These cars were imported to the territory of Ukraine in the form of humanitarian aid in accordance with the requirements of the resolution of the Cabinet of Ministers of Ukraine dated March 1, 2022 No. 174 "Some issues of the passage of humanitarian aid through the customs border of Ukraine under martial law" (Decision, 2022).

Next, turning to the relevant experience of individual European states, we will try to identify criminal law statues, which are similar to Art. 201-2 of the Criminal Code of Ukraine.

According to Art. 226 of the Criminal Code of the Federal Republic of Germany any person who abuses the authority granted to him by law or legal agreement to dispose of the assets of another person or enter into other binding agreements with such assets with another person, or any person who violates his duty to protect the property interests of another person, which are entrusted to him on the basis of the law, through the exercise of authority, legal transaction or fiduciary relations, and thus causes damage to the person for whose property interests he was responsible, shall be punished by imprisonment for a term of up to years or a fine (German Criminal Code, 1998).

In this rather cumbersome wording, if we refer to Ukrainian criminal law terminology, we are talking about the appropriation (waste) of someone else's property which was entrusted to a person, that is about the encroachment described in Art. 191 of the Criminal Code of Ukraine. At the same time, we were not able to identify provisions in the Criminal Code of the Federal Republic of Germany, which would prohibit the appropriation and embezzlement of humanitarian aid and the content of which would be similar to the content of Art. 201-2 of the Criminal Code of Ukraine.

According to § 1 of Art. 284 of the Criminal Code of Poland, appropriation of someone else's movable property or property rights is punishable by imprisonment for a term of up to 3 years. At the same time, misappropriation of someone else's movable property entrusted to a person is punishable by imprisonment for a term of 3 months to 5 years (§ 2 of Art. 284 of the Criminal Code of the Republic of Poland) (Polish Penal Code, 1997).

As for foreign (non-Polish) researchers, it is quite difficult for us to comprehend why the Polish legislator has put the element of trust as the basis for distinguishing between the two above-mentioned types of appropriation of another's property. However, without plunging deeper into the intricacies of qualification under Art. 284 of the Criminal Code of Poland (due to a different focus of our research), we note that this article is also reminiscent, same as the aforementioned German ban, of Art. 191 of the Criminal Code of Ukraine.

Based on Art. 372 of the Criminal Code of Hungary, cases where a person illegally appropriates or disposes of a thing entrusted to him as his own, are punished by law. At the same time, such a crime-forming feature as embezzlement in an emergency situation and embezzlement in commercial dimensions is singled out (Criminal Code of Hungary, 2012). The meaning of the element of emergency situation generally corresponds to the content of the aggravating element "in conditions of war or a state of emergency" provided for in part 4 of Art. 191 of the Criminal Code of Ukraine.

The Hungarian legislator does not consider it necessary to single out the norm devoted to embezzlement or other illegal actions with items

of humanitarian aid or any specially defined items – the link between punishment and the amount of damage caused by embezzlement is established in different parts of Art. 372 of the Criminal Code of Hungary.

Comparative data on humanitarian aid embezzlement statutes in several European jurisdictions is presented in the Figure 1.

	Country	General Embezzlement Statute	Humanitarian Aid Embezzlement Statute
1.	Germany	Art. 226, Criminal Code of the Federal Republic of Germany	No
2.	Hungary	Art. 372,Criminal Code of Hungary	No
3.	Poland	§ 1 of Art. 284, of the Criminal Code of Poland	No
4.	Ukraine	Art. 191, Criminal Code of Ukraine	Art. 201-2, Criminal Code of Ukraine

Fig. 1. General embezzlement statutes and humanitarian aid embezzlement statutes in various European jurisdictions. Source: prepared by the authors.

Therefore, we were not able to identify an analogue of Art. 201-2 of the Criminal Code of Ukraine in the criminal law of the above-mentioned European countries. This once again leads us to the conclusion that this ban is recognized as a kind of unjustified casuistic manifestation of *ad hoc* criminal law-making.

Taking into account the fact that in the absence of Art. 201-2 in the Criminal Code illegal actions regarding humanitarian aid, charitable donations or free aid would be qualified mainly according to the relevant parts of Art. 191 of the Criminal Code, we consider it expedient that the value criteria characterizing the subject of the analyzed criminal offense are clearly overstated and over-specified in paragraph 2 of the footnote to Art. 201-2 of the Criminal Code. This brings it into line with quantitative indicators specified in clauses 2, 3 and 4 of Art. 185 of the Criminal Code, which relate to criminal offenses against property and which also apply to Art. 191 of the Criminal Code.

The "purpose of obtaining profit" element of the offense, which in the structure of Part 1 of Art. 201-2 of the Criminal Code "replaces" the element of illegality indicated in the title of this article, as ambiguous. On the one hand, the wording "for the purpose of obtaining profit" is borrowed (literally) from the regulatory legislation (Article 12 of the Law of October 22, 1999). On the other hand, such legislative step can play a bad joke in practice.

The fact is that the normative indication of the purpose of obtaining profit complicates incrimination of Art. 201-2 of the Criminal Code in cases where the illegal disposition of the property specified in this article of the Criminal Code will take the form of, for example, donation, transfer to repay a debt, compensation for damages or as a payment for work performed or services rendered. In practice, there are also quite a few cases when humanitarian aid is used in one's own (personal) interests or in the interests of third parties, without receiving profit. The pressing nature of the indicated problem increases because of a potentially restrictive understanding of the concept of "profit" (the difference between the amount of income and the amount of incurred expenses).

At the same time, we do not rule out that in practice the "purpose of obtaining profit" will be interpreted as broadly as possible – as receiving any (property or even non-property) compensation for the property illegally disposed of by the guilty party, which will in turn increase the scope of efforts by an attorney. We believe that the reference to the "purpose of obtaining profit" in the title and disposition of Part 1 of Art. 201-2 of the Criminal Code does not meet the needs of law enforcement practice. It also significantly complicates the process of proof in criminal proceedings. Therefore, we propose to exclude the indication of the specified purpose from Art. 201-2 of the Criminal Code.

Considering the fact that the illegal use of humanitarian aid often involves implementation of complex criminal schemes, in which representatives of the authorities, law enforcement officers, military personnel, etc. are involved, *de ledge ferenda* the corruption-related nature of the investigated criminal offense cannot be ignored. Unfortunately, corruption remains among the major threats to the national security of Ukraine – while penetrating into all spheres of public life, it damages the most important social values of both the state as a whole and its individual citizens in particular (Vozniuk *et al.*, 2021).

Hence, we suggest replacing the construction "using official position", which is used in Part 2 of Art. 201-2 of the Criminal Code, with another wording – "by abusing official position". In the future, subject to the will of the legislator, this will make it possible to classify such a criminal offense as a corruption offense, for which it will be necessary to amend the footnote to Article 45 of the Criminal Code, which lists corruption offenses.

In our opinion, within the improved Art. 96-3 of the Criminal Code, the commission of a criminal offense by an authorized person on behalf of and in the interests of a legal entity, provided for in Article 201-2 of this Code, must be recognized as grounds for applying criminal law measures to the legal entity. Hence, additional mechanisms of criminal law protection of relations will be created, thus ensuring the provision of humanitarian aid, charitable donations or free assistance.

Conclusions

Therefore, the introduction of Art. 201-2 in the Criminal Code can be characterized as an example of excessive criminalization: in this case, we are talking about an act, which is inherent in the social harmfulness necessary for criminalization, but which did not require criminalization, since criminal liability for it has already existed. Criminal laws of some European countries, in which there are no analogues of the analyzed criminal law prohibition, additionally attest to the fact that, there are reasons to regard Art. 201-2 of the Criminal Code as a manifestation of unjustified casuistry of the criminal law and excessive criminalization. The negative consequences of the latter include: violation of the principle of economy of criminal law repression; artificial creation of unwanted collision between criminal law norms; the emergence of paradoxical situations in which the same act entails application of significantly different criminal law means.

At the same time, it is obvious that during the war, when abuse of humanitarian aid is particularly unacceptable and causes significant public outcry, the Ukrainian legislator is unlikely to take such a drastic and unpopular step as the exclusion of Art. 201-2 from the Criminal Code.

Therefore, members of jurisprudence community should focus their efforts on consideration of debatable issues related to the interpretation, application and improvement of Art. 201-2 of the Criminal Code. We believe that the latter needs improvement at least in terms of: 1) clarification of the official title: the proposed title of Art. 201-2 of the Criminal Code – "Illegal actions regarding humanitarian aid, charitable donations or free aid"; 2) exclusion of words "for the purpose of obtaining profit" from the title and disposition of Part 1 of Art. 201-2 of the Criminal Code; 3) adjustment of the value criteria, which characterize the subject of the analyzed (actually "proprietary") criminal offense and specified in paragraph 2 of the footnote to Art. 201-2 of the Criminal Code, with the notes specified in clauses 2, 3 and 4 of Art. 185 of the Criminal Code with quantitative indicators relating to criminal offenses against property.

In addition, by using construction "by abuse of official position" in the improved Part 2 of Art. 201-2 of the Criminal Code and making amendments to the note of Article 45 of the Criminal Code, the idea of classifying relevant manifestations of the illegal use of humanitarian aid among corruption criminal offenses could be implemented.

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Legal tools and prospects of state regulation of the quality management system in the sphere of tourism

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Abstract

Using an analytical and documentary methodology based on the review of high-impact scientific literature, the objective of the article was to develop the legal-conceptual principles of the quality management system in the field of tourism. Everything indicates that, product quality assurance means a set of legal and planned measures of a systematic nature that create the necessary conditions for the implementation of each stage of the quality concept, so that, the product meets the quality requirements of the market segment. One of the main principles of creating a concept of quality management in the field of tourism is a correct definition of the concept of quality of tourism services in the broader framework of the legal regulation of the system of tourism management. The obtained results allow us to conclude that the tourism industry is one of the promising areas of the development of global economic relations, and in the context of the transformation of the economy of a country, increasing the efficiency of the functioning of this industry acquires special relevance for the achievement of social welfare.

Keywords: tourism management; quality management system in the field of tourism; state regulation; sustainable development; legal tools.

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Herramientas legales y perspectivas de la regulación estatal del sistema de gestión de la calidad en el ámbito del turismo

Resumen

Mediante una metodología analítica y documental basada en la revisión de literatura científica de alto impacto, el objetivo del artículo fue desarrollar los principios jurídicos-conceptuales del sistema de gestión de la calidad en el ámbito del turismo. Todo indica que, la garantía de calidad del producto significa un conjunto de medidas legales y planificadas de carácter sistemático que crean las condiciones necesarias para la aplicación de cada etapa del concepto de calidad, de modo que, el producto cumpla los requisitos de calidad del segmento de mercado. Uno de los principios primordiales de la creación de un concepto de gestión de la calidad en el ámbito del turismo es una definición correcta del concepto de calidad de los servicios turísticos, en el marco más amplio de la regulación jurídica del sistema de gestión del turismo. Los resultados obtenidos permiten concluir que la industria del turismo es una de las áreas prometedoras del desarrollo de las relaciones económicas mundiales, y en el contexto de la transformación de la economía de un país, el aumento de la eficiencia del funcionamiento de esta industria adquiere especial relevancia para el logro del bienestar social.

Palabras clave: gestión turística; sistema de gestión de calidad en el ámbito del turismo; regulación estatal; desarrollo sostenible; herramientas legales.

Introduction

Problem statement

Providing consumers with high-quality tourist services in domestic and international markets should contribute to the formation of the state's image as a country with unique tourism opportunities. The quality of tourist services should be considered as a set of properties of travel services, processes and conditions of service to satisfy stipulated or anticipated needs of the consumers of the services from all components of a complex tourist product.

Recent research and publications analysis

Such scientists as O. Apilat, L. Baumgarten, M. Augustyn, A. Haghkhah, K. Koch, M. Samuel and others have made a significant contribution to

the study of the theoretical and practical foundations of the development and classification of the quality management system. Analysis of scientific research and scientific-methodological works by V. Baieva, I. Bakhova, I. Antonenko, T. Mirzodaeva, and others made it possible to identify the main components characterizing the development of medical tourism and its main components in the country of study. At the same time, a significant part of the issues related to the declared topic remain outside the attention of researchers and require further research and the development of a structured model of the quality management system in the tourism sector.

1. Methods

The purpose of the article is to develop conceptual legal principles of the quality management system in the field of tourism. To do this, it is necessary to solve the following problems: to determine the indicators of the quality of a travel service, to develop a model of the quality management system in the field of tourism according to the ISO series 9000 standards, the principles of TQM, and to study the main criteria of the quality of an integrated travel service.

2. Results

Most often, only elements of the quality management system are used at enterprises of the tourism industry, and there is no systematic approach. Creating a quality management system requires a strategic management decision. The development and implementation of quality management systems of entities of the tourism industry are influenced by strategic goals of the enterprises, the market situation, the needs of consumers for the provision of quality services as well as other specific factors (Opolchenova, 2006).

On the basis of the authors' previous scientific developments, the following main indicators of the quality of a travel service can be determined: purpose, ethics, comfort, technical quality, reliability, uniformity, exclusivity, environmental friendliness, safety, and the like. The entire set of indicators of the quality of a travel service can be grouped into main groups that are presented in Figure 1.

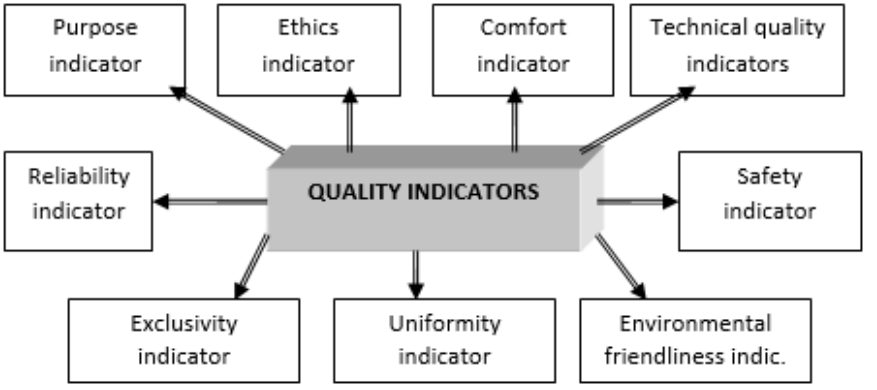

Figure 1. Indicators of the quality of a travel service.

Source: prepared by the authors.

The indicators of the purpose of a travel product characterize its functional properties, for the implementation of which it is intended, and determine the scope of its application. Purpose indicators describe the components of a travel service, its expected effect, and are one of the main areas of evaluating the activities of a travel organization. Purpose indicators should determine the degree of compliance of the proposed service with consumer expectations: indicators of consumer efficiency, composition of the proposed product, a set of quantitative indicators (journey duration, its route, schedule, etc.).

In this group of indicators, tourism companies cannot compete with each other. When a successful product appears (according to external characteristics), other organizations quickly adopt the offer. It can be concluded that the compliance of a travel product with the requirements of purpose indicators is not a subject of competition. It is a necessary condition for the start of competition, that is, the entry of travel enterprises into this competitive environment. The behavior of a travel company in this environment is determined by other indicators of product quality (Mohamed, 2007).

Indicators of ethical quality characterize public opinion, the opinion of tourists regarding the quality of tourist services and the possibility of achieving the goal of the trip (Kudla, 2012). The value of the proposed travel service includes the following aesthetic components: harmony, integrity of the coverage of the travel program, compliance with social expectations, level of skill of the service personnel.

Ethical indicators in general can be rate as social characteristics that express the value of the offered service (Shvets, 2005). The group of indicators that determine the ethical quality of a travel service is subjective in nature, but it is a significant addition to a balanced system of indicators of the quality of a tourist product.

As a rule, the group of ethical indicators of the quality of a travel service is divided into two subgroups: rationality and informativeness. The first subgroup includes indicators characterizing the functional compliance of an integrated tourist product and the integrity of the perception of the proposed program. The second subgroup of indicators includes the elements of an integrated tourist product: originality, relevance of primary information (Hudson *et al.*, 2004).

The group of indicators of ethical quality is of decisive importance in ensuring the competitiveness of a tourist product and the tour operator. Compliance of a tourist product with ethical quality indicators requires compliance with high executive, technological discipline and qualification of the personnel and the appropriate organizational culture of the travel enterprise (Komppula, 2006).

The group of comfort indicators includes anthropometric, physiological, psychological, hygienic and other indicators that are of great importance for consumers of an integrated tourist product. The requirements according to these indicators are included in the composition of a tourist product, its functional characteristics, elements of the construction of vehicles, equipment and interior of hotels and restaurants, etc.

Anthropometric indicators characterize the compliance of equipment, interior, rooms with the size and shape of human body and its individual parts. Physiological and psychological indicators of a tourist service are more closely related to the quality of excursions, their duration and the provision with material resources for recreation and other needs of tourists. Very often, specialists justify the competitiveness of their tour product by the presence of additional excursions, not taking into account an increase in the physical and psychological burden on the tourist (Shvets, 2005).

The group of technical quality includes patent law indicators (availability of a license, certification of services), compliance of service conditions with sanitary standards, compliance of accommodation categories with the level of comfort of the hotel (Kuzyk, 2011). With this group of indicators, groups of indicators characterizing reliability, environmental friendliness and safety are organically connected.

Reliability indicators include guaranteed compliance with the terms of the contract between a tour operator and a consumer of the tourist product, the reliability of technical and other means used in the implementation of tourist services. Reliability indicators cannot be contrasted with other

quality characteristics; however, without their observance, all other service quality indicators lose their meaning. On the other hand, reliability becomes a true indicator of quality only if it is combined with other characteristics of tourist services (Butnary, 2009).

Safety indicators determine the degree of risk to life and health of a tourist route, a type of tourist services, and the quality of measures to neutralize them. Safety factors in tourism are classified by: injury safety; environmental impact; fire safety; biological influence; psychophysiological load; radiation and chemical exposure safety; industrial dustiness and gas pollution; specific risk factors. As a rule, tourism within the country provides higher security in comparison with trips to countries with significant cultural and religious differences (Balashova, 2009).

Groups of indicators characterizing the uniformity and exclusivity of an integrated tourist product determine the degree of use of standardized, unified, original initial services in a specific service.

Standardized services include services performed according to international, state and industry standards. Uniform services include services that are provided according to enterprise standards and are used in more than two tourist programs. The main indicators of uniformity are the coefficient of use and the value coefficient of use:

- the coefficient of use by component parts, which is determined according to the formula:

$$Cou. = \frac{N_{pc.}}{N_{pc.} - N_{pc.e.}} \cdot 100\,\% \qquad (1)$$

where N *pc.* is the total number of initial composite services in the final tourist product;

N *pc. e.* is the number of exclusive components of initial services.

- the value coefficient of use is determined according to the formula:

$$Coc. = \frac{C_{tot.} - C_{e.}}{C_{tot.}} \cdot 100\,\% \qquad (2)$$

where C*tot.* is the total cost of a service;

C*e.* is the cost of exclusive services included in the final product.

Uniformity indicators testify to a high quality of a tourist product, the smoothness of the production process of service implementation, and the efficiency of the company’s production system (Baiev, 2013).

Exclusive services include services that are offered exclusively for this integrated tourist product. Exclusivity is characteristic of the segment of high-value tourist programs that do not fit into the framework of the standard offer. Exclusivity indicators reflect the uniqueness and individuality of a given tourist product (Komppula, 2006).

Environmental indicators characterize the state of the environment in the regions of tourist travel. Currently, considerable attention is paid to ecological tourism, and tourist flows to ecologically clean regions have positive dynamics (Pazek and Rozman, 2010).

Indicators of all established groups of the quality of a tourist service are ensured by the personnel of various entities of tourist activity, which combine their efforts in the final product, at the following stages of its life cycle: marketing research, design of a new tourist service, technological preparation of production, production (integration) of the service, control, promotion and sale in the market, and customer service (Baiev, 2012).

A high quality integrated tourism product can be provided by a travel enterprise with a sufficient level of general management and personnel management.

A quality system is understood as a set of organizational structure, responsibilities, methods, processes and resources necessary for the implementation of general quality management at a tourism organization.

The quality management system is intended for implementation at tourist enterprises in order to ensure the quality of work and continuous control of the compliance process of service provision. In most countries, tourism enterprises are not certified based on the QMS (Quality Management System). One of the reasons that is an obstacle to the implementation of the QMS is the lack of a developed organizational and economic mechanism for the implementation of quality management systems at travel enterprises.

In accordance with international standards, any system aimed at ensuring the quality of services must meet a set of interacting and complementary requirements.

Most often, tourism industry enterprises use only elements of a quality management system in the absence of a systematic approach. Creating a quality management system requires a strategic management decision. The development and implementation of a quality management system of a tourism industry entity (TIE) is influenced by strategic goals of the enterprise, the market situation, the needs of consumers for the provision of quality services and other specific factors.

Summarizing their own scientific research and that of scientists on quality management and quality management directly at enterprises of the tourism industry, the authors developed a model of a quality management

system in the field of tourism (Figure 2). The main structural elements of a QMS (Quality Management System) in the field of tourism are quality management of tourism industry entities and the quality of tourist services.

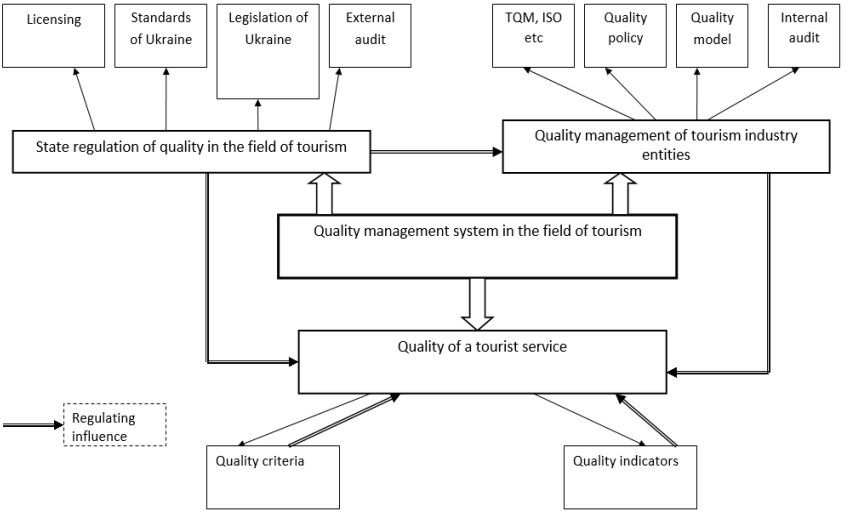

Figure 2. Model of a quality management system in the field of tourism.

Source: prepared by the authors.

Let us consider the main elements of the model of a quality management system in the field of tourism, which include state regulation of quality in the field of tourism, quality management of tourism industry entities and quality of a tourist service.

The leading role in state regulation of quality in the field of tourism is played by the country's legislation, which is the main factor in regulating relations in the field of product/service quality assurance.

External audit in quality management includes management actions aimed at ensuring compliance of tourism industry entities with licensing requirements of Ukraine and international standards.

Licensing means issuing, reissuing and canceling licenses, issuing duplicate licenses, monitoring licensees' compliance with license conditions, etc. In the licensing process, certain licensing conditions and requirements for licensees are provided, which provides for control over the quality of services.

Quality management of TIEs should be understood as a combined component of several principles and quality systems, such as principles of TQM (Total Quality Management), ISO 9000 series standards, quality policy and implementation of a quality model at an enterprise as well as independent expert quality assessment - internal audit.

The ideology of the Total Quality Management system -- TQM, which includes total quality management, quality assurance, quality policy, quality planning and quality improvement, most effectively meets the demands of the consumer market. In order to implement TQM at an enterprise, it is necessary to carry out many different transformations that will affect not only management processes, but also the mentality, attitude to everything that happens on the part of all employees without exception. The technology of a TQM system is represented by the ISO 9000 series international standards.

ISO 9000 series is a series of international standards describing the requirements for quality management systems of organizations and enterprises. The ISO 9000 series standards emphasize continuous monitoring by the organization of the requests and expectations of the consumers for their full satisfaction. However, the ISO 9000 series international standards establish neither a list of quality criteria and indicators, nor procedures and methods for their evaluation, nor normative values of service quality indicators.

In addition to external audit by state authorities and international organizations, quality management of TIEs involves the implementation of an internal audit system. A quality audit is a systematic and independent assessment of a company's quality, which can be subdivided into audits of: quality system; process; service; product (Opolchenova, 2006).

The above-mentioned elements of quality management at enterprises of the tourism industry indirectly affect the quality of tourist services.

The quality of tourist services is the most important factor in successful operation of any travel company, which ensures a protected position in the competitive environment and a high share in the market of tourist services (Mangion *et al.*, 2005).

The model of a quality management system in the field of tourism includes the third structural element: the quality of a tourist service (Figure 2). The quality of a tourist service is characterized by the totality of the components of the quality of all services provided and the culture of providing the tourist service. The quality is expressed through a system of indicators reflecting various types of tourist service activities.

Management of the quality of tourist services is a process that includes identifying the nature and scope of customer needs, assessing the actual level

of quality of the tourist services, developing, selecting and implementing measures to ensure and control the planned level of quality.

In order to meet the needs of consumers, an integrated tourist service should provide for high-quality provision of its main components (Figure 3). The main problem of high quality travel service is the choice of service providers that make up the tour product by the tour operator.

Almost no travel enterprise is able to independently organize a tour, provide its customers with all the necessary means of transport, provide accommodation, organize catering, etc. For this, appropriate agreements are usually concluded with specialized enterprises that provide the above missing links in comprehensive service (Srivastava *et al*., 2012). Such entities of the tourism industry include organizations that provide accommodation, food, provision of specific and exclusive services, carry out tourist transportation, provide tourist support and information support services, etc.

Thus, a tourist enterprise in the market does not act in isolation, but it is rather surrounded by and under the influence of various factors and subjects that make up its external environment. The relationships between environmental subjects and a tourist enterprise are diverse and mutually dependent; by the nature of their actions, they can have a direct impact on the quality of its integrated tourist product and the competitiveness of the tourist enterprise on the tourist market.

It is advisable to use the proposed quality criteria of an integrated tourist service in managing a tourist company when evaluating the quality of a tourist product. The universal SERVQUAL technique or its improved version SERVPERF is used to determine quantitative evaluation parameters. They provide an opportunity to assess the quality of an integrated service from the point of view of a consumer of the tourist product. In addition to the mentioned method, the proposed quality criteria of an integrated tourist service can be used in calculation according to the method of the Customer Satisfaction Index (CSI), developed by specialists of the Stockholm School of Economics. This index is calculated based on the method of personal interviews (Kovalenko, 2010). The indicators shown in Figure 3 make it possible to use this quantitative method in managing a travel company.

In recent years, separate scientific works have appeared in the international literature, which analyze the influence of the state of the infrastructure and resources of tourism on the possibility of providing a high-quality integrated tourist product. In the analysis of the competitiveness of tourism and travel, conducted annually by the World Economic Forum, the following quality indicators are considered: the quality of air, rail and land transport networks, the quality of port infrastructure, the quality of roads, the quality of the natural environment, etc.

However, in the literature available to us, no publication was found devoted to the analysis of the infrastructure and resources of the tourism sector of many countries, especially those of South America, the African continent and most of the Asian countries, from the perspective of the industry's ability to provide high quality tourism services.

Conclusions

Theoretical and methodological analysis of the modern paradigm of quality management allows us to conclude that quality improvement acts as a leading condition for the intensification of economic development, an increase in the efficiency of production processes and an increase in labor productivity, as well as for ensuring competitiveness in the global and domestic market. The problem of quality in most countries with a developed economy is considered as a problem that has a national nature. This approach is universal, has no alternative and allows the application of basic theoretical-methodological and applied principles developed by scientists in the formation of a quality management system in the tourism sector.

The research of this paper made it possible to propose a model of a quality management system in the field of tourism, which has three main structural elements: state regulation of quality in the field of tourism; quality management of tourism industry entities and the quality of tourist services. Quality management of tourism industry entities is implemented through the following tools: enterprise quality policy; quality model, voluntary certification according to ISO standards, implementation of TQM principles and internal quality audit. The quality of a tourist service is implemented through quality criteria and indicators.

This publication singles out and characterizes the concept of the system of criteria and indicators of the quality of tourist services. It is substantiated that the system of quality indicators of a tourist product includes purpose indicators; ethical and environmental indicators; indicators of comfort, technical quality, reliability, exclusivity, uniformity and safety. The above-mentioned indicators are interconnected, mutually conditioned and ensured by the personnel of various subjects of the tourism industry, whose actions are distinguished administratively, geographically and in time. Promptly received and processed information based on the above indicators is an effective tool for managing the quality of a complex tourist product.

The system of quality criteria for an integrated tourist service, which consists of a set of quality systems for hotel services, food services, transport services, tourist and excursion services, information support, and the assortment of specific services, has been concretized. It is expedient

to use the proposed quality criteria of an integrated tourist service in the development of an economic and organizational mechanism for quality management in the field of tourism, the implementation of an external audit of the activities of tourism industry entities and the management of tourism firms.

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Personality characteristics of the participant in an armed or paramilitary unit not provided for by law

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Abstract

Through the documentary-based scientific method, the article is devoted to the study of the criminological features of the personality of a participant of a paramilitary or armed unit (ULPAU) not provided by law. In addition, the formation of his criminological portrait (criminal profile) on the basis of socio-psychological and legal classification features is discussed. The value of the determined parameters of the offender's characteristics for the formation of negative social and psychological attitudes has been analyzed and their impact on subsequent criminal activity was considered. A number of conclusions of theoretical and applied character have been formulated, among which the following characteristic features of the criminological portrait (criminal profile) of a participant of the ULPAU: man aged 25-35 years who has Ukrainian citizenship and is Ukrainian by nationality, urban resident, single, childless, has general secondary or vocational education, is unemployed, has not been previously convicted; being a member of the armed unit he guarded the checkpoints and the area of location of the units.

Keywords: paramilitary or armed unit; armed conflict; armed unit; criminal profile; crime prevention.

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Características de personalidad del participante en una unidad armada o paramilitar no prevista por la ley

Resumen

A través del método científico de base documental, el artículo está dedicado al estudio de los rasgos criminológicos de la personalidad de un participante de una unidad paramilitar o armada (ULPAU) no prevista por la ley. Además, se discute la formación de su retrato criminológico (perfil criminal) sobre la base de rasgos de clasificación socio-psicológicos y legales. Se ha analizado el valor de los parámetros determinados de las características del delincuente para la formación de actitudes sociales y psicológicas negativas y se consideró su impacto en la actividad delictiva posterior. Se han formulado una serie de conclusiones de carácter teórico y aplicado, entre las que destacan los siguientes rasgos característicos del retrato criminológico (perfil delictivo) de un participante de la ULPAU: hombre de 25-35 años que tiene la ciudadanía ucraniana y es ucraniano de nacionalidad, residente urbano, soltero, sin hijos, tiene estudios secundarios generales o de formación profesional, está desempleado, no ha sido condenado anteriormente; siendo miembro de la unidad armada vigilaba los puestos de control y la zona de ubicación de las unidades.

Palabras clave: unidad paramilitar o armada; conflicto armado; unidad armada; perfil criminal; prevención del delito.

Introduction

The eight years running, an armed conflict is taking place in Ukraine, conducted by unprovided law paramilitary or armed unit by (farther – ULPAU) and supported by the Government of the Russian Federation. Despite a wide range of scientific research on the problem of hybrid warfare combating, separatism, etc., there are no detailed characteristics of a person who committed a crime related to ULPAU participation at a sufficient level of research at domestic science.

The study of the criminal personality is one of the main clusters of the criminology subject. It is impossible to determine the main crime determinants, as well as prevention measures without the criminal personality investigation. Studying the characteristics of criminals, scientists determine the link between the behaviour of the offender at the scene of the crime and his behaviour in society, taking into account behaviour during the previous crimes commission (Canter, 2000; Salfati, 2008). The main content of this theory is that the behaviour at the scene of the crime depends on the main character traits of such a person, which

remain unchanged (stable) in other aspects of the offender's life (Caspi and Bem, 1990).

Nowadays there are no detailed characteristics of the ULPAU participant at the sufficiently studied level in literature. Thus, the study of criminological characteristics of the ULPAU participant is of some interest for criminological science. Knowledge of the main (criminological) characteristics of the ULPAU participant will facilitate to a more accurate qualification of this type of criminal activity, high-quality investigation of such crimes, development of a systematic theoretical and methodological approach, which includes a set of legal, institutional and socio-psychological mechanisms aimed at strengthening the effectiveness of criminal law influence on the ULPAU participants.

1. Literature review

The study of the criminal personality is one of the areas of the positivist school of criminal law and criminology, whose supporters relied on the results of statistical analysis of crime, social characteristics of the criminal personality. The founder of anthropological criminology, Ch. Lombroso, was the first to initiate the study of the criminal personality (Lombroso, 1896). Despite the fact that during the 20th and 21st centuries, this theory has not obtained reliable data to determine who is a criminal and who is not, the study of the criminal personality (criminal profiling) is still relevant. There were not enough resources to conduct, for example, DNA tests in the time of Ch. Lombroso, and therefore, he could not rely on safer and more evidence-based scientific data (Mschado, 2021**)**.

Scientists-criminologists, whose scientific interests are in the field of personality of criminal studying, distinguish different classification features. The main of them are socio-psychological and legal. The first group include: sex, age, level of education, level of material security, social status, family relationships (wife, children), employment in socially useful work, occupation, specialty, place of residence, level of personal development, mental state, individual skills, abilities, habits (Salazar-Muñozet *et al*., 2020; Kuryliuk and Khalymon, 2020; White and Lester, 2016; Kuryliuk *et al*., 2021).

Legal features include: the severity of the crime, recidivism, group or single crime (complicity in the crime), duration of criminal activity, object of the offence, form of guilt, type and amount of punishment. Some studies also consider penal features (Khalymon *et al*., 2021), but, in our opinion, they are relevant to determine the impact of punishment of a person and the possibility of correction and resocialization. Kushnir and Hutsuliak (2021) attempted to form a typical criminological portrait of

a person who committed a criminal offense in the field of state border of Ukraine protection (violation of the order of entry into and leavingfrom the temporarily occupied territory of Ukraine). In order to compare the characteristics, the obtained results will be compared with their results (Kuryliuk and Khalymon, 2020; Kushnir and Hutsuliak, 2021).

There were quite a bit scientific studies devoted to the study of the criminological characteristics of ULPAU participants. Only a few scientific studies devoted to this problem are known. Thus, Finlay (2017) in his scientific work raises the issue of legal protection of rebels. In particular, the scientist examines the observance of their right to resistance as persons who are not combatants and whose legal protection has not received proper legal regulation in international humanitarian law.

Asal *et al.* (2017), investigating the activities of specific ethnic organizations, made an attempt to explain why in some countries representatives of ethnic minorities unite in militias. And also, they tried to find out what leads to the fact that the members of these associations take up arms. These authors concluded that governments should be very careful about suppressing ethnic minority organizations with a nationalist-separatist orientation, as there is a high probability that these organizations will form illegal paramilitary or armed formations in response to such measures.

Cunningham (2013) investigated the processes of choosing ways to resolve disputes that concern the self-determination of certain groups by analyzing how various factors affect the improvement or deterioration of the impact of conventional political strategies, mass nonviolent campaigns and the development of civil war.

The study of the characteristics of persons participating in paramilitary or armed formations not provided for by law is also carried out by scientists in the post-Soviet space (Magomedov, 2004; Kononchuck, 2017; Kolianda *et al.*, 2017; Dudarets, 2020). However, the analyzed works do not contain such thorough empirical material as in our study.

2. Materials and methods

The detailed analysis of the characteristics of criminals convicted of participating in illegal armed units operating in Ukraine from 2014 to the present will be conducted in this study. 129 sentences passed against persons who participated in the ULPAU in Donetsk and Luhansk oblasts have been studied.

The purpose of our investigation is to identify the characteristics of individuals who have participated in ULPAUs and to determine whether

it is possible to identify these individuals based on these characteristics. In addition, in our opinion, the identified characteristics that are common may be useful for investigative bodies in order to better study such persons, to develop prevention measures aimed at reducing the ULPAU participation.

3. Results and discussion

Among the people we studied, those who were prosecuted between the ages of 16 and 18 were not identified. 27,9% were young people aged 18–24, the largest number of 45,7% were aged 24–35, 10,1% were aged 36–45, 14,7% were aged 46–59 and only 1,5% were aged 60 years and older. The obtained results show that the ULPAU participants are quite different in terms of age, but the group of people whose age is the most productive was the most massive. In particular, these are young people whose consciousness must be fully formed and they must be aware of the illegality of such activities.

According to Bernard *et al.* (2020), crime is a predominantly male activity. The number of males is significantly higher, especially in more serious offenses in all criminal groups. Our results also confirm the thesis that women are less criminally active. Our results are confirmed by previous studies (Kuryliuk and Khalymon, 2020), although the number of people who smuggled migrants across the state border of Ukraine is higher. Obviously, the obtained data indicate a different social role of women, one that should not be associated with criminal activity. The obtained data (Kushnir and Hutsuliak, 2021) also confirm the thesis that women are less likely to commit crimes related to border violations.

Clarification of the nationality and citizenship of ULPAU participants is important in determining the motivation to participate in such formations. According to the Ukrainian Helsinki Human Rights Union, in addition to Ukrainian citizens, ULPAU members who took part in the military conflict in eastern Ukraine are residents of other countries, primarily the Russian Federation. Thus, Russians make up about 10% of all ULPAU participants, except this, there is information about the participation of citizens of Belarus (44 people), Kazakhstan (38 people), Serbia (28 people), Moldova (20 people), Germany (19 people), Uzbekistan (15 people), Slovakia (12 people), France (12 people). In total, the Documentation Centre has information on more than 250 foreigners who participated in the ULPAU.

However, a study of available to us sample of sentences showed that almost 100% of ULPAU participants were citizens of Ukraine, only 0,8% (1 person) were citizens of the Russian Federation.

How such differences can be explained? Firstly, if the Ukrainian authorities applied punishment to foreigners, they were later included in

the lists for the exchange of prisoners, and sentences were removed from the Unified Register of Judgments, and some of these decisions were immediately marked "not for publication." Secondly, there is the "problem of opportunities" of law enforcement agencies. It is obvious that foreign residents rarely enter the territory of Ukraine's jurisdiction, and therefore are not detained by the competent authorities of Ukraine.

After participating in the ULPAU, they usually either return to their homeland and may be persecuted by the authorities, or are unpunished. Thirdly, some non-residents of Ukraine were prosecuted under other articles of the CCU, such as (257 – Banditry, 258 – Terrorist act, 258-3 – Creation of a terrorist group or organization). Nevertheless, the problem of mercenaries (combatants) is very painful and of particular interest due to the rise of extremist, terrorist, separatist sentiment in a number of regions using mercenaries, such as the Middle East and the former Soviet Union.

Among the studied sentences, 92,2% are ethnic Ukrainians, 2,3% Azerbaijanis, and 5,4% Russians. It is obvious that the nationality of the persons included in the sample also depends on the circumstances described above in relation to such a feature as citizenship.

Statistical indicators of crime in terms of the place of their commission convincingly show that rural residents are less likely to commit crimes than those living in cities. Our results confirm the statistical data: 85,3% of people at the time of the crime lived in cities, 10,9% lived in villages and 3,9% lived in urban-type settlements.

Glaeser and Sacerdote (1999) tried to explain why the crime rate in big cities is much higher than in small towns or in rural areas. Using data from the National Crime Victimization Survey, they empirically tested their hypothesis and found that: 45% of crime rates are affected by the fact that urban families are much less cohesive; in 26% it is caused by a much higher average level of income of city residents and in 12% the reason is a lower probability of identifying a criminal and bringing him to criminal responsibility when committing a crime in the city. This study explains the higher crime rate in big cities compared to towns and villages.

An important feature of the socio-demographic characteristics of the offender is marital status. Researches on the offender identity of have traditionally focused on social connections (family, children, etc.). It is believed that a family deters a person from breaking the law. In the study of Laub and Sampson (2003) it was also confirmed that the absence of marriage significantly affects the participation in criminal activities of adults (Laub and Sampson, 2003). The presence of a family and its structure are considered an important feature by other scientists (Glaeser and Sacerdote, 1999).

The results showed that the vast majority (66,7%) were single, 6,2% divorced, 0,8% widowed, 20,9% were officially married, 5,4% were in so-called civil marriage. Parental status can also indicate a person's serious life intentions. 86,8% of convicted ULPAU participants had no children, only one person (0,8%) had three children, 4,7% had two children and 7,7% had one child. The low percentage of married people with children could be explained by age, but not in our case, as the majority of 70% were between 25 and 60 years of age. This is the age when a person tries to make a family, to have children. The average age of first marriage in Ukraine is 23,5 years.

The idea that the less intelligent will also be less likely to foresee and appreciate the consequences of their acts remains so plausible that most contemporary textbooks in criminology still address the question of the intelligence of criminals (Hirschi and Rudisill, 1976).

We also drew attention to the educational level of ULPAU participants. As can be seen from 72,1% of people had secondary or secondary special or vocational education (graduated from secondary schools, lyceums or obtained working professions in vocational schools). 17% had basic secondary education (graduated from 9th grade), 2,3% had primary higher education (graduated from college, technical school, college), but 8,5% had higher education. The low level of education of ULPAU participants is noted in a study of young people who participated in such formations operating in Colombia (Hernández-Holguín and Alzate-Gutiérrez, 2016).

It is impossible not to pay attention to Usher's study (1997) in which he argued that education can also have a "civilizing" effect, contributing to a reduction in crime rates. Education increases people's skills and abilities, thus increasing the efficiency and profitability of legal work compared to illegal activities. Sometimes the presence of education does not have obvious property advantages, but it significantly affects the social status of a person.

This means that the social impact of education is higher than the personal one. Education has an indirect (non-market) effect that affects the preferences of individuals. Therefore, the decision to commit a criminal offense for a person who has an education is psychologically difficult (Buonanno, 2003). An important factor that has a criminological significance and influence on the determination of criminal activity and even the formation of the identity of a ULPAU criminal participant is the level of employment.

A number of scientific studies devoted to the study of the connection between unemployment and criminal behavior confirm that an increase in the duration of unemployment is significantly ($P < 0.001$) associated with a number of indicators of delinquency among young people. Specifically, youth who have been unemployed for six months or longer have from 3,0

to 10,4 times higher rates of property crime, violent crime, arrests, and convictions than youth who have not been unemployed (Fergusson *et al.*, 1997).

Such a relationship was confirmed as early as 1963 in a study (Fleisher, 1963) who proved that unemployment has a significant effect on the level of crime. Witt *et al.* (1998) in their empirical study for England and Wales state that "the persistent fall in relative wages of unskilled men and the rise in male unemployment in England and Wales is an incentive to engage in criminal activity". Verbruggen *et al.* (2012) also confirm that random effects models consistently show that employment reduces conviction rates among both men and women.

The results of our study showed that the vast majority (80,5%) of participants at the time of the crime were not engaged in socially useful work, 4,7% were retired, 0,8% were servicemen and only 14% worked in working professions. The large number of able-bodied people among ULPAU participants is also explained by socio-economic problems that began after the occupation and loss of control over part of Ukraine, as a result, loss of livelihoods pushed the socially unstable element to illegal activities.

The study of previous behaviour is important for a possible criminal trajectory in the future. Thus, Horning, Salfati and Crawford, studying the behaviour of murderers, concluded that there is a relationship between previous criminal specialization and future behaviour in relation to murder (Horning *et al.*, 2010).

Therefore, it is important to find out the criminal experience of ULPAU members. We were somewhat surprised by the results, as only 27,2% of those convicted of participating in the ULPAU had criminal experience (prosecuted). While there were many headlines in media publications (2014-2017) that a significant proportion of ULPAU members were former prisoners. Thus, we do not have convincing evidence of the mass participation of former prisoners in the ULPAU. Comparing the criminal history of ULPAU participants with those who violated the order of entry into and leaving from the temporarily occupied territory of Ukraine, it was found that only 12% of persons had a criminal past (Kushnir and Hutsuliak, 2021). Thus, ULPAU participants had at 15% more criminal experience than those who violated the procedure for entering and leaving the temporarily occupied territory of Ukraine.

Forms of ULPAU participation give us an idea of the quality of persons who have been prosecuted for such crimes. The objective side of the investigated crime is expressed in the following forms: creation of paramilitary formations not provided by the laws of Ukraine; participation in the activities of paramilitary formations not provided by law; creation of armed groups not provided by law; participation in the activities of armed groups not provided by law; leadership of these formations; their financing, supply of weapons,

ammunition, explosives or military equipment (logistics, etc.); participation in the composition of these formations in the attack on enterprises, institutions, organizations or citizens.

Examining the verdicts, we found that only 3,1% of convicts were prosecuted for creating (leading) the ULPAU, with the largest number (90,7%) participating in the ULPAU as militants. The vast majority of them, according to the verdicts, guarded checkpoints, unit locations, etc. Obviously, such a picture does not fit into the general idea of participation in the activities of the ULPAU, which have operated and continue to operate in eastern Ukraine. After all, Ukrainian officials, addressing the international community, including the UN General Assembly, note that Ukraine lost more than 15,000 citizens in this war, 30,000 were wounded (Speech by President of Ukraine Volodymyr Zeleneskyi, 2021).

The results of our study showed that courts did not find any case with consequences in the form of deaths of people. In one case, there were serious consequences (0,8%), by which the court recognized injuries and infliction of bodily injuries of various severity (including severe) inflicted to 13 servicemen during the attack on the Luhansk Border Guard Detachment. At the same time, the report of the OSCE Special Monitoring Mission states that the total number of civilian casualties since the beginning of 2021 has reached to 78 people (15 dead and 63 wounded) (OSCE SMM Report, 2021).

Life damage and human health is usually caused by the detonation of explosives and shelling. In particular, 4,193 ceasefire violations were recorded by the SMM from 4 to 17 October. In view of this, on the one hand, we can state a high level of latency of committing criminal offenses under Part 5 of Article 260 of the CCU, on the other hand – difficulties in qualifying under Part 5 of Article 260 of the CCU, separation from related offenses under Article 255, 257, 258-3 of the CCU. Such acts (attacks), related to the death of people or the occurrence of other serious consequences are often classified as a set of criminal offenses under Article 258 and Article 258-3 of the CCU.

Mostly the criminological characteristics of the criminal offender determine the type of criminal association, the creation or participation to which it relates, and the purpose of its activities. Article 260 of the CCU distinguishes two types of criminal associations – paramilitary formations and armed formations not provided by the laws of Ukraine, defining their structure and features in the note to the article. In the terminology used in the UN documentation, "non-state armed groups" are understood as "organizations that are parties to an armed conflict, but are not subject to by one or more states" (McQuinn and Oliva, 2014; Petersohn, 2014).

From the analysis of court decisions we come to the conclusion that most of their activities are aimed at seizing certain territories and their maintenance, participating in attacks on enterprises, institutions and organizations, conducting military operations to support illegally created structures,

suppressing organized resistance in the occupied territories, confrontation the Armed Forces of Ukraine, law enforcement agencies, state authorities of Ukraine, destruction of their manpower and material resources, as well as the commission of serious and especially serious criminal offenses, including the use of firearms, explosives and other weapons. Studying the sentences, we found out that the vast majority of persons convicted under Article 260 of the CCU, were members of non-statutory armed / paramilitary formations of the "DPR" – 82 people (63,6%), 44 people (34,1%) – "LPR" and 3 people (2,3 %) were part of the armed formation, whose activities were aimed at creating the "Odesa People's Republic".

Obviously, if the participants of private military companies are dominated by selfish motivation the participants of illegal armed / paramilitary formations "DPR" and "LPR" have mostly political motives (Kononchuck, 2017), separatist motives, often their actions are subject to additional qualification as crimes against the foundations of national security of Ukraine (Articles 109, 110 of the CCU) (although in Article 260 of the CCU the purpose of the ULPAU is not specified). We will study the issue of motivation of criminally illegal behaviour in more detail below.

The analysis of studied sentences showed that the majority of persons (121 persons (93,8%) convicted under Article 260 of the CCU were members of armed groups not provided by the laws of Ukraine and only 8 (6,2%) – paramilitaries (as a rule training units where military training was conducted).

Taking into account this feature, it should be borne in mind that an armed formation is a type of paramilitary formation characterized by the availability of usable firearms, explosives or other weapons (Article 260 of the CCU) and a military-type organizational structure, some of which try to copy the attributes of a legitimate military formation, such as name, hierarchical structure, and military discipline. For example, armed formation "military unit L-73438", which was part of the "2nd separate motorized infantry brigade" of People's Militia of the LPR". Some have only certain features of the military formation: "People's militia of Dzerzhynsk" (DPR), battalion "Leshiy" ("LPR"), "Sevastopol Self-Defence Detachment" (ARC).

The feature of armament increases both the social danger of these criminal groups and the social danger of the acts committed by their members. This is proved by a comparison of sanctions under Part 1 and Part 2 of Article 260 of the CCU. Thus, if the upper limit of punishment set for the creation and participation in paramilitary formations not provided by the laws of Ukraine is 5 years, then for the same acts in armed groups – 8 years of imprisonment.

The length of time when a people take part at ULPAU largely depends on why they joined them. As noted, (Kolianda *et al.*, 2017) the ULPAU composition is carried out on a voluntary basis. Forced "mobilization" of the male population in a certain area is also possible. However, forcibly mobilized individuals are significantly worse than volunteers in combat training, levels of psychological readiness for combat with state military formations and law enforcement agencies (Kolianda *et al.*, 2017), in addition, they leave ULPAU at the first opportunity. Part 6 of Article 260 of the CCU gives the possibility of release from criminal liability in case of voluntary withdrawal from such formation and notification about its existence to public authorities or local governments.

From the content of the analyzed verdicts we can conclude that most of the convicted ULPAU participants voluntarily left them, but only over time their illegal activities have come to all knowledge, and they were detained. The study of court verdicts showed that 89,9% of convicts (116 people) were in the ULPAU from 1 to 6 months, 8,5% (11 people) – from 6 to 12 months. And only one person was there from 12 to 18 months and from 18 to 24 months and more than 2 years was not detected.

These data are slightly different from the obtained data (Dudarets, 2020). Studying the materials of criminal proceedings, the researcher concluded that the duration of participation in non-statutory paramilitary or armed groups is: 14% – up to one month, 40% – from one month to one year, 46% – over a year (Dudarets, 2020). However, in general, they confirm the thesis that the majority of ULPAU participants are in their membership for up to 1 year.

The criminological significance of a person's duration of stay at the ULPAU should also be taken into account. The longer the time – the more persistent negative attitudes are formed regarding further illegal activities both within and outside the formations.

For a deeper understanding of a person's mental attitude to the commission of a crime, it is necessary to study his inner motivation, i.e., the motive for the crime. The peculiarities analysis of the specific motivation of the crime affects the reasonable solution of issues related to establishing the degree of public danger of the act, individual criminal assessment, determining ways to prevent criminal acts and resocialization of convicts (Kozyriev, 2012).

Theories of crime causation have attracted criminologists long ago. Traditional approaches to the causation of crime (biological, psychological, sociological) cannot be considered monolithic and are periodically criticized. According to (Hirschi and Rudisill, 1976) obviously only the biological theory has retained its influence (its unchanged form), although mainly outside the academic environment, where it is periodically fueled by the popular press.

Three groups of people who had the following motives for ULPAU participation have been revealed as the results of our study. 84,5% participated in ULPAU in order to change the government in Ukraine, 9,3% wanted to earn money, and 6,2% during the investigation said that they were deceived and joined ULPAU not to commit criminal activity, but vice versa, in order to protect their territories from possible encroachments. However, in the process of being in such formations, they realized that the purpose of their creation is aimed at overthrowing the constitutional order, and therefore is criminally illegal.

During 2014–2015, one of the authors of this article had the need to stay in certain periods in the temporarily occupied territories of eastern Ukraine, which allowed studying this issue. The gained experience allowed us to conclude that one of the components of the motivational sphere of persons convicted of ULPAU participation (84,5% participated in order to change the government in Ukraine), is that this category of persons, despite the fact, that the vast majority of them had Ukrainian citizenship, did not identify themselves as real citizens of Ukraine.

We think that their lack of national self-identification is due to the fact that, unfortunately, during the entire period of Ukraine's independence, the Ukrainian socio-cultural environment was not created in these territories, the full functioning of the state language was not ensured, the symbolism of the "Russian world" was actively cultivated. Also, the so-called "Donbas mythologists" were actively spread ("the hard-working Donbas feeds Ukraine", "Russian has always been the main language in the Donbas", etc.) in the information environment. The consequence of this is the denationalization of a large part of the population of eastern Ukraine, which, in turn, allowed introducing into its consciousness a negative attitude towards the state, contributed to the formation of a fundamental ideological thesis "the need to fight Ukrainian fascism for Donbas participation in ULPAU".

Historically, the largest number of prisons were at the Donetsk and Luhansk regions of Ukraine (since Soviet times). As of 2013, 34 penal institutions operated in these regions, it was more than 18% of all penitentiary institutions in Ukraine (Babenko, 2015).

Former prisoners, being released from prisons, remained to live in these regions, and the assimilation of the local population with former prisoners took place. Donetsk and Luhansk regions have traditionally been characterized by a high level of crime intensity per capita. According to Babenko (2015) the average coefficient of the intensity of general crime per 100,000 population recorded in the Donetsk and Luhansk regions for the period 2001-2013 was 1172 and 1363, respectively, which is considered a very high indicator compared to the average for Ukraine of 1024.

In 1974 See Edwin (1974) proposed the theory that criminals estimate the crime positively. That is, the environment in which they live, grow and develop positively relates to criminal behavior.

An example of a positive assessment by the environment of criminal behavior was the frantic support of the voters of the fugitive former president of Ukraine V. Yanukovych, who, having two confirmed convictions for committing intentional crimes, was supported by the overwhelming majority of residents of Donetsk and Luhansk regions in the presidential elections in 2004 and then in 2010. In our opinion, it is precisely this attitude towards the commission of crimes by the inhabitants of these regions that explains their easy participation in the activities of the ULPAU.

In addition, it is necessary to pay attention to the role of the mass media that functioned in the territory of these two regions, as well as to the simultaneous suspension of broadcasts of state TV channels and the inclusion of broadcasts of Russian TV channels. Since the beginning of the conflict, the Russian Federation has been making enmity between the western part of Ukraine and the eastern part. False stories about "nationalists" who seek to destroy the residents of Donetsk and Luhansk regions have been fixed in the minds of the residents of these regions.

This influence continues to operate even today during the full-scale Russian invasion of Ukraine. An example of the negative influence of mass media (incitement of enmity) is the activity of the radio station "Radio of thousand hills", which worked in Rwanda. American scientist David Yanagizawa-Drott (2014) examined the role of the media during the conflict in Rwanda. Using a unique dataset on the Rwandan genocide, the author assessed the impact of a then-popular radio station (Radio of thousand hills) that encouraged violence against the Tutsi minority. The results showed that broadcasts of this radio had a significant effect on participation in murders.

The high intensity of activity of combat units and mass killings of Tutsis was observed in those territories of Rwanda, where the radio station "Radio of thousand hills" made deep coverage. The author provides evidence of how mass media can influence participation in violence directly through appeals to violence and indirectly through social interactions (Yanagizawa-Drott, 2014).

Mass propaganda of Russia is also one of the determinants of the participation of residents of Donetsk and Luhansk regions in ULPAU activities.

However, it should be noted that the ULPAU also included persons who did not hate the state, but they were forced to do so due to the difficult economic situation in the occupied territories, the inability to otherwise earn money to support their families.

For example, ULPAU participants in Colombia were motivated by a desire for recognition, power, and money. Their violent and illegal actions have become a strategy to achieve their goals. Belonging to an armed group was an alternative that gave work and money to participants. Thus, the armed group was an environment in which they gained public recognition, which they lacked (Hernández-Holguín and Alzate-Gutiérrez, 2016). Apparently, the ULPAU members operating in the temporarily occupied territories of Ukraine were also guided by such motives to some extent.

The quality of pre-trial investigation and judicial examination of such cases should be studied separately. Examining the motives for such crimes, we found out that 9,3% of people joined the ULPAU with the aim to earn money, some – because they had no means of subsistence, and some actually believed that will have "big money" as mercenaries. However, only in 6 verdicts we found information about the amount of money received by the ULPAU participants. On the average, such individuals received between $ 200 and $ 500 per month. It is obvious that there were more such people, but in our opinion, in order to mitigate their responsibility, they tried not to testify about the fact of "earning" money for ULPAU participation.

And it is impossible to obtain legal facts of obtaining such funds in the manner prescribed by law. Also, it was probably not part of the pre-trial investigation task, taking into account that more than 92,2% of such persons pleaded guilty and entered into a plea agreement. The low quality of the pre-trial investigation obviously leads to the fact that courts are forced to apply non-custodial sentences and pretend to achieve the goal of punishment – to prevent new crimes from being committed by both convicts and others (individual and general prevention).

It is necessary to pay attention to the problems of sentencing for ULPAU participation. For the purpose of comparison, we studied the results of a study conducted by T. Magomedov on the ULPAU participants based on the materials of the Republic of Dagestan. Thus, according to his data, out of studied 84 people, 3 people were sentenced to probation, 27 people to 2 years of imprisonment, 42 people to 5 years of imprisonment, none to more than 5 years; 8 people were acquitted (Magomedov, 2004). Thus, 82,1% were sentenced to real terms of punishment.

A study of our sentences showed that 65,9% of people were released from probation and only 34,1% were sentenced to imprisonment for a term: 6,2% – for a term of 1 to 3 years, 21,7% – from 3 to 5 years, 6% – from 5 to 10 years and 1,6% – for a term from 11 to 15 years imprisonment. Does it correspond to the logic and principle of fairness of sentencing? The question is quite complicated, because assessing how much grief the fighting in the east of the country has brought to the Ukrainian people, how many innocent victims have died, the sentencing of ULPAU participants looks like mockery of such victims.

However, other principles of sentencing must be kept in mind: individualization of punishment and humanism. We want to believe that the people who were included in the sample were not involved in the massacres, so such lenient punishments are enough to correct them and prevent new criminal offenses.

Obviously, the general trend towards the humanization of criminal justice and the liberalization of the judiciary does not forget those who are prosecuted for ULPAU participating.

However, one should remember the inevitability of punishment, because unpunished evil returns. Buonanno (2003) based on an analysis of the literature on socioeconomic determinants of crime, concluded that criminal behavior is influenced by the probability of punishment and detention. That is, a person who knows that he will be punished for committing a crime will probably refrain from committing a crime.

Conclusions

Thus, our study allowed us to form a typical criminological portrait (criminal profile) of a person – a ULPAU participant on the basis of two groups of classification features – socio-psychological and legal, which is characterized by the following features: male (98%), 25–35 years old (46%), who has Ukrainian citizenship (99%) and is a Ukrainian by nationality (92%), urban resident (85%), single (66%), do not have children (87%), has a general secondary or vocational education (72%), do not work (85%), was not previously convicted (73%).

According to the functional distribution, the majority of the studied persons were members of armed formations (94%) of the pseudo-state formation "DPR" (64%) and guarded checkpoints, locations of units, being in the formation from 1 to 6 months (90%).

ULPAU participants are also characterized by a set of negative social and psychological traits that lead to the commission of criminal acts on ULPAU creation or participation and are intensified by negative motivations associated with the desire to change government in Ukraine. At the same time, the instability of criminal attitudes is manifested in the fact that the majority of those who were surveyed showed sincere remorse and admitted their guilt (92%).

We have found out that the difficulties in studying the person – an ULPAU participant are largely due to the unresolved criminal law aspects of ULPAU combating, in particular the vagueness of the criteria for distinguishing the crime under Article 260 of the CCU, from terrorist crimes, the widespread practice of applying (sometimes unjustified) release

from serving a sentence (66% of sentences), as well as the low quality of certain pre-trial investigations and litigations of penal proceedings on criminal activities of ULPAU participants, as a result, convictions do not contain sufficiently detailed information to conduct an in-depth analysis of the personal characteristics of ULPAU participants.

After the russian federation's full-scale unprovoked invasion into Ukraine on February 24, 2022, it became clear that the occupying forces would continue to use the residents of the occupied territories as proxy troops. The mildness of the punishment, as evidenced by the results of our research, will contribute to the involvement of residents of the DPR and LPR in ULPAU. After all, their previous experience of participating in ULPAU showed that the state of Ukraine treats such violators too humanely.

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Democracy under Conditions of War: Challenges and Prospects

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Abstract

The research exposed problems related to socio-economic, political and social factors that directly or indirectly affect the security of the population on the European continent and the world. The analysis of cause-and-effect relations of the large-scale military invasion of the Russian Federation allows developing algorithms for implementing democratic processes for Ukraine and for the countries of the European Union EU, and the whole civilized world. The main scientific-research works devoted to the formation of democratic societies were also analyzed, defining the specificities and main features and strategic vectors of development. The population's perception of democracy, human rights and civil liberties in various European nations was evaluated by using a sociological survey. As a result of the research conducted, a model for the formation of democratic values as a basis for the establishment of a democratic society was developed. It is concluded that, it is desirable to develop further recommendations on practical measures to protect freedom and democracy as the basis of value orientations in the fight against military aggression and, the formation of the foundations of the future security architecture in the world.

Keywords: large-scale military aggression; socio-economic challenges; security architecture; freedom of speech; geopolitics in Eastern Europe.

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Democracia en condiciones de guerra: desafíos y perspectivas

Resumen

En la investigación se expusieron problemas relacionados con factores socioeconómicos, políticos y sociales que afectan, directa o indirectamente, la seguridad de la población en el continente europeo y el mundo. El análisis de las relaciones de causa y efecto de la invasión militar a gran escala de la Federación Rusa permite desarrollar algoritmos para implementar procesos democráticos para Ucrania y para los países de la Unión Europea UE, y todo el mundo civilizado. También se analizaron los principales trabajos científico-investigativos dedicados a la formación de sociedades democráticas, definiendo las especificidades y principales características y vectores estratégicos de desarrollo. La percepción de la población sobre la democracia, los derechos humanos y las libertades ciudadanas en varias naciones europeas se evaluó mediante el uso de una encuesta sociológica. Como resultado de la investigación realizada, se desarrolló un modelo de formación de valores democráticos como base para el establecimiento de una sociedad democrática. Se concluye que, es conveniente desarrollar más recomendaciones sobre medidas prácticas para proteger la libertad y la democracia como base de las orientaciones de valores en la lucha contra la agresión militar y, la formación de los fundamentos de la futura arquitectura de seguridad en el mundo.

Palabras clave: agresión militar a gran escala; desafíos socioeconómicos; arquitectura de seguridad; libertad de expresión; geopolítica en Europa del este.

Introduction

The security systems of Europe have experienced significant challenges with the beginning of the full-scale military invasion of the Russian Federation into Ukraine. For the first time since the Second World War, the European continent faced a full-scale threat caused by an authoritarian regime and the results of propaganda work.

The methods of forming public opinion in support of the war in the Russian Federation are based on elements of propaganda that have been known since the time of the Nazi regime. Unfair mass media, work with opinion leaders, criminal prosecution of political opponents, and formation of a negative attitude in society towards persons who have a viewpoint opposite to the position of power determined the destruction of the fundamentals of society's democratic development.

This caused mass emigration of the able-bodied population, political persecution, and a lack of a negative attitude against aggression on the territory of the aggressor country. Challenges to military aggression have become challenges to human rights, freedom, democracy, and international law in the civilized world. Ukraine, as an independent and sovereign state that received security guarantees from the world's leading countries, including the Russian Federation, as part of the Budapest Memorandum, was subjected to a military attack.

Accordingly, it should be understood that the existing security architecture, the postulates of security guarantees, in particular, within the framework of individual regulatory documents in the UN international security system, do not work. The absence of effective mechanisms of influence on the aggressor countries has also been determined. The flow of refugees who were forced to move to European countries, the USA, Canada and other countries have become a new challenge for social and economic security.

More than 8 million refugees were forced to leave Ukraine affected social-economic and social-political processes. Support for Ukraine's democratic aspirations, and its desire to join the European community and become a member of the international security system have created new challenges and requirements for establishing a democratic society at the global level.

Therefore, it is expedient to consider certain aspects of the influence on the processes of establishing democracy in different countries of the world and to identify those shortcomings that must be overcome to ensure the normal functioning of countries within the framework of an effective system of democratic international law.

Therefore, the purpose of the academic paper is to determine the cause-and-effect relationships of developing democratic processes and establishing security architecture as a new paradigm of social development.

To achieve the purpose of the research, the following aims were fulfilled, namely:

- a retrospective analysis of the cause-and-effect relationships of the largest military conflicts in the world and military aggression on the territory of the USSR and the countries of the former post-Soviet space was conducted;
- the interrelationships of the factors of developing democracy and ensuring peace in the territory of the countries of the former post-Soviet space and the countries of Europe were determined;
- a sociological survey of the relationship to democratic processes in Ukraine, European countries and the Russian Federation was conducted;

- factors affecting the population's attitude to the development of democratic processes were determined;
- a model of the architecture of society's democratic development as a future paradigm of social development was constructed.

1. Literature Review

Tolerance development is the cornerstone of a democratic society. Intercultural dialogue is the basis of global democratic development. Determining the mechanisms of forming a tolerant attitude of people toward each other in the conditions of global social-economic and social-political challenges is a significant task of scientific and applied studies.

Several scholars define the function of educational processes as a component of the core principles of democracy. The democratic values include the right to freedom of expression, freedom of thinking, participation in public life, and tolerance, i.e., freedom for all people without interfering with the rights of others (Roij, 2022).

The analysis of democratic challenges of a global nature made it possible to group the issues of democracy development: formation of authoritarian regimes and their spread, activation of terrorist organizations, fundamentalism, and organized crime. The reasons for this situation are imperfect mechanisms for implementing democratic rights and freedoms. International law is rather of a recommendatory nature.

After all, there are no effective mechanisms of influence on the implementation of normative approaches to the formation of democratic principles. Democracy formation is rather a task of civil society, which can only be done through developing public activity, education, the formation of tolerance and the development of intercultural ties, social security (Silander, 2022).

The concepts of social security and social development are significant elements of a democratic society. These concepts have a dynamic character, presenting national and regional differences of states and peoples. The formation of public and social features takes place under the influence of various historical processes, political, national, traditional, cultural, economic, geographical, climatic, and household differences.

Several authors analyze the processes of public and social security of the world's largest democracy – the United States of America. The American nation has a unique character because its creation is based on multicultural and multinational features. The main value of society is freedom and democracy. Neoliberal concepts of development consist in establishing

social priorities and economic paradigms in their interrelationship (Dahms, 2022).

The global challenges of democratic societies, identified in the studies of numerous scientists, can be grouped into the following elements (Silander and Simunkombwe, 2022):

- freedom of choice, electability and accessibility to electoral bodies;
- freedom of speech, freedom of mass media, lack of restrictions on information in social networks;
- the priority of a people-centered approach when making social-economic and social-political decisions;
- protection of private property and a person's economic interests;
- ensuring security;
- ensuring self-development, education, access to social services;
- equality and tolerance;
- freedom of political opinion, opportunities to express one's opinion through public actions.

Negative tendencies in developing anti-democratic processes in poor countries are one of the global challenges. Only global transformations can ensure global development. The analysis of democratic transformations in African countries made it possible to identify the following issues (Silander and Malmgren, 2022):

- authoritarian regimes;
- lack of the population's rights and freedoms;
- development of corruption;
- civil conflicts, terrorist threats;
- lack of protection of life and health, private property;
- lack of equitable regulatory and legal frameworks without divisions between private and public spheres of influence.

Military conflicts destroying the principles of freedom and democracy are a great challenge for the democratic, civilized world. Conducting a critical review of the impact of military actions on democratic processes made it possible to determine their influence on social-economic processes. Military conflicts have a negative impact on economic development, reducing the level of social security.

Concurrently, it is important to bear in mind that in the conditions of conflict, violent actions, physical injuries, and an important process during the conflict and after its end is social security, in particular, psychological and physiological rehabilitation, treatment, restoration of housing and life support infrastructure, etc. Therefore, in the conditions of social security requirements, the processes of democratic development take a back seat in the post-war reconstruction (Owens, 2022).

The Cold War is one of the examples of social needs in conditions of political instability. The development of countries with democratic fundamentals determined the provision of the population's high life quality. At the same time, authoritarian societies lead to humanitarian and social problems, the solutions of which are related to openness to global processes, and not to ensuring development by extensive methods. This significantly limits the implementation of the potential of the country and its population (Prabhakar, 2022).

The Cold War affected various regions the countries of Africa, which were divided by geopolitical influence into capitalist and communist ones. The development of these countries depended only on external influences, and not through the formation of stable state entities, which are possible only in conditions of democratic development (Jean-Baptiste, 2022; Silander, 2022b).

The creation of a balance between democratic procedures and global challenges is a crucial issue in the context of the security architecture formation in the world. Security architecture is related to understanding the rules of the global world order and their acceptance by all players of the international geopolitical space (van Riet, 2022).

The Russian Federation's full-scale military aggression against Ukraine posed new threats to global democracy and the security system that emerged after World War II. The aggressive policy of the aggressor country was provoked by the lack of effective mechanisms for containing military conflicts in the conditions of modern law and order in the global sense.

The formation of sustainable development priorities as a system of international world perception in the conditions of military aggression is determined by a system that requires significant transformations. Mechanisms of international positioning, developed and implemented by the UN, show their inefficiency, forasmuch as they cannot stop the bloody conflict (Bin-Nashwan *et al.,* 2022; Lopatovska *et al*., 2022). Therefore, it is expedient to consider issues related to establishing a model of security architecture's new processes in the conditions of new global challenges, in particular, the full-scale military aggression of the Russian Federation against Ukraine.

2. Methodology

The academic paper analyzes scientific studies of the processes of democracy development in various countries of the world, including those where military or civil conflicts took place. Based on the analysis, the cause-and-effect relationships of the processes of ensuring the country's security and democratic changes were determined.

A comparative analysis of the cause-and-effect relationships of influencing factors and the consequences of development processes and oppression of democracy in different countries of the world made it possible to determine the prerequisites for the formation of military conflicts.

A sociological survey of the population of Ukraine and European countries (in 2022) and the population of the Russian Federation (in 2021 due to the lack of the possibility of performing a survey in 2022) was conducted concerning the issue of developing democracy in the country, national values, development priorities.

The research hypotheses were confirmed by correlation-regression analysis of sociological survey data and the relationships between democratic and human development indicators. A model of the architecture of the democratic advancement of society as a prospective paradigm of social development has been created using modeling techniques.

3. Results

As a result of studying literary sources representing the scientific and research works of several authors devoted to the issues of democracy's role in the processes of social development and the construction of security architecture, the directions of social development that exert a significant influence on the formation of conditions for peace, security and global cooperation were determined, in particular, as follows:

- development of open good-neighborly relations based on mutual respect, tolerance, and recognition of the role of each nation and each state in the processes of global human development;
- determination of opportunities for open competition formation, fair access to international markets, formation of transparent mechanisms for the organization of the international trade system and fair distribution of income;
- creation of effective mechanisms for control of arms buildup systems and determination of effective mechanisms for deterring military aggression;

- development of international legal documents that would regulate foreign policy processes based on the supremacy of international law;
- formation of tolerance and tolerant attitude of people towards each other;
- creation of conditions for self-identification, development of national self-awareness without creating conditions for separatism development;
- freedom of speech, freedom of movement, freedom of public association, the impartiality of mass media and the possibility of free expression of will, struggle against political persecution and oppression on religious, political, ethnic and other grounds.

Analyzing the cause-and-effect relationships of military conflicts of recent years, world wars and political instability in the countries of the post-Soviet space and Europe, Table 1 was drawn up.

Table 1. Grouping of cause-and-effect relationships of military conflicts and social development.

Military conflict	Reasons	Social prerequisites	Implications for democracy development
World War I	Redistribution of geopolitical interests.	The significant branching of society into pluralistic and authoritarian monarchical ones. Technological backwardness, the need for social transformations in the territories that were under the power of the authoritarian monarchy, which significantly slowed down the processes of their development.	The spread of the processes of social development, the introduction of technologies, the cooperation of production processes, as a result, the improvement of the population's standard of living and the formation of social values.
World War II	Redistribution of geopolitical interests, the consequences of territories' distribution after the World War I, the struggle of totalitarian regimes.	The formation of totalitarian regimes aimed at military aggression's goals and expanding the territories of influence, the acquisition of territories with additional resources, the ideology of the superiority of some nations over others.	Destruction of nationalist ideology, transition to a new world order, formation of openness, freedom of Western democracies.

War between North and South Korea	The struggle of a totalitarian communist regime against a democratic society.	The formation of two polar state formations – totalitarian communist and democratic, which promoted freedom and pluralism.	Global isolation of the totalitarian regime and the development of science, technology and economy in conditions of freedom as a form of motivation.
War in Iraq	The fight against the totalitarian regime of Saddam Hussein, the distribution of spheres of influence in the Middle East.	Threats to democratic societies on the part of a totalitarian state, threats of international terrorism.	The development of democratic processes in the country; a negative aspect is social-economic instability and the lack of effective state institutions and security.
War in Afghanistan	The geopolitical conflict that has been going on since the 1980s over the distribution of spheres of influence in Central Asia, the fight against terrorist groups and fundamentalism.	The presence of a clan system of power organization, geopolitical instability.	The destruction of the democratic society's fundamentals that emerged in the country, the rise to power of Islamic fundamentalists with restrictions on the rights and freedoms of the population, poverty and lack of development in the country.
Russian-Chechen war	The struggle of the Chechen Republic of Ichkeria for independence and withdrawal from the Russian Federation.	Activation of national resistance on the territory of the Russian Federation after the collapse of the USSR with demands for greater powers and/or independence.	Limitation of rights and freedoms, lack of practical implementation of legislative mechanisms that should operate on the territory of Chechnya, usurpation of power.
Russian-Georgian war	Struggle for influence on territories that were the cause of armed conflicts after the collapse of the Soviet Union.	Efforts to solve the problems of the frozen conflict related to territorial claims as a result of the collapse of the USSR and uncertainty in the issues of belonging to a number of territories (South Ossetia, Abkhazia, Transnistria, Nagorno-Karabakh).	The presence of unrecognized republics as territories that cannot fully develop due to an uncertain status, the formation of corrupt puppet authorities dependent on the Russian government in these territories.
War in Yugoslavia	The struggle against authoritarian regimes and genocide on national grounds.	Genocide organized by the ruling party, which represented the interests of the Serbs, an authoritarian regime that did not allow solving issues of a national nature through public discussion and establishing mutually beneficial conditions.	Disintegration of the country into territories based on national divisions, the development of freedom and democracy in new territories, unification with the European space, in particular, membership in the EU with the corresponding introduction of norms and standards specific to the EU.

Russian-Ukrainian war	The desire of authoritarian regimes to revive the geopolitical positions of the former USSR, the struggle for resources, spheres of influence.	Genocide of the Ukrainian people, caused by Russian Federation which, with the help of military aggression and propaganda, tried to spread authoritarian orders on the independent territory of Ukraine through occupation and political struggle with persons who do not support the occupation regime.	The formation of a powerful movement of national self-awareness, the protection of freedom and democracy against an authoritarian regime, the formation of a system of European values.

Source: prepared by the authors.

Analyzing the social causes and consequences of military conflicts, their role in the formation of democratic principles, and general laws was determined, which are presented in the form of the following hypotheses:

- authoritarian regimes maintain power on the basis of the formation of an internal or external enemy; the support of power in conditions of restriction of freedoms and democracy is connected with the unification of the population around the fight against a potential threat – democratic and free societies;
- military conflicts can lead to two starting points for the state: the first is negative – the destruction of the fundamentals of statehood, democratic institutions, the formation of totalitarian or authoritarian, sometimes religious fundamentalist regimes or military juntas with subsequent usurpation of power; the second is positive – the transition of the state from an authoritarian to a democratic society,
- democratic societies are characterized by pluralistic social phenomena, which are a form of people's motivation for entrepreneurial activity, technological development, investment activity, obtaining a competitive education and improving qualifications. Pluralistic societies have significant advantages in development over authoritarian and totalitarian regimes in conditions of free competition and freedom of choice. Therefore, the struggle of democratic values with authoritarian restrictions is an element of society's progress and development at the global level.

In order to confirm the proposed three hypotheses (authoritarian regimes are based on creating an image of the enemy and fighting against it; military conflicts can be the result of the decline of state institutions or the development of the democracy's fundamentals; democratic societies

are more motivated in the aspect of ensuring development), it is proposed to conduct a retrospective analysis of the historical heritage and carry out a sociological survey, the form of which was developed and proposed in the research (it was described in the section on research methods).

To provide mathematical evidence for the relevance of the put-forward theories of cause-and-effect relationships in the development of democracy, available sociological data were analyzed and a sociological survey was conducted. The results of the sociological survey are represented in Fig. 1.

Table 2. A retrospective of historical events confirming the developed hypotheses of the interrelationship between democratic processes and military conflicts.

Hypothesis	Historical events confirming it	Consequences	Recommendations
Authoritarian regimes are based on creating an image of the enemy and fighting against it	The Nazi regime and the struggle with the Jews for the purity of Aryan blood; the communist regime and the struggle with capitalist countries; the totalitarian regime of North Korea and the struggle with the capitalist south. The Khmer Rouge regime in Cambodia that triggered the war with Vietnam. The authoritarian regimes of Iraq and Iran, which fought on religious grounds.	The overthrow of totalitarian regimes with the transition to democratic freedoms, the country's complete international isolation, the scaling of totalitarian terror due to the deterioration of the social-economic situation and the need to preserve power through repression due to the population's growing dissatisfaction.	Conducting a well-thought-out information policy aimed at preventing the formation of totalitarian regimes, implementing international programs for the development of civil society to form a system of resistance to such regimes, spreading the principles of democracy, the values of freedom and pluralism.
Military conflicts can be the result of the decline of state institutions or the development of the democracy's fundamentals	The decline of state institutions after the change of colonial regimes and the transfer of power to local elites; civil wars and social-economic instability of countries in Africa and Latin America (for example, Colombia, the Democratic Republic of the Congo, Myanmar, Nigeria, Somalia, Sudan). Social-political instability due to the intervention of other states: Afghanistan, Iraq, Syria.	The loss of powers by state institutions leads to the destruction of other institutions – social-economic ones. Such a system leads to a rapid increase in poverty, the impossibility of establishing effective economic processes, and a decrease in the level of the population's social security.	Formation of the conditions for developing democratic processes, primarily, in the formation of power systems, by adapting the world's leading experience and cooperation with international organizations in the field of peace and security.

Democratic societies are more motivated in the aspect of ensuring development	Countries with a high level of economy development, social security, engineering and technology are democratic, open to global cooperation, tolerant and have priorities in ensuring the rights and freedoms of the population: the USA, Germany, France, Japan, South Korea, and South Africa.	Democratic processes create competitive conditions in the economy, entrepreneurship, and technology development. Self-regulation promotes the spread of social and economic development' best practices. Accordingly, in the absence o=f restrictions, a person has motivation for development and self-fulfillment as a competitive advantage in the labor market, in business, social security, etc.	Implementation of deregulation processes, especially in economic systems, with the aim of providing the population with freedom of development, which is the basis of the state's development as a synergistic effect of developing individual subjects of economic activity, government, particular individuals, etc.

Source: prepared by the authors.

Analysis of the attitude towards democratic processes shows that democracy is a basic priority of state development for EU countries. More than 98% of respondents define it as a basic value; this indicator (99%) has been consistently high since 2021.

Analyzing indicators of the attitude to democracy in Ukraine, it is expedient to determine that this indicator is consistently high and has a steady upward trend. In 2022, this indicator reached its maximum of 95%. The development of the trend line's projection, represented in Fig. 2, shows that by 2025, the indicator of the attitude towards democracy as a basic value of society in Ukraine will be similar to the indicators of the survey of respondents in the EU countries.

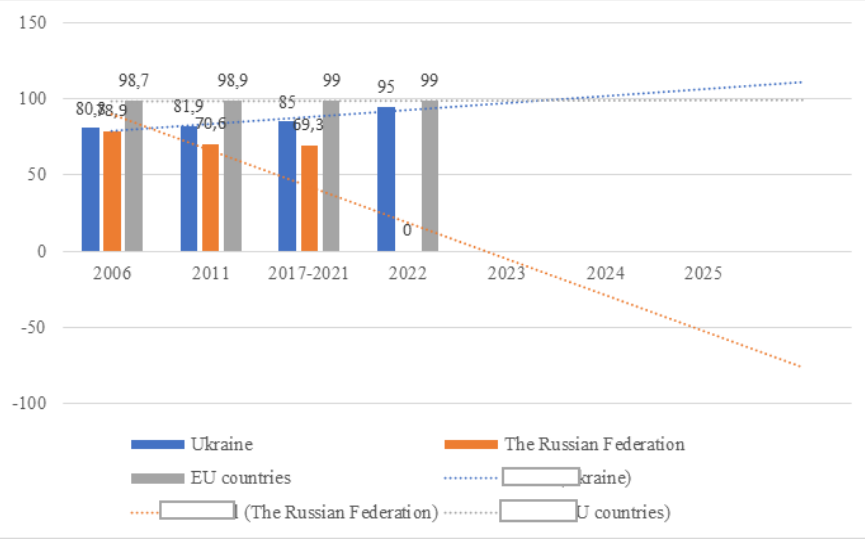

Fig. 1. Dynamics of changes in the indicator of support for democracy in the analyzed countries.

*Source: based on sociological survey data [VoxUkraine] (1995-2021) and a sociological survey as of 2022.

It is interesting that in 1995-1996, the indicator of the attitude to democracy in the Russian Federation was only 45% (almost half less than in the same period in Ukraine), and it increased in 2006. However, after developing a projection of the research results, it was determined that the indicator of democracy perception as a basic social value in Russia has a downward trend and may reach minimum values by 2025.

In order to understand such a rapid growth of attitudes towards democratic values in the conditions of an authoritarian power regime, it is expedient to determine the concepts included in the context of the democracy definition in the analyzed countries. The results of the sociological survey are represented in Fig. 2.

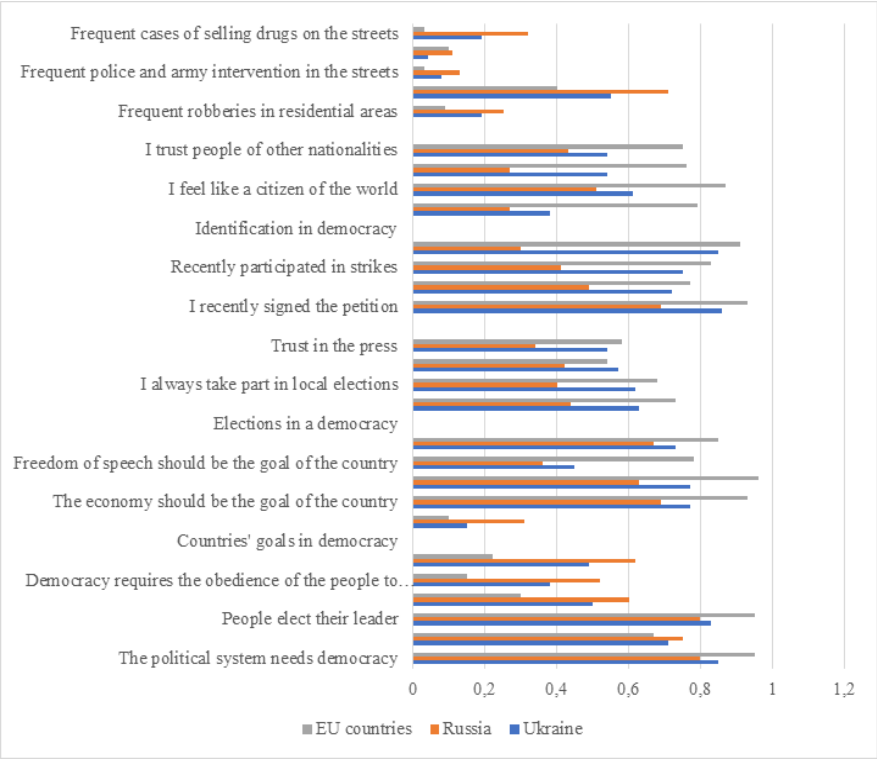

Fig. 2. Results of a sociological survey on the understanding of the concept of democracy and its elements, 2021.

* Source: based on sociological survey data [VoxUkraine] and a sociological survey.

The results of the sociological survey determine that the indicator of the relationship to democratic processes of Ukraine and EU countries has smaller deviations than the indicators of the Russian Federation and European countries, where the deviations are significant. The greatest deviations are observed when it comes to specific human actions aimed at the formation of democratic values, for example, participation in strikes, boycotts, signing petitions, participation in elections, especially local ones. All these elements, in fact, are a manifestation of citizens' participation in the formation of a democratic society. The indicators of such participation are minimal for the Russian Federation.

Considering the aggravation of the situation with manifesting freedom of speech and expressing will in 2022 in connection with full-scale military aggression and political persecution of persons who disagree with the

authorities' standpoint, such public activity has only decreased in 2022. With low public activity of the population, there is a high level of support for the state government and the leader.

More than half of the respondents prioritize the need to obey the political will of the state leader, without questioning his decisions, whatever they may be (regarding restrictions on freedom of speech, political persecution, the formation of a corrupt system, bringing one's friends and relatives to power, the hereditary transfer of power, changes to the constitution, starting a war, mobilization, etc.).

A strong military is the priority for the population, while the economy is the priority for democratic societies. Given that a third of the population defines the army as the basic purpose of the country; the level of trust in the army is lower than in democratic societies. Despite the high priority of law enforcement agencies as a system of supporting law and order and the existing state order, the majority of respondents define a higher level of danger than in democratic societies. Only a third of those surveyed define freedom of speech as a priority of a democratic society.

Therefore, it is expedient to note that according to the results of the conducted sociological survey, it was determined that authoritarian societies replace the democracy concept, defining it only as the stability of social-political processes.

The majority of respondents do not associate themselves with society as full-fledged members of this society; they do not define themselves as a person of the world, which determines distrust and limited contacts with representatives of other countries. This significantly limits the outlook and format of thinking of the population of authoritarian regimes, building an idea of the advantages of the existing political regime and determining its uniqueness.

It is proposed to analyze the results of assessing several indices: the democracy index, the human development index to confirm the hypothesis proposed in the research, that democratic societies are more motivated in the aspect of ensuring development. It was already partially confirmed by the results of a sociological survey, where it was revealed that respondents from Ukraine and EU countries identified their personal role in social-political and social-economic processes, as well as determined the priority of economic development.

Table 3. Correlation interrelationships of the democracy index, the human development index.

Place in the rating	Country	Democracy index	Human development index
1/1	Norway	9,81	9,49
2/9	Iceland	9,37	0,92
3/7	Sweden	9,26	9,25
4/14	New Zealand	9,25	0,93
5/10	Canada	9,24	9,2
6/11	Finland	9,20	0,93
7/5	Denmark	9,15	9,25
12/3	Switzerland	8,83	9,39
79/74	Ukraine	5,81	0,78
124/52	The Russian Federation	3,31	0,82
164/151	Syria	1,43	0,57
165/188	Central African Republic	1,32	0,39
166/149	DR Congo	1,13	0,57
167	North Korea	1,08	-

* Source [Human Development Report, 2021; Democracy Index, 2021].

The indicator of the democracy index is calculated by determining such indicators as the electoral process and pluralism, the government's functioning, participation in country's political life, and the development of political culture and civil rights. That is, these indicators confirm the statement about the role of pluralism as an element of a democratic society. The indicator of the human development index is calculated as a set of indicators for determining the level of poverty, literacy, education, life expectancy, health care, social indicators, the level of environmental safety, GDP, the level of freedom of speech and other indicators.

Analyzing interrelationship's indicators between the democracy index and the human development index, a high correlation dependence of the indicators was determined, namely 0,62. The confirmation of the developed hypothesis is also a place in the ranking of the democracy index and human development index calculation: the countries that are in the TOP-10 countries according to the democracy index are also found in the TOP-20 countries with the highest index of human development. Accordingly, the countries with the worst indicators of democratic development have the lowest indicators of the human development index, which statistically confirms the hypotheses developed in the research.

Based on the developed hypotheses, an architecture's model of society's democratic development as a future paradigm of social development was formed – Fig. 3.

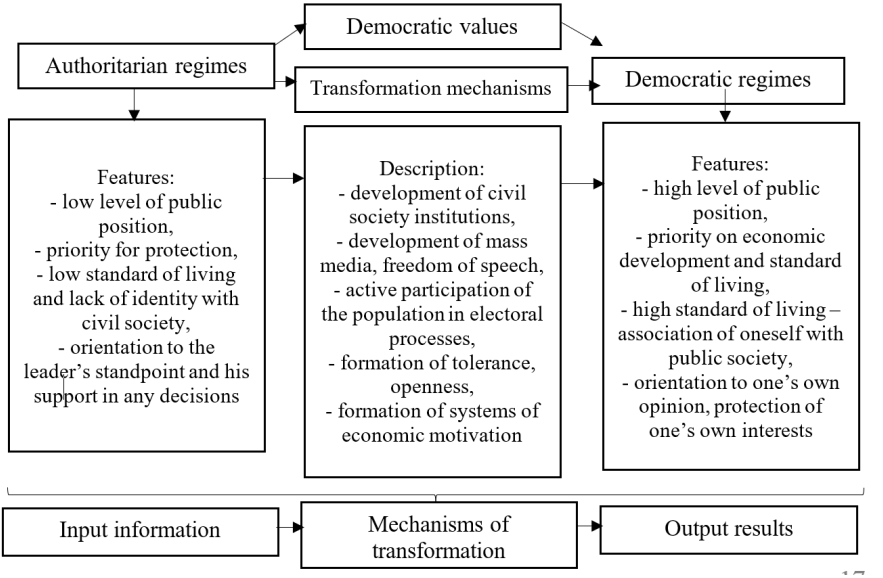

Fig. 3. Model of the architecture of society's democratic development. Source: prepared by the authors.

The developed model is represented as a system's elements: input-output information that is transformed by implementing the proposed mechanisms.

4. Discussion

As a result of the research, hypotheses were put forward regarding the role of democratic transformations in social development and political processes. In particular, the influence of the cause-and-effect relationships of military aggression to the level of democracy in society was considered. One of the hypotheses determines that authoritarian regimes use military conflicts by forming the idea of external enemies as a tool to preserve the regime in conditions of social-economic development's low indicators.

The absence of democratic processes is closely linked to inadequate measures of socio-economic progress, which was proven by analyzing

the role of pluralistic processes in motivating the population to engage in entrepreneurial and investment activity. The developed hypotheses are of a debatable nature. However, they were confirmed by the results of sociological surveys, their analytical studies and the determination of correlations between the democracy index and the human development index of the world's countries.

In subsequent studies, it is planned to determine the transformations that took place with the beginning of full-scale military aggression regarding the main issues of Ukraine's social development. Based on the conducted analysis, it is advisable to develop recommendations on practical measures to protect freedom and democracy as the basis of value orientations in the fight against military aggression and the formation of the fundamentals of the future security architecture in the world.

Conclusion

Through the comprehensive research conducted, specifically focusing on a retrospective examination of cause-and-effect dynamics within major global military conflicts and military aggression, a deeper understanding of the interplay between democracy development and peacekeeping factors has been achieved. The hypotheses formulated based on this analysis have been substantiated through a sociological survey that gauged public attitudes towards democratic processes in Ukraine, various European nations, and the Russian Federation.

Consequently, the culmination of this research effort has resulted in the formulation of a comprehensive model outlining the architectural framework for the future development of democratic societies, thus presenting a paradigm shift in social and political progress.

This model serves as a blueprint for shaping the trajectory of society, ensuring the realization of democratic ideals and fostering sustainable growth. By incorporating the findings and insights from this study, policymakers and stakeholders can effectively implement strategies and policies that facilitate democratic development, leading to enhanced stability and prosperity on both national and global scales.

The conducted research has yielded significant insights, not only in terms of retrospective analysis of cause-and-effect relationships within major military conflicts worldwide but also in understanding the complexities surrounding military aggression in the territory of the post-Soviet countries. By examining these historical events, it became evident that the development of democracy and the maintenance of peace are deeply intertwined factors.

Building upon this understanding, hypotheses were formulated and subsequently confirmed through a comprehensive sociological survey. The findings of this survey provided invaluable data to support the research outcomes and shed light on public perceptions of democracy in different regions.

Based on the accumulated knowledge and insights, a groundbreaking model for the architecture of society's democratic development emerged. This model stands as a guiding framework, offering a vision for the future paradigm of social and political progress. It recognizes the fundamental importance of democratic principles in shaping the trajectory of societies and outlines strategies for their implementation.

By adopting this model, policymakers and stakeholders can effectively navigate the challenges of the ever-changing global landscape. It presents a blueprint for fostering democratic ideals, ensuring that societies are built on principles of freedom, equality, and justice. Moreover, it serves as a foundation for sustainable growth, as societies that embrace democratic values are more likely to experience stability and prosperity.

In practical terms, the implications of this research extend beyond theoretical discussions. The model's recommendations can be translated into actionable measures aimed at protecting and promoting freedom and democracy in the face of military aggression. By prioritizing democratic values and integrating them into the fabric of society, nations can establish resilient security architectures that safeguard the well-being and aspirations of their citizens.

In conclusion, the conducted research has contributed to our understanding of the complex relationship between democracy, peace, and social-economic development. The developed model for society's democratic development provides a forward-thinking approach to shape the future trajectory of nations, emphasizing the importance of democratic values as the bedrock of a prosperous and secure world.

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Conduct of search actions in the investigation of fraud with financial resources

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Abstract

The analysis carried out in the article was aimed at exploring the conditions of possibility, for inspection and search of the crime of fraud with financial resources, which also involved the review of: (places of events, documents); interrogation (of witnesses, suspect, victim); simultaneous interrogation of two or more persons already interrogated; presentation for identification (person, things). With the help of general and special philosophical methods, the tactical features of carrying out the specified investigative (search) actions, which are often caused by a conflict situation produced by the involvement of organized criminal groups, in the commission of such fraudulent actions, are determined. The results indicate the specific circumstances of the search, aimed at the seizure of computer equipment, software and relevant information contained therein. Furthermore, the conclusions emphasize the desirability of timely implementation, thorough preparation, involvement of a specialist in the field of economic activity and competent use of technical means of fixation to manage these crimes.

Keywords: fraud; economic resources; investigation of financial crimes; evidence; investigative actions (search).

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Realización de acciones de búsqueda en la investigación de fraude con recursos financieros

Resumen

El análisis realizado en el artículo tuvo por objetivo, explorar las condiciones de posibilidad, para la inspección y búsqueda del delito de fraude con recursos financieros, lo que implico además la revisión de: (lugares de eventos, documentos); interrogatorio (de testigos, sospechoso, víctima); interrogatorio simultáneo de dos o más personas ya interrogadas; presentación para identificación (persona, cosas). Con la ayuda de métodos filosóficos generales y especiales, se determinan las características tácticas de realizar las acciones de investigación (búsqueda) especificadas, que a menudo son causadas por una situación de conflicto producida por la participación de grupos delictivos organizados, en la comisión de tales acciones fraudulentas. En los resultados se señalan las circunstancias concretas del allanamiento, tendiente a la incautación de equipos informáticos, software y la información relevante contenida en los mismos. Por lo demás, en las conclusiones se hace hincapié en la conveniencia de la implementación oportuna, preparación exhaustiva, participación de un especialista en el campo de la actividad económica y uso competente de medios técnicos de fijación para gestionar estos delitos.

Palabras clave: fraude; recursos económicos; investigación de delitos financieros; pruebas; acciones de investigación (búsqueda).

Introduction

Fraud with financial resources is a rather complex, carefully concealed process of damaging financial security (Hodnyuk et al., 2001, p. 111), which encroaches on economic relations - relations on the formation, distribution and use of monetary funds, causes multi-million losses to the national economy, business entities and the welfare of citizens, undermines the development of the banking and credit and financial system, entrepreneurial and investment activities.

According to global statistics, 6.3 trillion US dollars are lost annually due to economic crimes and fraud. On average, a company loses 5% of its profit due to fraud. In Ukraine, 61.5% of companies experienced fraud. 20% of companies estimated their losses from fraud in the amount of $100,000 to $5 million per year. Ukraine ranks 5th in the ranking of countries in the world by the level of fraud with financial resources (Boris and Korneev, 2022).

Undoubtedly, the main task of any state is to create such a system of control and accounting that will make it impossible or detect the commission of fraud in the early stages. But, if a criminal offense has already been committed, the only effective way out of this situation is a demonstrative investigation with the prosecution of the guilty (Parfilo, 2022).

Recently, fraud with financial resources is becoming more and more widespread and organized forms, is committed using the latest achievements of science and technology, which requires the development of adequate measures to respond to such criminal manifestations. The most widespread types of fraud with financial resources in wartime should include:

1. illegal appropriation of company assets (appropriation of assets that are humanitarian aid or aid; the director's conclusion of transactions that are detrimental to the company for his own benefit or for the benefit of other persons; implementation by the top management of the company for himself payments that are not provided for by law or an employment contract; the company's spending for the employee's personal purposes; the company's acquisition of assets that exist only «on paper»);
2. corruption (for example, receiving an illegal benefit for giving advantages over other counterparties);
3. misrepresentation of financial statements (income or expense part) is the most damaging type of corporate fraud (a common situation is when, due to fictitious business transactions, the company's expenses are artificially inflated and any payment of dividends to shareholders becomes impossible (Parfylo, 2022).

The investigation of such offenses is always: connected with documentary confirmation of the commission of the crime; involves documenting the fact of a person's abuse of authority, confirming the fact of obtaining an illegal benefit, as well as active work with witnesses, etc.

Today, the issue of investigating fraud with financial resources requires modern approaches and updated methods in connection with the improvement of the methods of committing these crimes. Therefore, there was a need to provide practical recommendations to the employees of law enforcement agencies regarding the conduct of typical investigative (search) actions during the investigation of crimes of this category.

1. Methodology of the study

The methodological basis of the research is the theory of knowledge and the general theory of criminology. Dialectical-materialistic contributed to

the understanding of the object of research in the context of combining the needs of science and practice.

The research used specially legal methods, in particular: dogmatic (when interpreting legal and economic categories, with its help, the conceptual and categorical apparatus was deepened and clarified); systemic (made it possible to determine the system of typical investigative (search) actions, as well as the circumstances that should be investigated); statistical (when illustrating the financial losses caused to the countries of the world as a result of committing financial fraud); sociological (to confirm scientific conclusions based on the results of a survey of law enforcement officers).

Other methods were also used in the article, in particular: logical-legal, functional, forecasting.

2. Analysis of recent research

The work of such scientists in the field of criminology and criminal procedure as H. Foros, I. Godniuk, V. Konovalova, O. Kovalchuk, V. Kovalenko, V. Lysenko (Foros *et al.*, 2022, pp. 115131; Godniuk *et al.*, 2021, pp. 110-115; Konovalova, 1999, pp. 72-74; Kovalchuk, 2018, pp. 268-276; Kovalenko *et al.*, 2013; Lysenko, 2006) and others are devoted to the study of the problems of criminalistic security of the investigation of fraud with financial resources.

At the same time, scientific developments regarding the creation of a comprehensive scientific convention for the investigation of fraud with financial resources in modern conditions, which would be based on the latest provisions of the theory of criminology and the generalization of criminal proceedings of this category of crimes, are not enough today.

3. Results and discussion

The success of the investigation of any criminal offense depends on the timely and tactically correct conduct of certain investigative (surveillance) actions (hereinafter - ISA), determining their optimal sequence and expediency.

According to Part 1 of Art. 223 of the Criminal Code of Ukraine, ISA are actions aimed at obtaining (collecting) evidence, things and documents or checking already received evidence in a specific criminal proceeding (Criminal Procedural Code. Law of Ukraine, 2012).

With the help of the ISA, the circumstances of the commission of criminal offenses are revealed, and the circumstances to be proven are clarified. Such circumstances during the investigation of criminal offenses in the field of

economic activity should include: the place of seizure of material values or money; circle of persons who participated in the commission of the crime, their position and functional duties; the method of committing the crime, as well as actions to conceal it; the subject of the encroachment, the amount of the damage caused; who is involved in the commission of the crime and how the functions were distributed among its participants; whether the crime was committed by an organized group; what is the duration of the criminal activity; connections of criminals with corrupt persons of controlling and law enforcement agencies, whether the facts of criminal activity are related to bribery, abuse of official position, tax evasion, etc.; reasons and conditions that contributed to the commission of crimes (Arit, 2013, p. 106).

According to V.O. Konovalova, when determining the sequence of ISA, it is important to predict the likely results of their implementation and, accordingly, specify the most optimal sequence (Konovalova, 1999, p. 72). Our survey of the investigative bodies of the pre-trial investigation of the NPU gives grounds for asserting that during the investigation of financial fraud it is most expedient to conduct the following ISA: inspection of the scene of the incident (64%); review of documents (78%); interrogation (100%); simultaneous interrogation (85%); search (81%); presentation for recognition (32%); examination (84%).

Also, in the opinion of the interviewed investigators, the conditions that contribute to the successful conduct of these ISAs are: timeliness (94%), involvement of the right specialist (86%), sufficient time and thoroughness of preparation for the conduct (79%), correct application of tactical techniques (71%) and competent use of technical means of fixation (59%).

The most common ISA is the inspection of the scene of the incident. In accordance with Part 1 of Art. 237 of the Criminal Procedure Code of Ukraine, examination is an ISA, during which the state, properties and signs of material objects are detected, directly perceived, evaluated and recorded in order to obtain factual data that are important for establishing the truth in criminal proceedings (Criminal Procedural Code. Law of Ukraine, 2012). The results obtained during its conduct are usually the basis on which the further course and results of the investigation depend.

The inspection of the crime scene is especially important in cases where the investigator begins the investigation with only information about the detection of traces of a crime, and the inspection is essentially the only opportunity to establish many circumstances important for solving the crime.

As it is rightly noted in the forensic literature, the review should ensure the possibility of obtaining information about the circumstances of the event in its original, unchanged state, since any delay causes the loss of

physical evidence, a change in the trace picture. The urgency of the OMP is also explained by the need to quickly obtain information for the purpose of organizing the search for the criminal, as well as conducting other investigative (search) actions aimed at investigating the crime (Shepitko, 2004).

In the context of the investigation of financial fraud, the scene can be: office buildings where the enterprise, financial organization, credit union is actually located or its legal address is indicated (in the process of inspecting the scene of the incident, offices, office premises, warehouses, archives, etc. are inspected); residential buildings, plots of land, and other property owned by a person with private property rights (often these premises can be used to hide means of committing fraud) (Dintu, 2015).

Taking into account the specifics of this type of criminal offense, as well as the fact that the inspection of the scene of the incident is carried out in the vast majority of premises that are at the disposal of a person with the right of private property, the inspection must be carried out in compliance with the requirements that the Criminal Procedure Code of Ukraine provides for conducting a search.

That is, the investigator, in agreement with the prosecutor, or the prosecutor himself, must apply to the investigating judge with a corresponding request in order to obtain a decision to conduct an inspection.

Therefore, during the investigation of criminal offenses of this category, the review makes it possible to: reproduce in a certain way certain aspects or moments of an objectively existing event of a criminal offense; display information about the identity of the criminal, the specifics of the object of the offense, on the basis of which to put forward versions in the future; get data on the number of criminals who committed fraud, etc.

Also, such information during the fraud investigation can be established in the process of reviewing documents. In criminology, a document is considered as a material object on which, with the help of signs, symbols and other elements of natural or artificial language, information about facts of legal significance is recorded.

For the investigation of financial fraud, the distribution of documents can be carried out depending on the information displayed in them:

1) documents that are of a criminal nature and are means of criminal activity (for example, forged passports, contracts or receipts for receiving money);

2) documents that have a legitimate origin, but were used to implement a criminal intent (for example, documents of economic activity of a financial organization; financial reporting documents);

3) documents that have an informative, cognitive and orientation value for establishing the circumstances included in the subject of proof.

During the investigation of financial fraud, it is advisable to carry out this ISA in the following cases: if the documents contain traces of the commission of a crime or were directly an instrument of its commission; if documents that directly or indirectly indicate the involvement of a certain person or group of persons in committing fraudulent actions; if the documents were not a tool for committing fraud, but their content is of evidentiary value for studying the necessary circumstances for the commission of this crime.

Document review allows you to properly organize and plan further investigation. Of all types of review, in our case, document review is the most informative means of collecting and verifying evidence.

The investigator will first review the following documents: founding documents of the financial organization (charter, minutes of general founding meetings, founding agreement, documents on approval of the procedure for covering registration costs; on approval of regulations on the work of individual management bodies and the formation of special funds; on the definition of the structure and policy of providing services; about engagement and acceptance, etc.); annual activity reports; documents confirming the provision of loans to members; payment order; tax invoices; contracts; acts on the write-off of material values and others that may relate to the organization's activities.

In the process of reviewing documents, the following tasks must be performed: finding out the general data characterizing the document; establishing the location of the text to be researched, its fragments, signatures; by whom and when the document was issued or produced, to whom it is addressed; on behalf of whom the signatures were executed, what is the content of the document, which testifies to the facts and circumstances that are important for the case; what details does he have; whether the document contains any signs or texts inextricably linked to the signatures to be examined; which facts or events are certified by signatures, seals and stamps when the text (signatures) is filled out; establishment of the fact of creation of the document or its individual parts by a specific person; establishment of signs indicating changes to the document; with what dye the main text, filled in props, individual fragments are used; how the text of the manuscript was executed; whether the time of filling out the document corresponds, judging by the date and time of production of the document form; establishing signs of forgery of seal impressions, stamps by their mirror image, as well as other tasks.

As a result of this review, the investigator finds out: which documents should be attached as material evidence; which documents are missing and measures must be taken to obtain them; regarding which documents it is

necessary to appoint a forensic examination; which documents will help investigate certain circumstances that have not yet been fully established; which documents can be used in the future during the ISA.

The review of documents is also important for the reason that the results of their review can become a reference point in the further planning of the investigation of fraud related to the activities of a financial organization (for example, from them you can obtain information about the circle of persons who had access to it and who need to be questioned, establish the location of other documents, etc.).

No less important is the review of documents on electronic media, in particular, a computer, to which attention is drawn in legal sources.

For this purpose, photography or video recording of the image from the display screen can be carried out. During a computer review, you need to: stop programs and record the results of your actions in the protocol, display the changes that have occurred on the computer; determine whether the computer has external data storage devices on hard magnetic disks (hard drives), display the location of the computer and its peripheral devices (printer, modem, keyboard, monitor, etc.).

In the protocol and on the diagram attached to it; display in the inspection protocol the purpose of each device, name, serial number, equipment (availability and type of disk drives, network cards, etc.), presence of a connection to a local computer network and (or) telecommunication networks, the condition of the devices (intact or with traces of hacking); accurately describe the procedure for connecting the specified devices to each other, if necessary, indicate the connecting cables and their connection ports, and then disconnect the devices from the computer.

Despite everything, the most common way of obtaining evidence is an interrogation, and its conduct requires the investigator to have a high general and professional culture, and a deep knowledge of human psychology. Interrogation during a pre-trial investigation is an ISA, the conduct of which is aimed at collecting, checking, and evaluating evidence by obtaining in verbal form and further recording them in the protocol and other methods prescribed by law by the appropriate subjects of criminal procedural activity, statements from the interrogated person about the circumstances known to him crime or about such circumstances that are important for criminal proceedings.

Obtaining information during the interrogation of persons involved in financial fraud has its own characteristics, which are determined by the procedural position of the interrogated person, the position held, interest in the results of the investigation, individual characteristics of the person and some other circumstances.

The set of circumstances that the investigator intends to find out through interrogation is related to the very event of the crime (the manner and place of its commission, time, amount of damages, etc.), preparation for its commission, and measures taken by criminals to conceal their illegal actions. The subject of the interrogation depends on the procedural situation of the interrogated, and on the amount of information he possesses.

The purpose of interrogations at the initial stage of a fraud investigation, as S. Udovichenko aptly points out, is to clarify the general picture of the event that took place, the schemes for carrying out this or that transaction, deciphering numerous documents, accounting entries, accounts, individual digital records and obtaining relevant explanations regarding them Therefore, if the investigator is not well versed in special economic issues, he needs to fill this gap when starting the investigation.

Appropriate training may include: familiarization with special literature (textbooks, manuals, methodical recommendations, regulatory documents); using the help of specialists in the economic profile and obtaining from them various background information regarding the general analysis of documentation; direct participation of the specialist in the interrogation (Udovichenko, 2007).

A significant amount of information, which is important for a quick and effective fraud investigation, can also be obtained from witnesses. The significance of the information reported by witnesses depends on a number of factors, among which the desire dictated by the duties of a citizen to stop the illegal activities of certain persons prevails. It is due to this circumstance that it becomes important to determine the groups of witnesses, their orientation, potential opportunities for obtaining data that contribute to the investigation of crimes.

The information reported by witnesses generally depends on the degree of awareness of the latter, but in a more detailed gradation also on other characteristics (Arit, 2013).

In our opinion, a typical circle of witnesses in fraud cases related to illegal financial activities may include: accountants and other officials of a financial organization who directly recorded financial and economic activities and prepared reports; persons who participated in certain stages of economic or financial activity (notaries, bank employees, etc.); employees of state control bodies, as well as officials who carry out verification of economic activity, perform separate control functions or are specialists in the field of accounting (employees of local executive bodies, state inspections and commissions, tax authorities, banking institutions, auditors, auditors, etc); fictitious persons listed as founders of the credit union; acquaintances of the suspects in extra-professional relationships (relatives, colleagues, neighbors, etc.).

When choosing tactical techniques for questioning witnesses, it is also advisable to take into account the questioning situation: non-conflict or conflict. Thus, in a non-conflict situation of questioning witnesses, it should be taken into account that some of them, performing their daily work «according to fixed instructions», may not remember it, or distort what happened, or do not report anything interesting.

In this case, it is appropriate to use the techniques of actualization of individual facts of the event that the witness has forgotten, favorable violation of associative ties, which help the verbal reproduction of the event known to the witness, aimed at establishing errors in the testimony and their elimination.

During the interrogation of witnesses about fraud related to illegal financial activities, it is necessary to get answers to the following questions: when, by whom and in what way was the activity, in the content of which the fraud appeared, carried out; who made the relevant decision when issuing the loan; whether it is known which official (persons) had the authority to issue a loan; whether other facts of fraud in the field of activity of the financial organization, credit union of this official (persons) are known, and if so, what exactly; whether the facts of illegal actions were reported to any of the members of the organization, union, law enforcement, control and audit bodies, if so, what were the results of the appeal, in case of non-reporting, the reasons for not contacting the police.

The sequence of questioning witnesses depends on the specific circumstances of the event under investigation. The best result can be obtained if the persons who conducted the audits of the economic activity of the financial organization, the employees of the control bodies, who are not personally interested in the results of the pre-trial investigation, are interrogated first. Then they interrogate the employees of the organization, the union (heads of structural divisions and accounting employees).

When questioning the accountants of the borrowing company, it should be remembered that they can act as students. As part of their functional duties, accountants draw up a balance sheet, deal with accounting reporting, sign financial documents, and often take part in the distribution and spending of money. When questioning the accountant, it is necessary to state the following: the type of business of this enterprise; what are the functional responsibilities of this job; procedure and availability of original accounting documents; did the accountant know about the misuse of the funds received; who controls the use of funds at their enterprise; whether he is familiar with all the documents for obtaining a loan; in what form the loan was received; whether there are previously received and unpaid loans; from which sources to pay off the debt.

From the creditor's side, employees responsible for issuing loans (head of the board, members of the board, employees of the credit department) are subject to questioning. During their questioning, it is necessary to find out: which legal acts, instructions provide for the procedure and conditions for issuing a loan; what is included in the scope of functional obligations of these types; who conducted negotiations with the borrower and under what conditions; who makes the final decision on granting a loan; whether the borrower's ability to pay was checked; what are the criteria for granting a soft loan; reasons for the permitted violations of the loan issuance procedure.

As witnesses, it is necessary to interrogate those who work together with the suspect and carry out the instructions of the manager.

At the initial stage of the investigation, persons who perform security functions in a specific credit institution (employees of security, accounting, etc.) may be questioned as witnesses.

During the interrogation of the victim, the investigator must obtain answers to the following questions: the degree of acquaintance with the person whom he points to as a fraudster; the time and circumstances of their acquaintance; the relationship that developed between them; the time when it became known that fraudulent actions had taken place; subject of fraud (money, property); the circumstances of the fraud; the relationship that developed between the victim and the fraudster after the fact of fraud was discovered; availability of documentary evidence of obligations to return property or other obligations (Streliuk, 2014).

Interrogation of the suspect (provided that he is identified and detained) is usually the primary ISA, and is also one of the most complex types of interrogation, which has its own procedural and tactical features (Boginsky, 1980, p. 3). This is explained by the fact that the investigator has much less information than the suspect, moreover, such information is fragmentary.

In the case of such an interrogation, two tasks are solved. The first of them is obtaining detailed information about the suspect's actions related to fraud. The second task involves creating the impression of significant awareness of the investigator, which prompts the suspect to give truthful testimony in a situation that he imagines to be helpless.

In all cases, during the questioning of the suspect, tactical techniques aimed at detecting falsehood should be used, which are chosen by the investigator in the sequence and in the combination that he considers most appropriate.

However, it should not be forgotten that, according to Part 3 of Art. 42 of the Criminal Procedure Code of Ukraine, the suspect has the right not to say anything about the suspicion against him, the accusation or to refuse to answer questions at any time, and this makes the process of pre-trial

investigation quite difficult (Criminal procedural code. Law of Ukraine, 2012).

Tactical methods of interrogating a suspect differ depending on the situation during the interrogation, whether it is conflictual or non-conflictual in nature. If the situation of the interrogation is non-conflict, its main tactical direction is to find out as fully and in detail as possible all the data related to the circumstances of the criminal offense that were the basis for detaining a person as a suspect.

In the process of such interrogation, if possible, it is necessary to find out the following: under what circumstances the fraud was committed; what methods were used (specific operations, preparatory actions, taking possession of property, etc.); what other criminal offenses did he commit; who participated in the criminal activity and since when, what is the role of each participant in the fraud; during which period the criminal offense was committed; what is the total amount of material values obtained as a result of the committed fraud; that there was a procedure for distributing funds to members of the criminal group; how specific primary accounting documents were drawn up; where the money obtained by crime is now located (Musyenko, 2006).

In cases where the interrogation situation is conflictual, other tactical techniques may be used. In particular, points related to the complexity of individualizing the extent of his responsibility should be explained to the suspect if he is an accomplice to a criminal offense, as well as points related to the need to obtain an explanation from him regarding the circumstances of the event, which the suspect directly relate to or justify him, and in these cases the position of the suspect can be activated in the following way: he is asked how he feels about the statements of the investigator, whether he does not see any discrepancies in them with the real facts, as well as contradictions that significantly affect the correctness understanding the position of a person as a suspect in a crime (Kryushenko, 2016).

During the investigation of fraud with financial resources, a situation may arise when it is necessary to interrogate the members of the organized criminal group who committed this crime.

In such a situation, it is recommended to wake up to the questioning experience associated with the possibility of «being late» with sincere repentance.

During the interrogation of the members of the criminal group, it is necessary to reveal the underlying crimes. During the questioning of the organizers and leaders of the criminal group, the following are revealed: a motivating motive for the emergence of intent; specific students; the methods of committing criminal activity, whether the practice of carrying out these activities is weak; group structure, methods of communication, methods

of conspiracy; arming the group with weapons, transport equipment, communication equipment; connections with corrupt elements, whether there is protection, cover; channels for receiving intelligence information; distribution of functions in the group (performers, fighters, etc.); types and methods of rewards for criminal services; interpersonal elements in the group, are there conflicting parties, contenders for the role of leader.

During the interrogation of an ordinary student of an organized criminal group, it is necessary to reveal the following circumstances: in the commission of which crimes the interrogated took part; what were the results of his actions; who was the initiator of the criminal activity; how roles were distributed in the criminal group; whether planning a criminal activity; how crimes were concealed; what are the relationships of the interrogated with other members of the group; how he was involved in a criminal group; why he committed the crime (Zhuravel, 2009, p. 200).

Practice shows that it is advisable to use audio or video recording during the interrogation. If the investigator uses a sound or video recording while interrogating, he must inform about this before the interrogation, reflect this fact in the introductory part of the phonogram (video) and the interrogation protocol.

The phonogram or video recording must contain the entire interrogation process, not just its fragments. After the end of the pre-trial investigation, the investigator must acquaint the suspect and the defense attorney with the contents of the phonograms (video recordings). After the participants of the process have familiarized themselves with the materials of the criminal proceedings, the phonograms are sealed and kept in the criminal proceeding.

According to Part 9 of Art. 223 of the Criminal Procedure Code of Ukraine, in the process of investigating the investigated crimes, there is a need to simultaneously interrogate two or more already interrogated persons in order to find out the reasons for discrepancies in their statements.

Summoned persons are invited in turn to testify about the circumstances of the criminal proceedings, for the clarification of which an interrogation is being conducted, after which the investigators and prosecutors may be asked questions. Persons participating in the interrogation, their defenders or representatives have the right to ask each other questions related to the subject of the interrogation (Kovalchuk, 2018).

An important procedural means of obtaining evidence is conducting a search. A search is an ISA aimed at obtaining (collecting) evidence or checking already obtained evidence in a specific criminal proceeding. A search is one of the methods of obtaining evidentiary information in a criminal trial (Denysiuk and Shepitko, 2001, p. 8). Its essence consists in a forced inspection of a dwelling, other possessions of a person, a search of a person who is there.

The search is conducted for the purpose of identifying and recording information about the circumstances of the commission of a criminal offense, finding the instrument of a criminal offense or property obtained as a result of its commission, as well as establishing the location of wanted persons. In the case of an investigation of criminal offenses committed in the sphere of economic activity, it is conducted with the aim of identifying stolen products, documents and draft records.

In accordance with Part 2 of Art. 234 of the Criminal Procedure Code of Ukraine, the search is carried out on the basis of the decision of the investigating judge. The grounds for obtaining permission to conduct a search are the presence of sufficient information indicating the possibility of achieving its goal (Criminal procedural code. Law of ukraine, 2012).

A search can be successful if the investigator has adequate indicative information. This information must contain the necessary information about the persons to be searched and the place of the search. The question of what and where to look for requires special attention. It is decided by the investigator on the basis of the data contained in the materials of the criminal proceedings.

In financial fraud proceedings, this task can be solved with the help of analysis of documents and financial transactions used by criminals, commercial connections and personal relationships of members of a criminal group, statements of witnesses and other persons, background information of state regulatory bodies, as well as data, obtained during operational search activities (Chaplinskyi, 2014).

In criminal proceedings about financial fraud, the objects of search are most often documents of its financial and economic activity, accounting and tax reporting (genuine and with signs of forgery), document forms with details (imprints of seals, stamps, signatures of officials), computer equipment and electronic media (CDs, flash drives, electronic notebooks, payment cards, smartphones, etc.), money (cash in national and foreign currency), securities, personal belongings (notebooks, diaries, etc.).

In the forensic literature, separate situations are considered when conducting searches in financial fraud proceedings: non-conflict (searching of persons not directly involved in the crime) and conflict (search with the aim of seizing objects, documents and valuables from persons involved in the crime).

In the first case, the investigator is often limited to seizing voluntarily provided things or documents. However, the second situation is more common, moreover, any search always has a clearly expressed coercive nature and is associated with interference in the private life of citizens, in the sphere of their personal interests (Denysiuk, Shepitko, 1999).

According to Part 1 of Art. 159 of the Criminal Procedure Code of Ukraine, temporary access to things and documents consists in providing the party to the criminal proceedings by the person in whose possession such things and documents are, the opportunity to get acquainted with them, make copies of them and, in case of a corresponding decision by the investigating judge, the court, to remove them (to seize them) (Criminal procedural code. Law of Ukraine, 2012). The investigator can seize those documents that are necessary for the further conduct of the pre-trial investigation.

The person in whose possession the documents are, is obliged to give the party of the criminal proceedings the opportunity to get acquainted with them only in the event that the investigating judge, the court decides on temporary access to the documents in the form of a resolution. The entity of the party to whom this decision is provided has the right to inspect them, make copies of them or remove them. If certain documents are seized, a description of them is drawn up and handed over to the owner. In the description of the documents, their name, content, number of sheets and other data by which they can be identified are indicated. A copy of the description of the seized documents is attached to the criminal proceedings (Alekseeva-Protsyuk, 2013).

When investigating fraud with financial resources, it is necessary to conduct a series of searches in service premises and apartments of suspects. Such searches were called group searches. Conducting group searches gives an effective result in the investigation of fraud with financial resources, which is committed by an organized criminal group.

When planning a group search, it is appropriate to use operational data and create a scheme of criminal connections, as well as a scheme of family connections of the searched persons. If it is planned to detain persons who are being searched, it is necessary to predict in advance how the detention will proceed, what measures should be taken to avoid communication between the detainees and where they will be placed.

When investigating fraud with financial resources, it is possible to conduct a search in a bank office, which sometimes poses certain difficulties in accordance with the specifics of the office's work. First of all, this is the reluctance to cooperate with the police, obstacles in obtaining the necessary documents, encroachment on some premises, and sometimes physical opposition from the security.

Conducting a search in a bank office should be preceded by thorough preparation. A cold-operational group is being formed, the number of which is determined taking into account the volume of future work, the number of premises to be searched, and the number of people working in the bank of personnel.

The operational mode of the bank, the number of personnel, the security system, the number, location and purpose of service premises are established in an operational way. Separately, information is collected about the managers of this institution, when they arrive at work, it is clear whose competence it is to open certain vaults, safes, and use databases. During the preparation, it is decided in which premises the search will be conducted: in the entire bank or only in separate rooms. Responsibilities are distributed among the students of the cold-operational group, briefings are conducted in case of a conflict situation.

It is appropriate to start the search at the moment of opening the bank, having previously blocked all entrances to the building. Having presented the decision of the investigative judge on permission to search, the investigative operative group begins to conduct the investigation (Lysenko, 2006).

Certain difficulties are caused by the burden of computer equipment during the search. Computers are increasingly used for accounting, business, and other tasks:

1) Whether the room where the computer is located is blocked by an electronic access system or a security alarm and what technical security measures are used for this.
2) What measures are available for protective signaling and ensuring the security of computer information, where is the relevant documentation.
3) Whether special tools are installed in the computer to destroy information in case of unauthorized access to it; indicate the location of the organization that established this system.
4) Is a password (an additional device – an electronic key) necessary for accessing information (individual tasks, databases, etc.) that is on the computer or to its individual parts. The rules of its use, and whether the violation of these rules leads to the collection of information.
5) Whether the computers are connected to the local network of the enterprise, what is its scheme, the current rules for its safe use.
6) Whether there is a continuous back-up of data with a complete log of the computer for the day (Kovalenko and Anapolska, 2013).
7) Whether the computer is connected to the Internet, what is its address in this network.
8) placement of computer equipment in the room; 9) who has access to work on computers, their professional level.

The selection of technical measures should be carried out together with specialists, depending on the conditions of the future search (Saltevskyi, 2000).

Presentation for identification can be classified as a derivative of ISA, since it is always preceded by an interrogation, without which presentation for identification is impossible. Identification can be carried out both at the initial and subsequent stages of the investigation, depending on the investigative situation. For example, if there is a threat of loss of identification evidence, identification must be carried out immediately (however, only after the interrogation).

The main tasks of presenting objects for impeachment are as follows: to establish the fact of the presence of a certain person at the place of commission of a criminal offense; to find out other intermediate facts in the proceedings; to establish the fact of acquaintance between persons, if one of them denies it; find out the signs and individual characteristics of objects; identify a person who does not have documents, or there are suspicions that he is impersonating someone else; to establish the identity of an unidentified corpse. If a person declares that he does not remember the features of the object and cannot recognize it, it is not advisable to present it for identification.

According to the provisions of Art. 228–230 of the Criminal Procedure Code of Ukraine, objects for recognition can be: 1) persons (outside of visual and audio observation, by photographs and video materials, by voice, by gait); 2) corpse; 3) things (Criminal procedural code. Law of Ukraine, 2012).

Presentation for the identification of a living person is usually carried out in cases where: the person to be presented was not previously known to the person who will be identified, but was observed by the latter in connection with a criminal event; the person who recognizes previously knew the person who presents himself, but cannot provide the necessary data about him (for example, cannot provide his surname and first name); the person is well known to the one who recognizes, but he denies this acquaintance; the person who will be recognized pretends to be someone else.

When investigating financial fraud, two situations can arise: favorable and unfavorable. In a favorable situation, the person clearly indicates the characteristics by which he remembered the person (gender, age, height, etc.), knows his complete profile data (surname, first name, patronymic); has information about its place, role and functions within the financial organization, credit union, etc.; remembers exactly when and under what circumstances the acquaintance with the suspect took place; clearly indicates which financial or documentary transactions were carried out with a certain person.

In an unfavorable situation, the victim, for example, cannot clearly describe the suspect, does not have enough information about what kind of activity he is engaged in; cannot remember the complete profile data of the person with whom he concluded various agreements or contracts; from whom exactly she received money or to whom she gave it. Such circumstances may negatively affect the investigation process, for example, the suspect may claim that he has never seen or communicated with the victim, assure that various operations were carried out by another official of the organization, etc.

Presentations for the identification of things (documents) are usually carried out in those cases when things (or documents) come into the disposal of the investigator during criminal proceedings and there are reasons to believe that they have a certain connection with the event of a criminal offense. During the investigation of financial fraud, the following documents will be the first of all: founding documents of the financial organization, credit union (charter, minutes of general founding meetings, founding agreement, documents on approval of the procedure for covering registration costs; on approval of the regulations on the work of individual management bodies and the formation of special funds; on defining the structure and policy of service provision, etc.); annual activity reports; documents confirming the provision of loans; payment order; tax invoices; contracts; acts on the write-off of material values and others that may relate to the activities of the organization, union.

The need to present documents for identification in our case arises when these same documents have become a tool or means of committing financial fraud.

According to the general rule, at least three items of the same type are selected for presentation, which must be of the same type, quality and without sharp differences in appearance. In the end, there should be at least four of all things to present.

In that case, if there are no other similar things, the person who recognizes is asked to explain by what signs he recognized the thing presented to him in one copy (such signs in our case can be letterheads that are characteristic of a certain organization, credit associates; certain special markings or paper; characteristic seals, signatures, handwriting, typeface of the text; the fact of execution of the document or its individual parts by a specific person; establishment of signs by which a person recognizes that changes have been made to the document, etc.).

However, do not forget that in order to present a document for identification, you need to pick up three more similar documents. The investigator is unlikely to be able to find three more almost identical documents in addition to the original of a certain credit agreement, which

will not differ significantly from each other, and will not make photocopies of them.

Therefore, in the investigation of financial fraud, in our opinion, it is more appropriate to present documents during the interrogation of a person with specific questions that will be recorded in the interrogation protocol: do you recognize this document? did you take part in its arrangement? which parties participated in its signing? Do you remember where exactly you saw this document for the first time and in the future? by what features do you recognize this document?

The results of presentation for identification are evidence in criminal proceedings and, like all other types of evidence, are subject to evaluation.

Therefore, at the initial stage of the investigation of frauds related to the activities of the CS, it is advisable to carry out the following complex of ISA: inspection (place of the event and documents), interrogation (applicant, victim, witnesses), search, presentation for identification, appointment of expertise.

Finally, we note that in parallel with the implementation of the above-mentioned ISA when investigating financial frauds, it is necessary to ensure proper support from the employees of operational units. In addition, according to the conducted survey, investigators believe that during the investigation of financial fraud, in cases where it is difficult or impossible to obtain evidentiary information publicly, it is advisable to conduct secret investigative (search) actions (hereinafter - NISA) (100%).

According to Art. 246 of the Criminal Code of Ukraine, NISA is a type of ISA, information about the fact and methods of conducting which are not subject to disclosure, except for cases provided for by the Code. Such actions are: 1) interference in private communication; 2) other types of covert investigative (research) actions. NISA are conducted in cases where information about the crime and the person who committed it cannot be obtained in any other way (Tolpygo, 2015).

The most appropriate in the investigation of financial fraud are: audio and video monitoring of a person (91%), removal of information from transport telecommunication networks (100%), examination of publicly inaccessible places, housing or other possessions of a person (77%) and the use of confidential cooperation (97 %). At the same time, we believe that the mentioned means of collecting and verifying evidentiary information require special attention and separate consideration due to their specificity and multifaceted nature.

Conclusions

On the basis of the scientific analysis made in the scientific article, as well as the generalization of judicial and investigative practice, it was concluded that among the typical investigative (search) actions that must be carried out during the pre-trial investigation of fraud related to financial resources, the following should be highlighted: overview (places of events, documents); interrogation (of witnesses, suspect, victim); simultaneous interrogation of two or more already interrogated persons; presentation for identification (person, things), search.

The peculiarities of the tactics of carrying out the specified investigative (search) actions are primarily determined by the fact that the investigator has to act in a specific environment (premises of a financial organization, credit union), receive, search and analyze documents of a specific content, interrogate persons who have relevant knowledge in the economic sphere and operate appropriate terminology. The main factors affecting their effectiveness are: timeliness, sufficient time and thoroughness of preparation for the implementation, the ability to attract the right specialist, correct application of recommended tactical techniques and competent use of technical means of fixation.

The efficiency of the document review is achieved thanks to the use of special methods by investigators: determination of the purpose and establishment of the origin of the document; deciphering unclear fragments, designations and terms; ascertaining the authenticity of the document; verification of the authenticity and propriety of the information specified therein.

The tactical features of questioning witnesses and suspects depend on the investigative situation. The most favorable situation is when the information about the crime and the persons involved in it is obtained by operative and investigative means. At the same time, conflict situations are typical when the interrogated person does not admit his participation in the crime; does not deny his participation in the commission of the crime, but insists that he was not aware of the illegal nature of his actions; shifts the blame to accomplices; refuses to communicate with the investigator or gives contradictory or false statements.

A particularly difficult task in the investigation of fraud with financial resources is conducting a search aimed at seizing computer equipment, software and relevant information contained in them. This is determined both by the place and conditions of conducting these investigative (search) actions (secured office premises, housing), and by the legal status of the search object - computer information, which often belongs to commercial or banking secrets.

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Recognition and normative reconstruction as a theory of justice in Axel Honneth

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Abstract

Based on Axel Honneth's concept of recognition, considered as a fundamental need of the human being, and the method of normative reconstruction, the core of a plural theory of justice is presented. The aim of the research was to articulate a normative conception of justice with the sociological analysis, by means of normative reconstruction, starting from the intersubjective dimension of the institutions of recognition. Social freedom presupposes access to institutions of recognition. Through research and bibliographical analysis, within the framework of German critical theory, a theory of justice is presented that analyzes institutions in a broad sense, through the reconstruction of already institutionalized practices and conditions of recognition, with a view to social emancipation. The main conclusions lie in the significance of the realization of freedom in patterns, not of an individual taken in isolation, but of social freedom expressed in a plural and expanded sense of "we". Thus, the spheres of realization of social freedom develop as the "we" of personal relations, of the market and, in relation to the sphere of the state, in the democratic formation of will.

Keywords: Axel Honneth; recognition; justice; normative reconstruction; critical theory of society.

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Reconocimiento y reconstrucción normativa como teoría de la justicia en Axel Honneth

Resumen

A partir del concepto de reconocimiento de Axel Honneth, considerado como una necesidad fundamental del ser humano, y del método de reconstrucción normativa, se presenta el núcleo de una teoría plural de la justicia. El objetivo de la investigación fue articular una concepción normativa de la justicia con el análisis sociológico, mediante la reconstrucción normativa, a partir de la dimensión intersubjetiva de las instituciones de reconocimiento. La libertad social presupone el acceso a las instituciones de reconocimiento. Mediante la investigación y el análisis bibliográfico, en el marco de la teoría crítica alemana, se presenta una teoría de la justicia que analiza las instituciones en un sentido amplio, a través de la reconstrucción de las prácticas y condiciones de reconocimiento ya institucionalizadas, con vistas a la emancipación social. Las principales conclusiones residen en el significado de la realización de la libertad en los patrones, no de un individuo tomado aisladamente, sino de la libertad social expresada en un sentido plural y ampliado del "nosotros". Así, las esferas de realización de la libertad social se desarrollan como el "nosotros" de las relaciones personales, del mercado y, en relación con la esfera del Estado, en la formación democrática de la voluntad.

Palabras clave: Axel Honneth; reconocimiento; justicia; reconstrucción normativa; teoría crítica de la sociedad.

Introduction

Axel Honneth, in developing the theory of recognition, has revitalized the reference to Hegel in contemporary political philosophy, especially since his work *The Struggle for Recognition in* 1992. The theoretical turn that Honneth imparted to critical theory consisted in developing the Hegelian category of *recognition* as the conceptual tool best suited to reveal social experiences of injustice and to understand the motivational source of social struggles. More recently, Honneth seeks to find, beyond a historical-genetic explanation of social demands, a normative standpoint from which to assess which claims are just and legitimate and which are not.

Honneth develops the core of a theory of justice that seeks to specify the intersubjective conditions of individual self-realization, that is, a theory of justice that is linked not to abstract models, but to a reconstruction of already institutionalized practices and conditions of recognition, analyzing social institutions in a broad sense. The author proposes to overcome the

gap between a normative conception of justice and the sociological analysis of modern societies, by proposing normative reconstruction and placing the emphasis on social freedom, based on the intersubjective dimension of the institutions of recognition.

1. Recognition

The idea of a struggle for recognition as a methodological key for understanding social conflicts was initially elaborated by Georg Wilhelm Friedrich Hegel (1807-1992) during the period called "Jena", as a reference to his stay in the city of the same name, as well as to the theoretical instrument he elaborated, as a young professor of philosophy, whose internal foundation goes beyond the institutional horizon of his time (Honneth, (1992-2011: 13). It is from here that Honneth seeks the possibility of founding a new social theory with normative content, along the lines of Max Horkheimer's earlier contribution to critical theory.

Based on a re-reading of Frankfurt theorists, Honneth proposes the existence of three assumptions that run through his critique: (1) the declaration of a universal reason capable of making social movements intelligible; (2) the discordant performance of this reason as the cause of a pathology; and (3) an emancipatory motive identified from a suffering (Honneth, 2009a: 42).

The first two presuppositions are open-ended and, thus, it is not possible to ascertain their empirical proof. It is only from the last theoretical assumption that the theory can be given a positive content, object of experimentation. In this way, Honneth proposes the construction of a social theory with normative content, dependent on the capacity for pre-theoretical verification of social suffering, capable of informing theoretical thinking about the pertinence of an emancipatory will in society.

However, according to Honneth ([2000] 2007: 65) the Frankfurt School had remained stuck in Marxist historical materialism, linking social suffering to the particular issues of a class, the proletariat, to whom it would be up to transform their suffering into an emancipatory engine. But when history had shown that the proletarian class had transformed its suffering into support for the rise of fascism, the positive tenor initially adopted by critical theory had become ill-suited to the understanding and transformation of society.

However, for Honneth what history shows as inadequate is only the specific positive content adopted by the theory, which was linked to the exploitation of labour and not its theoretical foundation, remaining open the possibility of developing a social theory with a normative content,

provided that it starts from suffering as revealing an emancipatory will in society. For this thinker, without some kind of proof that the critical perspective of theory is reinforced by a movement in social reality, critical theory can no longer be followed in contemporaneity, since it would not be possible to distinguish it from other models of social criticism, either by its claim to a superior sociological method or by its philosophical procedures of justification. For Honneth ([2000] 2007: 66), it is only by its attempt, which has not yet been abandoned, to provide critique with an objective grounding in pre-theoretical praxis that critical theory can be said to be unique and alive.

In Honneth's (1992-2011) theoretical extension, we perceive an effort to conceptualise the three spheres of recognition: Love, Law and Social Esteem, initially identified by Hegel. These spheres of interaction, through the cumulative acquisition of self-confidence, self-respect and self-esteem, create not only the social conditions for individuals to arrive at a positive attitude towards themselves, but also give rise to the autonomous individual.

The sphere of love constitutes the primary affective relations of mutual recognition that structure the individual from birth, and which are dependent on a fragile balance between autonomy and attachment. According to Honneth (1992-2011), the symbiotically nurtured bond, which is formed by an initially reciprocally desired boundary between mother and child, creates the dimension of individual self-confidence, which will be the fundamental basis for autonomous participation in public life.

From the normative perspective of the generalised other, which teaches us to recognise others as holders of rights, we are allowed to understand ourselves as legal persons. The sphere of law develops in a historical process, its development potential is verified in the generalization and materialization of legal recognition relations (Honneth, 1992-2011).

In order to achieve an uninterrupted self-relationship, human subjects also always need, in addition to the experience of affective dedication and juridical recognition, a social esteem that allows them to relate positively to their concrete properties and capacities. We are in the sphere of social esteem, of a third relation of reciprocal recognition, on the assumption of symmetrical valuation, individuals consider each other in the light of values that make manifest the capacities and properties of themselves and the other as important for the common experience.

The symmetrical relationship does not mean reciprocal valuing in equal measure, but rather the challenge that any subject has the opportunity to experience himself as valuable to society through his capacities and properties. Only then, following Honneth's (1992-2011) reasoning, under the notion of solidarity can social relations access a horizon in which individual competition for social valuation can be free from experiences of disrespect.

In the succession of the three forms of recognition, the degree of the person's positive relationship with himself increases progressively. With each level of mutual regard, the subjective autonomy of the individual also grows. Similarly, parallel experiences of social disrespect can be attributed to the corresponding forms of mutual recognition.

In his article "Invisibilité: sur l'épistémologie de la reconnaissance", Honneth (2005) presents invisibility as the negation of the notion of recognition. The concept and the beginning of the discussion are inspired by Ralph Ellison's book *El hombre invisible* (1984) and is based on the experience of a black character who suffers a process of "invisibilization" by white society.

Using a metaphorical idea, Honneth shows that invisibility is an active process in which contempt is evidenced: a behaviour concerning a person as if he were not and which, for him, becomes very real. Visibility, on the contrary, means recognising the relevant characteristics of a person. In this way, Honneth (2005) presents individual identifiability as the first form of knowledge. This stage is already considered a social act, since the affected individual knows of his or her invisibility by the lack of specific reactions on the part of the other or others. Besides, the lack of expressive acts of visibility may also be perceived by the other people present. Therefore, one can speak of a social invisibility, which leads Honneth to a differentiation between "knowing" and "recognising": "knowing" is then the non-public identification of an individual, while "recognising" refers to appreciation as a public act.

In an analogous way to Daniel Stern's ([1985] 1992) contributions on the interpersonal development of infants, Honneth claims that for adults too there are signs that openly show whether they have been socially approved. As evidence one can consider precisely that feeling which is produced in situations where a person is denied this approval. All expressions of approval are interpreted as a sign, in a symbolically abbreviated form, of a whole series of dispositions that refer to a set of performances that can be legitimately expected in future interactions, such as being treated with respect.

Following the argument of *Struggle for Recognition*, Honneth ([1992] 2011) adds to the elementary form of recognition through love the ideas of respect and solidarity, which place people in distinct constellations with different performances that can be legitimately expected. All of them go beyond the mere affirmation of the existence of the other, that is, of what is meant by "knowing", since they show a motivational disposition towards the other that supposes a restriction of one's own egocentric perspective and with which we grant the other a moral authority over us in interaction. Social invisibility then appears as the denial of social recognition.

For Honneth (2005) human subjects are visible to another subject insofar as the latter can identify them, according to the characteristics of the relationship, as persons clearly defined by properties, that is, when our social interaction partners recognise our singularities and qualities. According to Honneth (2005: 42), "cultural history offers numerous examples in which the dominator expresses his social superiority by appearing not to perceive those he dominates". A subject can attest to his visibility if he forces his social interaction partner to recognize the properties and singularities that form his identity.

From Honneth's historical-theoretical research (2008: 71) stands out the consequence, and to some extent the presupposition, that "in the relation of human beings to their world, recognising (*Anerkennen*) always precedes knowing (*Erkennen), so that* by *reification* we must understand a violation against this order of precedence." Spontaneous, somewhat unconscious and irrational recognition, what the author calls a "pre-cognitive realisation of the act of assuming a certain stance" (Honneth, 2008: 73), which leads to accepting the other's perspective after previously recognising in him a familiar intentionality, is presented as a presupposition of human interaction. This action is neither rational nor does it configure "any awareness of motives" (2008: 73).

This attitude for Honneth is not normatively oriented, although it does lead us towards some form of position-taking, which is by no means predetermined. The non-epistemic character of this elementary form of recognition is emphasised, for which reason the author sets before the differentiated spheres of recognition a stage of recognition, which appears as a kind of transcendental condition: the spontaneous recognition, not rationally achieved, of the other as a neighbour represents a necessary presupposition in order to be able to appropriate moral values, in the light of which we recognise that other in a determined, normative way (Honneth, 2008: 73)

In the absence of the experience of closeness and/or similarity to the other, we could not endow the relationship with moral values ordering our actions. Thus, in the first place, elementary recognition is necessary, "we must existentially take part (*Anteilnehmen*) in the other before we can learn to be guided by norms of recognition" (Honneth, 2008: 73) that bind us to certain ways of acting. In the process of socialization, individuals learn to internalize the culture-specific recognition norms of their culture; in this way they enrich step by step that elementary representation of the other, which is available to them by habit from an early age, with those specific values that are embodied in the principles of recognition prevailing within their society. (Honneth, 2008: 74).

What normative principles are presupposed in relation to the human being when claiming that he always refers to others in a "recognizing"

(*anerkennend*) way? The answer to this question constitutes a central concern in Honneth's reflection as he contributes to a theory of human intersubjectivity. Honneth attempts to guide sociological analysis in the study of normative claims to recognition.

Axel Honneth in his book "Crítica del agravio moral" (2009b) also presents us with a theoretical proposal for the recognition of moral offence and the expansion of democratic solidarity. Honneth develops a perspective in which moral offence is not a simple antecedent of reciprocal violence, nor only the reverse side of formal justice, which would have to punish in order to compensate for the damage inflicted on people's legal rights. But it seems important to interpret the moral consequences that interpersonal moral offence and conflicts over recognition play in the process of subjectivation.

Honneth aims to recover the ethical potential underlying the processes of struggle for intersubjective recognition that are developed from the experience of vulnerability and violation of personal integrity; these aim to expand the horizons of the forms of moral relationship - affection, respect and solidarity - and of the reciprocal bonds, which sustain our integrity in the form of self-confidence, self-respect and self-esteem.

In this sense, experiences of contempt and moral violation and the resulting feelings of injustice are the sources of normative claims for recognition, which expand reciprocal bonds and the sense of social recognition. Thus, moral violations offer a more adequate normative standard and source of practical motivation for Honneth (2009b) than the principles of conventional justice.

Alongside the three spheres of recognition listed above, Honneth (2009b: 322) distinguishes three forms of moral violation: firstly, forms of offence that deprive a person of the security of his or her physical well-being, as occurs with physical mistreatment, torture, rape and murder. Secondly, the forms of contempt for people's moral responsibility, which destroy self-respect, such as through fraud, deceit, failing to keep one's commitments, etc. Finally, there is a form of contempt that involves the humiliation of the other and a serious lack of respect, ranging from indifference and invisibility to the stigmatisation of the other.

For Honneth (2009b) it is fundamental to attend to the expression of feelings of contempt and injustice, since from their interpretation it will be possible to deepen the democratic forms of intersubjective recognition of all people and to minimise the possibilities of being affected by social injustice.

Thus, for Honneth, experiences of disrespect constitute the moral basis of the struggle for recognition of individuals, going beyond certain institutionalized standards. We can point to the feminist movement and those of colonized peoples as historical examples, which demonstrate

that this moral substratum is capable of considering the totality of forms of social injustice, resulting from the depreciation of certain standards of social esteem. For Honneth, it is only through a normative paradigm that goes beyond historical contingencies that the broad scale of human suffering can be examined and provide the moral foundation necessary to renew critical theory.

For Honneth the practice of deviant behaviour would not only result in a social reproach, but in preventing the individual from a positive recognition of himself in his action. This opens up the possibility of a transformation of the collective ethic that allows the realisation of the *Self*. In this sense, the struggle for social recognition of the particularities of the subject would be the constant engine of transformation of the ethical framework of a society, so as to include forms of individuality that in a given circumstance are the object of precarious recognition.

2. Recognition, normative reconstruction and justice

In order to rebuild the foundation of a social theory with normative content, along the lines of the project previously developed by Horkheimer for critical theory, Honneth recovered the Hegelian philosophical project of a struggle for recognition. Although at first, he confined himself to seeking its bases in the thought of the young Hegel, in more recent works (Honneth, ([2001] 2007, [2001] 2010), the author attempts to link that intersubjective struggle to the conception of freedom formulated by the mature Hegel, in opposition to the atomistic visions of Kant and Fichte.

Honneth states that Hegel's theory of justice has in common with the thought of these authors the centrality of the idea of equal individual freedom for all. However, his theory distinguishes itself from them by conceiving of freedom as something that goes beyond a simple subjective right or a simple moral autonomy. For Hegel, adopting either of these views of the concept of freedom in isolation would lead to the social pathologies resulting from the violation of the "absolute spirit" (Honneth, [2001] 2010: 25). In this Hegelian thesis, although metaphysical in character and historically situated, Honneth considers that there is a critical core that should be transported to our days.

Starting from these principles, Honneth ([2001] 2007: 52 ff) begins a work of re-updating Hegel's theory of right through three stages. In the first, he presents a theory of justice, starting from the Hegelian concept of "free will" which, having been conceptualised in opposition to atomistic perspectives, determines the total scope of what we should call "right". The difficulty of this fundamental intuition is related to the Hegelian thesis that the "will has itself as an object" (p. 59). Honneth interprets this idea on the basis of the Hegelian definition of love: "Being oneself in the other".

With this interpretation the focus shifts to the existence of social and institutional conditions, seen as fundamental, as these should enable the communicative relations of the subjects. For Honneth ([2001] 2007), those spheres, expressed in institutions and systems of practices, which are irreplaceable for socially enabling individual self-determination, are the authentic bearers of rights. In this way, *philosophy of law* is understood as the theory of the social conditions of possibility of the realisation of the "free will". Which goes in the direction of a normative theory of social justice.

From this perspective, Hegel's theory of law is structured in three divisions. "Abstract law" and "Morality" are the first two, in which Hegel deals with the incomplete conditions of realisation of the free will, in the form that it takes, respectively, of modern rights or the capacity for moral self-determination. In the third part, 'Ethicity', he deals with the complete conditions, distinguishing three spheres of communicative action: the family, civil society and the state. From here onwards the theory of justice is articulated with the diagnosis of the time, constituting the second stage of Honneth's re-updating proposal.

By updating the doctrine of ethics in a normative theory of modernity, Honneth establishes self-realisation and recognition as fundamental conditions. Only in an action whose execution is characterised by compliance with certain moral norms can a subject ensure being recognised by others, because this recognition is determined precisely by moral competences, which are established through the corresponding norms of action (Honneth, [2001] 2007: 86).

Thus, the normative content of ethics is an articulation of the forms of intersubjective action that can guarantee recognition due to their moral quality. In this sense, the family, civil society and the state are constituted as social spheres, with fields of practices, which may guarantee individual freedom in their modern configurations that articulate recognition, formation and self-realisation.

The renewed theory of the struggle for recognition appears as a model for understanding social conflicts as ethical claims that contribute to the expansion of the possibilities of subjectivation and change the ethical framework of the whole.

Transgression, thus, points to the ethical insufficiency of the collective, not of the individual transgressor. The focus of the law's intervention is inverted, no longer centred on the individual, on the need to adapt him to social conventions, but on society, on its need to recognise and include the most diverse modes of existence, guaranteeing them from physical survival to the valorisation of their singularity.

In view of the revision of the initial project of Struggle for Recognition, after almost twenty years, it is possible to understand *El derecho de la*

libertad, esbozo de una ética democrática ([2011] 2014) as the first book in which Honneth reworks his theory in a systematic way. In this sense, the concept of recognition starts to fulfil another role: if, in his habilitation thesis, Honneth develops a typology of the forms of recognition, articulating more properly a relation between theory of subjectivity and social theory, his attention turns, now, to an analysis of a theory of justice supported by a critical theory of society, whose central concept becomes that of freedom - understood, more specifically, from the idea of social freedom, where the spheres of a theory of democratic ethics (*demokratische Sittlichkeit*) are discussed.

In this sense, the suggestive title of the book points to a significant change in the face of recurrent models in the debate on theories of justice. It is a matter, therefore, of shifting the emphasis on the juridification and procedure of justice to the reconstruction of the ways of realising the concept of individual freedom mediated socially and institutionally.

It is noteworthy, here, the importance that the author gives to the sense of individual freedom as a presupposition for the task of a normative reconstruction. In this sense, Honneth ([2011] 2014: 31-32) states that:

> In social modernity, the demand for justice can only be legitimised when, in one way or another, the autonomy of the individual is neither the will of the community nor the natural order, but individual freedom which configures the normative cornerstone of all representations of justice.

But it is only in the third part of the book that we find the propositional core of Honneth's project ([2011] 2014). And it is in this part that the author, in distinction from the sense of possibility of freedom referring to moral and juridical freedoms, finds the meaning of "realization of freedom" in the standards not of an individual taken in isolation, but of social freedom expressed in a plural and expanded sense of "we" (das "Wir"). In this way, the spheres of realisation of social freedom, following closely in the footsteps of the Hegelian theory of ethics, are developed as the "we" of personal relations (pp. 174 ff.), of the *market* (pp. 232 ff.) and, in relation to the sphere of the state, in the democratic formation of the will (pp. 339 ff.).

With regard to the family, in turn, Honneth observes the structural changes that have occurred throughout modernity, showing the plural forms of conception around the family model. Here, the discussion between the spheres of family and work stands out, in which affective relations are combined with new roles played as a result of struggles for the emancipation of women.

At the same time, the author discusses the importance of seeing the affective care and upbringing of children by parents as a social contribution and at a later point, with increased life expectancy, the care of parents by their children, who, in a certain sense, "become 'parents' of their parents"

(Honneth, [2011] 2014: 226). And here, in the face of imminent death, Honneth finds in the sense of "consolation" (p. 227) a secular way, full of affective content, of dealing with the transitoriness of life. The author argues that both consequences should be taken into account by a public policy model (pp. 227 ff.).

If, in relation to the family, the normative reconstruction proposed by Honneth does not encounter major difficulties, the discussion about the market probably presents one of the most controversial parts. In effect, Honneth sees the market as a space of social freedom insofar as it would make possible the reciprocal satisfaction of individual needs and preferences and, in this sense, the reference to the market is inseparable from a discussion about its moral content: market relations can only be legitimate if they are able to fulfil such demands. The evident contradictions and exhaustion of the market in its current model in satisfying individual demands are problems occurring in its own development and preventing the realisation of its normative potential.

It is not clear, however, whether the problems of development are inherent in the capitalist mode of production - as in a Marxist analysis to which the author himself also refers - or whether there should be a kind of correction derived from an internal revision of capitalism. What Honneth proposes is to revise the necessary *moral* presuppositions so that the market, too, can ensure the socially mediated satisfaction of individual preferences.

And in this sense, Honneth refers to the so-called "Adam-Smith problem" ([2011] 2014: 238ff) - around the question of the link between moral theory and Smith's economic theory - defending the interpretation that a free market can only be founded if preconditions linked to a moral content are fulfilled - as suggested by the concepts of "empathy" in Smith, "solidarity" in Durkheim or "trust" in Hegel. (pp. 248 ff.). Thus, for example, Honneth argues, in defence of a "solidarity consciousness", prior also to contractual relations, that:

> ...in the language chosen by Hegel it is possible to express the idea that the coordination of the simple calculations of individual preferences proceeded in the framework of the market can only succeed if the subjects involved are recognized not only legally as contract partners, but also morally and ethically ("sittlich") as members of a community of cooperation ("kooperierenden Gemeinwesen"). (Honneth, [2011] 2014: 248)

Honneth in an interview with Gustavo Pereira (2010: 333) presents us with an idea of post-traditional extended ethicity, along Hegelian lines, which includes private life, forms of intimate relationships and, what becomes important here, certain forms of economic life. The author argues that we should have ethicity in economic life. The market should have a normative form. The neoliberal market we have today is not an ethical form

of market. Already Hegel and later Durkheim had had this idea, that the capitalist economic market will only have an ethical form if it is regulated in a sense of inclusion of each and every person. That every human being is specifically included in the market, so that corresponding forms of social esteem are possible.

As far as we can see, the Honnethian bet on normative reconstruction is not immune to criticism. And here we could basically name two problems or limitations. The first, already mentioned, is the fundamentally Eurocentric sense of the reconstruction that Honneth proposes. A second problem consists in a necessary starting point taken for the proposed reconstruction. In effect, the author needs to resort to a certain sense of *helos* that justifies the criteria of his reconstruction: it is only by already taking the concept of social freedom beforehand that it is possible to reconstruct institutional frameworks in a certain way linked to that concept.

Final considerations

Axel Honneth presents a concept of social struggle that emphasizes the ethical dimension of injustice, proposing new parameters for Critical Theory. His proposal consists in analysing the concrete patterns of disrespect that lead individuals to social struggles for recognition, in which there is a continuous broadening of the perceptions that individuals have of their unique attributes.

On the basis of an analysis of Honneth's bibliographical path initiated in the concept of recognition, seen as a fundamental need of the human being, a theory of justice is presented which seeks to specify the intersubjective conditions of individual self-realisation. Honneth's (2009c: 16) conception of justice is based, firstly, on replacing the distributive scheme with the conception of an inclusion of all subjects in the relations of recognition developed in each situation; secondly, in place of the construction of a fictitious procedure a normative reconstruction should be placed that reveals historically-genetically the fundamental moral norms of those relations of recognition; and, finally, the exclusive look at the regulatory activity of the rule of law should be complemented by a decentralised consideration of non-state agencies and organisations.

A reconstructively proceeding theory of justice is today faced with the challenge of defending in the name of individual autonomy not just one normative principle, but three such principles: depending on the respective social sphere, it must highlight and strengthen the moral standpoints of deliberative equality, the justice of needs, and the justice of performance.

A pluralism of these, however difficult it may seem to handle, meets the differentiations that the subjects themselves operate topically in questions of justice; as a number of empirical surveys show today, they too usually distinguish in cooperation-related problems in their everyday life precisely the three areas mentioned, in order to apply the corresponding principle of justice to each of them (Honneth, 2009: 21).

We can state that Honneth's thought represents a decisive contribution to the contemporary debate on theories of justice and political philosophy by questioning positions already taken as presuppositions in much of this debate, seeking to offer a response of its own within the framework of a renewed political philosophy (Fontes, 2021). The author's starting point of developing a theory of justice in the footsteps of a critical analysis of society therefore remains promising, even if Honneth's attempt is historically dependent on its own context.

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