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Cuestiones Políticas

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

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Transitional justice model implementation's mechanisms' characteristics

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Victor Filatov *

Abstract

Way of implementing transitional justice into national contexts is the parallel implementation of four conflict de-escalation strategies consisting of truth-seeking, judicial processes, reparations programs and institutional reforms. In this sense, the objective of this editorial is twofold, on the one hand, to present volume 41, number 78 of Political Questions and, on the other, to practical aspects of the transitional justice model implementation. The author substantiates that the process of transitional justice implementing is endowed with a certain ideological component serving the purpose of transitional justice implementing. The authors concept definition of "transitional justice model implementation" was proposed. It is noted that the mixed implementation mechanism of the studied model, combining domestic and international efforts in the field of peace building is the most acceptable for Ukraine. The author draws attention to the interdependence of the national context and the relevant mechanisms for the transitional justice implementation. The author concludes that implementation mechanisms are determined depending on the exigencies of the post-conflict society.

Key words: implementation, international legal standards, directions and principles, post-conflict development, transitional justice, social shock, Ukrainian context.

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Características de los mecanismos de implementación del modelo de justicia transicional

Resumen

La forma de implementar la justicia transicional en los contextos nacionales es la implementación paralela de cuatro estrategias de reducción de conflictos que consisten en búsqueda de la verdad, procesos judiciales, programas de reparación y reformas institucionales. En este sentido, el objetivo de este editorial es doble, por un lado, presentar el volumen 41, número 78 de Cuestiones Políticas y, por otro, los aspectos prácticos de la implementación del modelo de justicia transicional. El autor fundamenta que el proceso de implementación de la justicia transicional está dotado de cierto componente ideológico al servicio del propósito de la implementación de la justicia transicional. Se propuso la definición del concepto de los autores de "implementación del modelo de justicia transicional". Se observa que el mecanismo de implementación mixto del modelo estudiado, que combina los esfuerzos nacionales e internacionales en el campo de la consolidación de la paz, es el más aceptable para Ucrania. El autor llama la atención sobre la interdependencia del contexto nacional y los mecanismos relevantes para la implementación de la justicia transicional. Concluye que los mecanismos de implementación se determinan en función de las exigencias de la sociedad posconflicto.

Palabras clave: implementación, estándares legales internacionales, direcciones y principios, desarrollo posconflicto, justicia transicional, choque social, contexto ucraniano.

Exordium

The issue of the transitional justice model implementation in the foreign scientists' papers has been investigated rather fragmentarily. In particular, the legal aspects of this process, as well as certain procedural issues, are not detailed. In our opinion, this is related to the impossibility of making a universal implementation mechanism that should be determined by the national context. Antonio Cassese notes that the transitional justice implementation scope is wider than the scope of international criminal law, which is considered as a form of criminal justice implementation along with other extrajudicial measures. The latter cover the restorative aspect not only from a legal point of view, but also from a political, social and economic perspective. Therefore, the transitional justice implementation represents the international community requirements' justification for the fulfillment by states of their international obligations. Practice shows that the implementation process is influenced by the political settlement

aim. That is, there is an exchange of justice for political stability and peace, which can lead to the new conflict emergence (Cassese, 2005).

In our opinion, this thesis limits the implementation process and reduces it to fulfilling of political obligations by states. This does not correspond to the realities of the post-conflict development within which the key role is assigned not to international but to national actors. The latter should show political will embodied into clear legal implementation mechanisms. That is, this process requires the combination of international efforts and national aspirations to build sustainable peace. Attention should be paid to the dependence of implementation mechanisms on social and political factors that can change the vector of justice and stability within the state.

1. The legal nature of the implementation mechanisms of the transitional justice model

Foreign scientists emphasize that the philosophy of the studied model implementation consists of separate legal technologies accompanying the process of social transition. These technologies contribute to the prevention of grosser human rights violations and also reduce the state's ability to commit illegal actions. Therefore, it is necessary to assess the potential sources of injustice in order to understand the benefits and risks during the development and implementation of transitional justice strategies (Combs, 2018). It should be clarified that the implementation process is not only a complex of legal technologies, because it is necessary to take into account political and social factors and the ideological component, being ultimately reflected in national legislation. However, it is necessary to agree that the implementation itself contributes to the improvement of the situation in the post-conflict state. That is, it performs a preventive role consisting in positioning the key ideas of transitional justice.

At the stage of the transitional justice model implementation, it is necessary to clearly understand the national context, expected results, transitional processes dynamics, as well as imagine a set of legal instruments that will be used at every stage of this process. This requires the use of regional efforts that take into account all these factors and ensure wider integration of transitional justice key actors (Ibekwe, 2022). However, there is an extra regularity: the dependence of implementation mechanisms on expected results. That is, implementation mechanisms are determined depending on the exigencies of the post-conflict society. It refers to a set of legal instruments to be used within a specific national context.

However, we also observe mutual dependence that was clearly outlined by Nina Gulzari in her scientific paper. She believes that the transitional justice implementation mechanisms significantly influence the national

context in which the relevant strategies will be implemented. This is stipulated by the fact that transitional processes are intertwined with the past, which can become an obstacle to the post-conflict development. On the other hand, the implementation process also affects the specific responses and mechanisms of transitional justice. Therefore, the implementation process cannot be transferred from one post-conflict situation to another, but should develop in accordance with the social and cultural dynamics of a particular society. Thus, the contextual approach to the transitional justice implementation makes it possible to choose renewal mechanisms (Gulzari, 2017).

It is obvious that the transitional justice implementation requires a strategic approach that is significant in several ways: first, it helps shape a proactive approach by identifying priorities, key audiences, messages and resources; secondly, it helps coordinate efforts by delimiting responsibilities and distributing tasks within the transition period (McConnachie, 2004). It is considered that the implementation process should be preceded by the national context detailed analysis, taking into account the legal traditions of specific states. Only under this condition it will be efficient and objective.

In this regard, emphasizes that the transitional justice implementing process should occur taking into account the legal traditions of the post-conflict states. Domestic legal traditions cover the nature of law and its implementation in states and are based on the stages of its historical and cultural development. Taking this into consideration, the congruent implementation mechanisms, providing for the coordination of post-conflict development directions with legal traditions and the national context, are of particular importance. Moreover, congruence ensures the long-term nature of the initiatives and gives hope that the conflict will not repeat in the future. In our opinion, the transitional justice implementation congruent mechanisms allow ensuring the uniqueness of the corresponding mechanisms, and, therefore, form the proper perception of international actors' efforts by society (Villasmil Espinoza *et al*., 2022).

The argument in favor of this approach is the following thesis by Rowland Robin: the transitional justice model implementation can be ineffective if international actors apply a set of universal values, without taking into account the national context peculiarities. Therefore, it is necessary to ensure such an implementation process that will help the state make a linear transition from conflict to peace and democracy. It is about the narrative of the "future" that should dominate at the transitional stage, determining key changes in the legal system of the post-conflict states (Rowland, 2016). This thesis suggests that the implementation process is also endowed with a certain ideological component, which at a certain stage serves the purpose of transitional justice implementing.

The Working Group on Human Rights and Transnational Corporations and Other Enterprises Report dated July 13, 2022 notes that the transitional justice implementation requires taking certain caveats into account. In particular, post-conflict states should avoid adopting new economic agreements until they understand how their transition processes will affect business responsibility. In future, these agreements should be designed in such a way that they maximally protect the state's response to transitional justice and its obligations to victims of conflict. In turn, external actors are also obliged to avoid imposing economic agreements that would undermine the transitional justice implementation. This means that the transitional justice implementation requires taking into account certain caveats that are crucial in view of the further effectiveness of transitional processes. It is about the actions of international and national actors that can reduce the transitional strategies effectiveness (Matviichuk *et al*., 2022).

The implementation of the studied model is important in view of the necessity to theorize innovative practices of post-conflict development. Transitional justice mechanisms will depend on this, and they can be either helpful or harmful depending on a number of factors. Thus, there are certain conditions that favor the success of various transitional justice mechanisms. Therefore, the implementation process should be timely and adapted to changing contexts, political attitudes and the environment (Magara, 2021). The stated thesis shows the dependence of implementation mechanisms on the time factor affecting the national context, as well as public opinion.

2. Practical implementation mechanisms of the transitional justice model

Ahmad Bastomi, basing on a comprehensive analysis, argues that the main way to implement transitional justice into national contexts is the parallel implementation of four conflict de-escalation strategies consisting of truth-seeking, judicial processes, reparations programs and institutional reforms. This method turned out to be not effective enough, because some of the strategies remain without due attention and do not receive further development. The reason for this is the excessive external intervention, as well as the insufficient level of the institutions' independence, involved into the implementation of the studied model. Among the shortcomings of this method, it is also worth including the lack of evaluating practice and the specified strategies revising, taking into account the existing limitations at each of the stages of transitional justice (Tylchyk *et al*., 2022).

Thus, the transitional justice model implementation is a set of political and legal and organizational and legal measures aimed at implementing

the principles and directions of transitional justice of the post-conflict states into the national legislation that are implemented collectively and comprehensively within the framework of domestic and international mechanisms. That is, it is about the purposeful activity of the interested parties, the purpose of which is the transitional justice model implementation into the national context of the post-conflict state (Leheza *et al.*, 2022).

The domestic mechanism is a set of organizational and legal means and ways of implementing the transitional justice principles and directions by means of authorities' rule-making with mandatory interaction with the civil society. That is, it is about the transformation of legislation to meet the needs of the post-conflict development in order to resolve the legacy of the past, search for the truth and form national memory. The intrastate mechanism involves the use of the generalized historical experience of states that went through a transitional stage of development in due time.

The international mechanism is a set of political and legal means and ways of implementing the transitional justice model by integrating post-conflict states' international legal standards into the national legislation. That is, this mechanism is the result of the international community's efforts to implement the necessary standards of the rule law. Certainly, both implementation mechanisms are introduced taking into account national contexts. Thus, the difference between them is that the domestic mechanism involves the necessary legal instruments formation at the national level, and the international mechanism involves the implementation of ready-made standards contained in the relevant international legal acts (Zhukova *et al.*, 2023).

Among the signs of the transitional justice model implementation process, it is worth including: 1) dependence of the process on the national context; 2) systematic and comprehensive implementation and realization based on individual concepts; 3) dependence of the process on the time limits determining the beginning of the transition period; 4) combination of domestic and international mechanisms; 5) the ability to influence the national context by way of formation of transitional institutions; 6) the ability to have a preventive effect, i.e. prevention of gross violations of the conflict's victims' rights; 7) the uniqueness of the methodology of the process determined by the features of the post-conflict development of individual states; 8) dependence on the legal traditions of states being at the stage of social transition; 9) dependence on the mandate of national institutions that will implement the transitional justice strategy; 10) ability to dynamism, i.e. changes of individual mechanisms depending on changes in the national context. It should be noted that the mechanisms of transitional justice implementation can be implemented through separate strategies or in a complex, that is, in the form of a holistic strategy of social transition (Kobrusieva *et al.*, 2021).

The implementation of the transitional justice model requires taking into account certain problems that Ukraine has been currently facing. These problems are quite successfully systematized in the EU Action Plan on Human Rights and Democracy (2015). The document emphasizes that the problem of the implementation of transitional justice institutions in Ukraine is the protection of crime victims and access to justice. If this problem is detailed, then its following components can be identified: 1) lack of institutions providing services in the field of justice in territories not controlled by the government; 2) loss of case materials; 3) restriction of freedom of movement and notification of proceedings; 4) lack of legal assistance in territories not controlled by the government; 5) lack of resources; 6) inability to enforce court decisions in temporarily occupied territories (Filatov *et al*., 2022). It should be recognized that these problems are of a systemic nature and have not lost their relevance since 2014. They have a negative impact on the transitional justice implementation mechanisms, which must take these factors into account.

The transitional justice model implementation into the national legislation of Ukraine covers the goals, tasks, principles and forms of convergence of international and domestic normative legal acts aimed at the legal regulation of post-conflict development. That is, implementation acts as a legal instrument for the embodiment of the generalized historical experience of peace building in the national context. In view of this, the goal of implementation covers the consistent improvement of the quality and conditions of the society recovery; social and political, cultural and spiritual spheres of its life development; protecting the rights and freedoms of the victims of the conflict, as well as overcoming the legacy of the past that caused the conflict. The tasks of the transitional justice implementation are: formation of a single regulatory and legal set of norms regarding post-conflict reconstruction; protection of the interests of the victims of the conflict, society and the state as a whole; fight against systemic violations of human rights (Kobrusieva *et al*., 2021).

Conclusions

The process of the transitional justice model implementing is quite complex and lengthy. It has a number of features and caveats that should be taken into account to ensure further effectiveness of transition processes. For Ukraine, the mixed implementation mechanism of the studied model, combining domestic and international efforts in the field of peace building, is the most acceptable. Within the framework of this mechanism, it is expedient to implement the single Transitional Justice National Strategy including the implementation of the principles and directions of post-conflict reconstruction. Herewith, it is worth taking into account the impact

of the implementation mechanism on the national context and the ability of the latter to change the trajectory of the implementation process. It should be noted that the implementation process involves the dominant role of national actors in the transitional justice implementation. This prevents excessive interference of international actors in the affairs of the independent states. However, under certain conditions, the role of the latter can be strengthened, and is aimed at overcoming the resistance of the political elites responsible for the conflict and continue to influence public life.

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Legal Aspects of Ensuring Food Security in Modern Conditions of Development

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Abstract

Using the method of dialectical philosophy and its historical materialism, the main objective of the study was to analyze the modern legal aspects of ensuring food security in modern conditions of development. In this context, the subject of study is the food security system in general, under the hypothesis that states: the fundamental basis for ensuring national food security of the state in the modern world is the effective and sustainable development of its agricultural sector. Based on the results of the study, the key features of the legal support of food security in modern conditions of development were identified. In the conclusions of the case, it has been established that public policies and their relational framework should try at every moment to ensure food security, as an integral part of the agrarian law system, so that, form the dualistic legal nature of its understanding: as an agrarian legal institution and fundamental principle of the agrarian law branch.

Keywords: legal regulation; food sovereignty policies; legal aspects; food security; modern conditions for development.

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Aspectos legales para garantizar la seguridad alimentaria en las condiciones modernas de desarrollo

Resumen

Mediante el método de la filosofía dialéctica y su materialismo histórico, el objetivo principal del estudio fue analizar los aspectos legales modernos para garantizar la seguridad alimentaria en las condiciones modernas de desarrollo. En este contexto, el tema de estudio es el sistema de seguridad alimentaria en general, bajo la hipótesis que afirma: la base fundamental para garantizar la seguridad alimentaria nacional del Estado en el mundo moderno es el desarrollo eficaz y sostenible de su sector agrícola. Con arreglo en los resultados del estudio, se identificaron las características clave del soporte legal de la seguridad alimentaria en las condiciones modernas de desarrollo. En las conclusiones del caso, se ha establecido que las políticas públicas y su entramado relacional deben tratar en cada momento de garantizar la seguridad alimentaria, como parte integral del sistema de derecho agrario, de modo que, forman la naturaleza jurídica dualista de su comprensión: como institución jurídica agraria y principio fundamental de la rama del derecho agrario.

Palabras clave: regulación legal; políticas de soberanía alimentaria; aspectos legales; seguridad alimentaria; condiciones modernas para el desarrollo.

Introduction

The legal support of the food independence of each state is and will always be an extremely relevant topic, given the constant need for the state to properly provide the initial needs of the electorate for food as one of the basic factors in creating a prosperous social environment and a guarantee of sustainable development of the individual, the nation and the country as a whole. Ukraine is no exception from this list, the financial and economic capabilities of which in this area are significantly weakened by the need to resist external aggression, as well as the stagnant situation of incomplete land and agrarian reform.

The most effective factor in this socio-economic process is undoubtedly the legal one, which gives the chosen direction of research not only logical perfection, but also the appropriate level of relevance and urgency in general.

The legal nature of any social phenomenon is revealed primarily through its role and place in the system of social relations that form the subject of the relevant area of law. As for the agrarian relations of ensuring food security,

the latest research at the level of a doctoral dissertation is proposed to be considered as a sub-branch of agrarian law.

In general, it should be noted that this position is not without a number of methodological shortcomings. Firstly, any sub-sector must contain the relevant legal institutions, which the author of the idea does not name for some reason. Secondly, relations for the production of agricultural products, their processing and sale are the subject of legal sense to one degree or another of almost all institutions of agrarian law, which expands the boundaries of the proposed sub-sector to the boundaries of the directly branch of agrarian law, and such a substitution is devoid of rationality. Thirdly, the existing normative array of food security law is characterized by a relatively small volume, low efficiency, as well as fragmentation, dispersion of legal norms among various hierarchical legal acts of various branches, which has already been noted in the scientific literature.

Ensuring food security is a strategic problem that any government of a country may face in conducting its domestic and foreign policy. We are not talking about any stability in the country if the state is not able to provide its citizens with a sufficient and complete level of consumption of basic foodstuffs and cannot pursue an independent foreign policy if the food market inside the country depends on import intervention.

Highlighting national food security as the general goal of agrarian policy, scientists involved in food security propose to focus on its following aspects: food, agriculture, foreign economic, agro-industrial, and social. The food aspect is the starting point in the analysis of priorities, since it serves as a quantitative expression of the main goal of agricultural policy - food security. It determines the level of provision of the country with food, including its own production, the volume of necessary reserves of food and agricultural raw materials, as well as the physiological and solvent limits of demand for food in the domestic market, is characterized by indicators of the existing.

The main purpose of the study is to analyze the modern legal aspects of ensuring food security in modern conditions of development.

1. Materials and methods

The methodological basis of this work was philosophical (dialectical), general scientific (logical, analysis and synthesis) and special scientific (formal legal, comparative legal) methods, combined into one system. The dialectical (materialistic) method made it possible to consider the legal support of the food security of the state as a continuous process of interconnection of its socio-economic basis and legal mediation, which

are in unity and constant opposition, which stimulates their mutual development.

The general scientific logical method has become fundamental in identifying causal relationships between economic indicators of food security and the need to correct the corresponding legal framework. The analysis method was used to study the problems of ensuring food security due to their decomposition into components, followed by a detailed study of them to understand the general state.

2. Literature review

In general, in terms of its significance in the process of legal influence on agrarian relations, it is advisable to consider food security as one of the fundamental principles of agrarian law, that is, a kind of principle-institution.

Based on the general nature of agrarian legal principles as the main principles on which the mechanism of legal regulation of agrarian relations is based, it can be concluded that the principle of ensuring the legal security of the state runs like a red thread through the entire system of agrarian law, that is, it is a kind of core-goal, on where all agricultural and legal universities are based (Artemenko *et al*., 2022; Bihych *et al*., 2022; Gibbons *et al*., 1994).

Food security of the state is an interdisciplinary socio-economic phenomenon that characterizes the ability of the state to provide the population with balanced nutrition with high-quality and safe products in conditions of proper physical and economic access to them on the basis of external food independence of the state.

The underconsumption of most staples can be attributed solely to the economic inaccessibility of food. For the consumption of meat, fish and eggs, the consumer basket is formed on the basis of physiological (that is, minimum) norms, and for dairy products even this norm is reduced by 2.5 times.

Thus, for the type of nutrition of Ukrainians in the future, it will not be a development diet, as in the advanced countries of the world, which ensures the consumption of environmentally friendly food products that increase the life expectancy of the population as a whole and the average life expectancy for the country, improving health, but a survival diet (Grivins *et al*, 2021; Kalashnyk and Krasivskyy, 2020; Kryshtanovych *et al*., 2022).

The legal nature of food security law is dualistic. On the one hand, the right to food security is a set of agrarian and legal norms aimed at regulating

the relations of ensuring the food security of the state. In this form, it is a legal institution of agrarian law. On the other hand, it is a principle that runs like a red thread through the entire system of agrarian law, that is, a kind of core-goal on which all agrarian legal institutions are based.

Thus, this is a fundamental, fundamental principle-goal that has a synergistic effect on the organization of the entire organic complex of agrarian relations as a subject of agrarian law. The above positions are integrated in one legal construction "principle-institution", that is, the principle enshrined in a whole system of norms of the current agrarian legislation (Kryshtanovych *et al.*, 2021; Levcheniuk *et al.*, 2022; Margaryan, 2021).

The issues of legal regulation of the protection and reproduction of soil fertility are among the most important in the structure of the legal mechanism for ensuring the food security of the state.

While paying tribute to the scientific contribution of many scientists, the analysis of the legal aspects of ensuring food security remains relevant.

3. Research Results and Discussions

Solving the problem of food security as a guarantee of the existence and development of any state has always been and remains one of the most important tasks of mankind, the nation and the individual. This problem is complex and multifaceted. It affects all aspects of society. Food security is inextricably linked with the existing political and economic systems, as well as with the peculiarities of management and national traditions (Nersessian, 2018; Nerubasska, 2020).

Ensuring food security is one of the leading functions of the state. Law plays an important role in the implementation of this function . The legal regulation of ensuring the food security of the state in today's conditions is, first of all, inextricably linked with the production of sufficient both in terms of volume and safe in quality agricultural products and foodstuffs.

The issues of ensuring food security and its regulatory support are of priority importance, since at present the state is not fully capable of ensuring unimpeded access of the population to food. The need to improve the legal regulation of food security is also caused by the recent spread of agricultural products and food products produced using genetically modified organisms (Severini and Tantari, 2013).

The main source of agricultural products and food products is modern agricultural production, the functioning of which is inextricably linked with the efficient use of national land resources, in particular agricultural land as

the main means of production and the operational basis for ensuring food security.

Agricultural lands should act as a guarantee of sufficient and affordable food supply for the country, serve as a mechanism for solving the food problem and eliminating food shortages in modern conditions. Efficient use of these lands should provide not only domestic food needs, but also achieve leadership in the production of agricultural products in the world food markets.

The problem of ensuring food security today has acquired a global scale. Increasing food production, as well as improving their quality and safety, is one of the most important tasks of the world economy.

The problem of food security occupies a leading place in the national security of each country, since it is a prerequisite and a factor in the social and economic stability of the state. Thanks to it, sustainable socio-economic development of society, its demographic reproduction is achieved. Food security is a concept officially accepted in international practice used to characterize the state of the food market of a country or a group of countries, as well as the world market. It is a necessary component of economic security, which, in turn, ensures the national security of the state (Shevchenko *et al.*, 2021; Sylkin, 2021).

At the same time, food security has national characteristics, it is characterized by complexity and permanence. Depending on the characteristics of the national food system, the period of its development, the level reached, the priorities set, its provision is modified along with changes in internal and external threats.

Some states achieve a state of food security through self-sufficiency, that is, their own production of the necessary volumes of food, others are forced to import a significant part of food products, which not only requires appropriate funds, but leads to an increase in their economic and political dependence on the supplying states.

After all, food is not just a product of prime necessity, but also the most important strategic commodity. Whoever owns it is in charge both in the economy and in politics. According to the world criteria for food security of the country, the maximum level of food and food imports should not exceed 30%. Otherwise, this will mean the loss of food independence of the state. Food independence is usually measured by the share of the cost of domestically produced food products in the total cost of food consumption.

Food independence is characterized by such a level of economic development when the food security of the state does not depend on external food supplies. At the same time, the state must ensure independence from food imports, despite the specific natural conditions and the efficiency of the division of labor within the framework of agricultural production.

In our opinion, food security should be understood as a component of the national security of the state, which provides for the protection of the vital interests of a person, which is expressed in guaranteeing by the state, on the principles of self-sufficiency, unimpeded physical and economic access of a person to food in quantity, assortment, an established level of quality and safety, necessary to maintain his health and normal life activities.

Food security indicators are a quantitative and qualitative characteristic of the state, dynamics and prospects of the physical and economic accessibility of food products for all social and demographic groups of the population, the level and structure of their consumption, the quality and safety of food, the stability and degree of independence of the domestic food market, the level of development of the agricultural sector and related sectors of the economy, as well as the efficiency of the use of natural resource potential.

The main legal threats to the food security system in the world are shown in Figure 1.

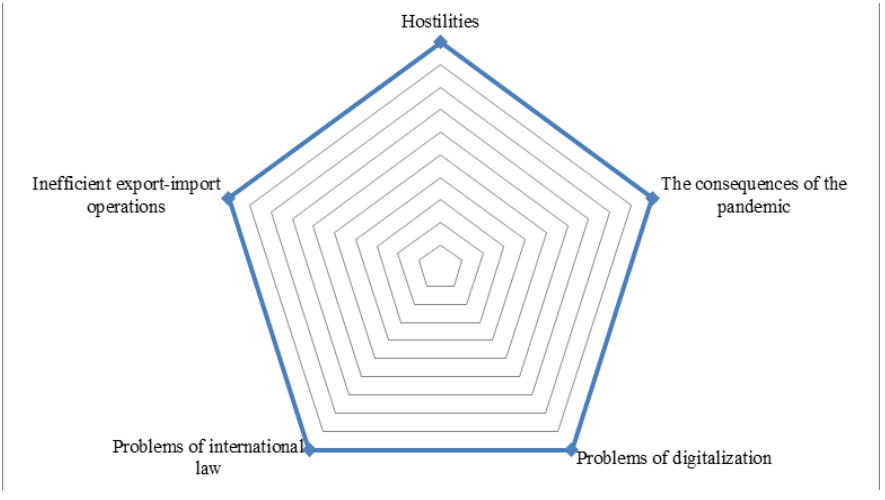

Figure 1. The main legal threats to the food security system in the world. Source: formed by authors.

Ensuring food security requires a system of organizational and legal measures, which should be understood as a set of economic, legal, organizational and managerial actions carried out by the competent state authorities and local self-government through the use of law-making, law

enforcement and law enforcement forms of state regulation in order to guarantee physical and economic access by the state of the population to food products in the quantity, assortment, established level of quality and safety necessary to maintain health and normal life activities.

Today, one of the defining, guiding principles of agrarian law is the principle of greening agricultural production. It is not only theoretical but also practical. It is assumed that the greening of agricultural production can be defined as a special principle of agricultural law, which is manifested in the establishment in agricultural legislation and the practical implementation of environmental standards, requirements and regulations both by authorized state bodies, local governments, and by the agricultural producers themselves in the field of agricultural management. . production activities for the protection of the environment, the ecological use of natural resources, as well as the production of high-quality and environmentally safe agricultural products of plant and animal origin.

In the system of legal relations to ensure food security, the legislation regulating them should also provide for other measures to protect the domestic producer. As already noted, legal relations to ensure food security are complex by their legal nature, therefore this problem must be solved in a comprehensive manner, based on increased state intervention in the problems associated with the formation of legal relations for logistics, subsidies, subsidies, in the process formation of prices for basic types of food, in a reasonable ratio of them with the purchasing power of the population.

To improve the legal regulation of legal relations in the field of ensuring the country's food security, a comprehensive integration approach is needed, taking into account the characteristics of production processes, working conditions, etc. Production processes in agriculture depend on natural factors with a pronounced seasonal and cyclical nature. Agriculture is a specific branch of public production in comparison with industry and the service sector.

It is associated with the use of land and other natural resources, which affects the characteristics of agriculture, the formation of financial resources, and the development of innovation processes. Land is the main means of production, it is not depreciated, and therefore does not participate in the formation of the cost of production. Along with this, its different level of natural fertility and location contributes to the formation of a differentiated profit.

The content of agricultural legal relations to ensure food security is the subjective rights and obligations of their subjects. Considering this legal relationship as a unity of material content and legal form, the following connections can be distinguished: 1) the connection of rights and obligations

by a model fixed by the legal norm, which should determine real behavior; 2) the real connection of the participants in legal relations, which must correspond to the model of behavior enshrined in the relevant norm; 3) the relationship between real behavior and a model that finds its expression in the exercise of rights and the performance of duties.

A common feature of a legislator and a scientist is inertia in solving problems, in particular, in the issue of regulating food security. If for the world community sustainable development, the food crisis, the legal support of food issues are defining and priority, then Ukraine disassociates itself from globalization processes and purely declarative concerns the legal regulation of food security. Thus, the declarative nature of legal regulation is reflected in the fact that the Ukrainian pantheon of legislation has a vague, incomprehensible and fragmentary mechanism for guaranteeing and implementing fundamental human rights and the foundations of national security, both for determining food security and for ensuring it.

A concrete confirmation of the problem of food security is the absence at the legislative level of a complete and consistent with international practice of its concept, since what we define at the level of law is ultimately reflected in the state of affairs. If the definition itself is imperfect and does not comply with international acts, then the state is not able to fully implement food security.

Conclusions

There is a real threat to the national security of the country, which manifests itself in all areas - in defense, in production and technological, economic, social, environmental, spiritual and moral areas. The conditionality of such a state is determined by the priority value of the food sector itself, which directly affects the urgent interests of people, regardless of their age status, nationality.

In the field of food security, the key problems of carrying out agro-industrial and economic reform, real trends in the development of agricultural and food production, the domestic market, and the degree of its dependence on the world food market intersect. Secondly, if the state focuses on the world market, prefers to work with an imported supplier, and not with a prospective domestic producer, this undermines the stability of the domestic food market and leads to destabilization of the economy, unemployment of the rural population, social tension, etc.

The main directions of ensuring the food security should be the harmonization of national standards of agricultural products with the standards of the most developed countries of the world; providing priority

support to needy segments of the population who, due to low incomes, are not able to provide healthy food for their families, as well as pregnant women, infants, preschool and school children; healthy nutrition in social institutions; development of interregional integration in the field of food risks and food security for the purpose of easy access to food products.

Creation of conditions for increasing the number of objects of trade infrastructure and public catering of various types; monitoring compliance with the requirements of the legislation of the countries of Eastern Europe at all stages of the process of production, storage, transportation, processing and sale of food products; introduction of a ban on the distribution of food products derived from genetically modified microorganisms (GMOs) and genetically modified analogues (GMAs); organization of production with the attraction of foreign investment in agriculture; implementation of the effective operation of the system of sanitary, veterinary and phytosanitary control, taking into account international rules and standards; improvement of state trade policy, regulation of markets for agricultural and fish products, raw materials and food; accelerating the development of the domestic market infrastructure; monitoring, forecasting and control of the state of food security. This will be the focus of further research.

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State legal regulation of the hotel and restaurant complex in the system of development of the national economy

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Abstract

The main objective of the article was to study the key aspects of the state legal regulation of the hotel and restaurant complex in the system of development of the economy. The subject of research is the state legal regulation of the hotel and restaurant complex. Based on the results of the conducted research, the key elements of the state legal regulation of the hotel and restaurant complex were considered. In order to achieve the stated objective, a hybrid documentary-based methodology was used, which combined analysis and synthesis in the treatment of information; selection of factual material and data based on the normative framework; descriptive-statistical analysis. The scientific novelty lies in the fact that, in the changing conditions of today's world, the further development of the hotel and restaurant industry requires an increase in the competitiveness of these companies in the national and world tourism market, both on the part of the companies themselves (their owners) and on the part of the State. It is definitely concluded that this task can only be achieved with the introduction of effective legal support in this area of strategic interest.

Keywords: legal regulation; legal aspects of tourism; hotel and restaurant complex; economic development.

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Regulación jurídica estatal del complejo hotelero y restaurantero en el sistema de desarrollo de la economía nacional

Resumen

El objetivo principal del artículo fue estudiar los aspectos clave de la regulación legal estatal del complejo hotelero y restaurantero en el sistema de desarrollo de la economía. El tema de investigación es la regulación legal estatal del complejo hotelero y restaurantero. Con base en los resultados de la investigación realizada, se consideraron los elementos clave de la regulación legal estatal del complejo hotelero. Para lograr el objetivo plateado se hizo uso de una metodología híbrida de base documental que combinó análisis y síntesis en el tratamiento de la información; selección de material fáctico y datos basados en el marco normativo; análisis descriptivo-estadístico. La novedad científica radica en el hecho de que, en las condiciones cambiantes del mundo de hoy, el mayor desarrollo de la industria hotelera y de restaurantes requiere un aumento de la competitividad de estas empresas en el mercado turístico nacional y mundial, tanto por parte de las propias empresas (sus propietarios) y, por parte del Estado. Definitivamente se concluye que, esta tarea solo se puede lograr con la introducción de un apoyo legal efectivo en esta área de interés estratégico.

Palabras clave: regulación legal; aspectos legales del turismo; complejo hotelero y restaurante; desarrollo económico.

Introduction

The development of tourism in each state was often considered as secondary, the actions of the authorities for its organizational and economic support were unsystematic.

Any state that is aware of the economic benefits from the development of tourism most often invests in the development of its industry, primarily in the hotel and restaurant infrastructure, since it is from the ability to receive foreign tourists at the highest level that the international tourist image of the country is formed (Dishkantyuk, 2016).

But there are systemic problems in the development of tourism and the hotel and restaurant business in countries whose legal system does not sufficiently support this area, namely (Apaza-Panca, 2020: 119):

- lack of effective state support for small and medium-sized tourism and hotel and restaurant businesses;

- insufficient advertising of the domestic tourism product and hotel and restaurant services within the country and abroad;
- lack of social tourism, social hotels and restaurants, which, given the low income of a significant part of the population, makes it impossible for them to have such a way of recreation.

It should be noted that the state should not use outdated models and should not directly affect the state of economic security of business entities, but only create favorable conditions for the functioning of the hotel and restaurant services market. The issue of reducing the level of corruption and combating the unprofessionalism of the state administrative apparatus remains urgent, which today has a huge impact on the system of ensuring economic security, from the state itself to business entities (Kryshtanovych *et al.*, 2021).

State tourism development programs consider tourism as a highly profitable sector of the national economy and provide significant support, in particular, through the introduction of financial and economic development mechanisms, stimulating entrepreneurship in this area, creating an effective model of investment policy, improving the organizational structure of the industry, which will ultimately contribute to the growth of the authority as a tourist state and strengthen the country's economy.

However, unfortunately, not a single program takes into account the fact that in order to maintain the status of a tourist state in the world market of hotel services, it is necessary to create modern highly comfortable specialized hotel enterprises with the appropriate infrastructure that meet international standards.

1. Materials and methods

Achieving the goal of the study required the solution of certain problems, which led to the use of theoretical ones: induction and deduction to collect primary legal information on state regulation of the hotel and restaurant complex in the system of development of the national economy; analysis and synthesis of information processing; selection of factual material and data based on the processing of the regulatory framework; descriptive-statistical - to characterize the features of the functioning of the hotel and restaurant complex in the system of development of the national economy; the logical method is to comprehend the laws of state and legal regulation of the hotel and restaurant complex in the system of development of the national economy.

2. Literature review

In the system of state management of the quality of service in hotels, an important role belongs to the regulatory and legal methods of control, which guarantee high stability and sustainability of the quality of services. The need to improve the quality of service in hotels is also due to the discrepancy between national world standards. In this regard, at the state level, it became necessary to harmonize national and world regulatory and technical documentation in accordance with the current legislative framework of the country (Kulagina and Tatarinov, 2009).

According to a number of authors (Oleksenko and Gosteva, 2013; Sylkin *et al.*, 2021), in modern conditions, management is of particular importance for the legal regulation of economic activity in the hotel industry, consisting of a set of legislative and regulatory and technical acts that are an integral part of the national legal system. The state policy for the development of the hotel industry as the main component of the tourism industry and the service sector is aimed at improving the quality criteria for its functioning.

At the same time, other authors note (Apaza-Panca *et al.*, 2020) that the key administrative levers of state regulation, the use of which makes it possible to improve the work of hotels, are licensing and certification procedures. The introduction of licensing in the hotel sector is aimed at protecting the rights and interests of consumers of hotel services, guaranteeing a certain level of service, compliance with environmental, sanitary and other norms and regulations.

The purpose of regulating the activities of hotels is the harmonization of relations between the consumer (client) and the producer of services (the subject of the provision of hotel services), aimed at harmonizing the interests of the consumer, producer and society and creating favorable conditions for the development of hotel enterprises through the production of legal acts (Vilks, 2005).

The negative impact of tourism on the social parameters of the life of the population is no less significant. Tourism activity contributes to an increase in the anthropogenic pressure on the natural and social environment, degradation of natural landscapes through excessive consumption of resources, land development, pollution of natural objects with waste, which leads to a deterioration in the quality of soil, air and water in reservoirs and seas due to an increase in emissions of harmful substances, spontaneous arrangement of temporary places of rest, kindling hearths, tormenting historical monuments by vandals, etc.

Some types of recreation, such as collecting plants, fishing, hunting, harm wildlife and lead to a decrease in the number or even to the complete disappearance of some species of fauna and flora in certain areas. The

growth in the number of visitors and population in tourist regions, the construction of new facilities requires the use of additional natural resources and increases the burden on the environment (Tepanov, 2018).

Experts believe that if the current trend of tourism growth continues, by 2050 energy consumption will increase by 154%, water - by 152%, solid waste emissions - by 251%, greenhouse gas emissions - by 131%. Therefore, for the international community, including the European Community, the urgent task is to develop new models for the safe development of tourism in the interests of all mankind, its current and future generations.

In 2003, the European Commission established the Commission on Sustainable Tourism, which included representatives of international organizations and EU governments, regional and local authorities, the tourism industry, trade unions, environmental and other public organizations, as well as research and educational institutions. The main tasks of this Commission included the development of rules for tourism activities, destination management, the definition of indicators of tourism sustainability and monitoring systems (Kryshtanovych *et al.*, 2022).

Oleksenko, Bortnykov, Bilohur, Rybalchenko, Makovetska (2021: 768) noted that:

> The change in the paradigm of the role of the state in the processes of regulating the activities of restaurant enterprises expanded alternative opportunities for their development, intensified privatization processes, contributed to the emergence and development of a restaurant business network of individual entrepreneurs, stimulated foreign investment and the spread of restaurant business in the national sphere. the economy of the most successful technology for the development of small and medium-sized businesses - franchising, the introduction of progressive methods of production, service and management of restaurant enterprises.

Despite the crisis and its consequences, restaurant business objects are becoming increasingly popular, the creation of which contributed to an increase in the number of jobs. The development of the restaurant business is largely determined by the effectiveness of the socio-economic policy of the state. Therefore, the task of creating an integrated and effective system of state regulation, especially in the field of food and services, is relevant.

Despite this, the issue of the civilizational and cultural aspect of state legal regulation of the hotel and restaurant complex in the system of development of the national economy has not been disclosed and, therefore, is relevant.

3. Research Results and Discussions

The hotel and restaurant business is a complex industry that combines production, trade, procurement of raw materials and the organization of the process of consuming home-cooked dishes and purchased goods. Given this, pricing in this area is also meaningful. In the end, the price as the monetary value of a serving of food or drink must contain all the elements necessary to cover the costs of the business, pay indirect taxes, and generate at least the industry average.

A separate element of the price of a public catering enterprise is the markup, which is not limited in modern conditions, and therefore is independently set by the main body of the industry in accordance with the type of enterprise, category of enterprise, product range, efficiency of the production process and competitive environment.

Given the particular importance of margins, we can say that the calculation of product prices in the restaurant industry is carried out according to a method very different from the industrial one. With lower profit margins, restaurants can cut prices ahead of closings as hygiene regulations prohibit selling food made the day before. When optimizing the process of purchasing raw materials, there is also a large reserve in reducing the prices of home-cooked meals. We are talking about the purchase of quality raw materials at lower prices, which will ensure a reduction in food prices.

However, in this case, the price will include additional costs associated with the purchase of such raw materials on their own. Accounting for these factors, which form the retail price (offer price) of one's own goods, may lead to the fact that such a price level will be very high and does not correspond to the demand price in the current market conditions.

To prevent this from happening, the hotel and restaurant business should develop a flexible pricing policy. As part of this policy, different pricing approaches can be taken based on factors such as seasonal factors, holidays and weekends, tourist traffic, and specific opening hours of the establishment, which together constitute the demand for the industry's products (Sylkin *et al.*, 2021).

The development of the hotel and restaurant business to the greatest extent depends on the conditions of the market environment, as it is associated with the consumer service sector and the influence of market economy factors. First of all, it concerns the conjuncture of the market environment, its changes, the state of competitiveness of the enterprise.

The essence of the state-legal mechanism for managing the hotel and restaurant industry (Oleksenko and Bortnikov, 2017):

1. External control: Factors of external control:

- political/legal (labor legislation, tax policy, law on technical regulations and conformity assessment, privatization/deregulation policy);
- economic (interest rates and inflation rate, prospects for economic growth, unemployment rate);
- socio-cultural (demographic changes, development of the society's value system, changes in lifestyle);
- technological (creation of a new market, new discoveries, the level of industry and government funding for research and development, changes in communication technologies, new production technologies, etc.).

2. Internal management:

Factors of internal management:

- the purpose of the organization;
- organizational structure;
- technology system;
- personnel and organizational culture.

Internal management is an internal economic mechanism of the enterprise - it is a set of factors of the enterprise that form its long-term profitability and are under the direct control of the managers and staff of the organization.

The main means of the regulatory influence of the state on the activities of the subjects of the hotel and restaurant business are (Bulba *et al.*, 2021):

- state order, state task;
- licensing, patenting and quotas;
- technical regulations;
- application of standards and limits;
- regulation of prices and tariffs.

The essence of the direction of state support for the development of the hotel industry and the components of implementation (Fig.1).

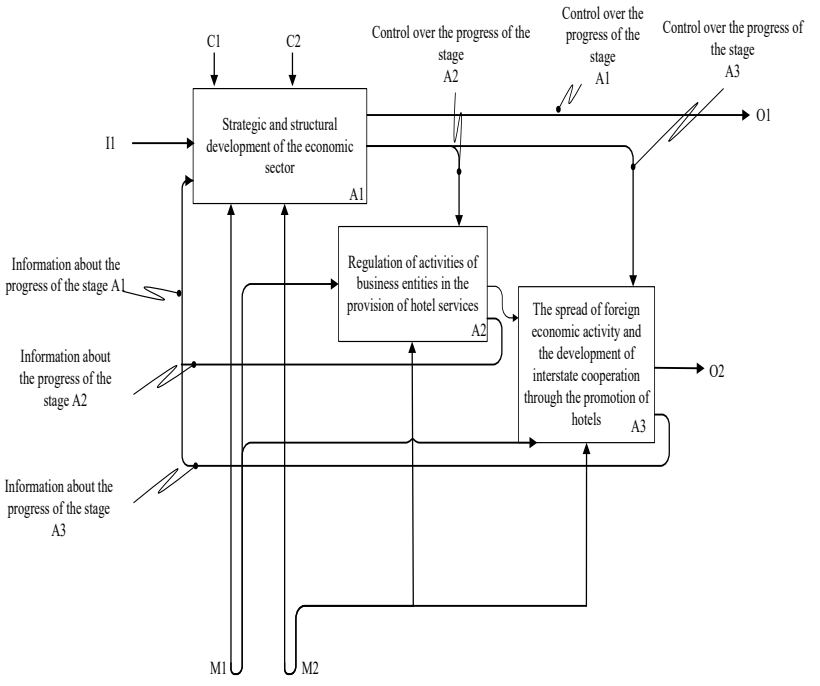

Figure 1. Model for improving the state-legal regulation of the hotel and restaurant complex in the system of development of the national economy
(Source: Formed by authors).

For a better understanding of these processes, let's look at each of the steps in more detail.

1. Strategic and structural development of the economic sector:

- Formulating and stimulating priority areas for the development of the hotel industry in the long term.
- Stimulating the opening and development of small hotels.
- Creation of regional programs for the development of hotel associations based on the coordination of the activities of independent hotels, automated collective booking and reservation systems.

3. Regulation of activities of business entities in the provision of hotel services:

- Monitoring and coordination of activities of enterprises and organizations on issues related to licensing and certification of hotels of various forms of ownership.
- Creation of an appropriate level of security and quality of the provision of hotel services in the context of the implementation of various aspects of master plans for urban development and market infrastructure.
- Coordination of hotel and tourist service processes at the regional and state levels.
- Development of an effective and adapted system of responsibility of officials for damage caused to hotel enterprises during their activities.

3.1. Improving tax policy:

Establishment of accrual and payment mechanisms and a system of control over the use of targeted funds received by local budgets in the form of hotel and tourist fees in order to develop the hotel industry.

3.2. Improving legal regulation:

- Updating and harmonization of legal acts and other documentation necessary for the formation of a market mechanism for the activities of the hotel industry in the framework of harmonization with the provisions of the general state policy for the development of the service sector.
- Development and approval of science-based state standards in the field of practical implementation of hotel services.

3.3. Reforming the organizational mechanisms of the hotel industry:

Creation of conditions for technological modernization of the process of providing hotel services.

3.4. Transformation of personnel policy:

Implementation of a developed system for organizing training, retraining and advanced training of personnel, conducting research work in the field of hotel services as one of the key factors in the development of the service sector.

4. The spread of foreign economic activity and the development of interstate cooperation through the promotion of hotels:

Stimulation of the development of foreign economic activity in the hotel industry, ensuring the representation of the interests of the state on these issues abroad, the conclusion of international agreements, the development of measures for the entry of hotels into international hotel chains.

Conclusions

Thus, a feature of the hotel and restaurant business is the inseparability of the creation of a service from the moment of provision to receipt, and from the entities providing it and receiving the service. This maximizes the importance of providing high quality services. In the hotel and restaurant business, the consumer directly determines for himself the level of quality of the services received and decides whether to receive them again or, conversely, refuse.

Decision making when receiving a service by other consumers is often based on the opinions of previous customers of hotels and restaurants. Consequently, the possibility of developing the capital of hotel and restaurant enterprises directly depends on the quality of services.

The hotel and restaurant business market is one of the most highly competitive due to the large number of entities, mostly independent of each other. We are talking about the development of several large chains, which, having significantly increased their presence in the market, strengthen their influence on it and displace smaller hotel and restaurant business entities from the market.

Therefore, governments should take into account these features and work to maintain a healthy competitive environment in the industry. The tools here are the introduction of the practice of monitoring the competitive environment of the market, the balanced policy of the Antimonopoly Committee, the support of competitiveness and the resource provision of less competitive enterprises in the hotel and restaurant business.

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Legal aspects of the formation, development and use of human capital in financial activities

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Abstract

The main objective of the study was to determine the main legal aspects of the formation, development and use of human capital in financial activities. The subject of the research is human capital. Dialectical, systemic, logical and historical methods of scientific knowledge, which guarantee the conceptual unity of the work, are used to solve the tasks set. Human capital is a specific resource, since whoever possesses it is both an input and a final vector of socio-economic development. Moreover, the activation of an individual's cognitive potential in the conditions dictated by modernity is the most powerful factor for increasing the efficiency of financial activity. Based on the results of the study, the key aspects of formation, development and utilization of human capital in financial activities were characterized. It is concluded that more research should be devoted to the analysis of the main problems of practical application of modern methods of human capital development in financial activities of the socio-economic system, as a condition of possibility for multidimensional support of sustainable development.

Keywords: human capital; legal aspects; public finance; financial activities; political economy.

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Aspectos legales de la formación, desarrollo y utilización del capital humano en las actividades financieras

Resumen

El objetivo principal del estudio fue determinar los principales aspectos legales de la formación, desarrollo y utilización del capital humano en las actividades financieras. El tema de la investigación es el capital humano. Para resolver las tareas planteadas se utilizan métodos dialécticos, sistémicos, lógicos e históricos del conocimiento científico, que garantizan la unidad conceptual del trabajo. El capital humano es un recurso específico, ya que quien lo posee es a la vez insumo y vector final del desarrollo socioeconómico. Por lo demás, la activación del potencial cognitivo de un individuo en las condiciones dictadas por la modernidad es el factor más poderoso para incrementar la eficiencia de la actividad financiera. Con base en los resultados del estudio, se caracterizaron los aspectos clave de la formación, desarrollo y utilización del capital humano en las actividades financieras. Se concluye que deberían dedicarse más investigación al análisis de los principales problemas de la aplicación práctica de los métodos modernos de desarrollo del capital humano, en las actividades financieras del sistema socioeconómico, como condición de posibilidad para apuntalar de forma multidimensional el desarrollo sostenible.

Palabras clave: capital humano; aspectos legales; finanzas publicas; actividades financieras; economía política.

Introduction

In the context of informatization, globalization and the transition of developed countries to a post-industrial model of the economy, a qualitatively new stage in the development of society, the problem of in-depth understanding of the role of a person and the accumulated results of his labor, intellectual and creative activity on the pace and quality of development of the national economy has arisen.

This problem has activated the interest of scientists in studying the processes of accumulation, preservation, reproduction and implementation of human capital as a special resource, which is the foundation for ensuring high economic growth rates. The study, as well as the proper provision of the general condition, structure and level of development of human capital, are decisive for the competitiveness, efficiency and growth of the national economy of any country.

The problem of human capital and the importance of understanding its essence were known to scientists of classical political economy. However, human capital received special attention as an object of scientific knowledge in the second half of the 20th century. It was with the help of large-scale social transformations observed in all areas of life of this period that there was a need to rethink the meaning of the category "human capital" in the context of studying its investment potential, the importance in the formation of an information and modern permanently competitive society.

Human capital, according to the definition of classical economic theory, is really capital, since it is directly used in the production process, is a source of future income and added value, and it is called human because its carrier is an individual (man). However, unlike ordinary capital, its true value cannot be accurately estimated, and therefore is potential or abstract until it is put into production. In general, the concept of capital is derived from human capital, since with its help a person is able to create any capital in the context of the development of financial activity.

The fundamental role of the legal aspects of state regulation in investing in human capital, or its reproduction to ensure economic growth, is undeniable. At the same time, in view of the post-crisis situation, it is especially worth considering not only the formation of human capital, but also its practical use in the context of transformation into the post-industrial stage of economic development.

The legal problem of the practical realization of the potential of human capital in the context of the development of financial activity directly depends on how well and diversified the conditions for its use are provided. Of particular importance, both the formation and the provision of the necessary conditions for the effective use of human capital, is the institutional factor.

Provision with high-quality institutions contributes to the proportional distribution of human capital in the sector, which ensures the dynamic, uniform and stable socio-economic development of the country. Such an axiomatic statement follows from the fact that properly organized state institutions carry out reliable protection of property rights (including intellectual as the main product of the knowledge economy), rely on the rule of law, eliminate any manifestations of economic discrimination, maintain an appropriate level of fair competition, and ensure the effective functioning of economy, free access to factors of production, versatile supporting production activities.

Thus, not only the formation and development, but also the effective use of human capital by its owner and the state as a whole depends on the quality and provision of the country with proper legal institutions. That is, the presence and functioning of relevant institutions in the country

stimulate or, in extreme cases, do not prevent the individual from disposing of his knowledge, skills, talents and everything else that we call components of human capital in the context of the development of financial activity.

1. Materials and methods

The methodological basis of the article is the fundamental provisions of the development of human capital in financial activity, the scientific works of scientists on the problems of legal regulation of financial activity. To solve the tasks set, dialectical, systemic, logical and historical methods of scientific knowledge are used, which ensure the conceptual unity of the work on the development of human capital in financial activities. The following methods were used in the research process: structural-logical, scientific abstraction, analysis and synthesis, modeling and abstract inference method. The information base of the study consists of legal documents and publications on the legal aspects of the development of human capital in financial activities.

2. Literature review

Most scientists (Brondizio *et al.*, 2009; Galtung, 1996; Hajikarimi, 2009) note that the concept of human capital is considered in the economy both in a broad and in a narrow sense. In a narrow sense, human capital is seen as education. It was called human because education is the property and part of a person, and capital is because it serves as a source of profit and needs.

In a broad sense, human capital is acquired as a result of investment (long-term capital investment) in a person through the costs of educating and training the workforce in enterprises and seeking information about improvement, prices and incomes. Human capital is the accumulated amount of experience, skills, knowledge, abilities, which in the future is used by a person in a particular area of social reproduction and contributes to the growth of labor productivity and production in financial activities.

Human capital in enterprises determines the ability to create, maintain and increase the competitive advantages of an enterprise and implement a strategy for the further development of an enterprise through a set of knowledge and skills of employees, professionalism, management efficiency, health of the enterprise personnel, ability to innovate, legal support.

According to scientists (Leana and Pil, 2006; Makareiko, 2020; Musatayeva, 2015), the following components of human capital influence the achievement of the goals and objectives of an enterprise: education, work experience, age, professionalism, labor productivity, and many others.

Continuous improvement of any of these components of human capital, combined with effective management, leads to an increase in the return of each of these components. The main feature of modern production is its constant dependence on quality and human capital management, its application and measures to attract personnel to enterprise management.

High results in the efficiency of managing the human capital of an enterprise can be achieved with the constant development of the state of human capital, which is directly related to the parameters of the financial activity of the enterprise. The development of human capital is also a continuous investment in people to achieve economic and social growth in the future. Investing in human capital is largely about investing in children. Research shows that these investments have very high returns, far exceeding investments in infrastructure and physical capital.

The development of human capital today is becoming increasingly important to increase the productivity of the workforce to support the aging society that characterizes it. Digital technology has rightfully disrupted every aspect of our lives. It brings permanent and unpredictable changes to the way we live and work. Today, no one can expect to stay in a specialized job for their entire career, because perhaps technology will make it obsolete for a long time. New jobs that didn't exist yesterday will push everyone out of their comfort zone to fit in with the new jobs created.

3. Research Results and Discussions

Human capital is an integral part of intangible assets that allow an enterprise to build competitive advantages and achieve ultra-high income. Human capital today is the prism by which the achievement of the financial performance of an enterprise should be assessed. It is also characterized by one of the strongest advantages in creating the value of a particular business unit in a competitive market. Its use in the economy is associated with the direct involvement of an employee who is its carrier and can freely dispose of it.

However, it is impossible to evaluate human capital on the basis of traditional financial statements that do not provide information about the company's potential. The legal characteristics of the value of human capital include: responsibility, work efficiency, diligence, identification of a person with the mission of the enterprise, mobility and accessibility, readiness and ability to cooperate in a team, a positive attitude towards the hierarchy of values of the enterprise (Poedynok, 2013).

These are manifestations of features that cannot be assessed in terms of the formation of the value of the organization. They have their own not only

economic, but also a fitness aspect. Human capital is the real power and, in a growing number of businesses, plays an important role in determining their value, provided that the appropriate capital is used properly.

Human capital management is supported entirely by the cost of personnel processes - selection, training, evaluation and motivation of employees in financial activities. It also affects competitive advantage through its role in determining the qualifications, competence, motivation and satisfaction of employees, and as a result of the costs of their selection, development and remuneration. That is, the management of human capital in the enterprise is the "carrier" of the cost of personnel.

The most important legal element in the development of each enterprise is its employees, whose peculiarity is that they are constantly changing under the influence of biological and social factors. Changes in human capital are interpreted as a component of its management. The connection between the enterprise development strategy and human capital management can be considered in different aspects.

Firstly, the development strategy of an enterprise affects the direction of its personnel policy, in particular, changing the tasks of personnel management, skills, experience, innovative proposals, incentives, career advancement, etc. Secondly, the results of the strategic management of human capital are reflected in the consequences of the implementation of the enterprise development strategy (Pylypenko, 2014; Smirnova and Temnyakov, 2021).

The main structural legal aspects of the formation and development of human capital for the socio-economic system in the system of financial activity are shown in Figure 1.

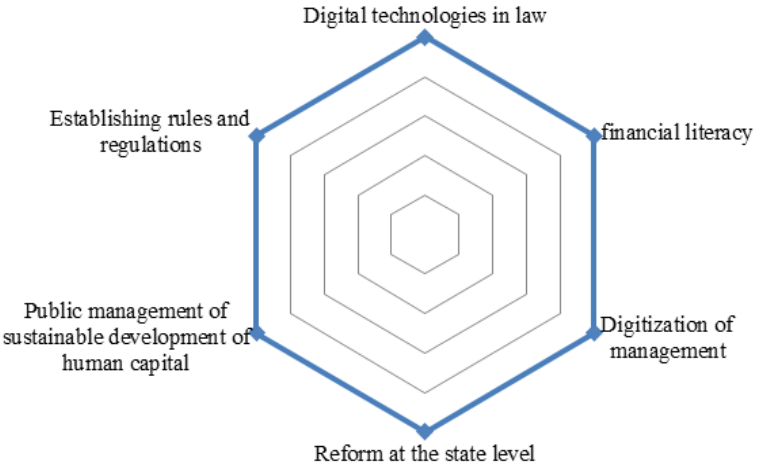

Figure 1. The main structural legal aspects of the formation and development of human capital for the socio-economic system in the system of financial activity.
Source: Formed by authors.

Regulatory and legal aspects of strategic planning are largely based on the correct ordering of strategic decision-making and coordination of activities in different areas and at different levels of management. The main condition for integrating the sphere of human capital management with the development strategy of the enterprise is to set clear goals in this area and other areas of the enterprise, such as production, marketing, finance, etc. Goals and certain measures are the basis for assessing their effectiveness in financial activities. A unified approach to the assessment of all areas of the enterprise, including human capital management, is consistent with the established concept of monitoring all key aspects of the development strategy against the background of the achievement of the tasks set.

The enterprise development strategy determines the direction, pace and methods of development of the entire organization, setting the direction for industry and functional strategies. Strategies for the activities of the enterprise should answer the question of how to succeed in a particular industry or in a particular market. In turn, functional strategies, among which are production, marketing, financial, investment, human capital management, determine the methods for implementing the development strategy and industry strategies in terms of individual functions of the enterprise.

Human capital management, being a functional strategy, must meet the regulatory and legal aspects of the enterprise development strategy

in terms of goals and structure. This involves determining the place of specific employees in order to ensure certain positions in the organization, corporate culture, recruitment and development (Sylkin *et al.*, 2021; Sylkin *et al.*, 2021; Tereshchenko, 2019; Vanova, 2016).

The directions of human capital management are closely correlated with the strengthening of the competitive position in the external environment and financial activities. The implementation of specific strategies requires human capital management systems adapted to them - in some cases, the emphasis is on innovation, in others on experience and routine financial activities. Yes, a diversification strategy requires adapting pay systems to the specifics of the industry, and a differentiation strategy encourages creativity. A specialization strategy focuses on the values associated with customer satisfaction, a cost-benefit strategy focuses on identifying lean areas (Vrublevska, 2016; Zakharchenko, 2020).

Employees are a strategic resource through which an enterprise creates a competitive advantage, core competencies and functions that distinguish it from competitors. The human resource consists of the competencies of managers and employees, their knowledge, skills, motivation, behavior and attitude to work. Human capital is developed through constant investment. The nature of its changes is determined by the fact that the completion of one stage is the beginning of a new one, which is the starting point for further changes.

The model of legal support for the formation and development of human capital in the system of improving the efficiency of the company's financial activity is shown in Figure 2.

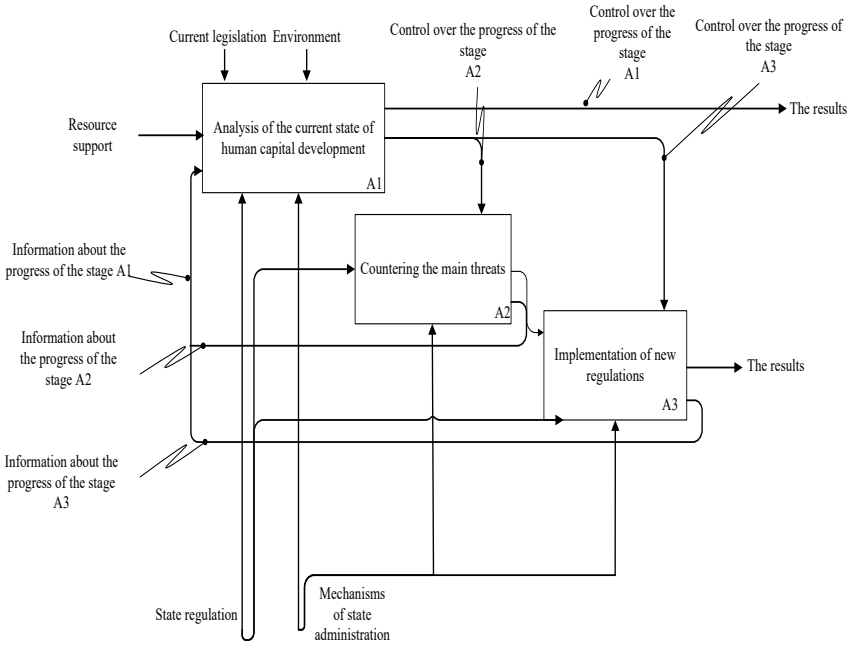

Figure 2. The model of legal support for the formation and development of human capital in the system of improving the efficiency of the company's financial activity.

Source: Formed by authors.

Strategic legal management of human capital is an integrated approach to its management. Traditional methods of human capital management are based on the assumption that employees belong to the enterprise. The development of this resource consists in lowering the level of turnover and ensuring (for example, through a system of material incentives, shaping a career path) employees' loyalty to it. Meanwhile, in the conditions of the modern economy, human capital is becoming more and more mobile.

Enterprises increasingly source talent from the external market. So today the problem is not to limit mobility, but to use it to create an internal talent market. Any actions in this regard, in the process of implementing the strategy, should be based on determining the demand for talents needed by the enterprise, and in the future, the implementation of various schemes for attracting them, taking into account the characteristics of various groups of employees. According to the concept of strategic management of human capital, the latter are interpreted in the context of a potential source of competitive advantage.

This concept treats staff as an asset that is influenced by the external environment and especially competition in the labor market, which cause long-term effects. It is based on the need for interconnection with the overall development strategy of the enterprise, its organizational structure, corporate culture, values, the need for more active actions - to anticipate the development of events, and not just respond to changes in the external environment. The purpose of the strategic management of human capital is, first of all, to determine the directions and methods of its use to achieve the goals of the organization and, as a result, increase the value of the enterprise.

Theoretical considerations on the development of human capital and investment in this capital as part of an enterprise development strategy allow us to draw a number of conclusions that are of practical importance for enterprises. First of all, it should be noted that, regardless of size, each enterprise must develop a strategy for the development of its activities. The problem of forming a development strategy for enterprises is that they often do not analyze the market in which they operate, and therefore do not want to invest in the development of competencies that, in their opinion, are not of decisive importance to them.

As for laying the means of birth and upbringing of future generations, we also see certain problems and difficulties. Trying to adopt the experience of other states in supporting young families and helping babies, our country faces problems in adapting these innovations, which is primarily due to the corruption of the entire economic and political systems. Another form of investment in human capital today is the cost of fundamental scientific developments. In the process of development of science, intellectual innovations are created and people themselves are transformed as economic entities, acting as carriers of new abilities and needs.

In today's information and legal society, science is turning into a kind of generator of «human capital». And from here follows another problem of the development of human capital in enterprises, namely the problem of investing in the innovative development of enterprises. Now there is such a situation that many enterprises are not able to allocate enough investment resources to finance innovative development or are simply not interested in it. Referring to the problems listed above, we also note that sometimes the management of enterprises in our country do not understand the significance and importance of investing in the development of human capital. It should be noted that it is due to the development and effective use of the human capital formed at the enterprise.

Employers are the subjects of economic and legal relations that are directly involved in the processes of human capital management at the micro level, it is they who form and develop human capital by increasing new key competencies, that is, those professional and personal qualities

necessary for an employee to occupy a particular position. The forms of legal development of personnel are the increase in the level of competence of employees that they already possess, on the basis of training and retraining of personnel, advanced training and professional experience.

As a conclusion, we note that also at the present stage of development of the economy of our country, moral stimulation of labor is of particular importance. It is the moral and financial stimulation of labor that is a special socio-psychological phenomenon that can satisfy a person's needs for social recognition. Scientists list many methods of influencing the motivation of employees, which can and should be used by company managers to establish the effective use of human capital.

Summing up the above, we note that among the main problems of developing the human capital of enterprises is investing in healthcare, education, upbringing and the creation of an effective system of motivation and encouragement of employees to increase the return on the use of existing human capital.

Conclusions

Summing up, it should be noted that the motivation and stimulation of intellectual work in the context of budgetary restrictions on financing the innovation sphere involves the creation of real market mechanisms for converting new knowledge into product or technological innovations, the readiness for innovations of managers and entrepreneurs, the creation of conditions for a constant increase in value and the return of national human resources.

The combination of market motivation for intellectual activity and legal state support for fundamental innovations requires the involvement of new subjects of the innovation process that are economically interested in the high social results of intellectual labor. Not every investment in a person can be called an asset in human capital, since the nature and types of investments in a person are determined by historical, national, cultural characteristics and traditions.

By solving the most important strategic political task of this study and improving the development of the national economy through the formation of reproductive sources of economic growth of human capital and the mechanism for its use. An analysis of scientific views on the economic essence and characteristics of human capital suggests that human capital is a set of economic relations regarding investments in knowledge, skills and abilities of a person, contributing to the growth of his productive force, acting as a leading element of social reproduction, the central source of sustainable development. national economy.

The creation of a qualitatively new workforce in financial activities can serve as an objective basis for progressive changes in the country's economy, the deployment of intellectual capital and the transition to an innovative, socially oriented development model. But a significant obstacle is the actual approval of a rigid liberal model with its inherent features - an increase in the share of market services in the areas of education and healthcare, which does not correspond to world trends. The decisive influence on the competitiveness of human capital is exerted by the level of entrepreneurial management as a manifestation of initiative, proposal of new ideas, finding non-standard solutions and ways to implement them. For restructured companies, it becomes necessary to form a new type of manager, change the management paradigm.

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Transformation of international forms of legal regulation of corporate relationships

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Abstract

The purpose of the article was to analyze the international forms of legal regulation of corporate relations and their consequent transformation in the corporate law of the European Union EU and Ukraine. The methods of this research were: monographic analysis, analysis and synthesis, systematic, comparative and legal, prospective and generalization. The formation and development of the EU corporate legislation is analyzed. A comparative analysis of the EU and Ukrainian corporate legislation in its different stages and forms of adaptation in accordance with the EU legislation is also carried out. It is concluded that modern EU corporate legislation is the result of the historical development of EU law in general and, its transformation into a specific, independent legal system. It is emphasized that company law in the EU is increasingly subject to unification, and with the adoption of the European Company Acts, the company law of the EU member states is also subject to constant transformation. Ukraine, as a candidate to join the EU, should implement measures aimed at adapting and unifying its corporate legislation to EU laws.

Keywords: corporate law; European Union and Ukraine; corporate governance; legal harmonization; legal unification.

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Transformación de las formas internacionales de regulación jurídica de las relaciones corporativas

Resumen

El propósito del artículo fue analizar las formas internacionales de regulación legal de las relaciones corporativas y su consecuente transformación en el derecho corporativo de la Unión Europea UE y Ucrania. Los métodos de esta investigación fueron: análisis monográfico, análisis y síntesis, sistemático, comparativo y jurídico, prospectivo y la generalización. Se analiza la formación y desarrollo de la legislación empresarial de la UE. También se realiza un análisis comparativo de la legislación societaria de la UE y Ucrania, en sus diferentes etapas y formas de adaptación, de acuerdo con la legislación de la UE. Se concluye que la legislación empresarial moderna de la UE es el resultado del desarrollo histórico del derecho de la UE en general y, su transformación en un sistema legal, específico e independiente. Se enfatiza que la legislación societaria en la UE está cada vez más sujeta a unificación, y con la adopción de los Actos Societarios Europeos, la ley societaria de los Estados miembros de la UE también está sujeta a transformación constante. Ucrania, como candidato a unirse a la UE, debe implementar medidas destinadas a adaptar y unificar su legislación corporativa a las leyes de la UE.

Palabras clave: derecho societario; Unión europea y Ucrania; gobierno corporativo; armonización jurídica; unificación legal.

Introduction

The study of the forms of legal regulation of corporate relationships is extremely relevant due to the tasks provided in the National Program for the adaptation of Ukrainian legislation to the EU laws of 2004 and upon Ukraine's conclusion of the Association Agreement with the EU of 2014, as well as in view of Ukraine's candidate status for EU membership received on June 23, 2022.

European integration processes strengthen the need to bring the national legislation of Ukraine into compliance with the norms of EU corporate law. At the same time, the harmonization of the corporate legislation of Ukraine with the relevant EU laws is one of the main and essential parts of the indicated programs and agreements.

Transformational changes in the forms of legal regulation of corporate relationships in the EU have a long history, which affects the further development of this area of EU law. Besides, the vector of the development of EU corporate law has a significant impact on the harmonization and

formation of corporate legislation of Ukraine not only in view of the actively implemented European integration processes, but also in view of the already established practice of legal regulation of such relationships in Ukraine.

In view of this, the transformation of the corporate law of the EU and Ukraine should be considered in a complex and interconnected manner, which can help to correctly outline the directions, forms and methods of harmonization of corporate law of Ukraine with EU laws. Therefore, the purpose of this article is to analyze the forms of legal regulation of corporate relationships and their transformation in the corporate law of the EU and Ukraine.

1. Methodology

The methodological basis of the research is general scientific and special methods of scientific cognition, the use of which made it possible to form scientifically based conclusions and recommendations. The dialectical method made it possible to get the general characteristics of the forms of legal regulation of corporate relationships in their integrity and development. The method of monographic analysis made it possible to clarify a range of problematic issues related to the transformation of the forms of legal regulation of corporate legal relationships in the EU and to consider the perspectives of harmonizing domestic corporate law with EU laws.

The method of analysis and synthesis made it possible to generalize information about the existing varieties of forms of legal regulation of corporate relationships, while studying those legal instruments of corporate law that are capable of contributing to the improvement of corporate governance in general.

The method of theoretical generalization assisted to study the elements of the mechanism of legal regulation in the field of corporate governance, which are used to improve its institutional and legal foundations. The comparative and legal method made it possible to carry out a comparative and legal analysis of EU norms in the field of corporate law and to clarify a range of issues that Ukraine has to implement in order to harmonize with EU laws.

The systematic method made it possible to conduct a study of the forms of regulation of corporate relationships as a dynamic system consisting of separate subsystems and elements. Tendencies in the development of the forms of legal regulation of corporate relationships have been studied due to the method of forecasting, in order to improve the results of corporate governance. The method of generalization made it possible to draw conclusions based on the conducted research.

2. Results and Discussion

2.1. Research on the transformation of the forms of legal regulation of corporate relationships in the EU

The legal forms of regulation of corporate relationships that exist in one or another country differ among themselves due to such principles as the legal system the country belongs to, its historical development and economic situation, mental and cultural characteristics of the country's population, etc. For example, the model of corporate governance developed in the USA is fundamentally different from the European one in terms of construction and functioning (Luts *et al.*, 2010).

At the same time, corporate relationships almost in all countries are regulated by regulatory legal acts, local acts of corporations, corporate agreements and corporate customs. The impact of court decisions (court precedents) in the legal regulation of corporate relationships is determined depending on the legal system the state belongs to.

Researchers of EU corporate law claim that EU law in the early days had a predominantly international legal character. However, it evolved over time into a coherent system of national law being separated from international law. At the same time, EU corporate law has not completely merged with domestic law, but is an independent legal system with its own sources, forms of law-making and law enforcement, specific mechanisms for the protection of corporate rights. Therefore, EU law is the unique system that combines features of both domestic and international law (Kibenko, 2005).

In general, EU corporate legislation (legislation on companies) includes the provisions of incorporation deeds – the Rome Treaties establishing the EU, EU directives, EU regulations, decisions as individual and legal acts, recommendations, decisions of the EU Court (Savetchuk, 2018). Besides, EU corporate law is characterized by a division into primary (founding treaties (Treaties of Rome)) and secondary (directives, regulations, decisions, recommendations, agreements, principles, decisions of the EU Court) (Law of Ukraine 'On the National Program of Adaptation of the Legislation of Ukraine to the Legislation of the European Union', 2004).

It is also worth mentioning that the EU has been working on improving and harmonizing corporate legislation for a long time aimed at unifying corporate rules in the national legislation of EU Member States, as well as those that wish to join the EU in the future (for example, Ukraine).

While analyzing the history of the formation and development of EU corporate law, it is customary to distinguish several periods in the transformation of EU legislation on companies: 1) the first stage – from 1968 till 1989, when the first nine directives on the regulation of corporate

relationships were adopted; 2) the second stage – from 1989 till 1999, which is called the crisis period; 3) the third stage – from 1999 till 2011, when the Action Plan to modernize on companies and to strengthen corporate governance in the EU was adopted, and a number of new Directives were adopted; 4) the fourth stage – from 2012 to the present day, which is characterized by further amendments in EU corporate legislation (Shumilo and Suleimanov, 2021).

However, we consider it expedient to offer our own periodization of the stages of EU corporate law development. Thus, the first stage, which we suggest to call the "establishment of EU corporate law", should be considered the period that began at the end of the 1950s with the adoption of the primary EU legislation.

In particular, it is about the signing of the so-called "Treaties of Rome" on the establishment of the EU, among which the Treaty of Rome on the establishment of the European Economic Community – EEC concluded on March 25, 1957 (entered into force on January 1, 1958) is important for corporate law (currently under revision Treaty of Rome or EEC Treaty (officially the Treaty establishing the European Economic Community) (EEC Treaty, 1957). The indicated period lasted until 1968, that is, until the moment of adoption of the secondary EU legislation.

Foundations for further formation of EU corporate legislation are directly laid down in the Treaty of Rome itself. It clearly shows the so-called components of the common market, which were called the "four freedoms" – the free movement of goods, people, services and capital. The main element of such free movement was the "freedom to establish centers of entrepreneurial activity" (Kibenko, 2005). In particular, in accordance with the provisions of the Art. 43 of the Treaty of Rome:

1. it is prohibited to restrict the freedom of entrepreneurial activity of citizens of one Member State on the territory of another Member State;
2. it is prohibited to apply restrictions to citizens of any Member State on the creation of representative offices, branches or subsidiaries on the territory of any Member State;
3. freedom of entrepreneurial activity includes the right to start and conduct independent labor activities, as well as to create and manage enterprises, in particular partnerships, under the conditions established for its citizens by the law of the Member State, where such entrepreneurial activity is carried out, taking into account the provisions of the subsection on the capital movement.

Part 1 of the Art. 44 of the Treaty of Rome stipulates the obligation of EU agencies to contribute to ensuring the freedom of establishment. One of

the measures of such assistance, in accordance with p. "g" of Part 2 of the Art. 44 is the coordination of guarantees to the necessary extent required by Member States from companies and firms to protect the interests of their members and other persons. The process of coordination provided by this paragraph was later called "harmonization of corporate law" (Kibenko, 2006).

The Council of the EU also adopted the General Program for the Removal of Obstacles to Freedom of Establishment in 1962 in order to fulfill the provisions of the Treaty of Rome. This document became the basis for the adoption of the first EU Directives on the freedom of establishment of certain types of legal entities, for example the Council Directive 64/225/ EEC "On the abolition of restrictions on the freedom of establishment and the freedom to provide services in the field of reinsurance and retrocession" (Council Directive 64/225/ EEC, 1964).

The second stage, which began in 1968 and lasted until 1999, we offer to call the "establishment of EU corporate law". It is the period, when the first main directives and regulations on EU corporate law were formed and adopted. Thus, according to the content of the Art. 249 of the Treaty of Rome, the European Parliament together with the Council, the Council and the Commission shall make regulations, issue directives, create recommendations and provide conclusions in order to carry out the tasks and in accordance with the provisions of this Treaty.

The regulation has general application. It is binding in all its elements and directly applicable in all Member States. The Directive is binding for each Member State to which it concerns as to the results to be achieved, but leaves the national authorities entirely free to choose the form and means of achieving these results. The decision is binding in all its elements on those to whom it concerns. Recommendations and conclusions are not legally binding (Treaty establishing the European Economic Community, 1957).

Several important directives were prepared during the period from 1968 till 1999, as part of the formation of the new EU corporate law, namely:

- The First Directive of the Council of March 9, 1968 "On the coordination of guarantees required by Member States from companies within the content of p. 2 of the Art. 58 of the Treaty in order to protect the interests of the members and third parties, with a view to establishing the equality of such guarantees throughout the Community";
- The Second Directive of the Council of 13 December 1976 "On coordination of guarantees required by Member States from companies within the content of Part 2 of the Art. 58 of the Treaty, in order to protect the interests of the members and third parties, with regard to the creation of joint-stock companies, preservation

and change of capital in order to ensure the equality of application of such guarantees";

- The Third Directive of the Council of 9 October 1978, based on p. (g) of Part 3 of the Art. 54 of the Treaty "Regarding the merger of open joint-stock companies with limited liability companies";
- The Fourth Directive of the Council of 25 July 1978, based on the Art. 54 (3) (g) of the Treaty "On the annual financial reporting of certain types of companies";
- The Sixth Directive of the Council of 17 December 1982 "Regarding the division of open joint-stock companies with limited liability";
- The Seventh Directive of the Council of 13 June 1983 "On consolidated reporting";
- The Eighth Directive of 10 April 1984 "Regarding the approval of persons responsible for the mandatory audit of accounting documents";
- The Eleventh Directive of the Council of 21 December 1989 "On requirements for the disclosure of information by branches started in a Member State by companies of certain types regulated by the law of another state";
- The twelfth Council Directive of 21 December 1989 on limited liability companies with a single member is aimed at legitimizing single-member limited liability companies within the EU (EU Council Directives, n/y).

The period from 1999 till 2017 should be considered as the third stage of the formation of EU corporate legislation, which we offer to call *"modernization of EU corporate law"*. We note that the work in the EU on the harmonization of corporate legislation in 1990s faced significant resistance from certain Member States regarding such controversial issues as the participation of hired employees in company management and the structure of management bodies, in particular, a single-level body (like in the Great Britain) or a two-level body (board and supervisory board, like in Germany) and some other issues. The adoption of the Action Plan on corporate law reform was an attempt to resolve this controversial situation (EU legislation on companies, n/y).

Besides, the following directives were also adopted during the specified period of the development of EU corporate law: the Thirteenth Directive of the European Parliament and the Council of 21 April 2004 "On Takeover Bids", which regulates the acquisition of a significant block of shares (takeover) of open joint-stock companies on the territory of the EU; The Tenth Directive of 26 October 2005 "On cross-border mergers of limited

liability companies", which provides the procedure for the merger of companies with registered offices in different EU countries (EU Council Directives, n/y).

The fourth stage is the period from 2017 to the present day. We offer to call it *"codification of EU corporate law"*. It was marked by the implementation of a systematic codification of EU corporate law. A large number of directives and their constant amendments, as well as the rules that needed some updating or improvement due to their ineffectiveness in practice, led to the fact that most of the Directives on corporate law were incorporated into Directive 2017/1132, which could be safely called a kind of "Code of EU corporate law". Thus, the European Parliament and the Council adopted Directive 2017/1132 "Regarding certain aspects of company law (codification)" on June 14, 2017.

This Directive establishes measures for: online establishment of companies, online registration of branches and online submission of documents and information by companies and branches; requirements for disclosing information about branches started in a Member State by certain types of companies governed by the law of another state; merger of public joint-stock companies; cross-border conversion, cross-border merger and cross-border division of limited liability companies; division of public joint-stock companies, etc.

However, the adoption of the EU Corporate Code was not the end for the modernization of EU corporate law. Thus, over time, the European Parliament and the EU Council adopted Directive 2019/2121/EU amending Directive (EU) 2017/1132 on cross-border transformations, mergers and divisions. As well as Directive (EU) 2019/1151 on the use of digital tools and processes in company law, which also amends the above-mentioned Code (EU Council Directives, n/y).

It should be noted that the caselaw of the EU Court served as the basis for the changes. Therefore, due to caselaw, the European Parliament and the Council of the EU created a "company law package", which aimed to establish "more simple and less burdensome rules for companies regarding registrations and cross-border transformation" (Shumilo and Suleimanov, 2021: n/p).

However, despite their importance for EU law as EU regulations, each EU Member State must implement the provisions of the directives into their national legislation in order they become binding for EU Member States. Therefore, there is a situation when EU corporate law directives, due to their dispositive nature, are not always applied by countries or are applied in a certain interpretation. Thus, in practice, we will continue to have different forms of legal regulation within the EU countries, which are similar in content to corporate relationships and in some aspects significantly different.

According to O. Kibenko, various types of regulation in the field of corporate law, despite the carried-out harmonization, remain in the EU countries, and among them we can distinguish: *the German model* (Germany, Austria, Switzerland); *the French model* (France, Belgium, Spain); *the Anglo-Saxon model* (Great Britain, Ireland); *the Scandinavian model* (Finland, Sweden, Denmark); *the Eastern European model* (countries of the former socialist camp) (Kibenko, 2006).

In this perspective, corporate governance rules that would be mandatory for all EU members become relevant, and these are the EU Regulations. According to the Art. 249 of the Treaty of Rome the Regulations have general application unlike Directives. The Regulations are binding in all the elements and have direct application in all Member States (Treaty establishing the European Economic Community, 1957). The Regulations are direct acts, that is they, unlike directives, grant individuals with subjective rights and obligations and do not require additional implementation into the national legislation of EU Member States (Corporate law, 2020).

A number of Regulations were adopted regarding the legal regulation of corporate relationships in the EU, which created so-called "supranational" legal entities operating within the EU, regardless of whether they are provided in the legislation of EU Member States or not. Thus, the Council Regulation (EEC) No. 2137/85 of 25 July 1985 established the European Economic Interest Grouping (EEIG); the Council Regulation (EC) No. 2157/2001 of 8 October 2001 – European Society (SE); the Council Regulation (EC) No. 1435/2003 of 22 July, 2003 – European Cooperative Society (SCE) (Corporate law, 2020).

As of July 2009, about 400 such European legal entities were registered in Europe (EU legislation on companies, n/y). The procedure for mergers and acquisitions of companies within the EU is regulated by another EU Regulation No. 139/2004 on the control of concentrations of enterprises (Savetchuk, 2018).

The caselaw of the EU Court has an extremely large influence on the forms of legal regulation of corporate relationships in the EU. Certain scholars, assessing the impact of the decisions of the EU Court on the formation of EU law, come to the opinion that its decisions are an impetus for the formation of EU corporate law (Kibenko, 2005) and a constant generator of new ideas that are used to improve EU corporate law (Shumilo and Suleimanov, 2021).

All other corporate acts within the EU, such as recommendations, conclusions, principles are mainly of a recommendatory nature and are auxiliary to the main EU legislation. Therefore, based on the criterion of the significance of EU corporate acts for the Member States, EU corporate legislation can be divided into: main (regulations, directives, decisions of

the EU Court) and auxiliary (recommendations, conclusions, principles, etc.).

2.2. Peculiarities of adapting the forms of legal regulation of corporate relationships in Ukraine to EU corporate law

As for Ukraine, the adaptation of its corporate legislation to EU laws also has a long history, which should be divided into the following stages. The first stage, which initiated cooperation in the coordinational work on the rules for the establishment and operation of companies in the EU and Ukraine, is Ukraine's signing and ratification of the Partnership and Cooperation Agreement between Ukraine and the European Communities and their Member States in 1994 (it entered into force on March 1, 1998) (Law of Ukraine 'On Ratification of the Agreement on Partnership and Cooperation between Ukraine and the European Communities and their Member States', 1994).

The Section Four of the Agreement contains provisions affecting entrepreneurial activity and investments. At the same time, Chapter 2 of this Section of the Agreement regulated the conditions affecting the creation and operation of companies.

The efforts of the parties to adapt their legislation were defined in the Art. 51 of the Agreement, where the parties recognized that the convergence of existing and future legislation of Ukraine with EU laws is an important condition for strengthening economic relationships between Ukraine and the EU. Ukraine will implement measures to ensure that its legislation is gradually brought in line with EU laws (Law of Ukraine 'On Ratification of the Agreement on Partnership and Cooperation between Ukraine and the European Communities and their Member States', 1994).

The EU approved a joint strategy for Ukraine later, at this stage, the EU supported the process of economic transformation in Ukraine and the gradual approximation of Ukrainian legislation to EU laws in certain priority areas at the Helsinki Summit on December 11, 1999. In addition, the strategic plans for the integration of Ukraine into the EU and the adaptation, and in fact the unification of the legislation of Ukraine to the EU laws, were also confirmed by a number of Decrees of the President of Ukraine and regulatory acts of the Cabinet of Ministers of Ukraine, as well as at international events – "Ukraine – European Union" Summits in the period from 1998 to 2003.

Significant changes are taking place in the corporate legislation of Ukraine during this time. The new Civil and Commercial Codes of Ukraine were adopted at the end of 2003. Those Codes contained entire Sections focused on the issues of creating and terminating activities of companies in Ukraine, the issues of corporate governance of legal entities, as well as the rights and obligations of their members.

They defined the concepts of corporate rights and corporate legal relationships. At the same time, the simultaneous adoption of those two Codes did not avoid the creation of certain contradictions during the regulation of corporate legal relations. The existence of various forms of legal regulation of corporate legal relations caused a lively discussion among lawyers and scholars who study corporate legal relationships. Unfortunately, the legislator, often not considering the opinion of scholars, regularly amends the relevant corporate legislation at the level of laws, introducing constant "innovations", which sometimes have nothing in common, and sometimes even contradict the principles of corporate governance that are practiced in the EU.

The Ukraine's adoption of the National Program of Adaptation of the Legislation of Ukraine to the Legislation of the European Union in 2004 (Law of Ukraine "On the National Program of Adaptation of the Legislation of Ukraine to the Legislation of the European Union", 2004) can be considered as the second stage of the adoption of Ukraine's corporate legislation to EU laws. The specified Program has already contained certain algorithms and the Action Plan, in particular regarding the improvement of corporate legislation.

Such key corporate regulatory legal acts as the Laws of Ukraine "On Securities and the Stock Market" of 2006, "On Joint-Stock Companies" of 2008, "On the Institution of Joint Investment" of 2012, "On the Depository System of Ukraine" of 2012 and others were adopted during this period.

In addition, this period is also characterized by the fact that all corporate disputes in Ukraine are concentrated within one jurisdiction – commercial courts. Such a step has significantly improved the situation on the protection of corporate rights and interests within judicial proceedings, eliminating the existing "competition of judicial decisions" in corporate disputes that existed before that.

The third stage of adaptation of the corporate legislation of Ukraine to EU laws became more active with the Ukraine's conclusion of the Association Agreement with the EU in 2014 (Law of Ukraine 'On Ratification of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand', 2014) and lasts till now.

The adoption of the Law "On Limited and Additional Liability Companies" in 2018 is a significant event at this stage. Besides, the war in Ukraine and the granting of EU candidate status to Ukraine on June 23, 2022 (Grant EU candidate status to Ukraine and Moldova with out delay; Ukraine has been granted candidate status for EU membership, 2022) strengthened the need of adaption Ukrainian legislation to EU laws. At the same time, the harmonization of the corporate legislation of Ukraine with

the relevant EU laws is one of the main and essential parts of the indicated above programs and agreements. Therefore, thorough work to improve the corporate legislation of Ukraine is currently going on.

As a positive, we should note the adoption by Ukraine of the new version of the Law of Ukraine "On Joint-Stock Companies" on July 27, 2022. The provisions of the indicated Law were developed, in particular, taking into account corporate law and the experience of corporate legal relationships in the EU.

The mentioned Law is aimed at improving and further harmonizing the legislation on companies, in particular by: introducing a mechanism for conducting general meetings with the use of electronic voting; bringing the norms on shareholder representation into compliance with EU legislation, in particular the norms of the Directive 2007/36/EU of the European Parliament and the Council of 11 June 2007 on the exercise of certain rights of shareholders in listed companies; the possibility of introducing a single-level structure of company governance in joint-stock companies; settlement of the issue of liability of officials of a joint-stock company; bringing the norms on mergers, acquisitions, spin-offs and divisions of joint-stock companies into compliance with the norms of the Directive 2017/1132/EU of 14 June 2017 regarding some aspects of legislation on companies.

Currently, the work of a group of scholars and MPs on improving the legal regulation of corporate relationships in the Civil and Commercial Codes of Ukraine is also going on. It is about the so-called group on the "Recodification of the Civil Code of Ukraine". Nowadays, there are already certain developments, regarding which there are ongoing discussions among experts and professionals. Some suggestions of the group have been already submitted for consideration to the legislator in the form of draft amendments to laws. We believe that the mentioned draft laws must necessarily contain the positive experience that the EU has gained in EU corporate law.

Conclusion

The corporate legislation of the EU was developed as a result of the development of EU law in general and went through the transformation from international to a separate specific and independent legal system, which is characterized by the stages of establishment, harmonization, improvement and codification. Given this, the following stages should be distinguished in the transformation of EU corporate law: the first stage – formation of EU corporate law (1957-1968); the second stage – establishment of EU corporate law (1968-1999); the third stage – modernization of EU corporate law (1999-2017); the fourth stage – codification of EU corporate law (2017 - till now).

The adaptation of the corporate legislation of Ukraine to the EU corporate law also has its long history, which should be divided into the following periods: the first stage – signing and ratification by Ukraine in 1994 of the Partnership and Cooperation Agreement between Ukraine and the European Community and its Member States; the second stage – the adoption of the National Program for the adaptation of Ukrainian legislation to EU laws in 2004; the third stage – Ukraine's conclusion of the Association Agreement with the EU in 2014 till now. This stage is characterized by the process of active adaptation of Ukrainian corporate legislation to EU laws.

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Taxation of Charitable Giving in Terms of Martial Law in Ukraine: Legislative Novelties and Future Models

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Abstract

The purpose of the article was to reveal the conditions and consequences of key developments in the Ukrainian tax legislation, with respect to charitable donations by residents and non-residents in the context of the martial law regime, but de facto, large-scale war; as well as to determine models of development forecasting tax incentives for the post-war period of the restoration of Ukraine. Interdisciplinary descriptive, analytical and prognostic methods were used in the development of the research; in particular, comparative, situational and matrix analysis, interpolation and extrapolation of trends, conceptual and cognitive modelling. It is concluded that, Ukrainian tax policy is being significantly modernized by implementing a wide range of novelties related to key national taxes, namely: corporate income tax and individual income tax, to create the most favourable treatment for charitable donations by individuals, legal entities, charitable organizations

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and business entities. It is expected that the post-war legislative strategy for taxation of charitable giving will be different from the peacetime and wartime models.

Keywords: charitable donations; tax incentives; war in Ukraine; humanitarian aid; restoration of Ukraine.

Tributación de donaciones caritativas en términos de derecho marcial en Ucrania: Novedades legislativas y modelos futuros

Resumen

El propósito del artículo fue revelar las condiciones y consecuencias de las novedades clave de la legislación fiscal ucraniana, con respecto a las donaciones caritativas por parte de los residentes y los no residentes en el contexto del régimen de la ley marcial, pero de facto, de la guerra a gran escala; así como determinar modelos de incentivos fiscales de pronóstico de desarrollo para el período de posguerra de la restauración de Ucrania. Se emplearon en el desarrollo de la investigación métodos descriptivos, analíticos y de pronóstico interdisciplinarios; en particular, análisis comparativo, situacional y matricial, interpolación y extrapolación de tendencias, modelado conceptual y cognitivo. Se concluye que, la política fiscal de Ucrania se está modernizando significativamente mediante la implementación de una amplia gama de novedades relacionadas con los impuestos nacionales clave, a saber: el impuesto de ganancias empresarial y el impuesto sobre la renta individual, para crear el tratamiento más favorable para las donaciones caritativas por parte de las personas, entidades legales, organizaciones caritativas y entidades comerciales. Se espera que la estrategia legislativa de la posguerra de impuestos de donaciones caritativas sea diferente de los modelos de paz y los de guerra.

Palabras clave: donaciones caritativas; incentivos fiscales; guerra en Ucrania; ayuda humanitaria; restauración de Ucrania.

Introduction

The unprovoked military aggression against sovereign Ukraine violating fundamental principles and rules of international law including international humanitarian one considering laws and customs of war became one of the key challenges to the civilized world within the first quarter of the XXI century.

According to the UN information published by BBC as of August 2022, there are thousands dead and wounded among civilians and the military, more than 13 million Ukrainians had left their homes including more than 6 million of internally displaced persons and 6 million leaving to Europe, where 4 million of them are women and children (Dorosh, 2022).

The enormous scale of humanitarian catastrophe determined unprecedented intensification of charitable giving on the part of both residents and non-residents of Ukraine. This phenomenon reflects the positive trend, which can be confirmed by the data of CAF World Giving Index 2022 indicating that Ukraine is the only top 10 European countries, moving up the rankings from #20 in 2020 to #10 in 2021 (The Charities Aid Foundation, 2022).

It is an axiom that peacetime legislative models in general and tax models in particular cannot objectively be fully effective during wartime. This issue is system in nature, consequently, it requires the modernization of tax incentives aimed at proper responding war challenges.

The purpose of the study regarding the above is to reveal Ukrainian legislation's key novelty in the field of direct taxation of charity activity provided by residents and non-residents by focusing attention on the main national taxes, namely, enterprise's assessable profit and personal income tax in the context of the warfare, as well as development forecasting of logical-semantic and cause-and-effect models for post-war period of Ukraine's restoration.

1. Methodology of the study

The outlined purpose of the study determined its epistemological approaches to the proper doctrine and methodology. Since there is no single method of cognition that would provide total knowledge on its own, it is worth applying a set of methods based on the ability of each of them to realize its advantages and at the same time compensate for the cognitive limits of other methods.

To provide the in-depth research alongside with diagnostic (descriptive) methods, a wide range of interdisciplinary analytical and forecasting methods are expected to be applied effectively, in particular, comparative, situational and matrix analysis, trends interpolation and extrapolation, conceptual and cognitive modelling.

The working hypothesis of the study, which is to be confirmed or refuted, is that residents and non-residents' taxation models of charity activity operated in Ukraine in peacetime have become history and cannot be preserved during the war or fully returned during the restoration of Ukraine.

2. Analysis of recent research

Having applied literature review qualitative methods, some dominant trends can be described. Particular attention within in-depth law research including PhD theses and monographs published in Ukraine in the field of private law is focused on the different aspects of the civil law status of charitable organizations, non-profit societies and institutions in the context of adaptation to EU laws including some features in the field of charity activity such as endowments (Kochin, 2020), (Shpuganych, 2018). In turn, public law research is being conducted in the field of administrative law regarding, among others, legal and administrative principles of patronage (Putayto, 2019), administrative and legal regulation of sponsorship in Ukraine (Demeshko, 2019).

As a rule, taxation of charity activity is the subject matter of the research in economics, which can be illustrated by the example of the dissertation with respect to tax incentives of charitable giving in terms of foreign practice and prospects of Ukraine (Bobrivets, 2018), PhD in economics scientific article regarding charity as a source of financial resources of the population social protection (Nasibova, 2020). Issues of charitable giving taxation alongside with this trend are analysed by practice-oriented experts, in particular, representatives of the State Tax Service of Ukraine, multinational audit and consulting companies, for instance, Price Waterhouse Coopers.

Analysis of recent research allows making the conclusion that synthesis of direct taxation issues of charity, volunteer and humanitarian aid provided by individuals and legal entities - residents and non-residents in the context of both warfare and future post-war restoration of Ukraine within one scientific article defines it as one of pioneering.

3. Results and discussion

3.1. Volunteer activity taxation

The peculiarity of Ukrainian legislation consists of the existence of three laws related to charity activity and charitable organizations (Law of Ukraine No. 5073-VI, 2012), volunteer activity (Law of Ukraine No. 3236-VI, 2011) and humanitarian aid (Law of Ukraine No. 1192-XIV, 1999). Comparative analysis of their rules determines the correlation between basic definitions considering charity activity as generic concept and volunteer and humanitarian aid as the concept's types. Meanwhile, "The Tax Code of Ukraine does not distinguish humanitarian aid separately and actually contains a description of charitable giving taxation" (Savchuk, 2022).

There are axioms that volunteers became the first and remain one the most effective supporters of the Armed Forces of Ukraine, territorial defense units and other formations in the defense sector.

Taking into account the definition of the Law of Ukraine "On volunteer activity" as of April 19, 2011 No. 3236-VI with the latest amendments as of December 13, 2022, it's worthwhile pointing out that volunteer activity is immanent significant peculiarity. Its concept quintessence consists of asymmetry between volunteers' legislative permission to receive any assets free of charge including cash, goods, services, works, property rights and narrower scope of activity limited by services providing and works performed to the beneficiaries personally without any monetary or material compensation.

Key problems related to volunteer activity taxation under warfare concerned the obligation to pay personal income tax after assets receiving free of charge and the absence of the right to compensate expenses occurred de-facto documentary unconfirmed de-jure. Indeed, an individual or a volunteer organization may need to receive cash or goods from benefactors (donors, philanthropists) both residents and non-residents in order to provide volunteer activity. The amount of such cash or the fair value of goods under the general tax legislation requirements during peaceful time shall be included in the gross individual taxable income followed by tax payment under 18 % tax rate.

Nowadays, the relevant tax treatment has been liberalized by the Ukrainian Parliament since 24 February 2022 significantly by means of implementing the following algorithms. Each volunteer may choose the appropriate tax model within the alternative - to be or not to be a taxpayer of individual income tax in part of assets received free of charge. Implementing of the first model does not require any additional procedure steps, in its turn, there are reasons to recognize the second model as much more effective adopted for the period of martial law in the territory of Ukraine. Its quintessence is following - the amount of cash and value of goods received free of charge by volunteers from other benefactors shall not be included in the gross individual taxable income under certain conditions regarding:

1. Obtaining the legal status of a benefactor by being included in a special State Register of volunteers by its holder State Tax Service of Ukraine which shall be completed during just 1 day after all required documents submitted.

2. Providing charitable giving (aid) to the certain categories of beneficiaries defined legislatively as exhausted list, namely: a) participants in hostilities or members of their families; b) employees of enterprises (institutions), civil defense forces participating in the

implementation of relevant state measures in the areas of hostilities directly (as well as their family members); c) natural persons who live or lived on the territory of settlements where hostilities are or were taking place and have been forced to leave their place of residence in connection with hostilities.

The option, that is the right but not obligation, concerning entering in the State register of volunteers, as a precondition for individual income tax incentive, became an important legislative novelty. Indeed, the huge problem was that, during the most awful initial period of Russian military invasion in February – March 2022, a number of Ukrainian volunteer's de-facto received cash on their banking (cards) accounts and goods from natural and legal persons to support the Armed Forces of Ukraine, territorial defense units, internal refugees without paying individual income tax to the state budget and confirming charitable expenses documentary.

De jure it means that the volunteers have been violating the provisions of the Tax Code of Ukraine (Tax Code of Ukraine No. 2755-VI, 2010), consequently they can be held liable and pay fines, which should be recognized as legal, but not fully legitimate. It is the reason for supporting the supplements of the Tax Code of Ukraine by the Parliament of Ukraine with a special rule in November 2022, which has retroactive effect.

That rule stipulates that charitable giving shall not be included in the personal income tax, if it was received during the period from February 24, 2022 to the date of inclusion of the individual in the Register of volunteers. Simultaneously, a sufficient time was given to complete the formal and legal procedure for inclusion in the mentioned Register, since the deadline expired just on January 1, 2023.

A little earlier, in September 2022, a reasonable valid alteration was adapted to the Tax Code of Ukraine, which also had a retroactive effect stipulating that the requirement for mandatory documentary confirmation of the expenses by individuals-volunteers was not applied to expenses in the period from February 24, 2022 to May 1, 2022.

An important positive temporal aspect for volunteers is that "Tax incentive period is stipulated till December 31, 2023 after of completing the measures of national defense and security implementation" (Karpenko, 2022).

3.2. Legislative restrictions of charity activity and incentives towards individuals-entrepreneurs

There are a lot of individuals in Ukraine acting as entrepreneurs providing profit-oriented activities of the certain types to be fixed under official registration procedure. They have the right to choose either general

system of taxation or simplified one within 1-3 groups applying different reduced tax rates.

The vast majority of individuals-entrepreneurs represent the 3d group within the simplified system of taxation, having the option to apply either 3% tax rate under condition of indirect value added tax payment or 5 % without VAT. One of the main legislative problems related to such kind of individuals-entrepreneurs included the barrier to transfer cash to either charitable organizations or directly to beneficiaries as charitable giving.

Individuals-entrepreneurs from the general point of view are permitted to receive cash free of charge within their commercial activity, which is recognized as irrevocable financial aid. Such a transaction results in including appropriate amount in the entrepreneurs' taxable income. Alongside with that, the amount of irrevocable financial aid received as charitable giving is not considered to be the income of an individual-entrepreneur paying a single tax by providing commercial activity (B24 – Information Business Portal, 2019). In accordance with the Art. 177.6 of the Tax Code of Ukraine in case if an individual-entrepreneur receives income other than the conduction of entrepreneurial activity, such income shall be taxed under the much higher personal income tax rate of 18% and, additionally, military collection of 1,5 %.

Concerning the restriction to be a cash donor, representatives of the State Tax Service of Ukraine emphasized that the provision of financial aid, moreover, both revocable and irrevocable, by individuals – entrepreneurs of 1-3 groups applying the simplified system of taxation belonged to the sphere of financial services, namely, intermediation which has been expressly prohibited for such payers at the legislative level for a long period (The Main Administration of The State Tax Service in The Ternopil Region, 2021).

We can agree with the experts' position that, actually, such approach meant a taboo on the implementation of charity and donations by an individual-entrepreneur on the simplified system of taxation because such payments, according to the terminology of the Tax Code of Ukraine, fully fell under the category of irrevocable financial aid, meanwhile, such prohibition was absolutely illogical (Korol, 2021).

Violating the legislative restriction concerning providing charitable activity led to loosing preferable simplified single tax payer status by individual–entrepreneur with the obligation to switch to a general taxation system with the tax rate 18 %.

In the context of Ukrainian tax legislation modernization, it is important to focus attention on the novelty rule, stipulating that, temporary, namely, from April 1, 2022 till the until the termination or cancellation of martial law treatment, individuals - entrepreneurs of the 3rd group being single tax

payers under the tax rate 2% are permitted to provide both revocable and irrevocable financial aid.

Key problem towards individuals-entrepreneurs who are income tax payers under the general system lies in the very fact that charitable aid delivered by individuals–entrepreneurs to the beneficiaries were not recognized as expenses resulted in non-reducing their taxable profit under the general rule of Ukrainian tax legislation in the peacetime.

This limiting rule was modified after beginning of the military invasion of Russia. According to the novelty rule - clause 22 of the subsection 1"Peculiarities of personal income tax payment" of the Section XX of the Tax Code of Ukraine, cash transferred to the Armed Forces of Ukraine and other formations in the defense sector voluntarily, as well as expenses in value of property including amount of cash of individuals-entrepreneurs providing commercial activity confirmed documentary can be taken into account as a part of expenses.

Thus, Private entrepreneurs registered under the general tax regime may deduct business expenses and depreciation charges, subject to the rules established by the Tax Code (PwC, 2023).

3.3. Business entities' charitable giving taxation

Under the warfare, business entities can grant charitable giving to the Armed Forces of Ukraine, other public law legal entities in the defense and security sector directly or through private law charitable organizations, which can be established as a charity society, institution or fund, herewith, this list is exhausted.

Indeed, Ukrainian business entities under the general system of taxation are active in providing social entrepreneurship and transferring assets to charitable organizations, which can be registered as non-profit ones. At the same time, they have to comply with the imperative rules stipulating significant limitations in regard to different approaches of financial and tax accounting related to the recognition of charitable giving as expenses.

The amount of the profit of an enterprise taxable is determined on the basis of financial statements prepared in accordance with either National Accounting Standards or International Financial Reporting Standards followed by its readjustment (increase or decrease) for differences in taxes defined in the Tax Code of Ukraine.

Business legal entities may receive both cash including foreign currency from non-residents and goods (services, works) free of charge from other economic entities. Such transactions from private law point of view require the conclusion of a donation contract or similar one. In turn, this transaction from taxation point of view shall be recognized as irrevocable financial aid

(which is non-targeted aid in comparison with charitable giving, which is targeted as a rule) without any tax differences.

Ukraine implemented charitable giving taxation model for business entities stipulating deduction of such giving portion from gross enterprise income generated from the sources both inside and outside with the ceiling expressed in certain per cent. Thus, when providing charity activity in times of peace, business entities had the right to add an amount of cash, as well as value of goods or services transferred free of charge to non-profit organizations to the corporate expenses in an amount not exceedingly just 4 % of the taxable profit of the previous reporting year.

As far as war requires fundamentally new legislative solutions from the public authorities to be adopted to stimulate charity activity, the above-mentioned provision of the Tax Code of Ukraine concerning 4 % ceiling shall not be applied until the termination or abolition of legal regime of the martial law on the territory of Ukraine. In order to take advantage of this tax incentive, i.e. to preserve the amount of financial accounting taxable profit without increasing readjustments for differences in taxes, it is necessary to comply with the mandatory rules related to:

- first, the range of property including an amount of cash or value of personal protection special means (helmets, body Armor, manufactured in accordance with military standards), technical means of observation, medicines, food, items of physical support, as well as other goods, works performed, services provided under the list of the Government of Ukraine;
- secondly, the manner of transferring above mentioned property - exclusively volunteer one, which is fundamentally different from a forced alienation of private property or withdrawal state one from state-owned enterprises;
- thirdly, the list of beneficiaries including, in particular, but not exclusively the Armed Forces of Ukraine, the National Guard of Ukraine, the Security Service of Ukraine, the Foreign Intelligence Service of Ukraine, the State Border Guard Service of Ukraine, the Ministry of Internal Affairs of Ukraine, other institutions or organizations maintained at the expense of the state budget, civil defense forces, as well as health care institutions of state or municipal ownership;
- fourthly, the purposes of charitable giving - the needs of state defense and provision of humanitarian aid in compliance with the requirements of the legislation of Ukraine on humanitarian aid in connection with the military aggression of the Russian Federation against Ukraine.

3.4. Taxation of charitable organizations

In accordance with the general preferential rule of the Tax Code of Ukraine (Art. 197.1.15), provision of charitable aid, in particular, free of charge supply, i.e., supply of goods or services without any monetary, material or other types of compensation, to charitable organizations, as well as provision of such aid by charitable organizations to recipients are tax-exempt transactions.

The main problems of key subjects – charitable organizations in the field of taxation are determined by legislative requirements to act in the compliance with the purposes and directions of the charity activity defined in the founding documents. Despite the fact pointed out by the State Tax Service of Ukraine that this requirement is mandatory (State Tax Service of Ukraine, 2023), it is worth emphasizing that such approach can be considered acceptable in peacetime, but unreasonable barrier during the war.

In the context of the declared state policy regarding the creation of favorable conditions for intensifying charity activity, charitable organizations can implement the option stipulated in the Tax Code of Ukraine. This option provides the acquisition of the legal status of non-profit organizations or institutions entered in the corresponding state Register that are not considered to be profit tax payers.

In accordance with the imperative rule stipulated in the Art. 133.4.2 of the Tax Code of Ukraine, profit (income) of a non-profit organization is permitted to be used for covering expenses for 1) its maintenance and 2) achievement of purposes within the scope of charitable activities directions. In peacetime, violation of the legislative restrictions concerning the targeted use of assets (cash, goods, property rights) by non-profit organizations in part of the compliance with the framework of charitable activities and list of permitted beneficiaries resulted in losing of the non-profit legal status.

Such an approach creating risks for charitable organizations as non-profits is radically modernized, albeit for a certain period of time, namely, for the duration of the martial law regime. The State Tax Service of Ukraine emphasizes that non-profit organizations can provide all kinds of charitable giving to third parties at the expense of their income, even if provision of any of them is not stipulated in their founding documents. Thus, it is not currently considered to be a violation of the tax legislation, consequently, there is no risk of losing their non-profit status (STA, Information letter No. 7/2022).

It is worth adding that the provision of a wider charitable giving unrelated to the purposes and directions of charity activity is not considered to be a violation of the legislation under the compliance with certain

requirement. The quintessence of such a requirement is goods transferring, services providing and works performing on a voluntary basis for certain priority needs, namely, defense and security of the state (in particular, for the Armed Forces of Ukraine, the National Guard Service of Ukraine, the Security Service of Ukraine, the Ministry of Internal Affairs of Ukraine), as well as health care facilities of state or municipal ownership.

Alongside with that, it is worth paying attention to the additional positive legislative novelty that it is not the violation of the tax legislation of Ukraine, if charitable aid is provided to individuals, who are not founders, members of non-profit organizations or related persons and who: a) reside or have previously resided on the territory of a settlement, where hostilities are being conducted or have been conducted, or b) were forced to leave their place of residence in connection with hostilities in such settlements.

3.5. Foreign humanitarian aid taxation and incentives

Non-residents of Ukraine have an opportunity to support Ukrainians by means of providing humanitarian aid to charitable organizations, other legal entities, as well as individuals whereby both across borders and on the territory of foreign countries. Such an aid can be provided from abroad of Ukraine, in particular, in foreign currencies on the banking accounts of charitable organizations without any legislative barriers and additional requirements like obligatory sale of a portion of foreign currency earnings, which was in effect for exporting businesses for a long period before the war.

Rules regarding taxation of succession shall be applied in cross-border free of charge receiving both of cash and goods by an individual resident of Ukraine from a non-resident individual. It means that the amount of cash or value of goods received shall be taxed under the personal income taxation rate of 18% with additional 1,5% of military collection.

According to the novelty rule - clause 27 of the subsection 1 “Peculiarities of paying personal income tax” of the Section XX of the Tax Code of Ukraine, amount of cash or value of goods (services) provided free of charge at the expense of budgetary funds of foreign countries and their state funds to individuals-residents of Ukraine and members of their families of the first degree of kinship shall not be included in the gross individual taxable income.

Indeed, such tax incentive is actual for millions of Ukrainian refugees being on the territory of EU Member States, Canada, USA, other friendly countries as far as it is granted just to persons, who suffered due to armed aggression of the Russian Federation against Ukraine and exercised the right to temporary protection in accordance with the legislation of the foreign state.

Taking into account the importance of such a foreign aid, which is under provisions of public law regulation, the effect of this rule is expanded towards private law relations by both objective and subjective speckle. Thus, individual-resident of Ukraine will not have the obligation to pay individual income tax under certain related conditions, namely: first of all, receiving all forms of provision of the specified aid including its recognition as an additional benefit, secondly, receiving such an aid from foreign companies and organizations carrying out charitable activities in accordance with the legislation of the relevant foreign jurisdiction.

4. Future models of charitable giving taxation under Ukraine's restoration

Considering the temporary nature of the tax incentives disclosed above, the development of appropriate models within the framework of stimulating approaches in the post-war recovery period of Ukraine is relevant. Such future models are likely to be different from previous models in order to provide new balance between public interests of the society and private interests of individuals and legal entities.

Ukrainians and people supporting Ukraine all around the world hope for the end of the awful war during 2023. To eliminate consequences of the uncivilized war at macro level - destroyed thousands of residential buildings, hospitals, schools, damaged transport and energetic infrastructure, the wide range of industries – the country will need partner international assistance of the governments and international organizations by means of implementing a Marshall Plan II-like the Restoration Plan for Ukraine.

At the same time, at micro level, millions of Ukrainians, in particular, participants of hostilities, families of fallen defenders of Ukraine, internally displaced persons, this list is not exhausted, will need social support also after the end of the war. According to the Art. 1 of the Constitution, Ukraine is declared to be, inter alia, social state, but it is obviously that public authorities will not be able to solve all the social issues without charitable activity provided by individuals and legal entities both by residents and non-residents. It requires adaptation of the state tax policy to the scale and conditions of the restoration of Ukraine unknown previously.

Key authors' conceptual approach to future strategy modelling is that tax legislation rules before and during the war can be viewed as having been adopted in fundamentally different polar historical conditions. Consequently, they are unlikely to be appropriate in the new perspective, but complicated context of Ukraine's restoration.

Thus, the strategic task is to offer new models of charitable activity taxation aimed at balancing, on the one hand, the need to increase budget revenues, which implies abolishing so-called war tax incentives to volunteers, charitable organizations and business entities, on the other hand, stimulation of these subjects to provide charitable giving to those who need social support as active as possible.

A very important aspect within conceptual modelling is temporal horizon as it can be considered an axiom that restoration of Ukraine will last much longer than a couple of years. Accordingly, it is worth developing several types of relevant models, in particular, the long-term ones designed for at least 10 years and models to be implemented under certain conditions.

Being one of the key providers of assets transferred to beneficiaries both charitable organizations and directly recipients free of charge, business entities–legal persons and individuals–entrepreneurs under the general system of taxation deserve the implementation of special treatment of profit taxation.

It can be defined as gradual reduction of tax incentives model. Its quintessence is saving the right of deducting 100% of charitable giving during a year after the martial law cancelling in Ukraine. Starting from the second year, the allowed deductible portion is 90% of charitable giving. In line with this logic, deduction for the 3d year will reach 80% portion of giving and so on gradually during next seven years. Thus, for the 11th year, public authority will have a possibility to stipulate the optimal level of a portion giving deductions allowed between 4% in a peacetime and 100% during the warfare.

Given the importance of volunteers in the field of charitable activities, it is worth preserving personal income tax incentive for them, where charitable giving is fully deductible for at least 10-years transitional period after the end of the war.

Offered approach can be extended to individuals – final recipients in need of charitable giving or humanitarian aid. It means that such recipients will not include all forms of giving to the gross individual taxable income. Herewith, it is said about the giving received from both residents and non-residents including foreign companies and organizations carrying out charitable activities in accordance with the legislation of the relevant foreign jurisdiction.

Considering the role of charity organizations as key subjects in the field of charitable activity, it is worthwhile saving them the wider space for manoeuvre to act out of limits of special legal personality. Thus, the provision of charitable activity unspecified in their founding documents, as well as granting charitable giving to the wider range of individuals, in particular, who were forced to leave their place of residence due to hostilities

should not lead to the loss of the status of charitable organizations as non-profit during at least 7-10 years after the end of the war.

Conclusions

Taxation policy of Ukraine related to charitable giving in the whole and volunteer and humanitarian aid in particular is significantly modernized to respond the challenges of unprovoked war in the center of the European continent, which is unprecedented after World War II.

It creates favorable conditions to fully implement moral, humanistic values by benefactors (philanthropists) - residents and non-residents – individuals and legal entities along with key subjects in this field, namely, Ukrainian and foreign charity organizations towards beneficiaries, who are in great need of support and assistance. The range of such beneficiaries includes, in particular, wounded defenders of Ukraine, families of fallen soldiers and officers, people who survived the occupation and left their homes because of hostilities, Ukrainian refugees on the territories of a number of foreign countries, primarily, women and children.

Ukrainian legislation liberalization in the field of direct taxation concerns the key nationwide taxes, namely, enterprise's assessable profit and personal income tax, when carrying out transactions of transferring cash, supply goods, providing services, performing works voluntarily and free of charge in favor of the Armed Forces of Ukraine, territorial defense units, the National Guard of Ukraine, the Security Service of Ukraine, the State Border Service of Ukraine, the Ministry of Internal Affairs of Ukraine and other institutions in the fields of defense, security, medicine, social protection, etc.

Looking forward to the end of the war in 2023 and developing the future post-war models of charitable giving taxation, it is suggested that the best legislative rules and practices that were introduced after the annexation of Crimea in 2014, improved and expanded by the Ukrainian Parliament after the large-scale invasion starting on February 24, 2022 should be preserved. Alongside with some constants, it's worthwhile implementing variable part of tax models stipulating decreasing tax incentives gradually granted at least for 10 years of transitional period of Ukraine's restoration.

The restoration of Ukraine will certainly happen and it'll be successful with the support of people of good will and kind hearts, foreign countries like Ukraine's partners from all over the civilized world.

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Modalities of protection of the rights of individuals according to the administrative-procedural order and in legal-administrative procedures

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Abstract

The object of the research was to consider the methods of protection of people's rights according to the administrative-procedural order and also in administrative judicial proceedings. A number of normative legal acts regulating the use of tools for the protection of subjective public rights were considered. Attention has been drawn to the following methods of protection of people's rights, according to the administrative-procedural order and in administrative judicial proceedings: administrative procedure; administrative mediation; administrative appeal; subjecting guilty public administration officials to special disciplinary liability; compensation for damage caused by unlawful actions (inaction) of public administration entities; means of self-defense and legal means of protest. The methodological basis of the research was 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 in the scientific literature it is very often the case that protection methods are not used, but tools, means and forms. The authors also examine the methods of protection of rights, freedoms and interests of individuals in the sphere of public administration.

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Modalidades de protección de los derechos de las personas según el ordenamiento administrativo-procesal y en los procedimientos jurídico-administrativos

Resumen

El objeto de la investigación fue considerar los métodos de protección de los derechos de las personas según el orden administrativo-procesal y también en los procesos judiciales administrativos. Se consideraron una serie de actos jurídicos normativos que regulan el uso de herramientas para la protección de los derechos públicos subjetivos. Se ha llamado la atención sobre los siguientes métodos de protección de los derechos de las personas, según el orden administrativo-procesal y en los procedimientos judiciales administrativos: procedimiento administrativo; mediación administrativa; apelación administrativa; someter a responsabilidad disciplinaria especial a los funcionarios de la administración pública culpables; indemnización por daños causados por actuaciones ilícitas (inacción) de las entidades de la administración pública; medios de legítima defensa y medios legales de protesta. La base metodológica de la investigación se presentó 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 en la literatura científica es muy frecuente que no se utilicen métodos de protección, sino herramientas, medios y formas. Los autores también examinan los métodos de protección de los derechos, libertades e intereses de las personas en el ámbito de la administración pública.

Palabras clave: procedimiento judicial administrativo; modalidades de tutela; modelo de procedimiento administrativo; derechos subjetivos; ordenamiento administrativo-procesal.

Introduction

It is impossible to imagine the present-day world without human rights, which are the basis of the legal order and must definitely be protected by the state. That is why, in the conditions of present-day reformation state-

building and law-making processes in Ukraine, one of the priority tasks consists in ensuring unimpaired functioning of legal mechanisms needed to be applied by subjects of authority for protection of rights and freedoms of citizens in the sphere of public-legal relations against violations performed by power entities. This is an important guarantee for implementing the constitutional principle of state bodies' responsibility for their activities to individual citizens.

The legal basis for protection of rights and freedoms is based on provisions of Article 3 of the Constitution of Ukraine. According to the mentioned article a person, his/her life and health, honor and dignity, inviolability and security are recognized as the highest social value in Ukraine, and affirmation and insurance of human rights is the main duty of the state.

Also, Article 40 of the Constitution of Ukraine defines the right of a person and a citizen to direct individual or collective written appeals or to personally address state authorities, local self-government bodies and officials of such bodies, who are obliged to consider the appeal and give a reasoned answer within the time limit established by the law. In addition to that, in accordance with Part 2 of Article 55 of the Constitution of Ukraine, everyone shall be guaranteed protection of his/her rights, freedoms and interests against violations and illegal encroachments by any means not prohibited by law. (Law of Ukraine, 1996).

First of all, it is necessary to pay attention to the fact that the right to protection guaranteed by Article 55 of the Constitution of Ukraine is possible only in the event of its violation, therefore justification of the violation is a logical requirement during protection of such a right. Violation must also be real, relate to an individually expressed right of a person, that is, it must be specified in the laws of Ukraine.

Instead, protection of a violated right must be effective. Thus, in its decisions the European Court of Human Rights has repeatedly emphasized the need for effective protection of applicants' rights. For example, in paragraph 75 of the decision dated 05 April, 2005 in the case "Afanasiev v. Ukraine" (application No. 38722/02), the European Court of Human Rights notes that the remedy required by the mentioned article must be "effective" both by law and in practice, in particular in the sense that its use should not be complicated by actions or oversight of the authorities of the relevant state (decision of the European Court Of Human Rights, 2005).

A similar idea is enshrined in the Convention on Human Rights and Fundamental Freedoms. Article 13 of the Convention entitled "The right to an effective remedy" declares that everyone whose rights and freedoms recognized in this Convention have been violated shall have the right to an effective remedy before a national body, even if such a violation was

committed by persons, who exercised their official powers (European convention on human rights, 2013). We would like to add that in its decision No. 3-рп/2003 dated 30 January, 2003 the Constitutional Court of Ukraine stated that justice in its essence is recognized as such only on the condition that it meets the requirements of fairness and ensures effective restoration of rights (par. 10 p. 9) (Law of Ukraine, 2003).

In addition, in its decision dated 09 July , 2002 No. 15-рп/2002 in the case of pre-trial settlement of disputes the Constitutional Court of Ukraine noted that every person should have the right to freely choose a means of protection of rights and freedoms not prohibited by law, including judicial protection; the possibility for subjects of legal relations to use pre-trial settlement of disputes can be an additional means of legal protection provided by the state to the participants of certain legal relations, which does not contradict the principle of justice to be administered exclusively by the court; choosing a certain means of legal protection, including pre-trial dispute settlement, is a right and not an obligation of a person who uses it voluntarily, taking into account his/her own interests.

Based on the need to increase the level of legal protection, the state can stimulate the resolution of legal disputes within the framework of pre-trial procedures, but their use is a right and not an obligation of a person who needs such protection; establishment by law or by contract of pre-trial settlement of disputes at the will of subjects of legal relations is not a limitation of the jurisdiction of courts and the right to judicial protection (Law of Ukraine, 2003).

Taking into account the above, it can be stated that responsibility for illegal behavior in a legal state should be borne equally by natural and legal persons, as well as by the state, its bodies, local self-government bodies and their officials and in the manner prescribed by the law. In cases of illegal decisions taken, illegal actions or inaction of state authorities, local self-government bodies and their officials, every person shall be granted the right to protection.

1. Literature review

It should be noted that scientific doctrine often uses not “tools” of protection, but “methods”, “means”, “forms”, etc. Thus, as noted by O.V. Konstantyi, the judicial procedural form of protection of rights and freedoms takes precedence and exclusivity over administrative appeals against decisions, actions, inaction of power authorities (Konstantyi, 2012). In this example, the scientist uses the term “form”. Y.V. Lazur also analyzes forms of protection. In particular, the author notes that judicial control, supervision and the right of citizens to appeal are the most effective forms of

administrative and legal protection (Lazur, 2010). In other cases, it is about methods or means of protection. Thus, application of a specific method for protection of a violated or denied right is the result of activity concerning rights protection.

Administrative and legal regulation of protecting rights and freedoms of humans and citizens is a system of administrative and legal means (elements), a set of ways and methods of legal influence on social relations, which are used to determine a complex of organizational and special measures aimed at protecting and guaranteeing their rights and freedoms, as well as at prevention of offenses in the analyzed sphere (Kostiushko, 2017). The explanatory dictionary defines the concept of "tools" as a means, a way to achieve something.

We support the position determined by the scholars in the administrative law textbook; they analyze precisely tools for protecting rights, freedoms and interests of individuals in the sphere of public administration and provide the following definition of them: these are administrative (quasi-judicial) means of legal protection of individuals in administrative-legal relations with subjects of public administration through an appeal to the appropriate competent extrajudicial arbitrator regarding illegality of decisions, actions or inaction of public administration subjects.

In addition, certain issues regarding methods to protect subjective public rights of participants in administrative relations and regarding correlation of these rights have been studied by present-day Ukrainian researchers including Halaburda Nadiia, Leheza Yevhen, Chalavan Viktor, Yefimov Volodymyr, Yefimova Inna (Halaburda *et al.*, 2021). These works constitute a scientific basis for further research of the specified instruments and actually initiate a scientific discussion regarding prospects for their legislative improvement.

2. Materials and methods

The study is based on the works of foreign and Ukrainian researchers regarding methodological approaches to understanding methods to protect the subjective public rights of participants in administrative relations and correlation of these rights, etc.

With the help of the epistemological method, methods of protecting subjective public rights of the participants in administrative relations and correlation of these rights, etc., were clarified. Thanks to the logical-semantic method, the conceptual apparatus was deepened, methods of protecting subjective public rights of participants in administrative relations and correlation of these rights, etc., were determined. Thanks to the existing

methods of law, we managed to analyze methods of protecting subjective public rights of participants in administrative relations and correlation of these rights, etc.

3. Results and discussion

Thus, when participants of administrative relations implement their rights, public legal disputes may arise between a subject of power, on the one hand, and a citizen, on the other hand. Instruments for protection of the subjective public rights of participants in administrative relations during resolution of a public-law dispute include the following:

1. administrative mediation;
2. administrative appeal;
3. bringing guilty public administration officials to special disciplinary responsibility;
4. compensation for damage caused by illegal actions (inaction) of public administration entities;

means of self-defense - legal means of protest (Matviichuk *et al*., 2022).

The listed protection tools make it possible to quickly restore violated rights of participants in administrative relations, to bring to justice public administration officials who are guilty of their violation. Common features for all types of right protection are as follows: firstly, they have a common goal - to restore the violated right and thereby prevent such offenses in the future; secondly, they are carried out in an extrajudicial (administrative) way (Villasmil Espinoza *et al*., 2022).

Separately, it is necessary to single out another tool for protection of subjective public rights of participants in administrative relations - this tool is judicial control (Nalyvaiko *et al*., 2018).

Despite the common features, the mentioned protection tools have a number of differences, because they are endowed with different legal nature.

Thus, administrative mediation is an institution of legal reconciliation; administrative appeal is a type of administrative proceeding based on complaints, statements and proposals of individuals; bringing guilty public administration officials to special disciplinary responsibility characterizes the institution of legal responsibility; legal means of protest realize the right of citizens to self-defense (for example, the freedom of meetings guaranteed by the Constitution of Ukraine (Article 39) (meetings, rallies, picketing, etc.) (Leheza *et al*., 2022).

Administrative-legal protection includes coercive measures provided by law which are applied by executive authorities and which are a measure for carrying out restoration (recognition) of violated rights of subjects, intellectual property rights, as well as for exerting property influence on violators (Tylchyk *et al.*, 2022).

Kobrusieva considers administrative-legal protection as a set of legal means applied in the administrative procedure and aimed at implementation of appropriate procedural actions by authorized bodies (officials), as well as by individuals and citizens aimed at stopping illegal encroachment on rights, freedoms and interests of citizens as well as at elimination of any obstacles during their implementation, at recognition or confirmation, renewal and enforcement of rights, unfulfilled or improperly fulfilled duties with prosecution of the guilty person (Kobrusieva *et al.*, 2021).

There is no consensus on the interpretation and application of the term "administrative and legal protection" in the domestic legislation. It is often that this concept is identified and compared with "preservation". The latter is a broader concept and represents a set of measures aimed at ensuring the normal realization of rights, as well as at protecting rights in the event of their violation or challenge through specific means of state influence, which exist mainly in legal form and can be manifested either through establishment of legal norms, or through their primarily positive application. The concepts of "preservation" and "protection" are related as a whole and a part.

Referring to the dictionary of the Russian language Borysenko also notes that these concepts coincide in many cases, but also, he draws attention to the grounds for distinguishing them: "protection" is related to activities carried out in case of violation of subjective rights (for example, judicial protection). It provides for measures to restore a violated right (for example, cancellation or suspension of illegal actions and the like). The concept of "preservation" presupposes activities that ensure normal realization of subjective rights, and the primary importance belongs to prevention of possible violations (precautionary measures) (Borysenko *et al.*, 2022).

Zhukova also contrasts these concepts, choosing the moment of violation of rights as the criterion for their separation. Thus, according to the scientist, preservation measures are in place before violation of rights, and protection measures are in place after violation (Zhukova *et al.*, 2023). At the same time, he understands "preservation" a set of various interrelated measures, which are carried out by both the state and public organizations and are aimed at preventing violations, eliminating the reasons that prompt them, and thus contribute to the normal process of citizens' realization of their rights and freedoms.

In turn, protection is understood as a coercive (relative to the obliged person) method of exercising a subjective right, which is applied in accordance with the law-established procedure by the competent authorities or an authorized person himself in order to restore the violated right (Nalyvaiko *et al*., 2022).

Conclusions

Therefore, the performed analysis provides grounds for the conclusion that the concepts of "preservation" and "protection" are on the same plane and have a single measurement criterion - rights and freedoms of individuals and citizens. However, there is no need to equate them. The concept of "protection" is directly related to a specific offense. But measures of protection are also applied in the event of contestation of rights.

In addition, the purpose of applying measures of protection consists not only in renewal of rights, but also in recognition of rights, as well as in termination of the offense. Thus, protection is a set of measures aimed at restoring, recognizing rights and terminating violations of rights, including measures applied by a competent authority independently or at the request of an authorized person.

In turn, the concept of "preservation" does not cease to be effective at the moment of violation of rights, but continues to operate at all stages of realization of rights, including the stage of their protection.

Therefore, administrative and legal protection is a set of measures aimed at ensuring and protecting rights, which are applied by competent bodies of public administration upon the application or complaint of a person whose rights are violated or denied, or on their own initiative. It is a reliable guarantee of quick, effective and objective transformation of the general concept of "protection of human rights" from rhetorical one to real one.

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Legal dimensions of innovative development management functions

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Abstract

Using dialectical, systemic, logical and historical methods of scientific knowledge, the main purpose of the article was to study the features of the state legal regulation of the innovation development management system. The subject of the research is the system of innovative development. The sphere of innovation at the present stage acts as a highly organized type of activity that requires the reciprocal influence of the state. The experience of developed countries shows that the existence of a market economy is not a sufficient condition for technological growth. It is concluded that consistent state regulatory measures are needed to create a favorable innovation climate to help develop the country's scientific and technical potential. As a result of the study, a number of key aspects of state legal regulation of the innovation development management system were identified.

Keywords: legal dimensions of development; legal aspects; innovative development; state regulation; public policies for development management.

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Dimensiones jurídicas de las funciones innovadoras de gestión del desarrollo

Resumen

Mediante el uso de métodos dialécticos, sistémicos, lógicos e históricos del conocimiento científico, el objetivo principal del artículo fue estudiar las características de la regulación legal estatal del sistema de gestión del desarrollo de la innovación. El tema de la investigación es el sistema de desarrollo innovador. La esfera de la innovación en la etapa actual actúa como un tipo de actividad altamente organizada que requiere la influencia recíproca del Estado. La experiencia de los países desarrollados muestra que la existencia de una economía de mercado no es condición suficiente para el crecimiento tecnológico. Se concluye que se necesitan medidas regulatorias estatales consistentes para crear un clima de innovación favorable que ayude a desarrollar el potencial científico y técnico del país. Como resultado del estudio, se identificaron una serie de aspectos clave de la regulación legal estatal del sistema de gestión del desarrollo de la innovación.

Palabras clave: dimensiones jurídicas del desarrollo; aspectos legales; desarrollo innovador; regulación estatal; políticas públicas para la gestión del desarrollo.

Introduction

Innovative business is one of the most important factors supporting the economy, a key driver of economic growth in many countries. Even crisis conditions are not able to change the priorities of innovative development in the context of globalization. The use of knowledge and innovation as the main sources of economic resources makes it possible to raise the economy to a new level that meets modern civilizational requirements. There is an urgent need for changes in the national innovation system, the implementation of which requires the creation of special support mechanisms by the state.

Increasing the efficiency of material production and the competitiveness of products is based on the use of new high-performance equipment and progressive technology, the use of modern organizational forms and economic methods of management.

Innovative activity is an activity carried out at one's own risk, aimed at making a profit from the implementation of innovations (including the commercialization of scientific or scientific and technical results). Modernization should differ from innovative activity, the fundamental difference of which from innovative activity lies in the local nature of novelty

due to the absence of a sign of high risk (the concept of modernization corresponds to a broader understanding of innovation in the modern sense and requires a different, more limited system of state support measures).

Modernization activity, with a certain similarity to innovation, differs from the latter in signs of novelty from the global level to the local one. As part of the modernization, methods are being introduced that have been previously tested by other participants and have proven their effectiveness in the same field of activity. Innovations are associated with the development of fundamentally new approaches.

The law of innovation activity can be considered at present as an intersectoral complex institution of national law, which includes the norms of administrative, financial, civil, business and other branches of law. In the structure of this complex intersectoral institution, it is possible to single out relations that are predominantly private and predominantly public legal in nature.

In innovative legal relations, the state can act in a special status (management of innovative activities, support of innovative activities) and in the status of a direct participant in innovative activities - an innovator. Regardless of the role played by the state, its participation in innovation is due to a special interest.

If a business, investing in new technologies, promoting new products on the market, is ultimately interested in making a profit, and the amount of this profit serves as a criterion for the effectiveness of innovations, the interest of the state lies in the development of the economy through innovation. By stimulating innovative activity, the state is interested in increasing the competitiveness of enterprises (not in a particular, but in the whole industry, region, country), which leads to an increase in the profits of these enterprises, respectively, there is an increase in the tax base, and ultimately, an increase in the social obligations of the state.

Public administration is carried out by using certain administrative-legal forms and methods. An analysis of the scientific literature makes it possible to single out two administrative and legal forms of state participation in innovation activity: direct and indirect.

Management of innovation activity is an indirect form of state participation in innovation activity. Management in the classical sense includes the stages of planning, accounting, analysis, control and regulation. In the state management of innovation activity, these stages are represented by the definition of state policy (including budgetary) in the field of innovation activity - planning, implementation of state statistics - accounting, rule-making in the field of innovation activity - regulation, state control in the field of innovation activity.

The main purpose of the article is to study the features of the state-legal regulation of the innovation development management system.

1. Materials and methods

The methodological basis of the article is the fundamental provisions of economic science, the theory of innovative development, scientific works of scientists on the problems of legal regulation of innovation. To solve the tasks set, dialectical, systemic, logical and historical methods of scientific knowledge are used, which ensure the conceptual unity of the work. The following methods were used in the research process: structural-logical, scientific abstraction, analysis and synthesis, modeling and abstract method for drawing conclusions. The information base of the study consists of legal documents and publications.

2. Literature review

Innovation is defined as the end result of the implementation of new ideas and knowledge in the national economic system, due to the availability of sufficient funding, in the form of new products, technologies, organizational and managerial decisions, which ultimately provide a qualitative increase in the initial cost, leading to the economic growth of the national economy, increasing competitiveness in the long run (Atusiak and King, 2020).

Among the general methods of management in innovation activity, the method of stimulation stands out, which is closely related to the method of persuasion, but has significant differences. The very stimulation is the main method of state management of innovation. In the system of private methods, the program-target method, the method of state support, and the state order are distinguished (Dligach, 2022).

In recent years, the program-target method has been used predominantly in the state management of innovation activities. The specificity of this method involves focusing on the sectoral approach, which consists in identifying priority areas for innovation in order to further provide state support measures in these areas.

Some scientists note that the state order is not only a form of direct participation of the state in innovation as an investor and intellectual owner, but also a form of state support for innovation. The advantages of the state order as a form of implementation of innovative activities by the state include its simplicity - no additional mechanisms or special subjects of law are required. In addition, the close connection between the state order mechanism and targeted programs is a sign of the systemic integration of this form with the state management of innovation activities.

At the same time, the state order, with its insufficiently universal and not always objective procedures for evaluating and selecting applications, cannot effectively stimulate the private sector to implement truly large innovative projects. This requires specially created by the state special participants in the innovation process - state-owned companies and corporations (Fadeev, 2012; Gontareva, 2018; Hrebennyk, 2021).

As most scientists note, in the conditions of the post-industrial stage of development, the efficiency of functioning and the ability to develop any economic system (organization, region, state) is determined by susceptibility to innovation, that is, the ability to provide conditions for the continuous renewal of various forms of activity in accordance with changes in the external and internal environment. In the modern world, economic growth is, on the one hand, the main factor in the development of countries, on the other hand, it is the result of scientific and technological progress, the introduction of innovations in various fields of activity.

The innovative economy, based on innovation activity, is a special type of economy that ensures the development of the economic system through the renewal of knowledge, innovative factors and post-industrial technologies (Kalashnyk, 2020; Krylova, 2020; Kryshtanovych *et al.*, 2022).

Despite the active scientific and practical attention to the issues we have chosen, today some aspects of the state-legal regulation of its innovative development still remain undisclosed.

3. Research Results and Discussions

The complex and systemic nature of innovation activities has a direct impact on the composition of its subjects, which is characterized by breadth and heterogeneity. Two groups of subjects take part in innovation activities: entities that directly carry out innovative activities and ensure its implementation.

The state investment policy should be aimed not only at the entities that are the owners of the invested funds and at the entities that provide financing for the implementation of investment projects, but also at the entities that act as professional intermediaries in the investment services market. Such financial intermediaries are called institutional investors, and their activity, being permanent and professional, is to mobilize temporarily free capital from various sources with subsequent investment in the economy through collective investment schemes.

Institutional investors act as a special instrument of state regulation of the economy, allowing them to accumulate significant capital and concentrate it under the control of a single entity, which leads to an increased

state interest in regulating activities as part of the implementation of state investment policy.

Particular attention on the part of the state to the activities of institutional investors is due to the fact that they invest the money savings of the population, but are not automatically included in the system of compulsory insurance of the risk of losing invested funds, which leads to the need to protect non-professional investors from such a risk (Margaryan, 2021; Kryshtanovych *et al.*, 2021; Mastrobuoni, 2020).

Priority areas in the infrastructure provision of state support for the innovation activity of technoparks should be: the formation of basic centers for innovation activity (innovation platforms); ensuring prompt and verifiable information exchange between innovative structures (based on the principles of relevance and complexity); integration of available resources (human, financial, material and others) for the purposes of maximum targeted use; search for new ways and opportunities for state support of innovation activity with justification of the expected payback.

The system of infrastructural provision of state support for innovative development is based on the principles of target and organizational certainty, the creation of a single information space (based on the resources of the digital economy), focusing on the specific features of the socio-economic development of regions.

A tripartite model for determining the key factors of innovative development, presented in Fig.1.

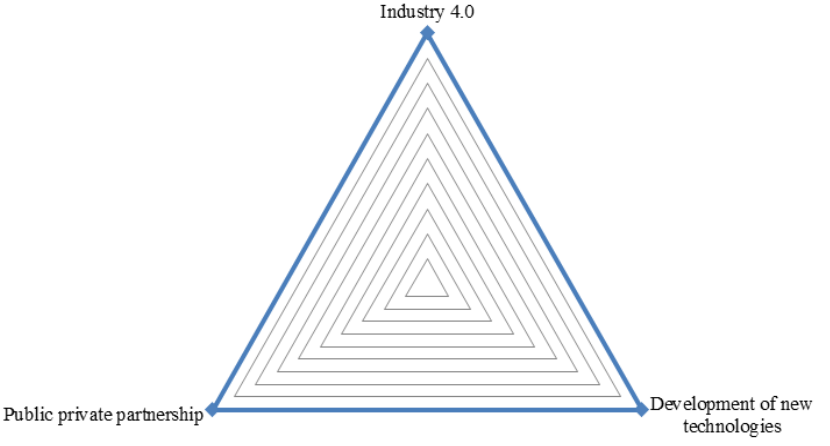

Figure 1. A tripartite model for determining the key factors of innovative development. Formed by authors.

At present, there is an obvious need to combine the efforts of the state and business to satisfy the public interest in strengthening national security, accelerating the socio-economic development of the state, improving the quality of life of society as a whole and of each citizen individually. Public-private partnership mechanisms are recommended as ways to solve various kinds of public and state problems in strategic planning documents of a territorial and sectoral nature, and individual laws. Various legal forms of public-private partnership are being actively implemented in the EU countries.

Public-private partnership can be carried out in various legal forms, in particular, in the form of concession agreements, production sharing agreements, a special investment contract; agreements on conducting activities in special economic zones, lease agreements with investment terms, trust management and other contractual structures using special legal regimes - territories with special regimes for doing business, mechanisms for the development of territories provided for by urban planning legislation, project financing.

Despite the readiness of the legislator to introduce public-private partnerships everywhere in the implementation of state investment policy, in practical terms, the implementation of such projects raises a number of problems: the lack of fixing some legal forms of public-private partnerships in the legislation, for example, the model of the operator agreement, institutional form, life cycle contract.

Innovative development requires the necessary investment, while the promotion of investment activity should be considered in the context of the general innovative vector of the strategic development of the state. In the modern world, it has been unconditionally proven that investments in the development and development of innovations are the most profitable.

They guarantee a high return, laying a reliable foundation for maintaining the scientific and technical potential at the required level, thereby ensuring the country's competitiveness in world development. However, innovation activity is the object, the regulation of which only with the help of market mechanisms is not enough. They cannot ensure the emergence of long-term initiatives for accelerated technical development in the absence of stable, scientifically reasoned, and effective government regulation mechanisms that help attract investment in the scientific and technical sphere (Sylkin, 2021; Zakharchenko, 2020; Zarichna, 2018).

The state innovation and investment policy is the activity of the state aimed at creating favorable regulatory and economic conditions for investment and investment in innovation, stimulating the process of creating investment conditions for innovative development, as well as forming a market for innovation and investment.

A four-sided model of the main threats to the regulation of innovative development, presented in Fig.2.

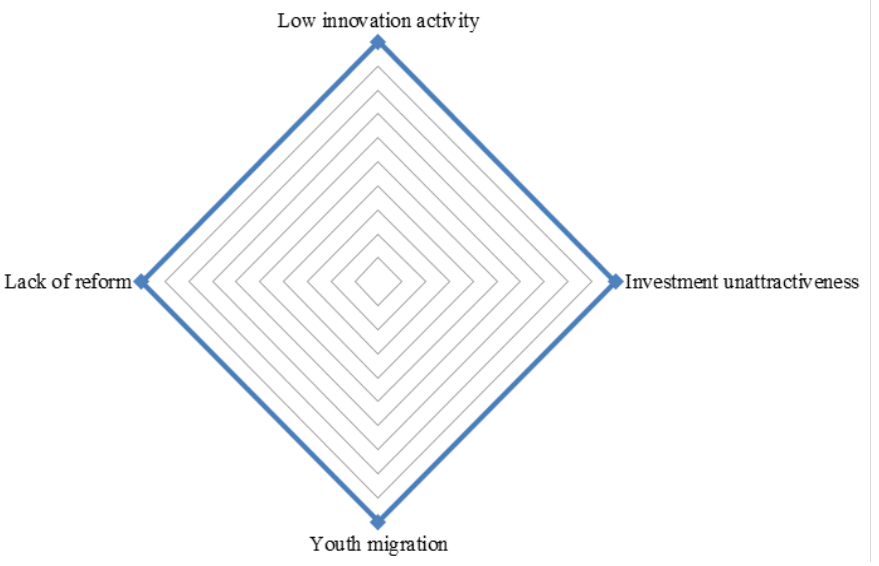

Figure 2. A four-sided model of the main threats to the regulation of innovative development. Formed by authors.

Within the framework of the general legal policy, the main directions of innovation policy are formed to stimulate, develop and effectively use the innovation potential, forms of state support for the subjects of innovation activity are established. The basic vector of development in this area should be aimed at creating the regime of the greatest assistance to the subjects of innovative activity, regardless of organizational and legal forms and forms of ownership.

The state and individual specialized bodies, scientific and educational institutions, representatives of large, medium and small businesses, citizens whose creative work creates intellectual property are involved in innovative activities, ideas for effective application are being developed.

The state as a subject of innovation activity is represented by a number of state structures and systems of public authorities that develop and implement the main directions of state legal policy in the innovation sphere. The state as a subject of innovation acts as a legislator, as a system of management, supervision and control in the field of innovation, and as a system of specialized bodies.

Representatives of innovative business are legal entities and individuals-entrepreneurs who directly carry out innovative activities or invest in them. Specialized subjects of innovative activity are created, as a rule, within the framework of an individual project in connection with the implementation of a special project or type of activity. The status of subjects in the field of innovation is different and depends on organizational and legal forms.

In the scientific literature, the following organizational and legal forms of subjects of innovative activity have been identified: state corporations, as a subject endowed with the powers of management bodies, on the one hand, are an economic entity, on the other; investment funds (for example, state, non-state and international investment funds for the support of scientific and scientific and technical activities); innovation centers; Techno parks and other forms of state support for innovation.

The participants of the innovation process can be: associations and clubs; technological platforms formed in the most promising areas of innovative development - aviation and space technologies, nuclear and radiation technologies, and others; innovative territorial clusters; development institutions; private industrial parks, youth entrepreneurship and others. The state should support subjects in the innovation sphere.

This can be carried out according to long-term target programs for the development of innovation activity, departmental target programs for the development of innovation activity, lists of measures aimed at the development of innovation activity. State support to the subjects of innovation activity should be provided in priority areas of innovation activity in the following areas: agro-industrial complex; electric power industry; informatics and telecommunications; mechanical engineering; construction and housing and communal services; chemical industry; healthcare; transport complex.

Conclusions

Summing up, it should be noted that innovations today are the most effective means of technological development of enterprises, ensuring strong market positions based on significant competitive advantages, which makes it possible to get out of the state of economic depression. Innovative development is a determining factor in the efficiency of an enterprise, based on the introduction and implementation of innovations that improve its activities, ensure the strengthening of its market position and create favorable conditions for its development.

In a general definition, innovation is an innovation in the field of engineering, technology, labor organization or management, based on

the use of scientific achievements and best practices. Innovation is the end result of innovative activity - that is, activities associated with the transformation of scientific research and development, other scientific and technological achievements into a new or improved product introduced to the market, into a new or improved technological process used in practice or a new approach to social services.

Modern studies show the existence of a close dependence of the international competitiveness of the national economy on the level of innovation activity in the country. The higher the level of innovative activity, the greater the competitiveness of the country in the world market.

Countries with a more developed innovation infrastructure and a high level of innovation activity form a leading cluster in the global economy, occupy more competitive positions in the system of the international division of labor, which ensures an additional inflow of foreign capital in the form of direct investment in the economies of these countries. Effective borrowing of innovative technologies allows for a relatively short period of time to ensure a significant increase in the competitiveness of the national economy in the world economy, which is confirmed by the experience of countries called "Asian tigers".

Innovation clusters play a significant role in increasing the level of competitiveness of the national economy due to the high concentration of innovative companies that are intensively involved in the development, commercialization and diffusion of innovations. Large-scale financing of innovations allows for active implementation in economic practice, which leads to a new quality of economic growth of national economies, the basis of which is innovative development. This should be the focus of further research.

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Structure of legal consciousness in the system of human rights: civilizing and psychological aspect of the development of the society

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Abstract

The main objective of the article was to analyze the structural parts of legal consciousness in the human rights system: with special emphasis on the civilizing and psychological aspect of societal development. In this context, the subject under discussion is legal consciousness as a phenomenon and concept in the human rights system. Based on the results of the study it was determined that legal consciousness is a set of legal ideas, feelings, beliefs and assessments that express the attitude of individuals, social groups and society as a whole to the law and, to the behavior of people in the field of law. It is concluded that the experience of legal consciousness, has a complex internal structure and a sensationalist character, therefore, allows to know and understand more fully and objectively the legal reality of the structural elements of consciousness in the system of human rights, revealing its civilizational and psychological aspect in the development of society. Thanks to the modern method of modeling, a model for the study of the development of legal consciousness in the human rights system has been formed. This made it possible to achieve the stated object.

Keywords: representations of law; legal subjectivities; society and legal consciousness; human rights; civilizing aspect.

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Estructura de la conciencia jurídica en el sistema de Derechos Humanos: Aspecto civilizador y psicológico del desarrollo de la sociedad

Resumen

El objetivo principal del artículo fue analizar las partes estructurales de la conciencia jurídica en el sistema de derechos humanos: con especial énfasis en el aspecto civilizador y psicológico del desarrollo de la sociedad. En este contexto, el tema a debate es la conciencia jurídica como fenómeno y concepto en el sistema de derechos humanos. Con base en los resultados del estudio se determinó que la conciencia jurídica es un conjunto de ideas jurídicas, sentimientos, creencias y valoraciones que expresan la actitud de los individuos, grupos sociales y la sociedad en su conjunto ante el derecho y, ante el comportamiento de las personas en el campo del derecho. Se concluye que la experiencia de la conciencia jurídica, tiene una estructura interna compleja y un carácter sensacionalista, por lo tanto, permite conocer y comprender de manera más completa y objetiva la realidad jurídica de los elementos estructurales de la conciencia en el sistema de derechos humanos, revelando su aspecto civilizatorio y psicológico en el desarrollo de la sociedad. Gracias al método moderno de modelado, se ha formado un modelo para el estudio del desarrollo de la conciencia jurídica en el sistema de derechos humanos. Esto hizo posible alcanzar el objeto planteado.

Palabras clave: representaciones del derecho; subjetividades jurídicas; sociedad y conciencia Jurídica; Derechos Humanos; aspecto civilizador.

Introduction

It should be noted that the problem of legal consciousness is one of the key problems of legal science, since legal consciousness, as one of the forms of public consciousness, performs extremely important functions and tasks, implements generally significant goals in the system of social relations. Despite the fact that more than one generation of researchers has been studying this social and legal phenomenon, there is no single generally accepted interpretation of legal consciousness. This is due to the fact that an exhaustive scientific definition of this category cannot be short and unambiguous.

Society consists of a system of social groups, groups of individuals, political associations. At the same time, they are an integral part of society, therefore, in the legal consciousness of social groups, individual citizens, there are always assessments, imperatives, schemes of legal consciousness

in general. Along with them, the legal consciousness of social groups has its own group legal guidelines, standards, special criteria for requirements for the level of legal consciousness.

They are the product of the special place that a certain social group occupies in the system of society, its specific activity, the special goal that it has, and the specific means of achieving it. The legal consciousness of a separate social group should be defined as a group legal consciousness in the system of human rights. Most often, it manifests itself in the process of passing laws or legal regulations affecting the interests of these groups, as well as regulating their relations with each other and with the state.

One of the most important aspects of the development of the legal consciousness of society is the study of psychological aspects. That is why our study is relevant and important. The main purpose of the article is to analyze the psychological qualities of the development of legal consciousness in the system of formation of a civilized society. The object will be legal consciousness as a phenomenon and concept.

The structure of the article involves an analysis of the literature and a review of the methods used that form the main methodology of the study. The main results of the study, the part under discussion and the current conclusions are presented.

1. Materials and methods

The methodological basis of the article is the fundamental foundations of the psychological aspects of structural legal consciousness as a fundamental feature of a civilized society in the system of human rights. To solve the tasks set, dialectical, systemic, logical and historical methods of scientific knowledge are used, which ensure the conceptual unity of the work on the development of the psychological aspects of structural legal consciousness as a fundamental feature of a civilized society in the system of human rights.

The following methods were used in the research process: structural-logical method, scientific abstraction method, analysis and synthesis, modeling and the method of abstract conclusion based on the results of the analysis of the psychological aspects of structural legal consciousness as a fundamental feature of a civilized society in the system of human rights. The information base of the study is legal documents and publications on the psychological aspects of structural legal consciousness as a fundamental feature of a civilized society in the system of human rights.

Thanks to the modern modeling method, a model for the development of legal consciousness in society was formed, taking into account psychological aspects. This made it possible to achieve the goal.

2. Literature review

As most scientists note, legal ideology is the presented image of law, its reflection in legal norms, concepts, conclusions, theories and concepts, it is a reflection of law, which may be existing or existed, acceptable or undesirable. Although legal ideas are born in the human brain, the sources of their occurrence and the cause of development are legal, social, economic, political reality, the practical activity of people, in the process of which legal ideas, views, social and political requirements are formed. Legal ideology actually affects all aspects of public life, primarily the socio-economic and political situation, being embodied in legal norms, principles, and traditions. Finding its reflection in human consciousness, legal ideology has a significant impact on people's behavior (Maksimov, 2012; Minchenko, 2019).

In modern legal science, there are different approaches to determining the structural elements of legal consciousness and its functional purpose and role in the development of the state as such. As a rule, Ukrainian lawyers distinguish three main approaches to the analysis of the structure of legal consciousness. The first approach involves the analysis of legal consciousness at the level of society, group, individual. In the second case, the analysis of the structure of legal consciousness is associated with the knowledge and study of law at the ordinary, scientific (theoretical) and professional levels.

The third approach to the analysis of the structure of legal consciousness is associated with the general cultural level of a certain community in general, in particular its legal culture, and a certain ideology that prevails in society at the time of studying the above issue. In our opinion, it is appropriate to highlight the fourth approach, determined by the relationship of legal ideology and legal psychology as the main components of legal consciousness (Myronova, 2008; Pavlyshyn, 2017).

According to scientists (Shevchenko, 2020; Sylkin, 2021), the legal psychology of the group consists of legal education, which is characterized by the total knowledge of the members of the group on the legal system of society, about law in general, understanding their own rights and obligations, ways to implement them, etc.; legal awareness, characterized by the group's knowledge of the current legislation, as well as the ability to apply it; legal public opinion, that is, the point of view inherent in the group regarding the law, legal prescription, decisions of state bodies, actions of the state apparatus and law enforcement agencies, the work of the courts; the legal climate, primarily due to group moods, experiences, feelings caused by the reaction to the legal reality; legal experience acquired by the group as a result of legal events.

Individual legal psychology and swings intellectual, moral, psychophysical and other specific qualities of the individual, the level of its general culture, professional competence, spiritual development, self-organization, socialization. A significant role in the formation of individual legal psychology is played by motivation associated with the legal ideals and stereotypes that prevail in society.

As noted in the scientific literature (Kryshtanovych, 2021; Bandura, 2019; Bortnyk, 2021; Jianjian, 2018; Kovkel and Popova, 2019), the structure of legal consciousness consists of legal knowledge, assessments, certain experiences, grouped at three levels - ordinary, scientific (theoretical) and professional.

The scientific level consists of legal doctrines and concepts that are the embodiment of legal knowledge developed within the framework of a particular legal system. Legal consciousness has the following types: individual legal consciousness, group (collective), public. At the same time, in modern legal science there are different views regarding the levels of legal consciousness: cognitive (cognitive), emotional, evaluative.

Giving due to the scientific achievement in such studies, the characterization and analysis of the psychological aspects of the development of legal consciousness through a structural approach to the formation of a civilized society is still relevant today in the system of human rights.

3. Research Results and Discussions

Modern cardinal changes in the social and economic conditions of life cause an increase in the weight of the subjective human factor in building a civilized society. The practical necessity of understanding the content-psychological mechanisms of social interaction of people, their social consciousness is actualized. For the first time, humanity faced the question: is the level of consciousness of citizens sufficient for a satisfactory solution of legal relations between them.

The dramatic search by a person for the meaning of his life, the acquisition of his own worldview position has always existed. Today, in the new social conditions, this search often manifests itself not only in the reassessment of the values of the historical past, but also in those values, motives and goals of behavior that have existed for many decades and formed the basis of both everyday and professional legal consciousness in the system of human rights.

The main characterizing elements of legal consciousness in the system of human rights are presented in Fig.1.

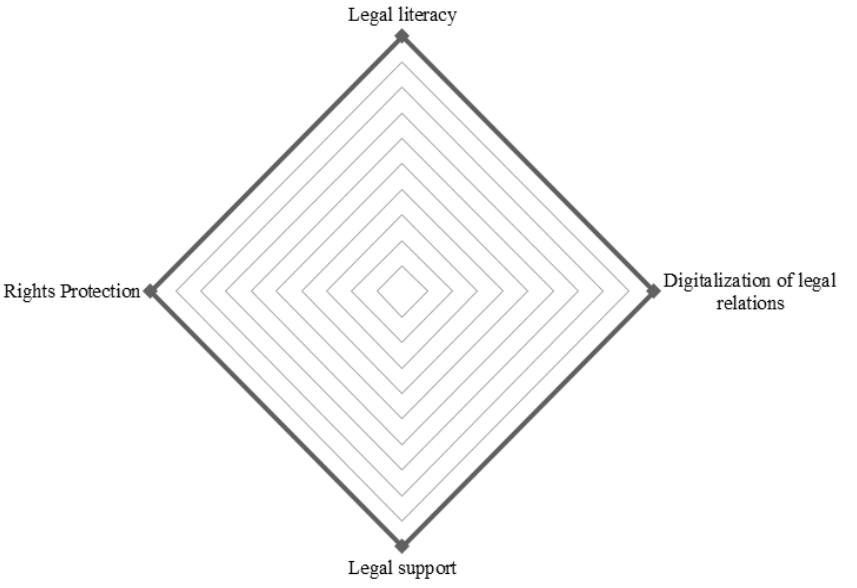

Figure 1. The main characterizing elements of legal consciousness in the system of human rights. Formed by authors.

The inevitable processes of renewal of society contribute to the formation of a new ideological culture of the individual as the basis of his spirituality. Despite the great inertia of public consciousness, society strives for a new and better life, but is in no hurry to abandon old stereotypes, people continue to live by the old rules. Consequently, a legal person, being in the system of legal relations of a particular society, may face a serious discrepancy between individual legal concepts, forms of behavior, values, as well as the whole image of the world of different participants in legal relations.

Therefore, we see the particular importance of this study not only in identifying and structuring the content of the legal consciousness of the subject, but also in the ability to identify the causes and predict the consequences of the above discrepancy, which manifests itself in social interaction.

A legal person is a person who is represented in a legal perspective, that is, falls under the system of social and legal regulation, according to which he acquires certain legal properties and qualities that allow him to actively engage in political and socio-legal reality, to fully exercise his rights and obligations. , as well as to show political and legal activity for sustainable

state development. The properties of a legal personality include: firstly, a person's awareness of his personal, social group and common interests, which becomes an incentive for the socially useful behavior of the individual. Secondly, a person's awareness of duties to other people, social groups and society as a whole. Thirdly, the socio-political and legal activity of the individual, expressed in its positive behavior.

The main properties of legal consciousness are its ideality, rationality, reflexivity, universality, intentionality, creativity, subjective-objective character, normativity, structural unity and mediation in language.

The usual level of legal awareness is inherent in individuals and social groups that implement legal prescriptions in everyday relationships. Ordinary legal consciousness is formed spontaneously under the influence of specific living conditions, personal life experience and legal education, and then its main components are aimed at assimilation of legal requirements only to the extent that they are necessary for practical use in everyday life.

Professional legal awareness is a system of specialized legal knowledge, skills, beliefs, feelings, through which the application of law is carried out. Professional legal consciousness is the legal consciousness of specialists in the field of law, it is differentiated depending on different areas of legal relations (for example, economic, commercial, civil law, criminal law, criminal procedure). Professional legal consciousness consists in the social group of professional lawyers, as well as in individual legal consciousness on the basis of legal practice, under the influence of legal science and theoretical legal consciousness.

The model of the development of the civilized and psychological aspects of the legal consciousness of society in the system of human rights is shown in Figure 2.

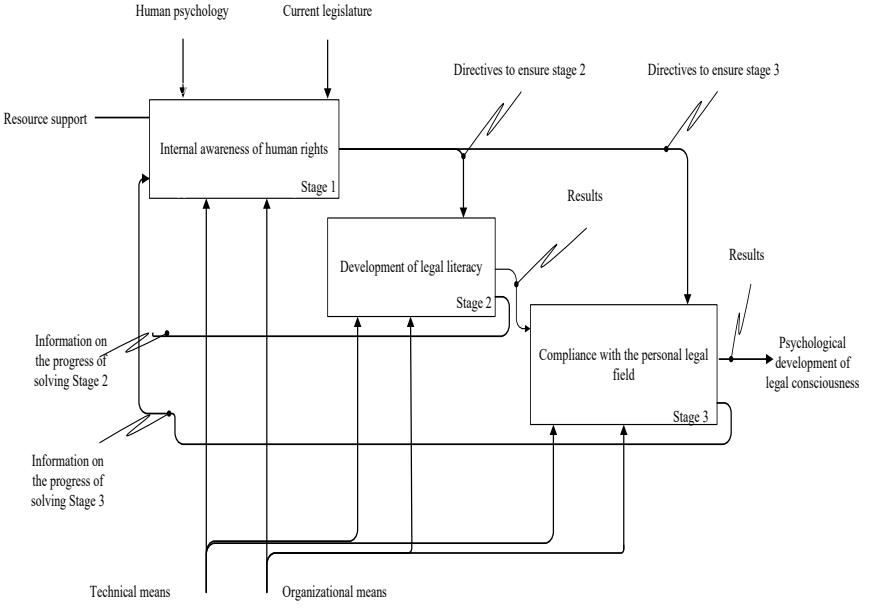

Figure 2. The model of the development of the civilized and psychological aspects psychological aspects of the legal consciousness of society in the system of human rights. Formed by authors.

Professional legal awareness, its main components are distinguished by the ability to constantly develop in the process of law enforcement, the ability to ensure overcoming difficulties in a particular area of law enforcement. This includes specialized legal knowledge, skills, abilities, legal attitudes, mental qualities of a law enforcement officer (sustainable readiness), as well as updating these components, their active use for the implementation of specific law enforcement actions. Such an internal disposition of the law enforcement officer for specific actions to apply the law, the mobilization of all components of professional legal consciousness for the implementation of active law enforcement actions is called situational readiness for law enforcement.

Legal ideas, legal norms and institutions, legal acts, legal attitudes reflect the state of the society's legal consciousness, while an individual legal culture is a set of ideas, a perceived need, an internal need for a person's behavior in the field of law, which is based on its legal consciousness. Based on this, one can join the generally accepted scientific position that legal behavior is directly determined by the legal consciousness of the individual.

Legal ideology is representations, views, concepts, beliefs, theories, concepts regarding legal reality, that is, relatively systematized knowledge about specific legal phenomena, their understanding at a sufficiently high scientific level. Legal ideology corresponds to the level of scientific and theoretical reflection and assimilation of reality. It is characterized by a purposeful, scientific or philosophical understanding of law as an integral social institution not in its individual manifestations (for example, through certain norms, judicial decisions, etc.), but as an independent element of society (culture, civilization). In the field of ideology and through ideology, the needs and interests of social groups, nations, and states are reflected.

The structure of the group's legal psychology includes the following elements: legal education, awareness, legal climate, legal experience (with substructures of the group's legal beliefs, group value-normative orientations, legal position and legal activity). Legal education is the totality of knowledge possessed by group members in relation to the legal system of society, the role of law and legality in the life of society, their own rights and obligations, and ways to implement them.

Legal awareness - knowledge by the group and its members of laws and other legal guidelines, both already in force and new ones being developed, as well as the ability to navigate them when making decisions regarding their own life and the activities of the group Legal climate - a complex phenomenon in the form of an integral characteristic of the psychological atmosphere the legal life of the group The decisive role in it is played by group moods - experiences and feelings caused by the reaction to various legal events.

Legal experience is a special psychological and legal phenomenon that arises as a result of legal events (dynamic, one-time, repeated) occurring in a group. The group's legal beliefs consist in the cumulative product of individual opinions that arise in response to legal questions and play the role of a group's legal worldview. Group value-normative orientations are socio-psychological norms of understanding, attitude and behavior in the legal sphere of society. The legal position reflects the place that the group occupies in the system of law and in relation to it.

The position can be actively supportive, law-abiding, selectively law-abiding (actively supporting in relation to some legal acts and condemning in relation to others), delinquent and actively opposing. Provides motivation for appropriate actions. The legal activity of group psychology, which characterizes not only the reflection of legal reality in the passive manifestations of group psychology, but also the system of motivations, needs, aspirations, creative research, desires to prove themselves in the legal system.

Value orientations are a stable system of attitudes, oriented in a certain way to social values, which directs people's behavior in relation to these values in the context of their complex interaction. The dominant attitudes form the orientation of the personality, determine its life position and characterize the content side of the value orientation. Legal orientation is an integrated set of legal attitudes of an individual or a community that directly forms an internal plan, a program of activity in legally significant situations. Thus, the regulatory function of law is carried out through legal attitudes and orientations, synthesizing and stabilizing all other sources of legal activity in the system of human rights.

Legal consciousness is a self-reflection, a reflection of legal reality through the prism of individual interest. Therefore, legal consciousness acts as an element of motivation for the actions of an individual, social groups in accordance with the rules of law, i.e. performs motivational and reflective functions. The predictive function of legal consciousness lies in the fact that it is able to get ahead of practice, to predict the development of certain processes in the field of law, it, in fact, is the result and at the same time the process of reflecting and assimilating legal reality, taking into account the interests of people. Finally, legal consciousness produces its own categorical, conceptual apparatus that characterizes the legal reality; therefore, it is also possible to single out the function of terminology inherent in it.

Conclusions

A statement about the absorption of legal consciousness by law or its identification with other legal categories, such as legal understanding, legal influence, legal education, legal culture, etc. in the development of legal relations, expresses the public vision of legal reality, on the one hand - as an observer, that is, without performing specific legally significant actions, and on the other - as a direct participant, publicly manifesting a negative or positive attitude towards ensuring the rights and freedoms of man and citizen (demonstrations, strikes, writing publications as a subject of legislative initiative).

Summing up, it should be noted that legal consciousness reflects legal reality. In this regard, through the analysis of legal consciousness, its development and specifics, it becomes possible to understand how law functions in society, how society as a whole and individual citizens perceive law, relate to it, recognize or do not recognize the values enshrined in it. , norms, principles, ideas, etc. Considering this, the consideration of various problems of legal consciousness, many of which are still debatable, is of paramount importance in the system of philosophical and legal knowledge in the system of human rights.

The emotional and psychological component of legal consciousness consists of the sensations and experiences that social subjects have in connection with their participation in legal relations and are formed on the basis of legal knowledge and ideas about the rules of law, legal rights and obligations, as well as legality, law-making and law enforcement activities and related perception and evaluation of legal phenomena.

Such feelings and experiences include, for example, confidence in the fairness of legal norms, normative legal acts, impatience for their violation. Emotional feelings and psychological experiences are an integral part of legal consciousness and behavior. Accompanying almost any manifestation of the legal activity of the subject and directing it to achieve vital goals, emotions and feelings are one of the main elements of the mechanism for regulating legal relations. A developed legal consciousness implies the formation of stable stereotypes in the field of emotions, feelings and experiences among its bearers.

As a result, as a conclusion, it can be argued that legal consciousness is a complex systemic formation containing various elements that form its structure, the consideration of which is important in connection with the changes that have befallen modern legal reality. The demolition of established stereotypes in philosophical and legal science, the radical reform of the legislative framework have become factors that have changed precisely the idea of the elements of legal consciousness in the system of human rights. The number of elements of legal consciousness, their relationship are interpreted by different authors ambiguously. This question is debatable to this day. Precisely because it should be considered in further research in more detail.

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The air transport industry as an object and subject of government regulation

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Abstract

By using the comparative method, this scientific article provided a comprehensive analysis of the Ukrainian air transport industry as an object of analyzing its state regulation. It is argued that a feature of the state regulation of the air transport industry is the integrative capacity, i.e. a comprehensive perception of the specified industry, which is not limited to air transport, but covers legal relations in the field of educational training, production, repair and modernization of aviation equipment, resolution of civil, economic and other disputes. Emphasis is placed on the systematization of legislation, on the basis of which administrative and legal regulation in aeronautical matters is carried out. In conclusion, the priority importance of a specialized state administration capable of simultaneously solving organizational, legal, political, economic, technical and other problems of development and operation of the air transport industry is pointed out. In addition, other practical recommendations for increasing the competitiveness of Ukrainian air transport were provided.

Keywords: air transport; airspace; state regulation; legal principles; public administration.

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La industria del transporte aéreo como objeto y sujeto de regulación estatal

Resumen

Mediante el uso del método comparativo, este artículo científico proporciono un análisis exhaustivo de la industria del transporte aéreo de Ucrania como objeto de analizar su regulación estatal. Se argumenta que una característica de la regulación estatal de la industria del transporte aéreo es la capacidad de integración, es decir, una percepción integral de la industria especificada, que no se limita al transporte aéreo, sino que abarca las relaciones jurídicas en el ámbito de la formación educativa, producción, reparación y modernización de equipos de aviación, resolución de disputas civiles, económicas y de otro tipo. Se pone énfasis en la sistematización de la legislación, a partir de la cual se realiza la regulación administrativa y jurídica en materia aeronáutica. A modo de conclusión, se señala la importancia prioritaria de una administración estatal especializada, capaz de resolver simultáneamente los problemas organizativos, jurídicos, políticos, económicos, técnicos y otros del desarrollo y funcionamiento de la industria del transporte aéreo. Además, se proporcionaron otras recomendaciones prácticas para aumentar la competitividad del transporte aéreo de Ucrania.

Palabras clave: transporte aéreo; espacio aéreo; regulación estatal; principios jurídicos; administración pública.

Introduction

The effectiveness of their functioning directly depends on how fully and qualitatively the corresponding social relations are regulated. At the same time, the state regulation of relevant social relations is a rather complex and multifaceted activity, which is carried out by a significant number of state-authorized subjects by using a wide variety of means of regulating such relations in order to maintain its functioning in a normal state.

Throughout its existence, aviation throughout the world belonged and continues to belong to such spheres of human activity that require clear and specific regulation (Daraganova, 2010), and the aviation industry is an important component of the integration of Ukraine into the system of international economic relations, especially in the conditions of globalization of the world economy.

The proper state of the industry strengthens foreign economic ties, creates the necessary prerequisites for ensuring national security and affects the solution of the socio-economic problems of the state. But in the

conditions of external factors – the growing economic crisis caused by the pandemic, as well as the military aggression of the Russian Federation, the aviation industry, as the industry with the largest percentage of passenger transportation, becomes the most vulnerable compared to other types of transport. State support of the aviation industry in these conditions is of great importance.

Thanks to a competent state policy in the field of air transport, it is important to create conditions for maintaining the operation of air transport and its recovery after the war. The Law of Ukraine "On Transport" provides that "state management of transport activities is carried out through the implementation and implementation of economic (tax, financial and credit, tariff, investment) and social policies, including the provision of subsidies for passenger transportation" (Law Of Ukraine, 1994).

Therefore, the support and restoration of the aviation industry in the conditions of war on the territory of Ukraine directly depend on the state of state regulation of aviation activities, and the state must be aware of the importance of state support for the planning and production of modern, innovative, high-tech aviation transport and take appropriate steps in this direction.

In this aspect, questions regarding the effectiveness of administrative and legal regulation of public relations in the field of air transport are of particular importance, because the functioning of this field includes a significant number of components, most of which are related to the need to ensure the security of data and related public relations, satisfaction of public interests in air transportation, economic interests of the state, etc.

Also, in view of the fact that the use of the airspace of Ukraine is connected with the activities of both domestic and foreign subjects of the aviation industry, the air traffic of air transport, the transportation of luggage, cargo and passengers and many other aspects of the implementation of state regulation of this sphere of public relations is based on a significant number of normative legal acts. This state of affairs in practice gives rise to both inaccuracies in the implementation of relevant legal acts and difficulties in law enforcement due to contradictions in their separate provisions.

That is why today the issue of developing substantiated positions regarding the determination of ways of development of administrative and legal regulation in the field of air transport is acute.

1. Methodology of the study

The following methods were used to achieve the set goal and solve the specified tasks: comparative analysis - to reflect the trends of state

regulation of the air transport industry; systemic approach – to determine the author's concept of «state regulation of the use of airspace of Ukraine»; systematization and classification – for the classification of priority issues of state regulation of the specified industry; morphological analysis – to improve the conceptually categorical apparatus of the studied issues; systematization of measures by means of which state regulation of the use of airspace is carried out; modeling – to justify the feasibility of developing a comprehensive plan for maintaining the qualification of the aviation industry; abstraction and logical analysis – for the development of conceptual provisions of the administrative-legal mechanism of state regulation of the development of air transport infrastructure; analogies and extrapolations – to form conclusions regarding the normalization of provisions that regulate legal relations in the researched area.

2. Analysis of recent research

Separate problems of regulating social relations in the field of transport use were the subject of research by many scientists from various fields of law. The conducted scientific research has great theoretical and practical significance both in the aspect of defining the category "state regulation" and in the aspect of establishing the essence and content in relation to certain spheres of social relations. However, despite the large number of scientific works, Ukraine still faces the task of harmonizing its own legislation in the field of air transport with the requirements of international normative documents.

In order to solve this task, it is necessary not only to select and finalize the most effective model of the construction of relevant state bodies, which will make it possible to find the optimal balance between strict state regulation and liberalization of management, but also to provide reasonable proposals for the standardization of regulatory and legal provisions in the field of aviation transport.

It must be stated that almost no attention was paid to the definition of the essence and content of the state regulation of the use of the airspace of Ukraine, and the rapid updating of the current national legislation regulating this sphere of public relations necessitates the implementation of additional scientific research and determines the relevance of the chosen topic. Therefore, the purpose of the presented article is to clarify the legal nature and content of the state regulation of the use of the airspace of Ukraine.

3. Results and discussion

State regulation of the aviation industry is currently the most optimal form of state influence on social relations by establishing universally binding aviation rules of conduct for all participants in order to satisfy public and private interests in this area. Usually, «state regulation» is a static category that is practically implemented through a certain «mechanism» (Svitlychna, 2017).

We consider it expedient to start research on clarifying the meaning of the term «state regulation». The word «regulate» comes from the Latin «regulo» – to arrange. The online dictionary of foreign words defines the term «regulate» as: to submit to a certain order, rule, arrange; to do something to obtain the required indicators, the required degree of something (Interpretive dictionary of foreign words, 2023).

From the analysis of the legislation of Ukraine, we see that the concept of «regulation» is used in the names of the terms of the regulatory and legislative framework of Ukraine more than a hundred times.

Among them, the most important for our research are the following: State regulatory body of aviation activity of Ukraine – «(body) that has the authority to act directly on behalf of the state in case of execution of all official procedures in the field of aviation...» (Legislation of Ukraine, the term «State regulatory body of aviation of Ukraine (authorized state body of civil aviation)); Regulation of airspace (Regulation) – «a method of bringing the need to use airspace in accordance with the declared capacity of air traffic service bodies by limiting the number of flights that plan to enter the specified airspace or airfield...» (Legislation of Ukraine, the term «Regulation of airspace (Regulation)»).

So, as we can see, state regulation involves purposeful powerful influence of a state body with the help of the entire set of legal means. However, the term «legal regulation», unlike the category «state administration», does not include any powerful activity of authorized bodies and officials, but only that which aims to direct the behavior of participants in social relations in a clearly defined direction , regulated by the rule of law and individual acts based on it (Osaulenko, 1997).

R. Demkiv sees legal regulation as a legal phenomenon, which is actions and operations carried out by state authorities in established procedural forms with the help of certain methods and with the use of legal means aimed at establishing and implementing certain models of social development (Demkiv, 2015). A. Kulish considers «legal regulation» as an influence on the behavior of participants in social relations carried out in the interests of society with the help of legal norms in order to establish and regulate the latter» (Kulish, 2003: 62).

Therefore, it can be argued that the content of state regulation goes beyond the scope of the activities of executive authorities. In addition, regulation is aimed not only at management objects, but is also intended to influence the social environment of these objects, i.e., social phenomena and processes, the existence of which ensures an impact on the state of a certain management object. From a social point of view, state regulation is used in the interests of the entire society both to activate forms of activity necessary for society and to limit undesirable forms of business.

It guarantees equal business conditions, the stability of the rules of economic behavior, promotes the manifestation of the effectiveness of the parties to market relations and limits their negative consequences. If you rely only on market forces, then structural restructuring will be a matter of the distant future without a guarantee of optimal proportions, and if you do not regulate prices and tariffs, then economic ties between the regions of the country will be severed.

The state carries out regulation by adopting laws and normative legal acts common to the entire transport system, regardless of the type of transport, the territorial location of certain objects, the economic situation, the profitability or unprofitability of individual enterprises and industries and others.

According to the American economist M. Porter (Porter and Kramer, 2006), the most important function of the state is not to provide direct assistance to industries and firms, but to focus them on solving increasingly large and complex tasks that the spontaneous market cannot set before them.

Among the main functions of state regulation in the doctrine, target, stimulating, normative, corrective, social, direct management of the non-market sector of the economy, controlling, as well as exclusive functions of the state in the economic, ecological and social spheres are distinguished (Buryk, 2017). At the same time, the Ministry of Infrastructure of Ukraine emphasizes that:

> State regulation of activities in the field of aviation and the use of airspace of Ukraine consists in the formation of state policy and development strategy, definition of tasks, functions, conditions of activity in the field of aviation, application of aviation safety measures, adoption of mandatory aviation rules of Ukraine, in the implementation of state control over their implementation and establishing responsibility for their violation» (General information about the industry, 2022: n/p).

Thus, «state regulation» is a process implemented by various branches of state power by available legal means with the aim of influencing the relevant social environment to ensure the conditions for the effective activity of subjects and objects of management in the directions that are

desirable and useful for the development of a certain industry and state in general.

The content (structure) of the air transport industry is the environment, activities of individuals and legal entities (organizations, operators, users, aviation personnel and ground service entities, air carriers, providers, passengers, other entities) for the implementation of flights and aviation operations. The field of transport aviation requires the organization of air traffic and the use of air space, air navigation services, ensuring the operation of air traffic routes, air lines and regulation slots. The use of aircraft (including unmanned ones) requires airfields and heliports, airstrips and airfield areas, airports, appropriate means of communication, navigation and surveillance (radio technical support), meteorological service, etc.

The development of the aviation industry is also connected with the availability of relevant manufacturers and developers, the ability to carry out repair work, the availability of a scientific and technical base and specialists capable of ensuring the production and repair of objects of aviation activity in a closed cycle (by the way, this is the level of development in the whole world characterized by only about a dozen countries) (Brusakova, 2020).

It can be seen from the above that activities in the field of transport aviation are built and developed in the relations of a large number of subjects with various goals and interests inherent in them. However, from the point of view of state regulation, the air transport industry in general can be characterized as a circle of issues, the promotion of the solution of which should be a priority of the state. The list of these issues includes: ensuring aviation safety, developing the national economy, meeting the needs of society and ensuring environmental responsibility (Brusakova, 2020).

We will carry out a detailed analysis of the legal framework as the basis of state regulation of transport activities, which should ensure effective interaction of transport enterprises, state protection of the rights of consumers of transport services, safety of the transport process and environmental protection. The activity of state regulation of the use of airspace is not an exception in this aspect, which, in view of the multifaceted nature of these social relations, affects all of the aspects of the functioning of transport named by the scientist to the greatest extent compared to other sectors (automotive, railway, pipeline transport, etc.).

That is why the primary importance among the legal acts on the basis of which state regulation of the use of airspace is carried out is the Basic Law of Ukraine (Constitution Of Ukraine, 1996), the provisions of which: establish the principles of such regulation; determine the basis of the legal status of some of the subjects of such activity; is the legal basis for all other legislation.

Given the fact that the airspace of Ukraine is used by a significant number of foreign aviation entities, international legal standards, which have found their objectification in the provisions of the relevant international treaty of Ukraine, are of particular importance in the aspect of state regulation of this field of public relations. In this regard, the position that regulatory legal acts regulating the activities of types of transport should be developed in their harmonization with international legal acts seems fair. That is, the international treaties of Ukraine should be considered as a basis for the adoption of national normative legal acts on the implementation of state regulation of the use of the airspace of Ukraine.

First of all, among such international legal acts, the Convention on International Civil Aviation of December 7, 1944 should be mentioned, which defines the following aspects of state regulation of the use of airspace: The contracting states recognize that each state has full and exclusive sovereignty over the airspace over its territory (Article 1); the territory of the state means the land territories and territorial waters adjacent to them, which are under the sovereignty, suzerainty, protectorate or mandate of the given state (Article 2); in the prescribed cases, each Contracting State undertakes not to allow the operation of airlines of any Contracting State in the airspace over its territory (Article 87); defines the essence of international air traffic as air traffic carried out through the airspace over the territory of more than one state; etc. (Convention On International Civil Aviation, 1944).

At the same time, the appendices (a total of 18) to the Convention on International Civil Aviation are of particular importance, among which, in the context of state regulation of the use of Ukrainian airspace, it is necessary to highlight: Appendix 2 «Flight Rules», which contains only standards and does not contain recommended practice, and Appendix 11 «Air Traffic Services», which emphasizes that today air traffic control, flight information and alerting services, which together form what is called air traffic services, are among the most important components of the mandatory ground support, necessary for safe and efficient air traffic around the world.

At the same time, the world airspace is divided into a number of adjacent flight information areas, within which air traffic service is provided. The main purpose of air traffic services, as defined in the annex, is to prevent collisions between aircraft at all stages of their movement, be it taxiing, take-off, landing, en-route or waiting at the destination airport (Convention On International Civil Aviation, 1944).

Another important group of normative legal acts, on the basis of which the state regulation of the use of the airspace of Ukraine is carried out, are the laws of Ukraine, including acts of codified legislation. The main regulatory legal acts include the Air Code of Ukraine dated 19.05.2011, the preamble of which states that the purpose of state regulation of the use of

airspace of Ukraine is to guarantee aviation safety, ensure the interests of the state, national security, and the needs of society and the economy in air transportation and aviation works (Air code of ukraine. Law of ukraine, 2011).

The legal principles of state regulation of the use of airspace of Ukraine are also enshrined in numerous laws of Ukraine, including: the Law of Ukraine «On Protection of the Natural Environment» dated 25.06.1991 (On Protection Of The Natural Environment, 1991); the Law of Ukraine «On the State Border of Ukraine» dated November 4, 1991 (On The State Border Of Ukraine, 1991); the Law of Ukraine «On Protection of Atmospheric Air» dated 16.10.1992 (On Protection Of Atmospheric Air, 1992); the Law of Ukraine «On the State Program of Aviation Safety of Civil Aviation» dated March 12, 2017 (On The State Program Of Aviation Safety Of Civil Aviation, 2017); the Law of Ukraine «On Border Control» dated November 5, 2009 (On Border Control, 2009), etc.

A special place among the acts defining the legal basis of the state regulation of the use of the airspace of Ukraine is occupied by subordinate legal acts. It should be noted that the framework of the laws of Ukraine does not fully allow to predict the entire complex of situations that may be subject to such regulation in the future.

That is why the legislation provides for the possibility of independent regulation of public relations by state-authorized subjects with the help of the issuance of a subordinate regulatory legal act, which allows, for example, to quickly determine the competence of public administration subjects, to establish the rights and obligations of a person within the limits of relevant public relations.

Among the acts of central executive bodies, on the basis of which the state regulation of the use of airspace is carried out, those adopted by the Ministry of Infrastructure, the Ministry of Defense of Ukraine and the State Aviation Service should be mentioned.

The most numerous group of secondary legal acts, the provisions of which determine the specifics of the state regulation of the use of airspace, are those adopted by the State Aviation Service. At the same time, it should be noted that the fundamental aviation rules of Ukraine, which determine the peculiarities of the state regulation of the use of the airspace of Ukraine, were approved by joint orders of the State Aviation Service and the Ministry of Defense of Ukraine.

Yes, the procedure for civil and state aircraft flights, the procedure for air traffic maintenance, the procedure for air traffic control, which guarantee the safety of flights when using the airspace of Ukraine and the airspace over the open sea, where the responsibility for air traffic maintenance is assigned to Ukraine by international treaties of Ukraine , civil and state

aviation are defined in the Aviation Rules of Ukraine «General rules for flights in the airspace of Ukraine», which were approved (Order Of The State Aviation Service Of Ukraine And The Ministry Of Defense Of Ukraine No. 66/73, 2017).

Directly, the requirements regarding the organization and procedure for the use of the airspace of Ukraine by airspace users are defined in the Aviation Rules of Ukraine «Rules for the Use of the Airspace of Ukraine», approved by the joint order of the State Aviation Service and the Ministry of Defense of Ukraine No. 430/210 dated 11.05.2018 (Order Of The State Aviation Service Of Ukraine And The Ministry Of Defense Of Ukraine, 2018; Aviation Rules Of Ukraine "Rules For The Use Of The Airspace Of Ukraine" No. 430/210, 2018).

In general, we can state that compared to other levels of normative and legal regulation, the sub-legal level allows for the fastest regulation of relevant social relations. However, a large number of such acts, including those issued by various law-making entities, greatly complicates their perception and law enforcement in general, and therefore, in our opinion, needs its revision, which can be carried out by systematizing legislation (Brusakova, 2020).

Among the norms of international and national legislation that regulate relations in the specified sphere, it is worth emphasizing the key role of the administrative-legal mechanism of state regulation of the aviation industry, which covers the largest part of legal relations in the specified sphere. It is with its help that relations are regulated and the balance of private and public interests in the field of aviation is maintained with the help of administrative and legal means

The implementation of almost all of the above measures of state regulation of the use of airspace of Ukraine is entrusted to the bodies of the joint civil-military system of organization of air traffic of Ukraine (hereinafter – the joint system).

Thus, in accordance with the Regulation «On the United Civil-Military System of the Organization of Air Traffic of Ukraine», the united system consists of units whose powers and activities are related to the organization of air traffic in the airspace of Ukraine and in the international airspace under the responsibility of Ukraine.

At the same time, these divisions are part of the State Enterprise of Air Traffic Services of Ukraine (Resolution Of The Cabinet Of Ministers Of Ukraine, No. 1281, 1999). In accordance with the order of the Ministry of Infrastructure dated 18.12.2018 No. 641, which approved the ownership policy of the State Enterprise of Air Traffic Services of Ukraine, the specified enterprise is a state-owned commercial enterprise, which is based on state property and belongs to the sphere of management of the Ministry of

Infrastructure (Resolution Of The Cabinet Of Ministers Of Ukraine, No. 1281, 1999).

At the same time, the State Enterprise of Air Traffic Services of Ukraine is Ukraeroruh. The main operational unit of the unified system is the Ukrainian Airspace Planning Center of Ukraine – Ukraerocentr, which is part of Ukraeroruh (Resolution Of The Cabinet Of Ministers Of Ukraine No. 1281, 1999). It follows that direct state regulation of the use of Ukrainian airspace is carried out by Ukraeroruh and Ukraerocentr using the means provided for by legislation. Such means as a whole form the methods of state regulation of the use of airspace.

It should be noted that on February 24, 2022, the state enterprise for air traffic maintenance of Ukraine «Ukraerorukh» suspended the provision of air traffic maintenance services to civilian users of the airspace of Ukraine due to the high risk to aviation safety for civil aviation. And already on February 28, 2022, it was reported that force majeure occurred due to the large-scale military aggression of the Russian Federation against Ukraine, as a result of which the execution of agreements, contracts, agreements and other acts in the aviation sector became impossible.

Currently, Ukrainian airports are under constant danger from potential shelling, and unlike, for example, the grain initiative, under which international organizations, in particular the UN, provide a guarantee of transportation, the aviation recovery of flights will be much more difficult. After all, the organization of air or missile attack by guided high-precision weapons of the aggressor country takes a fairly short period of time.

Under such conditions, the Armed Forces of Ukraine must guarantee that such missiles will be shot down. In addition, we need guarantees from our allies regarding the use of anti-missile defense systems of European Union countries on the territory of Ukraine in case of shelling. Currently, this is one of the key problems, the solution of which will enable the use of our airports for civilian needs (Zhdanova, 2022).

In addition to the destruction of a large part of the infrastructure of the Ukrainian civil aviation, Ukraine is experiencing large losses among highly qualified specialists. The issue of training civil aviation specialists and developing strategies for building aviation potential is extremely relevant and important for Ukraine.

That is why today an important task is to establish partnership relations in the aviation industry, which will help to make up for lost time. Even under martial law, Ukrainian airlines continue to operate abroad, demonstrating the powerful potential of aviation (The Minister of Education and Science of Ukraine participates in the 41st session of the Assembly of the International Civil Aviation Organization, 2022).

It is logical to imagine that when civil aviation resumes operations in Ukraine, there will be a problem of a lack of pilots, the absolute majority of whom are currently losing their qualifications. The loss of qualification not only of flight personnel, but also of technical and dispatching personnel is a very big problem that should be solved now. Unfortunately, Ukraine does not have a single training center for pilots or simulators for Western aircraft used in Ukraine (Zhdanova, 2022).

Under such conditions, before the resumption of civil aviation flights, the state must develop a comprehensive plan for maintaining the qualifications not only of air carriers, but also of the entire aviation industry.

Conclusions

State regulation of the use of airspace is the activity of authorized subjects by available legal means, which is carried out by them in connection with aircraft flights, the movement (stay) of material objects in the airspace of Ukraine, the implementation of a number of other works and activities related to the use of airspace space, through the implementation of a set of legally established means to guarantee aviation safety, ensure the interests of the state, national security, and the needs of society and the economy in air transportation and aviation operations.

The main measures by means of which the state regulation of the use of airspace is carried out are: granting permits, establishing conditions, prohibitions and restrictions on the use of airspace; establishing the structure of the air space; confirmation of air traffic service routes; implementation of airspace classification; planning and coordination of airspace use; consideration of applications for the use of airspace; coordination of activities related to the use of airspace and civil-military coordination; determining the procedure for aircraft crossing the state border and using the airspace of the zone with a special mode of airspace use; implementation of control over compliance with the procedure and rules for the use of the airspace of Ukraine.

The regulatory basis for the implementation of measures of state regulation of the use of airspace is a significant number of normative legal acts, the main ones of which are: the Constitution of Ukraine, international treaties of Ukraine, acts of codified legislation and laws of Ukraine, subordinate normative legal acts. The large number of acts of the sub-legal level, issued by various subjects of rule-making, complicates their perception and law enforcement as a whole and requires systematization.

Among the norms of international and national legislation that regulate relations in the field of air transport, the key role belongs to the

administrative-legal mechanism of state regulation, which regulates relations and maintains the balance of private and public interests in the field of aviation with the help of administrative-legal means.

The task of direct state regulation of the use of Ukrainian airspace is entrusted to Ukraeroruh and Ukraerocenter. Before the resumption of civil aviation flights after the end of military operations on the territory of Ukraine, a comprehensive plan for maintaining the qualifications of not only air carriers, but also the entire aviation industry must be developed at the state level.

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War crimes and crimes against humanity in Ukraine: Legal qualification and features of documentation

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Abstract

This scientific article is devoted to the interpretation of war crimes and crimes against humanity, peculiarities of regulation of these illegal acts and organization of their investigation in Ukraine. Using the dialectical method, it emphasizes the necessity of using the resources of the International Criminal Court ICC in Ukraine and establishing a Special International Tribunal to hold personally responsible for the commission of crimes of aggression the actors involved. The expediency of creating a special state institute for interaction with the ICC with the appointment of national coordinators is argued. The components of the concept of investigation of war crimes and crimes against humanity are determined as a holistic, comprehensive and interdisciplinary theoretical system for activities under special conditions. In the conclusions of the case, the need to ensure clear management and coordination of the international investigation team under the auspices and control of the International Criminal Court and the Eurasian Agency in order to collect, execute, systematize and preserve the factual evidence base, in accordance with the rules of the international protocol, is pointed out.

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Crímenes de guerra y crímenes contra la humanidad en Ucrania: Calificación legal y características de la documentación

Resumen

Este artículo científico está dedicado a la interpretación de los crímenes de guerra y crímenes contra la humanidad, las peculiaridades de la regulación de estos actos ilegales y la organización de su investigación en Ucrania. Mediante el método dialéctico, se enfatiza en la necesidad de utilizar los recursos de la Corte Penal Internacional CPI en Ucrania y establecer un Tribunal Internacional Especial para responsabilizar personalmente por la comisión de crímenes de agresión a los actores implicados. Se argumenta la conveniencia de crear un instituto estatal especial para la interacción con la CPI con el nombramiento de coordinadores nacionales. Se determinan los componentes del concepto de investigación de crímenes de guerra y crímenes de lesa humanidad como un sistema teórico holístico, amplio e interdisciplinario para actividades en condiciones especiales. En las conclusiones del caso, se señala la necesidad de garantizar una gestión y coordinación claras del equipo internacional de investigación bajo los auspicios y el control de la Corte Penal Internacional y el Organismo Euroasiático a fin de recopilar, ejecutar, sistematizar y preservar la base de pruebas fácticas, de conformidad con las normas del protocolo internacional.

Palabras clave: derecho internacional humanitario; crímenes de guerra; crímenes de lesa humanidad; organización de la investigación; recopilación de pruebas.

Introduction

The need for a criminal law bans on crimes against peace, the security of mankind and international law and order in modern conditions is due not so much to their prevalence as to the extremely high degree of their public danger. Thus, Article 7 of the Law of Ukraine «On the Fundamentals of National Security of Ukraine» determines that at the present stage the main real and potential threats to the national security of Ukraine, stability in

society, in the sphere of state security are criminal activities against peace and security of mankind (On The Fundamentals Of Ukraine's National Security. Law Of Ukraine, 1993).

Also, with the proclamation of Ukraine's independence and the choice of a course aimed at ensuring the fundamental principles of protecting human rights and freedoms that are well-established in the international community, in 2001 the Criminal Code of Ukraine, having Chapter XIX «Crimes against the established order of military service (War crimes)» (Articles 401-434), for the first time in the history of national criminal legislation was supplemented by Chapter XX «Crimes against peace, the security of mankind and international law and order» (Criminal Code Of Ukraine, 2001).

Armed conflict, in the overwhelming majority of cases, is due to the existence of contradictions of an ethnic, national, religious nature, which the parties cannot resolve peacefully, non-military means. The Russian Federation (hereinafter – the RF) commits deliberate criminal acts in Ukraine, which, in accordance with the Rome Statute, have signs of war crimes and crimes against humanity - in particular, murder, torture, kidnapping, hostage-taking, inhuman treatment, rape and other forms of sexual violence, extrajudicial executions, deportation, destruction of civilian infrastructure, misappropriation of property and other actions against the civilian population, etc.

During the full-scale invasion of the RF in Ukraine (from 02/24/2022 to the present day), law enforcement officers recorded more than 47 thousand such crimes committed by the aggressor party (Torture, rape and murder, 2022), and this number in the conditions of war is constantly growing. At the same time, the colossal sums of the Russian Federation's war expenditures only confirm the commitment and involvement of the top military and political leadership in such actions (Table 1).

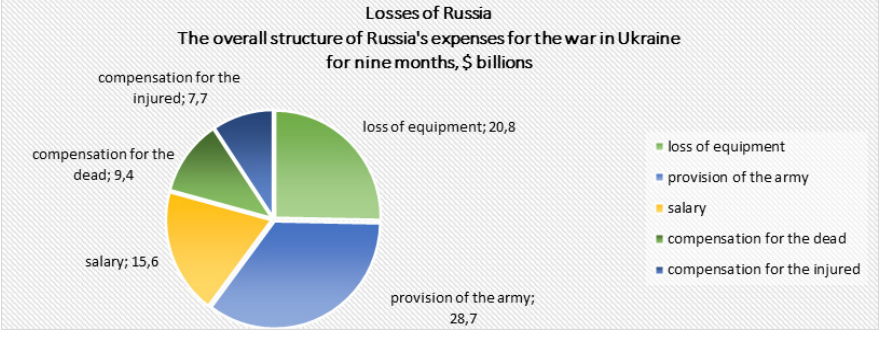


Table No. 01. (Information from: Datsenko, 2022).

War crimes and crimes against humanity, which are directly related to international criminal law, are particularly dangerous for humanity and undermine the international system of security and law and order. The long-term efforts of the international community have yielded fruitful results, which are reflected in the formation of international legal norms that establish the grounds and conditions for responsibility for crimes against peace, security of mankind and international law and order.

With the signing of the Rome Statute of 1998, since July 1, 2002, the international criminal justice body has been officially operating on a permanent basis, whose competence includes the prosecution of persons responsible for genocide, war crimes, crimes against humanity and aggression (Bibik and Kulyk, 2014).

As you know, international organizations were created and continue to be created by states to jointly solve global problems. The essence of global problems is that states are not able to solve them independently, on their own. Of course, the problem of armed conflicts and violations of humanitarian law that occur during armed conflicts, especially in the light of recent events in Ukraine, Syria and the Middle East as a whole, is the most vivid example of the fact that these problems cannot be solved by the forces of one, even the most powerful state.

At the 2005 World Summit, member states of the United Nations Organization (hereinafter – the UN) recognized that genocide, crimes against humanity, and war crimes are such dangerous crimes that the world's population needs collective international responsibility to protect against these acts. In this regard, the international community, acting through the UN, has undertaken to use diplomatic, humanitarian and other peaceful means to protect the population from international and, in particular, war crimes (Article 139 of the Final Document).

In addition, the states agreed to support UN efforts to create opportunities for early warning of these acts. At this, the obligation of members of the international community to stop mass violations of human rights cannot be recognized as an innovation in international law and the practice of international relations.

Thus, in the XXI century, the world community continues to emphasize the universal nature of the problem of combating war crimes, and the UN remains the main international organization designed to solve problems of concern to the entire world community.

The resolutions of the Parliamentary Assembly of the Council of Europe and the European Parliament mention the genocide in Ukraine. Even a preliminary review of the existing factual base of crimes committed by the Russian occupiers gives objective grounds to talk about all the signs of actions defined precisely as genocide in accordance with the international

Convention for the Prevention and Punishment of the Crimes of Genocide. In particular, we are talking about: mass intentional killings of Ukrainian civilians; injuries, disability, severe mental trauma, including due to numerous cases of rape, torture, bullying committed by the Russian occupiers; purposeful and deliberate destruction by the aggressor country of the system of life support of Ukraine; forcible deportation of Ukrainian citizens to Russia. Mass kidnapping of children (Pashkov, 2022).

Illegal actions committed in the conditions of armed conflict, causing a ban on the entire international community, should not go unpunished, and their effective warning is intended to be ensured both by measures adopted at the national level and by the intensification of international cooperation.

Disclosure and investigation of international procedures requires international cooperation of state institutions in order to search for international criminals. The need for such cooperation determines the needs of practical activities of national law enforcement agencies to seize evidence on the territory of other states, to ensure the implementation of criminal procedural functions defined by law and the administration of justice. It is regulated, on the one hand, by international legal norms, and on the other – by the provisions of the national criminal and criminal procedural legislation.

The adoption in Ukraine in 2012 of a new Criminal Procedure Code (hereinafter – the CPC of Ukraine) settled a number of issues of international cooperation in criminal proceedings, including defining its main forms: international legal assistance in carrying out procedural actions (Chapter 43 of the Criminal Procedure Code of Ukraine); extradition of persons who have committed a criminal offense (extradition) (Chapter 44 of the Criminal Procedure Code of Ukraine); criminal proceedings in the order of adoption (Chapter 45 of the Criminal Procedure Code of Ukraine).

However, in recent years, the nature, concept and goals of international cooperation of state bodies have undergone significant changes. In today's conditions, the presence of numerous military conflicts in the world and, above all, on the territory of Ukraine, encourages the search for reserves in improving the efficiency of law enforcement activities, the development of new methods for investigating war crimes and crimes against humanity in order to improve skills in the search for criminals, qualifications, organization and conduct of investigative (investigative) actions in the investigation of crimes of this category.

1. Methodology of the study

The methodological basis of the study was the methods and techniques of scientific knowledge. Their application is due to a systematic approach, which makes it possible to consider the problems of research in the unity of their social content and legal form. The leading method of research is dialectical, with the help of laws and categories of which the essence of war crimes and crimes against humanity is determined, as well as the peculiarities of international regulation of their investigation, taking into account national regulatory procedures.

The use of the laws of formal logic and its methods such as induction and deduction, analysis and synthesis, made it possible to determine the structural and logical scheme of research, to identify the properties and signs of the legal nature of war crimes and crimes against humanity, the problems of their criminalization and investigation at the national level.

The method of system analysis, system-structural and formal-logical methods are applied in order to clarify the conceptual foundations of the organization of the investigation of war crimes, subject to the proper legal procedure in accordance with the norms of international customary law and the practice of its application; dogmatic – for the interpretation of legal categories, deepening and clarifying the conceptual; functional – in order to identify the levels of organization of the investigation; typological – when clarifying the proper legal procedure for organizing an investigation and collecting evidence of war crimes; methods of modeling and forecasting – to form proposals for the improvement of certain provisions of national legislation in accordance with the requirements of international humanitarian law and the practice of its application in the investigation of crimes of aggression committed under a special legal regime; sociological and statistical methods – during the analysis and generalization of the empirical basis of the study.

2. Analysis of recent research

Today, in the science of international humanitarian law, criminal and criminal procedural law, a significant number of works are presented, which analyze the features of qualification, organization of investigation and collection of evidence about the crimes of aggression, the processes of formation and development of the system of international criminal justice in this direction.

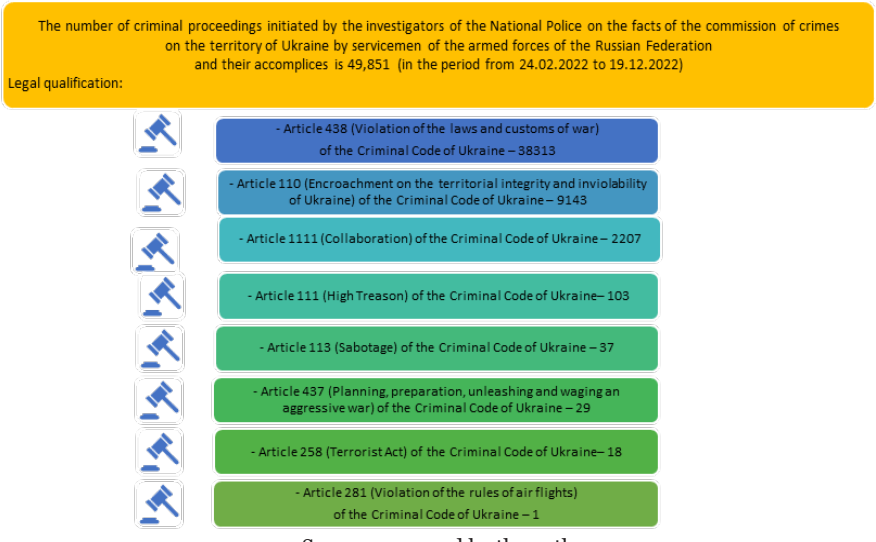
The presence of a significant number of scientific research on this topic is of great theoretical and practical importance, and the formulated ideas are reflected in the legislation and are positively perceived by international

law enforcement practice. At the same time, some works do not take into account the modern development of law enforcement investigative practice in this area, which is happening very rapidly and necessitates the reassessment of previous conclusions in the light of a new interpretation of certain provisions of international treaties or the construction of new concepts.

Most scientific concepts lack a systematic approach to organizing the investigation of war crimes committed during a military conflict.

It should be noted that according to official statistics, since the introduction of martial law in Ukraine on 24.02.2022, investigators of the National Police of Ukraine initiated 172,684 criminal proceedings, 49,851 initiated on the facts of committing crimes on the territory of Ukraine by servicemen of the Armed Forces of the Russian Federation and their accomplices (National Police of Ukraine, 2022) (table 2). The investigation of such a large number of these crimes requires efficiency, professionalism and the involvement of a significant human resource.

Table No. 02.



Source: prepared by the authors.

In connection with the above-mentioned circumstances, there is a need, taking into account current trends in the development and interpretation of the norms of international humanitarian and criminal procedural law,

a new theoretical understanding of issues related to the organization and establishment of interstate and interdepartmental interaction of documenting and investigating war crimes and crimes against humanity.

These circumstances determined the choice of the topic of a scientific article, covering a set of issues, the study of which has an indisputable theoretical value.

3. Results and discussion

3.1. The legal nature of war crimes and crimes against humanity and the problem of their criminalization

By their nature, war crimes are among the most serious and serious crimes known to mankind. According to modern international law, international crimes (crimes against humanity) are genocide, aggression, war crimes, crimes against humanity.

The international community refers to war crimes as any of the following acts: deliberately directing an attack against civilians in a war zone; committing violent acts in order to spread terror among the civilian population; deliberately carrying out an indiscriminate attack affecting civilians or civilian objects, knowing that such an attack would result in excessive deaths, injuries to civilians or damage to civilian objects; deliberate attacks on unprotected areas or demilitarized zones; deliberately transforming into an object of attack a person known to be hors de combat; deliberate attacks on medical personnel, equipment and materials.

Deliberately carrying out an attack, knowing that such an attack would lead to broad, long-term and serious environmental damage; the use of weapons, shells and materials that cause excessive injury or unnecessary suffering; use of poison or poisoned weapons or suffocating, poisonous or other gases and all similar liquids, materials or devices; use of chemical or bacteriological weapons; the use of bursting bullets or weapons, the main action of which is injury; the use of indiscriminate traps or mines (which can affect both combatants and civilians) in places where there is a high probability of civilians being (Koval and Avramenko, 2019).

Determination of the grounds for the application (criminalization) or refusal to apply (decriminalization) of criminal influence should be recognized as a constant problem of criminal law. It should be emphasized that the perpetrators of most war crimes today, unfortunately, manage to avoid criminal prosecution. One of the reasons is the imperfection of the legislation and its non-compliance with international standards.

Despite the lack of a legislative definition of war crimes, some of those are provided for in Chapter XIX of the Criminal Code of Ukraine: violence against the population in the area of hostilities (Article 433); mistreatment of prisoners of war (Article 434); illegal use of symbols of the Red Cross, Red Crescent, Red Crystal and their abuse (Article 435); looting (art. 432). At the same time, looting in accordance with the Criminal Code of Ukraine has a much narrower application compared to the one provided by the Geneva Conventions and, accordingly, the Rome Statute. Thus, according to Ukrainian law, looting is the theft on the battlefield of things that are killed or wounded, whereas according to the Rome Statute, looting is the seizure of any property without the consent of its owner for personal use.

The universal norm regarding war crimes is contained in Chapter XX of the Criminal Code of Ukraine. So, in accordance with Art. 438 «Violation of the laws and customs of war» is considered a crime of ill-treatment of prisoners of war or civilians, expulsion of civilians for forced labor, looting of national values in the occupied territory, use of means of warfare prohibited by international law, other violations of the laws and customs of war provided for by international treaties ratified by the Verkhovna Rada of Ukraine, as well as ordering the commission of such actions (Criminal Code of Ukraine, 2021).

When applying this norm, it is necessary to similarly focus on the practice of international criminal courts, doctrine, authoritative comments on international humanitarian law and the provisions of international treaties. At the same time, the list of acts that may be considered violations of the laws and customs of war does not necessarily have to coincide with the list from Article 8 of the Rome Statute, or the list of serious violations of international humanitarian law under the Geneva Convention or the First Additional Puncture.

It can be expanded, but not arbitrarily. In any case, the expansion of the list of these acts should be supported in international practice. Otherwise, Ukraine will almost certainly face cases against itself in the European Court of Human Rights.

In accordance with modern international law and practice, as well as the criminal legislation of foreign countries, crimes of aggression are considered exclusively in the context of political subjectivity, that is, criminal liability, including international liability. It is possible to attract only the highest political and military leadership of the aggressor state, which by its powers can actually plan, prepare or unleash (initiate) an aggressive war or order aggressive hostilities.

Thus, bringing to criminal liability persons from among ordinary servicemen of the Russian Federation according to the qualification of Art. 437 (planning, preparation, unleashing and waging an aggressive war) of

the Criminal Code contradicts both the provisions of current international legal acts and the practice of criminalizing aggression in the legislation on criminal liability of EU countries (Khrypun, 2022).

It should be emphasized that currently the Criminal Code of Ukraine does not have responsibility for crimes against humanity covered by Art. 7 of the Rome Statute and contain the following features of a large-scale or systematic attack against the civilian population, the performer's awareness of the large-scale and systematicity, and be committed in the form of: murders (civilians); destruction (mass destruction of civilians or occurred within the framework of such destruction); the use of a vacuum bomb; deportation or forced displacement of the population; Torture; persecution (restriction of the freedom of one or more persons in terms of exercising fundamental rights) (Rome Statute Of The International Criminal Court. Charter Of The United Nations, 1998).

Currently, we have to state the imperfection of certain norms of the Criminal Code of Ukraine, which sometimes creates obstacles in an adequate response to hostilities in the temporarily occupied and adjacent territories. Currently, there is an urgent need to revise Chapters XIX-XX of the Code in order to include in their composition the norms that would provide for criminal liability for all actions against the interests of the people of Ukraine.

We propose to focus on the list of acts that can be qualified as a violation of the laws and customs of war proposed in the draft law «On Amendments to Certain Legislative Acts of Ukraine to Ensure the Harmonization of Criminal Legislation with the Provisions of International Law» No. 9438 (On The Adoption As A Basis Of The Draft Law Of Ukraine On Amendments To Certain Legislative Acts Of Ukraine To Ensure The Harmonization Of Criminal Legislation With The Provisions Of International Law, 2019). This list complies with international standards and Ukraine's obligations under international treaties to criminalize violations of international humanitarian law.

The challenges faced by the national justice system include the inconsistency of criminal legislation with the generally recognized provisions of international criminal law enshrined in the Rome Statute of the International Criminal Court (hereinafter – the ICC) (there is no explanation of what war crimes are, the blank disposition of Article 438 of the Criminal Code of Ukraine, the general subject of the crime of aggression, the lack of responsibility for crimes against humanity, the lack of an institution of team responsibility, etc.). This problem requires a comprehensive solution. Some lawyers reasonably believe that the way out of this situation is the adoption of the law on transitional justice (Bida, 2021).

In addition, the problems with bringing perpetrators to justice are created for Ukraine by the lack of a unified approach to the qualification of war crimes. The analysis of the specified category of criminal proceedings showed the absence of a single position in the qualification of these criminal actions among the investigative bodies and the prosecutor's office, which negatively affects the process of organizing the pre-trial investigation and its results as a whole.

As a result of the ambiguous and diverse assessment of this category of crimes, a dual nature was gradually laid in the mechanism of preliminary and final criminal-legal qualification of the circumstances of the crime and the actions of suspects, when the same events were simultaneously assessed as participation in the crimes of aggression, and as terrorist acts, and in other individual cases – as a violation of the laws and customs of war.

3.2. Prospects for using the resources of the International Criminal Court and establishing a Special International Tribunal to bring to personal responsibility for the commission of crimes of aggression

Under international law, the most active way to investigate and bring the perpetrators to justice is the state in whose territory war crimes are committed (Nazarchuk, 2020). In regulating the organization and interaction of law enforcement and judicial bodies in the investigation of crimes at the interstate level, bilateral and multilateral international treaties play a significant role (Smyrnov, 2003), which, first of all, should include the European Convention on Mutual Assistance in Criminal Matters of 1959; European Convention on the Transfer of Criminal Proceedings of 1972; convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of January 22, 1993 etc.

To date, in Ukraine, all data on crimes of aggression committed on its territory must be promptly collected, appropriately documented, which will further allow administering justice in order to restore justice for victims of violence. That is, fixing the events that have signs of war crimes and crimes against humanity committed by the RF in Ukraine is necessary for: achieving justice and bringing to inevitable responsibility the leadership of the Russian Federation and all those responsible for these crimes; guaranteeing effective justice to prevent the commission of new such crimes; informing the international community in order to prevent disinformation and silence the facts about the crimes committed; strengthening the country's legal position in investigations, litigation at the national and international levels; assessment of the damage caused to the state and citizens as a result of large-scale armed aggression (Participation of Ukrainian organizations in documenting crimes committed by the Russian Federation in Ukraine, 2022).

In the world there is a rather conditional division into «internal» and «external» models of prosecution of war criminals. The main criterion is whether the state wants to actively investigate cases of war crimes on its territory, or whether the leading role belongs to external factors (international institutions, foreign mechanisms, etc.).

Ukraine is still using hybrid tactics, on the one hand, directing efforts to bring the perpetrators to justice as much as possible by means of the national legal system, on the other hand, it relies on the ICC as a universal jurisdiction over complex jurisdictional issues or immunities, or in case of insufficient resources.

International customary law provides an opportunity to exercise universal jurisdiction over war crimes that are not serious violations, regardless of the citizenship of their perpetrator and the place of their commission. Universal jurisdiction may be provided for by the rule of international customary or contractual law.

If a universal jurisdiction is established by a contract, it is usually mandatory. Universal jurisdiction can be exercised either by adopting internal legislative or in the form of an investigation into persons suspected of committing offenses and transferring them to the court. The grounds for exercising universal jurisdiction over war crimes are present simultaneously in international treaty and customary law.

Usually, the parties to the conflict make it clear that they will not cooperate in any way and in every way interfere with the investigation. As a result, active opposition to the organization of the investigation and collection of evidence-based information about war crimes committed by the opposing parties to the armed conflict is formed by hiding traces of war crimes (destruction of relevant documentation, evasion of its issuance to investigative groups, etc.). This behavior is explained by a completely understandable unwillingness to be convicted of committing illegal actions, paying reparations in the future.

ICC Prosecutor F. Bensouda stated that:

> The events in Ukraine show signs of war crimes and crimes against humanity and require a more detailed investigation. Despite the available information about national court proceedings, potential cases that may appear on the basis of an investigation would be admissible in the ICC. This is explained either by the fact that the authorized bodies in Ukraine and/or in the Russian Federation do not take active actions against the relevant categories of persons and acts, or by the fact that the national judicial system is not «accessible» in the territory under the control of the opposite party, which makes it impossible to detain the accused, or to obtain the necessary evidence and testimony, or to conduct proceedings by representatives of the competent authorities (Prischepa, 2020, n/y).

It should be emphasized that the ICC, as the highest court for criminal prosecution of international crimes, faces objective difficulties in obtaining jurisdiction over the crime of aggression. In addition, neither Ukraine nor Russia ratified the Rome Statute, although Ukraine recognized the ICC's jurisdiction to prosecute other international crimes. In addition, within a universal jurisdiction, only a few countries can prosecute for this fundamental international crime.

Despite all its shortcomings, the International Criminal Court is currently the only international mechanism that gives a chance to bring to personal responsibility the highest military leadership of the Russian Federation. In view of this, the main attention of the Special International Tribunal, the creation of which is planned, should be focused solely on the act of aggression, so that the work of the ICC is complemented solely to attract the military-political leaders of the RF, who planned, prepared, initiated and carried out an act of aggression in Ukraine, and later - control and manage its implementation.

It is possible that the tribunal will consider the actions of Belarus falling under paragraph f of Art. 8 of the Rome Statute, as the state that allowed its territory to be used to commit an act of aggression against Ukraine (Ogrenchuk, 2022). The narrow and clear purpose of the tribunal will also mean a reasonable budget, as it will not have to review the cases of hundreds of mid-level officials.

International organizations and a number of countries currently support the creation of a tribunal, which can be created on the basis of a multilateral treaty between states or on the basis of an agreement with international organizations such as the UN, the EU or the Council of Europe. The key thing is that the status of this judicial institution should be international and cover as many states as possible. Also, the jurisdiction of the Special Tribunal should cover the beginning of an armed conflict, that is, from 2014, and should not have a final date, as the armed conflict continues.

3.3. Organizational and legal aspects of the investigation of war crimes and crimes against humanity

It should be emphasized that in March 2022, the UN Human Rights Council launched a corresponding investigation into Russian aggression and created an independent commission, in April 2022 the Parliamentary Assembly of the Council of Europe adopted a resolution «Consequences of the Russian Federation's continued aggression against Ukraine: the role and reaction of the Council of Europe», in which it called on member states and international judicial institutions to promptly investigate the crimes of Russian invaders in Ukraine.

On 19.05.2022, the European Parliament adopted a resolution containing a number of important points: taking all necessary measures to investigate war crimes, crimes against humanity, genocide and aggression committed on the territory of Ukraine; creation of a special international tribunal; expanding the mandate of Eurojust to ensure the analysis and preservation of the collected evidence, etc. (Pashkov, 2022).

In Ukraine, the Office of the General Prosecutor of Ukraine (hereinafter – the OGP), as the legally established body responsible for the investigation of war crimes on the territory of Ukraine, plays a key role in ensuring the prosecution of those responsible for war crimes and crimes of cruelty. However, the scale of these criminal actions is unprecedented and puts forward huge demands to the entire law enforcement system and justice authorities.

The main goal at this stage is to ensure accountability for war crimes in Ukraine, to provide assistance, advice and resources necessary to prosecute criminals. Currently, various expert groups and international missions involved in the investigations carried out by Ukrainian law enforcement agencies involved in the collection and execution of evidence of crimes.

In particular: the ICC Prosecutor's Group (42 investigators, forensic experts and support staff (The Prosecutor of the International Criminal Court sent a group of 42 investigators and forensic experts to Ukraine to investigate international crimes, 2022), joint investigation team (Ukraine-Lithuania-Poland); a team of French criminologists; Council of Europe Advisory Group; a group of experts from the international organization Human Rights Watch; American «Conflict Observatory», created at the initiative of the State Department and so on. In addition, 12 countries have launched their own criminal investigations into the events in Ukraine, and more than 40 countries have supported the ICC investigation. The Office of the President of Ukraine also initiated the creation of a personal register of Russian interventionists who committed war crimes on the territory of Ukraine (Advisory group on investigation of war crimes and crimes against humanity for Ukraine, 2022).

The support of the EU, the US and the UK-initiated Advisory Group on War Crimes and Crimes against Humanity, the Office of the Prosecutor General aims to streamline coordination and communication measures to ensure the application of best practices, avoid duplication of efforts, and support the effective use of financial resources and qualified personnel to respond to the needs of the OGP.

The main task of such a group, which included experienced prosecutors on the investigation of war crimes, investigators and other specialists who should provide the necessary expert potential, provide training, advisory and operational support to the OGP. The mobile investigation teams also

include international and Ukrainian specialists to increase the capabilities of the war crimes unit, regional prosecutors to conduct investigative (inquiry) actions and assist Ukrainian investigators in conducting investigative actions at crime scenes (Advisory group on investigation of war crimes and crimes against humanity for Ukraine, 2022).

Thus, it is on the agenda to ensure clear management and coordination of the international investigation team (from prosecutors, ballistics, pathologists to translators), under the auspices and control of the ICC and the Eurojust agency in order to collect, execute, systematize and preserve the factual basis of evidence according to the norms of the international protocol.

The organization and methodology of the investigation, the collection of evidence of war crimes committed by the parties to the armed conflict are directly influenced by the following destructive factors: a rapid change in the operational situation; frequent redeployment of military units and units; death, wounding and capture of witnesses, victims, suspects; change of situation as a result of bombing and shelling, occupation; mining of the terrain, shelling of snipers, etc.; a large number of proceedings on such facts; the difficulty of bringing to criminal liability the parties to the conflict; a significant period of time from the moment of the massacres to the beginning of the study of mass grave sites, which prevents their identification due to the decomposition of corpses.

Problems of forming an evidence base due to the inability to access witnesses, scenes, etc.; selective provision of military information, i.e. documents, objects, photographs from drones, decoded recordings of interceptions of radio conversations, etc., politicization of the investigation process and investigation on the border line between national sovereignty and international responsibility, in the area between the legal and political spheres; investigation of war crimes only against one of the parties to the conflict, etc.

Unwillingness of the parties to an armed conflict to comply with the legal requirements of the justice authorities and a number of international legal provisions; problems of ensuring the testimony of high-ranking leaders and diplomats; attempts to dramatize the «commission» of war crimes by the enemy; counteraction to the investigation; armed resistance during detention; receiving combat and mental injuries by persons involved in the investigation process.

The unwillingness of the parties to the armed conflict to prosecute their citizens – war criminals, to whom the population often refers as «heroes», and the lack of a binding effective legal mechanism for the search, detention and transfer of war criminals is one of the destructive factors in the investigation of war crimes.

It should also be emphasized the need to establish constant cooperation, regular exchange of experience with representatives of the international community, prioritizing political considerations and short-term interests of states, providing the international community with political assistance in collecting and organizing the collection of evidence-based information on war crimes, the arrest of criminals. It is also effective to widely involve representatives of international organizations (Organization for Security and Cooperation in Europe, Human Rights Watch, etc.) and the media in order to use the institute of privileged evidence by international criminal justice authorities.

At the national level, members of the investigative task force directly interact with each other, coordinate the main directions of pre-trial investigation, conduct procedural actions, and exchange the information received. Coordination of their activities on the territory of Ukraine is carried out by the Prosecutor General's Office of Ukraine (Second Additional Protocol To The European Convention On Mutual Legal Assistance In Criminal Matters, 2001), as the initiator of the creation of a joint investigation team. Also, in addition to representatives of law enforcement agencies of the member states of the organization, which are part of the joint investigation teams, within the EU there is a possibility of involving employees of Europol and Eurojust (Shostko and Ovcharenko, 2008).

The specificity of the content of the methodology for investigating war crimes committed during an armed conflict is determined mainly by the group (brigade) method of investigation, investigation on «hot tracks» and special conditions for conducting investigative (investigative) actions in an armed conflict.

This applies to both traditional investigative (search) actions (interrogation, search, inspection of the scene, etc.) and new techniques for forensic science, which have become widespread in practice only in areas of armed conflict (for example, interrogation of prisoners of war, research of mass grave sites, analysis of radio conversations, etc.).

The main evidence in the activities of international criminal justice bodies is the testimony of witnesses, victims, suspects, accused and documents with the widespread practice of their preliminary fixation using technical means obtained during interrogations, examinations, searches, appointment and conduct of examinations.

In our opinion, it is necessary to develop new techniques for forensic science, which are common in practice only in areas of armed conflict (intelligence analysis, involvement in the case of a large number of photo-audio and video materials proving the commission of war crimes, etc.). Investigative (investigative) actions should be aimed at identifying

specific command personnel (pilots, artillerymen, snipers, etc.) who gave and carried out orders for airstrikes, shelling and destruction of civilians, settlements, other war crimes, and then, on the basis of regulatory regulation of the activities of officials of the state party to the conflict – to identify the perpetrators.

It is worth noting that there are already some successes in the investigation of war crimes and crimes against humanity in Ukraine. Thus, since the active phase of military aggression on the territory of Ukraine on 24.02.2022, as of October 2022, suspicion of aggression, its planning, preparation and implementation of 624 top officials of the highest political and military leadership of the RF has been notified in absentia (Kostin: 626 representatives of the leadership of the RF reported suspicion of a crime of aggression, 2022).

The analysis of the ICC's work makes it possible to identify the following conceptual organizational measures that go beyond individual criminal proceedings, the rejection of which destructively affects the investigation of war crimes and crimes against humanity: the definition of an investigation strategy and the organization of investigation and collection of evidence; determination of the structure of bodies and the principles of organization of their work; the procedure for establishing an interdepartmental investigative task force (hereinafter – the MCOG), material, technical and logistics support for their activities; organization of ensuring the right to qualified legal protection and the procedure for attracting other participants in criminal proceedings (translators, specialists, concepts, etc.); definition of the principles of information and analytical work, organization of control, accounting, reporting; organization of interaction and cooperation between states, international and national criminal justice bodies; optimization of evidence collection, adaptation of the use of human resources in «field» conditions; organization of expert research and activities of expert institutions, etc.

Determining the strategy of organizing the investigation and collecting evidence-based information about war crimes and crimes against humanity, it should be understood that representatives of the military-political leadership of states, as a rule, themselves do not directly participate in the commission of such crimes, do not personally give orders to commit such actions, do not sign the relevant documents, etc.

Therefore, in our opinion, when organizing the collection of evidence-based information on war crimes and crimes against humanity committed by representatives of the military-political leadership of states, the main efforts should be focused on collecting sufficient evidence that gives grounds for accusing those who bear the greatest responsibility and occupy the highest political and military positions.

To prove their guilt, it is necessary to establish a connection between persons pursuing state policy with a set of crimes committed in different areas of armed conflict, to prove that they or under their direct leadership developed and put into operation a strategic criminal plan, that is, to apply the doctrine of «common goal» when several criminals act together to achieve the goal.

In conditions of limited time, in the absence of the opportunity and resources to organize a simultaneous investigation of a large number of criminal proceedings on war crimes committed in different areas of the armed conflict, each IIOG should have the task of quickly and efficiently conducting investigative (investigative) actions and collecting the maximum amount of material evidence.

At the same time, IIOG prosecutors should coordinate the investigation of various criminal proceedings, ensure effective exchange of information, promptly and competently report suspicion to the main organizers of war crimes. Under such conditions, interaction, taking into account the specifics of war crimes, is one of the determining factors for the successful investigation of this type of socially dangerous acts.

In the process of organizing the investigation of war crimes and crimes against humanity and the collection of evidence-based information, various forms of interaction between law enforcement agencies can be used. There may be difficulties associated with collecting evidence outside the territory of the relevant state on the territory of the other party, in compliance with the rights of participants in criminal proceedings.

In our opinion, in order to minimize the consequences of destructive factors that affect the effectiveness of war crimes investigation, it is necessary to create a special governmental institute for cooperation with the ICC with the appointment of national coordinators. This requires amendments to the CPC of Ukraine, providing for the possibility of creating an institution of joint IIOG, that is, to form joint groups of employees of the ICC and national criminal justice bodies on the basis of relevant international treaties to organize the collection of evidence-based information on war crimes.

Summing up the unit, it should be noted that when investigating war crimes and crimes against humanity, it is necessary to rationalize the procedure for conducting investigative (investigative) actions by adapting them to the conditions of armed conflict, using the latest technologies for fixing evidence, expanding and strengthening the expert base, improving the forms and methods of interaction with other law enforcement and state bodies, improving the quality characteristics and reliability of communications and transport, etc.

Conclusions

The imperfection of certain provisions of the criminal legislation of Ukraine was stated, which creates obstacles in an adequate response to criminal actions that are interpreted by the international community as war crimes and crimes against humanity crimes of hostilities in the temporarily occupied and adjacent territories.

This actualizes the need to supplement the Criminal Code with relevant provisions that would provide for criminal liability for all actions against the interests of the people in the conditions of military aggression, meet international standards and Ukraine's obligations under international treaties to criminalize violations of international humanitarian law.

Given the relative novelty for Ukraine of war crimes and crimes against humanity, their specificity, significant public resonance and an extremely large number, it is necessary for law enforcement agencies and courts to develop a common position in the criminal legal qualification of the studied illegal acts in order to increase counteraction to their commission, organization of pre-trial investigation and trial.

We see the prospects of documenting war crimes and crimes against humanity, and further bringing to justice the perpetrators of them, first of all, the top political and military leadership of the aggressor state, in using the resources of the International Criminal Court and the Special International Tribunal tested by practice. In addition, it is expedient to create a special state institute for interaction with the International Criminal Court with the appointment of national coordinators and make appropriate changes to national legislation.

The concept of investigation of war crimes and crimes against humanity is a comprehensive, interdisciplinary holistic theoretical system of provisions on specific patterns in the field of legal support, organization of investigation and collection of evidence-based information on these crimes, search, detention and transfer of officials involved in their commission within the framework of international cooperation.

This concept makes it possible to combine scientific provisions on the activities of law enforcement agencies and criminal justice bodies under special legal regimes into a single system, and contains scientifically based methodological recommendations on the organization of documentation and investigation of war crimes and crimes against humanity.

In order to collect, execute, systematize and preserve the factual base of evidence on war crimes and crimes against humanity according to the norms of the international protocol, the relevant changes are required by the provisions of the criminal procedural legislation through detailed regulation in it of the powers of joint international investigative and

operational groups under the auspices and control of the International Criminal Court and the Eurojust agency.

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Legal regulation of the automation of judicial enforcement proceedings: International experience

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Abstract

The purpose of the article was to offer ways to improve the legislation regulating the field of automation of judicial enforcement proceedings, in order to guarantee the rights of the executing entities. The research methodology is based on the application of the following methods of scientific cognition: analytical, comparative, legal, hermeneutic and synthesis. Gaps in the legal regulation of automation of court enforcement proceedings in Ukraine were identified and ways to eliminate them were suggested. The authors have offered amendments to legislative acts with respect to: granting the right to the parties to enforcement proceedings to apply through the enforcement officer to the State Enterprise "National Information Systems" to further solve problems of removing obstacles to access to the Automated System of Court Enforcement Proceedings. It is concluded that, it can be stated that the automation of court enforcement proceedings is a significant achievement of the national system of court enforcement proceedings. However, in order to improve the legislation on the automation of judicial enforcement procedures and the practice of its implementation, a set of institutional reforms must be carried out.

Keywords: judicial enforcement procedure; compulsory enforcement of judgments; automated system of judicial enforcement procedure; private executor; information.

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Regulación legal de la automatización de los procedimientos judiciales de ejecución: Experiencia internacional

Resumen

El objeto del artículo fue ofrecer las vías para mejorar la legislación que regula el ámbito de la automatización de los procedimientos judiciales de ejecución, con el fin de garantizar los derechos de las entidades ejecutoras. La metodología de la investigación se basa en la aplicación de los siguientes métodos de cognición científica: analítico, comparativo, jurídico, hermenéutico y de síntesis. Se identificaron lagunas en la regulación legal de la automatización de los procedimientos judiciales de ejecución en Ucrania y se sugirieron formas de eliminarlas. Los autores han ofrecido enmiendas a los actos legislativos con respecto a: otorgar el derecho a las partes en los procedimientos de ejecución a solicitar a través del oficial de ejecución a la Empresa Estatal «Sistemas Nacionales de Información» para resolver además problemas de eliminación de obstáculos para el acceso al Sistema Automatizado de Corte Procedimientos de Ejecución. Se concluye que, cabe afirmar que la automatización de los procedimientos judiciales de ejecución es un logro significativo del sistema nacional de procedimientos de ejecución judicial. Sin embargo, con el fin de mejorar la legislación sobre la automatización de los procedimientos de ejecución judicial y la práctica de su aplicación, hay que realizar un conjunto de reformas institucionales.

Palabras clave: procedimiento judicial de ejecución; ejecución forzosa de resoluciones; sistema automatizado de procedimiento judicial de ejecución; ejecutor privado; información.

Introduction

Access to reliable and objective information and the existence of an effective system of protection and counteraction to unauthorized distribution, use and violation of the integrity of information with limited access in accordance with the Information Security Strategy are components of information security of Ukraine (Decree of the President of Ukraine No. 685/2021, 2021). Since, it is information security that is responsible for the protection of the citizens and state interests in the information sphere from threats of various nature, both real or virtual threats (Novytskyi, 2022).

Directive of the European Parliament and the Council (EU) 2016/1148 of 6 July 2016 on measures for a high common level of security of network and information systems on the territory of the Union (Directive (EU) No. 2016/1148, 2016) plays an important role in the legal regulation of

information security sector in the EU. This directive establishes tools for achieving a high level of security of network and information systems within the EU.

The Network and Information Security (NIS) Directive, which was published in July 2016, requires EU Member States to adopt a national strategy for the security of network and information systems also known as NCSS (National Cyber Security Strategy), as set out in the Articles 1 and 7 (Sarri *et al*, 2020). We believe that the specified documents can be a guideline for the implementation of effective measures in the field of ensuring information security in Ukraine.

Compulsory enforcement of court decisions in Ukraine and other agencies and officials is carried out within enforcement proceedings. Registration of enforcement documents, documents of enforcement proceedings, recording of enforcement actions is carried out in the automated system of court enforcement proceedings (hereinafter – ASCEP) in accordance with Part 1 of the Art. 8 of the Law of Ukraine "On Court Enforcement Proceedings" (Law of Ukraine "On Court Enforcement Proceedings").

L. V. Krupnova notes that the Unified State Register of Court Enforcement Proceedings no longer exists due to the introduction of the ASCEP in accordance with the Order of the Ministry of Justice of Ukraine dated from August 5, 2016 No. 2432/5 (Krupnova, 2018). But we do not agree with this statement, because in accordance with c. 2 of the Section I of the Regulations on the Automated System of Court Enforcement Proceedings approved by the Order of the Ministry of Justice of Ukraine on August 5, 2016 No. 2432/5 (hereinafter – the Regulations on the ASCEP), the Unified State Register of Court Enforcement Proceedings is an archival component of the Automated System of Court Enforcement Proceedings and contains data on enforcement proceedings that were registered before the implementation of the Automated System of Court Enforcement Proceedings (Regulations on the Automated System of Court Enforcement Proceedings, 2016). Therefore, the Unified State Register of Court Enforcement Proceedings exists, but already as a component of the ASCEP.

The functioning of the ASCEP as a single electronic data system on enforcement proceedings is a significant achievement of Ukraine in the field of digitization of administrative activities. For example, Bulgaria does not have an automated system for managing enforcement proceedings; document flow of enforcement proceedings is carried out in paper form. However, bailiffs can receive data from electronic registers, use programs with databases to send electronic documents (Belikova and Popova, 2017). Similar situation is in Poland: an enforcement officer has access to state electronic registers, bank account databases, car owner's database, social insurance fund database, provides identification of the debtor's employer (as a payer of social contributions) (Plokhuta, 2022).

The Money Restrictions Information System (PLAIS) functions in Lithuania, which sends the enforcement officer's decision to seize the debtor's funds to all banks and financial institutions in the country. The system debits funds in the required amount and transfers them to the enforcement officer taking into account sequence and proportionality (Avtorgov, 2021). The use of such a system is a significant achievement of Lithuania in automating compulsory enforcement of decisions. However, the Money Restrictions Information System (PLAIS) performs different functions than the ASCEP. Besides, the Lithuanian system of automating all enforcement proceedings does not contain monetary restrictions.

Analysis of the Regulations on the ASCEP allows us to generalize that it contains a large amount of information with limited access. Therefore, the issues of legal provision for entering data into the ASCEP, access to them, and their security are urgent. Therefore, the authors of this article offer own vision of the ways to improve the legislation regulating the field of automation of enforcement proceedings in order to ensure the rights of enforcement proceedings entities.

1. Methodology of the study

The methodological basis of this scientific article is based on the use of various methods of scientific cognition. Due to the application of the analytical method of scientific cognition, the problem of the divergence of the content of law norms regarding the entry of data into the ASCEP during the registration of an enforcement document in the ASCEP and the actions of an enforcement officer in case if an enforcement document does not contain all the details provided by law – on the one hand, and judicial practice regarding interpretation and application of such legal norms – on the other hand.

The comparative and legal method of scientific cognition made it possible to compare the norms of Ukrainian legislation and the norms of the legislation of certain foreign countries in the field of automation of court enforcement proceedings. The generalization that the use of ASCEP is a significant achievement of the domestic system of compulsory enforcement of decisions has been given on the basis of the application of this method.

The hermeneutic method of scientific cognition was used to establish the content of law norms regulating the field of automation of court executive proceedings in Ukraine, namely: entering data into the ASCEP and accessing them, the security of data contained in the ASCEP, as well as current judicial practice on the issues highlighted in this research study. The synthesis method made it possible to generalize considerations regarding the issues of the topic of the scientific article and to develop

specific suggestions for improving the legislation regulating the field of automation of court executive proceedings in order to ensure the rights of court enforcement proceedings entities.

2. Results and Discussion

2.1. Entering data into the Automated System of Court Enforcement Proceedings and access to them

The Sections II and IV of the Regulations on the Automated System of Court Enforcement Proceedings define the data that must be entered into the Automated System of Court Enforcement Proceedings when registering an enforcement document and when conducting enforcement proceedings (Regulations on the Automated System of Court Enforcement Proceedings, 2016). Certain problems occur, if an enforcement document needs to be registered in the ASCEP and it does not contain all the data that must be entered in the ASCEP when registering such an enforcement document.

Thus, in addition to other data, the date, month, year of birth, registration number of a taxpayer's registration card or series and passport number of the debtor-individual are entered into the ASCEP when registering an enforcement document, in accordance with c. 2 of the Section II of the Regulations on the ASCEP (Regulations on the Automated System of Court Enforcement Proceedings, 2016). In accordance with paragraphs 3, 4, Part 1 of the Art. 4 of the Law of Ukraine "On Enforcement Proceedings", this personal data of the debtor-individual must be contained in the enforcement document.

In accordance with paragraph 6, Part 4 of the Art. 4 of the Law of Ukraine "On Court Enforcement Proceedings", if an enforcement document does not meet the requirements stipulated in this Article, it is returned to the execution creditor by the state executive service agency, a private enforcement officer without acceptance for execution (Law of Ukraine "On Court Enforcement Proceedings").

Therefore, if an enforcement document is presented for compulsory enforcement and does not contain the date of birth of the debtor-individual, his registration number of the taxpayer's registration card or series and passport number, then such an enforcement document must be returned to the execution creditor without acceptance for execution.

However, the Decision of the Supreme Court dated from August 22, 2018 in case No. 471/283/17ts states that the absence of information on the date of birth of the debtor, the registration number of the taxpayer's registration card and his passport data in an enforcement letter is not a

reason for returning enforcement documents by the state enforcement officer without acceptance to be done.

To substantiate the above, the Supreme Court referred to paragraph 3, Part 3 of the Art. 18 of the Law of Ukraine "On Enforcement Proceedings", which provides the right of an enforcement officer during the implementation of enforcement proceedings to receive explanations necessary for carrying out enforcement actions, certificates and other information, including confidential information, free of charge, from state authorities, enterprises, institutions, organizations regardless of the form of ownership, officials, parties and other participants in enforcement proceedings (The Decision of The Supreme Court at case No. 471/283/17ts, 2018). Similar conclusion is given in the Decision of the Supreme Court of 14 December 2022 in case No. 504/3238/16-ts (The Decision of the Supreme Court in case No. 504/3238/16-ts, 2022).

The authors of this study disagree with the above on the basis on the following. The interpretation of paragraph 3, Part 3 of the Art. 18 of the Law of Ukraine "On Enforcement Proceedings" indicates that an enforcement officer has the right to receive the information he needs to carry out enforcement actions, precisely during the implementation of enforcement proceedings. In order to carry out enforcement proceedings, it should be first initiated, and before that – one should register the enforcement document in the ASCEP.

That is, before initiating enforcement proceedings an enforcement officer cannot exercise the right to receive data in accordance with Part 3 of the Art. 18 of the Law of Ukraine "On Enforcement Proceedings". Therefore, in order to register enforcement proceedings and the initiation, it is necessary to fill out the form of the enforcement document in the "Parties" tab of the ASCEP, specifying the date of birth of the debtor, if the subtype of the debtor is an individual or an individual-entrepreneur (Dragan, 2017).

Therefore, all the data required by law to be entered in the ASCEP while presenting an enforcement document for compulsory enforcement must be entered when registering an enforcement document in the ASCEP. The agency or official who issued the enforcement document is responsible for the accuracy and completeness of the data contained there.

When receiving an enforcement document that does not meet the requirements of the law (for example, it does not contain data on the date of birth of the debtor-individual, the registration number of the taxpayer's registration card or passport data), an enforcement officer must act in accordance with the requirements of the law – to return such an enforcement document to the execution creditor without acceptance for execution.

The access of the parties to the ASCEP information is ensured by using the identifier for accessing information about the enforcement proceedings

in accordance with paragraph 2, c. 2 of the Section VII of the Provisions on the ASCEP. Such an access identifier is indicated in the report on registration of the enforcement document and the resolution on initiating enforcement proceedings. In accordance with c. 3 of the Section I of the Regulations on the ASCEP, the registrars of the ASCEP are responsible persons of the state executive service agency, state enforcement officers of the state executive service agencies, private enforcement officers, assistants of private enforcement officers, responsible persons of private enforcement officers, heads of state executive service agencies and their deputies (Regulations on the Automated System of Court Enforcement Proceedings, 2016).

However, the identifier of the access to information about enforcement proceedings is formed by other persons. Thus, the court in case No. 2-620/10, which was reviewed by the Kropyvnytskyi Court of Appeal, concluded in its decision dated from February 7, 2019 that the state enforcement officer does not have the legal grounds and technical ability to produce additional identifiers for the access to information about enforcement proceedings, since this identifier is provided to the ASCEP automatically upon initiating enforcement proceedings and according to the Regulations on the ASCEP, the state enforcement officer does not have access to its formation (The Ruling of Kropyvnytskyi Court of Appeal in case No. 2-620/10, 2019).

In accordance with clauses 1, 3 of the Section XIV of the Regulations on the ASCEP, the Administrator of the ASCEP is responsible for the quality of providing services for technical and technological support of the ASCEP. And in accordance with c. 2 of the Section I of the Regulations on the ASCEP, the Administrator of the ASCEP is the state enterprise "National Information Systems" (hereinafter – the State Enterprise "NAIS") (Regulations on the Automated System of Court Enforcement Proceedings, 2016).

But the legislation does not provide legal regulation of procedural interaction within the framework of enforcement proceedings between its parties and the Administrator of the ASCEP. The possibility of the parties to enforcement proceedings to have access to the ASCEP corresponds to their right to be informed about the progress of the enforcement proceedings, the procedural documents issued in it.

Therefore, we consider it expedient to supplement the Section VII of the Regulations on the ASCEP with the clause four of the following content: "In case if the parties to the enforcement proceedings do not have access to the System for reasons beyond their control, but which can be eliminated by the Administrator of the System within his competence, the parties have the right to apply to the enforcement officer with a request to remove obstacles to access to the System, which the enforcement officer forwards to the Administrator of the System within two days and informs the person who submitted such a request about the results of the consideration of the request".

2.2 Security of data contained in the Automated System of Court Enforcement Proceedings

The State Enterprise "NAIS" as the Administrator of the ASCEP is entrusted with the function of taking a set of programmatic, technological and organizational measures to protect the information contained in the ASCEP from unauthorized access and the responsibility for preserving information contained in the Automated System of Court Enforcement Proceedings in accordance with clauses 1 and 2 of the Section XIV of the Regulations on the ASCEP (Regulations on the Automated System of Court Enforcement Proceedings, 2016).

In order to ensure the integrity of information and to prevent unauthorized access to information contained in state information resources, users access to all systems and registers (including the ASCEP) has been blocked since the declaration of the martial law on the territory of Ukraine on February 24, 2022. It was carried out by the State Enterprise "NAIS" within the framework of its legally defined duties as the Administrator of the ASCEP (The answer of the State Enterprise "National Information Systems", 2022).

Registrars of the ASCEP (including state and private enforcement officers) were temporarily terminated access to the ASCEP in accordance with c. 1 of the Order of the Ministry of Justice of Ukraine dated from April 4, 2022 No. 1310/5 "Some issues of access to the automated system of court enforcement proceedings and the Unified Register of private enforcement officers of Ukraine during the period of the martial law" (Order of the Ministry of Justice of Ukraine No. 1310/5, 2022).

Gradually, such access to the ASCEP is being restored. In order to restore access to the ASCEP, the State Enterprise "NAIS" must receive a written notification from the Department of the State Executive Service of the Ministry of Justice of Ukraine about restoring the access of a specific enforcement officer (specific enforcement officers) to the ASCEP. Only after that notification the State Enterprise "NAIS" will restore such an access. By the end of 2022, 253 private enforcement officers have access to the ASCEP, or it is 89% of the total number of those operating in Ukraine (Chepurnyi, 2023).

However, at the same time, the Ministry of Justice of Ukraine does not keep track of the correspondence in terms of the number of requests from private enforcement officers regarding the restoration of their access to the ASCEP, which have been received by the Ministry since February 24, 2022 (The answer of the Ministry of Justice of Ukraine, 2023).

The order of the Ministry of Justice of Ukraine dated from April 4, 2022 No. 1310/5 "Some issues of access to the automated system of enforcement proceedings and the Unified Register of private enforcement officers of

Ukraine during the period of the martial law" does not contain deadlines for the preparation of written notices on the restoration of access to specific private enforcement officers to the ASCEP by the Department of the State Executive Service of the Ministry of Justice of Ukraine and addressing such notices to the State Enterprise "NAIS".

There are already court cases based on claims of private enforcement officers to the Ministry of Justice of Ukraine regarding the recognition of illegal omission of the Ministry of Justice of Ukraine, which consists in not restoring access to the ASCEP of private enforcement officers. The courts have already made a decision in some cases, some are still being considered in courts. As an example, we can cite the Decision of Kharkiv District Administrative Court of 13 December 2022 in case No. 520/5223/22 (the case at the stage of appellate review) (The Decision of Kharkiv District Administrative Court in case No. 520/5223/22, 2022).

According to the authors of this study, the termination of access to the ASCEP due to the declaration of the martial law in Ukraine on February 24, 2022 is a justified measure aimed at securing the data of the ASCEP from possible illegal actions. But the restoration of access of private enforcement officers to the ASCEP should take place in accordance with the legislation as soon as possible, so that they can continue to perform their functions – full, impartial and timely enforcement of decisions.

Therefore, we consider it appropriate to supplement c. 2 of the Order of the Ministry of Justice of Ukraine No. 1310/5 dated from April 4, 2022 with the c. 15 of the following content (after the words "... is not under temporary occupation as a result of the military aggression of the Russian Federation"): "Notice on restoration of access of a private enforcement officer to the automated system of court enforcement proceedings is prepared by the Department of the State Executive Service of the Ministry of Justice of Ukraine no later than three days after confirming the conditions, the fulfillment of which is mandatory for the restoration of such an access, and within three days is transferred by the Department of the State Executive Service of the Ministry of Justice of Ukraine to the Administrator of the automated system of court enforcement proceedings".

Conclusion

Having analyzed the state of legal regulation of the automation of compulsory enforcement of court decisions, other agencies and officials, it is worth stating that the use of the ACCEP is a significant achievement of the domestic system of court enforcement proceedings. However, in order to improve the legislation on the automation of court enforcement proceedings and the practice of its application, the following is expedient.

1. When registering an enforcement document in the ASCEP, all data required by law to be entered in the ASCEP when presenting an enforcement document for compulsory enforcement must be entered. The agency / official who issued it is responsible for the accuracy and completeness of the data contained in an enforcement document. When receiving an enforcement document that does not meet the requirements of the law (in particular, it does not contain data on the date of birth of the debtor-individual, his registration number of the taxpayer's registration card or passport data), an enforcement officer must act in strict accordance with the requirements of the law – return such an enforcement document to an execution creditor without acceptance for execution.
2. We offer to supplement Section VII of the Regulations on the ASCEP with the fourth paragraph of the following content: "If the parties to court enforcement proceedings do not have access to the System for reasons beyond their control, but which can be eliminated by the System Administrator within the scope of his competence, the parties have the right to apply to an enforcement officer with a request to remove obstacles to access to the System, which the enforcement officer forwards to the System Administrator within two days and informs the person who submitted such a request about the results of the consideration of the request".
3. Clause 2 of the Order of the Ministry of Justice of Ukraine dated from April 4, 2022 No. 1310/5 should be supplemented with paragraph 15 of the following content (after the words "...is not under temporary occupation due to the military aggression of the Russian Federation"): "Notice on restoring access of a private enforcement officer to the automated system of court enforcement proceedings is being prepared by the Department of the State Executive Service of the Ministry of Justice of Ukraine no later than three days after confirming the conditions, the fulfillment of which is mandatory for the restoration of such access, and within three days is transferred by the Department of the State Executive Service of the Ministry of Justice of Ukraine to the Administrator of the automated system of court enforcement proceedings".

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Theory and practice of influence caused by the criminal subculture on crime in the penitentiary sphere

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Abstract

The object of study was the study of the theory and practice of the influence caused by the criminal subculture on criminality in the penitentiary environment. In the main content of the research, two directions are highlighted: first, the influence of criminal subculture among convicts in places of detention of the State Criminal Executive Service of Ukraine and; the second direction of influence, this caused by criminal subculture among convicts who are registered with parole of the State Institution «Parole Center». The methodological basis of the research was presented as comparative-legal and systematic analysis, formal-legal method, method of interpretation, hermeneutic method, as well as methods of analysis and synthesis. Among the contributions of the research, the definition of the influence that the criminal subculture exerts on delinquency in the penitentiary environment is formulated. It concludes on the need for the mandatory application of measures for the individual prevention of professional delinquency, in terms of judicial and public policies.

Keywords: theory and practice; criminal influence; criminal subculture; probation; prison environment.

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Teoría y práctica de la influencia que provoca la subcultura delictiva sobre la delincuencia en el ámbito penitenciario

Resumen

El objeto de estudio fue el estudio de la teoría y práctica de la influencia que provoca la subcultura delictiva sobre la delincuencia en el ámbito penitenciario. En el contenido principal de la investigación, se destacan dos direcciones: primero, la influencia de la subcultura criminal entre los convictos en los lugares de detención del Servicio Ejecutivo Penal del Estado de Ucrania y; la segunda dirección de influencia, está causada por la subcultura criminal entre los convictos que están registrados con libertad condicional de la Institución Estatal "Centro de Libertad Condicional". La base metodológica de la investigación se presentó como análisis comparativo-legal y sistemático, método formal-legal, método de interpretación, método hermenéutico, así como métodos de análisis y síntesis. Entre los aportes de la investigación, se formula la definición de la influencia que la subcultura delictiva ejerce sobre la delincuencia en el ámbito penitenciario. Se concluye sobre la necesidad de la aplicación obligatoria de medidas para la prevención individual de la delincuencia profesionales, en términos judiciales y de políticas públicas.

Palabras clave: teoría y práctica; influencia criminal; subcultura delictiva; libertad vigilada; ámbito penitenciario.

Introduction

In view of the subject of the research, it should be noted that the state of penitentiary crime in the places of detention of the State Criminal-Executive Service of Ukraine (hereinafter referred to as the SCESU) and the authorized bodies on probation issues of the State Institution "Probation Center" (hereinafter referred to as the SIPC) in the conditions of martial law covers a significant amount of its indicators, in particular, influence caused by the criminal subculture on crime in the penitentiary sphere.

As a result of a sharp change in the nature of social relations and new economic processes taking place in Ukraine, the nature of crime has also changed. This, in turn, affected both the qualitative composition of convicts in prisons and the environment of convicts in general.

Consequently, the tendency to keep convicts in places of detention leads to overcrowding of prisons, significant human and financial costs for their maintenance, and it also significantly complicates the process of

socialization, resocialization of convicts as well as the possibility of their reintegration into the society after release.

Obviously, when the state does not pay enough attention to penal institutions where the processes of execution / serving of criminal sentences take place, there is an increased danger of emergence of a criminal subculture among convicts with its own values, norms, language (jargon, argot, slang), traditions, and lifestyle.

According to the research conducted by scientists of the "Intellect" scientific school such integration of the criminal subculture into lives of prisoners in places of detention is a consequence of pressure caused by some convicts on others, as well as hushing up of its existence by the administration of places of detention and, obviously, unwillingness to change it.

The purpose of this article is the theory and practice of influence caused by the criminal subculture on crime in the penitentiary sphere, since its main aspects can be useful in the process of preventing convicts from committing new crimes in the penitentiary sphere.

Based on the purpose, the following tasks are set: to find out scientific and practical approaches to defining the concept of criminal subculture in places of detention; to propose to the scientific community two hypotheses of influence caused by the criminal subculture on crime in the penitentiary sphere; to determine longevity of the criminal subculture among convicts in places of detention.

1. Literature review

It is important to emphasize that the term "criminal subculture" in places of detention has been used in the scientific sphere for a long period of time, but its influence on antisocial and, even more so, on crime in the penitentiary sphere has been discussed since relatively recently.

In particular, the domestic criminologist O. M. Dzhuzha defines criminal subculture as a set of special rules of behavior, customs, and morals that have developed in a criminal environment and are characterized by an anti-social orientation aimed at achieving the internal goal and the external goal of functioning of a criminal organization (Dzhuzha, 2011).

Another domestic scientist, L. Gula, when researching criminal subculture as a determinant of crime in penal institutions, came to the conclusion that criminal subculture in places of deprivation of liberty is a way of life of convicts who have united in groups of a negative direction and who adhere to certain criminal traditions in order to establish dominance over other convicts.

In addition, the scientist emphasizes that when studying the criminal subculture that exists in places of deprivation of liberty, one can clearly identify the fact that it has a rather close connection and influence on penitentiary crime. Based on criminal rules and prison traditions, self-regulation of relations between convicts is carried out; convicts implement inhumane methods of influence and suppress human dignity, and in some cases arbitrariness and cruelty are demonstrated (Hula, 2018).

Undoubtedly, their works will always be useful for the theory and practice of the criminal-executive system of Ukraine, since the problem of the penitentiary subculture is always connected with commission of new crimes by the convicted in places of detention. In addition, certain issues of theoretical understanding and development of humanism in the sphere of criminal law were researched by contemporary Ukrainian researchers Halaburda Nadiia, Leheza Yevhen, Chalavan Viktor, Yefimov Volodymyr, Yefimova Inna investigated (Halaburda *et al.*, 2021).

2. Materials and methods

The research is based on works by foreign and Ukrainian researchers regarding methodological approaches to understanding the theory and practice of influence caused by the criminal subculture on crime in the penitentiary sphere, etc.

With the help of the epistemological method defined have been theories and practices of influence caused by the criminal subculture on crime in the penitentiary sphere, etc.; thanks to the logical-semantic method, the conceptual apparatus was deepened, theory and practice of influence caused by the criminal subculture on crime in the penitentiary sphere have been determined etc. Thanks to the existing methods of law, we have managed to analyze the essence of theory and practice of influence caused by the criminal subculture on crime in the penitentiary sphere, etc.

3. Results and discussion

When studying the concept of subculture and its up-to-date meaning the domestic scientist O.G. Krykushenko divides it into the subculture of the criminal world (which is hidden from the society) and the subculture of penal institutions, especially places of detention where people use the subculture as a means of integration and overcoming the burdens associated with serving their sentence (Krykushenko, 2014).

Based on the results of their own research on crime in the penitentiary sphere scientists of the “Intellect” scientific school came to the conclusion

that isolation of persons guilty of crimes in places of detention does not always produce positive results, and the fact that when appearing in such places according to the court sentence they sometimes commit never less serious and especially serious crimes, provides the criminological science with the task of revising outdated concepts of prevention and creating new, more effective ones (Bohatyrov, 2022).

Supporting this position of scientists, we believe that it is just the time to develop a concept of counteracting influence caused by the criminal subculture on the process of execution/serving of criminal punishments. This is caused by the fact that the taxpayers, at whose expense convicts are kept in places of detention, do not understand why when being in conditions of isolation a convicted person commits a crime again, giving rise to a new type of crime - penitentiary crime.

Our proposal corresponds to the opinion of the domestic scientist I.M. Kopotuna, in whose opinion, commission of a new crime by a convicted person in places of detention increases the punitive side which is expressed in the non-alternative application of punishment in the form of deprivation of liberty for a certain period as well as in strengthening the conditions of the regime of serving punishments (Kopotun, 2013).

This is confirmed by the fact that the above-mentioned criminal subculture occupies an appropriate place among convicts in places of detention, and negatively affects their behavior during serving of a criminal sentence, and therefore it requires the administration of correctional colonies to apply various security levels to act preventively by means of registering convicts who support traditions of the subculture in places of detention.

So, in our opinion, the theory and practice of the influence of the criminal subculture on crime in the penitentiary sphere is based on two basic hypotheses. The first hypothesis is related to a certain system of humanization of the criminal-executive system in Ukraine at the stage of its transformation into the penitentiary system of Ukraine, which indicates that every reformation of the system generates changes in the activities of penal institutions. And it covers all aspects of life, both of convicts and of the personnel serving it.

The domestic scientist V. Radievskyi conducted a survey of employees of the criminal enforcement system of Ukraine regarding the stereotypes of the penitentiary subculture in places of detention and ways to change it. The respondents proposed the following solutions: psychological and pedagogical influence on small groups of convicts prone to committing new criminal crimes in places of detention (38.3%), elimination of criminal traditions among convicts (37.3%), improvement of material and living conditions of convicts in places of detention (36.3%), expanding

the influence of religious and public organizations on convicted relatives (31.3%) (Radziievskyi, 2012).

The above-mentioned approaches of scientists to the influence caused by the penitentiary subculture on the liberalization of the criminal-executive system of Ukraine show that in places of detention each convict (consciously or intuitively) aims to preserve his/her human personality, and therefore he/she is forced to focus on those who live in the conditions of imprisonment and even to increase his/her status by means of following traditions and customs of the penitentiary subculture (Matviichuk *et al.*, 2022).

And although the penitentiary subculture is in a certain shadow, it is not talked about publicly, it is absent in reports of correctional camps, both convicts and staff know about it. My life experience of working with convicts shows that they constantly complain about justice and violations of their rights, and if the administration of their correctional camp does not respond to such complaints, people from the penitentiary subculture take its place. It is leaders of the penitentiary subculture who take on the role of justice for food, receiving parcels from family and friends, a place to sleep, choosing a workplace, etc.

When researching crime in places of detention in Ukraine, the domestic scientist A.I. Bohatyrov came to the conclusion that the problem of the penitentiary subculture is closely related to criminal leaders who support customs and traditions of the criminal world by means of their illegal actions performed against the will of convicts, and who influence them in various forms and methods, and at the same time act as mediators of convicts based on the penitentiary subculture (Bohatyrov, 2019).

That is why some convicts (those who do not agree with inculcation of the penitentiary subculture in them) make another choice and agree to cooperate with the administration of the correctional camp. As a rule, the motive and choice consist in a possibility to get out of prison as soon as possible. It is precisely intercession of the administration of the correctional camp that is an unobstructed way to obtain the right to release on parole (Villasmil Espinoza *et al.*, 2022).

Therefore, it is important to understand how dangerous the penitentiary subculture is for the correction and re-education of convicts, their self-affirmation in the penitentiary. And if the Ministry of Justice of Ukraine does not want to assess the influence caused by the penitentiary subculture on liberalization of the criminal-executive system, we can predict its deterioration, not its improvement (Tylchyk *et al.*, 2022).

Another hypothesis involves determining factors of the penitentiary subculture that affect the psychological state of convicts in places of detention:

- illegal behavior of a convicted person while serving his/her sentence for the crime committed;
- refusal to implement decisions of the administration and staff of places of detention;
- suicide among convicts and prison personnel representatives;
- committing penitentiary crimes by convicts and prison personnel representatives;
- slang vocabulary, criminal tattoos, criminal folklore, use of alcoholic beverages, explosive materials etc. (Leheza *et al.*, 2022).

As our research showed, the Ministry of Justice of Ukraine does not reflect influence caused by the penitentiary subculture on lives of convicts in places of detention in reports and newsletters, and therefore it is very difficult to determine quantity and quality of such influence. We receive such information either during surveys of personnel of the criminal executive system or in conversations with operatives during their advanced training at educational institutions of the Ministry of Justice of Ukraine (Zhukova *et al.*, 2023).

It is important to note that influence caused by the penitentiary subculture on liberalization of the criminal-executive system of Ukraine in the up-to-date conditions of its reformation and transformation into a penitentiary system is connected, on the one hand, with insufficient funding from the state budget for development of the penitentiary system, and on the other hand, with acceptance of the penitentiary subculture by convicts who get adjusted to conditions in places of detention, where customs and traditions of the criminal world have been established for years (Kobrusieva *et al.*, 2021).

Therefore, influence caused by the criminal subculture in places of detention is connected with relations of execution/serving of punishment, which, according to domestic scientists, are based on the unity and differentiation of two subjects - the administration and the convicts. A sign of unity stems from the stay of these subjects in a single institution with its clearly defined boundaries and corresponding statutory (internal) rules. The sign of differentiation clearly stems from subordination relations (subordination vertical), based on inequality of legal statuses, which often leads to emergence of certain internal conflicts that support the criminal subculture in places of detention (Khalymon *et al.*, 2023).

Conclusions

The article examines the problem of influence caused by the penitentiary subculture on liberalization of the criminal-executive system of Ukraine. Attention is drawn to the necessity of mandatory application of measures for individual prevention of professional crime. It is determined that measures to neutralize criminogenic nature of places of deprivation of liberty are divided into organizational ones and educational ones.

Prevention of the penitentiary subculture is connected with implementation of a set of measures aimed at ensuring a proper standard of living, person's return to the society, education, and provision of necessary assistance after punishment.

Definition of influence caused by the criminal subculture on crime in the penitentiary sphere is formulated.

In addition, within the framework of the measures under consideration, it is necessary to develop special measures to counter the penitentiary subculture. Based on the results of the research, proposals have been made concerning improvement of the penitentiary subculture prevention system.

1. identification and registration of all leaders of the penitentiary subculture who are serving sentences in places of detention;
2. creation of a single data register in the Ministry of Justice of Ukraine on the leaders of the penitentiary subculture;
3. exclusion of residence of penitentiary subculture leaders with convicts who have committed a crime for the first time and are directed to serve their sentences in places of detention.

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Procesos de secularización de símbolos religiosos en el discurso político contemporáneo: Aproximaciones desde la antropología política

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Resumen

La relación de Estado-iglesia implica procesos que van más allá de la teoría política o las relaciones de poder; se presenta también en el lenguaje y se empleó en el discurso político, el cual guarda especial relación con la ideología de un determinado segmento de la sociedad. Desde la antropología política se buscan los recursos y herramientas necesarios para explicar los procesos que ocurren dentro del lenguaje y la simbología política. El presente articulo intento describir los procesos de secularización de símbolos religiosos en el discurso político contemporáneo. Basándose los autores en una metodología de análisis fenomenológico y empírico enmarcado con un diseño documental-bibliográfico; a partir de la revisión de textos especializados en la temática antes referida, se recolectaron textos que permitan identificar los procesos de secularización en el discurso político contemporáneo. Se concluye que la secularización de símbolos religiosos en el discurso político contemporáneo se refiere a la eliminación o reducción del papel de la religión en la política y la sociedad, a fin de promover la religiosidad en el ámbito privado y fomentar la tolerancia religiosa y la diversidad cultural, a partir de discursos cuyos ejes de interés giran en torno a la globalización, derechos humanos y democracia.

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Palabras Clave: secularización; símbolos religiosos; discurso político; antropología política; religiosidad y poder.

Processes of secularization of religious symbols in contemporary political discourse: Approaches from political anthropology

Abstract

The State-church relationship involves processes that go beyond political theory or power relations; it is also present in language and is used in political discourse, which is especially related to the ideology of a certain segment of society. Political anthropology seeks the resources and tools necessary to explain the processes that occur within language and political symbology. This article attempts to describe the processes of secularization of religious symbols in contemporary political discourse. Based on a methodology of phenomenological and empirical analysis framed with a documentary-bibliographic design; from the review of specialized texts on the subject referred to above, texts were collected to identify the processes of secularization in contemporary political discourse. It is concluded that the secularization of religious symbols in contemporary political discourse refers to the elimination or reduction of the role of religion in politics and society, in order to promote religiosity in the private sphere and encourage religious tolerance and cultural diversity, based on discourses whose axes of interest revolve around globalization, human rights and democracy.

Keywords: secularization; religious symbols; political discourse; political anthropology; religiosity and power.

Introducción

La modernidad trajo un elemento importante en el surgimiento de los Estado actuales y, además, fue un hito significativo para la separación de iglesia-Estado, la cual fue la transformación de las unidades político religiosas de la edad media en conglomerados políticos cuya soberanía y gobierno se distanciaban de lo religioso. La idea de un Estado secular de acuerdo a Vergés (2014), se desarrolla en el siglo XVIII con la ilustración y este buscaba limitar la influencia de la iglesia en los asuntos de gobierno y construir una estructura social cuya moral estuviese basada en principios como la libertad, justicia y tolerancia bajo el imperio de la ley.

Por consiguiente, la ilustración influyo notablemente en la construcción de los proyectos políticos republicanos en América y el despotismo ilustrado que se produjo en Europa tras la revolución francesa. Estos hechos históricos formaron parte de la evolución de la secularización en occidente y su influencia en el discurso político de hoy día el cual promueve valores basados en la libertad individual, la practica privada de la fe y la multiculturalidad la cual debe romper los esquemas sociales tradicionales, en donde la religión era un conector cultural tradicional.

Por ello, el presente estudio pretende hacer una exposición de aquellos procesos en los que se llevó a cabo la secularización de lo religioso y su simbología en el lenguaje político a fin de establecer las pautas fenomenológicas necesarias para estudiarlo y señalar los elementos ideológicos que influyeron en este aspecto en los últimos años (Vergés, 2014).

En cuanto a los objetivos centrales del presente trabajo, este pretende describir los procesos de secularización de símbolos religiosos en el discurso político contemporáneo, mediante ciertas aproximaciones desde la antropología política, que intentan definir la secularización y su evolución en la modernidad política haciendo una breve comparación en Europa y América y; por último, poder exponer lo que es el discurso político desde la antropología política para posteriormente emitir un juicio analítico que permite desarrollar las conclusiones del estudio.

Definitivamente, este se divide en varios puntos específicos del momento de la investigación en la cual se formula la interrogante a responder por medio de los objetivos, para posteriormente hacer una revisión teórico bibliográfica de los términos más relevantes del trabajo y su posterior descripción metodología, para exponer su análisis y conclusiones finales.

1. Secularización

Este término hace referencia a los cambios y transformaciones de los valores religiosos de una sociedad, donde la autoridad de la iglesia deja de tener influencia en la administración pública y los asuntos de gobierno, siendo un término clave para definir al Estado laico y la separación de la iglesia y el Estado (Cely, 2009).

Por su parte, Wilson (1987), señala que este término es el proceso mediante el cual las actividades e instituciones religiosas pierden relevancia social y lo religioso se ve relegado del sistema social. A su vez, autores como Sánchez (2017), establecen que el proceso de secularización del Estado ha pasado por una serie de etapas y transformaciones a lo largo de la historia, pero este hace referencia principalmente al desplazamiento de

las instituciones, símbolos y regulaciones eclesiásticas en la sociedad que paulatinamente pasaron a manos del Estado, entre los siglos XVIII y XIX en Europa y hasta mediados del siglo XX en América Latina.

Otros autores como Blancarte (2008), explican que la secularización se consolida en occidente solo a mediados del siglo XX tras la disminución definitiva de los elementos religiosos ante la modernidad, la industrialización y la urbanización de los principales centros económicos que transformaron a las sociedades en focos cuya influencia religiosa se ha diluido por las autoridades civiles.

1.1. Símbolos religiosos

De acuerdo a Moreno (2020), los símbolos en general son una característica cultural que por sí solo no representa o posee un significado, este es conferido por todas las personas que comparten una cultura en común y su significado vario según las circunstancias y momento histórico en el cual se desarrolla o percibe.

Posteriormente este autor añade que por símbolo religioso se entiende a una serie de resultados en donde lo simbólico posee una interpretación social y en donde este carácter representa un elemento de creación, valor o sacralidad, que sea parte integra de la confesión religiosa practicada por una persona, comunidad o grupo y esta es, de igual modo, aceptada y reconocida bien sea por toda la sociedad o un grupo que pertenece a esta.

1.2. Discurso político

Uno de los tipos de discurso más representativos de acuerdo a Manzano (2005), es el discurso político, este se desarrolla en el ejercicio o búsqueda de cargos de poder y su principal utilidad es la de argumentar una determinada función política ante una situación dada como lo es la conducción del país, la economía o la educación. Todo con el propósito de hacer que el público o audiencia sea convencido e invitado a intervenir en dichos asuntos o apoyar tales acciones. Este ítem puede ser definido de forma sintética como aquel discurso producido dentro del escenario político, en el cual se desarrollan las dinámicas de poder. Por tanto, este es un elemento clave en la constitución de un movimiento político o partido, que permita alinear a los simpatizantes de una causa determinada hacia la obtención del poder por la vía democrática.

Asimismo, Peschard (2012), explica por su parte, que este es el eje central de la comunicación política ya que el discurso es la principal herramienta de un grupo político para alcanzar la hegemonía, de manera que esta autora concibe al discurso político como el planteamiento de diversas argumentaciones que se contraponen entre sí, cuyo objetivo es generar un impacto en la audiencia electoral. Por tanto, el discurso político permite manejar también a las masas e influir en su capacidad de decisión.

Asimismo, puede ser definido como un producto de los procesos cognitivos de las relaciones de poder dentro de la sociedad en donde sus actores intercambian opiniones diversas y promueven sus iniciativas para que sean apoyados y se conviertan en una actividad integradora y coherente (Dorna, 1993). Con lo cual se desarrollan los elementos ideológicos que aglutinan las diferentes facciones políticas y permiten la interacción política dentro de la sociedad mediante la refutación e intercambio de opiniones, ideas y argumentos.

Por tanto, en estos procesos cognitivos el sujeto expone a nivel discursivo su visión o interpretación de la realidad, que determina el contenido del mismo y la forma en como este genera una serie de estrategias persuasivas, que involucran a todos los actores y encausan la temática del discurso de acuerdo a las características de la situación y las posibles consecuencias de este en términos de: (aceptación, critica o rechazo). Dentro de este razonamiento se ubican temas tales como: la opinión pública, matriz de opinión y voluntad de la mayoría con lo cual se convierten en factores de decisión que influyen o demandan determinadas acciones de la dirección política de la sociedad.

La influencia de los medios masivos de comunicación hace del discurso político una elaboración dramatizada de metalenguaje en la cual todos los elementos discursivos son calculados y medidos para tener una cierta influencia o impacto en la audiencia, lo que de acuerdo a Dorna (1993), implica una reconstrucción de lo político como espectáculo ya que los medios hacen de la figura del político un actor que se encuentra en una representación permanente, basada en la gestualidad y discursividad en la aplicación retórica del discurso.

Por su parte, Gutiérrez (2000), señala que el discurso político posee elementos notorios que se encuentran en casi todos los modelos y tipificaciones del mismo: lo político y la ideología. Asimismo, esta autora realiza una distinción especifica de tipología de los discursos políticos ya que estos buscan llevar a cabo actividades en torno al convencimiento de masas y la argumentación de ideas en las cuales deben ser desarrollados ciertos elementos, los cuales son de variada naturaleza, pero están amparados bajo el accionar de la voluntad humana.

Por tanto, el discurso político supone la descripción de múltiples estrategias discursivas, intercambio de estilos que varían en todo el proceso del mismo, ya que este pretende dar un mensaje que intente influir en las decisiones de los votantes. Una de las principales características del discurso político es que a diferencia de la retórica tradicional no se busca convencer al adversario, se busca mediante una línea argumentativa identificar a los partidarios y atraer aquellos electores que están indecisos Gutiérrez (2000).

Por lo que explica que los discursos políticos se orientan en dos tipos de concepciones: primero, aquellos que se formulan en base a una orientación restrictiva, bajo líneas institucionales que se dan en la escena política como tal, desarrollándose en la dinámica de poder entre partidos, cargos de gobierno y representaciones de las demás instituciones del Estado. Por ejemplo: el discurso de envestidura presidencial, los partidos políticos, los magistrados, ministros, jefes militares y representantes de organizaciones públicas.

Segunda, la concepción extensiva se lleva a cabo en todos aquellos actores o instituciones que buscar influir en las relaciones de poder existentes. Estos sujetos o actores pueden ser los grupos de presión, la oposición política, la iglesia, las ONG´s, los empresarios, sindicatos y minorías sexuales (Gutiérrez, 2000).

La autora antes mencionada explica que el discurso político posee una serie de especificidades dentro del discurso como tal, ya que se presenta dentro de una tipología de los juegos de discurso, en la cual se confrontan procesos de intercambio discursivo entre dos o más representantes de una facción política, destacando como principal ejemplo los debates televisivos, mítines y convenciones de partidos que, por regla general, componen y estructuran su línea discursiva en contraste con las de sus rivales o antagonistas.

Siguiendo el planteamiento antes formulado, Gutiérrez (2000), explica que con los avances tecnológicos actuales en las comunicaciones han hecho que el discurso político sea revalorizado y conducido a nuevas formas de comunicación, que van desde la comunicación entre los gobernantes y sus ciudadanos a la persuasión de la comunidad política en beneficio de una acción determinada (estar a favor de alguna circunstancia o política específica).

Por tanto, el discurso político permite expresar los elementos ideológicos presentes dentro del ideario del gobernante o facción política, con lo cual estos pueden dar a conocer y describir sus puntos de vista, dentro del contexto en el que se enmarcan tales declaraciones, así como también la situación coyuntural en las que son emitidos. Lo que permite reconocer: "Las claves que llevan a la reconstrucción de la realidad por parte del gobernante" (Gutiérrez, 2000: 112).

Por consiguiente, el discurso político en esencia y existencia se constituye en un dispositivo que representa la trasmisión, recepción y producción discursiva en contextos específicos que, en su mayoría, son elaborados en alguna institución de naturaleza estatal o social, que determinan tanto el tipo como la forma del mensaje. Otro aspecto a resaltar de acuerdo es que el medio técnico en el cual se envía el mensaje (Tv, radio, internet, auditorio), influye en la recepción del mismo por parte de la audiencia o votantes.

De igual manera debe tenerse en cuenta que el discurso político ha evolucionado de acuerdo a las nuevas estructuras sociales, ya que el cara a cara de finales de los siglos XVIII y XIX, dio paso a la radio hasta que a mediados del siglo XX la televisión y otros medios audiovisuales replantearon los esquemas en los cuales el discurso político puede influir en una audiencia.

2. Antropología política

Según Borja (2018), esta es la rama de la antropología que estudia a las sociedades y los sistemas políticos que las rigen, haciendo una comparación histórica desde las formas de gobierno de la antigüedad con las modernas. A diferencia de la ciencia política, la antropología política busca explicar lo político como parte integral de los fenómenos sociales a partir de las relaciones de poder entre la autoridad y la sociedad según la época y localización.

Asimismo, esta es una diciplina independiente de la antropología social al incluir a las sociedades tribales de pueblos originarios de América, África, Asia y Oceanía, comparando sus formas de dirección política con el estudio de lo político y con las sociedades estatales complejas de los países desarrollados mediante un análisis comparativo y universal, en conjunto con otras subdivisiones temáticas de la antropología interesadas en temas como el desarrollo y la economía, entre otros.

Parte de sus perspectivas de análisis implican hacer una reinterpretación de la realidad social desde las relaciones de poder que se ejercen en una comunidad humana, bien sea una nación o una tribu en medio de África, de modo que los conceptos como: poder, autoridad, gobierno y legitimidad se repiten en mayor o menor escala a pesar de la diferencia en las entidades políticas que se forman a partir de las sociedades sin Estado y en las sociedades estatales (Borja, 2018).

3. Metodología

El presente trabajo posee un diseño documental-bibliográfico ya que su principal fuente se compone eminentemente de textos y materiales de estudio recopilados en libros, artículos e investigaciones en formato físico o digital disponibles en la web.

A su vez, se desarrolló un análisis fenomenológico que busco describir e interpretar la realidad humana desde la subjetividad de la secularización de los símbolos religiosos en el discurso político, a fin de exponer su evolución en toda su especificidad y concreción, para referir los aspectos claves detrás de ella desde el marco empírico individual y social (Reyes *et al.*, 2019).

Por lo demás, se trató de un estudio cualitativo enmarcado en la exposición del fenómeno planteado desde la realidad social y el discurso de la dirección política que la organiza, con el fin de explorar la evolución de la problemática planteada a través del tiempo.

4. Procesos de secularización de símbolos religiosos en el discurso político contemporáneo: Aproximaciones desde la antropología política

Tras la revisión de estudios llevados a cabo por Blancarte (2008), Gutiérrez (2000), Cely (2009) y Moreno (2020), puede señalarse que dentro del discurso político contemporáneo existen elementos de secularización promovidos desde los ámbitos generales de políticas llevadas a cabo en la mayoría de los países de occidente, amparados por una mayor democratización de sus sociedades en donde una religión de Estado o promovida desde el Estado resulta inviable ya que hay marco legales en mayor medida ganados a la construcción de la multiculturalidad y la tolerancia religiosa, este proceso puede describirse a nivel histórico y social.

Por lo que las sociedades europeas y ciertos sectores sociales en Norteamérica (principalmente en Canadá) causan una práctica social de disminución de los símbolos religiosos en lugares públicos o edificios de gobierno, tales como: llevar crucifijos, velo islámico en escuelas entre otros, a fin de limitar en lo posible a espacios privados la práctica religiosa en general. Si bien este tipo de políticas han causado polémica es producto de sociedades que demandan un mayor nivel de inclusión a la vez que el gobierno promueve la asimilación del migrante a su sistema sociocultural.

Tras la revisión de la bibliografía consultada, se identificaron tres elementos dentro del proceso de secularización de los símbolos religiosos dentro del discurso político contemporáneo, entre estos se encuentra la creciente diversidad religiosa en una sociedad, especialmente en aquellos países que son centros de inmigración en las últimas décadas, como es el caso de Europa occidental y Norteamérica, lugares en donde las culturas son más cosmopolitas y coexisten múltiples confesiones, que buscan una mayor participación y reconocimiento de su identidad particular dentro de la comunidad.

Otro aspecto clave es la separación de la iglesia y el Estado, la cual genera un nuevo tipo de valores dentro de la sociedad al desacralizar a la religión y separar ambos principios rectores, es decir, la autoridad civil coexiste con una autoridad eclesiástica que genera una serie de dualidades dentro de la sociedad. Por lo demás, a un nivel simbólico se replantean nuevas modalidades de coexistencia entre el Estado y la iglesia siendo un actor de interés dentro del sistema político de varios países; por lo que

los cambios políticos no son tan evidentes en cuanto al discurso, estos se ven influenciados más bien por las nuevas demandas sociales que buscan mayores derechos e inclusión de las minorías, ya que los símbolos se ven relegados ahora a un segundo plano en función de las nuevas atenciones sociales a los grupos minoritarios que no se identifican con estos.

En este sentido, la necesidad de un lenguaje político más inclusivo es otro de los elementos de interés, en este sentido Van Dijk (2005), explica que los discursos que se inscriben en el ámbito de lo político poseen una connotación ideológica fuerte; ya que este es el vehículo mediante el cual la ideología se impone como elemento que marca el accionar político del grupo y plantea sus estrategias y expectativas de poder. Por lo que este es un elemento fundamental que permite exponer ideas y métodos de práctica política en la sociedad y el electorado.

En el discurso político, Pardo (2012) explica que se llevan a cabo todas las actividades del lenguaje en las cuales se desarrolla la producción simbólica de todos aquellos elementos que constituyen la ideología de un movimiento político, como sus opiniones, posturas, interpretaciones de la realidad económica, social, moral y política. Los juicios constituyen los elementos subjetivos del orador, que son apoyados o secundados por sus seguidores, llevando a cabo la acción colectiva de todo partido político, con independencia de su ideología.

Por lo que parte de la agenda política de varios gobiernos se centra en la necesidad de incluir a los migrantes y sus descendientes en sus discursos, ya que son un sector importante de la comunidad política y pueden ser un elemento decisivo en las elecciones, por lo que este ámbito se asocia también con el fortalecimiento de las instituciones democráticas.

A continuación, se presenta un cuadro comparativo que permitirá comprender elementos de la secularización de los símbolos religiosos en el discurso político contemporáneo.

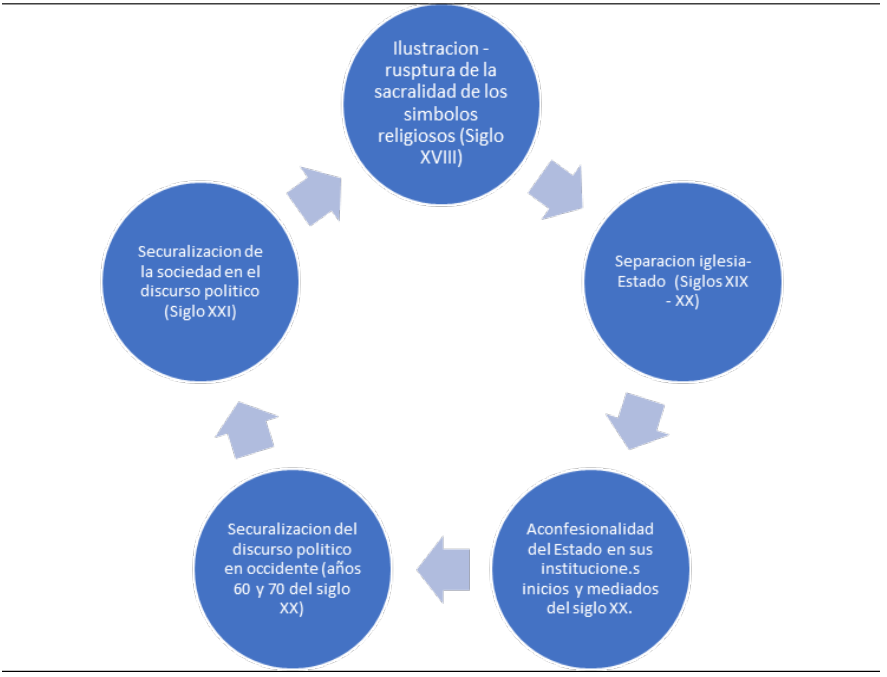
Cuando No. 01: Elementos dentro de la secularización de símbolos religiosos

Sociales	Políticos	Culturales
Transformación del sistema de valores en el cual lo religioso pasa a ser vinculado a tradiciones más que a tener un significado real para los integrantes de la comunidad. Esto debido al incremento del ateísmo en países de Europa y Norteamérica.	Ampliación de los derechos fundamentales y formulación de un discurso políticamente correcto en el cual se deba dar cabida a todas las minorías, en todos los ámbitos de la sociedad, lo que implica una secularización de la religión dominante con el fin de integrar a las personas de credos y tradiciones diferentes.	Transformaciones producto del intercambio cultural continuo entre dos o más culturas, crisol, en donde un país deja de ser monocultural y se desarrolla en entornos multiculturales, lo que implica la aparición de nuevas demandas para incluir a los nuevos integrantes de la sociedad.
Cambio en las precepciones morales que apoyan la aconfesionalidad del discurso político.	Adopción de posturas incluyentes para beneficios electorales de sectores o grupos compuestos minoritarios, que poseen una influencia de peso en el sistema político.	
Demandas sociales que promueven la integración de toda persona sin importar credo, raza, religión o condición.	Adopción de discursos incluyentes que suscriban los principios democráticos antes que los intereses nacionales o de identidad de la nación.	Interés en fomentar una cultura de valores de convivencia que promueva la práctica religiosa al ámbito del hogar o lo privado.

Fuente: Elaboración Propia, 2023.

Lo expuesto en líneas anteriores permite identificar cada uno de los elementos que influyen en la secularización del discurso y que ha evolucionado desde mediados del siglo XX al presente, lo que implica una serie de transformaciones materiales y simbólicas que fomentan el debate de los sectores más conservadores de la sociedad, ya que estos justifican que la sacralización de lo religioso es parte de su identidad cultural. Sin embargo, es notoria la posición de un discurso moderado que tiende a mantener la secularización relativa de los símbolos religiosos.

Figura No. 01 Secularización de Símbolos Religiosos a través de la historia.



Fuente: Elaboración Propia, 2023.

A manera de síntesis se procede a elaborar una breve reseña de la evolución de la secularización del discurso político a lo largo de la historia en occidente. Como puede verse en el grafico anterior, se evidencia la ruptura de la sacralidad de los símbolos religiosos, donde se procedió de forma paulatina a separar la iglesia del Estado y constituir un gobierno civil laico, proceso que se extendió durante todo el siglo XIX, con etapas en las cuales se desarrollan las primeras repúblicas con sistemas políticos y educativos laicos en América y Europa. Posteriormente esta situación evoluciona dentro de las instituciones y cultura política de las naciones hasta aceptar una sociedad secularizada en un mayor o menor grado. Ya que cambia radicalmente el paradigma de como los símbolos religiosos son utilizados en el discurso político, y las maneras en cómo estos se relacionan con la identidad nacional, transformando las sociedades en cuanto a su sistema cultural-religioso, mediante procesos de cambio que se han observado en los ámbitos sociales desde las últimas décadas del siglo XX.

Finalmente, en el siglo XXI se aprecia como las sociedades de varios países industrializados dejan de ser homogéneas y se convierten en comunidades multiculturales por la migración y el descenso de la natalidad, lo que implica una mayor participación de la comunidad migrante en todos los ámbitos del país, lo que se expresa, a su vez, en una adecuación del discurso político a las nuevas demandas y valores de la sociedad que busca revindicar las nuevas formas de convivencia, respeto a la alteridad, derechos humanos y democracia.

Por tanto, la secularización de símbolos religiosos en el discurso político contemporáneo se refiere a la eliminación o reducción del significado religioso de ciertos símbolos en el ámbito político. Esto puede ser el resultado de una variedad de factores, como la creciente diversidad religiosa en una sociedad, la separación de la iglesia y el Estado, o la necesidad de un lenguaje político más inclusivo y racional. Desde la antropología política, se han hecho varias aproximaciones para entender estos procesos, incluyendo el análisis de cómo los símbolos religiosos son utilizados en el discurso político, cómo se relacionan con la identidad nacional y cómo se negocian en el ámbito político.

En lo referente a este fenómeno puede señalarse que se trata de un proceso en el que los símbolos religiosos pierden su significado religioso original y se utilizan en un contexto político o secular. Esto puede ocurrir por varias razones, como la necesidad de adaptarse a una sociedad cada vez más secularizada o la intención de utilizar símbolos religiosos para fines políticos, esta última opción es una práctica empleada por los sectores sociales más conservadores de América y Europa.

De acuerdo a Blancarte (2008) hoy día la mayoría de los Estados se definen a sí mismos como seculares y definen en sus respectivas legislaciones una separación de iglesia y Estado siendo mayoritariamente los Estados que promueven una religión oficial los países de medios oriente y el África central y del norte, mientras que, en Europa, Grecia, Dinamarca, el vaticano y el reino unido promueven una religión oficial en sus instituciones, aunque los ciudadanos cuentan con una libertad de culto. Por tanto, uno de los retos y consecuencias de los modelos de sociedades multiculturales que se desarrollan en occidente implica a nivel antropológico la convivencia de múltiples formas de vida, costumbres y visiones de mundo que demandan de una mayor aconfesionalidad y secularización de la sociedad, a fin de hacer viable este modelo civilizatorio ya que la defensa de identidades nacionales bajo las tradiciones liberales pueden poseer un significado político segregacionista desde el enfoque de la inclusión y multiculturalismo. Por lo que, según Bunger y Cabrera (1998), lo religioso será relegado a la práctica privada en las próximas décadas dejando al discurso político anti-secular a los sectores más conservadores de la sociedad.

Conclusiones

Los procesos de secularización de símbolos religiosos en el discurso político contemporáneo se refieren a la eliminación gradual de la influencia religiosa en la política y la adopción de un enfoque más profano. Desde la antropología política, se han hecho varias aproximaciones para entender este fenómeno, incluyendo el análisis de cómo las instituciones políticas y religiosas interactúan entre sí, cómo se construyen las identidades políticas y religiosas, y cómo se negocian los conflictos entre ellas. En general, se ha observado que la secularización de los símbolos religiosos en el discurso político contemporáneo es un proceso complejo y multifacético que involucra tanto factores políticos como culturales y sociales (Oleksenko y Oleksenko, 2020).

Desde la perspectiva de la antropología política, se puede entender la secularización de símbolos religiosos en el discurso político contemporáneo como un proceso de desacralización y desmitificación de los símbolos religiosos. Esto implica que los símbolos religiosos pierden su carácter sagrado y se convierten paulatinamente en objetos políticos que pueden ser utilizados para fines partidarios específicos. Además, la secularización de los símbolos religiosos también puede ser vista como un proceso de democratización, ya que permite que diferentes grupos políticos tengan acceso a estos símbolos y los utilicen para sus propios fines. En resumen, la secularización de símbolos religiosos en el discurso político contemporáneo es un proceso complejo que involucra tanto la desacralización de los símbolos religiosos como su democratización y uso político.

Los procesos de secularización pueden ser impulsados por una variedad de factores, como: la modernización, la globalización y la creciente importancia de los derechos humanos y la democracia, en países que promuevan políticas de inclusión en todos los aspectos sociales incluyendo lo religioso. Esto se debe en parte a la secularización de las sociedades modernas en donde lo religioso deja de ser un valor y paradigma ético reemplazándose por esquemas de derechos y garantías legales, libertades y principios laicos cuyas premisas se establecieron con la ilustración y la revolución francesa. Desde la antropología política, se pueden analizar los procesos de secularización en términos de cómo se relacionan con la identidad cultural y la construcción de la nación, así como con la relación entre el poder político y religioso, lo que establece un marcado distanciamiento en las últimas décadas del Estado y la religión, manteniéndose vigente solo en América Latina como estandarte de sociedades que aún conservan el notable poder simbólico de la rugosidad en sus sociedades.

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Prospects for improving public control over the observance of the rights of convicts

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Abstract

Using the dialectical method the publication was devoted to determining the prospects for improving public control over the observance of the rights of convicts in Ukraine. A clear distinction is indicated between state and non-state control, i.e.: (execution of control functions on observance of rights, exercise of moral and educational influence, educational work, placement of released persons, etc.), and standardization of relevant provisions in the corresponding legislation. It is argued that ensuring openness and transparency of the activities of penitentiary bodies and institutions is not the goal of public control, and the approach to its interpretation should not be equated with such concepts as «aid» and «sponsorship». In the conclusions it is substantiated that in order to reflect in the Ukrainian legislation the principle of openness of penal institutions for the society, it is necessary to overcome: formalism of public control by the observation boards over the

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implementation of the rights of convicts; to grant the right to exercise public control to other subjects of public control, in particular to the mass media, along with the active borrowing of progressive international practices in the specified field.

Keywords: penitentiary system; rights of convicted persons; public control; penal enforcement activity; observation commissions.

Perspectivas para mejorar el control público sobre la observancia de los derechos de los convictos

Resumen

Mediante el método dialéctico la publicación estuvo dedicada a determinar las perspectivas para mejorar el control público sobre la observancia de los derechos de los condenados en Ucrania. Se indica una clara distinción entre el control estatal y no estatal, esto es: (ejecución de las funciones de control sobre la observancia de los derechos, ejercicio de la influencia moral y educativa, trabajo educativo, colocación de los liberados, etc.), y la normalización de las disposiciones pertinentes en la legislación correspondiente. Se argumenta que garantizar la apertura y transparencia de las actividades de los órganos e instituciones penitenciarias no es el objetivo del control público, y el enfoque de su interpretación no debe equipararse con conceptos tales como «ayuda» y «patrocinio». En las conclusiones se fundamenta que para reflejar en la legislación ucraniana el principio de apertura de las instituciones penales para la sociedad, es necesario superar: el formalismo del control público por parte de los consejos de observación sobre la aplicación de los derechos de los condenados; otorgar el derecho a ejercer el control público a otros sujetos de control público, en particular a los medios de comunicación social, junto al préstamo activo de prácticas internacionales progresivas en el campo especificado.

Palabras clave: sistema penitenciario; derechos de los condenados; control público; actividad de ejecución penal; comisiones de observación.

Introduction

Adequate functioning of any civil society depends on the interrelationship of state authorities and public entities in the field of control, such activity

of the relevant entities is the main component of the development of a democratic and effective state.

Public control, as a specific form of human activity, is a social activity, and a person is its subject and object. It formulates control goals, determines the means of achieving them, and evaluates the degree of achievement (Mukshymenko, 2010). Under the condition of effective and proper functioning of the system of public control and activities of public organizations, society can develop on a democratic basis, create conditions for the realization of the rights and responsibilities of its citizens.

The importance of public control over the observance of the rights of convicts in Ukraine also lies in the direct involvement of the public, clarification of their opinions, proposals for improving control and the penitentiary system in general. The specified type of control is actually an additional means of ensuring legality and transparent functioning of law enforcement agencies. The presence of public control guarantees the absence of arbitrariness and the use of illegal methods of activity by representatives of the penitentiary system, and on the other hand, supervision of the proper observance of the state's obligations regarding the social security of such a category of citizens as convicts.

The special interest of public control over the closed criminal-executive system is due to numerous discovered facts of gross violation of the rights of persons who are in places of forced detention. Such facts provoke a universal resonance and stimulate the activity of public formations. Under such conditions, one of the key tasks of the state in this area is to ensure the openness and transparency of the activities of criminal enforcement institutions, their control by institutions of civil society, and the creation of conditions for public participation in solving the tasks set before such institutions and bodies.

To date, a number of normative decisions have been adopted in Ukraine in the researched area, active work is being carried out on their practical implementation, but the issue of public control over ensuring the rights of persons in prisons and detention centers is still debatable. The main reason for this is the imperfection of modern national legislation, its non-compliance with international standards in the specified area, as well as the low efficiency of its implementation mechanisms.

Also, in the current conditions of the formation of civil society, a clear distinction between non-state (public) control and state control becomes especially relevant (Tereshchuk, 2015). Clarification of these issues in the scientific article will allow a more thorough and holistic characterization of public control as one of the areas of activity aimed at increasing and improving the functioning and organization of the penitentiary system of Ukraine, proper protection of the rights and legitimate interests of convicts in places of punishment.

1. Methodology of the study

The methodological basis of the scientific article is the dialectical method, which was used when studying the unity, interrelationship, and differences of such concepts as «state control» and «public control» in the criminal and executive sphere, as well as when distinguishing the concepts of «public control», «help» and «patronage». With the help of the historical method, the sources of the formation and development of the essence of public control over the observance of the rights of convicts were identified. With the use of analysis and synthesis methods, the place and role of the researched type of control over the observance of rights in places of punishment is determined. The structural-functional method, methods of classification and grouping helped in the study of the complex of functions covered by the concept of public control.

The logico-semantic method was used to clarify the peculiarities of the regulation of provisions on the implementation of public control in the specified area, to clarify the powers of observation commissions, to determine the essence of the best world practices of public control over the observance of the rights of convicts. The comparative legal method was used in the process of researching the foreign experience of implementing public control in the specified area and the possibility of its implementation in domestic legislation.

The hermeneutic method is applied to the scientific analysis of the provisions of the national legislation in terms of the application of public influence on compliance with the law in penitentiary institutions. The statistical method was used to generalize the survey results. The formal-logical method was used to substantiate proposals for clarifying and supplementing the provisions of industry legislation.

2. Analysis of recent research

Scientists (Kolb and Makhnitskiy, 2019; Tereshchuk, 2018; Barabash and Pavshuk, 2010; Vitvitskyy, 2013) made a significant scientific contribution in the field of the researched topic analysis of public influence on the state of compliance with the law in places of execution. However, despite the significant number of scientific developments related to the participation of the public in the observance of individual rights in the institutions of the penitentiary system, the issue of a clear distinction between state and public control, and the normalization of certain areas of activity of subjects of public control in the observance of the rights of convicts, do not lose their relevance.

In addition, issues regarding the normalization of individual provisions aimed at improving the general situation in the researched area remain quite debatable. The above-mentioned circumstances determined the choice of the topic and the main directions of the research.

3. Results and discussion

In the doctrine, public control is understood as the public verification by public society of the activities of the state in accordance with its declared goals, the adjustment of these activities and the goals themselves, the subordination of state policy, the activities of its bodies and officials to the interests of society, as well as the supervision of civil society over the activities of state and local bodies self-government, aimed at protecting and ensuring the rights and legitimate interests of a person and fundamental freedoms and respect for them (Zakharov, 2023).

From the analysis of scientific points of view on the concept and essence of public control, we see an opportunity to single out the most important features of the investigated type of control: it has specific tasks and goals; carried out by specific subjects: both individual (citizens) and collective (public associations, organizations, etc.); subjects of public control act on behalf of the public, not the state; decisions of subjects of public control are of a recommendatory nature and are mostly preventive in nature; public control concerns virtually all areas of activity of law enforcement agencies in the state; subjects of public control do not have the right to interfere in the operational activities of the controlled structure (law enforcement agencies) (Barabash and Pavshuk, 2010; Vitvitskyy, 2013; Tereshchuk, 2018).

Given the lack of an unambiguous approach to defining the content of public control both in science and in normative legal acts, we believe that the normative consolidation of this concept would make it possible to avoid a number of inconsistencies in the specified field of legal relations.

The goals of public control over the observance of the rights and legitimate interests of persons serving sentences in places of deprivation of liberty are subordinated to the general constitutional goal of recognizing a person as the highest social value.

Therefore, public control should ensure the effective operation of bodies and institutions for the execution of punishments in order to ensure the realization of their rights by the persons detained in them. The conditionality and justification of the goals of public control are determined by various factors. First of all, they must comply with the provisions of the Constitution, in addition, they depend on the general political goals that are currently being faced by the system of execution of criminal punishments.

We share a position A. Mukshimenko's that the main goal of public control over this process is to ensure unwavering observance of the rights and freedoms of a person and a citizen, taking into account the restrictions established by the court verdict and the law regarding persons detained in penitentiary institutions. At the same time, the principled observance of the constitutional rights of individuals must correspond to the needs and will of society, its primary subject – the people (Mukshymenko, 2010).

The specified goal is strategic and consists in creating conditions for the observance of human and citizen rights in individual bodies and institutions for the execution of punishments. The authors of some literary sources come to the conclusion that the goals of monitoring the activities of the penitentiary system personnel are subordinated to the general goals of criminal punishment and are oriented towards their implementation. This is also recognized as fair in relation to public control over the activities of bodies and institutions for the execution of punishments (Zubarev, 2006).

At the same time, it must be stated that state bodies sometimes misinterpret the content of control activities, especially when it concerns public control. Thus, the Law of Ukraine «On the State Criminal Enforcement Service of Ukraine» No. 2713-IV dated 23.06.2005 lists the following among the principles of its activity: interaction with state authorities, local self-government bodies, associations of citizens, charitable and religious organizations; openness to democratic civilian control.

However, in practice, these concepts are often mixed. For example, the State Department for the Execution of Punishments comments on its understanding of public control in the Concept of Social Partnership of Public Organizations and Penitentiary Bodies and Institutions: «Achieving the goal of correction and resocialization of convicts corresponds to the moral and spiritual interests of society, which necessitates the active participation of public organizations in the process restoration of convicts in the social status of a full member of society, returning them to an independent, generally accepted social and normative life in society.

The country's history has rich experience in the activities of various public institutions, which voluntarily performed the functions of caring for those members of society who are in places of deprivation of liberty...» (Law of Ukraine No 2713-IV, 2005).

Thus, we see the desire of individual state structures to shift the emphasis from public control as such to control as a form of social partnership and assistance (patronage) to persons in prisons. This state of affairs is unacceptable in a democratic legal society.

It is important to emphasize that the goal of public control over the observance of human rights and freedoms during the execution of criminal punishments cannot be the same as ensuring the openness and transparency

of the activities of the criminal enforcement service as a subject of criminal proceedings. administrative and legal relations. If such an approach is used, a dangerous tendency may arise for the penitentiary service to implement the principles of openness and transparency through subjects of public control, and the rights and powers of other representatives of civil society will be limited. unreasonably limited. It is also worth emphasizing that ensuring openness and transparency is the task of the authorities, not civil society institutions, which work to prohibit the definition of such a goal for public control.

Therefore, it should be emphasized that the purpose of public control over the observance of human rights and freedoms during the execution of criminal punishments cannot be equated with the purpose of ensuring the openness and transparency of the activities of the criminal enforcement service as a subject of administrative and legal relations.

In case of continuation of lobbying of this kind of approach, there may be a dangerous tendency for the penitentiary service to implement the principles of openness and transparency exclusively through subjects of public control, and the rights and powers of other representatives of civil society will be unduly limited. It is also worth emphasizing that ensuring openness and transparency is the task of authorities, not institutions of civil society, which indicates the fallacy of defining such a goal for public control.

The process of reforming the criminal-executive system of Ukraine was reflected in the Criminal-Executive Code of Ukraine in 2003, which defined a special place for public control and established one of the main principles of criminal-executive legislation – public participation in the activities of bodies and institutions for the execution of punishment. So, we can talk about increasing the role of public organizations in creating proper conditions for serving a sentence, ensuring compliance with human rights and freedoms, assisting in the social adaptation of citizens after release, conducting educational activities, as well as preventing them from committing new criminal offenses.

According to the Criminal Executive Code of Ukraine, citizens' associations, religious or charitable organizations, and individuals may take part in the correction and resocialization of convicts and conduct social and educational work with them (Criminal Executive Council Of Ukraine, 2003).

In order to ensure public control over the observance of the rights of convicts during the execution of criminal sentences, in accordance with the Resolution of the Cabinet of Ministers of Ukraine «On Approval of Provisions on Monitoring Commissions and Boards of Trustees at Special Educational Institutions» No 429 dated 01.04.2004, monitoring commissions are created (Resolution Of The Cabinet Of Ministers Of Ukraine No 429, 2004).

According to the idea of the legislator, the formation of observation commissions by executive committees and state administrations with the simultaneous mandatory inclusion of representatives of public organizations in them is the optimal form of combining the efforts of the authorities and the public.

The authorities have a real opportunity to provide financing and organizational and technical support for the measures being implemented, to provide the form of official prescriptions to the decisions of the observation commission, and public organizations have not only financial opportunities for this, but also free time and desire. In addition, observation commissions are a kind of connecting link between the authorities, society and the convicted (released).

Today, the participation of the public in the process of execution of criminal punishments is axiomatic, and the involvement of various groups of civil society in the process of reforming the penitentiary system is an integral part of the humanization and democratization of the criminal-executive system and ensures its openness and transparency.

It is worth noting that the course of humanizing the criminal justice system, which was chosen by the world community, has both its supporters and opponents. The first indicate that the conditions of a person's stay in places of deprivation of liberty characterize the level of development of the respective society. Others point to the fact that no country has been able to prove that more humane treatment of criminals would lead to an overall decrease in crime.

In many countries of the world, schemes of interaction between the public and law enforcement agencies have already developed and are successfully functioning, in other countries they are searching for and testing their own models. Despite the fact that each country follows different paths, taking into account traditions, culture and national characteristics, the existing world experience shows that there are a number of general trends and principles of building structures (in particular, observation commissions or observation councils), implementation of public control and patronage , which would be expedient to implement in Ukraine.

For example, in Great Britain there are Councils of Inspectors at each prison, and in Germany – Advisory Councils, the typical tasks of which are: providing reports to the management of the prison and penitentiary system regarding existing problems and proposals for improving certain areas of work, considering complaints, promoting the social adaptation of convicts after release and other. Monitoring commissions created in each region have the right to check the living and maintenance conditions of detainees, accused and convicted persons.

Members of the commissions may visit pretrial detention centers, prisons, and colonies without special permission (but without fail to notify the administration). The conversation with the human rights defenders should take place only in such conditions that the representative of the administration can see and hear them, and it is allowed to have a one-on-one conversation with the convicts (Kochergan and Danovsky, 2023).

Kazakhstan is considering whether to develop and implement a system of public accreditation of correctional facilities based on international and national quality management standards. The results of such accreditation should affect the funding of institutions, salaries of their employees, promotion of staff, and even the decision on the further operation of a specific correctional institution that received a low rating score when assessing the quality of work with convicts, respect for human rights and freedoms. In other countries, purely state control over the activities of correctional institutions was abandoned, independent non-state accreditation centers were created instead, for example, the American Association of Correctional Institutions (Kochergan; Danovsky, 2023).

In addition, not only penitentiary institutions, but also services that carry out alternative types of punishments should be in the field of public control. This type of control cannot be reduced to the activities of the existing public monitoring commissions, its circle of subjects should be much wider at the expense of representatives of human rights organizations, academic circles, religious associations and charitable foundations, which will be an important prerequisite for the prevention of ill-treatment and torture.

Reforming the criminal justice system of Ukraine in a European way consists primarily in increasing the role of public organizations in the process of creating appropriate conditions for serving punishment, conducting educational activities, ensuring compliance with human rights and freedoms, promoting the social adaptation of citizens after release, as well as preventing them from committing new crimes (Tereshchuk, 2018).

Increasing the efficiency of the monitoring commissions - institutions that were formed in accordance with the Resolution of the Cabinet of Ministers «On the approval of provisions on monitoring commissions and boards of trustees at special educational institutions» (Resolution Of The Cabinet Of Ministers Of Ukraine No. 429, 2004) is one of the important conditions for achieving the specified tasks.

They are responsible for organizing public control over the observance of the rights and legitimate interests of convicts and persons released from serving their sentence; educational work with persons released early from serving a sentence; monitoring the behavior of persons during the unserved part of the sentence; providing assistance in the full resocialization of those released from serving their sentence.

Despite the supposedly democratic approaches to the normative consolidation of public participation in the activities of criminal enforcement institutions in the form of the functioning of observation councils, their activities both in Ukraine and abroad are subject to sharp criticism by national and international human rights and public organizations. Criticism concerns the impossibility of influencing the administration of penal institutions in case of violation of the rights of convicts, the lack of real opportunities to help released persons and the organization of control over their behavior. In addition, due to the relatively short existence of this institute, there are many organizational and legal problems that arise in the process of interaction of commissions with bodies and institutions of the criminal enforcement system (Tereshchuk, 2018).

An analysis of the contents of the Regulations on Observed Commissions, approved by the Resolution of the Cabinet of Ministers of Ukraine No 429 dated 01.04.2004, proved that the specified public control is formal and does not relate to essential aspects of criminal enforcement activities, in particular, issues related to the use of physical force, special means, straitjackets and weapons to convicts deprived of their liberty (Resolution Of The Cabinet Of Ministers Of Ukraine No 429, 2004), and most of the provisions of the Regulation do not correspond to the content of those changes and additions made to the Criminal Code of Ukraine, in particular, those related to reducing the conditions of serving sentences in the form of deprivation of liberty to European standards, as well as with the relevant articles of the Law of Ukraine «On the National Security of Ukraine» (On The National Security Of Ukraine., 2018).

The importance of amending the legal framework and substantive elements of public control in the field of execution of punishments is also due to the fact that in the current Criminal and Executive Code of Ukraine, if based on the requirements of Art. 25 of the specified code, this form of activity of public organizations is essentially reduced to its two types: a) providing assistance to bodies and the institution of execution of punishments in the correction of convicts and carrying out social and educational work (Part 1 of Article 25 of the Criminal Procedure Code of Ukraine); b) exercise of control by the only legitimate body – observation commissions (Part 2 of Article 25 of the Criminal Code of Ukraine) (Criminal and Executive Code of Ukraine, 2001).

As individual scientists emphasize, neither observation commissions nor other public associations can, for these reasons, properly implement in their practical activities the following principles of civil control in Art. 4 of this Law, as:

1. clear delineation of the functions and powers of the political leadership in the sphere of execution of punishments of Ukraine;

2. interaction and responsibility of state authorities and bodies managing the sphere of punishments for the implementation of state policy in terms of strengthening legality and public order for timely and comprehensive material and financial support of bodies and institutions for the implementation of punishments for the implementation of the functions assigned to them;
3. transparency of expenses for the maintenance of bodies and institutions for the execution of punishments;
4. openness to the public of information about the activities of the State Criminal Enforcement Service of Ukraine, which does not constitute a state secret, taking into account the specifics of state law enforcement bodies defined by law (responsibility of officials for the timeliness, completeness and reliability of the information provided, and response to citizens' appeals , public organizations, media appearances (Kolb and Makhnitskyi, 2019).

There is no doubt that the control over the observance of the rights of convicts when their legal status changes should be the subject of public attention. At the same time, practice shows that approval of decisions and submissions of institution administrations to courts regarding convicts with observation commissions in most cases takes place formally. In our opinion, the mandatory approval of resolutions and submissions of the administration of the correctional colony with the observation commission, which change the conditions of detention of convicts, should be carried out only in the event of an increase in the amount of established legal restrictions and changes to stricter conditions of detention.

Given the need to improve the organization of public control over the observance of the rights, basic freedoms and legitimate interests of convicts and persons released from serving a sentence, assistance to bodies and institutions for the execution of punishments in ensuring the process of correction of convicts and creating appropriate conditions for their detention, as well as assistance in providing effective assistance in social adaptation to persons released from serving a sentence, on 25.11.2022 the Cabinet of Ministers of Ukraine approved Resolution No 1314 «On Amendments to the Regulation on Monitoring Commissions (Resolution The Cabinet Of Ministers Of Ukraine No. 1314, 2022).

The main tasks of observation commissions are determined by the Regulation on observation commissions: the organization and implementation of public control over the observance of the rights, fundamental freedoms and interests of convicts during execution of criminal sentences in institutions of execution of sentences; carrying out regular visits to penal institutions for the purpose of monitoring and conducting inspections of the state of compliance with the rights, fundamental freedoms

and interests of convicts during the execution of criminal sentences in penal institutions (during the period of martial law, the monitoring commission may decide to stop visits to penal institutions).

Providing assistance in social adaptation to persons who have served a sentence of restriction of liberty or deprivation of liberty for a certain period, as well as those released from further serving the specified types of punishments on the grounds provided for by law; assistance to subjects of social patronage in the implementation of a complex of legal, economic, organizational, psychological, social and other measures, in particular, the provision of services aimed at the social adaptation of released persons, and probation authorities in the implementation of a complex of measures aimed at the correction of social probation subjects behavior or its individual manifestations.

The formation of socially favorable changes in their personality; assistance to bodies and institutions for the execution of punishments in the creation of appropriate conditions for the detention of convicts, their material, household and medical and sanitary support, the implementation of health and preventive measures, the preparation of convicts for release, the involvement of public and charitable organizations, executive authorities, local bodies in such activities self-government, enterprises, institutions and organizations regardless of the form of ownership and citizens; participation in the preparation of convicts for release, as well as assistance in determining the place of residence, etc. (Resolution of the Cabinet of Ministers of Ukraine No. 1314, 2022).

Currently, the activity of the observation commissions, although relegated to the background in connection with the military actions on the territory of Ukraine, still continues to be criticized by some human rights and public organizations, primarily for the existing formalism, the impossibility of influencing the administration of institutions for the execution of punishments in the event of a violation the rights of convicts, lack of real opportunities to help released persons and organize control over their behavior. For example, monitoring commissions are entrusted with the functions of approving decisions of the administrations of penal institutions regarding changes in the legal status of convicts (parole, early release, replacement of the unserved part of the sentence with a lighter one, exemption from serving the sentence of pregnant women and women with children under the age of three years, changing the conditions of detention of convicts, etc.).

Conclusions

The further development of public control over the observance of the rights of convicts in Ukraine should be based on the principle of independence of the subjects of such control. Based on the idea of demarcating spheres of influence, it is advisable to observe a clear separation of the functions of the state and society in places of execution of punishments.

Standardization in the relevant legislation needs to reflect the fact that the main functional duty of the administration of bodies and institutions for the execution of punishments is exclusively the execution of punishments, that is, the exact and consistent execution of court sentences, the isolation of convicts or the application of other restrictions to them. The function of control over the observance of rights, exercise of moral and educational influence, educational work, placement of the released, etc., must rely on society.

Given the lack of an unambiguous approach to defining the content of public control in science and in normative legal acts, the normative consolidation of this concept would make it possible to avoid a number of inconsistencies in the specified field of legal relations. Ensuring the openness and transparency of the activities of penitentiary bodies and institutions cannot in any case be the goal of public control, and the approach to the interpretation of «public control» should not be equated with such concepts as «help» and «patronage».

Today, Ukraine is on the way to reforming criminal law in accordance with the best international practices. The principle of openness of penal institutions to society, as the main principle of penitentiary rules, must be reflected in Ukrainian legislation, since the legally established possibility of the public to take a real part in the activities of penal institutions, as well as in the correction and resocialization of convicts is one of the main means of implementing the ideas and traditions of a democratic civil society.

For this purpose, first of all, it is necessary to overcome such negative phenomena as: the formalism of public control by observation councils on the observance of the rights of convicts; renewal; granting the right to exercise public control to other subjects of public control, in particular mass media; active borrowing of progressive experience of foreign countries in the specified field.

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Personal security and sustainable development at work

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Abstract

The objective of the work was to study the international aspects of the regulation of social and labor relations, with emphasis on global processes and their influence, on the part of international institutions, on the security of the individual and stable development in the work environment. The study used scientific methods such as: systemic analysis, comparison, functional historical, legal comparative and communicative. It was established that the sharp multiplication of global problems that have currently appeared before mankind requires consensual efforts of all members of the world community. In the conclusions it was stressed that all measures of the world community in terms of labor have to start from the true fact that it affirms the safety and dignity of work of each person as a fundamental value. Consequently, the category «security» should be considered not only as an abstract dominant of development of a certain spectrum of labor social relations, but also as a real reason for the valid assurance of each individual. Definitely, the guarantee of safety should be based on the active position of each separate individual, not only in the sphere of occupational safety and hygiene, but in all spheres of social relations.

Keywords: stable development; objectives of stable development; security of the individual; decent work; labor rights.

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Seguridad del individuo y desarrollo estable en el campo laboral

Resumen

El objetivo del trabajo fue el estudio de los aspectos internacionales de la regulación de las relaciones sociales y laborales; con énfasis en los procesos globales y su influencia, por parte de las instituciones internacionales, en la seguridad del individuo y desarrollo estable en el ámbito de trabajo. En el estudio se utilizaban métodos científicos como: análisis sistémico, comparación, histórico funcional, comparativo jurídico y comunicativo. Se estableció que la multiplicación brusca de problemas globales que actualmente han aparecido ante la humanidad requiere de esfuerzos consensuados de todos los miembros de la comunidad mundial. En las conclusiones se subraya que todas las medidas de la comunidad mundial en términos laborales tienen que partir del hecho verdadero que afirma en la seguridad y dignidad de trabajo de cada persona como valor fundamental. En consecuencia, la categoría «seguridad» debe considerarse no sólo como dominante abstracta de desarrollo de cierto espectro de las relaciones sociales laborales sino, además, como motivo real para el aseguramiento válido de cada individuo. Definitivamente, la garantía de seguridad debe basarse en la posición activa de cada individuo separado, no sólo en el ámbito de seguridad e higiene de trabajo sino en todas las esferas de relaciones sociales.

Palabras clave: desarrollo estable; objetivos del desarrollo estable; seguridad del individuo; trabajo digno; derechos laborales.

Introduction

At the present time, the importance of international aspects of regulation of social and labor relations gains momentum; this is primarily attributed to powerful global processes and the growing influence of international institutions on national states. The United Nations (UN) is the most respected among such institutions; its activities are traditionally aimed at protecting the rights and freedoms of people around the world. The social protection of workers is one of them. In this respect, the Sustainable Development Goals (hereinafter referred to as the "SDGs"), which were approved by the UN General Assembly in 2015 and became a point of reference for the world community for the development of various spheres of social life, deserve consideration.

The importance of the world community's constant response to new challenges and threats has significantly increased due to the emergence of the COVID-19 pandemic, which has become perhaps the greatest threat to the uninterrupted existence of humanity since the end of two world wars. The COVID-19 pandemic has brought about significant changes to the lives of millions of people around the world, including social and labor relations and social protection of workers (in particular, causing a rapid rise in unemployment, impoverishment, increasing uneven social and economic development of certain regions, digital transformation of labor, and increasing informal employment, etc.).

Under such conditions, great importance is attached to the activities of the International Labor Organization (hereinafter referred to as the "ILO"), which for more than a century have been focused on the development of international labor standards and the protection of working people globally.

Moreover, the security and health of every individual lie at the bottom of the development and improvement of any spheres of social relations. In this case, it is appropriate to quote the constitutional provision that an individual, his life and health, honor and dignity, inviolability and security shall be recognized in Ukraine as the highest social value.

1. Literature review

The focus of attention of interested parties and the world community taken as a whole on multi-faceted aspects of sustainable development creates a strong potential for discussions in the course of which the most important problems of our time are considered: the essence and features of modern political and legal development; the place of international organizations in the process of political and legal regulation of certain aspects of social relations; the implementation of international standards into national legal systems, while complying with the already defined criteria for ensuring human and citizen security.

In the study of the topic outlined in the title of the work, both a merely chronological process of accumulation and development of relevant knowledge, as well as a thematic divide related to responding to the challenges and threats caused by the spread of the COVID-19 pandemic, are distinct.

For the initial stage of research on the outlined topic, the work of T. Hák and his co-authors is important; they state that the SDGs need a clear operationalization and further development of their implementation mechanisms (the authors suggest, for example, paying more attention to policy formation, while noting that "the final format of the goals and targets is, of course, a matter of political process" (Hák *et al.,* 2016: n/p)).

The tenor of the discussions acquired a qualitatively new connotation in connection with the crisis of social and social and labor relations caused by the COVID-19 pandemic. According to a figurative statement of R. Naidoo and B. Fisher, UN documents "became been another casualty of COVID-19." At the same time, the authors urge the UN, in order to fully and timely learn the lessons from COVID-19, to convene the high-level forum to find out how and when to update the SDGs, what specific goals should be verified and whether each pathway is resilient to global disruptions (the authors believe that all this definitely applies to Goal 8) (Naidoo and Fisher, 2020).

By this time, considerable empirical material had already been accumulated, which testifies to different themes in the achievement of various goals in certain countries and regions. In this regard, the research of Ch. Meschede should attract the interest of researchers; it provides a reasoned analysis of the bibliography and at the same time offers suggestions for future lines of research of the relevant issues (Meschede, 2020).

In this case, the references to the political process encourage researchers to analyze the effective participation of an individual in social and social and labor relations. The work of C.M. Lipset and A. Etzioni has provided a reliable foundation for modern researchers to continue studies in this area today. Substantiating the sociological approach to an entry of an individual into politics, these authors emphasize the activity of an individual. Such approach was pursued in the works of H. Arendt in the phrase "*vita activa*" coined by her (distinguishing three types of activity, putting "labor" in the first place, followed by "work", and then by other activity as well as activity determined by the previous forms (Etzioni, 1968; Lipset, 1981; Arendt, 2005).

Therefore, socialization also becomes a rather complex process, which is based not only on merely political activity, but also on the professional activity and actions of an individual and many other factors. For example, T.A. Smith argues that the study of individual's political preferences in relation to other stimuli or influencing factors shows that such preferences are against the background of merely economic and lifestyle factors (Smith, 1979).

B. Tsymbal and other authors believe that modern challenges and dangers make it necessary to protect the interests of the country's population and result in the need for a state participation in ensuring the best possible level of social protection and personal security. The level of social protection of the population can be increased under the condition of adopting a complex of consistent efforts to stabilize the development of entrepreneurship, as well as through strengthening the social protection of the population and providing people with comprehensive assistance from the public authorities (*Tsymbal et al.*, 2022).

The above findings are supported by G. Reeher, who raises the question of overcoming the alienation of the public from politics. The researcher also addresses the fundamental principles of personality functioning and at the same time emphasizes that a properly organized process of political socialization is able to solve the specified problem (Reeher, 2006). This gives additional arguments to the works of D. Walsh, who states that "the person is transcendence, not only as an aspiration, but as his or her very reality" (Walsh, 2015).

B.M. Tsymbal and other scholars focus on the fact that the concept of sustainable development contains the main goals, the achievement of which should ensure both the social security of the country's population and the personal security, and has targets related to individual goals, namely the creation of conditions by the state in order for the economically active part of the population to achieve its self-actualization (Tsymbal *et al.*, 2022).

Therefore, according to our preliminary assessment, the implementation of all seventeen sustainable development goals is a factor of systems effects on all aspects of an individual's life, including personal security in its various manifestations.

2. Materials and methods

The research is based on a philosophical understanding of methodology as a complex and multifaceted means of knowledge development. At the same time, special attention is paid to the concept of "discipline-specific methodology", i.e., the selection of relevant starting principles and tools for specific research from the general methodological repertoire (for our subject, the separation from the complex system of social and social and labor relations of those phenomena and subjects of legal reality that directly relate to the general principles of adoption and implementation of the sustainable development goals, their interconnection with and mutual influences on the so-called "environment"). Therefore, the methodology in this regard is the provider of a universal toolkit for scientific inquiry at various stages of scientific and research work.

In this connection, considerable attention is paid to the systems analysis method, which is recognized as one of the main directions of the methodology of special scientific knowledge and the application of which ensures all the necessary phenomena and processes linked into a single coherent object. The main factors of the application of such a method in the context of the implementation of the given task include: the scale of the problem under consideration (which has respect to both the general determinants of the development of social relations for a significant period of time, and the complexity of individual tasks, which are specified in a

significant number of indicators), as well as the emergence of numerous challenges and threats, the adequate response to which is impossible without account various related issues considered (the first is the COVID-19 pandemic, which caused a crisis of social and social and labor relations unprecedented since the world wars).

All this requires the entire necessary set of regulatory and legal acts of different legal force to be included in the analysis, which in this case also acquire systemic unity, and as specific norms are aimed at regulating the appropriate spectrum of social and social and labor relations. While doing so, special attention is paid to the variety of internal and external factors of the implementation of the SDGs, to the partial structural isolation and systemic unity of the conducted research.

The implementation of the tasks set in the introductory part is also based on a number of other methods, namely:

1. the historical and legal method (to enunciate provisions regarding the essence and features of the modern international legal order, retrospective analysis of the development and adoption of international labor standards, clarification of the basis and reasons for the adoption of the updated Agenda of the United Nations, as well as to clarify the phasing in the process of the ILO's activities in order to implement certain goals);
2. the structural and functional method (to characterize the significance of the activities of the ILO as a whole and its separate structures in the implementation of the SDGs, to fully reveal the problems of the interconnections of certain goals and indicators, as well as to substantiate conclusions which contain certain provisions that taken in totality are important both for the implementation of certain goals and for a complete understanding of the significance of SDG 8 for the development of social relations as a whole);
3. the comparison method (which makes it possible to conduct a comprehensive analysis of sources and literature, to single out key points in the updated understanding of the outlined issues, to fully analyze the specifics of the ILO's activities in order to implement the set targets before and after the emergence of new challenges and threats, first of all, the COVID-19 pandemic);
4. the special comparative and legal method (to group and compare the documents of this organization with respect to the emergence of new challenges and threats), as well as the approaches of synergetics (as a result of which it becomes possible to find out the impact on the implementation of the SDGs of seemingly insignificant events and circumstances that, as time progressed, acquired the importance of powerful factors of global world development and the activities of most intergovernmental and state institutions;

5. in this respect, significant attention is paid to bifurcation points, which make it possible to additionally substantiate the provisions regarding qualitative changes in relation to the implementation of the SDGs in connection with the emergence of new challenges and threats).

In this respect, the importance of the communicative method should be noted, because the use of a communicative resource, among other things, allows focusing on the so-called "feedback", on the active participation of all involved organizations and interested parties in the renewed understanding of the place of the ILO.

3. Results and discussion

At the beginning of the 21st century, the United Nations Millennium Declaration, adopted in 2000 at the UN Millennium Summit, became relevant. The Declaration defined a comprehensive framework of values, principles and key factors of development under the three main mandates of the United Nations: peace and security, development, and human rights (General Assembly United Nations, 2000).

Today, the world community is invited to focus on the global transition from the Millennium Development Goals (MDGs) to the Sustainable Development Goals (SDGs), adopted by the UN General Assembly in September 2015, which includes 17 sustainable development goals and 169 targets. The approved goals and targets comprise diverse spheres of social relations (social, economic, humanitarian, environmental, security, etc.).

Within the framework of the subject being analyzed in the article, the first thing to pay attention to is **Goal 8**. Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all (United Nations, Department of Economic and Social Affairs, 2023). The specified goal acquires functional significance in the following targets:

1. **SDG 8.3.** Increase employment.
2. **SDG 8.4.** Reduce the share of youth not in employment, education or professional training.
3. **SDG 8.5.** Promote a safe and secure working environment for all workers, including through the application of innovative technologies in terms of health and safety (General Assembly United Nations, 2015).

The specified goal and the targets cover a complex of interrelated issues that traditionally pertain to the competence the ILO: the economic growth

is not an end in itself; it must necessarily be combined with effective social protection and adequate safety of workers (in addition, it has been repeatedly proven that the expenses for measures ensuring safety and health of workers lead not to a slowdown, but to an acceleration in the rate of economic growth); full and productive employment is the fundamental principle and core component of social protection; decent work for all is the basis of the decent work program, which was worked out at the end of the 1990s and which today has become a kind of a road map for improving international labor standards.

At the same time, a number of issues related to the implementation of the SDG and the social protection and safety of workers have no proper line of argument. The academic community still considers inadequately the peculiarities of the modern activity of the ILO, which is related to responding to new challenges and threats.

This applies, in particular, to clarifying the place of occupational safety and health in the renewed agenda of the world community. Indeed, the ILO has been successfully developing international labor standards for a century and already has solid experience in responding effectively to the numerous challenges and threats faced by workers in the world of work.

This applies, in particular, to social protection and social security of people regardless of their professional level, gender, etc. Today, this organization is largely focused on ensuring decent work for people all over the world, regardless of race, gender or any other characteristics.

In this case, it is significant that world leaders are increasingly pointing out that achieving the SDGs requires the joint efforts of all organizations and interested parties.

For example, at the SDG Summit held in September 2019, world leaders proposed to declare a decade of action and delivery for sustainable development. The UN Secretary-General called on all sectors of society to mobilize for a decade of action on the following three levels: global action to secure greater leadership, more resources and smarter solutions for the Sustainable Development Goals; local action embedding the needed transitions in the policies, budgets, institutions and regulatory frameworks of governments, cities and local authorities; and people action, including by youth, civil society, the media, the private sector, unions, academia and other stakeholders, to generate an unstoppable movement pushing for the required transformations (General Assembly United Nations, 2019).

Over the past twenty years, the concept of decent work has already been included and substantiated in various versions in most of the program documents, international legal norms and analytical developments of this organization. Today, this concept has already become the object of active research in several thousand articles, monographs and dissertations.

From the point of view of our research, it is advisable to focus on the key moments of the solutions and developments related to the concept of the decent work, which are provided in the basic documents of this organization. They are systematized in the table "Solutions and Developments of the ILO related to the Concept of the Decent Work" (Table 1).

Table 1: Solutions and Developments of the ILO related to the Concept of the Decent Work

Report (abbreviated title)	**Essence and structure of the basic principles of decent work**
Declaration [1998]	Fundamental principles and rights at work (FPRW): freedom of association and the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; the elimination of discrimination in respect of employment and occupation (General Assembly United Nations, 2019).
Report (1999)	The purpose of decent work is to promote opportunities for productive labour for women and men in conditions of freedom, equity, security and human dignity; promoting decent work for men and women around the world as the main goal of the ILO in present-day conditions. In this regard, the need is emphasized to transfer from several dozen main programs to four strategic objectives, which are listed in the 1998 ILO Declaration (International Labour Organization, 1998a).
Declaration (2008)	Four strategic objectives of the ILO are named and detailed: (1) promoting employment (includes three components); (2) developing and enhancing measures of social protection – social security and labour protection (also includes three components); (3) promoting social dialogue and tripartism (total of four targets are provided); (4) respecting, promoting and realizing the FPRW (International Labour Organization, 1999).
Declaration (2019)	All workers should enjoy adequate protection in accordance with the concept of the decent work, taking into account: respect for their fundamental rights; an adequate minimum wage; maximum limits on working time; safety and health at work. Safe and healthy working environment as a fundamental factor that promotes decent work (International Labour Organization, 2008).

Source: authors.

Taking into consideration the subject of this research, the following structural and logical chain is especially noteworthy: fundamental principles and rights at work, decent work, occupational safety and health. At the same time, attention should also be paid to the fact that one of the basic components is missing here – ensuring the safety of each individual worker and individual as a whole.

The primary focus should be on the reports of the ILO, which are traditionally prepared for presentation at the sessions of the International Labor Conference (hereinafter referred to as the "ILC") and which cover the most important problems of the development of social and labor relations. A kind of divide in the content of these reports precisely pertains to 2019-2020, which caused the start of work on defining whole new points of reference for the development of social and social and labor relations.

Year after year, such reports have gradually revealed the most important principles of the ILO's participation in the development and implementation of the SDGs (the most important reports in terms of the subject of the research are provided in Table 2).

Table 2. Reports of the ILO Covering the Development and Implementation of the SDGs: 2017-2019.

Report (abbreviated title)	Thematic scope
World Social Protection Report 2017–19... (2017)	The report is based on a comprehensive assessment and prospects for the development of the social protection in the light of the goals to be achieved by 2030; issues regarding progress and major gaps in this area of relations that need to be closed are analyzed (International Labour Organization, 2019a).
ILO. Towards 2030... (2018)	The report is based on methods regarding the need to comply with the core principles and fundamental principles and rights at work when implementing the SDGs (International Labour Organization, 2017).
Time to Act for SDG 8... (2019)	The subject of the report is the statement that the economic, social and environmental dimensions of sustainable development are harmoniously combined in SDG 8. This means that the lack of progress in achieving SDG 8 will hinder progress towards the implementation of other SDGs (International Labour Organization, 2019b).

Source: authors.

It is known that the program principles of the ILO become normative in the conventions – current documents of this organization, which contain specific international legal norms in the area of social and labor relations. In this case, principal emphasis needs to be placed on the ILO Convention No. 102 – The Social Security (Minimum Standards) Convention, which is repeatedly cited in the above reports. This convention reveals the essence of the term "persons protected" and indicates that social protection covers not only certain categories of workers and members of their families, but also, under certain conditions, other categories of the population (International Labour Organization, 1952).

Leaving the essence of the category's "protection" and "security" out of the analysis, we will only point to the fact that in the cited international legal norm there is no significant difference between them (which should also be recognized as some fault of the specified document as a whole, because the categories "human protection" and "personal security" have a related but under any circumstances not identical meaning).

The thematic scope of the reports has changed fundamentally in connection with the spread of the COVID-19 pandemic, which prompted an intensive search for ways to counteract its destructive force in all spheres of social and social and labor relations. At the same time, it should be noted that most of such reports lack a systematic approach to the analysis of pressing problems and ensuring the safety of each individual in the course of developing social and labor relations. In particular, it is quite convincingly evidenced by the absence of references to the connection between certain proposals and already available international legal norms.

Conclusions

The dramatic increase in global problems faced by humanity today requires the concerted efforts of all members of the world community. First of all, it is about overcoming crisis phenomena and restructuring social relations aimed at sustainable development and protection of the vital interests of human and society as a whole. In a difficult situation, which affects all spheres of social and social and economic relations, it takes on particular significance. Therefore, the content of the UN Sustainable Development Goals should become a reliable road map for overcoming negative trends and ensuring continuous development. This applies, in particular, to promoting decent work and economic growth.

And in this respect, creating and promoting safe and healthy working environment for millions of workers should be of key importance. Therefore, the activity of the ILO, which has been developing international labor standards for a century, should take on special significance. The implementation of the declared goals and targets should primarily be based on the concept of decent work, which was developed long before the adoption of the updated Agenda of the United Nations and until recently included four strategic objectives of the ILO: promoting employment; developing and enhancing measures of social protection; promoting social dialogue and tripartism; respecting and realizing the fundamental principles and rights at work. Today, a fifth component is added: the creation of safe and healthy working environment is not only defined as a fundamental factor ensuring decent work, but also becomes one of the fundamental principles and rights at work.

At the same time, it is important to note the fact that the category "security" should be considered not only as an abstract keynote in the development of a certain spectrum of social and labor relations, but also as a real basis for the comprehensive provision for each individual. In this case, it is reasonable to emphasize the importance of the inductive method, that is, the analysis of the specified question "from the specific to the general".

The above targets constitute a reliable foundation for the implementation of many other targets outlined in SDG 8 and many other goals. In these circumstances, official statements and current practical activities place an increasing emphasis on the fact that comprehensive security must be ensured by the active position of each individual – not only in the occupational safety but also in any other spheres of social relations.

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Lineamientos teóricos para el desarrollo de una política de promoción del ecoturismo

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Resumen

El ecoturismo se sustenta en el aprovechamiento económico de las áreas y monumentos naturales de una comunidad determinada, cuya práctica se basa en la sustentabilidad, responsabilidad y bienestar de la población local. El desarrollo de este tipo de políticas debe contar con una adecuada planificación y gestión específicamente diseñadas, apoyadas además en los principios de conservación y sostenibilidad. El presente articulo tuvo por objetivo identificar los lineamientos teóricos involucrados en el desarrollo de una política coherente de promoción del ecoturismo. Para el logro del objetivo planteado se hizo uso de la metodología fenomenológica y hermenéutica con predominio de fuentes documentales en formato digital, cuyo tema principal fuese la formulación y diseño de políticas que fomenten el ecoturismo, su promoción y desarrollo, las cuales se analizaron y discutieron para elaborar las conclusiones del estudio. Los resultados obtenidos permiten concluir que los lineamientos teóricos para el desarrollo de una política de promoción del ecoturismo, se enfocan en la conservación de la naturaleza, la sostenibilidad, el desarrollo local y la educación ambiental entendidos como fuerzas capaces de impulsar en su conjunto el desarrollo sostenible.

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Palabras clave: lineamientos teóricos; políticas públicas; promoción del ecoturismo; políticas de promoción; desarrollo sostenible.

Theoretical guidelines for the development of an ecotourism promotion policy

Abstract

Ecotourism is based on the economic use of the natural areas and monuments of a given community, whose practice is based on sustainability, responsibility and the wellbeing of the local population. The development of this type of policy must be based on specifically designed planning and management, supported by the principles of conservation and sustainability. The objective of this article was to identify the theoretical guidelines involved in the development of a coherent ecotourism promotion policy. In order to achieve the proposed objective, a phenomenological and hermeneutic methodology was used, with a predominance of digital documentary sources, whose main theme was the formulation and design of policies that promote ecotourism, its promotion and development, which were analyzed and discussed to draw up the conclusions of the study. The results obtained lead to the conclusion that the theoretical guidelines for the development of a policy to promote ecotourism focus on nature conservation, sustainability, local development and environmental education, understood as forces capable of promoting sustainable development as a whole.

Keywords: theoretical guidelines; public policies; ecotourism promotion; promotion policies; sustainable development.

Introducción

El ecoturismo es una práctica que ha cobrado notoriedad en las últimas décadas, sobre todo al fomentar actividades económicas sustentables para las localidades y el medio ambiente, lo que permite una coexistencia armónica entre el interés económico y el bienestar de los sitios de interés turístico, en las cuales estas se llevan a cabo. Dentro de la promoción del ecoturismo, Araujo, Parra, Salvatierra y Arce (2013), explican que los gobiernos en cualesquiera de sus niveles deben enfocarse en fomentar la actividad turística en armonía con la conservación del medio ambiente y la cultura local. Estos lineamientos buscan garantizar la sostenibilidad y el desarrollo económico de las comunidades a través del turismo responsable.

Según Arboleda (2018), entre los principales lineamientos teóricos para una política de promoción del ecoturismo se encuentran: la planificación y gestión sostenible de los destinos turísticos, la educación ambiental y cultural para visitantes y residentes, la participación activa de las comunidades en el desarrollo del ecoturismo, la conservación del patrimonio natural y cultural, y la promoción de prácticas turísticas responsables. Por lo que ahora se pretende identificar los lineamientos teóricos involucrados en el desarrollo de una política coherente de promoción del ecoturismo.

Para el desarrollo de este trabajo se busca definir el ecoturismo y sus ventajas económicas, los elementos a tener en cuenta para el desarrollo de políticas de promoción y, además, establecer el alcance de las mismas en materia de sostenibilidad y protección de las poblaciones locales. De manera que se divide en varios segmentos que desarrollan un apartado específico, que al integrarse exponen de forma general los objetivos formulados y sus conclusiones sobre las políticas de promoción turística, el ecoturismo y la relación del turismo con las políticas públicas en general.

A su vez, se desarrolla un apartado en donde se detalla la metodología del estudio la cual fue de tipo fenomenológica y hermenéutica, para una mayor comprensión de las teorías relacionadas con el desarrollo de una política de promoción del ecoturismo, para posteriormente realiza39mcr39 una discusión de los resultados obtenidos tras la revisión hermenéutica de los textos consultados, que permitieron emitir las conclusiones del estudio.

1. Turismo

Sobre las definiciones en torno al concepto de turismo, Rengifo y Sánchez (2022) rescatan la que emana de las Naciones Unidas, la cual explica que el mismo es una actividad realizada por las personas en periodos de viaje que requieren una estancia en lugares ajenos a su entorno habitual. Dicha actividad se desarrolla por un periodo de tiempo inferior a un año, tiene como objetivo el ocio, los negocios o cualquier otro propósito turístico, siempre y cuando no incluya la práctica de actividades remuneradas en el lugar de destino.

Por otra parte, Rengifo y Sánchez (2021) exponen que, en palabras de la Organización Mundial del Turismo, este es un hecho social, cultural y económico en el cual las personas se movilizan de un lugar a otro, fuera de su residencia habitual para conocer destinos con atractivos particulares, recreación y ocio. Como puede verse, los autores remarcan la dimensión que el turismo tiene como un fenómeno humano con diferentes aristas que afectan, no solo al sujeto que desarrolla dicha actividad, sino que, además, tiene un impacto en el entorno donde se llevan a cabo.

Los autores explican que en todas las definiciones que puedan existir sobre el turismo, existen unos elementos transversales e interdependientes: uno de ellos es el desplazamiento del sujeto de su lugar habitual a otro completamente distinto (ya sea dentro de su propio país o hacia el extranjero). Asimismo, el segundo elemento propio de la definición de turismo es la motivación del que viaja. Esta es, predominantemente, la recreación, aunque también no se descartan otras motivaciones de tipo profesional o de negocios. Finalmente, el otro elemento asociado es la temporalidad del desplazamiento turístico, la cual es siempre limitada a un periodo no mayor a un año (Oleksenko, 2021).

En el caso de Guerrero y Ramos (2014), estos autores recogen en su trabajo una definición de turismo que lo señala, igualmente, como fenómeno social que implica un desplazamiento voluntario y temporal del sujeto con motivos de recreación, descanso, salud o culturales. Este desplazamiento parte del lugar de residencia a otro donde no se aspira a realizar ninguna actividad lucrativa. En este fenómeno se desarrollan interrelaciones de índole económica, social y cultural.

Cabe resaltar que de acuerdo con CESUMA (2020), existen otras clasificaciones emanadas desde la Organización Mundial del Turismo, las cuales corresponden al turismo interno, receptor, emisor, internacional, nacional, recreativo, de consumo, cultural y educativo, de reunión y nostálgico. El turismo interno lo constituyen aquellos desplazamientos realizados dentro de un país por parte de sus propios habitantes. En el turismo receptor se hace referencia al rol que ejerce una región que recibe a turistas que no son habitantes permanentes de esa localidad.

Por otro lado, el turismo emisor se entiende por todos aquellos viajes que son realizados por los residentes de un país hacia otro. A su vez, estas categorías, al combinarse entre sí, dan origen a otras subcategorías turísticas. Para el turismo internacional, CESUMA (2020) explica que el mismo se refiere a actividades turísticas, tanto de tipo emisor como receptor. Esto quiere decir que se involucran actividades de empresas que ofrecen productos turísticos a los ciudadanos fuera de su país (lo que sería el turismo emisor) y las personas extranjeras (como parte del turismo receptor). Asimismo, el turismo nacional involucra actividades tanto del turismo emisor como receptor.

Otra clasificación que aporta CESUMA (2020) son aquellas que se derivan a partir de la motivación del turista. En este sentido se tienen algunas clasificaciones previas como el turismo recreativo, cultural y educativo, empresarial y profesional, terapéutico, deportivo, aventurero, ecológico y el turismo religioso. Sobre el turismo de consumo se explica que este involucra el aprovechamiento de recursos naturales como parte del programa turístico. Entre ellos se ubica la caza autorizada, pesca, recolección de alimentos silvestres y platas medicinales.

Por otro lado, el turismo de reunión y nostálgico es de tipo más personal, ya que se relaciona con la visita a conocidos y familiares, a los lugares de su nacimiento, entre otras actividades relacionadas con la historia de vida del propio turista. Finalmente, los viajes combinados incluyen dos o más modalidades de turismo anteriormente explicadas. Tal es el caso de viajes terapéuticos que pueden incluir programas de excursiones, viajes recreativos y ecológicos y muchos otros.

2. Ecoturismo

El ecoturismo se define como aquella actividad que involucra viajes con actividades recreativas donde el turista aprende sobre temas relacionados con la naturaleza y su conservación. Por otra parte, el turismo de aventura involucra actividades deportivas para los "amantes de la adrenalina" y del contacto con la naturaleza. Adicionalmente, el turismo rural permite al viajero involucrarse en actividades propias de la localidad visitada, manteniendo el respeto por las identidades culturales y promoviendo la cultura de paz (Pérez *et al*., 2012).

Por su parte, Zambrana (2014), resalta que el ecoturismo es una práctica que desarrolla todas sus actividades en el medio natural, de manera que estos puedan ser transformados en productos y servicios con el mínimo nivel de intervención humana, aprovechando exclusivamente el potencial natural de las localidades o lugares con un determinado atractivo (montañas, cascadas, lagos, mares, bahías, islas, entre otras).

De igual manera, Crespo (2020), define a este como aquella actividad turística que promueve la conservación del ambiente y el desarrollo sostenible de la comunidad por medio de la educación y concientización del visitante con interés turístico de los patrimonios naturales. Las características del término varían según la zona y circunstancias de las comunidades en donde se desarrollan estas actividades, por lo que el autor resalta su variabilidad y que, además, este término se caracteriza principalmente como una actividad económica que busca el desarrollo sostenible por medio de prácticas políticas que promueven el desarrollo desde la ecología, conservación y educación del visitante.

En general, los autores antes mencionados coinciden en que el término se origina de los acuerdos de la conferencia de las Naciones Unidas para el medio ambiente humano de 1972, en el cual los países participantes establecieron pautas generales para llevar a cabo actividades turísticas con el menor grado de impacto en el ambiente y el desarrollo sustentable de las localidades involucradas en tales actividades. Asimismo, es importante recalcar que para la práctica del ecoturismo se debe tener como premisa fundamental la protección de la naturaleza, con el fin de garantizar que tras

su visita y explotación comercial no se vulnere el equilibrio natural de la zona visitada (Zambrana, 2014).

En cuanto a sus características y dimensiones, Castillo y Castaño (2015), establecen que este busca reducir el impacto físico, social y ecológico del turista en áreas naturales; genera conciencia ambiental en la sociedad; brinda crecimiento financiero a las localidades; ofrece una experiencia positiva a los visitantes y, definitivamente, permite el desarrollo de las comunidades locales como pueblos indígenas, comercios, familias, entre otras.

Sus dimensiones pueden clasificarse en focales, cuando elementos culturales o naturales de una localidad son aspectos característicos del territorio que causan interés en el ecoturista y, por si solos, promueven el lugar; como es el caso del salto ángel en Venezuela o Akumal, Riviera Maya en México. Son complementarios cuando estos elementos culturales o naturales son un complemento adicional a la experiencia del turista en la zona; como Playa del Carmen en México o la Isla de Margarita en Venezuela. De apoyo, son todas aquellas infraestructuras desarrolladas en los entornos naturales, como: posadas, alojamientos, servicios entre otros que enriquecen la experiencia turística como, por ejemplo, el parque marino nacional arrecifes de Cozumel, México (Castillo y Castaño, 2015).

3. Políticas de promoción turística

Según Castillo y Castaño (2015), la promoción turística es o implican técnicas y elementos de mercadeo adaptados al ámbito turístico, con el objetivo de dar a los consumidores o potenciales visitantes la información necesaria sobre las infraestructuras, establecimientos y lugares con el fin de influir en la decisión de destino de los potenciales turistas.

Las políticas de promoción turística son aquellas que parten de iniciativas públicas o privadas y buscan incentivar el turismo por medios de diversas estrategias publicitarias y de mercadeo, estas bien pueden ser llevadas a cabo por empresas particulares o instituciones gubernamentales, ministerios, entre otros, a fin de impulsar este sector económico en sus respectivos países. Otros autores como Gondim *et al.,* (2012) explican que las políticas de promoción turística permiten hacer asociaciones positivas o negativas sobre la imagen de una localidad, monumento natural o país en específico, la cual cambie la imagen tradicional de un país ante la opinión pública global y esta se posicione como un destino de interés.

4. Turismo y políticas publicas

De forme breve puede decirse que una política pública es el 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 o problemas que son importantes 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; además de lo anterior, estas deben responder a los fines que el Estado trazo para ellas, por lo que se enmarcan dentro del tinglado institucional y lega se debe hacer siempre efectivo su cumplimiento (Maggiolo y Maggiolo, 2007).

En cuanto a la relación que las políticas públicas tengan con el turismo, normalmente estas buscan dar respuesta a algún tipo de demanda de las localidades involucradas en tales actividades, regular por medio de leyes y normas su desarrollo y evitar la sobreexplotación, deterioro, daño o intervención excesiva de los espacios naturales, siendo el Estado el encargado de facilitar la cooperación y la coordinación entre los actores claves que hacen parte del espacio material y simbólico de política pública (Torres y Santander, 2013).

5. Metodología

El universo de la investigación estuvo conformado por todas las publicaciones, artículos, tesis, libros y revistas especializadas revisadas en materia de ecoturismo, políticas turísticas de promoción de turismo, políticas públicas en turismo, material en el cual se hizo una apreciación critica de las fuentes y se dispuso su análisis para el cumplimiento de los objetivos del presente trabajo.

De acuerdo a Strauss y Corbin (2002), el método empleado para la elaboración del presente artículo fue la revisión sistemática y el análisis de los artículos seleccionados a fines del tema planteado mediante un enfoque próximo fenomenológico, que busca en cada momento describir la esencia de los fenómenos y; simultáneamente hermenéutico, al intentar precisar en contexto el significado real de las fuentes consultadas. De manera que se procedió a realizar una interpretación general de los diferentes puntos de vista recogidos en la documentación seleccionada, y se desarrolló la revisión bibliográfica de los datos recabados para identificar los lineamientos teóricos para el desarrollo de una política de promoción del ecoturismo.

6. Lineamientos teóricos para el desarrollo de una política de promoción del ecoturismo

En este punto conviene recordar que, tras la revisión de la bibliografía escogida, los textos de Araujo y otros (2013), Arboleda (2018), Castillo y Castaño (2015), Crespo (2020) y Rengifo y Sánchez (2021) se proceden a discutir las aproximaciones teóricas encontradas que permitan identificar los elementos que componen los lineamientos teóricos de una política de promoción del ecoturismo, en los cuales se encuentran los siguientes elementos:

6.1. Conservación del medio ambiente y del patrimonio natural

En este contexto, Araujo y otros (2013) señalan que la conservación del medio ambiente y del patrimonio natural es esencial para el desarrollo de una política de promoción del ecoturismo exitosa. Este debe diseñarse a partir del respeto y cuidado hacia el medio ambiente y la cultura local, enfocándose primordialmente en aquellas experiencias y actividades turísticas que minimizan el impacto negativo en el entorno natural, asegurando su conservación a largo plazo.

Por ello, las políticas de promoción del ecoturismo deben enfatizar en la preservación del medio ambiente y del patrimonio natural, asegurando la sostenibilidad de las actividades turísticas y su integración con las comunidades locales, a partir del trabajo mancomunado de todos los actores sociales involucrados, empresas dedicadas a viajes turísticos, hoteles, centros de recreación, ONG`s, instituciones de cultura ambiental, entre otros.

La conservación de los entornos naturales muchas veces involucra medidas de protección, recuperación y restauración de los ecosistemas amenazados, así como la promoción de su cuidado sistemático como un bien de la nación y la humanidad, de manera que todo esto se convierte en parte de la experiencia turística de los visitantes en el desarrollo del ecoturismo.

En este orden de ideas, siguiendo el criterio de Arboleda (2018), es importante mantener un equilibrio para que el turismo y la conservación coexistan, de tal forma que los turistas puedan disfrutar de su visita a la región y al mismo tiempo, se preserve el patrimonio natural, cultural y el medio ambiente del lugar. Por lo que es preciso contar con parámetros cualitativos y cuantitativos de número de personas por metro cuadrado según la extensión de área; donde se ubican los sitios de interés, la realización de estudios de impacto ambiental por parte de los grupos de visitantes, a fin de desarrollar todo un protocolo ambiental que permita una adecuada explotación sostenible del lugar.

Lo antes descrito permite afirmar que la sostenibilidad se perfila como uno de los términos clave para llevar a cabo las políticas de promoción turística desde la protección del ambiente y del patrimonio, ya que según Crespo (2020), el termino es una guía metodológica en cuanto a los criterios de cómo debe ser fundamentado el desarrollo de la gestión turística, para hacerla ecológicamente viable a la vez que mantenga las buenas prácticas ecológicas que permitan un desarrollo equitativo en ambos planos.

Por lo que entre los lineamientos teóricos para el desarrollo de una política de promoción del ecoturismo, siguiendo la pauta de formulación y diseño de políticas públicas llevada a cabo por Torres y Santander (2013), se debe tener en cuenta la premisa fundamental de la conservación del ambiente y del patrimonio natural por medio de la promoción de los sitios de interés y velar por que se desarrollen siguiendo estándares de visitas y protocolos de impacto mínimo sobre la zona, invitando a los turistas a depositar los residuos en los lugares apropiados, organizar tours con grupos pequeños, fomentar a las empresas de transporte de guía a que sus actividades generen huellas de carbono mínimas, entre otras. A fin de evitar el deterior de los espacios por una saturación de presencia humana, por lo que este tipo de experiencias deben ser llevadas a cabo siguiendo protocolos de visita y guías de destino lo suficientemente rigurosos como para evitar un impacto negativo por la presencia humana en las zonas naturales.

6.2. Promoción de la cultura local

Otro aspecto clave es la promoción de la cultura local como patrimonio, desde las prácticas, costumbres y cultura; lo que permite promover además este tipo de prácticas que, de acuerdo al Ministerio de Comercio, Industria y turismo de Colombia (2023), consisten en propiciar la inclusión, vinculación y participación de las comunidades locales con la gestión y promoción de su patrimonio para así llevar una gestión turística que fortalezca los activos culturales de cualquier zona, o región; de manera que se integren las cadenas de valor de todos los elementos turísticos, artísticos y culturales de una región de interés por su desarrollo.

Sin lugar a dudas, la promoción cultural local busque incentivar el desarrollo competitivo de los destinos señalarles como de interés turístico, a fin que las comunidades se preparen a nivel organizacional y protocolar, buscando exaltar su identidad con estas prácticas. Por consiguiente, este es un elemento a tener en cuenta para el desarrollo de una política pública del ecoturismo basada en las proyecciones de como el entorno natural puede influenciar en el atractivo de la localidad (Castillo y Castaño, 2015).

6.3. Desarrollo sostenible y responsable

El desarrollo sostenible y responsable según Arboleda (2018), implica la capacidad de satisfacer las necesidades actuales sin comprometer los recursos, patrimonios o reservas naturales a las generaciones futuras, para satisfacer sus propias necesidades. Desde el punto de vista de la ecología, esto significa que debemos utilizar los recursos naturales de manera responsable y garantizar la conservación y el cuidado del medio ambiente, para evitar su deterioro y posterior degradación intergeneracional.

En la industria turística, esto se traduce en promover un turismo responsable y sostenible, en el que se respeten las culturas locales, se protejan los recursos naturales y se fomente la participación y el beneficio de las comunidades con el fin de consolidar su autodesarrollo. Para ello, es importante que las políticas públicas en materia de promoción del ecoturismo incentiven y promuevan el desarrollo de esta actividad turística, garantizando siempre una gestión adecuada de los recursos y la conservación de los ecosistemas. Asimismo, la industria turística debe formular también estrategias de sostenibilidad para sus productos y servicios, a fin de minimizar el impacto ambiental de la actividad y contribuir a fomentar el desarrollo económico local de una manera responsable, capaz de ser viable ecológicamente con el pasar del tiempo (Castillo y Castaño, 2015).

6.4. Desarrollo y gestión del turismo

El desarrollo y la gestión turística se refieren al conjunto de estrategias y acciones encaminadas a fomentar un turismo sostenible y responsable en una determinada región o destino. De manera que Araujo y otros (2013), señalan que el enfoque en el desarrollo turístico sostenible implica no sólo el cuidado del medio ambiente, sino también el desarrollo económico y social de las comunidades locales y la protección de su patrimonio cultural incluida sus identidades, en un conjunto de prácticas que deban ser afines entre sí.

La importancia de la gestión y el desarrollo turístico sostenible es especialmente relevante en el ecoturismo, ya que este modelo turístico se enfoca en la conservación del medio ambiente y la promoción del desarrollo local. Dado que se centra en la búsqueda continua del equilibrio entre el desarrollo turístico y la protección del medio ambiente, de manera que se puedan aprovechar las ventajas del turismo sin poner en riesgo los recursos naturales de la región (Rengifo y Sánchez, 2021).

A su vez, Delgado (2020) explica que el desarrollo y gestión del turismo debe estar orientada a promover políticas de calidad capaces de innovar y generar el nivel de excelencia deseados, con el propósito de establecer prácticas sostenibles capaces de mantenerse a través del tiempo y que

faciliten las transformaciones institucionales y organizacionales necesarias para una política de promoción del ecoturismo adecuada.

Por tanto, los lineamientos teóricos del ecoturismo se basan --en general-- en la idea de que el turismo puede ser una herramienta para la conservación del medio ambiente y la cultura local, siempre y cuando se promueva de manera sostenible y responsable. Esto implica una planificación cuidadosa del desarrollo turístico, la educación de los visitantes y las comunidades locales, la conservación del patrimonio natural y cultural, y la promoción de prácticas turísticas responsables. La implementación de estos lineamientos puede contribuir al desarrollo económico de las comunidades, mientras se preservan los recursos naturales y culturales a largo plazo; por lo que la gestión turística es fundamental para que cualesquiera de los niveles de gobierno involucrados logren una adecuada práctica del ecoturismo.

Conclusiones

En lo referente al análisis de la literatura consultada sobre los lineamientos teóricos para el desarrollo de una política de promoción del ecoturismo, esta se enmarca en 4 grandes bloques epistémicos, de los cuales se deben partir diferentes aspectos a desarrollar para un objetivo común:

1. Ambiental: Es fundamental establecer estrategias que fomenten la conservación ambiental y el uso sostenible de los recursos naturales en lugares turísticos. Esto incluye promover políticas de turismo responsable y educar a los visitantes sobre la importancia de preservar la biodiversidad y el medio ambiente (Oleksenko, 2022).
2. Social: Se deben considerar los aspectos sociales de la promoción del ecoturismo, asegurando que las comunidades locales sean beneficiadas con el turismo y se promueva la participación activa de la población en el desarrollo de proyectos turísticos sustentables.
3. Cultural: proteger y promover el patrimonio inmaterial de las comunidades de interés turístico, ayudarte a promover la cultura local, como eventos y festividades, y para fomentar el desarrollo turístico responsable y sostenible desde la gestión cultural y su relación con el entorno.
4. Económico: El ecoturismo puede ser una fuente importante de ingresos para las comunidades locales y puede contribuir al desarrollo económico del país. Es importante promover prácticas turísticas responsables que generen empleo y valor agregado en la cadena de producción del turismo, llevadas a cabo desde el desarrollo y gestión turístico.

Además, se debe buscar información actualizada sobre leyes y regulaciones relacionadas con estos temas, para que el actor turista pueda estar siempre informado y actuar dentro de los límites legales.

En conclusión, aquellos lineamientos teóricos necesarios para el desarrollo de una política de promoción del ecoturismo se enmarcan dentro de la conservación del medio ambiente y del patrimonio natural, como premisas ecológicas clave para establecer los objetivos de este tipo de políticas, a la vez, que se debe fortalecer la concientización de los visitantes y la educación de los habitantes de los sitios de interés. La promoción de la cultura local es de vital importancia para otorgarle a este tipo de prácticas la proyección y alcance necesarios para que se conviertan en un destino atractivo. Por último, la promoción de un turismo responsable y sostenible es fundamental para potenciar un sector turístico que beneficie tanto al ambiente como a las personas, lo que se traduce en desarrollo sostenible.

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Rethinking destructive rumors as a legal means of solving the problems of intercultural interactions

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Abstract

The purpose of the study was to analyze situations of occurrence and spread of destructive rumors and, at the same time, to identify effective legal practices to counteract them in multicultural urban communities. In most cases, rumors do not reflect the factual situation, so they cannot be a tool for unbiased presentation of facts and, in the case of intercultural interaction, they can also provoke extreme and unlawful negative feelings about a certain group of people. The results of the study indicate that in the city Melitopol there are rumors about immigrants, refugees, ethnic groups, national communities or other groups, which are mostly negative. The analysis made it possible to identify the most common ethnic rumors: «Roma are thieves», «Jews are selfish»; confessional: «Muslims are terrorists»; socio-cultural: «IDPs live on state aid», «Ukrainians are cheap labor from Western Europe». Based on a qualitative analysis of social practices of Melitopol community members, in the conclusions the authors corroborate the effectiveness of ways of counteracting destructive rumors in multicultural urban communities as a legal means of solving the problems of intercultural interactions.

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Keywords: destructive rumors; incitement to hatred; critical legal thinking; interaction with others; hate speech.

Repensar los rumores destructivos como medio legal de resolver los problemas de las interacciones interculturales

Resumen

El propósito del estudio fue analizar las situaciones de aparición y propagación de rumores destructivos y, al mismo tiempo, identificar prácticas legales eficaces para contrarrestarlos en comunidades urbanas multiculturales. En la mayoría de los casos, los rumores no reflejan la situación objetiva, por lo que no pueden ser una herramienta para la presentación imparcial de los hechos y, en el caso de la interacción intercultural, también pueden provocar sentimientos negativos extremos e ilícitos sobre un determinado grupo de personas. Los resultados del estudio indican que en la ciudad Melitópol existen rumores sobre inmigrantes, refugiados, grupos étnicos, comunidades nacionales u otros grupos, que en su mayoría son negativos. El análisis permitió identificar los rumores étnicos más comunes: «Los romaníes son ladrones», «Los judíos son egoístas»; confesionales: «Los musulmanes son terroristas»; socioculturales: «Los desplazados internos viven de las ayudas del Estado», «Los ucranianos son mano de obra barata de Europa Occidental». Basándose en un análisis cualitativo de las prácticas sociales de los miembros de la comunidad de Melitópol, en las conclusiones los autores corroboran la eficacia de las formas de contrarrestar los rumores destructivos en las comunidades urbanas multiculturales, como medio legal de resolver los problemas de las interacciones interculturales.

Palabras clave: rumores destructivos; incitación al odio; pensamiento jurídico crítico; interacción intercultural; problemas socioculturales.

Introduction

The study of the phenomenon of rumors is primarily driven by the need to develop and effectively function mechanisms for regulating the legal social behavior of citizens in interethnic interactions and to address such problems as manipulation of public and individual consciousness, and the spread of various forms of intolerance in society. The complexity of the

phenomenon of rumors lies in the fact that stereotypes of consciousness are a rather unstable subject that can be studied only at the stage of their material embodiment in human behavior.

From a theoretical point of view, the relevance of the research topic is confirmed by the need to deepen the knowledge developed in sociology about intercultural interaction and, accordingly, those legal forms of group counteraction to destructive factors of consciousness and behavior of people which ensure the integrity of multinational communities. Since modern society is characterized by a high level of tension, which increases the number of intercultural conflicts, sociological science and practice have recently detailed and specified many essential aspects of the emergence and spread of rumors as a manifestation of hate speech.

Therefore, from a practical point of view, the relevance of a qualitative sociological study of intercultural interaction is explained by the need to identify effective means of overcoming the consequences of acute illegal manifestations of negativism, in particular, finding effective means of group counteraction to the manipulative use of rumors as a manifestation of hate speech in multinational communities.

1. Theoretical Framework or Literature Review

Theoretical and methodological developments in the field of intercultural communication and interaction show that it is important for sociological science to analyze the possibilities of understanding social interaction based on the theory of social communication and the subject of attention of such scholars as Aksenova (2013), Batsevych (2007), Donets (2019), Horovyi (2010), Kvit (2006), Rizun (2008), Kholod (2018), Timler (2008) and others. The social and psychological aspects of studying the factors of rumor origination and spread are reflected in the works of Moskalenko (2008), Potapchuk and Potapchuk (2015) and other researchers.

The search for ways to counteract destructive manifestations in intercultural relations in modern Ukrainian society is the subject of research by Stegniy (2011), Ruchka (2014), Afanasieva *et al.* (2021) a large group of researchers - authors of the "Antirumors Rumor Counteraction Manual" and many others. In considering the method of critical thinking as a means of a conscious approach of an individual to socio-cultural phenomena in social practice, we relied on the principles set forth in the works of Terno (2009), Tyaglo (2017), Halpern (2013) and other researchers of the problem.

Intercultural relations have different forms of manifestation and channels of functioning. However, the traditionally formed stereotypes of interethnic and intercultural relations, connections and communications

do not fully correspond to modern realities, and the insufficient level of intercultural competence today is often the cause of illegal conflict situations and various communication difficulties (Aksenova, 2013). In the process of this interaction, forms of unmanaged information exchange are also manifested, which is expressed in the phenomenon of "destructive rumors" (2021).

Based on the fact that rumors as a form of intercultural interaction function through language, to understand the nature of this interaction, we rely on the scientific concept of the theory of intercultural communication, according to which this phenomenon is considered as "the process of communication between people (groups of people) who belong to different national communities, who, using different languages, feel the linguistic and cultural "foreignness" of the communication partner, have different communicative competence, which can cause communicative failures or cultural shock in communication" (Potapchuk and Potapchuk, 2015).

Rumors are among the most influential and actively circulating phenomena in the spiritual life of people and remain an objectively inevitable attribute of interpersonal communication. A rumor is an informative message based on true or false information about real or fictitious facts, events, and phenomena of reality.

Rumors most often do not reflect the objective situation, so they cannot be a tool for objective presentation of facts, and in the case of intercultural interaction, they can also provoke unlawful extreme negative feelings towards a particular group of people or specific representatives of groups with a different attitude to the problem, in particular, groups of people defined by race, ethnicity, national origin, gender, religion, sexual orientation, etc.

The fundamental features of a productive dialogue of cultures include not only traditional cultural and communicative compatibility in everyday life, but also active counteraction to the destructive influences of the information environment. It is this activity, based on critical thinking, that expresses the socio-cultural orientation of the joint activities of different groups and their members in their desire to reach agreement. The search for criteria for such compatibility is evidenced by a wide range of scientific discourse: these include value, motivational, and normative criteria and orientations of the subjects of the dialogue, critical objectivity, experience, and practices of dialogue.

The realities of today have extremely actualized the approach associated with its understanding of these correspondences as a means of minimizing illegal risks, and the modern type of this kind of social relations can be attributed to those based on expert qualitative sociological knowledge, which, therefore, acts as a systemic factor in predicting the necessary measures to counteract destructive rumors (Batsevych, 2007).

2. Materials

Since modern society is characterized by a high degree of tension, which increases the number of intercultural conflicts, sociological science and practice have recently detailed and specified many essential aspects of the emergence and spread of rumors as a manifestation of hate speech. Therefore, from a practical point of view, the relevance of a qualitative sociological study of intercultural interaction is explained by the need to identify effective means of overcoming the consequences of acute unlawful manifestations of negativism, in particular, to find effective legal means of group counteraction to the manipulative use of rumors as a manifestation of hate speech in multinational communities.

Hate speech is a generalized designation of linguistic means of expressing a sharply negative attitude of "opponents" - holders of a different system of religious, national, cultural or more specific, subcultural values. This phenomenon can be an unlawful form of racism, xenophobia, ethnic hatred and intolerance, homophobia, and sexism (Hate speech, 2021).

As for rumors, hate speech should be understood as all types of statements that spread, incite, support or justify racial hatred, xenophobia, anti-Semitism and other forms of hatred caused by intolerance, including intolerance manifested in the form of aggressive nationalism and ethnocentrism, discrimination against minorities and hostile attitudes towards them, as well as immigrants and persons of immigrant origin. The main characteristic of hate speech is that it provokes extreme negative feelings about a particular group of people or specific members of a group through communication and is based on such phenomena as social stereotypes, rumors and discrimination.

From the perspective of intercultural conflict, linguistic unlawful aggression is understood as a speech action that establishes psychological or social inequality between participants in a communicative discourse. This is an individualistic and self-centered manner of human behavior that denies moral canons, aimed at destroying or partially destroying the social status of the addressee, with the possible subsequent illegal subjugation of oppression and exploitation of the aggressor's victim.

3. Methodology

In order to identify situations of emergence and spread of destructive rumors and effective legal practices to counter them in multicultural urban communities, we analyzed the materials of the survey of city residents of the Ukrainian Network of Intercultural Cities (UNIC-Ukraine), conducted by the Center for Sociological Research of Melitopol Bohdan Khmelnytsky

State Pedagogical University from June 11 to July 02, 2021, in order to classify existing rumors and prejudices related to cultural diversity (Terno, 2009).

The empirical basis of the article is based on the materials of the sociological study "Fighting Rumors" conducted by the Center for Sociological Research of Bohdan Khmelnytsky Melitopol State Pedagogical University from June 11 to July 02, 2021, among residents of the cities of the Ukrainian Network of Intercultural Cities (ICC-Ukraine). (Analysis and classification of rumors. ICC-Ukraine project "Fighting Rumors", 2021).

The article aims to accomplish the following tasks:

- to identify the essence and role of rumors in the manifestation of various illegal forms of negativism and intolerance in the relations of multicultural communities;
- to identify effective ways of counteracting destructive rumors in multicultural urban communities based on a qualitative sociological analysis of effective legal practices.

4. Results and Discussion

The results of the prevalence survey indicate that more than half (54%) of Ukrainian city residents answered positively to the question "Are there any rumors about migrants, refugees, ethnicities, national communities or other groups in your city?", and 73% of them noted that these rumors are mostly negative. The analysis also made it possible to identify the most common ethnic rumors - "Roma are thieves", "Jews are selfish"; confessional rumors - "Muslims are terrorists"; socio-cultural rumors - "internally displaced persons live on state aid", "Ukrainians are cheap Western European labor" (Terno, 2009).

Since the frequency of detection of rumors about representatives of a certain group in different media is almost identical, and respondents identify "indigenous people" as the leaders of the spread of all stereotypical expressions-rumors offered for evaluation, the negative stereotype about Roma - "Roma are thieves", and usually latent and not so emotionally expressed rumor that "Jews are selfish" should be classified as "chronic" for many cultures. At the same time, given the vague personalization and uncritical argumentation, these rumors have all the social prerequisites for overcoming them.

The second-ranked rumor containing signs of a dismissive attitude towards the nation, "Ukrainians are cheap Western European labor," is classified by respondents as primarily a consequence of current and

unresolved social issues in Ukraine, such as economic security, employment, political trends, etc.

Indeed, if we think about the content of the positive arguments given by Ukrainian specialists who have worked abroad for a long time: "People everywhere are valued for their moral qualities, life principles, culture and professionalism"; "in Europe, Ukrainians have salaries at the level of indigenous citizens and their work is appreciated"; "good specialists earn good money abroad", the importance of the socio-psychological contexts of self-esteem of Ukrainians in their own communities as talented and hardworking people becomes obvious. Obviously, major cultural and industrial centers in Europe (as well as domestic ones) have always needed high-quality specialists. Therefore, the activity of recruitment agencies inviting qualified specialists shows that the presence of qualified, and thus adequately rewarded, Ukrainians there will only grow.

The third position in the ranking is occupied by the rumor that internally displaced persons do not want to work ("live off state aid"). This is a fairly widespread negative stereotype, one of the reasons for which respondents cited the fact that wealthier IDPs of the first waves had enough money to take their time with employment and the final choice of a place of permanent residence. However, according to the survey data, in practice this statement is most often associated with significant problems of finding a job in their specialty in the context of high regional unemployment rates.

The fourth position, according to the rating, is occupied by the rumor that "Muslims are terrorists and we should stay away from them." This statement has historical roots in the global information space and is relevant today due to the growing level of illegal terrorism in the world. The low readiness (18%) to oppose the least widespread of the rumors offered for evaluation (only 48% have heard the phrase "Muslim terrorists"), despite its relative personalized vagueness, indicates a serious underestimation by respondents of the negative consequences of its spread. This increases the possibility of an uncritical attitude of Ukrainians to both world and domestic news and can be seen as a latent source of interethnic tension.

At the same time, the respondents are aware that since the Muslim community is integrated into the civil and political space of Ukraine and is a full-fledged subject of the development of Ukrainian statehood, ignoring such statements about Muslim Ukrainians in public places is a violation of a number of legislative acts. Given the accessibility and frequency of fabricated biased news feeds of the Russian media in information networks (in fact, the information ethnic war of the Russian Federation against the indigenous people of Ukrainian Crimea - the Crimean Tatars), tolerance of such statements about the Muslim confessional group in the Ukrainian media and public space is unacceptable and is legally classified as participation in inciting interfaith and interethnic hatred.

5. Implementation stages

Understanding this has led to the need for a sociological study of social processes and mechanisms for guiding people's behavior, primarily through their identification and self-identification with certain communities and their inherent normative systems based on critical thinking. Thus, based on the identified peculiarities of the respondents' attitudes towards rumors, and with the aim of developing practical tools for further research, we see that the culture of social groups in relation to the rumor factor is determined by the close interconnection of various forms of behavior of individuals and groups with different values and their hierarchical configurations in the social consciousness of social actors (Terno, 2009).

The present-day Ukrainian urban communities have many dimensions that allow us to identify these features, to show the content and nature of their current trends. A significant role is played by the ability of urban communities to self-develop, which begins with answering simple questions: who are we? how do we treat ourselves? who do we consider ourselves? how do we want to be seen in the eyes of European communities and national cultures? what are we doing for this?

We will consider how the critical thinking revealed by the groups of respondents is realized in the practice of positive narratives on the examples of interaction and solidarity of the Melitopol city community.

Consideration of the rumor that contains signs of a dismissive attitude towards the Ukrainian nation, "Ukrainians are cheap Western European labor," if we understand the content of the positive arguments given by Ukrainian specialists who have worked abroad for a long time: "people are valued everywhere for their moral qualities, life principles, culture and professionalism"; "in Europe, Ukrainians have salaries at the level of indigenous citizens and their work is valued"; "good specialists earn good money abroad," the importance of the socio-psychological contexts of Ukrainians' self-esteem in their own communities as talented and hardworking people becomes apparent, which, in our opinion, is primarily a consequence of current and unresolved social issues in Ukraine, such as economic security, employment, political trends, etc.

Taking into account the problem becomes an important element of the integration theme of the Lift Business Incubator project under the Diversity Connectors for Start-ups: The Art of Mixing program, which has been implemented in Melitopol for a long time by the NGO Committee of the Future. Solidarity and Responsibility".

An example of refuting the rumors about "Ukrainians as cheap labor" is the community's attention to the need of young people for quality vocational education and the involvement of graduates of Melitopol secondary schools,

colleges and universities of Melitopol region - successful professionals in various fields with experience in many European countries. An example of this practice is the recently opened School of Ambassadors in Melitopol, where those who intend to popularize traditional and newest city brands through various communication channels, who voluntarily undertake to conduct promotional activities and promote the values of the Melitopol brand, receive the necessary information and get acquainted with the long-term development plans for various industries in our region.

The emphasis of this School on the promotion of Melitopol region as a diversified regional professional and educational center known in different parts of the world will serve the good cause of introducing our region to the Europe where we are integrating, and will help young people to realize the value of their own professional culture, based on the continuity and continuity of the educational traditions of Melitopol region in many modern industries.

A fairly widespread negative stereotype is reflected in the position in the ranking of rumors about internally displaced persons ("living off state aid"). The analysis of the problem shows that one of the main reasons for this rumor is the significant problems of employment in Ukraine in their specialty in the context of high regional unemployment rates. An example of active counteraction to such rumors is the welcoming policy of Melitopol towards newcomers, which combines the joint efforts of the community, city authorities and active personal and public participation of internally displaced persons in the daily life of the city.

The real phenomenon of this movement, which encouraged IDPs from Crimea and Donbas to Melitopol to avoid the dry abbreviation "internally displaced persons" in everyday life, was the initiative of a group of IDPs to create the Alliance of New Melitopolians, a public organization that largely refuted the opinion of many that IDPs are mere freeloaders who want to work and live at the expense of the state on behalf of a quantitatively significant group of people displaced from the temporarily occupied territories.

A new level of contact with the city's residents and local authorities is evidenced by the participation of members of the New Melitopolians NGO, whose membership is now open to all newly displaced persons, migrants, and foreign students who do not want to be positioned as passive, temporary members of the city's community in many city events and roundtables in the format of a contact studio: "Are Melitopol's IDPs a Visitor or a Home?", "Unity as a Guarantee of Ukraine's Unity".

These efforts have borne fruit, many barriers and misunderstandings have been successfully overcome, and newcomers can always count on understanding and assistance in difficult circumstances. At the same time, as we can see, thanks to their active work, members of this social group

are now writing a new bright page in the life of intercultural Melitopol in opposition to rumors.

We consider the rumor that "Muslims are terrorists and we should stay away from them" to be a latent source of interethnic tension, since despite its relative personalized blurring (only 48% have heard the phrase "Muslims are terrorists"), only 18% of Ukrainians are ready to oppose it, which indicates a serious underestimation of the negative consequences of its spread.

Melitopol demonstrates public resistance to this phenomenon by the fact that one of the central streets, named Intercultural, is home to the Center for National Cultures, the Melitopol City Jewish Community, a Muslim Mosque, and the New Generation Christian Charismatic Church, demonstrating the religious tolerance of the city's residents as the basis for the harmonious existence of a multicultural community. This is not about a city where joint celebrations of the Tatar Sabantu and Hederlez, the Muslim Nowruz, the Moldovan Martishor, and the Bulgarian Martenitsa have long been a tradition of the city community.

The sincerity of the feelings of citizens of all ethnicities in condemning the arbitrary and criminal actions of the Russian authorities against Ukraine and the Crimean Tatar people is also evidenced by the invariably crowded annual Melitopol citywide peaceful rallies of Unity and car rallies to Chongar, held annually on May 18, the anniversary of the deportation of Crimean Tatars from their homeland, as a sign of historical memory and solidarity with them.

The most striking examples of the goodwill of the city's Muslims for understanding and unity are demonstrated by the confessional leaders and ministers of the Melitopol region through their participation in traditional meetings with representatives of the city authorities and the public in the form of regular prayer breakfasts, as a means of interfaith dialogue on pressing issues of the region and the city.

The women of the Melitopol Committee for the Return of Crimean Tatars to their Historical Homeland "Azat", as part of the protests against the annexation of Crimea, initiated the action "Women for Peace!", dedicated to the International Day of Peace. The Crimean Tatar community of Melitopol initiated a peaceful march to show that Crimean Tatars stand for the unity of Ukraine, for peace, spreading compassion, kindness and hope for a peaceful future. This atmosphere of mutual support is perhaps the most significant example of interculturalism in action.

Conclusions

Thus, the above practices of creating positive narratives on the examples of interaction and solidarity of the Melitopol city community, identified by the groups of respondents, allow us to conclude that legal critical thinking is a safeguard against the thoughtless spread of destructive rumors. Only such an approach allows us to learn, create a friendly atmosphere in a multicultural community and develop a culture of interaction through dialogic communication, which requires a high level of social awareness, communicative legal competence, and developed communication skills from all participants.

It can also be argued that in today's difficult conditions, sociological methods of supporting intercultural dialogue are becoming an important and effective factor in identifying ways to encourage each individual to engage in constructive interaction, to develop a positive attitude towards representatives of other nationalities, to develop knowledge about the cultures that surround them, and to flourish a modern multicultural community.

Since the culture of social groups in relation to the rumor factor is determined by the close interconnection of various forms of behavior of individuals and groups with different values and their hierarchical configurations in the social consciousness of social actors, further systematic sociological support is required for the practical development of legal counteraction tools in each case.

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Policy issues and legal support for the activity of the State Bureau of Investigation in Ukraine

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Abstract

Using dialectics and cognition method the purpose of this work was to analyze the appropriate level of legal support for the activities of the State Bureau of Investigation, to determine its effectiveness and to identify problematic aspects. A number of statutes, reports, online meetings and speeches delivered in the media and in the specialized committee of the Verkhovna Rada of Ukraine were investigated. It is concluded that among the shortcomings of the State Bureau of Investigation regulation, the following stand out: 1) Absence of a system of internal law enforcement agencies and clear delimitation of their role; 2) Uncertainty about the status of the State Investigation Bureau as an anti-corruption body; 3) Changes in the status compared to the principal established in the first edition of the Basic Law of Ukraine; 4) Inadequacy of regulatory consolidation of social and pension provision of employees of the State Bank of Ukraine; 5) Questions about the need to create expert services in the SBI system and include them among the state institutions entitled to conduct forensic examinations in Ukraine.

Keywords: normative and legal support; law enforcement agencies; State Bureau of Investigation; National Anti-Corruption Bureau of Ukraine; wartime crimes against children.

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Cuestiones de política y apoyo jurídico a la actividad de la Oficina Estatal de Investigación en Ucrania

Resumen

Mediante el uso de la dialéctica y el método de cognición el propósito de este trabajo fue analizar el nivel adecuado de respaldo legal para las actividades de la Oficina Estatal de Investigación, para determinar su eficacia e identificar aspectos problemáticos. Se investigaron una serie de estatutos, informes, reuniones en línea y discursos pronunciados en los medios de comunicación y en el comité especializado de la Rada Suprema de Ucrania. Se concluye que entre las deficiencias de la regulación de la Oficina Estatal de Investigaciones, se destacan las siguientes: 1) Ausencia de un sistema de agencias de aplicación de la ley internas y una delimitación clara de su rol; 2) Incertidumbre sobre la condición del Negociado Estatal de Investigaciones como órgano anticorrupción; 3) Cambios en el estado en comparación con el principal establecido en la primera edición de la Ley Básica de Ucrania; 4) Inadecuación de la consolidación reglamentaria de la provisión social y de pensiones de los empleados del Banco Estatal de Ucrania; 5) Preguntas sobre la necesidad de crear servicios de expertos en el sistema SBI e incluirlos entre las instituciones estatales que tienen derecho a realizar exámenes forenses en Ucrania.

Palabras clave: soporte normativo y legal; organismos encargados de hacer cumplir la ley; Oficina Estatal de Investigaciones; Oficina Nacional Anticorrupción de Ucrania; crímenes contra los niños en tiempos de guerra.

Introduction

The State Bureau of Investigation (after this - SBI) is a Ukrainian state law enforcement agency 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 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.

At the same time, the legal regime of martial law has a significant impact on the organization of the work of law enforcement agencies that conduct pre-trial investigations. Currently, on the territory of Ukraine, the most resonant, in addition to directly military ones, are crimes against children in the occupied territories, and therefore, the issue of legal responsibility

for sexual and other violence against children committed during wartime is gaining special relevance.

The changes introduced following Laws of Ukraine No. 305-IX dated 03.12.2019 and No. 720-IX dated 17.06.2020 add particular 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 tasks as mentioned above, which, strengthened the independence of this body and gave it considerable governmental weight (Gulak *et al.*, 2023).

1. Objectives

This work aims to analyze the appropriate level of legal support for the State Bureau of Investigation activities, analyze its effectiveness, and identify problematic aspects.

2. Materials and methods

General scientific and unique scientific methods of cognition were used to achieve the goal, particularly dialectical, formal-logical, analysis, synthesis, systemic-structural, comparative-legal, formal-legal, and prognostic.

The theoretical basis for the research was provided by the scientific output of scientists who dealt with issues of legal support for the system of newly created Ukrainian state law enforcement agencies in general, as well as the legal basis for the formation and operation of the State Bureau of Investigation.

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., Yara O. (Golovko *et al.*, 2022; Gulak *et al.*, 2015; Gulak *et al.*, 2021; Dubchak *et al.*, 2021; Gulak *et al.*, 2022; Yara *et al.*, 2021). Furthermore, public control over the activities of the State Bureau of Investigation was studied in a recent work by the co-authors of the same scientific publication (Gulak *et al.*, 2023). In the context of writing the article, the work of Ladychenko V., Danyliuk Yu., Golovko L., Kidalov S., Kutsevych M. who studied public participation in ensuring security and law and order at the level of local self-government bodies, was used (Ladychenko *et al.*, 2021; Golovko, 2017; Kidalov *at al.*, 2020; Kutsevych *et al.*, 2020).

A comparative analysis of the legal support of the formation and activity of the newly created state law enforcement bodies of the anti-corruption direction became important in the scope of the research. In addition, several 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

Among several legal conflicts and imperfections in the normative regulation of the legal foundations of the formation and activity of the State Bureau of Investigation, we singled out the following blocks, which we aim to investigate in the course of writing this scientific article:

1. Absence of a system (clearly defined by a single normative legal act of such a list) of domestic law enforcement agencies and a clear delineation of the place of the SBI itself in it;
2. Uncertainty of the status of the State Bureau of Investigation as an anti-corruption body and a body in the system of ensuring domestic national security, in particular, the presence of gaps and conflicting positions in the Basic Law of Ukraine on establishing the foundations of the SBI's activities, as well as in the corresponding profile main legislative acts of Ukraine;
3. Changes in the status of the DBR in comparison with the primary one established in the first edition of the Basic Law of Ukraine, which, by analogy with the status of the National Anti-Corruption Bureau of Ukraine, are such that they contradict the norms of the Constitution of Ukraine and are the subject of consideration in the Constitutional Court of Ukraine;
4. Inadequacy of regulatory consolidation of social and pension provision of employees of the State Bank of Ukraine;
5. Questions regarding the need to create expert services in the SBI system and include them among the state institutions with the right to conduct a forensic examination in Ukraine.

The current legislation of Ukraine needs to contain a clear list of Ukrainian state bodies that are law enforcement. The Law of Ukraine "On State Protection of Court Employees and Law Enforcement Bodies" (Law of Ukraine, 1993) provides an incomplete list of bodies considered law enforcement for this Law. The Law of Ukraine "On the National Security

of Ukraine" (Law of Ukraine, 2018) discloses only the main characteristics of law enforcement agencies. Several subordinate legal acts contain non-exhaustive lists of such bodies. In particular, some founding documents of state bodies directly indicate their law enforcement status (Resolution of the Cabinet of Ministers of Ukraine, 2009).

So, to the list of law enforcement agencies, which are defined in Article 2, "Basic Concepts" of the Law of Ukraine "On State Protection of Court Employees and Law Enforcement Agencies" following the latest amendments introduced under the norms of Law of Ukraine No. 1150-IX dated 28.01.2021 (Law of Ukraine, 2021a), include the following: "bodies of the prosecutor's office, the National Police, the security service, the Military Law and Order Service of the Armed Forces of Ukraine, the National Anti-Corruption Bureau of Ukraine, the state border protection bodies, the Bureau of Economic Security of Ukraine, bodies and institutions for the execution of punishments, pretrial detention centers, bodies of state financial control, fish protection, state of forest protection, other bodies that perform law enforcement or law enforcement functions" (Law of Ukraine, 1993).

At the same time, the content of Article 1 of the Law of Ukraine "On the State Bureau of Investigation" indicates the opposite: "The State Bureau of Investigation is a state law enforcement body entrusted with the tasks of prevention, detection, termination, disclosure, and investigation of criminal offenses assigned to its competence" (Law of Ukraine, 2015).

Therefore, the absence of both a comprehensive normative and legal action regarding the unified definition of the system of "law enforcement agencies" and the absence of the "State Bureau of Investigation" among the list of such, in particular, in Article 2 "Basic Concepts" of the Law of Ukraine "On State Protection of Court Employees and law enforcement agencies" gives rise to many legal differences, collisions, and procedural contradictions.

The same legal conflicts concern the uncertainty of the status of the State Bureau of Investigation as an anti-corruption body and a body in the system of ensuring domestic national security. In particular, the very status of the SBI, enshrined in Article 1 of the Law of Ukraine "On the State Bureau of Investigation" (Law of Ukraine, 2015), mentions the relationship of this body neither to anti-corruption nor that which is part of the Ukrainian security and defense sector does not have.

At the same time, the norms of the Law of Ukraine, "On Prevention of Corruption," are contradictory, even within the same law. In particular, Article 1, "Definition of Terms" of the Law of Ukraine "On Prevention of Corruption" operates in entirely different interpretations regarding the place and role of the law enforcement body under investigation, defining:

1. among the list of specially authorized entities in the field of anti-corruption - the prosecutor's office, the National Police, the National Anti-Corruption Bureau of Ukraine, and the National Agency for the Prevention of Corruption;
2. and at the same time, including, following the latest changes stipulated by the provisions of the Law of Ukraine No. 1502-IX dated 01.06.2021 (Law of Ukraine, 2021b), among the regular channels of reporting on possible facts of corruption or corruption-related offenses – methods of protected (including anonymous) reporting of information by the whistleblower to the prosecutor's office, the National Police, the National Anti-Corruption Bureau of Ukraine, the National Agency for the Prevention of Corruption, and the State Bureau of Investigation (Law of Ukraine, 2014).

Part 2 of Article 12, "Composition of the Security and Defense Sector" of the Law of Ukraine "On National Security of Ukraine" refers to the security and defense sector: "Ministry of Defense of Ukraine, Armed Forces of Ukraine, State Special Transport Service, Ministry of Internal Affairs of Ukraine, National Guard of Ukraine, National Police of Ukraine, State Border Service of Ukraine, State Migration Service of Ukraine, State Emergency Service of Ukraine, Security Service of Ukraine, The Anti-Terrorist Center under the Security Service of Ukraine, the Judicial Security Service, the State Security Office of Ukraine, the State Service for Special Communications and Information Protection of Ukraine, the Apparatus of the National Security and Defense Council of Ukraine, the intelligence agencies of Ukraine, the central body of executive power that ensures the formation and implementation of state military-industrial policy" (Law of Ukraine, 2018), without including the body under study.

Therefore, regardless of the lack of a classification of the State Bureau of Investigation both in the main and in the relevant legislation as an anti-corruption body and a body in the system of ensuring domestic national security, we see the need for such a legal step, since de facto. Accordingly, intermediate norms of the current legislation, the SBI performs these functions directly.

At one time, special anti-corruption laws were adopted (in particular, Laws of Ukraine: "On the Anti-Corruption Bureau of Ukraine" and "On the State Bureau of Investigation"). However, they were not harmonized with the Constitution of Ukraine. This incompleteness of the previous parliament gave rise to many legal conflicts.

Thus, the director of the National Anti-corruption Bureau of Ukraine was appointed in April 2015 by issuing a corresponding Decree of the President of Ukraine, which the Constitution of Ukraine does not provide as the exclusive authority of the highest official of the Ukrainian state.

In December 2019, the Constitutional Court of Ukraine did not agree to the changes to the Constitution of Ukraine, which allowed the President to appoint the directors of the SBI and NABU. On August 28, 2020, the Constitutional Court of Ukraine recognized as unconstitutional the Decree of the President of Ukraine on the appointment of Artem Sytnyk to the position of Director of the National Anti-Corruption Bureau (which took place in April 2015) and the provisions of the Law of Ukraine "On NABU" regarding the participation of the President in the selection and appointment of the Director of the Bureau (Komisarov, 2021).

In order to resolve such significant regulatory discrepancies in the system of anti-corruption legislation, several draft Laws of Ukraine were submitted to the Verkhovna Rada of Ukraine. In particular, on February 15, 2021, the Verkhovna Rada registered the government draft law No. 5070 on bringing the status of NABU into compliance with the requirements of the Constitution (Draft Law of Ukraine, 2021a). And on February 22 of the same year - draft Law No. 5133 of February 22, 2021, "On Amendments to Articles 85 and 106 of the Constitution of Ukraine (Regarding the Procedure for Appointment and Dismissal of the Director of the National Anti-Corruption Bureau of Ukraine and the Director of the State Bureau of Investigation)" (Draft Law of Ukraine, 2021b).

The rationale behind the latest legislative initiative was that those anti-corruption law enforcement agencies that investigate and uncover corruption crimes by top officials, judges, and law enforcement officers, namely NABU and SBI, should be as independent as possible from the legislative (Verkhovna Rada) and executive (Cabinet of Ministers) authorities On March 16, 2021, following the review of the latest legislative initiative, draft Law No. 5133 was sent to the Constitutional Court for its opinion (Draft Law of Ukraine, 2021b).

The proposed constitutional changes are necessary for the legislative recognition of NABU and DBR as state authorities with a special status. From a constitutional and legal point of view, amendments to the Basic Law of our country will make it possible to distinguish the legal status of the State Security Bureau and NABU from the status of other state authorities.

Similar constitutional and legal transformations are due primarily to the specific tasks that the SBI and NABU must carry out within the limits of their powers. At the same time, following the provisions of draft law No. 5133, the improvement of work in the anti-corruption sphere will be based on parity and competitive principles of the procedure for appointing and dismissing directors of these state law enforcement agencies. Similar proposals were repeatedly expressed by Ukraine's international partners (Shevchuk, 2021).

Note that the current status of NABU in the relevant Law of Ukraine has been changed from a different law enforcement body, whose director is appointed by the President of Ukraine, to a "central body of executive power with a special status," following the requirements of Law of Ukraine No. 1810-IX dated 19.10.2021 "On Introduction amendments to some laws of Ukraine regarding bringing the status of the National Anti-Corruption Bureau of Ukraine into compliance with the requirements of the Constitution of Ukraine" (Law of Ukraine, 2021c).

Instead, at the same time, the SBI acquires the status of a state law enforcement agency instead of the previous version: "a central body of executive power that carries out law enforcement activities," following the norms of the Law of Ukraine "On Amendments to Certain Laws of Ukraine on Improving the Activities of the State Bureau of Investigations." adopted at the end of 2019 (Law of Ukraine, 2019).

In addition, according to the complete order of norms defined for him by the Constitution of Ukraine, the President of Ukraine does not have such powers concerning 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 central Law of our state (Gulak *et al.*, 2023).

Among the essential problematic issues in the activity of the SBI are the following: the issue of social and pension security for SBI employees and the need to create expert services in the SBI system and include them among the state institutions that have the right to conduct forensic examinations in Ukraine.

In particular, a draft of the Law of Ukraine "On Amendments to the Law of Ukraine "On the State Bureau of Investigation" and other legislative acts on social protection of rank-and-file and senior members of the SBI and particular issues of service in the SBI was prepared for the SBI, which, following the procedure established by law, along with accompanying documents, was sent to the Committee of the Verkhovna Rada of Ukraine on Law Enforcement Activities (Letter dated May 11, 2022, No. 10-11-01-6163). However, the subjects of the legislative initiative still need to introduce the specified draft law for consideration by the Verkhovna Rada of Ukraine.

In addition, the Cabinet of Ministers of Ukraine, as a subject of the right of a legislative initiative to eliminate legislative gaps and regulate legal relations in the field of pension provision for employees of the State Bureau of Investigation, submitted to the Verkhovna Rada of Ukraine on

22.07.2021 the draft Law of Ukraine "On making changes to some laws of Ukraine regarding the regulation of certain issues of pension provision and insurance of employees of the State Bureau of Investigation" (reg. No. 5818). According to the results of voting at the plenary session of the VRU, which took place on December 1, 2022, the mentioned draft law was rejected in connection with the issue of pension provision for members of the rank and file of the SBI still needs to be solved.

Currently, the Verkhovna Rada of Ukraine is considering draft law No. 5305, "On Amendments to Certain Laws of Ukraine on Improving the Legal Basis of the State Bureau of Investigation," registered on March 26, 2021.

The Verkhovna Rada of Ukraine adopted the said draft law on 01.07.2021 as a basis. However, during its preparation for the second reading, the norms regarding the creation of expert services in the SBI system and their classification as state institutions entitled to perform forensic examination were removed from it in Ukraine, even though the Opinion of the VRU Committee on Law Enforcement Activities dated November 24, 2021, recommended its adoption in the second reading and as a whole as a law with the necessary technical and legal amendments.

Conclusions

Our analysis of the regulatory and legal foundations of the formation and operation of the State Bureau of Investigation, which, according to its status, is currently, the law enforcement body with the most potent powers, showed several conflicting norms and contradictions.

Among the imperfections of the normative regulation of the legal foundations of the formation and activity of the State Bureau of Investigation, we singled out the following blocks, which were investigated in the course of writing this scientific article:

1. Absence of a system (clearly defined by a single normative legal act of such a list) of domestic law enforcement agencies and a clear delineation of the place of the SBI itself in it;
2. Uncertainty of the status of the State Bureau of Investigation as an anti-corruption body and a body in the system of ensuring domestic national security, in particular, the presence of gaps and conflicting positions in the Basic Law of Ukraine on establishing the foundations of the SBI's activities, as well as in the corresponding profile main legislative acts of Ukraine;
3. Changes in the status of the DBR in comparison with the primary one established in the first edition of the Basic Law of Ukraine,

which, by analogy with the status of the National Anti-Corruption Bureau of Ukraine, are such that they contradict the norms of the Constitution of Ukraine and are the subject of consideration in the Constitutional Court of Ukraine;

4. Inadequacy of regulatory consolidation of social and pension provision of employees of the State Bank of Ukraine;
5. Questions regarding the need to create expert services in the SBI system and include them among the state institutions with the right to conduct a forensic examination in Ukraine.

It was concluded that the absence of both a comprehensive legal act regarding the unified definition of the system of "law enforcement agencies" and the absence of the "State Bureau of Investigation" among the list of such, in particular, in Article 2 "Basic Concepts" of the Law of Ukraine "On State Protection of Court Employees and law enforcement agencies" gives rise to many legal differences, collisions, and procedural contradictions.

In addition, regardless of the lack of a classification of the State Bureau of Investigation as an anti-corruption body and a body in the system of ensuring domestic national security in both the primary and specialized legislation, we see the need for such a legal step, since de facto. Accordingly, intermediate norms of current legislation, the SBI performs these functions directly.

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Políticas deportivas en el mundo actual

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Resumen

Este artículo tuvo por objetivo describir las políticas deportivas en el mundo actual con el propósito de revisar el rol que el Estado desarrolla con la promoción del deporte a nivel internacional, a fin de establecer los mejores mecanismos de promoción deportiva. Este estudio se basó en una metodología de análisis hermenéutico de textos, informes e investigaciones especializadas en el tema con el propósito de dar cumplimiento con el objetivo pautado. Tras la revisión bibliográfica se procedió a contrastar las diversas fuentes consultadas para realizar una exposición integral del estado de las políticas deportivas actualmente desde un enfoque global, para luego explicar los roles y funciones que ejerce el Estado con respecto a la planificación y diseño de su política deportiva. Todo permite concluir que tales políticas varían en aspectos como la concepción que el aparato directivo posea de las actividades deportivas como actividad colectiva que involucre los intereses del país o, desde un enfoque individualista, donde se estimule el patrocinio e inversión privada para promover el talento deportivo en general.

Palabras claves: políticas deportivas; políticas públicas; actualidad deportiva; organización deportiva; mundo actual.

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Sports policies in today›s world

Abstract

The purpose of this article was to describe sports policies in today›s world in order to review the role that the State plays in the promotion of sports at the international level, in order to establish the best mechanisms for the promotion of sports. This study was based on a methodology of hermeneutic analysis of texts, reports and specialized research on the subject in order to comply with the set objective. After the bibliographic review, we proceeded to contrast the various sources consulted to make an integral exposition of the current state of sports policies from a global approach, to then explain the roles and functions exercised by the State with respect to the planning and design of its sports policy. Everything allows us to conclude that such policies vary in aspects such as the conception that the directive apparatus has of sports activities as a collective activity that involves the interests of the country or, from an individualistic approach, where sponsorship and private investment are stimulated to promote sports talent in general.

Keywords: sports policies; public policies; sports actuality; sports organization; current world.

Introducción

La práctica del deporte involucra una participación directa o indirecta del Estado que promueve su participación en distintos eventos nacionales o internacionales a fin de suscitar la práctica del deporte y los valores e ideas a través de su práctica como la transmisión de valores, respeto, perseverancia, justicia y hermandad entre las naciones y competidores dentro de un marco de armonía y amistad.

Por su parte, Cuevas (2019), resalta que las políticas deportivas no solamente se enmarcan en eventos o competencias, estas poseen una mayor relevancia al tener un impacto en la sociedad como tema de interés en materia de salud, educación y seguridad pública, ya que la cultura física es un tema de interés general que ha cobrado relevancia en los últimos años, en especial al momento de promover beneficios físicos y mentales en la población en general.

Asimismo, le corresponde al Estado organizar las distintas agrupaciones profesionales en las diferentes especialidades y diciplinas deportivas que deberán representar al país o constituir la selección en diferentes eventos deportivos nacionales o internacionales. Bajo este razonamiento es necesario señalar que criterios o enfoques de planificación se utilizan regularmente para diseñar y planificar una política deportiva (Cuevas, 2019).

Este estudio tuvo por objetivo describir las políticas deportivas en la actualidad con el fin de exponer sus diversos ámbitos y posturas, por parte del Estado, y como están se llevan a cabo; el trabajo está dividido en una serie de subtítulos que desarrollan un momento específico del estudio. Concretamente las secciones desarrolladas son: introducción al problema, las políticas públicas y políticas deportivas a fin de realizar una exposición teórica de ambos términos, la planificación y diseño de las políticas deportivas y la postura estatal de estas con respecto a cómo son organizadas.

A su vez, se desarrolló el apartado de la metodología del trabajo, para explicar al lector bajo que paradigma de investigación se enmarcara dicho estudio y los métodos de revisión empleados al momento de recopilar la bibliografía, para luego analizarla y exponer los aportes del análisis de los textos en la problemática, como condición de posibilidad para defender las conclusiones y recomendaciones del estudio.

1. Políticas públicas

Las políticas públicas son todas aquellas acciones y decisiones tomadas por las autoridades, de cualquier nivel de gobierno, para abordar problemas y desafíos en una sociedad determinada. Estas políticas se basan en objetivos específicos y se implementan a través de leyes, regulaciones y programas de carácter público que varían según las necesidades del país y las demandas de la población, siendo su objetivo principal mejorar la calidad de vida de los ciudadanos y promover el bienestar general (Ruiz y Cadenas, 2008).

En el contexto de las democracias modernas, Lahera (2004) explica que las políticas públicas son acciones y flujos de demandas y respuestas entre la comunidad, las autoridades y el sector privado, sobre uno o varios temas en específico que buscan orientar soluciones o mecanismos de atención. La importancia de las políticas públicas radica en su capacidad para abordar problemas sociales y económicos de manera efectiva. Estas políticas pueden abarcar una amplia gama de áreas, como: la educación, la defensa, el medio ambiente, la seguridad, la economía, entre otras. Al definir políticas públicas estables, los gobiernos pueden influir en el desarrollo y el progreso de una sociedad.

Además, las políticas públicas también pueden ayudar a garantizar la equidad y la justicia social al abordar las desigualdades, promover la inclusión y el desarrollo sostenible. Así como también pueden fomentar la participación ciudadana y la transparencia en la toma de decisiones gubernamentales en diversas áreas como contrataciones públicas, gastos sociales, presupuestos y contraloría social (Lahera, 2004).

En resumen, las políticas públicas son herramientas fundamentales para abordar los desafíos y mejorar la calidad de vida de los ciudadanos en su conjunto. Su importancia radica en su capacidad para promover el bienestar general, abordar desigualdades y fomentar la participación de la sociedad civil organizada.

Las políticas públicas abarcan un amplio nivel de programas cuya naturaleza varía de acuerdo a los intereses del Estado y la sociedad en invertir fondos públicos para lograr cumplir determinadas metas o garantizar su permanencia; un caso concreto sería los servicios de salud pública que garanticen el acceso de estos a la población en general o la educación. Por su parte, el deporte es un tema de interés para el desarrollo físico y mental del sujeto por lo que varios países garantizan una partida específica para su continuidad y desarrollo.

2. Políticas deportivas

Una política deportiva es aquella que afirma la promoción y fomento del deporte desde el Estado y que estimula su práctica y desarrollo en conjunto con otros actores del sistema político como las ONG´s, la comunidad, las empresas privadas, los gobiernos locales y regionales, entre otros. De manera que el deporte trasciende la actividad y cultura física para ser también una actividad de interés económico de cara a la salud, cohesión social y cultura (Cuevas, 2019).

Por su parte, Rhodes (2013), explica que una política deportiva es un conjunto de principios, objetivos y estrategias que se establecen para guiar y regular el desarrollo del deporte en un determinado ámbito, ya sea a nivel nacional, regional o local, de manera que permita que se ejecute y promueva su práctica desde cualquiera de los niveles de gobierno y vaya aumentado su nivel de competitividad y regulación. Estas políticas son elaboradas por entidades gubernamentales, federaciones deportivas u organizaciones deportivas.

Los elementos que conforman una política deportiva pueden variar dependiendo del contexto, pero generalmente incluyen aspectos como: la promoción del deporte, la formación de atletas, la organización de competiciones, la infraestructura deportiva, la financiación, la prevención de dopaje, la igualdad de género en el deporte, entre otros (Rhodes, 2013).

La relevancia de una política deportiva radica en que proporciona una guía clara y coherente para el desarrollo del deporte en una sociedad. Estas políticas permiten establecer además metas y objetivos a largo plazo, fomentar la participación y el acceso igualitario al deporte, promover la salud y el bienestar de la población, impulsar el rendimiento deportivo y

vigorizar la identidad y el sentido de pertenencia de una comunidad (Reyes, 2006).

Además, una política deportiva bien diseñada puede contribuir al desarrollo económico de una región, generar empleo en la industria deportiva, promover el turismo deportivo y mejorar la calidad de vida de las personas. También puede ayudar a prevenir problemas sociales como la violencia, el ocio, el dopaje y la discriminación. Por tanto, puede señalarse que una política deportiva es un conjunto de principios y estrategias que buscan regular y promover el desarrollo del deporte en una sociedad. Reiteramos que es relevante porque establece metas y objetivos claros, promueve la participación y el acceso igualitario al deporte, mejora la calidad de vida de las personas y contribuye al desarrollo económico y social.

3. Planificación y diseño de políticas deportivas

De acuerdo a Cuevas (2019), las políticas deportivas se diseñan a partir de dos enfoques:

1. El deporte de alto rendimiento, en donde los atletas desarrollan una práctica profesional del mismo y de un alto nivel competitivo (juegos olímpicos, campeonatos internacionales de cualquier diciplina).
2. El deporte en general que es para todas las personas (educación física, espacios habilitados para el juego y disfrute de la competencia con fines recreativos o aficionados). Esta última actividad posee una connotación de la práctica del deporte como política social y de inclusión.

La planificación de las políticas deportivas se elabora a partir de las necesidades u objetivos estratégicos del Estado en materia deportiva; tal es el caso de invertir en grandes infraestructuras como estadios o centros polideportivos en donde puedan desarrollarse las habilidades necesarias para la competición de alto nivel o, la inversión social del deporte, como herramienta para luchar contra la delincuencia en varios países de Centroamérica. En líneas generales, estas políticas buscan intervenir en los grupos de riesgo y promover el deporte como una práctica positiva lejos de la violencia, el crimen y las drogas, las cuales han tenido un notable éxito en conjunto con otras medidas preventivas a nivel social y familiar (UNODOC, 2023).

4. Metodología

A nivel metodológico, el presente estudio se enmarca dentro del paradigma de investigación cualitativo en el cual se busca entender el significado y características del fenómeno a estudiar, que en este caso sería el estado actual de las políticas deportivas, descubriendo el fenómeno a medida que se va realizando el estudio del mismo (Quintana y Hermida, 2019).

El presente trabajo empleo el método de análisis hermenéutico, el cual se basó en el análisis e interpretación de los textos cuyo criterio de selección se correspondió con el estudio y comprensión de las políticas deportivas y su implementación en el marco de las políticas públicas, las cuales aplican este método desde dos formas particulares: la interpretación y lectura para emitir un criterio de estudio. Tomando como referencia la descripción del estado de las políticas deportivas en el mundo actual (Quintana y Hermida, 2019).

Asimismo, el enfoque hermenéutico permite establecer en cada momento la relación entre el todo y sus partes, es decir, tratar el tema de estudio y su correlación con todos aquellos elementos que lo componen, de manera que el investigador puede exponer de forma integral la problemática a analizar de forma global, estableciendo las relaciones que considera necesarias para la investigación.

5. Estado de las políticas deportivas en el mundo actual

Tras la revisión teórica de algunos conceptos claves se procede a la descripción del estado de las políticas deportivas en el mundo actual, haciendo un énfasis en los diversos programas de América del norte, Latinoamérica y el Caribe y Europa, a fin de hacer una descripción general para luego exponer la postura estatal que asumen algunos países con respecto a la organización de sus políticas deportivas a fin de determinar si esta es abiertamente centralizada o posee la participación del gobierno, la sociedad en general y el sector privado.

En el mundo actual, las políticas deportivas varían de un país a otro y de una organización a otra. Sin embargo, hay algunos elementos comunes que se encuentran en la planificación de este tipo de directrices por parte del Estado en todo el mundo. Estos elementos incluyen la promoción de la participación deportiva, la promoción de la igualdad de oportunidades para el ingreso a las selecciones nacionales, la promoción de la salud y el bienestar para toda la población por medio de la práctica del deporte, la promoción de la ética deportiva y la lucha contra el dopaje, entre otros.

Otros países como Costa Rica, El Salvador, Guatemala, México y los EE. UU posee programas de desarrollo social y comunitario en donde en las áreas geográficas de mayor riesgo social se habilitan infraestructuras necesarias para el ejercicio físico o la práctica de alguna diciplina deportiva, con el propósito de captar el interés de niños y adolescentes en este tipo de actividades y promover, al mismo tiempo, valores positivos en ellos de manera que los aleje de las drogas y de la delincuencia organizada (UNODOC, 2023).

En muchos países, las políticas deportivas son desarrolladas y promovidas por los gobiernos nacionales o por organizaciones deportivas nacionales que se agrupan en federaciones o asociaciones con financiamiento gubernamental, de patrocinadores privados o de tipo mixto, en donde los atletas son seleccionados a partir de eliminatorias locales y regionales para integrar a las selecciones que representaran al país en eventos internacionales. Estas políticas pueden incluir la creación de programas y proyectos para fomentar la participación deportiva en todas las edades y niveles de habilidad, bien sea a nivel educativo, actividades comunitarias o ejercicios de integración social en empresas y eventos públicos (Cuevas, 2019).

A su vez, las políticas deportivas pueden incluir la promoción de la igualdad de género en el deporte por medio de ventos deportivos compuestos por equipos mixtos, la inversión en infraestructuras deportivas y la promoción de la educación y la formación en este ámbito con el objetivo de prevenir enfermedades cardiovasculares, luchar contra la obesidad y la depresión y mejorar el estado de salud de la población en general (Reyes, 2006).

Las políticas deportivas también pueden abordar cuestiones relacionadas con la financiación del deporte, la regulación de las competiciones deportivas, la prevención y el tratamiento de lesiones deportivas, la protección de los derechos de los atletas y la promoción de la diversidad y la inclusión en el deporte, por medio de eventos cuyo interés mediático cubra este tipo de agendas, a la vez que se busque obtener el mayor número de ingreso por medio de la publicidad, que se constituye en la herramienta de los mayores ingresos en los grandes eventos deportivos como el campeonato nacional de futbol americano, conocido como super tazón, la copa mundial de futbol, entre otros grandes eventos deportivos de interés internacional.

La relevancia de este tipo de políticas de acuerdo a Cuevas (2019) radica en su capacidad para promover y fomentar la práctica deportiva en la sociedad. El deporte no solo tiene beneficios físicos y de salud, sino que también puede contribuir al desarrollo personal, social y económico de las personas y las comunidades. También desempeña un importante factor de cohesión social en varias naciones como es el caso de Brasil, Bélgica, España o Camerún, donde la heterogeneidad social se unifica por el deporte como

hecho social dentro de estos países. A su vez, una política deportiva puede ser equitativa e inclusiva al ayudar a garantizar que todas las personas tengan acceso a oportunidades deportivas, independientemente de su origen socioeconómico, género, edad o habilidad.

Además, las políticas deportivas pueden ayudar a promover valores como el *fair play (juego limpio)*, la solidaridad, el respeto y la tolerancia, que son fundamentales en el deporte y en la sociedad en general. También pueden contribuir a la prevención de problemas sociales como la violencia, el abuso de sustancias y la exclusión social como se ha mencionado en páginas anteriores; lo que implica que en el Estado puede emplear el deporte como un medio catalizador social en la juventud y la población en general.

En resumen, las políticas deportivas son importantes porque promueven la participación deportiva, fomentan la igualdad de oportunidades, promueven la salud y el bienestar, promueven la ética deportiva y luchan contra el dopaje, entre otros aspectos. Además, contribuyen al desarrollo personal, social y económico de las personas y las comunidades, suscitan valores positivos y ayudan a prevenir problemas sociales, tales como: la violencia de género, drogadicción, pertenecer a grupos delictivos, entre otros.

A continuación, se hace una breve reseña de las diferentes prácticas en materia de políticas deportivas en diferentes países, a fin de establecer el alcance de las mismas y su impacto en el desempeño a nivel deportivo en la sociedad y en competencias:

En el caso de la mayoría de los países de América del Norte, la política deportiva se centra en la promoción de la actividad física y la participación en deportes, desde una edad temprana. El gobierno invierte en la construcción de instalaciones deportivas y en programas de formación de atletas de alto rendimiento que competirán en eventos internacionales, a su vez en los EE. UU cada estado posee su propio sistema deportivo. Además, se promueve la igualdad de oportunidades en el deporte, especialmente en términos de género y diversidad (Cuevas, 2019).

En el caso de algunos países europeos como Alemania, la política deportiva se enfoca en el apoyo a los clubes deportivos y la formación de atletas de alto rendimiento. El gobierno proporciona financiación y recursos para el desarrollo de infraestructuras deportivas y programas de entrenamiento. Igualmente, se promueve la participación activa de la población en actividades deportivas y se fomenta la organización de eventos deportivos a nivel local y nacional.

En Australia, la política deportiva se centra en la promoción de un estilo de vida saludable a través del deporte y la actividad física. El gobierno invierte en la construcción de instalaciones deportivas accesibles y en programas de promoción de la actividad física en las escuelas. También, se

promueve la participación de la comunidad en deportes populares como el cricket, el rugby y el fútbol australiano (Cuevas, 2019).

Estos son solo algunos ejemplos de cómo las políticas deportivas pueden variar de un país a otro y cómo pueden influir en el desarrollo del deporte y la promoción de valores positivos. En América Latina y el Caribe, Soto y Moreira (2021) señalan que, en muchos países de la región, se han implementado políticas deportivas con el objetivo de fomentar la práctica del deporte, promover la actividad física y mejorar la calidad de vida de la población.

En Argentina, por ejemplo, se ha implementado la Ley Nacional del Deporte, que establece las bases para el desarrollo del deporte en el país. Esta ley promueve la participación de todos los ciudadanos en actividades deportivas, fomenta la formación de deportistas de alto rendimiento y establece mecanismos de financiamiento para el deporte.

En Brasil, se ha implementado el Programa *Bolsa Atleta*, que consiste en una beca otorgada a deportistas de alto rendimiento para que puedan dedicarse de manera profesional al deporte, de manera que se busca una mayor profesionalización de los atletas en sus respectivas diciplinas y esto permita mejorar el desempeño general del país en eventos deportivos. El futbol también constituye uno de los deportes más practicados, aunque este se encuentra en manos de empresas y particulares privados donde la intervención estatal solo se centra en invertir en infraestructuras y promover su desarrollo a nivel comunitario (Soto y Moreira, 2021).

En México, se ha implementado el Programa Nacional de Cultura Física y Deporte, que tiene como objetivo fomentar la práctica regular de actividad física y deporte en la población joven y prevenir enfermedades y padecimientos ligados a la falta de actividad física, como: la obesidad, diabetes, hipertensión y depresión. Este programa promueve la creación de infraestructuras deportivas, la formación de entrenadores y la organización de eventos deportivos.

En cuanto al Caribe, muchos países de la región han implementado políticas deportivas para promover el turismo deportivo. Por ejemplo, en Jamaica se ha desarrollado el programa *«Jamaica Moves»*, que busca fomentar la actividad física y el deporte como parte de un estilo de vida saludable. Este programa incluye la construcción de infraestructuras deportivas y la organización de eventos deportivos internacionales, principalmente el atletismo (Soto y Moreira, 2021).

Estos son solo algunos ejemplos de las políticas deportivas en América Latina y el Caribe. Cada país tiene sus propias políticas y enfoques, pero en general, todas buscan promover la práctica del deporte, mejorar la salud de la población y fomentar el desarrollo del deporte a nivel nacional e internacional. Lo que implica a su vez que las políticas deportivas

se enfocan en diversos ámbitos que van desde el financiamiento de la selección nacional en múltiples eventos deportivos internacionales, como: olimpiadas, campeonatos entre otros. Del mismo modo, se aprecia también que se encuentra presente un interés por mejorar la cultura física de la población en general por los beneficios del deporte para la salud.

A continuación, se muestra un cuadro comparativo que indica el tipo de organización y métodos en la implementación de políticas deportivas de acuerdo a las prácticas llevadas a cabo por el Estado y la visión que este posee del desarrollo deportivo de su nación, así como su participación en eventos internacionales.

Cuadro No. 01. Postura estatal para el desarrollo de las políticas deportivas

Centralizada e Intervencionista	**Descentralizada y con inversión privada o mixta**
La organización deportiva es diseñada y planificada exclusivamente por el Estado como un asunto de interés nacional que involucra enteramente fondos públicos, y en ciertas actividades permite el patrocinio de empresas u organizaciones privadas. Estas políticas parten de un mecanismo de gestión y organización centralizado, que en ocasiones se encuentra articulado con un programa de desarrollo deportivo nacional más que la organización por medio de federaciones de diferentes diciplinas deportivas.	La organización deportiva se agrupa en diferentes sistemas de federaciones o asociaciones coordinadas por un comité centralizado que se encarga de la logística y financiamiento en diferentes eventos o competiciones internacionales. En la mayoría de los sistemas deportivos en los que impera este modelo el Estado se encarga de invertir en infraestructuras mientras que patrocinadores privados financian a los atletas para su entrenamiento o traslado a los sitios de competencias (esta modalidad ocurre en la mayoría de los países de Norteamérica y Europa) en el caso de América Latina y el caribe los mecanismos de financiamiento son mixtos en su mayoría con fondos estatales y privados.
Las políticas deportivas son influenciadas por un sistema de selección nacional de atletas o posibles talentos deportivos con un alto nivel de competitividad interna.	Las políticas deportivas se diseñan en torno a diversos ámbitos de interacción: social, educativo, competitivo entre otros en los cuales el Estado posee un nivel de participación, aunque no es un actor de peso en la selección de atletas y competidores.
Países o regiones en los que prevalece este sistema de políticas deportivas	**Países o regiones en los que prevalece este sistema de políticas deportivas**
China, Cuba, Corea del Norte, Bielorrusia, Rusia, Siria, Irán, entre otros.	Norteamérica, América Latina y el Caribe, Europa Occidental, Australia, Japón, Sudáfrica, entre otros.

Fuente: elaboración propia (2023).

Conclusiones y recomendaciones

Tras la revisión de la bibliografía consultada en la temática del estudio, los trabajos de Cuevas (2019), Reyes (2006) y Soto y Moreira (2021) coinciden en que una política deportiva significa un conjunto de normas,

reglas y directrices establecidas por un gobierno o una organización estatal para regular y promover el deporte en un país. De manera que estas políticas suelen abordar aspectos como la financiación del deporte, la infraestructura deportiva, la formación de atletas, la promoción de la actividad física y la participación en competiciones internacionales, entre otros aspectos.

Dependiendo de la postura en que el Estado desarrolle sus políticas deportivas (centralizada, democrática o mixta) estas pueden ser centralizadas y fuertemente intervencionistas y poseer un enfoque descentralizado y con un modelo de desarrollo que cuente con la inversión mixta de capitales públicos y privados. De manera que se aprecia que la mayoría de los países desarrollan una política deportiva en la que buscan la inversión de particulares a la vez que crean programas nacionales a nivel educativo y social para el beneficio de la salud de las personas.

Por último, es importante resaltar que la relevancia de una política deportiva radica en su capacidad para fomentar el desarrollo del deporte en un país y promover valores, como: la salud, la inclusión, la competencia justa y el espíritu deportivo. Además, una política deportiva bien diseñada puede tener impactos positivos en la economía, el turismo y la imagen internacional de un país.

A manera de recomendaciones, se requiere de la implementación de mecanismos de rendición de cuentas y transparencia más rigurosos e inflexibles en los eventos deportivos internacionales y que, a su vez, las federaciones o asociaciones nacionales de cada país, lleven una detallada lista detallada de sus integrantes con el propósito de evitar hechos de corrupción.

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Civilizational and culturological aspect of philosophical and legal studies of observance of human rights

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Abstract

The main purpose of the article was to study the key elements of the civilizational and cultural aspect of philosophical and legal research on the observance of human rights. The subject of the research was specifically the philosophy of human rights observance. Methodologically it is descriptive research developed in the domains of legal philosophy and logic. The scientific novelty lies in the fact that in modern legal discourse several approaches to the modern cross-cultural substantiation of the idea of human rights have been identified. Among them deserve attention the theories of human rights, based on the self-limitation of negative manifestations of a person, the ontology of spheres of human existence, the idea of human identity and the possibility of intercultural legal discourse. All allowed to conclude that, the further development of a theory of human rights acceptable to the majority of countries, in the opinion of the authors, is connected precisely with the otological concepts of human rights, among which the intercultural legal approach can be of great importance, in heuristic and hermeneutic terms.

Keywords: civilizational aspects; human rights; legal aspects; philosophy of law; intercultural law.

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Aspecto civilizatorio y cultural de las investigaciones filosóficas y jurídicas sobre la observancia de los derechos humanos

Resumen

El propósito principal del artículo fue estudiar los elementos clave del aspecto civilizatorio y cultural de la investigación filosófica y jurídica sobre la observancia de los derechos humanos. El tema de la investigación fue específicamente la filosofía de la observancia de los derechos humanos. Metodológicamente se trata de una investigación descriptiva desarrollada en los dominios de la filosofía jurídica y la lógica. La novedad científica radica en que en el discurso jurídico moderno se han identificado varios enfoques de la moderna fundamentación intercultural de la idea de derechos humanos. Entre ellos merecen atención las teorías de los derechos humanos, basadas en la autolimitación de las manifestaciones negativas de una persona, la ontología de las esferas de la existencia humana, la idea de identidad humana y la posibilidad del discurso jurídico intercultural. Todo permitió concluir que, el desarrollo ulterior de una teoría de los derechos humanos aceptable para la mayoría de los países, en opinión de los autores, está relacionado precisamente con los conceptos otológicos de los derechos humanos, entre los cuales el enfoque jurídico intercultural puede ser de gran importancia, en términos heurísticos y hermenéuticos.

Palabras clave: aspectos civilizatoros; derechos humanos; aspectos jurídicos; filosofía del derecho; derecho intercultural.

Introduction

In the globalization context, the problem of human rights is sharply discussed in two planes: the natural-legal understanding of the origin of fundamental human rights, that is, their universality and cultural differences (pluralism) regarding their recognition and implementation. This is due to the relevance of the institutional development of global law based on universal foundations (which are actually the principles of human rights), and the actualization of the problem of multiculturalism in a transitive society.

The theoretical discussion between the two dominant approaches is still going on today, but it is inappropriate to resort to certain extremes and reduce the right to only moral belonging or coercion. Since law, in our opinion, acts as a harmonious unity of both sides, definitely outlined in these concepts. Indeed, in their nature they have more in common than different, and their formation, genesis and modern production are largely

interdependent. It is a person who is the unifying basis, he is both an initiator and a practical element and a direct object of influence of a specific concept of human rights.

The confrontation between the positivist and natural-legal positions, as already noted, has been going on for a long time. Moreover, they are not limited to the sphere of scientific discourse, but also develop their concepts in individual constitutions of modern states. For example, the natural law (superpositivist) concept of human rights is implemented in the constitutions of Italy, Spain, France, the United States, and the positivist one is implemented in the constitution of Austria. Consequently, the disagreements of these approaches to the nature of human rights require the introduction of certain scientific adjustments.

Of great importance in shaping the idea of ensuring human rights was the theory of natural law, which was due to the reasoned concept declared by it of inalienable human rights and freedoms, regardless of the will of the state power, must be guaranteed and ensured at every historical stage in any society.

In the context of this paradigm, the position was substantiated that the phenomenon of distinguishing a special group of human rights, denoted by the definition of "inalienable rights", is due to the genesis and convincing scientific and theoretical interpretation of the doctrine of natural law. Motivating the phenomenon of law, the superpositivist theory appeals to the essence (nature) of a person, and not to certain external factors (the state, authorities, etc.), outlining its nature, which creates an opportunity, gives the potential to use such categories and "right ' and 'man'.

Note that it was Aristotle's teaching that became the source of lively philosophical discussions, since the thinker for the first time divided the right into natural and volitional, which is actively continuing between supporters of natural law and positivists today.

1. Materials and methods

Achieving the goal of the study required the solution of certain problems, which led to the use of theoretical ones: induction and deduction 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-statistical - to characterize the civilizational and cultural aspect of the philosophical and legal studies of the observance of human rights; the logical method is to understand the patterns of the civilizational and cultural aspect of the philosophical and legal studies of the observance of human rights; retrospective - in

order to clarify the features of the civilizational and cultural aspect of the philosophical and legal studies of the observance of human rights.

2. Literature review

As most scientists note, the key property of natural law is that its quintessence is universal human values. Natural legal concepts characterize human rights as a manifestation of the values of human existence and a manifestation of objective needs. However, it should not be ignored that the understanding of the genesis and essence of human rights was assessed taking into account two antithetical positions, a certain antipode of naturalism was the positivist approach to understanding human rights. Under the conditions of legalistic legal understanding, the concepts of state and law dominate over the concept of human rights, and in the second understanding, the dominants are the individual and their natural rights (Custers, 2021; Kzanchian, 2020; Kellman, 2021).

Human rights issues have always occupied a large place both in life and in the political and legal doctrine. In different periods of human history, human rights were and to a certain extent depend on the external environment, namely the public "shell" in which the individual existed and exists. Its convergence from a position without rights and completely dependent on this environment to freedom marks the evolution of both the actual rights and freedoms of a person, and their legal regulation.

Of course, the axiological approach to the analysis of the phenomenon of human rights is correct, since it allows comparing, on the one hand, the degree of freedom of the individual, and, on the other hand, the degree of readiness of the state to follow the proclaimed principles and norms. The entire modern list of fundamental ideas and principles in the field of human rights and freedoms was formulated in the era of antiquity and partly in the Middle Ages and served as the basis for the formation and approval of the relevant ideas and concepts of modern and modern times (Kryshtanovych *et al.*, 2022; Mantelero and Esposito, 2021).

According to scientists (Muller, 2019; Nersessian, 2018), human rights define the space that provides each person with the conditions for his self-realization, that is, the space of his personal autonomy. They are the moral criteria by which the legal order must be guided. According to their status, human rights act as independent standards for criticizing laws and other political and legal institutions, that is, as criteria for legitimation.

Human rights are, first of all, the moral rights that every person in the world has simply by virtue of the fact that he or he is a human being. Demanding our human rights, we morally demand, usually from the state,

not to do something, because this is an interference in our personal sphere, a violation of our personal dignity (Rodrigues, 2020; Sergeeva, 2022).

The content of human ontology is the direction of the will "to search for oneself in behavior", to realize the natural features of efficiency, to ensure that his actions are useful for nature and society. At the same time, the efforts of the will should be directed to the fulfillment by a person of that social role that is necessary to ensure the harmony of life, to maintain beauty, balance, which are a condition for the existence of everything natural.

Education is an objective phenomenon of social life, its function, has a national, historical character. It is an attributive element of human existence in the implementation of "humanity" that accompanies a person from the first steps of his historical existence. In every historical epoch, in every nation, the goal of education was certainly associated with ideas about a person, his essence and place in society (Zbigniew, 2019; Yukhno, 2012; Wong *et al.*, 2020).

Despite this, the issue of the civilizational and cultural aspect of the philosophical and legal studies of the observance of human rights has not been disclosed and, therefore, is relevant.

3. Research Results and Discussions

The interpretation of human rights as natural is fundamental to national declarations and contemporary international documents, and continues to this day as the standard and degree of just solutions, the basis for assessing and resolving genocides, massacres and wars. The culturological and historiosophical basis of a high assessment of natural human rights is the principle of Eurocentrism, the spread to all countries of the world of the system of value coordinates developed by Western countries, and their dissemination as a single standard of law.

But over the course of the 20th century, the globalization of the world space is rapidly taking place. The cultural, economic and political expansion of the West into the countries of the third world caused a tangible protest of these countries, the search for ideologies that became an alternative to aggressive Eurocentrism and the political and legal paradigms associated with it. Among the complaints are accusations against Western countries not only of "cultural imperialism", of promoting their political and economic interests, but also of cultivating an idea of natural human rights that is alien and unacceptable to many non-Western countries.

The ideology of multiculturalism has become one that not only puts the culture of the world on the same level, but also equalizes their legal principles and approaches. It was under its influence that the idea arose

that the idea of human rights is purely Western, it was formed at a certain stage in the development of Europe, and it postulates an abstract, universal, rationalistic vision of man, which is not mandatory for all cultures of the world. So, the idea of human rights, self-evident for Europeans, needs a new justification in order to become acceptable to the countries of the non-European world (Vinogradova *et al.*, 2021; Sylkin, 2021).

In pre-modern times, the idea of rights and freedoms depended on the characteristics of the class society. Representatives of those social classes were considered free who freely obeyed the political and legal Law recognized by the authorities, recognized the supreme Law of God over themselves and did not belong to the disenfranchised part of the population of slaves and serfs. The rights and freedoms of people were endowed by God and the ruler of the country. God endowed with the highest freedom to make a moral choice, and the ruler, who acted on the basis of political law, imitated dynastically or blessed by the Church, gave state-political rights and freedoms.

Enlightenment doctrine of human rights comes from the idea of a single universal nature of man - a rational, moral, free and creative being. It is valuable in itself because it is the main active and conscious agent of life and social relations. And it does not matter what cultural environment a person belongs to, the main thing is that under no circumstances can he be deprived of rationality, morality, freedom (Sylkin, 2021).

In the late 19th and early 20th centuries, the classical view of a person was replaced by the non-classical ideal of cultural relativism, whose representatives argued that it was impossible to talk about a person and his rights without taking into account the cultural context. Every culture has its own «image of man».

And if we respect the right of cultures to their own way of existence, we must accept the existence of cultures for which man and his rights do not represent the highest value. This is, for example, ancient China, Egypt or Byzantium, which did not give rise to the idea of human rights, and therefore, it is not universal, which means that no one has the right to spread it, let alone impose it on other peoples.

In the philosophy of the late twentieth century, theories are becoming more and more common, in which the rejection of the enlightenment interpretation of the universalism of human nature and his rights are replaced by the concepts of the plurality of human nature. They focus on the diversity of forms and manifestations of man. So, the relativism widespread in the conditions of globalization has also touched upon the fundamental problem of human nature and his rights, which actualizes the discussion of legal anthropology alternatives to the classical theories.

At the beginning of the twentieth century, the search for alternatives took place in many directions. In particular, the position of a kind of minimalism in understanding the essence of man is promising. This approach proposes to abandon any metaphysical statements about the essence of man, to leave all the grandiose supernarratives of human existence.

Acceptable for all cultures and situations is the position that a person is a being capable of both constructive and creative activity, social peace and tranquility, and non-constructive, destructive activity. A person can potentially be both a perpetrator and a victim. If he chooses the first path, then he becomes a potential victim for others. Conversely, the role of the victim prepares her and others for the crime. Hence, the thesis arises that the only way to remain human is to give up the role of the victim and the role of the criminal.

Legal theory can be derived from the ontology of the main spheres of human existence - the body, will, communication, understanding. The existence of the body, its needs and aspirations constitute the human right to a decent life. In accordance with this, the right to a healthy life, the right to one's own emotions, and even the right to peace and pleasure are established. The desire and will to live, the need and ability to make a choice determine the right to freedom and independence of human existence.

Everyone should be able to make their own decisions and be responsible for their consequences. The reciprocal right to have another's freedom imposes certain restrictions on my freedom, but gives rise to respect for the rights of others. The existence of speech and the need for communication determines the human right to freedom of speech and discussion of any issues. Since we are confronted with the opinions of others, the right to one's freedom of speech is respect for the right to express another.

Freedom of expression implies freedom of thought and one's own understanding, and hence the right of everyone to their own opinion, its upholding and protection. A similar rationale can be applied to any culture, but only when that culture recognizes that the satisfaction of these human needs is desirable.

Recently, in substantiating the idea of rights, arguments have appeared that come from the idea of human identity. Man as a person has the right to an original and identical existence. In addition to personal identity, one can talk about cultural, social, religious, political identity. In particular, when we talk about human rights in the context of cultural identity, it should be remembered that in a certain cultural environment, rights can have a peculiarity that is not typical for the West.

This is explained by the determining influence of local traditions, which should be taken into account. So, if for European countries the practice is widespread when children give their parents of advanced age to shelters

to preserve their rights, then in Africa this situation is perceived as a violation of human rights. For example, according to individualistic ethics, monogamy is the norm, while the ethics of tribal solidarity in the East allows polygamous families. You can also give examples of the difference in the assessment of the punishment in different countries of the world or even cultural differences in relation to the death penalty. Justification of law from the standpoint of cultural identity makes sense if the diversity of cultural identities of different legal groups is recognized.

Another methodology of law, the theory of intercultural discourse, can become a deepening of the previous one. According to this approach, in a situation of the cultural diversity of the world, one should not only take into account the uniqueness of human communities and their ideas about a person, but also strive for an intercultural legal dialogue.

Intercultural discourse is based on the basic recognition of the cultural identity of the community, which does not allow the imposition of a certain model and argumentation of one community (for example, Western) on another (for example, Eastern), one's own vision of a person and his rights - to other cultures.

On the other hand, the absence of a generally accepted theory of human rights, shared by representatives of various socio-cultural and civilizational communities, requires the establishment of basic principles that are acceptable to all, since value conflicts will occur between these cultural communities. The search for common values is an important task of international intercultural discourse. Its result is the adoption of the thesis that the highest value for all cultures is the value of human life. And this maxim is true for everyone, despite the specifics of individual regions and civilizations.

Recognizing the right of our culture to identity, we must thereby recognize the similar right of another culture. And it is precisely in order for a meaningful dialogue to take place between representatives and foundations of different cultures that an intercultural discourse should be developed, the task of which is to create a language and an intellectual environment within which it would be possible to reach a certain agreement in understanding the problems of a person and his rights.

Human and collective rights are a variety of universal values and norms. They can receive proper legitimation in a free, impartial discussion, taking into account the specifics of the world's cultures. To legitimize human rights within individual cultures, intercultural legal discourse lays down the principles of tolerance, recognition of the significance and uniqueness of all legal cultures in the world.

The main model of the human rights protection mechanism is presented in Fig. 1.

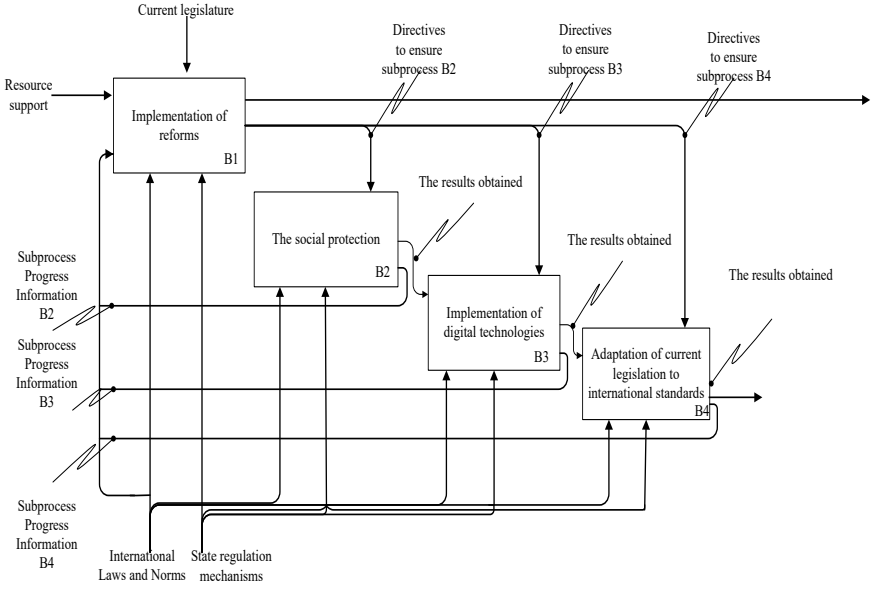

Figure 1. The main model of the human rights protection mechanism. Formed by authors.

An important part of the further development of intercultural discourse is the correspondence of universal legal norms and institutions to such an image of a person that has developed within the dominant culture. In the future, for the duration of the process of legitimation of legal norms, it is necessary to find arguments for rooting the ideological sources of this or that introduced legal phenomenon in the tradition of the host socio-cultural community. That is, the implementation of intercultural legal discourse within local cultures is a complex and multi-stage process.

Conclusions

The idea of human rights is fundamental to the development of European and world civilization. Its influence on the development of not only law, but also morality, religion, the foundations of civil society, and politics cannot be overestimated. The idea of "natural", "sacred" human rights and freedoms in one or another cultural form permeates the entire history of Europe from antiquity to the present.

To solve these problems in the philosophy of law there is no single approach. The range of views here extends from the assertion of the self-evidence of human rights to the complete denial of the possibility of substantiating human rights in general. The main paradox of the evolution of human rights lies in the contrast between the gradual withering away of their ideological roots (Christianity and classical theories of natural law) and the development of their content and jurisdiction on a worldwide level. In other words, the more the discourse of human rights spreads, the greater the uncertainty about their foundations becomes.

The scientific novelty lies in the fact that in modern legal discourse several approaches to the modern intercultural substantiation of the idea of human rights have been identified. Among them worthy of attention are theories of human rights, based on the self-restraint of negative manifestations of a person, the ontology of the spheres of human existence, the idea of human identity, the possibility of intercultural legal discourse.

In general, the results of the study implied the disclosure of the problems of analysis of the civilizational and cultural aspect of the philosophical and legal studies of the observance of human rights.

The approaches to the modern substantiation of the idea of human rights identified in the study refuse from educational approaches. At the same time, there is a search for the latest theories that substantiate the possibility of universal principles that ensure the development and implementation of universal legal norms for non-Western countries of the world. Indicative here is the theory of intercultural legal discourse, which demonstrates promising possibilities for realizing this goal. Further development of a theory of human rights acceptable to most countries, in our opinion, is connected precisely with the analyzed concepts, among which the intercultural legal approach can be of great importance.

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Transformation of the State policy of Ukraine in the healthcare sector during martial law

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Abstract

The purpose of the article was to highlight the essence and specific features of the transformation of the Ukrainian state policy in the health sector during the development of martial law. The methodological basis of this research grouped a set of general and special scientific methods of scientific cognition (deductive, comparative and legal, comparative, systems analysis method, formal and logical method, etc.). Everything indicates that, the destabilizing factors affecting the state policy include the reaction to the armed aggression of another state and the subsequent introduction of martial law. The authors have emphasized the regulatory legal acts of the national legislation of Ukraine, which establish the principles for the formation and implementation of state policy in the health sector. Specific features of the transformation of state policy in the health sector during martial law have been identified and revealed. It has been concluded that the state policy in the health sector is characterized by a dual nature, which consists in its stability, on the one hand, and at the same time, wide adaptability to changes and needs caused by martial law.

Keywords: martial law; state policy; health system; right to health; specificities and duality.

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Transformación de la política de Estado de Ucrania en el sector de la salud durante la ley marcial

Resumen

El propósito del artículo fue resaltar la esencia y las características específicas de la transformación de la política estatal de Ucrania en el sector de la salud durante el desarrollo de la ley marcial. La base metodológica de esta investigación agrupo un conjunto de métodos científicos generales y especiales de cognición científica (deductivo, comparativo y legal, comparativo, método de análisis de sistemas, método formal y lógico, etc.). Todo indica que, los factores desestabilizadores que afectan la política estatal incluyen la reacción a la agresión armada de otro Estado y la posterior introducción de la ley marcial. Los autores han hecho hincapié en los actos jurídicos reglamentarios de la legislación nacional de Ucrania, que establecen los principios para la formación e implementación de la política estatal en el sector de la salud. Se han identificado y revelado características específicas de la transformación de la política estatal en el sector de la salud durante la ley marcial. Se ha concluido que la política de Estado en el sector salud se caracteriza por una doble naturaleza, que consiste en su estabilidad, por un lado, y al mismo tiempo, amplia adaptabilidad a los cambios y necesidades ocasionados por la ley marcial.

Palabras clave: ley marcial; política de Estado; sistema de salud; derecho a la salud; especificidades y dualidad.

Introduction

Effective state policy in the healthcare sector is the basis for the stable functioning of the health care system of any country in the world. At the same time, the proper state of health of the population has a direct relationship to the economic potential, defense capability, level of cultural and social well-being and other important components, which influence on the successful development of the state.

The formation and implementation of the state policy in the healthcare sector requires both legal and organizational influence on social relations, and timely response to internal and external factors. Such factors can have both positive and negative content, because their action can contribute to the improvement (electronic governance, increased funding, optimization, etc.) or destabilization (state of emergency, martial law, financial crisis, etc.) of a certain system.

The action of negative factors may often be combined, which can lead to greater destabilization of a certain system. For example, the level of

corruption risks may increase during simplified public procurement in the context of counteracting the spread of COVID-19 (Teremetskyi *et al*., 2021; Lohvynenko *et al*., 2022; Knysh and Yakymets, 2022). The ability of the state policy to timely transform and implement the necessary changes into the national health care system becomes extremely important under such circumstances. It becomes possible due to the timely response of national governments to the changing conditions, challenges and threats accompanying the healthcare sector.

Based on the above, the study of the transformation of the state policy of Ukraine in the healthcare sector will be carried out in the context of the introduction and operation of a special legal regime of the martial law.

1. Methodology of the study

The scientific and theoretical basis of the research was the works of specialists focused on the legal, managerial, organizational, medical-social and military aspects of the formation of the state policy and the implementation of public administration in the healthcare sector. The informational and regulatory basis of the work consists of acts of national law that regulate relations in the healthcare sector within the normal period and under emergency conditions (martial law), political and legal journalism, scientific and journalistic works on public administration, open sources of documentary information, official registers and databases in the Internet.

The choice of the research methods is determined by the purpose, objectives and subject matter of the scientific article. The process of scientific search conditioned the mutual application of general scientific and special methods of scientific research. The indicated approach made it possible to form scientifically based conclusions.

Thus, the deductive method assisted to form the idea of the general principles of the state policy in the healthcare sector on the basis of the analysis of certain components and the dynamics of their changes in a particular period. The comparative and legal method made it possible to reveal specific features of legal regulation of the healthcare sector at the international and national levels. The comparative method contributed to determine the main components of the state policy in the healthcare sector in certain countries.

The application of the system analysis method made it possible to identify the main components of the state policy in the healthcare sector, which cause the need for its transformation during the martial law. The formal and logical method has been used to determine the perspectives

for improving the implementation of the state policy of Ukraine in the healthcare sector in a special period.

2. Results and Discussion

The sustainable development of any state is related to the successful formation and implementation of the state policy. Conventionally, it can be imagined as a certain cyclical process: a) formation of development perspectives; b) creation of a regulatory framework; c) organizational guaranteeing for implemented changes on the basis of adopted acts; d) assessment of results and formation of perspectives for the future. After that, everything starts again.

The healthcare sector in Ukraine is no exception. The inconsistency and unsystematic nature of the state policy is characteristic for this area, which was repeatedly emphasized by experts in the medical and legal field. Real reforms in the healthcare sector of Ukraine started very late. Those reforms are characterized by insufficient systematicity and continuity, as well as the absence of an approved reform strategy that takes into account existing and potential risks while implementing transformations (Lehan *et al.*, 2018). At the same time, the protection of citizens' medical rights requires more effective tools, especially in emergency situations, when rights become more vulnerable (Teremetskyi and Muliar, 2020).

National legislation is regulatory legal basis for the formation and implementation of the state policy of Ukraine in the healthcare sector. First of all, it is the Constitution of Ukraine, which refers definition of the principles of domestic and foreign policy, the implementation of the state's strategic course to acquire full membership of Ukraine in the European Union and the North Atlantic Treaty Organization to the powers of the Verkhovna Rada of Ukraine (c. 5 of the Art. 85 of the Constitution of Ukraine).

Besides, the Cabinet of Ministers of Ukraine ensures the implementation of the strategic course of the state for the acquisition of Ukraine's full membership in the European Union and the North Atlantic Treaty Organization, as well as the implementation of financial, pricing, investment and tax policies; policies in the spheres of labor and employment of the population, social protection, education, science and culture, nature protection, environmental safety and nature management (c. 11 and c. 3 of the Art. 116 of the Constitution of Ukraine).

The constitutional provisions on the formation and implementation of the state policy of Ukraine in the healthcare sector are detailed in the Fundamentals of the legislation of Ukraine on health care. They refer to

such a priority area of state activity as health care, the formation of the state health care policy, the implementation of the state health care policy, the system of standards in the healthcare sector and health care agencies (the Articles 12-15, Commentary on the Law "Fundamentals of the legislation of Ukraine on healthcare", 2021).

As it has been already mentioned, the state policy in the healthcare sector can be transformed under the influence of external factors. The latter include the declaration of a state of emergency related to the COVID-19 pandemic (Teremetskyi and Duliba, 2020) or counteraction to the armed aggression of another state and implementation of the martial law in this regard.

The martial law is a special legal regime. It is introduced in Ukraine or on some of its territories in case of any armed aggression or threat of attack, danger to the state independence of Ukraine, its territorial integrity. The martial law provides for the granting to the relevant public administration entities of the powers necessary to avert the threat, to repulse armed aggression and to ensure national security, to eliminate the threat of danger to the state independence of Ukraine, its territorial integrity.

Temporary restriction of the constitutional rights and freedoms of a person and a citizen, as well as the rights and legal interests of legal entities with the indication of the period of validity of these restrictions is allowed during the martial law due to the threat (Law of Ukraine "On the legal regime of the martial law", 2015).

As we know, the Constitution of Ukraine prohibits to restrict the rights and freedoms provided in the Articles 24, 25, 27, 28, 29, 40, 47, 51, 52, 55, 56, 57, 58, 59, 60, 61, 62, 63 (the Art. 64 of the Constitution of Ukraine, 1996) even in terms of the martial law. However, certain temporary restrictions may be imposed on the exercise of other rights and freedoms, in particular the right to health care.

In our opinion, the transformation of Ukraine's state policy in the healthcare sector during the martial law should take place taking into account the following features: 1) changes in strategic documentation, as well as amendments to the national legislation within the researched field; 2) greater attention to vulnerable population groups (children, persons with special needs, persons of the third age, internally displaced persons, etc.); 3) strengthening military-civilian cooperation on medical issues; 4) consolidation of health care standards under emergency conditions; 5) search for perspectives in order to improve the national health care system.

Considering each of the singled-out features in details, we note that regulatory legal framework that enshrines the right to health care is undergoing changes. Assistance in realizing the right to health care in emergency situations is the key aspect to such changes. It is related both to specific legislation in the healthcare sector and strategic documents.

It is not necessary to have a declaration for internally displaced persons during the martial law, it is allowed to refer to primary care physicians – pediatricians, therapists and family doctors, as well as narrow specialists (Ministry of Health of Ukraine, 2022). The functional subsystem of medical protection has been brought into readiness to perform assigned tasks in a special period, and the implementation of the Civil Protection Plan of the functional subsystem of medical protection for a special period has begun.

At the same time, the degree of readiness is defined as "Full readiness", which was approved by the Order of the Ministry of Health of Ukraine dated from February 25, 2022 No. 381 (Ministry of Health of Ukraine, 2022). In turn, the Order of the Ministry of Health of Ukraine dated from March 17, 2022 No. 496 approved the requirements for improving the quality of providing primary medical care in terms of the martial law, in particular, vaccination in accordance with the requirements of the preventive vaccination calendar (Ministry of Health of Ukraine, 2022).

We note legal regulation of administrative liability for violating quarantine under the martial law. In particular, Resolution of the Cabinet of Ministers of Ukraine dated from March 26, 2022 No. 372 "On Amendments to the Resolution of the Cabinet of Ministers of Ukraine dated from December 9, 2020 No. 1236" determined the specifics of quarantine to combat the coronavirus disease during the martial law in Ukraine (Cabinet of Ministers of Ukraine, 2020).

According to the amendments made, the "green", "yellow", "orange" or "red" levels of the epidemic danger of the spread of COVID-19 and the corresponding restrictive anti-epidemic measures during the martial law are not applied. Instead, the identified measures are related to counteracting COVID-19 in emergency situations, primarily prevention and vaccination (Chernetska, 2022).

As for increasing attention to vulnerable groups of population, it primarily concerns population groups or types of health care. Regarding population groups, the most important of them is children. A person is formed physically, mentally and intellectually during the childhood, and acquires all the necessary knowledge, skills and abilities. The future of the state, its successful development and perspectives for existence in general depend on the health of children.

Equally important is the organization of rehabilitation of victims to the conflict. Local self-government agencies and military-civilian administrations have received wide powers and financial opportunities in modern conditions in order to properly resolve the issue of the realization of human rights, in particular, regarding the medical and psychological rehabilitation of persons, who suffered as a result of the armed conflict.

Unfortunately, local initiatives for the formation of a rehabilitation system, which would take into account the challenges associated with the consequences of resisting the military aggression of the Russian Federation, do not find national recognition. In particular, ir is explained by the lack of the unified state register of persons who have received injuries or other harm of health from explosives, ammunition and military weapons, as well as a corresponding state program that would make it possible to introduce social protection measures for such persons and provide their financing at the regional level.

Strengthening of military-civilian cooperation in terms of the martial law is carried out in many directions, where a prominent place among them is occupied by the medical one. One should agree with Skrynnikova (2022) that health care institutions function in an extremely complicated mode providing assistance, first of all, to military personnel.

The Verkhovna Rada of Ukraine in order to implement and properly coordinate the work, as well as to ensure the proper treatment of military personnel, made amendments to the Art. 11 of the Law of Ukraine "On social and legal protection of military personnel and their family members" (Law of Ukraine "On social and legal protection of military personnel and their family members", 1991). Those amendments improve the provision of medical care to military personnel under the martial law and provide treatment of military personnel both in military health care facilities and in other facilities located both on the territory of Ukraine and abroad (Skrynnikova, 2022).

In turn, Loboda and Mykhalchuk (2022) emphasize that it is the state that forms the implementation of regulatory legal framework of health services, the structures of the state security sector, and the civilian health care system; it provides financial and resource support for the needs of the civilian population during the martial law. The Ministry of Health of Ukraine together with the Ministry of Defense of Ukraine form and maintain a certain number of territorial hospital bases for medical support of the military and civilian population during the martial law.

Thus, departmental medicine was integrated into a single medical space in terms of the martial law, as it was earlier required by the concept of medical reform. That made it possible to implement the principle of patient-centeredness, to ensure the possibility of receiving high-quality medical services by all subjects of legal relations within the healthcare sector.

The above corresponds to the provisions of the Military Medical Doctrine of Ukraine approved by the Resolution of the Cabinet of Ministers of Ukraine dated from October 31, 2018 No. 910 (Cabinet of Ministers of Ukraine, 2018). The Doctrine defines the ways for forming and implementing unified approaches to preserving and strengthening the health of servicemen,

providing medical assistance, their treatment and rehabilitation, as well as combining the capabilities and efforts of military medical services and civilian healthcare to form the unified medical space, improve material and technical equipment of medical facilities.

Health care standards during the martial law also need to be reviewed and optimized. Accordingly, the national standards and basic principles, which should be the basis for the realization of the right to health care, must be the fundamentals of the state policy in the researched area. For example, it is applied to the standard of emergency medical care: "Medical triage during mass admission of victims at the early hospital stage".

At the same time, temporary measures are important, in particular regarding the readiness of health care institutions to provide medical assistance to victims of Russia's military aggression against Ukraine. It also includes the Order of the Ministry of Health of Ukraine dated from March 10, 2022 No. 458, which approved the Minimum requirements for ensuring the sanitary and epidemic well-being of the population during the emergency arrangement of places of temporary stay for persons who are forced to leave their places of permanent residence because of the military aggression of the Russian Federation (Ministry of Health of Ukraine, 2022). The specified changes at the sub statutory level make it possible to optimize the state's efforts to implement the state policy in the healthcare sector during the emergency period, to guarantee citizens the realization of the constitutional right to health care.

Transferring to the perspectives for improving the national health care system, we can point to the active participation of international partners in this process. It is related to the de-occupation and reintegration of the temporarily occupied territories of Ukraine, the restoration of the functioning of public administration agencies on such territories, as well as the proper guarantee of human and civil rights and freedoms.

The principles for restoration and transformation of the health care system in Ukraine suggested by the WHO European Regional Office can be cited in this case. The position of international experts takes into account the strategic directions of the post-war recovery of the health care system in the short- and long-term perspective, simultaneously with the continuation of the provision of basic services in the healthcare sector during the ongoing hostilities. The suggested principles can be used as criteria for evaluating potential investments into measures to ensure the provision of qualitative individual and public health services, but not just to rebuild what was destroyed during the war.

Those principles are defined as: 1) orientation for human beings; 2) equality and financial protection; 3) resilience (stress resistance); 4) efficiency and stability; 5) accountability. It is believed that the application

of the above principles within the framework of the recovery strategy will make it possible to align the investments and priorities of the post-war policy with the main directions of the health care reform in Ukraine, in particular, in relation to the requirements for joining the European Union and accelerating the transformation of the national health care system (World Health Organization. Regional Office for Europe, □2022).

Approach by Zhovnirchyk *et al.* (2022) who suggest to use the positive experience of other states in solving the urgent problem of transforming the health care system is also very interesting. In their opinion, the health care of military personnel and the civilian population during the martial law does not meet the current domestic requirements regarding the guaranteed volume and quality of medical care, treatment and rehabilitation. Besides, scholars indicate the need to develop a military health care system.

We do not share the point of view regarding the development of the departmental health care system in the Armed Forces of Ukraine. On the contrary, in view of the treatment of a significant number of military personnel in health care institutions of various levels of subordination and institutional affiliation, the target-oriented improvement of the qualifications of medical employees is more perspective. It will preserve the unity of the medical space, as well as to ensure the proper level of medical services provision by qualified specialists.

We also emphasize the project of the Recovery Plan of Ukraine based on the materials of the "Health Care" working group. The main goal for the implementation of the Recovery Plan in the healthcare sector is the restoration and development of the health care system with new quality and availability of services to meet the needs of citizens. In order to realize this goal, the Plan provides a number of measures, in particular:

1. strengthening the management of the process for restoring the health care system;
2. ensuring the financial stability of the health care system;
3. restoration and transformation of the network of health care facilities;
4. strengthening medical services to meet the special needs of people caused by war;
5. strengthening and increasing personnel resources;
6. strengthening the public health system and readiness to emergency situations;
7. development of electronic health care and strengthening cyber security;

8. strengthening the quality management system at the national and local levels;
9. restoring the pharmaceutical sector, improving access and proper use of medicinal products (National Council for the Recovery of Ukraine from the War, 2022).

While supporting the vectors offered by the project for reforming the health care system of Ukraine in the post-war period, it should be emphasized that the conceptual principles should be developed and consolidated in the current legal acts.

The transformation of the state policy in the healthcare sector during the martial law surely requires a balanced approach. Some components of such a policy remain static (priority of preventive medicine, standards and programs of medical care, unified medical space, patient-centeredness, equality of medical care). At the same time, other components have a variable nature (psychiatric and psychological care, rehabilitation, quarantine restrictions, radiological safety measures, sanitary-epidemiological norms and rules, etc.).

Considering the above, it can be concluded that the state policy in the healthcare sector is characterized by a dual nature, which consists of its resistance to destabilizing factors, and at the same time, wide adaptability to changes and needs associated with the operation of a special legal regime of the martial law.

Conclusion

The authors of the article have analyzed the transformation of the state policy of Ukraine in the healthcare sector during the operation of the special legal regime of the martial law. It has been found out that the ability of the state policy to timely transform and implement the necessary changes into the national health care system becomes possible due to the timely response of national governments to the changing conditions, challenges and threats accompanying the healthcare sector.

It has been emphasized that the sustainable development of any state is related to the successful formation and implementation of the state policy that can be imagined as a certain cyclical process: a) formation of development perspectives; b) creation of a regulatory framework; c) organizational guaranteeing for implemented changes on the basis of adopted acts; d) assessment of the results and formation of future perspectives.

It has been concluded that the transformation of the state policy of Ukraine in the healthcare sector during the martial law should take place taking into account the following specific features: 1) changes in strategic documentation, as well as national legislation within the researched field; 2) greater attention to vulnerable population groups (children, persons with special needs, persons of the third age, internally displaced persons, etc.); 3) strengthening military-civilian cooperation on medical issues; 4) consolidation of health care standards under emergency conditions; 5) search for perspectives to improve the national health care system.

Certain components of the state policy remain static (priority of preventive medicine, standards and programs of medical care, single medical space, patient-centeredness, equality of medical care). Other components are variable (psychiatric and psychological assistance, rehabilitation, quarantine restrictions, radiological safety measures, sanitary-epidemiological norms and rules, etc.). Thus, the state policy in the healthcare sector is characterized by a dual nature, which consists in its resistance to destabilizing factors and, at the same time, wide adaptability to changes and needs in terms of the martial law.

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Legal regulation of occupational safety and health

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Abstract

The aim of the article was to discuss the issues of legal regulation of health and safety in Ukraine. The aim of the research was achieved with the help of general and special methods of scientific knowledge. It was concluded that in the conditions of martial law, the legislative approach to the adoption of new laws, amendments and additions to existing laws should be carried out in accordance with international legal standards, concerning the provision of adequate guarantees for persons exercising the right to work. The analysis of the content of normative legal acts and draft laws led to the development of relevant proposals in connection with the fact that the concept of the profile of the law should reflect a holistic approach to occupational safety and health, with emphasis on measures to prevent occupational accidents; improvement of working conditions (increasing the employer's liability for violations of legislation in the specified area, imposing on employees the duty to take care of their own safety and the health of others, etc.).

Keywords: labor rights; labor protection; occupational safety; health and labor; legal regulation.

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Regulación jurídica de la seguridad y salud en el trabajo

Resumen

El objetivo del articulo fue discutir los temas de regulación legal de la salud y seguridad en Ucrania. El objetivo de la investigación se logró con la ayuda de métodos generales y especiales del conocimiento científico. Se concluyó que en las condiciones de la ley marcial, el enfoque legislativo para la adopción de nuevas leyes, enmiendas y adiciones a las leyes vigentes debe llevarse a cabo de conformidad con las normas jurídicas internacionales, relativas a la provisión de garantías adecuadas para las personas que ejercen el derecho a trabajar. El análisis del contenido de los actos jurídicos normativos y los proyectos de ley condujo al desarrollo de propuestas pertinentes en relación con al hecho de que, el concepto de perfil de la ley, debería reflejar un enfoque holístico de la seguridad y salud en el trabajo, con énfasis en las medidas para prevenir accidentes laborales; mejora de las condiciones de trabajo (aumentando la responsabilidad del empleador por violaciones de la legislación en el área especificada, imponiendo a los empleados el deber de cuidar su propia seguridad y la salud de los demás, etc.).

Palabras clave: derechos laborales; protección laboral; seguridad laboral; salud y trabajo; regulación legal.

Introduction

Protection of the life and health of citizens in the process of their work, during the performance of official duties is one of the most important tasks of the state throughout the history of mankind (Pogorelova, 2020). Creation of optimal and safe working conditions at the enterprise, in institutions and organizations for employees of all branches of production is one of the urgent needs of today. The improvement of the production environment contributes to the increase of labor efficiency, preservation of working capacity and health of employees (Tymchenko and Zakrevsky, 2015), and a high level of ensuring safe and healthy working conditions is a guarantee of a successful state and a profitable capital investment for the state and for the employer.

Accidents at work and occupational diseases have devastating consequences for accident victims and their families, especially in human terms (death, injuries, disability, reduced quality of life, pain, sadness, suffering, low self-esteem) and financially (e.g., lost profit and loss of working capacity), as well as high direct and indirect losses to employers

and the state, the size of which can reach 4% of the gross national product (Takala, 2005).

According to the estimates of the International Labor Organization (hereinafter – the ILO), about 2.3 million people die annually in the world as a result of accidents at the workplace or due to work-related diseases – an average of 6,000 people every day. Also, about 340 million industrial accidents and occupational diseases occur every year around the world. At the same time, material losses from lost working days, medical expenses and compensation payments exceed 1.25 trillion dollars (approximately 4% of global gross domestic product) (Tsopa, 2019: 27).

Today, in Ukraine, legislative foundations have been formed to ensure the functioning of the model that combines state and contractual regulation in the field of conditions and labor protection. At the same time, state regulation of working conditions at the workplace is carried out by establishing minimum social standards, framework obligations, while specific quantitative parameters should be determined through the use of social dialogue mechanisms – during the conclusion of collective agreements and agreements of various levels.

At the same time, the aggravation of the problems of preserving and developing the labor potential in the conditions of the economic and demographic crisis, caused in particular by the war in Ukraine, requires the creation of effective mechanisms for ensuring safe and harmless working conditions.

It must be stated that today the state of ensuring labor safety in Ukraine is also quite low, and the severity coefficient of fatal accidents at work is much higher compared to the average indicators in the European Union (hereinafter – the EU). Privatization of large and creation of small and medium-sized enterprises, outdated and inadequate legislative framework on safety and health at work, as well as a high level of informal employment and undeclared work created significant obstacles to the prevention of accidents at work and occupational diseases, and their proper registration.

In addition, eight years of armed conflict and more than a year of full-scale war have turned Ukraine into one of the most mined countries in the world, and the large-scale destruction of infrastructure and industry requires considerable effort and resources.

In order to prevent cases of occupational injuries, occupational diseases, industrial accidents and other unexpected situations at work, a necessary task for our state is to reform the legislation in the field of occupational safety, taking into account the legal developments of the EU countries. The analysis and rethinking of the issues of legal regulation of labor provision are designed to formulate directions for improving the law-making practice of this social and legal phenomenon. In addition, the unprecedented

experience of Ukraine in the mentioned field, when work during martial law is associated with a large number of new, in particular, deadly risks, should become an example for countries where the possibility of armed conflicts is high.

1. Methodology of the study

Scientific research is built on a system of general scientific and special methods of scientific knowledge, in particular: the historical-legal method, which was applied in the study of the prerequisites for the emergence and regularities of the development and establishment of legal regulation of labor safety; the dialectical method – which made it possible to analyze the content of the concepts «labor safety», «legal regulation» in their development and correlation; a systematic method that made it possible to carry out research and systematic analysis of social relations that arise in the process of realizing the human right to occupational safety during work; the target method that was used to determine the specifics of provision in the field of legal regulation of labor protection and health; the method of observation, the manifestation of which is knowledge and study of the object of research; with the help of a prognostic method, the recommendations for improving the labor legislation of Ukraine, in particular, for improving the areas of legal regulation of legal relations in the field of labor protection and health; logical methods and techniques – deductions, inductions, analogies, analysis, which were used during the entire scientific research.

2. Analysis of recent research

The problem of legal regulation of industrial safety and occupational health and safety has been paid attention to in one way or another in their research by many scientists, whose works examine theoretical and methodological issues of management, planning, promotion of occupational health and safety, the effectiveness of the social insurance system against industrial accidents and measures on labor protection.

However, despite the large number of theoretical and practical scientific developments in the specified field, the expediency of a comprehensive study of the legal and scientific-methodological support of the national strategy of occupational safety and health does not lose its relevance. Among the complex of main problems, the problem of improving the normative and legal regulation of labor relations in the conditions of special legal regimes is extremely important, which is relevant not only for Ukraine, but also for other countries on the territory of which armed conflicts are ongoing or there is a threat of their occurrence.

The purpose of the article is to carry out a comprehensive analysis of the legal regulation of labor protection and health in Ukraine based on the study of scientific works on the theory of labor law and related fields, normative legal acts of Ukraine and judicial practice, to determine the prospects for improving the national legislation on labor and practices of its application.

The achievement of the set goal is subordinated to the solution of the following tasks: to determine the current state and trends of normative and legal regulation of the specified legal relations in Ukraine; to analyze individual legislative amendments to the legislation in the conditions of the extraordinary legal regime caused by the war; outline the main areas of improvement of the legislation regulating legal relations in the field of occupational health and safety.

3. Results and discussion

3.1. General characteristics of the legal regulation of occupational health and safety in Ukraine

Legal regulation of labor relations in the field of occupational health and safety has its own specific features: legal regulation is carried out with the help of a comprehensive system of legal means; formalization of labor relations, which arise in the process of ensuring labor safety and health and are enshrined in the provisions of the legislation, and are used in the regulation of these legal relations; legal regulation has a regulatory effect and consists in the degree of legal influence on labor relations while ensuring occupational health and safety.

The concept of providing employees with working conditions that meet the requirements of occupational safety and hygiene was first formulated in Art. 7 of the International Covenant on Economic, Social and Cultural Rights (International Covenant On Economic, Social And Cultural Rights, 1966), ratified by Ukraine in 1973. This document provided an interpretation of the right of every person to favorable working conditions defined by the Universal Declaration of Human Rights (Universal Declaration Of Human Rights, 1948).

The implementation of fundamental rights in the field of labor, which is one of the main strategic goals of the ILO, was reflected in the Decent Work Concept introduced in 1999, an important component of which is occupational safety. The Constitution of Ukraine established a number of labor rights of citizens, which are norms of direct effect, which include, in particular, the right to proper, safe and healthy working conditions.

Article 43 of the Constitution of Ukraine established the right to work for every citizen. The state provides the opportunity to earn a living by work that is not prohibited by law and that a person freely chooses or freely agrees to (Constitution Of Ukraine, 1996). When it comes to the right to work as a natural and inalienable right of a person to own and use his abilities to work (physical, creative and intellectual), the development and provision by the state of the mechanisms for the realization of such a right comes to the fore.

At the national level, the legal regulation of the specified activity is carried out on the basis of the Code of Labor Laws and the Law of Ukraine «On Employment of the Population», according to which everyone has the right to freely choose the place, type of activity and type of occupation, which is ensured by the state through the creation of legal, organizational and economic conditions for such a choice (On Employment Of The Population, 2012).

The legislation of Ukraine on labor protection is a system of interrelated legal acts that regulate relations in the field of social protection of citizens in the process of work. It consists of the Law of Ukraine «On Labor Protection», the Code of Labor Laws of Ukraine, the Law of Ukraine «On Mandatory State Social Insurance» and the normative legal acts adopted in accordance with them.

In Art. 49 of the Constitution of Ukraine enshrines the right of every citizen to health care, medical assistance and medical insurance (Constitution Of Ukraine, 1996). This norm reflects the requirements of global and regional international legal standards in the field of health care regarding the establishment of the relevant right, as well as the means of its enforcement that the state has at its disposal.

Among the laws, a special place is occupied by the Civil Code of Ukraine dated January 16, 2003, which for the first time at this level established a number of important human rights in the field of health care, in particular the right to health care (Article 283), medical assistance (Article 284), medical information (Article 285), medical confidentiality (Article 286), etc. (Civil Code Of Ukraine, 2003).

According to the Law of Ukraine “On Labor Protection”, labor protection is a system of legal, social-economic, organizational-technical, sanitary-hygienic and medical-prophylactic measures and means aimed at preserving the life, health and working capacity of a person in the process of work activity (On Labor Protection, 2002). This law defines the main provisions regarding the implementation of the constitutional right of employees to protect their life and health in the process of work, to proper, safe and healthy working conditions, regulates, with the participation of the relevant state authorities, relations between the employer and the employee on issues of safety, occupational hygiene and industrial environment and

establishes a unified procedure for the organization of labor protection in Ukraine.

Modern, developed labor law as such is impossible without the complex regulatory and legal interaction of international and national labor standards. After the signing of the Association Agreement between Ukraine and the EU, Ukraine is making significant efforts to bring the current legislation into line with international and European standards on safety and health at work.

Recently, these efforts were enshrined in the Concept of reforming the labor protection management system in Ukraine approved by the Cabinet of Ministers of Ukraine (hereinafter referred to as the CMU) in 2018 (Resolution Of The CMU No. 989-r, 2018), which creates the basis for reforming and bringing the national safety system into line and health at work to EU and ILO standards and offers a plan for its implementation.

In addition, EU Directives on safety and health at work, such as 2009/104/EC of September 16, 2009, concerning the minimum requirements for safety and health during the use of work equipment by workers during work (Directive No. 2009/ 104/EC, 2009) and 89/656/ EEC of November 30, 1989 (Directive No. 89/656/EEC, 1989), concerning minimum safety and health requirements for the use of personal protective equipment by workers at the workplace, were enshrined in the current normative and legal framework through the orders of the Ministry of Social Policy of Ukraine.

However, the high rates of accidents at work and occupational diseases indicate that Ukraine still has a lot to do when it comes to preventing occupational risks and promoting the safety, health and welfare of workers.

In order to improve working conditions in Ukraine and ensure a high-quality, sustainable and successful process of approximation of national legislation to international labor standards, there are still a number of challenges that need to be overcome. Among other things, we are talking about the following:

- overly detailed, complex and outdated legal framework for safety and health at work, consisting of too many laws/norms that often contradict each other;
- invalid provisions of legislation, for example: a) provisions regarding workers who work in difficult, harmful and dangerous conditions and are entitled to higher wages and additional privileges. This not only encourages workers to work in such conditions, it also removes responsibility from employers for and reduces motivation to create safe and healthy working conditions; b) prescriptions according to which employers are obliged to spend at least 0.5% of the wage

fund for the previous year on measures to create safe and healthy working conditions.

- The specified provision reduces the motivation of employers who already have modern safety and health conditions at work, and exempts from responsibility those employers who have unsatisfactory working conditions, but have complied with the specified norm. In addition, the list of labor protection measures and means, as well as types of labor protection services, provided for by the Law «On Labor Protection», does not include widely recognized relevant types of occupational safety and health activities provided for, for example, in the Occupational health services convention, 1985 (No. 161) (Occupational Health Services Convention, 1985);
- national legislation on safety and health at work does not cover all sectors of the economy, all employers and all employees. Including self-employed workers; trainees, apprentices, trainees and persons in other situations that should be considered as vocational training; an administrator, director, manager or a person performing their functions who do not have an employment contract, but receive remuneration for this activity; a person in a situation where he works for another person without a formalized employee-employer relationship is economically dependent on the beneficiary of the activity; as well as employees who have an employment relationship, but do not have an official or written employment contract, for example, fully or partially undeclared employees;
- the legislation on safety and health at work does not provide for employers' obligations to use and constantly adapt to changing circumstances the necessary measures for the safety and health of employees, including assessment and prevention of occupational risks, consultation with employees and their participation in solving safety issues and health at work, supervision of health, provision of information, training, necessary organization and means;
- the national legal framework on safety and health at work does not provide for the responsibility of employers, which cannot be transferred to third parties, for the safety and health of employees in all aspects related to work;
- the current process of approximation of national legislation to EU norms is focused on the implementation of separate directives, and not on the transposition of the general EU architecture on safety and health at work, starting with bringing it into line with the Framework Directive 89/391/EEC (Directive No. 89/391/EEC, 1989), and only after that – to separate directives;

- the level of current legal acts used to transpose EU directives on safety and health at work is inadequate, as they do not have sufficient legal force to ensure their effectiveness and sustainability.

3.2. Legal regulation of occupational health and safety in Ukraine in the postcovid and postwar period

The cause of work-related death, injury and illness is constantly changing around the world. These changes can be gradual or drastic, but in any case, they affect the safety, health and well-being of workers. The usual approach to risk management is insufficient in the complex conditions faced by organizations today.

It is worth emphasizing that the COVID-19 pandemic is one of the new risk factors that have proven the outdated approach used by organizations. A rethinking took place – large-scale measures and innovative political solutions are absolutely necessary to overcome the crisis, to preserve the standard of living of the population and restore the economy and well-being after the pandemic.

Currently, the reform of labor protection and health in Ukraine is taking place in two key directions – at the level of legislation and taking into account digitization and digital transformation. Given the subject of the study, we will focus on the legislative level.

The need to implement international standards in the field of occupational health and safety in our country is of particular practical importance due to Ukraine's desire to join the European Community, and the Law of Ukraine "On Occupational Safety" adopted in 1992 is outdated for obvious reasons. Having signed and ratified the Association Agreement between Ukraine and the EU in 2014, Ukraine undertook to ensure the gradual adaptation of legislation in accordance with the directions defined in the Agreement and their effective implementation.

In order to fulfill its obligations under the Agreement, Ukraine undertakes to gradually (from 2 to 10 years) bring its legislation closer to EU legislation in the field of occupational health and safety by implementing 27 EU directives. At the same time, it is worth noting the key Directive 89/391/EEC of June 12, 1989 "On the introduction of measures to improve the safety and health of workers at the workplace" (Sukhanenko, 2021).

Below, we will examine what steps have been taken in this regard, having analyzed the draft laws in the specified area, developed and submitted for discussion.

The Ministry of Economy published a draft of the Law of Ukraine "On Safety and Health of Workers at Work" (hereinafter referred to as the draft law) on its official website. The document was developed with the aim of

forming a new national system for the prevention of occupational risks by implementing at the legislative level a risk-oriented approach in the field of organizing the safety and health of employees and implementing the provisions of the Council Directive 89/391/EEC on the introduction of measures designed to encourage the improvement of safety and health protection employees at work (hereinafter – the European Council Directive No. 89/391/EEC).

The draft law proposes to introduce a new national system for the prevention of industrial risks, based on the principles of risk assessment, risk control and management, which are basic for the construction of similar systems in developed countries of Europe and the world.

The consistent hierarchy of these principles is defined by European Council Directive No. 89/391/EEC and provides for: risk prevention; assessment of risks that cannot be avoided; elimination of sources of risks; adaptation of working conditions to the employee, especially during the arrangement of workplaces, selection of production equipment, work methods; adaptation to technical progress; replacement of high-risk equipment with safe or less dangerous equipment; development of an agreed general policy for the prevention of industrial risks, etc.

Therefore, in contrast to the existing system, the approaches proposed by the draft act provide for the organization of the safety and health system of employees according to the "proactive" principle of preventive actions.

A change in the principles of building the system involves, among other things, a change in the object of state policy influence: from the current "labor safety" or "labor protection" to the European "employee safety". The draft act envisages the introduction of a system of minimum requirements for the safety and health of employees based on the European example, and regular assessment by the employer of risks that may arise at a specific workplace, development and implementation of measures to minimize or eliminate them.

The analysis of the investigation materials of accidents at work show that the majority of measures aimed at preventing accidents consist in conducting unscheduled briefings on occupational safety issues. Such a uniform approach, which is not aimed at eliminating the causes of accidents, leads to their repetition and does not contribute to their prevention.

Therefore, the draft law is aimed at increasing the effectiveness of procedures for investigating accidents, occupational diseases and accidents. Also, the draft act envisages the introduction of informing the competent authorities about all accidents, and keeping records by the employer of all incidents that could potentially lead to an accident.

In general, we share the point of view that the implementation of European Council Directive No. 89/391/EEC provided for by the draft law is a logical and consistent continuation of the chosen course of approximation of Ukrainian legislation to EU legislation and will contribute, in particular: to increasing the level of protection of life and health of employees; increasing the responsibility of employers for creating proper working conditions and a safe working environment; simplification of legislation in the field of safety and health of employees, reduction of the administrative and regulatory burden on the employer; introduction of mechanisms for improving the safety conditions of workers and relevant economic incentives; strengthening fair competition, expanding access of Ukrainian enterprises to the international market and increasing their competitiveness on this market; gradual implementation of European Union legislation into national legislation (Guidelines on ensuring safety and health at work in war and post-war times, 2021).

There is no doubt that the process of developing any legal act, conducting consultations and discussing it with national stakeholders in order to improve it and achieve a wider consensus, as well as alignment with relevant international and European labor standards, is always complex, time-consuming and time-consuming. However, this algorithm will provide a better and more balanced final version of the legal act.

The introduction of martial law in Ukraine on the basis of the Law «On the Legal Regime of Martial Law» (On The Legal Regime Of Martial Law, 2022) led to a new stage in the development of labor relations. The sphere of labor protection and health, in which the vital interests of the citizens of the state are intertwined, is no exception, and required an immediate reaction from the legislator in order to ensure its normal functioning. Conflicts between the interests of employees and employers, which are inevitable even in peacetime, have become even more acute in the conditions of martial law, and require prompt intervention by the state with the help of appropriate legal regulation in the form of adopting new laws, making changes and additions to existing legislation.

The purpose of the adoption of the draft Law of Ukraine «On Amendments to Certain Laws of Ukraine Regarding Deregulation in the Field of Labor Protection by Changing the Permit System to the Insurance System for Employees Performing High-Danger Work» (hereinafter – the Draft Law No. 2655-IX) is to simplify the procedure for starting work for employers increased safety and increasing their responsibility due to the introduction of mandatory employee life and health insurance (Draft Law Of Ukraine No. 2655-IX, 2023).

Occupational health and safety legislation requires employers to provide adequate, safe and healthy working conditions. At the same time, in order to acquire the right to perform work of increased danger and to operate (use)

machines, mechanisms, and equipment of increased danger, the employer must currently obtain appropriate permits in accordance with Article 21 of the Law of Ukraine «On Labor Protection» (On Labor Protection. Law Of Ukraine, 2015), and the mechanism and method are determined by the Procedure for Issuing Permits for Performing High-Danger Works and for the Operation (Use) of Machines, Mechanisms, and High-Danger Equipment, approved by Resolution of the Cabinet of Ministers of Ukraine No. 1107 dated October 26, 2011 (Resolution Of The Cabinet Of Ministers Of Ukraine No. 1107, 2011).

However, obtaining these permits is a rather time-consuming procedure, in particular, associated with the high cost of conducting an examination of the state of labor protection and safety of the industrial production of the business entity.

Such a procedure in many cases has a formal character. In addition, within the existing legislative mechanisms of supervision and control over compliance with legislation in the field of labor protection is difficult to verify. or impossible at all. Even with a positive expert opinion, the creation of safe conditions, in particular regarding the performance of high-risk works, is not guaranteed due to the employer's lack of sufficient motivation for their creation, in particular financial (for example, the obligation to compensate the damage caused to the employee) (Explanatory Note To The Draft Law Of Ukraine, 2023).

The negative perception of such a permit procedure is exacerbated by the high corruption risks that accompany the actions of officials and constantly become the subject of law enforcement authorities' attention. At the same time, the global experience of reimbursement of costs is based on the wide involvement of guarantees of compensation of losses from insurance systems in these processes. The European experience has long been based on a sufficiently effective model, when insurance is a mandatory condition for those who conduct business related to increased risks for employees, when those who organize the performance of high-risk work insure their liability to potential victims. This ensures that the employer will be motivated to create safe conditions, and the victims will receive compensation for damages (Explanatory Note To The Draft Law Of Ukraine, 2023).

In our opinion, the introduction of the insurance system for the performance of high-risk works will bring the legal regulation of occupational health and safety in Ukraine closer to the principles that are generally recognized in the world. The state will carry out the supervisory function in a more civilized way, agreeing on the main basic conditions for concluding insurance contracts, including such parameters as the sum insured, the procedure for making payments, etc.

In general, we consider the importance of adapting national legislation in the field of legal regulation of occupational health and safety to the requirements and standards of the EU Directives to be indisputable.

In particular, among other things, in accordance with the provisions of Directive No. 89/391/EEC, the Code of Labor Laws of Ukraine and the Law of Ukraine «On Labor Protection» should be supplemented with a provision on the employer's obligations to take measures necessary for the safety and health of employees, including measures to prevent professional risks, information and training, etc., as well as supplement the relevant legislation with the duty of employees to take care of their own safety and the health of others.

In conclusion, we note that the legal regulation of occupational safety and health of workers is carried out with the help of a large number of local legal acts (standards, rules, instructions, clarifications, etc.), however, a unified legal act that would define a comprehensive approach to occupational safety and health of workers, regardless of the form of ownership, type of activity and branch of production, has not yet been adopted.

The problem of ensuring safety, occupational health and safety in Ukraine cannot be completely solved by the outlined issues. We see the prospects for further scientific investigations and their practical implementation in: economic stimulation of employers to create safe working conditions; differentiation of violations of legislation in this area; increasing responsibility for violations of legislation, etc.

Conclusions

On the basis of the conducted scientific review and analysis of the peculiarities of the legal regulation of occupational health and safety in Ukraine, certain reasoned conclusions should be drawn.

Legal regulation of labor and health protection – streamlining labor relations and enshrining them in the relevant legal norms, with the aim of their protection, development and ensuring a high level of modern production environment, which excludes the influence of dangerous and harmful factors on the life and health of employees.

In the conditions of martial law and in the post-war period, the legislative approach to the adoption of new laws, amendments and additions to the current acts in Ukraine must take place in compliance with international legal standards regarding the provision of adequate guarantees in the field of occupational health and safety, which consist in: simplifying significant the number of legal acts in the specified area, by carrying out their inventory, modernization and systematization; harmonization of national legislation

with international labor norms and European standards; formation of effective state mechanisms, which will ensure effective implementation and inevitable execution of legal acts.

The creation of a modern model of occupational safety and health protection in Ukraine requires, among other things: improvement of conceptual support and current legislation on occupational safety and occupational health and the mechanism of its implementation; creation of conditions for the implementation of international labor norms and standards on occupational health and safety to national legislation. Directions for improving labor legislation in the field of legal regulation of labor protection and health in Ukraine are proposed. In particular, the profile law should reflect a holistic approach to occupational safety and health of employees with an emphasis on measures to prevent accidents and accidents at work, improve working conditions (strengthening the employer's responsibility for violations of legislation in the specified area, imposing on employees the duty to take care of their own safety and health of others, etc.).

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Identification of new threats to the national security of the state

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Abstract

The objective of the article was to identify new threats to the national security of countries and, at the same time, to determine the adaptation tasks related to their identification. The synergistic approach, comparative legal analysis methods and foresight were the main tools of this research. Manipulation actions involving deep forgeries are spreading rapidly. Autonomous weapons with artificial intelligence are used to create negative fake events. Criminal use of users' smart devices to create a unique behavioural profile has been detected. New cyber threats to Ukraine's national security during the military conflict are characterized by attempts to disrupt critical infrastructure. It is concluded that "cyber looting" has emerged with the use of social engineering methods. The activities of the Belgian Center for Cyber Security (CCB) are a positive example of the identification of new cyber threats in the countries of the European Union EU. Furthermore, CCB performs activities related to the identification, monitoring and analysis of online security issues. Coordination between relevant services and agencies, public authorities, private sector and academia is ensured.

Keywords: cyber warfare; deep forgery; cyber security; social engineering; cyber resilience.

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Identificación de nuevas amenazas a la seguridad nacional del Estado

Resumen

El objetivo del artículo fue identificar nuevas amenazas a la seguridad nacional de los países y, al mismo tiempo, determinar las tareas de adaptación relacionadas con su identificación. El enfoque sinérgico, los métodos de análisis jurídico comparado y la previsión fueron las principales herramientas de esta investigación. Las acciones de manipulación que involucran falsificaciones profundas se están extendiendo rápidamente. Se utilizan armas autónomas con inteligencia artificial para crear eventos de falsos de carácter negativo. Se ha detectado el uso delictivo de los dispositivos inteligentes de los usuarios para crear un perfil conductual único. Las nuevas amenazas cibernéticas a la seguridad nacional de Ucrania durante el conflicto militar se caracterizan por intentos de interrumpir la infraestructura crítica. Se concluye que ha surgido el "saqueo cibernético" con el uso de métodos de ingeniería social. Las actividades del Centro para la Seguridad Cibernética de Bélgica (CCB) son un ejemplo positivo de la identificación de nuevas amenazas cibernéticas en los países de la Unión Europea UE. Por lo demás, CCB realiza actividades relacionadas con la identificación, seguimiento y análisis de problemas de seguridad en línea. Se garantiza la coordinación entre los servicios y organismos pertinentes, las autoridades públicas, el sector privado y el académico.

Palabras clave: guerra cibernética; falsificación profunda; seguridad cibernética; ingeniería social; resiliencia cibernética.

Introduction

The evolution of information and cyberspace is the main factor in the development. Globalization has led to a strong dependence on electronic communications. The reshaping and redefinition of technological processes have caused large informational changes in different countries (Cristea, 2020). The consequences of the application of 5G technology, artificial intelligence, and the Internet of Things may become a threat to national security (Li and Liu, 2021).

In the same context, the role of interstate competition and conflicts worsened. The narratives have been denied with the use of digital diplomacy and subversive disinformation operations (Devanny *et al.*, 2022). A new battlefield was created, in which military operations involve sophisticated digital technologies (Ştefănescu and Papoi, 2020). The online activities of special services, armed forces and related non-state actors have become

increasingly intense. Countries began to prepare guidelines for cyber war. Training has been conducted to practice cyber tactics such as espionage, information theft, disinformation, hacking, and malware.

Threats from the virtual environment are spreading to critical infrastructure, government bodies, communication systems, and citizens. Fake messages distributed via smart devices form a new space of conflict that does not depend on geographical location (Sługocki and Sowa, 2021). Deepfakes can contribute to pressure and shaping the process of making wrong decisions by individuals or organizations (Farid, 2021).

The Russian-Ukrainian war provides relevant information about what types of cyber threats will appear in future cyber conflicts (Guitton and Fréchette, 2023). The existing and emerging threats require the improvement of specific means of intelligence and response, continuous increase in their effectiveness. The response to hybrid threats is implemented through an integrated process. This process is influenced by the difficulties of their identification and forecasting because of their mobility and the intensity of their impact.

The main task of national security organizations is to guarantee the protection of citizens from relevant threats. The priority is also to preserve the economic sustainability of national institutions. The tasks of national security organizations are actions based on assistance to public authorities responsible for decision-making in the country. They are responsible for ensuring that the information is correct and up-to-date (Dobák, 2021). Activities in the field of national security protection should be based on timely identification of possible threats and preparation of appropriate countermeasures.

Particular attention should be paid to identifying vulnerabilities and strengths of the state and society. Priority should be given to the development of opportunities for further protection of national interests (Reznikova, 2022). At the same time, it is expedient to update the security environment transformation vectors. The result will be a statement of strategic goals and priorities of state policy in the field of national security.

The military conflict on the territory of Ukraine requires quality solutions in terms of the forms, methods and procedures of using state resources to achieve political goals in a cross-border context (Semenenko and Frolov, 2023). The Russian Federation uses military, informational and psychological, as well as economic and political resources to the maximum possible extent. The elements of the information technology component of the hybrid war on the part of the aggressor country are significantly strengthened.

The uncertainty of the situation related to the military aggression of the Russian Federation in Ukraine leads to significant difficulties in the process

of policy making in the field of national security. Emerging and developing threats lead to the need to identify them, strengthen and revise traditional security mechanisms. The implementation of adaptive management in the field national security is becoming especially relevant.

In view of the foregoing, the aim of this research is to identify new threats to the national security of countries and new tasks related to their identification. The aim involved the fulfilment of the following research objectives:

1. Determine the current trends in the legislative regulation of national security protection using the example of cyber security in the EU and Ukraine;
2. Identify new types of cyber threats and the current state of their identification;
3. Analyse the implementation of mechanisms for identifying new cyberthreats using the example of Belgium for the possible implementation of relevant positive experience in Ukraine.

1. Literature review

The study by Cristea (2020) was used as a background for this research, which was focused on the role of the evolution of security threats in the national and international context. Particular attention is paid to the existing problems related to the implementation of the necessary measures, which aim to cover each control system. The paper concludes that the result should be a better understanding of the evolution of threats. The work also summarized conclusions about the future vision of the technological world. The need to stimulate users to analyse the components of information security is emphasized.

The study by Guitton and Fréchette (2023), who conducted a comprehensive analysis of crisis and post-crisis cyber threats, had an impact on the author's position on the issue under research. Attention was paid to the influence of the Russian-Ukrainian conflict on the nature of cyber threats. The study also took into account the findings obtained by Reznikova (2022) regarding the analysis of the security environment of Ukraine before the war in 2022. The importance of identifying the sources of the main threats to the national security of Ukraine for further forecasting the transformations of the sources of the main threats in the post-war period is emphasized. It was also emphasized that this activity is necessary for determining the strategic goals and priorities of the national security policy.

Devanny *et al.* (2022) studied the nature of modern threats and their impact on public administration. It was concluded that there is a need to focus on cyber security and resilience, and especially on effective cyber diplomacy. The study by Li and Liu (2021) on different types of cyberattacks of the new generation is worth noting. The authors present new trends and latest developments in the field of cyber security, as well as analyse security threats and challenges. An increased number of cases of cyberattacks, which may have military or political goals, has been noted.

Farid (2021), Boháček and Farid (2022) considered issues related to state and individual protection measures against deepfakes, ethical use of deepfakes as a weapon. Particular concern about the use of deepfakes against world leaders during armed conflicts has been noted. The importance of using an identity-based approach to protect world leaders from fake imposters was emphasized. It was concluded that this approach captures distinct facial features, gestures and voice.

The study by Dobák (2021), who emphasizes that the national security sector is connected with the world of ICT, was used when shaping the author's position. It is concluded on the developing transformation of intelligence technologies and methods, the emergence of cross-border solutions for data collection. The importance of comprehensive protection of state and national systems, critical infrastructure from cyber-attacks was noted.

An article by Willett (2022) on the cyber dimension of the Russian-Ukrainian war is worth noting. The author emphasized the importance of the reliability of Ukrainian cyber security supported by Western aid. The researcher focuses on the fact that there is uncertainty about the true nature of cyber operations, their responsible use, and the application of international law to them.

Urych and Matyasik (2022) compare military and defence training, education and socialization in a number of European countries. The need for the development of defence education in each country was noted. The authors analysed possible shortcomings in this area, which are related to the cyber space. The importance of each country's experience aimed at strengthening national security is clarified.

An active study of the issues under research points to the fact that identification of new threats to the national security of the country should be given special attention. The diversity of studies in this field is also noted. Therefore, it is necessary to carry out research according to new research criteria.

2. Methods

The research on the topic of the article involved a set of methodological tools aimed at fulfilling the objectives outlined by the aim of the study. Figure 1 shows the research design, which makes it possible to single out the main elements used to draw the author's conclusions. During the research, the authors studied and shaped their own position regarding regulatory documents and studies on the issue under research. The study comprises information from thirty-seven sources with relevant references in the text.

A synergistic approach was used to identify the high level of self-organization of states on the way to solving the issue of countering innovative threats to national security, as well as to shape the author's vision of strengthening interstate ties against the background of the exacerbation of militarized conflicts on the way to the prevention of the studied threats. This approach made it possible to minimize the multivariability of paths and accidents when identifying new threats, and determine universal packages of actions in the studied area. Some have been fragmentarily implemented into the EU legislation. This approach was also tested while considering the debatable positions of the representatives of legal schools and finding a single vector of agreement for supranational changes in the studied area.

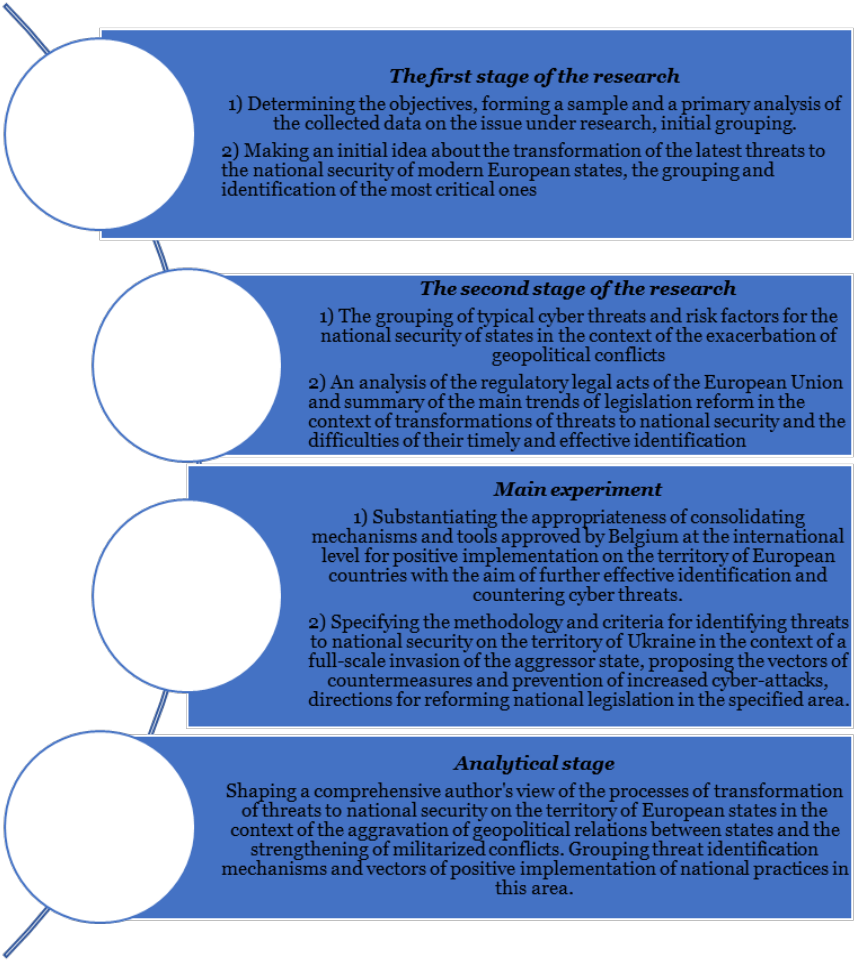

Figure 1. Research design on the topic being studied. Own elaboration.

The observation method was applied to identify the criteria for the riskiness of making a unique behavioural profile of each network user in the current realities. This methodological tool also made it possible to monitor the decrease in the level of cyber security in the EU in the context of full-scale military operations in Ukraine.

The method of comparative legal analysis was used to reveal the essence and content of risk assessment and threat monitoring, as well as outline the

primary vectors of the planning strategy of preventive security measures of the EU member states. This method helped to determine the positive practice of Belgium in the field of increasing protection against cyber threats at all levels. The results of prevention and effective protection developed and implemented by this state deserve attention and further testing.

The forecasting method helped to specify the vectors of adaptation of the Belgian practice of identifying the latest threats on the territory of European countries, determine the mechanisms of identifying fake information. It was established that the Bug Bounty Programme for detecting vulnerabilities in technologies initiated by Belgium has been implemented in Ukraine despite the challenges of the martial law in the country.

The historical method was applied when tracking the genesis of the emergence and identification of threats to the national security of states in recent years, and proving the accelerated pace of growth in the number and complexity of new threats.

The statistical method identified trends in the transformations of current threats. This methodological tool also made it possible to analyse the National Cyber Security Index. The clustering method was also used in the analysis of the sample in this study. It was used when studying the classifications of cyber threats, cyber incidents and possible response measures.

3. Results

The identification of threats involves the assessment of events, phenomena, processes, and other factors that lead to the danger of realizing vital national interests. Cyber threats have the following basic components: collection, modification, leakage, and destruction. Internal threats spread from employees of organizations, software, and hardware. External sources of threats can be represented by computer viruses and malware.

Incident categories contain malicious (offensive) content and distribute spam. Malicious software code provokes malware infection and distribution. The attacker collects information using scanning, sniffing, and phishing. Incident categories also include attempts to interfere by exploiting a vulnerability and logging into the system.

The availability violation category is characterized by a denial-of-service attack, sabotage, and failure. Violation of information properties is possible with unauthorized access to information and modification. Fraud is carried out through the use of a fraudulent website. Known vulnerability is also a characteristic category.

Digital technologies have changed the dynamics of conflict. Cyber war has evolved from propaganda to espionage, from defacing websites to disrupting power grids and water systems. Threats related to information activities and cyberspace have got a military-political orientation. The information and technical threats, as well as information and psychological influences have become part of military strategies.

Lethal autonomous weapons based on artificial intelligence have become a particular threat. Their use leads to new ethical problems. An example would be the substitution of human ethical judgments during conflicts. Artificial intelligence algorithms that focus on attracting people's attention use human cognitive abilities. A social media post containing an indignant disagreement based on moral emotional words gets a lot more reposts. This can spread both economic and political discontent in countries with the help of artificially created negative events.

Many social consequences of new technologies began to be stated only as they expanded. Quantum computers have significant computing capacity. It became possible to use them for hacking encryption algorithms of Internet websites, for attacks on state systems and institutions.

Social networks are increasingly becoming the target. Methods and tools with different levels of complexity and innovation are used. Solutions based on deep learning techniques use generative adversarial networks (GAN).

Two systems of competing artificial neural networks —a generator and a discriminator — make it possible to create hyperrealistic videos, audio, images or text. Relevant digital content is determined to be unreliable only using sophisticated forensic methods. Once created, the content, known as synthetic media or deepfake, can be used as a threat to national security. Another example of a malicious use of GAN could be targeting servers that distribute patches to disrupt scheduled updates. In general, the list of identifiers of new threats and their manifestations can be replenished daily with the latest developments, but it is proposed to single out the basic ones (Figure 2).

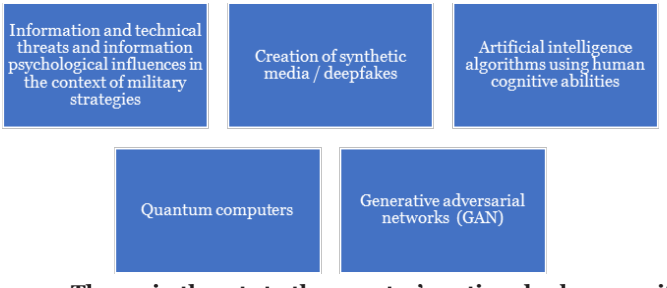

Figure 2. The main threats to the country's national cybersecurity. Own elaboration.

The process of identifying deepfake videos can be divided into three types. The first type is based on learning, where features that make it possible to distinguish the reality from a fake are learned explicitly. The second type is based on artifacts in which low- to high-level features are designed to distinguish real from fake.

The third type is identity-based, in which biometric style features are applied to detect whether the person depicted in the video is who he/she says he/she is. The difficulty of implementing these methods is that they require an individual model created from several hours of authentic video record. An integrated model of the face, gestures and voice should be prepared, which captures the distinctive features of the person's speech. Approximately 700-800 behavioural features are needed to achieve the identification accuracy. (Figure 3).

Figure 3. Deepfake video identification process. Own elaboration.

The attackers' task is to collect data from all aspects of life to create an accurate and unique behavioural profile of each user. By 2030, the volume of behavioural data collection will increase exponentially (ENISA, 2023). Criminal activities can be aimed at gaining access to data arrays to adapt social engineering attacks based on a user's behavioural profile. Adversely impacting users through collected behavioural profiles may pose a threat to national security.

The combination of software, hardware, and component-based code began to create uncontrolled interactions and interfaces, disrupting the respective supply chains. Cyberattacks are becoming more sophisticated, and may be combined with physical or offline attacks. Hybrid operations are characterized by the difficulty of detection and protection due to their complexity and insufficient training of specialists who are trained to consider each attack separately.

A lack of skills and personnel is the cause of most cybersecurity threats, which can negatively impact businesses, governments, and citizens. It is also possible to note the fact of the growth of cybercrime with the use of digital currencies, the use of data from the electronic healthcare database and genetic data.

As of April 2023, there were 5.18 billion Internet users worldwide. A total of 4.8 billion of the population were social media users (Statista, 2023). Global costs from cybercrime could reach $10.5 trillion annually by 2025 compared to $3 trillion in 2015 (CompTIA, 2023).

After the beginning of the aggression of the Russian Federation against Ukraine, cyber-attacks on energy networks, transport infrastructure and space facilities of the EU showed the relevant risks and threats. The EU's cyber defence policy aims to expand the EU's cyber defence capabilities and strengthen coordination and cooperation. Back in 2019, the European Parliament and the Council adopted the Cybersecurity Act (European Parliament and of the Council, 2019).

The main goals of cyber security are information security, access control, vulnerability assessment, monitoring of user activity, cyber resilience. The EU Agency for Cybersecurity Security (ENISA) has been given permanent powers. It takes into account the most relevant and widespread standards in the field of risk management. The international ISO/IEC 27002, the American NIST Cybersecurity Framework are applied. The EU supports the US Information Sharing and Analysis Centres (ISAC) model.

In the EU, it is proposed to impose cybersecurity obligations on all products with digital elements (European Parliament and of the Council, 2022) It is also proposed to increase the level of preparedness, detection and response to threats and attacks in the field of cybersecurity in the EU (European Parliament and of the Council, 2023). As a result, the European Cyber Shield should be created. It is planned to introduce operational security centres in it, which should be interconnected throughout the EU.

A positive example of the implementation of the identification of new cyber threats is the relevant activity in Belgium. According to the National Cyber Security Index (NCSI), Belgium has a score of 94.81, which equates to No. 1 in the ranking (NCSI, 2021a). The Centre for Cyber Security Belgium (CCB) is the national cybersecurity authority (CCB, 2023). Belgium has a federal CCB cyber emergency response team (CERT.be).

The CCB site Safeonweb.be informs and advises Belgian citizens in their daily life on cyber security issues and the main current digital threats. The Cyberfundamentals Framework created by CCB helps Belgian citizens in the workplace. The Cyberfundamentals Framework includes well-known cybersecurity frameworks: NIST CSF, ISO 27001/ISO 27002, CIS Controls, and IEC 62443.

The Cyber fundamentals Framework has prepared four levels, the purpose of which is to respond to the severity of the threat. The Baseline Security Guidelines (BSG), the Executive Summary (FR) for the public sector contain different levels of guidance. Federal Public Services (FPS) Policy and Support offers cybersecurity training for federal government employees.

In Belgium, the identification of operators of essential services operating in critical infrastructure is legislated (Chancellerie du Premier Ministre, 2019). An Early Warning System (EWS) has been established for CCB's critical infrastructure. Authorized businesses have access to filtered cyber threat alerts through a common platform.

Belgian organizations widely use a coordinated vulnerability disclosure policy (CVDP), as well as the Bug Bounty Programme for identifying vulnerabilities in technologies. CCB conducts various classes, courses, training and academic research on cyber security in Belgium.

Despite the martial law introduced in Ukraine, the state continues to implement the necessary legislative initiatives. The National Security Strategy of Ukraine (Decree of the President of Ukraine No. 392/2020, 2020) is based on the principle of deterrence through the improvement of defence and security capabilities, stability and interaction with key foreign partners.

The Law of Ukraine No. 2163-VIII "On the Basic Principles of Ensuring Cyber Security of Ukraine" dated October 5, 2017 defines the legal and organizational foundations of ensuring the protection of the vital interests of citizens, society, the state, and national interests of Ukraine from cyber threats.

According to the National Standard of Ukraine ISO/IEC 27032:2016, cyber threats affect digital assets. In Ukraine, a list of categories of cyber incidents has been developed, and the TLP Protocol, which contains general rules for exchanging information about cyber incidents, has been in effect since February 2023.

According to the National Cyber Security Index (NCSI), Ukraine has a score of 75.32, which equals 24th place in the ranking (NCSI, 2021b). Table 1 provides a detailed information on Ukraine's cyber security indicators (NCSI, 2021b).

Table 1. Indicadores de seguridad cibernética de Ucrania según el ranking del Índice Nacional de Seguridad Cibernética (NCSI).

General cyber security indicators	Basic cyber security indicators	Indicators of incident and crisis management
Cyber security policy development - 100% Analysis and information about cyber threats - 80% Education and professional development - 89% Contribution to global cyber security – 33%	Protection of digital services - 20% Protection of basic services - 100% Electronic identification and trust services - 100% Personal data protection - 100%	Responding to cyber incidents - 67% Cyber crisis management - 60% Combating cybercrime – 100% Military cyber operations – 17%

The given data indicate that Ukraine currently needs to improve the protection of digital servers, response to cyber incidents, and cyber security management. Special attention needs to be paid to improving the level of incident management related to military cyber operations. A total of 1,374 cyber incidents in 2021, and 2,194 cyber incidents and cyber-attacks in 2022 were processed manually (CERT-UA, 2023). A more destructive nature of the attacks was recorded. New cyber threats were noticed during the military aggression of the Russian Federation.

This is the first military cyber conflict in which the respective capabilities of the two countries are almost identical. Most of this conflict in the field of cyber technologies consists of information operations, which are based on cognitive components. Hacking and disruptions of critical national infrastructure of Ukraine became a characteristic feature.

New cyberattacks are being carried out with the aim of revenge or attempts at informational and psychological influence to convince the population that the state is not capable of protecting them. Critical “silent” attacks are also committed. They are aimed at military espionage, the main targets of which are high-ranking officials, diplomats and other professionals who have access to the most sensitive information.

The most popular methods of penetration are phishing, using known vulnerabilities. The cyber techniques are shifted from destructive attacks to attacks aimed at obtaining information, and the interest is shifted to new industries.

Table 2 contains groups of the most frequent combined cyberattacks of the Russian Federation during hostilities in Ukraine (CERT-UA, 2023):

Table 2. The vectors of cyber-attacks committed by the Russian Federation during a full-scale invasion of Ukraine

Operations of information influence	Cyber espionage	Technical vulnerabilities
- mass media; - civil infrastructure websites (state institutions and critical infrastructure facilities (especially the energy sector); - websites of defence organizations.	- "silent" operations; - phishing.	- destruction of data, infrastructure.

Source: according to CERT-UA data (2023).

The scope of cyber fraud using social engineering techniques significantly expanded in Ukraine during the wartime, when the citizens needed social assistance. The population's demand for military- and electricity-related goods has grown. Cash payments from the state and international organizations have become the subject of close attention of fraudsters. "Cyber looters" started issuing loans for missing servicemen and citizens who went abroad (EMA, 2023).

The draft Ukraine Recovery Plan has been developed. Much attention is paid to increasing the cyber resilience of the state and the effective response to cyber security incidents.

4. Discussion

It can be stated that digitization, generation of more data and expansion of connectivity leads to the emergence of new threats to national security. Globalization and the development of ICT have affected national security as threats have become much more abstract and complex (Abd Al Ghaffar, 2020). A new approach to predicting and identifying cyber-attacks at an early stage is needed, which is based on a preventive approach to identifying security threats, especially in the field of critical infrastructure (Alqudhaibi *et al*., 2023).

The researchers propose to ensure the accuracy of forecasts through the minimization of false-positive alarms. The identification mechanism can be based on the specifics of the attacker's motivation and the nature of the critical infrastructure.

Tested on several hours of authentic video, the identification-based deepfake detection approach was found to capture distinct gestures, facial and voice features. In this way, the use of deepfakes against world leaders during elections or during armed conflicts is minimized (Boháček and Farid, 2022).

The responsibility for the danger of programmes that can later simulate deepfakes should rest with the inventors of the software. It should occur before the release of the technology into open access, as the corresponding software can be used as a cyber threat (Farid, 2021).

It can be stated that the identification of a cyber threat is an effort that requires serious analysis. Reports from people using radio intelligence tools can help gather evidence to support attribution analysis (Devanny *et al*., 2022). According to the researchers, an understanding of the technical operational methods of the alleged criminal will be ensured.

It can be concluded that the scale, variety and complexity of cyber threats are growing significantly. The existing security strategies, which are mandatory to combat cybercrime, will not be able to meet the future requirements that will arise in the post-war crisis era (Guitton and Fréchette, 2023). The researchers state that network dynamics with the help of artificial intelligence for specific tasks should be implanted in the process of exchanging accumulated experience between experts.

It was established that the positive example of Belgium indicates the need to implement constant tracking and use of advanced technologies in the field of cyberspace. Socialization, education and training of young people to ensure national security is becoming extremely important (Urych and Matyasik, 2022). Countries need to increase their spending on developing infrastructure such as firewalls and developing cybersecurity talent (Hung, 2022). A serious task in this field is the employment of the younger generation, which better perceives the digital world (Dobák, 2021).

It can be concluded that the components of cyber-attacks against Ukraine are new hybrid threats with characteristic criteria. Ukraine has shown sufficient capacity to recover from detected cyber intrusions and develop cyber resilience (Willett, 2022). In Ukraine, it is necessary to develop a programme of state strategic forecasting and planning (Bondarenko *et al*., 2022). According to researchers, it should be related to the entire structure of state activity, be based on models of the future security environment, and correspond to the national interests of the state.

It can be stated that the identification of informational fakes and deepfakes is one of the main tasks of the state in ensuring the information and cyber security of the Ministry of Defence of Ukraine and the Armed Forces of Ukraine. This will contribute to counteracting adverse informational and psychological influences on the personnel of the Armed Forces (Semenenko and Frolov, 2023).

Conclusions

New information technical threats and information psychological influences are becoming components of military strategies. An autonomous weapon with artificial intelligence appeared to simulate and create negative events. Deepfakes become a tool used to deceive in order to influence the decision-making processes of community members. The increasing malicious use of quantum computers is recorded. The criminal use of users' smart devices to create a unique behavioural profile has emerged. Cyber threats have become hybrid. New threats require an urgent evaluation of events, phenomena, and processes.

The EU's cyber defence policy has set the expansion of cyber defence capabilities, strengthening of coordination, cooperation as its goal through the proposed laws regarding cyber solidarity and cyber resilience. A characteristic feature of the future European Cyber Shield will be a comprehensive mechanism for responding to relevant emergency situations.

The activities of the established Centre for Cyber Security Belgium (CCB) are a positive example of the implementation of the identification of new cyber threats. CCB centrally carries out activities related to the identification, monitoring, and analysis of online security problems.

States need to step up efforts to improve targeted interventions in national education to ensure future skilled cybersecurity professionals. It is also necessary to pay attention to the issue of involving the capabilities of national intelligence special services for the processes of identifying cyber threats to national security.

New cyber threats to national security in Ukraine are characterized by attempts to disrupt critical national infrastructure. New cyberattacks are being carried out with the aim of revenge, attempts at informational and psychological influence, military espionage. Phishing attacks and the use of known vulnerabilities are being improved. "Cyber looting" with the use of social engineering techniques has emerged.

Ukraine still needs to strengthen the levels of protection of digital servers, response to cyber incidents, and cyber security management. The positive example of Belgium indicates the need for continuous monitoring and application of advanced technologies in the relevant field. It can be implemented in the relevant activity in Ukraine.

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Objective assessment in the quality assurance system of the academic virtue of the university in the context of legal security

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Abstract

The main objective of the article was to evaluate the quality assurance system of the university's academic virtue in the context of regulatory security. In order to achieve the stated objective, dialectics and the historical method were used. In addition, the following methods were also used in the research process: the structural-logical method, the method of scientific abstraction, analysis and synthesis, modeling and the method of abstract conclusion. According to the results of the study it is concluded that the approached system has a complex internal structure, with significant impact on the educational process. definitely, it is proved that an objective evaluation in the system of quality assurance of academic virtue of the university, in the general framework of legal certainty, plays an important role in the institution of higher education and cannot be ignored. After all, it is precisely such components of academic virtue as: justice, trust, respect, responsibility, honesty that are at the same time universal values, moral and ethical ideals of a highly developed society and, fundamentally, the key to the successful development of the state as a whole in the democratic system.

Keywords: legal aspects; axiological security; legal quality; academic virtue; university in the XXI century.

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Evaluación objetiva en el sistema de aseguramiento de la calidad de la virtud académica de la universidad en el contexto de la seguridad jurídica

Resumen

El objetivo principal del artículo fue evaluar el sistema de aseguramiento de la calidad de la virtud académica de la universidad, en el contexto de la seguridad normativa. Para lograr el objetivo planteado se hizo uso de la dialéctica y del método histórico. Además, en el proceso de investigación se utilizaron también los siguientes métodos: el método estructural-lógico, el método de abstracción científica, análisis y síntesis, modelización y el método de conclusión abstracta. De acuerdo a los resultados del estudio se concluye que el sistema abordado tiene una estructura interna compleja, con impacto significativo en el proceso educativo. definitivamente, se comprueba que una evaluación objetiva en el sistema de aseguramiento de la calidad de la virtud académica de la universidad, en el marco general de la seguridad jurídica, juega un papel importante en la institución de educación superior y no puede ser ignorada. Después de todo, son precisamente tales componentes de la virtud académica como: la justicia, la confianza, el respeto, la responsabilidad, la honestidad que son al mismo tiempo valores universales, ideales morales y éticos de una sociedad altamente desarrollada y, fundamentalmente, la clave para el desarrollo exitoso del Estado en su conjunto en el sistema democrático.

Palabras clave: aspectos legales; seguridad axiológica; calidad jurídica; virtud académica; universidad en el siglo XXI.

Introduction

In the context of entering the European higher education area, an important problem is the approximation of educational paradigms, fundamental principles, methodological approaches in the design of content and the introduction of organizational forms, innovative technologies to ensure the quality of training of a future specialist in the system of legal security.

One of the components of ensuring the quality of higher education, effectively increasing the competitive ability of a specialist is the responsibility of the student for the results of his educational activities. In this context, academic virtue is a system-forming element that influences the formation of the ethical qualities of future professionals, in particular: responsibility, integrity, decency, trust, justice, respect, courage in the system of legal security. It should be noted that the spread of dishonest

behavior among students and an irresponsible attitude towards the results of their educational activities explain the decline in the quality of education and lead to the training of incompetent specialists.

Today, the problem of using dishonest methods by students in their educational activities is becoming relevant both for the higher education system of many European countries. Studies of dishonest behavior, which began in the 1940s, show that a significant proportion of students are involved in the practice of academic deception: in foreign universities at different times, estimates of their prevalence vary from more than 50% to 70% and more. Cheating students get better grades than they deserve, which spoils free competition, reduces students' desire to learn, and leads to misjudgment of students' academic achievement. In developed democracies, cheating is considered fraud and socially condemned in the legal security system (Popelo, 2017; Pushkina, 2007; Sylkin, 2021a).

So, we can state that the internal quality assurance system of any institution of higher education, both foreign and Ukrainian, must necessarily provide for the observance of the principles of academic virtue by all participants in the educational process in the system of legal security.

The structure of the article involves an analysis of the literature and a review of the methods used that form the main methodology of the study. The main results of the study, the part under discussion and the current conclusions are presented.

1. Materials and methods

The methodological basis of the article is the fundamental foundations of assessment in the quality assurance system of the academic virtue of the university in the context of legal security. To solve the tasks set, dialectical, systemic, logical and historical methods of scientific knowledge are used, which ensure the conceptual unity of the assessment work in the quality assurance system of the academic virtue of the university in the context of regulatory and legal security.

The following methods were used in the research process: the structural-logical method, the method of scientific abstraction, analysis and synthesis, modeling and the method of abstract conclusion, based on the results of the assessment in the quality assurance system of the academic virtue of the university in the context of legal security. The information base of the study is legal documents and publications devoted to the assessment in the quality assurance system of the academic virtue of the university in the context of regulatory security.

Thanks to the modern modeling method, an assessment model has been formed in the quality assurance system of the academic virtue of the university in the context of legal and regulatory security. This made it possible to achieve the goal.

2. Literature review

The transformation of higher education into the compulsory socialization of young people completely changes the main tasks of education. A number of scholars suggest that an increase in the number of young people with higher education and its transformation into a mandatory continuation of secondary education leads to a mechanical increase in the contingents of elite higher education.

Another equally important prerequisite for high-quality higher education is to provide young people with professional competence of a long-term plan, that is, with a focus on the future labor market, and not on the previous one. Under these conditions, the role of the country in educational affairs may change. The public sector of the economy will become only an integral part of the entire employment market, so higher education will be guided by the interests of the whole society, and not only by state institutions (Hesse, 2013; Osipyan, 2010).

Scientists believe that state bodies and structures are considered as the only ones responsible for all matters of assessing the quality of the higher education system. They note that it is most expedient to preserve everything that is available in management and control, improving it by expanding funding or using new instrumental or organizational means - computer testing, an external unified state exam, the introduction of student loans or educational vouchers (Cosmulese, 2019; Jones and Goodfellow, 2012; Kholiavko *et al.*, 2021).

An important tool for monitoring the quality of education at the university is a sociological survey of students, which allows you to quickly receive assessments and offers on educational services from their direct consumers. In Ukraine, there are no strong traditions of studying student opinions regarding the quality of teaching and the quality of higher education in general, although certain practices of this kind already exist. For example, students are surveyed in their opinion about the quality of teaching subjects for rating teachers (Habib *et al.*, 2021; Djakona *et al.*, 2021; Yukhachev, 2008; Kryshtanovych *et al.*, 2021).

In a market economy, the main criterion for assessing the quality of training a specialist in a higher educational institution is his professional competitiveness and competence. The issues of evaluating the quality of

education of a specialist, the choice of indicators, the construction of a system for evaluating higher educational institutions remain insufficiently studied. The considered aspects of quality assessment require the development of new promising directions for substantiating the criteria for assessing and monitoring the quality of education (Kryshtanovych *et al.*, 2022; Damm, 2016; Sylkin, 2021b).

3. Research Results and Discussions

In the context of the implementation of the international Academic IQ project "Academic Virtue and Education Quality Initiative", launched by the American Councils for International Education in cooperation with the Ministry of Education and Science of Ukraine, the National Agency for Quality Assurance in Higher Education and with the support of the US Embassy in Ukraine, a study was conducted to disseminate the principles academic virtue among applicants for higher education as a component of the internal quality assurance system of the Lviv Polytechnic National University in the system of regulatory and legal security.

As part of the study, a survey was conducted among full-time students at the first (bachelor's) level of higher education. The timing of the survey: December 2020 - January 2021. The results of the study can be considered representative, since 2342 students took part in the survey, which is 14% of the total number of 16590 full-time bachelor's degree applicants of the Lviv Polytechnic National University. The survey was conducted online. The results were processed using Excel, this exploration presents individual univariate distributions.

The survey involved applicants for full-time education of four courses, among which the largest number of respondents are students of the 1st year of study (34%). The least active were the 4th year students, whose answers amounted to only 15% of the total number of respondents in the system of legal security.

In the structure of the Lviv Polytechnic National University there are 15 educational and scientific institutes that train bachelor's specialists in numerous specialties. Respondents from these institutions were involved in the study, among which students of specialties should be noted as the most active.

Achieving the effective formation of an internal system for ensuring the quality of higher education is impossible without the application of all its elements, in particular, the observance of the principles of academic virtue. Academic virtue is a relatively new concept for the legal framework, but not new in use and application by educational institutions and applicants

for higher education in Ukraine. We have made an attempt to highlight some of the parameters that characterize the spread of this approach in the educational environment of the Lviv Polytechnic National University in the system of legal security.

Today, in the system of regulatory and legal security, the main vectors for the development of academic virtue at the Lviv Polytechnic National University is the development and adoption of some regulatory documents, in particular: the Regulations «On Academic Virtue at the Lviv Polytechnic National University, the Regulations» On the Code of Corporate Culture of the Lviv Polytechnic National University, the standard for ensuring the quality of educational activities and higher education «Regulations for checking academic plagiarism of students' qualification papers, manuscripts of dissertations and monographs, manuscripts of articles submitted for publication in scientific periodicals», as well as the procedure for considering applications from students of the Lviv Polytechnic National University.

The Regulation «On Academic Virtue at the Lviv Polytechnic National University determines the moral principles, norms and rules of moral behavior, professional activities and professional communication of the academic community of the Lviv Polytechnic National University. This document is aimed at maintaining high professional standards in all areas of the university's activities (educational, scientific, educational, etc.), affirming academic virtues and preventing violations of academic virtue. The norms of this provision fix the rules of moral behavior directly in three main areas - educational, scientific and educational in the system of legal security.

The regulation sets out the basic concepts, principles and norms of academic virtue, and also establishes the norms for the observance of academic virtue by scientific and pedagogical workers and applicants for higher education, the norms and rules of academic virtue for scientific and pedagogical workers and applicants for higher education in the system of legal security.

In order to fulfill the norms of this provision, the University creates the Commission on Academic Virtue, among the main tasks of which are: to receive, consider, analyze applications for violation of the norms of this provision and prepare appropriate conclusions; involve experts in a particular industry in their work, as well as use technical and software tools to reliably establish the facts of violation of the norms of academic virtue on the submitted application.

Carry out information work to popularize the principles of academic virtue and professional ethics of scientific and pedagogical workers and applicants for higher education; initiate, conduct and support research on

academic virtue, the quality of education and scientific activity; prepare proposals to improve the effectiveness of the implementation of the principles of academic virtue in the educational and scientific activities of the university; provide recommendations and advice on ways and means of effective compliance with the norms of this provision in the system of regulatory and legal security.

Any employee of the university or applicant for higher education can apply to the Commission with a statement about the violation of the norms of this provision, making suggestions or additions. Also, the regulation provides for liability for violation of academic virtue and a set of preventive measures to prevent non-compliance with the norms and rules of academic virtue at the university.

The Code of Corporate Culture of the Lviv Polytechnic National University reflects the moral principles, rules and norms of communication and behavior, as well as the norms of professional ethics of the academic community of the Lviv Polytechnic National University. The Code proclaims and protects the value-oriented unity of the entire academic community, taking into account the feeling of solidarity, mutual respect, tolerance and patriotism, the readiness to preserve and develop the traditions of the university.

This Code presents the corporate values of the university, the principles of corporate interaction, professional ethics and culture in the academic community of the university. In particular, the norms and rules of academic virtue of scientific and pedagogical workers and applicants for higher education in the system of legal security are highlighted.

Thus, the norms and rules of academic virtue of applicants for higher education include: worthily carry the title of a university student, represent their educational institution, protect its honor and contribute to the creation of its positive image; profess the principles of academic freedom, intellectual independence and responsibility; initiate proposals aimed at improving teaching and educational work, humanizing the educational process and organizing the internal life of the academic community.

Confirm your level of conscientiousness in the entire educational process: follow the schedule of the educational process, pass tests and exams in a timely manner, and perform qualifying work; avoid manifestations of academic dishonesty, including: requests for assistance, rendering or receiving assistance from third parties in compiling any type of final control, slandering other students and teachers, using family or professional ties to get a positive or higher grade, cheating when performing written control measures.

Not to offer remuneration to teachers when evaluating the results of the implementation of educational, qualification, research tasks; not allow a

false interpretation of collectivism when performing tests, passing an exam or a test, not copying reports of laboratory work, computer programs, course projects; profess a culture of scientific integrity in the implementation of scientific activities, prevent plagiarism in scientific and qualifying works; not spontaneously audio or video recording of lectures; do not use a mobile phone during class.

Do not miss classes and do not be late for them without a good reason, do not leave the audience in the classroom without the permission of the teacher; respect the teacher as a person, personality, teacher and cooperate in the promotion of academic virtues, the development of scientific and educational innovations and the protection of public morality; develop leadership qualities, teamwork, professional mobility and spiritual integrity; to create and maintain a favorable moral and psychological climate in the student environment, to be tolerant in the system of regulatory and legal security.

Responsibility for violation of the norms of the Code lies with the academic community of the university. In case of violation of these norms, such measures may be applied to members of the academic community as: remarks; a written or oral warning in accordance with the established procedure; recommendations to make a public apology; consideration of issues at meetings of the student self-government body, meetings of the Academic Council, the College of Students, if necessary, petitioning the university administration for the use of disciplinary measures in accordance with the requirements of the Internal Regulations of the Lviv Polytechnic National University.

The procedure for considering applications from students of the Lviv Polytechnic National University provides for the use of the practice of obtaining feedback and complaints from students, in particular, when violations of academic integrity are detected both by students and university teachers in the system of regulatory and legal security.

One of the important indicators that indicates the possibility of popularizing the principles of academic virtue among students is the discussion of its components with teachers. To do this, the respondents were asked to note the frequency with which certain of the proposed questions were discussed with teachers during the semester in the system of legal security.

Thus, according to the results obtained, it can be argued that the discussion of the requirements for written work on the course (49.42%) and the issue of plagiarism, cheating and other violations (35.36%) are frequent. Unfortunately, topics about ethics and/or academic virtue (33.29%) are rare for teacher-student discussions; rules for citing borrowed texts and rules for referring to used literature (29.18%), as well as sanctions for plagiarism, cheating and other violations (29.89%).

The main assessment model in the quality assurance system of the academic virtue of the university in the context of regulatory security is shown in Fig.1.

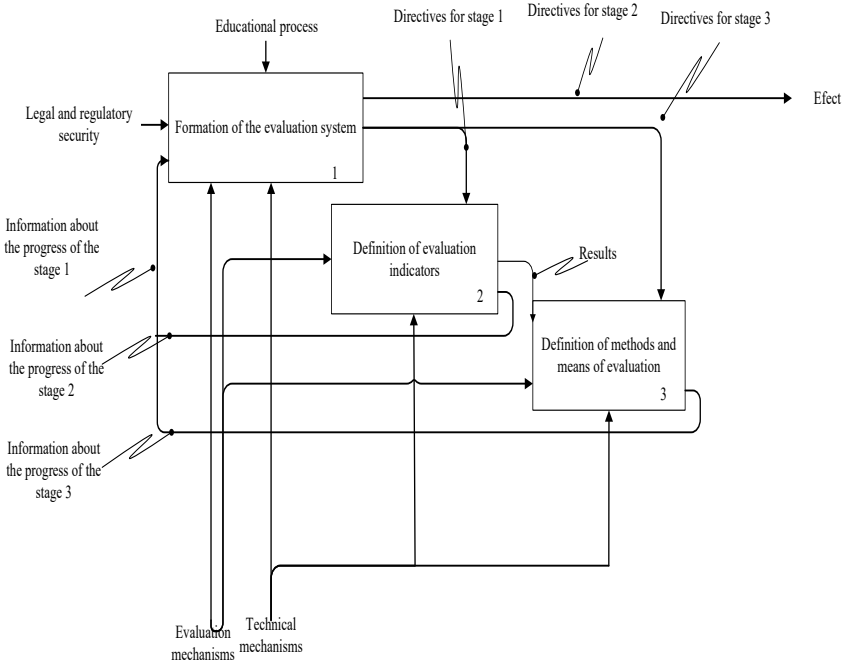

Figure 1. The main assessment model in the quality assurance system of the academic virtue of the university in the context of regulatory security. Formed by authors.

It should be noted that scientific and pedagogical workers should not only know, understand and observe the principles of academic virtue, but also strive to bring them to applicants, in particular, master the methods and techniques for introducing them into the educational process. So, for example, in the work program or syllabus of the academic discipline, the teacher can prescribe a policy on academic plagiarism, develop clear requirements for the implementation of various types of tasks, projects, reports, graphic, calculation, theses, and submit learning results with diagnostic, unambiguous, measuring criteria assessments that make it possible to clearly identify the content of the requirements for a higher education applicant in the system of legal and regulatory security.

Conclusions

Summing up the results of the survey, we can state that, despite the developed and adopted a number of documents regulating the policy of academic virtue at the Lviv Polytechnic National University, the educational environment of the university requires certain tools to improve the dissemination and observance of the principles of academic virtue among the participants in the educational process.

These tools include: voluntary signing by students, graduate students, teachers, representatives of the administration and other participants in the educational process of the Declaration on the observance of academic virtue; ensuring transparency and open access to relevant information as a key condition for the development of an institutional culture of academic virtue; the content of the policy and rules of academic virtue should be communicated to each participant in the educational process; there should be training activities for students (both as part of the components of the educational program, and in addition to it); students should have access to advice on academic writing, avoidance of violations of academic virtue, procedures for dealing with such violations, possible types of academic responsibility, organized separately from training sessions in the system of legal and regulatory security; issues of academic writing / academic virtue can be promoted both through the official website and at seminars, trainings, round tables, conferences, guest lectures for applicants; organizing and conducting anti-corruption activities; acquisition and updating of licensed software for checking works for plagiarism at the institutional level; students should have access to technical support and free access to software for checking papers for plagiarism; the policy on academic virtue should not only be embodied in the institutional culture of the educational institution, but also strengthened by appropriate procedures and institutional practices.

Also, an important element of the internal quality assurance system is the study and application of international practices to strengthen policies for the observance of the principles of academic virtue by applicants for higher education.

Thus, despite the fact that the effectiveness of these activities requires considerable time for their implementation, the main thing depends on the high level of motivation and internal culture and consciousness of the participants in the educational process. Compliance with the principles of academic virtue is not only an important factor in the internal system for ensuring the quality of higher education, but also an important criterion that determines the moral and moral principles that will be formed among applicants for higher education over the years of their study in the system of regulatory and legal security.

After all, it is precisely such components of academic virtue as justice, trust, respect, responsibility, honesty that are at the same time universal values, moral and ethical ideals of a highly developed society and the key to the successful development of the state as a whole in the system of legal security.

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The impact of Russian military aggression on the establishment of a new Ukrainian political nation

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Abstract

The open Russian invasion of Ukraine forced the Ukrainian society to defend its right to a unique and consolidated national identity. The aspiration of Ukrainians to preserve their own identity implied, later, the establishment of a new Ukrainian nation. The aim of the study was to analyze the factors influencing the establishment of the Ukrainian political nation in the context of the Russian invasion of Ukraine. The method of comparative analysis was used to identify a high level of legal awareness of the constitutional military duty to defend the Fatherland and preserve the Ukrainian nation. It is concluded that in the context of the Russian-Ukrainian military conflict, a new Ukrainian political nation is being established under the influence of ensuring equal rights to culture, language, territory, religion, justice, economy and ethnicity. It was found that Russia's military aggression against Ukraine forced Ukrainians to unite for the sake of their own preservation as a single Ukrainian political nation. A new Ukrainian political nation, which was established during the Russo-Ukrainian war, is a sovereign community of citizens who have the political subjectivity to put up national resistance to the occupiers.

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Keywords: Russian military aggression; Ukraine and Russia; sovereignty of the nation; new national identity; resistance.

El impacto de la agresión militar rusa en el establecimiento de una nueva nación política ucraniana

Resumen

La abierta invasión rusa de Ucrania obligó a la sociedad ucraniana a defender su derecho a una identidad nacional única y consolidada. La aspiración de los ucranianos de preservar su propia identidad implica, **más tarde**, el establecimiento de una nueva nación ucraniana. El objetivo del estudio fue analizar los factores que influyeron en el establecimiento de la nación política ucraniana en el contexto de la invasión rusa de Ucrania. El método de análisis comparativo se utilizó para identificar un alto nivel de conciencia legal del deber militar constitucional de defender la Patria y preservar la nación ucraniana. Se concluye que en el contexto del conflicto militar ruso-ucraniano, se está estableciendo una nueva nación política ucraniana bajo la influencia de garantizar la igualdad de derechos a la cultura, el idioma, el territorio, la religión, la justicia, la economía y el origen étnico. Se descubrió que la agresión militar de Rusia contra Ucrania obligó a los ucranianos a unirse por el bien de su propia conservación como una sola nación política ucraniana. Una nueva nación política ucraniana, que se estableció durante la guerra ruso-ucraniana, es una comunidad soberana de ciudadanos que tienen la subjetividad política para oponer resistencia nacional a los ocupantes.

Palabras clave: agresión militar rusa; Ucrania y Rusia; soberanía de la nación; nueva identidad nacional; resistencia.

Introduction

The standard of living of Ukrainians has significantly decreased as a result of Russia's military aggression against Ukraine. Residents of Ukraine faced many problems related to rising prices for foodstuffs and goods, constant interruption of electricity and heat supply, mass unemployment, and reduction of jobs. Paradoxically, all this forces Ukrainian citizens to believe and hope for a better future and victory for Ukraine. In 2022, almost every third citizen of Ukraine believed that their standard of living would improve in the next year. For comparison, only every fifth resident of Ukraine believed so in 2021 (Institute of Sociology, National Academy of Sciences of Ukraine, 2023).

Despite the heavy losses of the Armed Forces of Ukraine, Ukrainians seek the continuation of the war with Russia until the complete victory of Ukraine and the return of all the territory of Ukraine captured by Russia, including Crimea. Ukrainians' defence of the right to live in a democratic independent legal state forced them to resist numerous war crimes and fight for their right to exist against the Russian invasion. Preservation of the Ukrainian identity forced Ukrainians to resist and mobilize as citizens for the right of their democratic nation-state to exist. The Ukrainian nation has always struggled with arbitrariness and lawlessness.

In 2014, it defended the territory of Donbas. In 2013-2014, it protested on the Euromaidan for dignity and against corruption. In 2004, during the Orange Revolution, it rallied for free and fair elections for the president of Ukraine. So even now Ukrainians are mobilizing against Russia's invasion of Ukraine in order to defend their Motherland and protect their families and homes. So, all this undoubtedly proves the relevance of the chosen research topic.

The aim of this study is to analyse the open military aggression of the Russian Federation against Ukraine and to determine the main factors for the establishment of a new Ukrainian political nation in the context of the military conflict.

The aim of the article was achieved through the fulfilment of the following research objectives:

- consider the provisions of the national legislation of Ukraine on the national resistance to the Russian occupiers as a manifestation of the establishment of a new political nation of Ukrainians;
- identify the components of the identity of the Ukrainian nation and describe their constituent components in the context of Russia's military aggression against Ukraine;
- determine the standard of living of Ukrainians in the context of the Russian invasion and identify the level of their trust in the Ukrainian authorities regarding the resolution of the issue of ending the military conflict;
- carry out an analysis of the provisions of international standards on human rights and determine the state of their violation during the military conflict.

1. Literature review

Kuzio (2022) and Knott (2022) carried out a nationalist analysis of Russia's military aggression against Ukraine. In their opinion, the military

conflict forced Ukrainians to unite in order to preserve their nationality and defend the independence of Ukraine. Mälksoo (2022) analysed the Russian-Ukrainian war through the prism of Russian imperialism and came to the conclusion that Russia's open denial of the political sovereignty of Ukraine strengthens Ukrainians' awareness of their right to exist as an independent political nation.

Bureiko and Moga (2019) and Kulyk (2019) studied the Ukrainian-Russian linguistic dyad and its impact on national identity in Ukraine, noting that the issue of choosing free communication is an integral element of the gained freedom. Ciuriak (2022) analysed Russia's military aggression against Ukraine through the prism of ensuring information security, claiming that social networks in Russia's war against Ukraine are an effective tool for forming nationalist ideas and maintaining the connection of many families.

Hunter (2018) analysed the Ukrainian government's involvement of volunteer battalions in response to Russian aggression in Donbas. In his opinion, the creation of volunteer battalions is a conscious manifestation of self-preservation of the Ukrainian nation. Therefore, the active position of the Ukrainian nation in the political life of the country contributed to stabilizing the situation in Donbas in 2014 through the participation of volunteer battalions in an anti-terrorist operation together with the Armed Forces of Ukraine (Semenyshyn et al., 2020). Haran *et al.* (2019) and Dzutsati (2021) explored the public sentiments in Donbas, which is not controlled by Ukraine and stated that, contrary to Russia's expectations, the military invasion of Ukraine only strengthened the Ukrainian civil nation.

Harris (2020) and Bojcun (2015) examined the Russian-Ukrainian crisis of 2014 in the context of nationalism, emphasizing the proportional relationship between Russia's determination to control Ukraine's political future and Ukraine's determination to free itself from Russian influence. They also emphasize the incompatibility between Russian and Ukrainian nationalist ideas, which became the basis for the establishment of a new Ukrainian political nation during Russia's military invasion of Ukraine.

The unity of the political and cultural space of Ukraine has been strengthening after the Euromaidan and the Russian military aggression. This is stated by Kuzyk (2019) and Dembińska and Smith (2021) who studied the issue of national integration of Ukraine before and after 2014. The political and cultural identity of Ukrainian citizens is not fixed, it currently has an ever-growing convergence of Ukrainian society with Russia's military aggression (Sydorova *et al.*, 2022). Analysing the impact of Russian military aggression on the attitude of Ukrainians to Russia and Ukrainian national identity, Oliinyk and Kuzio (2021) and Kasianov (2023) reached the same conclusion.

Matveeva (2022) and Voronovici (2022) studied Russia's military aggression against Ukraine since 2014 and came to the conclusion that the Ukrainians who remained living in the Donbas, which is not controlled by the Ukrainian government, sought unity with Ukraine despite the continuation of military operations and the economic blockade. They also note that Ukrainians strive for national unity, even those who were forced to accept the terms of integration with Russia because of the lack of food security.

Sasse and Lackner (2018) supports this position when studying the issue of preserving the identity of Ukrainians in the context of a military conflict. The researcher believes during the military conflict, every citizen of Ukraine did not leave the political life of their country aside, which contributed to the creation of a new Ukrainian political nation.

Petryna (2023) and Veselov (2023) study Russia's war against Ukraine and argue that the wave of war crimes committed in Ukraine is a genocide of the Ukrainian people. Therefore, Ukrainians unite trying to oppose these crimes, forming a special kind of resistance that strikes against impunity.

However, despite a rather wide spectrum of research on this issue by researchers, the issues of establishing a new Ukrainian political nation in the context of Russia's military aggression against Ukraine remain fragmented, which determines the relevance of the chosen research topic.

2. Methods and materials

The analysis procedure of this study included three stages. The first stage provided for the analysis of academic literature to determine the content of Russia's military aggression in Ukraine and its consequences for the establishment of a new Ukrainian nation. The provisions of the national legislation regarding national resistance to the Russian occupiers were selected. International human rights standards established by the Universal Declaration of Human Rights and the European Convention on Human Rights were reviewed. The material of sociological surveys on public opinion on the state of war and its consequences for the future of Ukraine was selected.

The second stage involved theoretical and experimental research conducted by comparing their results and analysing discrepancies. The provisions of the Law of Ukraine "On the Fundamentals of National Resistance£ and the Decree of the President of Ukraine "On the Introduction of Martial Law in Ukraine" were considered in order to determine the criteria for assessing the legal awareness of Ukrainians before putting up national resistance to the Russian occupiers.

The state of violation of human rights in Ukraine was assessed according to international standards by comparing the norms of the Universal Declaration of Human Rights and the European Convention on Human Rights for the violation of the rights of Ukrainians during the military conflict. War crimes committed by Russia against Ukrainians were assessed through the analysis of the practice of the Parliamentary Assembly of the Council of Europe and the parliamentary decisions of the leading countries. The analysis of the survey was the basis for an assessment of Ukrainians' trust in the state authorities and the strength of military personnel during the military conflict.

The third stage provided for systematization of the criteria for evaluating public opinion on the state of war in Ukraine and the identity of the Ukrainian nation using Microsoft Office capabilities. A scientific discussion on the prerequisites and grounds for Russia's open military conflict in Ukraine was systematized. The processed materials were analysed for the assigned tasks, and the results of the conducted research were formalized.

A comparative analysis was used to analyse scientific, legal, statistical and practical information about the open military invasion of Russia into Ukraine and its consequences on the formation of the legal consciousness of Ukrainians regarding the desire to defend their own state and preserve the nation.

The system-logical method was applied to analyse the results of the survey of the leading sociological organizations of Ukraine regarding the public opinion about the war, victory, and the future of Ukraine in terms of the formation of a new Ukrainian political nation.

The combination of empirical and theoretical methods was used to carry out an empirical interpretation of the theory and theoretical interpretation of empirical data. The legal framework of national resistance to the Russian occupiers was also determined as a conscious manifestation of the preservation of Ukrainian identity. The doctrinal analysis of academic works on the problematic issues of the survival of Ukrainians during the Russian-Ukrainian military conflict enabled determining the imperfection of the existing legal mechanisms in the field of national resistance and social security of Ukrainians in martial law.

The sample was the following:

- the general characteristics of the observance of human rights and its components for the protection of the identity of the Ukrainian nation;
- the standard of living of Ukrainians in the context of the Russian-military conflict;
- the level of trust of Ukrainians in the state authorities regarding the resolution of the issue of ending the military conflict;

- provisions of the Ukrainian legislation of Ukraine in the field of national resistance through the prism of the establishment of a new political nation of Ukrainians;
- factors in the establishment of a new Ukrainian political nation through the prism of Russia's open military attack on Ukraine;
- practical recommendations for assessing the state of military aggression of Russia against Ukraine on the life of Ukrainians and their desire to preserve Ukrainian identity.

The totality of the study of these objects revealed the content of the problems of forming the legal consciousness of Ukrainians and preserving their identity in the context of an open Russian conflict in Ukraine.

The main materials being the basis for the research were the norms of national legislation in the field of defence, the introduction of martial law, and the commission of national resistance, and the norms of the Universal Declaration of Human Rights and the European Convention on Human Rights. These were also the practice of the Armed Forces of Ukraine, territorial defence and volunteer units, as well as studies on the problems of preserving the identity of the Ukrainian nation in the context of Russia's military aggression against Ukraine.

They also included the survey results of the Razumkov Centre as part of the MATRA Programme funded by the Embassy of the Kingdom of the Netherlands in Ukraine and the Institute of Sociology of the National Academy of Sciences of Ukraine. The practice of the Parliamentary Assembly of the Council of Europe on the assessment of war crimes committed by the Russian Federation against the Ukrainian nation was also used.

3. Results

Russia's encroachment on the territory of Ukraine and Russia's failure to recognize the legal sovereignty of Ukraine led to a massive violation of the rights of Ukrainians to preserve their lives. The lawlessness and arbitrariness of the Russian occupiers contributed to the formation of the legal consciousness of Ukrainians to put up national resistance in order to preserve their nation. The total resistance of Ukrainians against Russian military aggression proves the willingness of Ukrainian citizens to fight and win for the sake of preserving an identical Ukrainian nation.

The willingness to fight and win is evidenced by a certain political agreement of the population with the demands of the state power as socially legitimate, regardless of their relationship to the Ukrainian political power and the assessment of its effectiveness. Democracy manifests itself in the

conscious will of the public to fulfil the established requirements of the state authorities without excessive use of coercive means. So, after the declaration of martial law in Ukraine after Russia's military invasion of Ukraine, Ukrainians with combat experience began to actively enrol in the Armed Forces of Ukraine (Decree of the President of Ukraine No. 64/2022, 2022).

Ukrainians immediately began to create volunteer units, carry out volunteer activities aimed at helping the military and refugees, and also actively participate in the territorial defence (Law of Ukraine No. 1702-IX, 1991).

The territorial defence is a conscious desire of Ukrainians, mostly without combat experience, to participate in the defence of the country by fulfilling the constitutional duty to protect Ukraine, its independence, and territorial integrity.

The massive territorial defence units indicate the desire of Ukrainians to put up national resistance to the Russian occupiers. Therefore, the total national resistance of Ukrainians to Russia's military aggression against Ukraine proves to the formation of new values in Ukrainians. They began to value more their state, the territory on which their families live, and identify themselves more as a new Ukrainian political nation.

Ukrainians were massively subjected to violations of their rights related to their identity during the last nine years of the Russian-Ukrainian war. Ukrainian national identity consists a number of interconnected and interdependent components (Figure 1). A particular component is dominant for each region of Ukraine, which characterizes the differences of individual regions among different ethnic, linguistic, and religious groups. However, regardless of the conflict between different communities of Ukrainians due to linguistic, religious or political issues, the military aggression of Ukraine united them for the sake of their self-preservation as a single Ukrainian nation.

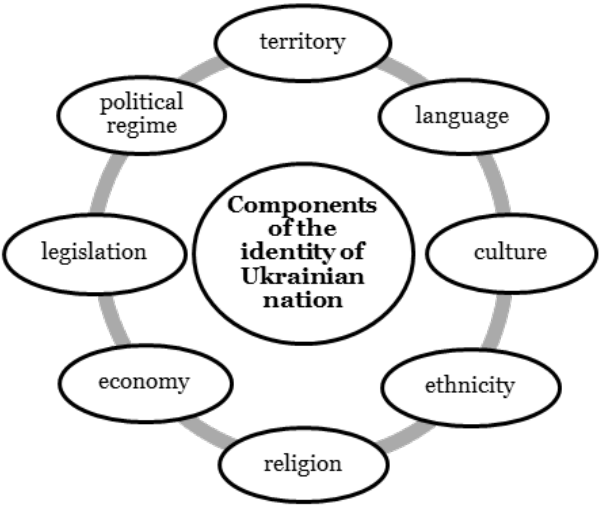

Figure 1. The structure of the identity of Ukrainian nation.
Source: author's own development.

The desire to survive and preserve the united Ukrainian nation proves the colossal trust of Ukrainians in state power and the strength of the military. Ukrainians became more optimistic During Russia's open military aggression against Ukraine and felt the value of the state and the importance of the authorities, which were traditionally treated with distrust (Table 1). The absolute majority of Ukrainians hope for the end of the war and the complete liberation of the territory of Ukraine, including the occupied territory of Crimea, in the coming year, or even sooner.

Table 1. Public opinion about Russia's military aggression against Ukraine.

The opinion of the Ukrainian nation	2023	2022
Faith in the victory of Ukraine		
Yes	93%	93%
No	4%	3%
Difficult to answer	3%	4%
The period in which the military conflict will end		
Current year	32%	50%
1-2 years	34%	26%

3-5 years	7%	7%
More than 5 years	4%	2%
Difficult to answer	23%	15%
Resistance to Russian aggression in Ukraine is put up in the right or wrong direction		
In the right direction	61%	59%
In the wrong direction	21%	24%
Difficult to answer	18%	17%
Will Ukraine be able to overcome the difficulties associated with the military conflict		
Will be able to overcome in the near future	50%	50%
Will be able to overcome, but at an indefinite time	36%	37%
Will not be able	3%	5%
Difficult to answer	11%	8%

Source: author's own development based on Institute of Sociology, National Academy of Sciences of Ukraine (2023), Razumkov Center (2023).

In general, the level of optimism in Ukraine's free and independent future is improving. More than three-quarters of Ukrainians believe in this, whereas in the pre-war period, only every tenth citizen of Ukraine was an optimist. The majority of Ukrainians are convinced that the Ukrainian authorities are doing a very good job of solving problems in the field of defence (Table 2). Ukrainians take an active part in the life of the state by committing national resistance to Russian military aggression.

They express a high level of trust in the Commander-in-Chief of Ukraine, military personnel, and defence officials. They testify to a high level of mistrust of state officials. Such dissatisfaction with the work of politicians and civil servants indicates their inefficiency in ensuring the proper functioning of all state authorities during martial law.

Table 2. Level of public trust in government officials of Ukraine

Social institutions	2023		2022		2021	
	Trust	Do not trust	Trust	Do not trust	Trust	Do not trust
Armed Forces of Ukraine	95%	5%	94%	6%	68%	32%
Volunteer organizations	88%	12%	85%	15%	54%	45%
Volunteer units	88%	12%	81%	11%	54%	45%

National Guard of Ukraine	86%	14%	88%	12%	54%	45%
State Emergency Service of Ukraine	86%	14%	88%	12%	62%	38%
President of Ukraine	83%	17%	80%	20%	36%	64%
State Border Service of Ukraine	83%	17%	84%	16%	55%	45%
Security Service of Ukraine	75%	25%	60%	40%	36%	64%
National Police of Ukraine	72%	28%	65%	35%	39%	61%
Religious organizations	70%	30%	62%	38%	64%	36%
NGOs	66%	34%	65%	35%	47%	53%
Local government	63%	37%	64%	36%	58%	42%
National Bank of Ukraine	57%	43%	35%	65%	30%	70%
Cabinet of Ministers of Ukraine	50%	50%	40%	60%	22%	78%
Verkhovna Rada of Ukraine	41%	59%	35%	65%	19%	81%
State officials	26%	74%	20%	80%	15%	85%
Courts	25%	75%	19%	81%	16%	84%
Politicians	22%	78%	15%	85%	16%	84%

Source: author's own development based on Institute of Sociology, National Academy of Sciences of Ukraine (2023), Razumkov Center (2023).

The high level of trust of Ukrainians in the President of Ukraine and the Armed Forces of Ukraine indicates the legal awareness and assessment of mass war crimes committed by Russia against the civilian population. Ireland, Estonia, Canada, Latvia, Lithuania, Poland and the Czech Republic recognized the genocide of the Ukrainian nation committed by the Russian military.

The Parliament of Ukraine recognized the mass war crimes committed by the Russian occupiers against Ukrainians as genocide of the Ukrainian nation (Resolution of the Verkhovna Rada of Ukraine No. 2188-IX, 2022). The Parliamentary Assembly of the Council of Europe recognized the genocide of Ukrainians because of the deportation and forcible transfer of Ukrainian children to the territory of the Russian Federation.

The desire of Ukrainians to preserve their own nation and win the Russian-Ukrainian war indicates the desire of Ukrainians to fight lawlessness and arbitrariness by recognizing their right to life. The recognition of the right of Ukrainians to their nation will testify to the restoration of Ukraine as a legal state that complies with the guarantees of international human rights standards established by the Universal Declaration of Human Rights

(United Nations, 1948) and the European Convention on Human Rights (European Commission of Human Rights, 1950). Therefore, Ukrainians deliberately try to restore their equality of rights and freedoms as citizens of Ukraine by committing national resistance to the Russian occupation.

4. Discussion

Russia's military aggression against Ukraine contributed to the unification of Ukrainian citizens for the purpose of their self-preservation. Russia's non-recognition of Ukraine's legal sovereignty forces Ukrainians to defend their nation and state. Russia's aggression directed at the destruction of Ukrainian nationality forced the residents of Ukraine to actively fight against lawlessness and defend their own rights to life and freedom of choice.

Russia's aggression directed at the destruction of Ukrainian nationality forced the residents of Ukraine to actively fight against lawlessness and defend their rights to life and freedom of choice.

Flockhart and Korosteleva (2022) noted that Russia's military aggression changed the view on the value of life and self-existence not only among Ukrainians, but also among Europeans. Hunter (2018) supports this position, claiming that Russia's military aggression against Ukraine activated Ukrainians to participate in the country's political life by establishing volunteer battalions.

Ukrainians have repeatedly participated in military operations consciously and actively under such conditions (Donbas, 2014 and Ukraine as a whole from 2022 to the present) or actively involved in volunteering and aid to the military at the front. Russia's military invasion of Ukraine contributed to the strengthening of the Ukrainian nation and the shaping the opinion of Ukrainians regarding their identity as citizens of Ukraine (Haran *et al.*, 2019; Dzutsati, 2021.; Gryshchenko et al., 2022).

Moreover, nine years of occupation of the citizens of Donbas indicates the desire of these Ukrainians for compromises on the part of the Ukrainian authorities to settle the issue of the military conflict. Pakhomenko *et al.* (2018) and Kamyanets (2022) noted that the military aggression of Russia with the partial occupation of the territory of Ukraine feeds a persistent desire of Ukrainians in the occupied territories to preserve their national identity as citizens of Ukraine (Yunin *et al.*, 2022).

But despite the incessant military conflict, a new Ukrainian political nation is being established in parallel in different parts of the population of Ukraine in particular: those who live in territories not occupied by Russia; those who live in the territories occupied by Russia; those who live in self-

proclaimed republics; internally displaced persons; those who accepted the integration of Russia (Sasse and Lackner, 2018; D'Anieri, 2022).

According to Harris (2020), the Russian-Ukrainian crisis is not an ethnic conflict, but nationalism in it contributed to the instigation of this conflict, and remains an actual obstacle to its resolution. Kuzio (2022) and Knott (2022) claim that existential nationalism motivates Russia to continue the war at any cost, and Ukraine — to fight with everything it has. According to Mälksoo (2022) Russian imperialism contributed to building Ukrainians' awareness of their self-preservation by defending their rights to exist as an independent nation.

Internal divisions in Ukraine related to national belonging and linguistic issues are actively used by Russia in the war with Ukraine. However, all these problems also have a positive element, they have a significant impact on the establishment of a new political nation in Ukraine (Bureiko and Moga, 2019). At the same time, Akaliyski and Reeskens (2023) and Bosse (2022) believe that Ukraine is a branched state, but its regional differences within the state are quite minimal.

The doctrinal analysis of the outlined issues of the analysis of Russia's military aggression against Ukraine with a view to the establishment of a new Ukrainian nation revealed that researchers consider it appropriate to further study the military conflict, which in general adjusts the content and directions of development of observance of the rights and freedoms of Ukrainian citizens.

Conclusion

The Ukrainian political nation established as a result of Russian military aggression in Ukraine is a sovereign community of citizens who have the political subjectivity to put up national resistance to the occupiers. In other words, it is a collection of politically united residents of Ukraine, who pursue collective national interests through the mechanism of their own political organization — the state. Most members of the political community are characterized by patriotism and responsibility for the fate of the country.

Therefore, citizens of Ukraine massively joined the Armed Forces of Ukraine during the Russian invasion of Ukraine to fulfil their constitutional duty to protect Ukraine, its independence, and territorial integrity.

So, the total national resistance of Ukrainians to Russia's military aggression against Ukraine testifies to the formation of new values in Ukrainians. They began to value more their own state, the territory on which their families live, and identify themselves more as a new Ukrainian political nation.

The prospects for further research are the development of practical recommendations for improving the observance of rights and freedoms in Ukraine through world recognition of the Ukrainian nation and Ukraine as a legal state. Therefore, we see a further perspective in the empirical study, theoretical and methodological substantiation of effective mechanisms for compliance with international standards for the observance of human rights and freedoms and an effective system of measures of responsibility for violations of these rights and freedoms.

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Correlation of the principles of criminal law in the conditions of the introduction of martial law

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Abstract

The purpose of the research was to consider the essence of the principles of criminal, administrative law and the peculiarities of their application in conditions of war, considering the case of Ukraine invaded by the Russian Federation. It has been substantiated that the main idea of the existence of the principles of administrative criminal law consists in their systematic, balanced and comprehensive implementation in relation to the subjects of criminal and administrative legal relations. The mentioned principles are used as a support for the elaboration and application of the law, both in peacetime and in wartime. The methodological basis of the research was presented as comparative-legal and systematic analysis, formal-legal method, method of interpretation, hermeneutic method, as well as methods of analysis and synthesis. A conclusion has been reached on the necessity of observing human rights norms in the criminal prosecution of persons who have committed crimes against humanity and have been involved in such crimes. Consequently, the civilized world must comply with international standards and ensure security through legal and legitimate means.

Keywords: administrative law; principles of criminal law; just punishment; European legal values; war crimes.

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Correlación de los principios del derecho penal en las condiciones de la introducción de la ley marcial

Resumen

El objeto de la investigación fue considerar la esencia de los principios del derecho penal, administrativo y las particularidades de su aplicación en condiciones de guerra, pensando en el caso de la Ucrania invadida por la federación rusa. Se ha fundamentado que la idea principal de la existencia de los principios del derecho penal administrativo consiste en su implementación sistemática, equilibrada e integral, en relación con los sujetos de las relaciones jurídicas penales y administrativas. Los principios mencionados se usan como soporte para la elaboración y aplicación de la ley, tanto en tiempo de paz como en tiempo de guerra. La base metodológica de la investigación se presentó como análisis comparativo-legal y sistemático, método formal-legal, método de interpretación, método hermenéutico, así como métodos de análisis y síntesis. Se ha llegado a una conclusión sobre la necesidad de observar las normas de derechos humanos en el enjuiciamiento penal de las personas que han cometido crímenes de lesa humanidad y han estado involucradas en tales crímenes. En consecuencia, el mundo civilizado debe cumplir con los estándares internacionales y garantizar la seguridad a través de medios legales y legítimos.

Palabras clave: derecho administrativo; principios del derecho penal; castigo justo; valores jurídicos europeos; crímenes de guerra.

Introduction

Despite international documents aimed at the protection of human rights, norms of national legislation, diplomatic relations and agreements, the Russian Federation have begun active hostilities on the territory of Ukraine.

Any senses in a person's life must be implemented in compliance with the principle of humanity. It is so since humanity is a feature of a person that distinguishing humans from animals. According to V. Frankl when implementing a sense, a person realizes himself/herself. And by means of realizing a sense contained in suffering, we realize the very human in a person. It is where we are helpless and hopeless, unable to change the situation, that is where we are called to change ourselves and we feel the need to change.

A person always decides whether he/she wants to realize a certain sense. Implementation of a sense always involves making a decision (Frankl, 1946). At the same time, V. Frankl notes that a person is a being who can always say "no" to his/her passions and who should not always say "yes" to such passions. When a person says "yes" to his/her passions, it is always performed only by means of identifying himself/herself with these passions (Frankl, 1946).

Currently, the matter of expediency of legislation and international treaties arises more than ever before. That is the matter of value of such documents, value of scientific research in this sphere, the matter of value and purpose of criminal law, as well as value of its principles.

1. Literature review

The issue of criminal law principles was studied by many scientists. In particular, V. O. Gatselyuk carried out a comprehensive research concerning implementing the principle of legality of the criminal law of Ukraine; in her research, N.A.Orlovska covered the problems concerning construction principles of criminal sanctions; P. Pogrebnyak considered the issue concerning meaningful characteristics of the fundamental principles of law (Tuliakov, 2020). V. O. Tulyakov investigated peculiarities of the principle of legality in the practice of the ECHR M.I. Khavroniuk investigates principles of criminal law in the context of its reformation (Khavroniuk, 2020).

In addition, certain issues of theoretical understanding and development of humanism in the sphere of criminal law were researched bymodern Ukrainian researchers Halaburda Nadiia, Leheza Yevhen, Chalavan Viktor, Yefimov Volodymyr, Yefimova Inna investigated (Halaburda *et al.*, 2021). However, the procedure of understanding principles of criminal law and particularities of their implementation under conditions of war have not been covered by the scientists.

2. Materials and methods

This research is based on works of foreign and Ukrainian researchers regarding methodological approaches to understanding principles of criminal law and their specific implementation under conditions of war, etc.

With the help of the epistemological method, ways of protecting rights of individuals in administrative proceedings, etc., has been clarified; thanks to the logical-semantic method, the conceptual apparatus has been deepened, principles of criminal law have been defined alongside with peculiarities of

their implementation under conditions of war etc. Thanks to the existing methods of law, we have managed to analyze the essence of criminal law principles and peculiarities of their implementation under conditions of war, etc.

3. Results and discussion

The principle of presumed knowledge of the law provides that every person must know what criminal liability is. This is one of the requirements of the "social contract" (J. J. Rousseau). Violation of "agreements" must inevitably lead to liability. It is for this purpose that international treaties and conventions on the protection of fundamental human rights have been adopted (Kobrusieva *et al*., 2021).

The concepts of crime and punishment are conditional. They change over time. The main idea is that the list of crimes and respective punishments for these crimes should be clearly and unambiguously formulated in the legislation. Everyone should be able to know what criminal liability is provided for in the state, to understand the essence of what criminal liability is provided for. *The presumption of innocence principle* is not that a person should guess what the legislator was thinking when adopting this or that norm, what he had in mind and why the norm was not properly communicated to the citizens through the relevant official sources. The legislator must establish the norm clearly and comprehensibly.

The approach of the classical school of criminal law "punishment for crime" is also related to this. It is based on the fact that the state reacts with criminal legal means precisely to the committed act, which is provided as a crime in the current criminal law. No one can be punished for thoughts, for feelings, for thinking as such. Goethe noted in "Faust" that thought cannot create and act, hence the beginning of existence and objective reality is in action.

Only a person who has committed a criminal act (defined as a crime in the criminal law of the state) can be held criminally liable. She must clearly and unambiguously know about such liability. And if a person has already committed a crime, then he/she should be held liable in accordance with the law. In modern criminal law *the principle of certainty* is one of its main principles. Part 2 of Art. 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 provides that this article is not an obstacle to the judicial punishment of any person for any act or inaction, which at the time of their commission constituted a criminal offense in accordance with *the general principles of law, recognized by civilized countries*.

The principle of humanism is expressed in the fact that a person who commits a crime, including a war crime, or a crime against humanity, is still a person with his/her rights and freedoms (Timofieieva, 2020). A person who broke the law. The state must respond to human actions. But such "response" should not turn into a crime. We also hope to correct the law breaker by the means provided for by the criminal law. This is the purpose of punishment according to Art. 50 of the Criminal Code

No person shall be subjected to torture, inhuman treatment or treatment degrading human dignity (part 3 Art. 50 of the Criminal Code). Torture and inhumane treatment are expressly prohibited by Art. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950).

The same principle has also become the basis for provisions of Art. 3 of the Geneva Convention relative to the Treatment of Prisoners of War dated 12 August, 1949. According to it persons who do not actively participate in military activities, in particular those from the Armed Forces who have ceased hostilities, as well as those who have stopped participating in military activities in connection with illness, injury, detention or for any other reason should be treated humanely in any circumstances, without any discrimination on grounds of race, color of skin, religion or believes, sex, origin or property status or any other similar criteria (Geneva Convention on the Treatment of Prisoners of War, 1949).

Participants of armed hostilities in Ukraine must strictly adhere to current norms of international humanitarian law. And although it is difficult to talk about justice and expediency of war and bloodshed, it is the observance of preliminarily known rules and agreements that puts the parties within relatively clear norms.

No person has the right to commit crimes within the jurisdiction of the International Criminal Court, including Ukraine (where these horrific events are taking place) and citizens of that country. Ukrainians often show dissatisfaction with the humane attitude to prisoners, their feeding, maintenance of hygienic norms, provision of necessary clothes and medicines. But if Ukrainians treat them with cruelty, Ukraine will also be violating international norms, in particular the Geneva Convention ratified by Ukraine.

Also, a great number of problems emerge if requirements of the Geneva Convention are followed because the budget is not sufficient for this. However, the prohibition of torture cannot be deviated from under any circumstances. In the context of inhuman treatment with its interpretation expanded from time to time and taking into account the dynamic nature of the Convention, it is necessary to ensure provision of necessary medical care, nutrition, hygiene items.

It should also be taken into account that, in fact, servicemen of the Russian Federation commit a criminal offense provided for in Article 332-2 of the Criminal Code "Illegal crossing of the state border of Ukraine". That is, they can be brought to criminal liability under this article and this will not violate any of the principles of the criminal law, and this will ensure *implementation of criminal legal response inevitability*. In addition, it is necessary to approach such liability *individually,* in compliance with *the principle of fault-based individual responsibility and guarantees of protection.*

The principle of inevitability of criminal liability. The whole world is horrified by the atrocities that took place in Bucha, rapes in plain view of children, rapes of children. Some eyewitnesses and victims of these atrocities have survived. And Putin and the Russian leadership insist that this did not happen.

The whole world is horrified by the destruction of Kharkiv, Kherson and Mariupol as well as by brutal crimes committed in Bucha, rapes and tortures of citizens. Kharkiv, its architectural and cultural heritage have been irreparably destroyed. The people who remained in the city were forced to live in the subway.

On 11 April, 2022, information regarding the use of chemical weapons in Mariupol was confirmed. On 23 April, 2022, on the eve of Easter, missile attacks were made at Odesa, one of the missiles hit a residential building. As a result, 9 civilians died, including a three-month-old baby, and citizens' apartments were destroyed. On 24 April 24 (Easter Day), Donetsk and Luhansk regions were also shelled, churches were shelled. On 09 May, a missile hit a shopping center in Odesa. Due to the curfew, there were security guards on the territory who were injured, windows were blown out by the blast wave in residential buildings near the shopping center. None of the attacks has been recognized by the aggressor.

International institutions and the state must properly respond all these crimes. On 28 February, 2022, the Prosecutor's Office of the International Criminal Court began an investigation into the situation in Ukraine. On 13 April, 2022, the prosecutor of the International Criminal Court visited "Bucha" in the Kyiv region as a place where war crimes had been committed. But the Russian Federation government continues to insist that all these corpses in "Bucha" were staged by the United States.

It is important that each action and the actions of each person shall be qualified separately. These are not the crimes of Putin alone, not only those of the commanders who gave the orders. Each act has its own characteristics, so it must be evaluated individually and in compliance with *the principle of fault-based individual responsibility*. According to the current Criminal Code of Ukraine, there is no collective responsibility. Each action is committed by a specific person (Zhukova *et al*., 2023).

Human behavior depends on both external (for example, an order) and internal factors. Internal (subjective) factors include presence of guilt, i.e., an ability to be aware of the criminal wrongfulness of an act, foresee the consequences and wish for them to occur; purpose, motive, emotional state (Leheza *et al.*, 2022).

In accordance with Law No. 2108-IX dated 03 March 2022, criminalization of collaborative activities (Article 111-1 of the Criminal Code) also does not contradict this principle, since a person must be aware that such activities contribute to the commission of war crimes initiated by the aggressor country. Criminal liability for collaborative activity is provided for in the criminal legislation of other countries, in particular the Criminal Code of Lithuania.

When determining the degree of punishment for a war crime, the Court must obligatorily take into account that any punishment should first of all "reflect the guilt of the convicted person". At the same time, in addition to the guilt and gravity of the crime, the Court shall take into account the following: the degree of damage to the victims and their families; the nature of "illegal conduct" and means used to commit the war crime; "degree of intention"; factors related to the method, time and place of the crime; age, level of education, social and economic status of the person found guilty; mitigating and aggravating circumstances (Tylchyk *et al.*, 2022).

According to the Law "On Amendments to the Criminal and Criminal Procedural Codes of Ukraine on Ensuring Counteraction to the Unauthorized Dissemination of Information on the Dispatch, Transfer of Weapons, Arming, and Military Supplies to Ukraine, Movement, Transfer, or Placement of the Armed Forces of Ukraine or Other Military Formations Formed in Accordance with the Laws of Ukraine, committed under conditions of martial law or a state of emergency" No. 2160-IX dated 24 March, 2022.

The Criminal Code was supplemented with Article 114-2 "Unauthorized dissemination of information about sending, transfer of weapons, armaments and war supplies to Ukraine, movement, transfer or placement of the Armed Forces of Ukraine or other military formations formed in accordance with the laws of Ukraine, committed under conditions of war or a state of emergency."

Features of the information age are related to the simplification of recording and transmission of information. Therefore, many "bloggers" began to post relevant photos and videos of such movements, air defense operations, explosions, etc. Information war and information defense in the modern realities of criminal law of Ukraine has received a completely updated content (Matviichuk *et al.*, 2022).

Persons who have certain cooperation with the Russian Federation have access to social networks and other communication channels, which highlight relevant photos and videos. That is, such actions do not help the state and law enforcement agencies, because they correct actions of the enemy. They provide the enemy with information about relevant locations, the situation in the city, etc. (Villasmil Espinoza *et al.*, 2022).

Conclusions

Therefore, existence of right and law is valuable. When the law is codified, structured, understandable and clear, a person can compare his/her behavior with this law. If a person chooses to commit a crime, he/she does this taking into account the awareness of illegality of such an act and presence of an appropriate punishment or measure of a criminal law nature determined for such an act. Therefore, the government in such a case has all the moral and legal grounds to prosecute such a person.

The main idea, essence and value of criminal law is to protect basic rights and establish a fair punishment for violation of these rights. A fair punishment must comply with the principles of criminal law. The Sense of criminal law is expressed through its principles. They include principles of humanism, legality, proportionality, individualization and differentiation of criminal responsibility.

The main idea of the existence of criminal law principles consists in their complex and balanced implementation in relation to subjects of criminal legal relations. This requirement applies to the level of law-making and law enforcement, both in peacetime and in wartime.

Determined is the necessity to observe standards of human rights standards in criminal prosecution of persons who have committed war crimes and other crimes against humanity and have been involved in such crimes. The civilized world must meet civilized standards and ensure security through civilized means.

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Armed violence in the system of state image formation

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Abstract

The purpose of the article was to analyze the impact of armed violence on shaping the image of democracy, the image of foreign policy and the image of information policy of Ukraine. In the context of Russia's aggression against Ukraine, a real fact is the transformation of Ukraine's image in the perception of the world during the processes of European integration. Methodologically, dialectical, systematic, structural-functional, institutional, conflictological, political-cultural and axiological approaches were used in the study. It is concluded that the definition of state image presents many variants, since each scholar interprets this concept according to his or her subjective experience. However, the study of the image of a state in the context of international relations makes it possible to assume that the image of a state may arise under the influence of spontaneous (unconscious) factors, armed violence, geopolitical position and other characteristics; as well as a result of the selective influence of the mass media. A positive image of the state is formed through the proper functioning of three components: internal image, foreign policy image and information image.

Keywords: armed conflict; total war; state image; positioning in the European space; political semiology.

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La violencia armada en el sistema de formación de la imagen del Estado

Resumen

El propósito del articulo fue analizar el impacto de la violencia armada en la configuración de la imagen de la democracia, la imagen de la política exterior y la imagen de la política de información de Ucrania. En el contexto de la agresión de Rusia contra Ucrania, un hecho real es la transformación de la imagen de Ucrania en la percepción del mundo durante los procesos de integración europea. En lo metodologico se utilizaron en el estudio los enfoques dialéctico, sistemático, estructural-funcional, institucional, conflictológico, político-cultural y axiológico. Se concluye que la definición de imagen de Estado presenta muchas variantes, ya que cada estudioso interpreta este concepto según su experiencia subjetiva. Sin embargo, el estudio de la imagen de un Estado en el contexto de las relaciones internacionales permite suponer que la imagen de un Estado puede surgir bajo la influencia de factores espontáneos (inconscientes), la violencia armada, la posición geopolítica y otras características; así como resultado de la influencia selectiva de los medios de comunicación. Una imagen positiva del Estado se forma mediante el buen funcionamiento de tres componentes: imagen interna, imagen de política exterior e imagen informativa.

Palabras clave: conflicto armado; guerra total; imagen del estado; posicionamiento en el espacio europeo; semiología política.

Introduction

In the context of European integration processes in Ukraine, the issue of the importance of forming a positive image of the country while preserving national identity and distinctive culture for the effective functioning of its foreign policy interests has arisen. After the full-scale invasion on February 24, 2022, Ukraine's foreign policy course towards the unification of the European Union only intensified. On June 23, 2022, the European Council granted Ukraine the status of a candidate for membership in the European Union (Ministry of Education and Science of Ukraine, 2023).

Accordingly, there is a need for the effective functioning of information and communication tools to shape the state's image. It is thanks to the frequent news of a full-scale war in the media that Ukraine has become the focus of discussion at the national and international levels. Today, an important factor in shaping the country's foreign policy image is building a diplomatic strategy based on soft power rather than hard power. The former

does not involve the use of coercion, but the ability of the state to improve its image in the European space through culture, values, and foreign policy.

On August 26, 2021, the Decree of the President of Ukraine No. 448/2021 "On the Strategy of Foreign Policy of Ukraine" (Decree of the President of Ukraine No. 448/2021..., 2021) was enacted. According to this document, we emphasise paragraphs 12 and 13, which guarantee the use of soft power in public diplomacy to create a positive image of the state and protect the rights of Ukrainian citizens, preserve national and cultural identity outside the state. Burlaka *et al.* (2023) emphasize that public policy should be flexible, universal, and based on the principles of humanism and social consciousness of citizens.

In the context of the armed conflict that has been going on since 2014 and the martial law since 2022, the problem of armed violence, which is an instrument of power of a non-democratic state, arises. The international law categorically prohibits the use of armed violence, but there are cases when a state exercises its defence right during aggression or acts in accordance with a UN Security Council resolution. In times of war and war crimes, there is an urgent need to develop the military law (Gorinov and Mereniuk, 2022). Another problem is the absence of a separate legal system for military personnel.

It mostly does not respond to threats to national security and defence capabilities of the state. In European countries, such a legal system is developing at a high level that indicates the awareness and guarantee of the implementation of legal provisions on military security during hostilities (Gorinov and Mereniuk, 2022). In the context of Russia's aggression against Ukraine, the study of armed violence in the system of state image formation is an urgent task.

Ukraine's image requires significant transformations, as it is characterised by an unstable economy, corrupt government, social insecurity of certain groups of the population, and a long-term armed conflict in eastern Ukraine, where Ukraine has taken the position of a "victim". However, since the beginning of martial law in Ukraine, the European community's attitude toward our country has changed.

According to the "Report on the Perception of Ukraine in the World in 2022" compiled by the NGO BRAND UKRAINE, 71% of respondents supported Ukraine in the war. Russia's aggression against Ukraine has shaped a favourable attitude toward our country, particularly, because of the unity in society, the revival of Ukrainian culture, and national consciousness. Many European countries have become an asylum for refugees. 66% of respondents approved of Ukraine's accession to the European Union, which is a record figure in the history of European integration processes (Brand Ukraine, 2022).

The purpose of this study is to analyse the formation of Ukraine's image in the context of armed violence. The realisation of this goal requires the fulfilment of the following tasks: 1) to study the impact of armed violence on the image of democracy of the state; 2) to analyse the foreign policy image of the country during a full-scale war; 3) to find out the role of the image of information policy in the system of forming the image of the state.

1. Literature Review

Shaping the image is an important strategic task for the state. When developing a unique image for long-term positive positioning, it is important to develop the government, society, economy, and culture in an interconnected manner. The topic of forming the image of the state in the context of management and marketing aspects was studied by Musienko *et al.* (2020). The researchers identified the key factors (economic freedom, competitiveness, human development, and digitalisation) of the state image formation through a comparative analysis of the brand in the world rankings of developed and developing countries.

Raev and Minkman (2020) examined the concept of branding (state image, policy image, and image of policy instruments) in diplomatic relations. The authors concluded that branding is effective only if all three images are developed. The concept of branding is an effective tool in international communication, but not universal. Savon (2019) studied the strengths (favourable geopolitical position) and weaknesses (war, corruption, scandals) of Ukraine's international image. The author concluded that the image is influenced not only by government officials but also by the citizens of Ukraine.

Kosheleva (2021) studied the image of the state in the cultural system. The author concluded that an important condition for Ukraine's effective international positioning is the creation of a positive image to protect the national interests of the state, to achieve the strategic goal of joining the European Union, to be successfully competitive in the global sales and investment market; to popularise Ukrainian traditions in European culture.

Lisovskyi (2022) in his study revealed the concept of "foreign policy image" in the context of Ukraine's national security. The author emphasised that during a full-scale war, Ukraine's image is dynamic and requires constant foreign policy support and correction.

Horbachenko (2022) analysed the Decree of the President of Ukraine No. 448/2021 "On the Strategy of Foreign Policy of Ukraine" (Decree of the President of Ukraine No. 448/2021..., 2021). The main idea of this legal document is to ratify Ukraine as a strong and authoritative state in Europe,

which can guarantee favourable external conditions for the sustainable development of the state, ensure the independence and state sovereignty of Ukraine, restore territorial integrity, and counter Russian aggression.

Eremeeva (2022) studied and systematised theoretical approaches to the definition of the concept of the "international image of the state". She identified the formative factors of the state's image (standard of living, legal framework for regulating social relations, functioning of social policy, use of mass media, and state means of influence on society). The author classified the directions of modern state image-making (geopolitical, marketing, brand).

Buinitskyi and Yakovets (2019) analysed the role of the media in shaping the image of a politician through the creation of stereotypical political images and myths ("conspiracy myth", "golden age myth", "saviour hero myth", "unity myth"). Identified the means used by the media to create a political image (combination of three facts: truth, falsehood, fiction; repetition of news, non-recognition of pluralism of opinions; "mudslinging" the enemy).

Rudnieva and Malovana (2022), studying the image of the state in the context of the development of the information society and digital technologies, noted the need to develop an information image. The constant mention of the state in the information field of national media will lead to mention in international media. In addition, the authors focused on improving the "Digital State", as receiving public services online is positively perceived by society, especially after the COVID-19 pandemic and during martial law.

The issue of armed violence as a socio-political phenomenon has been studied by Balatska (2018), Bader (2020), Balcells and Stanton (2021), and other scholars. However, the topic of studying the impact of armed violence in the system of forming the image of the state is poorly understood, which determines the scientific novelty of the study.

2. Methodology

The methodology of studying the impact of armed violence on the formation of the state image is characterized by pluralism, which incorporates various methods of general philosophical, general scientific and special levels.

The main approach used in the study concerning armed violence in the system of socio-political relations is the dialectical approach. It is due to this approach that the article examines the impact of armed violence on the system of forming the image of the state and the relationship between internal and external images. In addition, the dialectical approach was

used to consider the phenomenon of armed violence and the concept of the image, which are not unambiguously interpreted. The systematic method was used to study the foreign policy image of the state.

This method was evaluated in order to determine the transformation of the country's image in the minds of the international community; to identify the main changes in legal documents after the introduction of martial law; to find out that the image of the state is formed through the interconnected functioning of not only the political, social, and economic spheres but also the cultural one.

The structural-functional method helped to clarify the structure of armed violence and the image of the state. The functional purpose of armed violence in the system of forming the country's image and its impact on Ukraine's integration into the European Union was determined. Using the institutional method, the author analysed the image of the state as part of the state institutions that create it. The role of socio-political institutions in shaping the image was analysed. The conflictological approach was used to study the image of democracy and autocracy and to find out public attitudes towards the implementation of effective policies in Ukraine. The political and cultural approach led to the study of the impact of armed violence on the system of forming the state's image through the media, the active use of the Ukrainian language in all spheres of life, and the formation of the original culture.

The axiological approach was used to identify the destructive values of armed violence and to highlight the constructive values that are part of a positive image of the state. The main materials used in the research were Ukrainian and international legal documents, reports of social institutions that study the reaction of society to the armed aggression against Ukraine, and articles by Ukrainian and foreign scholars.

When searching for information sources, the main tags were: the formation of the state image, political image during an armed conflict, European integration in times of war, international image of the country, the image of the Armed Forces of Ukraine, the image in the cultural system, Ukraine's perception by Europe in 2022.

3. Results and Discussion

The image of the state is formed by the targeted influence of PR specialists on the country's citizens. The purpose of the image is to create a positive image within the country and abroad. An image is a reflection of the reality created by the media. The main components of the image are imagination and sensuality, so the image of the state cannot be considered objective.

The history of Ukraine's integration into the European Union (EU) began in the 2000s, but it was only in 2022 that the EU granted Ukraine the status of a candidate for membership.

One of the reasons for the long-term European integration processes is the negative image of Ukraine, characterised by investment unattractiveness, an unstable economy (the COVID-19 pandemic played a special role in this aspect), a protracted armed conflict, and a low level of culture. However, since the full-scale invasion, the country's image has begun to change for the better.

Armed violence is a form of political violence that necessarily affects the lives of citizens. The structure of armed violence is as follows: a set of subjects (individuals, groups, associations, and other socio-political institutions) ☐ influence on the object of violence ☐ establishment of a strategic plan for armed violence ☐ constitutional and conceptual grounds for the use of armed violence (Bader, 2020).

The subject of armed violence that initiates this act (Russia) against the object (Ukraine) seeks to seize, maintain and change a democratic regime into an autocratic one in order to fully control the economic, social, and spiritual spheres of society.

A similar opinion on armed violence in the system of socio-political relations is shared by Bader (2020). In this system, Ukraine has taken the position of a counterparty defending its freedom. Europe supported Ukraine in the war by providing military, humanitarian, and financial assistance. In contrast, tough sanctions measures were imposed on Russia (The European Commission, 2022).

A similar study on the European Union's solidarity with Ukraine was conducted by a team of authors from the Razumkov Center (2023), who noted the EU's condemnation of Russian aggression, non-recognition of the annexation of Crimea, and the forced annexation of occupied Ukrainian cities to Russia. The scientists also confirmed the author's thesis on comprehensive support for Ukraine in the war and added two more aspects of assistance: ensuring the protection of the rights of refugees from Ukraine; promoting reforms in Ukraine (Razumkov Center, 2023).

In accordance with the above mentioned, it can be stated that Russia's armed violence against Ukraine has begun to shape the positive image of our country for the European community. An image is an image that is created with the help of virtual information and communication tools. It can be constantly adapted to political demands and rooted in the public consciousness through the media.

Eremeeva (2022) gave a similar definition of the concept of "image" with some clarifications. From the point of view of an international PR

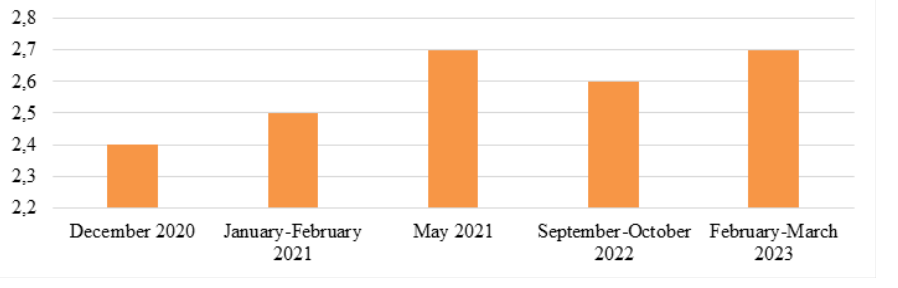
service, the image of a state can be created spontaneously or artificially, which realises the functions of a stable position of the state in the political and global information space.

The image of the state cannot be formed alone; there are always two addressees - the country's society and the world community. Accordingly, a distinction is made between the domestic and foreign policy image of a country.

Chumak (2020) identifies internal and external factors in the formation of the state image. The author considers the general welfare of society, respect for the rights of the Constitution, the absence of corruption, crime, the shadow economy, and favourable social well-being to be positive internal factors. The external factors include Ukraine's foreign policy, EU membership, development of diplomatic relations with strategic partner countries, the conclusion of international documents, etc. Lisovskyi (2022) defines the concept of "foreign policy image" as a set of ideas about the state that are formed in the external environment.

Changes in the internal image of the state during 2020-2022 (Fig. 1).

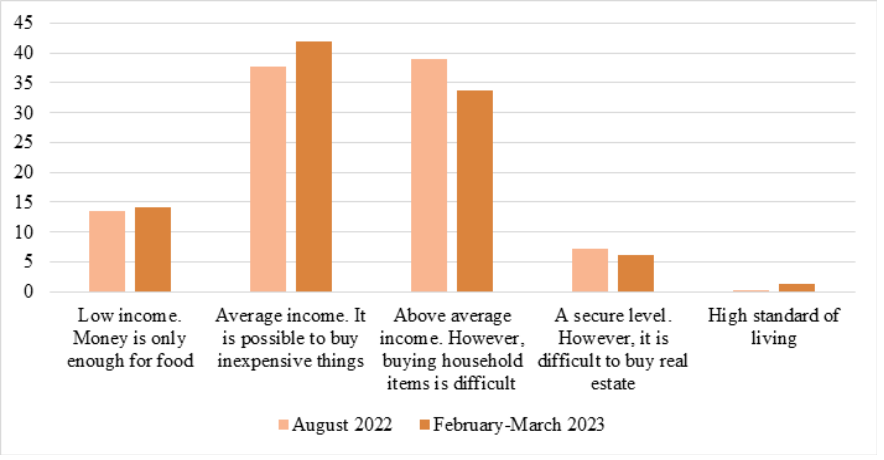
Figure No. 01: Comparative analysis of well-being indicators on a 5-point scale.



Source: Created by the author based on the source (Razumkov Center, 2023).

According to Figure 1, martial law did not have a significant impact on the level of well-being of the population. The financial situation of society has mostly changed in a negative direction (Fig. 2).

Figure No. 02: The financial situation of society during a full-scale war.



Source: Created by the author based on the source (Razumkov Center, 2023).

According to the analysis of internal factors of Ukraine's image, it cannot be unequivocally considered negative or positive, but rather neutral in terms of citizens' perception. As for the foreign policy image, the following changes are observed (Table 1):

Table No. 01: Public attitude to foreign policy under martial law.

Direction	Positive	Negative
General implementation of foreign policy	78 %	6 %
Strengthening Ukraine's relations with European countries and international organisations	85,6%	14,4 %
Dissemination of unbiased information	86,2 %	13,8 %
The favourable attitude of Europe to Ukraine's international image and authority	86,2 %	13,8 %
Providing external support to counter external aggression	86 %	14 %
Popularisation of Ukrainian initiatives on international platforms	85,6 %	14,4 %
Integration into the EU	81,2 %	18,8 %
Integration into NATO	77,6 %	22,4 %
Protection of the Rights of Ukrainians abroad	72,4 %	27,6
Promotion of Ukrainian business in the international market	67 %	33 %

Source: Created by the author based on the source (Ukrinform, 2023).

The analysis of the results concerning internal and external image factors showed that the former is paid less attention than the latter, which is a wrong position. Horbachenko (2022) emphasised the formation of the internal image first, which indicates the self-development and competitiveness of society, and only then the foreign policy image.

Armed violence in the system of forming the image of the state is present in Russia in the form of aggression against Ukraine, which creates an unattractive foreign policy image and contradicts the principles of democracy. Ukraine has gained experience over many years of fighting Russian aggression and hybrid threats and uses soft power to develop secure, political, and legal relations with other countries. This, in turn, creates a positive image of the state (Horbachenko, 2022). On February 24, 2022, the President of Ukraine declared martial law from 05:30 a.m. for 30 days (Decree of the President of Ukraine No. 64/2022, 2022).

The martial law is extended due to military operations. In connection with the introduction of martial law in Ukraine, the rights and freedoms of a person and a citizen provided for in Articles 30, 34, 38, 39, 41, 44, 53 of the Constitution of Ukraine, as well as temporary restrictions on the rights and legitimate interests of legal entities within the limits and to the extent necessary to ensure the possibility of introducing and implementing measures of the legal regime of martial law, as provided for in Part 1 of Article 8 of the Law of Ukraine "On the Legal Regime of Martial Law" and Decree of the President of Ukraine No. 64 of February 24, 2022 "On the Introduction of Martial Law in Ukraine" (Decree of the President of Ukraine No. 64/2022, 2022).

According to the documents "On the Legal Regime of Martial Law" (part 10, article 9), the Regulations of Local Councils, "On Access to Public Information" (part 6, article 22), "Some Issues of Ensuring the Functioning of Information and Communication Systems, Electronic Communication Systems, Public Electronic Registers under Martial Law", there is a limitation of interaction between local governments and the public.

This is confirmed by a study conducted within the framework of the Council of Europe Project "Strengthening Public Participation in Democratic Decision-Making in Ukraine" (Council of Europe, 2022). 42.2 percent of respondents are aware of cases of restrictions on public influence by local governments, while 57.8 percent are not aware of this issue.

An effective tool for addressing this issue is the principle of subsidiarity, which involves the transfer of competencies to higher authorities and the EU (Kumar, 2021). The main problems include the inaccessibility and secrecy of information, ineffective communication between society and the state, and restrictions on the use of civic participation tools. On the one hand, this is a violation of the principles of a democratic regime, which is

more like an autocracy where all decisions are made by the head of state, and on the other hand, these temporary restrictions are part of democracy to ensure the national security of citizens and society.

This is confirmed by a study conducted by the Kyiv International Sociological Institute in 2022 (Democracy, rights and freedoms of citizens..., 2022), according to which 58% of respondents want a strong leader in the person of the President, 27% prefer a democratic regime, and the remaining 14% abstained. Therefore, we can conclude that the restriction of citizens' rights under martial law is fully justified and does not harm the image of democracy.

The main problem that spoils the image of democracy is the inability of the state to fully protect society from war crimes. Today, law enforcement and judicial authorities need special training in collecting evidence of the war crime of Russian aggression against Ukraine (Baladyiha, 2022). However, the unification of the democratic regimes of Ukraine and Europe will lead to a victory over the autocratic regime of Russia, as it is built on unity, solidarity, peace, security, inviolability, honour, dignity against violence, coercion, weapons, injustice, inequality, fear, etc. The article by O. Kalynovskyi *et al.* (2023) discusses the means used by EU countries to improve the effectiveness of law enforcement in Ukraine. These results can be used to improve and optimize crime analysis.

The main structural components of the state's image are official information about Ukraine countering Russian aggression; general perceptions of the state as a social institution that protects the rights and freedoms of citizens; and daily reports on specific actions of the authorities and political figures in the media that create the state's domestic and foreign policy image. There are 20 ministries, 24 state services, and 15 agencies in Ukraine that directly influence the formation of the country's positive image.

The information policy in the media plays an important role in spreading the image of the state and forming a certain attitude towards it. This position is supported by Volotko (2019), who argues that modern information and communication tools used to shape the image of any country are based on a number of actions to protect and promote its interests in the international community, as well as to present information to the world community about geography, politics, features of the national economy, the state of development and major achievements of culture and science. An information image is an image created with the help of language in the media in accordance with requests. It is through language tools that contain emotional colouring that public opinion is formed.

When developing an information image, it is important to constantly update the information situation in the context of Ukraine's national

interests; to seek ways to influence a certain situation to maintain a positive image, implement Ukraine's foreign policy strategy; to block hostile information campaigns against Ukraine in advance, etc.

During martial law, an effective information policy is a component of national security. Currently, there is a News Marathon that unites all national TV channels, which are mostly filled with news and/or information and analytical programs. At the initial stage, when the martial law was in effect, this information policy was effective and helped reduce public panic.

However, now that the vast majority of Ukrainian citizens have adapted to the martial law, society is interested in entertainment content, learning news from social networks and YouTube, which can significantly distort information. A similar position is supported by Denysiuk (2021). According to a study conducted by the Gradus Research Company in 2022, 77% learn information from social media, 60% receive information from websites, 42% - from news on national television, 37% receive information about events from relatives, friends, colleagues, 16% of respondents watch local and regional television, and 13% listen to the radio (Gradus Research Company, 2022). Accordingly, it is important to revise the strategy of the state's information image.

Thus, the main recommendations to improve the image of the state are: protecting the rights of Ukrainian citizens within the country and abroad; strengthening Ukraine's information presence in the international media space through the broad participation of Ukrainian state institutions, active cooperation with local media and organisation of information events; focusing more attention on cooperation with foreign journalists working in Ukraine, informing them about the innovative, scientific, technical, industrial, agricultural and tourist potential, and cult.

Conclusions

The definition of state image has many varieties, as each scholar interprets this concept according to his or her subjective experience. However, studying the image of a state in the context of international relations allows concluding that the image of a state can arise under the influence of spontaneous (unconscious) factors, armed violence, geopolitical position, and other characteristics, as well as a result of targeted media influence. A positive image of the state is formed through the successful functioning of three components: internal image, foreign policy image, and information image. Russia's aggression against Ukraine has had a positive impact on Ukraine's image in the European space.

For Europe, Ukraine has become a brave state that defends law, freedom, and territorial integrity. With the introduction of martial law, a number of restrictions were introduced at the legislative level that violates the principles of a democratic regime. However, the overwhelming majority of citizens support such restrictions as they contribute to the national security of the state. In addition, during the full-scale war, a large number of war crimes were recorded that violate International Humanitarian Law. It was found that the judiciary does not have enough specialists to investigate such crimes.

It is determined that the image of the state is flexible and can be changed in accordance with political and economic demands. In the context of Ukraine's foreign policy strategy, which is focused on European integration processes and assistance from European countries, it was determined that the formation of a positive image of the state is aimed at protecting human rights, preserving Ukrainian culture, and using soft power. Since the beginning of the full-scale war, the European community has been favourable to Ukraine's image.

Ukraine's image needs constant correction in line with the socio-political situation in the country and the world. The media play an important role in shaping the image of the state, as they can cover the country's actions in both positive and negative ways. It is through the media that the perception of reality and public opinion are formed. Currently, the information policy is based on a news marathon, which is ineffective because the news is presented in a standardised and monotonous way. The vast majority of people get their news from social media, which is uncontrolled and uncensored. Accordingly, a promising area for further research is the impact of social media on information policy in the context of armed violence.

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Mechanisms of strengthening the economic sovereignty of the state in the context of military operations

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Abstract

The objective of the study was to determine the methodological aspects of the construction of mechanisms for strengthening economic sovereignty in the context of the processes of globalization and war. Comparative law and economic statistics were used in the study. The research found that economic security, which showed a significant decrease after a large-scale invasion, is the material expression of economic sovereignty. The Debt/GDP ratio reached 85% and gross external debt was 83% of GDP. Mechanisms for strengthening Ukraine's economic sovereignty and economic security were determined by analysing international experience. They included, in particular: improvement of the legal framework, development of emergency response mechanisms, development of international partnerships, strengthening of economic governance, balancing regional development. Reactive and proactive approaches to the development of response measures should be taken into account when introducing such mechanisms. The results of the study are of value to government representatives in terms of ensuring the economic security and economic sovereignty of the country. Further research can focus on identifying the main methods for forecasting threats to the economic sovereignty of the country.

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Keywords: economic sovereignty; economic security; globalization transformations; national interests.

Mecanismos de fortalecimiento de la soberanía económica del Estado en el contexto de operaciones militares

Resumen

El objetivo del estudio fue determinar los aspectos metodológicos de la construcción de mecanismos para el fortalecimiento de la soberanía económica en el contexto de los procesos de globalización y guerra. En el estudio se utilizó el derecho comparado y las estadísticas económicas. La investigación encontró que la seguridad económica, que mostró una disminución significativa después de una invasión a gran escala, es la expresión material de la soberanía económica. La relación Deuda/PIB alcanzó el 85% y la deuda externa bruta fue del 83% del PIB. Los mecanismos para fortalecer la soberanía económica y la seguridad económica de Ucrania se determinaron mediante el análisis de la experiencia internacional. Incluyeron, en particular: mejora del marco legal, desarrollo de mecanismos de respuesta de emergencia, desarrollo de asociaciones internacionales, fortalecimiento de la gobernanza económica, equilibrio del desarrollo regional. Los enfoques reactivos y proactivos para el desarrollo de medidas de respuesta deben tenerse en cuenta al introducir tales mecanismos. Los resultados del estudio tienen valor para los representantes gubernamentales en términos de garantizar la seguridad económica y la soberanía económica del país. La investigación adicional puede centrarse en identificar los principales métodos para pronosticar amenazas a la soberanía económica del país.

Palabras clave: soberanía económica; seguridad económica; transformaciones de la globalización; intereses nacionales; medidas reactivas.

Introduction

In the context of globalization, the development of effective mechanisms for strengthening the economic sovereignty of the state should be aimed at solving a number of controversial issues of determining the balance between national interests and compliance with international norms (Dutta and Anupama, 2019; Paplekaj, 2021; Charsmar, 2020). Globalization is

often considered a force undermining economic sovereignty (O'Grady Walshe, 2019), but many works refute this view (Quiggin, 2001; March and Schieferdecker, 2021; Collin, 2004; Havrylyshyn *et al.*, 2000). In particular, Sapir (2020) suggests considering international law as a law of coordination that does not subordinate one state to another.

Pisani-Ferry and Wolff (2019) note that the development of economic sovereignty does not involve a rejection of globalization, which brings advantages for further growth. Its strengthening should involve strengthening the order based on the relevant rules.

Such contradictions are caused, among other things, by the lack of a generally accepted definition of economic sovereignty. It can be defined as the ability of the national government to make decisions independently of other governments' decisions (Ozioko and Oraegbunam, 2019; Tkalenko, 2014) and is also used in discussions about "economic patriotism" (Clift, 2022; Szanyi, 2022) and "economic populism and sovereigntism" (Gryshchenko et al., 2022a; 2022b; Mazzoleni and Ivaldi, 2022; Csehi and Heldt, 2021). Caravella et al. (2021) define economic sovereignty as the ability to generate added value and prosper through independent activities.

Mitchell (2010) describes economic sovereignty as the state's autonomy to implement fiscal and monetary policy, which is demonstrated by its ability to achieve desired economic goals and outcomes. In the conditions of globalization, such interpretations of economic sovereignty are somewhat narrow-minded, because the modern international environment determines the interdependence of countries to a certain extent, and therefore they cannot conduct their activities at their own discretion only.

Therefore, economic sovereignty should be viewed as an opportunity for the state to choose one of the alternatives for further economic development. It is necessary to develop appropriate mechanisms for strengthening economic sovereignty in order for globalization processes not to threaten it, which will contribute to an adequate assessment of existing and potential threats. This will help to preserve national interests in the context of integration processes.

The aim of the article is to determine the methodological aspects of developing mechanisms for strengthening economic sovereignty in the context of globalization processes and war. The aim involved the fulfilment of the following research objectives:

- determine the components of economic security as a material embodiment of economic sovereignty;
- propose approaches to the development of mechanisms for strengthening economic sovereignty during the war;

- determine the main mechanisms for ensuring economic security and strengthening economic sovereignty in the context of crisis in the USA and the EU, and propose ways of their adaptation in Ukraine.

1. Literature review

The work of Tatsii *et al.* (2021) significantly influenced the author's position regarding the main areas of research. The researchers reveal the concept of economic sovereignty through the prism of its relationship with the economic security of the state, coming to the conclusion that economic security can be considered as a material embodiment of the economic will of the state (economic sovereignty).

Besides, their reflections on the transformation of the understanding of economic sovereignty in the course of deepening integration processes in the economy are worth special attention. The work also takes into account the findings of Yakoviyk *et al.* (2020), who comprehensively consider the problems of ensuring national, including economic, security.

The monograph by Mazaraki *et al.* (2015) made a significant contribution to the development of aspects of economic sovereignty. In particular, the work noted that approaches to the understanding and realization of economic sovereignty vary in time and space, and they can be interpreted in terms of three main parameters: carrier, absoluteness, external and internal dimensions.

Almost all researchers in this direction raise the issue of the "absolute" economic sovereignty, its limits and existence as such in general in the context of globalization, integration and deepening interdependence of economies. Sapir (2020) notes that criticisms of both absolute and limited sovereignty often refer to the objective limitations imposed by the state.

However, in the event of a decreased control by the state in connection with the strengthening of its dependence on relations with other countries, the importance of this state decreases accordingly. Therefore, the thesis of economic globalization is often used to justify the limitations of the state's powers and the gradual abandonment of sovereignty. However, this statement is misleading because of the inappropriate generalization of different levels of abstract concepts.

The conceptual apparatus of the study is based on the work of Miriasov and Yakhno (2019), who study methodological approaches to determining the economic sovereignty of the state. In their work, the researchers emphasize the essential difference between the political and economic sovereignty of the state, reveal the differences in the understanding of

economic sovereignty from the economic and legal points of view, and also emphasize incomplete existing definitions of this concept, offering their own interpretation. The distinction between formal and actual economic sovereignty is an important emphasis in the work.

Unlike Miriasov and Yakhno (2019), who emphasize the differences between political and economic sovereignty, Leonard *et al.* (2019) suggest that the line between geopolitical and economic sovereignty is becoming increasingly blurred.

The researchers reveal the problems of ensuring economic sovereignty in the European Union (EU) in the form of an analytical report. They noted that sovereignty for the EU as a whole is, first of all, economic sovereignty. The ability of EU countries to work together to maintain economic independence underlines the value of European integration. This statement is supported by the EU's ability to determine the rules of the game in the global economy.

Savanovic (2014) provided an alternative approach to the relationship between economic and political sovereignty. The approach is to transform the classical concept of sovereignty, in which economic sovereignty itself becomes the dominant element of sovereignty, while other aspects of sovereignty are effectively suppressed and "turned into simple words." This view is opposite to the views of individual lawyers who, as Miriasov and Yakhno (2019) noted, consider the separation of the concept of "economic sovereignty" as such inappropriate.

Hackenbroich *et al.* (2020) are the authors of an analytical report on the protection of European sovereignty and the search for new ways to counter economic coercion. Like the study by Leonard *et al.* (2019), this work belongs to the series of reports of the European Council on Foreign Relations and also has not only theoretical, but also practical value, as it reveals directions for strengthening economic sovereignty in European countries.

In some works, the desire to strengthen/restore economic sovereignty is defined as a counter-reaction to the globalization and denationalization processes. The sentiments of dissatisfaction intensified in certain regions and/or among certain strata of the population when such trends deepened.

Examining the election campaigns of Austrian parties, Heinisch *et al.* (2020) note that populist radical right and, more recently, centre-right parties in Western political systems seek to "recover lost values in the search for self-determination." Jabko and Luhman (2019) explore the reconfiguration of sovereignty, including economic, in the EU.

The analysis of literature gives grounds to note that very few studies focus on the ways and mechanisms of strengthening economic sovereignty

in the context of military operations. At the same time, the issue of defining and ensuring economic sovereignty arises most acutely in such conditions, because economic sovereignty is under the greatest threat in wartime.

2. Methods and materials

2.1. Research design

The first stage of the study provided for describing the structure of Ukraine's economic security by analysing the 2025 Economic Security Strategy of Ukraine. The application of the method of economic statistical analysis demonstrated the deterioration of the main indicators of the state of economic security in terms of its financial component upon a full-scale invasion.

The second stage deals with identification of the mechanisms of ensuring economic security and strengthening economic sovereignty in the context of crisis in the USA and the EU using the method of comparative law. The conducted analysis made it possible to create a list of these mechanisms for Ukraine.

The third stage involved making propositions to classify response measures into proactive measures (countermeasures or mitigating the threat) and reactive measures (overcoming or adapting to the threat) based on the analysis of international experience.

2.2. Methods

The study involved the method of comparative law and economic statistics.

2.3. Sample

The research sample consists of such countries as Ukraine, the USA, the EU, Japan, and China. The choice of Ukraine as the main object of the study is explained by the current situation in the country, which developed with the beginning of the full-scale invasion of the Russian Federation on the sovereign territory of the country, which caused a number of significant threats to the economic sovereignty and economic security of the country.

Other states are included in the study because of the existence of powerful systems of ensuring economic sovereignty and economic security, which can be a positive example for Ukraine. The experience of the EU, among other things, is considered in the article through the prism of the European integration intentions of Ukraine.

2.4. Information background

Academic periodicals of Ukraine and other states, legislative acts of Ukraine, as well as information contained on the official website of the Ministry of Finance of Ukraine are used as the information background of the research.

3. Results

3.1. Components of economic security as a material embodiment of economic sovereignty

The problem of ensuring Ukraine's economic sovereignty is more acute than ever in the context of the large-scale invasion of the Russian Federation (RF) on the country's territory, as well as Ukraine's European integration course.

These two global factors have a direct and significant impact on ensuring the economic sovereignty of Ukraine, which is materially expressed in economic security. The 2025 Economic Security Strategy of Ukraine (Verkhovna Rada of Ukraine, 2021) provides the values of the main indicators of economic security presented in terms of its components (Figure 1).

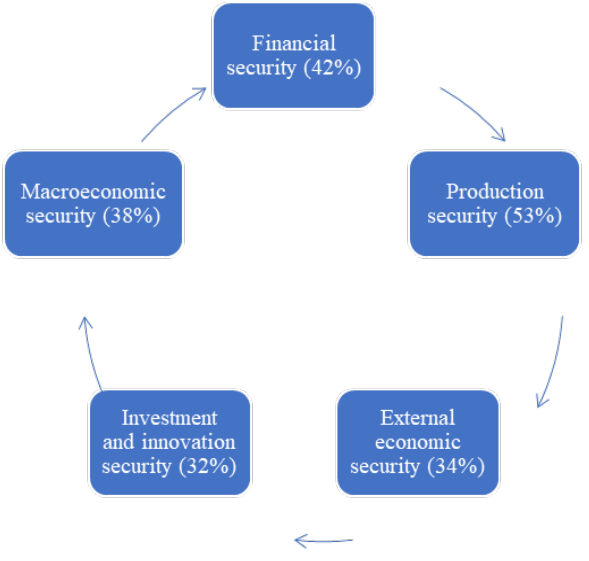

Figure 1: Components of economic security (built by the author according to (Verkhovna Rada of Ukraine, 2021).

Figure 1 shows the integral value of the assessment of the state of each component of economic security in percentage (with an optimal value of 100%). This gives grounds to judge that the state of all components of Ukraine's economic security was assessed as unsatisfactory as of 2019. The situation worsened after the invasion, which is confirmed by the analysis of economic security indicators. Table 1 compares the values of some of these indicators in 2019 and 2022.

Table 1. Comparison of the values of some indicators of financial security as one of the main components of the economic security of the state in 2019 and 2022

Indicator	Value in 2019	Value in 2022	Critical value
Budget deficit to GDP ratio, %	2	19.1	32
Debt-to-GDP ratio, %	44.3	85	60
Gross external debt (percentage of GDP)	79.2	83	70

Source: prepared by the author based on (Verkhovna Rada of Ukraine, 2021; Ministry of Finance of Ukraine, 2023).

Table 1, gives grounds to conclude that the negative economic trends significantly deepened after the full-scale invasion. The Debt-to-GDP ratio and Gross External Debt require special attention, because their values significantly exceed the critical ones. This is determined by the need to attract significant financial resources for the country's defence, thereby causing an ambiguous situation. On the one hand, the growing public debt and ross external debt pose a threat to the country's economic security.

On the other hand, Ukraine would not be able to fully resist the aggressor without loans, and its economic, as well as national, security would be under even greater threat. This proves that the interpretation of integration and deepening of relations with other countries and international organizations as an unambiguous threat to economic security and sovereignty is somewhat one-sided. Therefore, the level of the threat should be assessed taking into account the specific situation in a specific country.

3.2. Mechanisms for ensuring economic security and strengthening economic sovereignty in crisis conditions in the USA and the EU and their adaptation in Ukraine

The mechanism for ensuring economic security and strengthening economic sovereignty in the US crisis involves several key principles and tools. Most often, the main aspects that are taken into account are the following:

1. Ensuring the reliability of the financial and regulatory systems by creating a comprehensive structure of financial rules and institutions in order to maintain stability and mitigate risks. The Federal Reserve System, the Securities and Exchange Commission, and the Treasury Department are the main players in this structure. These authorities supervise financial markets and institutions, monitor systemic risks, and implement measures to protect economic security.
2. Implementation of measures to respond to emergency situations, in particular, fiscal stimulus packages are implemented, monetary policy is adjusted, targeted support is provided to industries that have suffered losses, financial assistance programmes are introduced, etc.
3. Cooperation with international partners (countries and international organizations) in order to coordinate the response to global crises and exchange experience. This helps increase the effectiveness of measures to ensure economic security and contributes to the stabilization of the world economy.
4. Improving the legislative framework, in particular, acts related to financial regulations, trade policy, emergency management, as well as national security strategies regarding the economy.

The mechanisms for ensuring economic security and strengthening economic sovereignty in the context of a crisis in the EU in the context of Ukraine's European integration intentions are also worth noting, which include:

1. Defining the economic management framework, which includes the Stability and Growth Pact (SGP), the European Semester and the Macroeconomic Imbalance Procedure. These mechanisms are aimed at ensuring fiscal discipline, coordinating economic policy, and preventing imbalances.
2. Implementation of crisis management tools to resolve financial crises and support member states facing economic problems. These instruments include the European Stability Mechanism, which provides financial assistance to countries in financial distress, and the European Investment Bank, which offers financing for strategic investments.
3. Ensuring unity and solidarity through structural funds and related policies. These mechanisms help reduce regional disparity, support economic development, and increase social resilience in times of crisis.
4. Development and improvement of the legislative framework, including on the implementation of banking supervision, regulation of securities and capital markets, as well as competition policy.

It is important for Ukraine to assess the specific conditions of its development and to consult with experts and stakeholders in order to develop and implement an appropriate mechanism for ensuring economic security and strengthening economic sovereignty. Ukraine should consider the following mechanisms taking into account the experience of the USA and the EU:

- improvement of existing and the development of new effective legal acts, which should be aimed at strengthening financial stability and increasing the transparency of the financial system, take into account the improvement of risk management practices and the implementation of measures to prevent and resolve financial crises;
- development of emergency response mechanisms, including the ability to provide timely fiscal incentives, implement targeted support measures for affected sectors, strengthen social protection networks, create crisis response funds;
- development of international partnership for exchange of experience, knowledge and resources, in particular, through participation in regional and global economic cooperation initiatives;
- improving economic governance, which can be implemented through the establishment of effective fiscal rules, improving the management of public finances, increasing transparency and accountability in the process of making economic decisions;
- balancing of regional development aimed at reducing regional disparities and supporting vulnerable population groups during the crisis.

3.3. Approaches to the improvement of the mechanism of strengthening economic sovereignty during the war and in the post-war period

The analysis of international experience and its comparison with Ukrainian practice revealed that the world's leading countries use not only a reactive (response to existing challenges), but also a proactive approach (anticipation and early action in response to potential challenges) for ensuring economic sovereignty and economic security. Therefore, it is suggested that the threats to economic security should be classified using the algorithm shown in Figure 2.

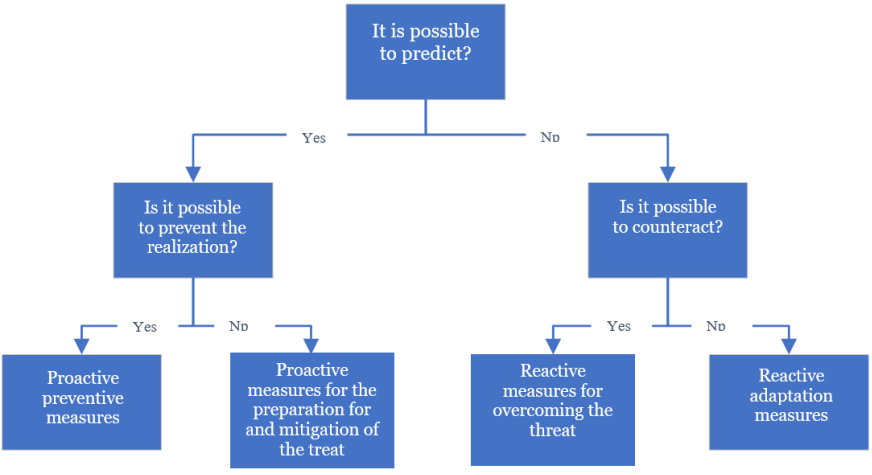

Figure 2: Classification of threats by appropriate measures (counteraction, mitigation, coping or adaptation) (developed by the author).

Such a distribution of threats will contribute to more effective countermeasures by determining the most appropriate measures and taking into account the possibility of completely preventing them or mitigating their negative impact in advance. Ultimately, this will help strengthen economic security and strengthen the economic sovereignty of the state.

4. Discussion

The results of the study develop the main theses presented in Tatsii *et al.* (2021), however, the researchers' work is more theoretical, and it also does not take into account the problems faced by the economy during the war, because the work was written before it began.

Yakoviyk *et al.* (2020) determine the key areas of ensuring national security, which can be interpreted as external — joining the global security system (NATO, UN) and internal — ensuring regional security by the country. An important achievement of researchers used in this study is the conclusion that the security policy of Ukraine in the current conditions should not only counteract existing threats, but apply more active (aggressive) mechanisms to ensure national security.

Such mechanisms should serve the promotion of national interests in the geopolitical space. The expanded classification of security and proactive

measures (defined in the article as "reactive" and "proactive") into proactive countermeasures/mitigation and reactive coping/adaptive measures is distinctive in the author's research.

The work of Miriasov and Yakhno (2019) considered the theoretical aspects of the definition of the concept of "economic sovereignty", which researchers divide into formal (existing rights) and actual (the degree of compliance of realities with constitutional norms). The author's work is different, as considered economic sovereignty only in a formal sense, and its material (actual) expression is found in the degree of economic security, which more fully reflects the economic and legal essence of the category.

Mazaraki *et al.* (2015) consider economic sovereignty in two dimensions — internal and external. In contrast to this work, the author's research focuses mostly on the external dimension, because the category of economic sovereignty finds its manifestation in any open economy through foreign economic relations.

A study by Leonard *et al.* (2019), as well as the work of Hackenbroich *et al.* (2020), which is a continuation of the previous one, focuses on identifying threats and countering them in the EU. The United States of America (USA) and China are identified as one of the sources of the most important threats to the EU. Russia is also a threat, but "its economic leverage is limited by its economic failure." In response to the increased level of threats, researchers suggest developing the scientific, innovative and technological background, protecting critical assets from foreign interference, ensuring equal conditions for domestic and international competition, strengthening monetary and financial autonomy.

The desire to restore economic sovereignty can be traced as a counter-reaction to the globalization processes in this policy, which carry certain threats. The definition of economic sovereignty by Savanovic (2014) is worth noting in this context: "being sovereign means that a person is de facto capable of managing resources, i.e., able to impose the rules of allocation, exchange and use of resources", which is the definition of economic sovereignty in this work.

This is a return to the understanding of sovereignty as an absolute category, and even the ability to "impose rules" is attributed to its key characteristics. This distinguishes these works from the author's article, which states that sovereignty is "eroding" under globalization, but this is not always a threat. This difference is probably determined by the difference in the understanding of economic sovereignty for Ukraine and the EU. Increasing dependence on international partners is the only alternative in wartime for the former, because it would not be able to effectively resist the aggressor without international support. In turn, the issue of economic sovereignty is not only an aspect of security for the EU as a powerful union, but also involves the possibility of dictating favourable conditions for it.

As a continuation, the works of Heinisch *et al.* (2020) and Jabko and Luhman (2019) are worth noting. These studies reveal the reasons behind the desire to strengthen economic sovereignty in the EU in response to globalization. Heinisch *et al.* (2020) provides the example of Austria, where political forces have expressed concern about how foreigners are encroaching on the socio-economic interests of Austrians.

As noted in the paper, the restoration of economic sovereignty is not limited to criticism of European integration — encroachment on economic sovereignty will probably be reflected in the rejection of international and multilateral trade agreements and a hostile attitude towards everything that potentially threatens national economic autonomy. Jabko and Luhman (2019) take a different position, noting that while the Eurozone and migration crises have exposed the EU's weaknesses, its leaders have been able to reorganize existing institutions by addressing member states' politicized concerns about sovereignty.

So, these studies considered the provision of economic sovereignty from the perspective of the EU countries, which interpret the European integration as a threat to sovereignty. In the author's work, European integration is considered as the most desirable alternative from the perspective of Ukraine, which can contribute to the strengthening of economic sovereignty in the context of threats from the Russian Federation.

At the same time, Sapir (2020) proposed to consider international law as the right of coordination, not subordination: its norms are not established by the majority, but unanimously; the signatories of the agreement have equal rights regardless of size, population, wealth; any party has the right to unimpeded withdrawal from an international agreement. This once again confirms that the understanding of economic sovereignty can be extremely relative, and integration into international associations is not always a threat to economic sovereignty, but must take into account the preservation of the balance between national interests and the norms that exist for the members of the association.

Conclusions

Summarizing the results of the conducted research, it is worth noting that despite the fact that the boundaries of economic sovereignty are blurred in the context of globalization, decisions on further integration do not always weaken it and are often a necessary requirement for further development and ensuring economic security. Ukraine's economic sovereignty and economic security, which were under a threat even before the war because of numerous challenges to the developing economy, faced even greater challenges after the full-scale invasion.

Integration into the EU is the optimal alternative for strengthening economic sovereignty in the face of armed aggression of the Russian Federation. The article determines that the actions of the government of Ukraine should be aimed at strengthening economic sovereignty and security in the context of European integration, as well as martial law and post-war reconstruction. In particular, not only reactive, but also proactive measures should be used in response to challenges, as well as international experience should be taken into account.

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Use of criminal analysis in operational and search activities

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Abstract

The purpose of the research was to consider the essence of the use of criminal analysis in operational and search activities. The rationale is that it is necessary to improve the existing ways of using criminal analysis methods in operational and search activities. The methodological basis of the article is a dialectical approach. Moreover, during the research, a system of methods of scientific knowledge has been used: formal logic (abstraction, analogy, deduction, induction, synthesis) for detailed clarification of the content of the issues under consideration; empirical research method - during experimental research and interviewing experts; the method of system analysis - to determine the directions for the introduction of innovative approaches to solving the problem. As a conclusion it is proposed to make changes in the Law of Ukraine "On operational and search activities", in particular, to supplement clause 4 of the first part of Article 8 with the following provision: in order to perform the tasks of operational and search activity to obtain information held by telecommunications operators and providers, about communications, subscribers, provision of telecommunications services, in particular, about the reception of services, their duration, content, transmission paths, etc.

Keywords: operational unit; criminal analysis; operational and search measures; operational and search activities.

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Uso del análisis criminal en actividades operativas y de búsqueda

Resumen

El propósito de la investigación fue considerar la esencia del uso del análisis criminal en actividades operativas y de búsqueda. Se fundamenta que es necesario mejorar las formas existentes de utilizar métodos de análisis criminal en actividades operativas y de búsqueda. La base metodológica del artículo es un enfoque dialéctico. Además, durante la investigación, se ha utilizado un sistema de métodos de conocimiento científico: lógica formal (abstracción, analogía, deducción, inducción, síntesis) para la aclaración detallada del contenido de los temas en consideración; método de investigación empírico - durante la investigación experimental y entrevistando a expertos; el método de análisis del sistema - para determinar las direcciones para la introducción de enfoques innovadores para resolver el problema. Como conclusión se propone realizar cambios en la Ley de Ucrania "Sobre actividades operativas y de búsqueda", en particular, para complementar la cláusula 4 de la primera parte del artículo 8 con la siguiente disposición: con el fin de realizar las tareas de actividad operativa y de búsqueda de obtener información en poder de los operadores y proveedores de telecomunicaciones, sobre comunicaciones, abonados, prestación de servicios de telecomunicaciones, en particular, sobre la recepción de los servicios, su duración, contenido, vías de transmisión, etc.

Palabras clave: unidad operativa; análisis criminal; medidas operativas y de búsqueda; actividades operativas y de búsqueda; procedimientos de investigación.

Introduction

Within the limits of the given powers, criminal police units acquire a sufficient mass of information about criminal activity, in particular about representatives of organized crime. In view of the mentioned, an extremely important task consists in using tools that would provide an opportunity to process significant amounts of available data.

Criminal analysis is one of such tools in activities performed by operational units of the National Police of Ukraine - it is a specific type of information and analytical activity, which consists in identifying and as accurate as possible determining internal connections between information (facts, data) related to a crime and any with other data obtained from various sources, their use in the interests of operational, search and investigative activities, their analytical support.

In the countries of the European Union and the USA, the use of criminal analysis capabilities is mandatory for all law enforcement agencies. Its content, rules and procedures are clearly defined and regulated in the legal field (Korystin, 2019).

Law enforcement agencies of foreign countries have been using criminal analysis in their work for a long period time. In particular, this type of activity began to be considered as a separate profession back in the 60s of the last centuries. In the subsequent decades, criminal analysis gained significant development in such countries as the USA, Canada, Great Britain, Australia, and Belgium. In the 70s of the 20th centuries, the process of scientific substantiation and provision of this activity began alongside with creation of a system of special education and professional development.

In the 1980s and 1990s, at all levels (local, federal, regional, national ones) separate units (departments) of criminal analysis began to be created or separate positions of analysts were introduced in the units of law enforcement agencies carrying out detection and investigation of crimes, and with development of computer technologies an active use of special software for criminal analysis began.

It can be stated that criminal analysis is the basis of the "Intelligence Led Policing" model, aimed at making effective management decisions based on the use of a complex of methods and techniques for collecting, processing, evaluating, analyzing and implementing information, as well as for exchange of information during criminal proceedings, operational and search activities, and development of tactical and strategic measures to combat crime.

Its main difference is that criminal analysis units having legal access to various information bases that operate on the territory of our state, as well as possessing the skills of intelligence analysis, significantly facilitated the work of operational officers. Criminal analysts have demonstrated that they are able to find the most hidden patterns in activities performed by criminal elements, as well as to build systemic connections in situations of non-obviousness.

In today's conditions, criminal analysis as a separate type of professional activity is carried out at law enforcement agencies of most developed countries. In the structure of the Interpol's General Secretariat, a separate unit of criminal analysis functions, and activities performed by the Europol headquarters is based mainly on the use of criminal analysis technologies (Kalynovskyi and Shkolnikov, 2017).

Criminal analysis is one of the main activities of the European Police Office. In accordance with Article 4 and 5 of the Agreement on the establishment of Europol (Europol Convention), criminal analysis is one of the main tasks of this Organization. In addition to that Articles 14-16

of this Agreement determine the grounds and procedure for creating the so-called Europol Analysis Workfiles (AWF) which are analytical projects. Importance of this line of work is evidenced by the fact that more than 100 analysts work at the headquarters (Korystin, 2019).

At the same time, legal aspects of using criminal analysis methods during operative proceedings and pre-trial investigation require improvement.

1. Literature review

Criminal analysis is a specific type of information and analytical activity, which consists in identifying and as accurate as possible determining internal connections between information (facts, data) related to a crime and any with other data obtained from various sources, their use in the interests of operational, search and investigative activities, their analytical support.

In the process of criminal analysis, targeted search, detection, recording, extraction, organization, analysis and evaluation of criminal information are provided alongside with presentation (visualization), transmission and implementation of such information.

The purpose of collecting and analyzing information consists in creating and verifying hypotheses and conclusions about past, present and future illegal actions, and this procedure is related to description of the structure and sphere of activity of criminal groups as well as to transfer of clear information to the management regarding operational and search measures and investigative (search) procedures.

All forms of analysis are related to each other, if analysis accompanies operational and search and investigative activities, it simultaneously supports these activities and provides grounds for conducting investigative (search) procedures and operational and search measures (criminal intelligence). During the analytical process, information about the criminal, the course of events, the instrument of the crime, the time and place of its commission, etc. are evaluated. Circulation of this information takes place between operational workers and investigators and consists not only in providing or receiving information, but also in active acquisition (search) of such information (Farion, 2021).

Processing of large volumes of information is possible only thanks to the use of intelligent technologies that reduce the burden on investigative or operational workers and help them during implementation of relevant measures and adoption of a procedural decision.

IBM i2 Analytics delivers powerful analysis and visualization capabilities to improve analytics productivity and reduce the time it takes to deliver high-value intelligence across rapidly growing data sets. In the field of criminal analysis, i2 is used mainly with iBase, iBridge, iGlass, Analyst's Workstation software products (Tsyhykal, 2017).

The set of factual data collected as a result of these actions creates sufficient prerequisites for information support of the further course of the respective investigation at the initial stage of the pre-trial investigation of the criminal proceedings. However, this becomes possible only when the specified actions are carried out taking into account all the features of the search and cognitive activity performed by investigative and operational workers, as well as the specifics inherent in display of the crime event information (Halaburda *et al.*, 2021).

However, the procedure of understanding principles of criminal law and particularities of their implementation under conditions of war has not been covered by the scientists.

2. Materials and methods

This research is based on works of foreign and Ukrainian researchers regarding methodological approaches to understanding the use of criminal analysis in operational and search activities and their specific implementation under conditions of war, etc.

With the help of the epistemological method, the use of criminal analysis in operational and search activities, etc., has been clarified, thanks to the logical-semantic method, the conceptual apparatus has been deepened, the use of criminal analysis in operational and search activities and peculiarities of their implementation in conditions of war has been revealed etc. Thanks to the existing methods of law, we have managed to analyze the essence of using criminal analysis in operational and search activities, etc.

3. Results and discussion

In today's conditions, solution of high-profile, serious and especially serious criminal offenses is impossible without participation of criminal analysts and appropriate analytical intelligence work conducted during operational and search activities and criminal proceedings.

While standards of criminal procedural legislation determine principles of criminal proceedings, at the level of operational and search legislation, this issue remains unresolved (Villasmil Espinoza *et al.*, 2022).

In our opinion, a due proposal was made by the authors of the draft law "On Operational and Search Activities". According to this proposal operational and search proceedings are interpreted as covert implementation of a complex of operational and search measures against a person or a group of persons (in particular, unidentified ones) who are reasonably suspected of preparing to commit a crime, for the purpose of prevention of such crime or for the purpose of searching for a criminal who is trying to flee from investigation and trial, when it is impossible or extremely difficult to achieve the specified goals by other means (Law of Ukraine, 1992).

Timely and effectively conducted analytical studies contributed to disclosure of a significant number of high-profile crimes, primarily those on "hot scents", as well as to arrest of criminals and the general increase in pressure on criminality.

Emphasis on criminal analysis is extremely important in the context of law enforcement in view of the profound impact it can have on police strategy, tactics, and methods. Currently, criminal analysis has already begun active implementation of technological innovations through the constant updating of software analytical tools, modernization of technical means, introduction of innovative technologies (for example, systems for quick review and analysis of surveillance camera materials using the program "Video Synopsis", innovative image processing technology). (Kalynovskyi and Shkolnikov, 2017).

In the process of criminal analysis, with temporary access to information on communications, operational units provide targeted search, detection, recording, extraction, organization, analysis and evaluation of criminal information alongside with presentation (visualization), transmission and implementation of such information.

The purpose of collecting and analyzing during temporary access to information about relations consists in creating and verifying hypotheses and conclusions about past, present and future illegal actions, and this procedure is related to description of the structure and sphere of activity of criminal groups as well as to transfer of clear information to the management regarding operational and search measures and investigative (search) procedures.

After the entry into force of the new Criminal Procedure Code of Ukraine and introduction of certain changes to other legislative acts, factors were identified that prevent the use of the criminal analysis mechanism as an evidentiary basis within the framework of pre-trial investigation of criminal proceedings (Matviichuk *et al.*, 2022).

In accordance with Chapter 15 of Section II of the Criminal Procedure Code of Ukraine, access to information about communications, subscribers, provision of telecommunication services, in particular about the receipt

of services, their duration, content, transmission routes, etc. (hereinafter referred to as "information on communications"), is carried out according to the procedure of temporary access to things and documents on the basis of the decision made the investigating judge, the court, obtained at the request of the investigator, agreed with the prosecutor (Tylchyk *et al.*, 2022).

According to part 1 Art.159 of the Criminal Procedure Code of Ukraine, temporary access to information on communications consists in providing the investigator or the prosecutor with an opportunity to get acquainted with this information (it is provided by telecom service operators and providers in whose possession it is) and receive copies in accordance with the procedure established by the Criminal Procedure Code (Law of Ukraine, 2012).

It should be noted that the Law of Ukraine "On Operational and Search Activities" does not provide for the right of operational units to receive information on communications by telecom service operators and providers in whose possession it is (Law of Ukraine, 1992).

In accordance with 3, Part 2 of Art.40 of the Criminal Procedure Code of Ukraine, the investigator is authorized to entrust execution of investigative (search) actions to the relevant operational units by means of issuing a procedural document (a mandate or order) and the respective operational unit shall be obliged to perform these actions in accordance with Art.41 of the Criminal Procedure Code of Ukraine. Chapters 20 and 21 of the Criminal Code of Ukraine provide a comprehensive list of investigative (search) actions and covert investigative (search) actions.

At the same time, according to Chapter 15 of Section II of the Criminal Procedure Code of Ukraine, temporary access to things and documents does not belong to investigative (search) actions, but is a measure to ensure criminal proceedings, and such a procedural action as analysis of information on communications and radio-technical examination is not normatively defined in the Criminal Procedure Code of Ukraine (Law of Ukraine, 2012).

In connection with the fact that according to Chapter 20 of the Criminal Procedure Code of Ukraine it is not possible to perform such types of investigative (search) actions as information on communications and radio technical examination, establishing owners of telephone numbers, etc., carrying out specified instructions of investigators and drawing up the corresponding protocol (Law of Ukraine, 2012).

In addition, investigators sometimes issue a mandate (order) to carry out investigative (search) actions, in order to entrust implementation of investigative (search) actions to employees of the respective operative unit with their involvement as specialists, namely, to carry out an analysis

of telephone connections (by means of conducting an inspection of the DVD-R disc) within the framework of the resolution on involvement of representatives of operational divisions as specialists.

However, according to Art.237 of the Criminal Procedure Code of Ukraine, inspection is an investigative (search) action carried out with the aim of identifying and recording information about the circumstances of a criminal offense. That is, such an investigative (search) action as an inspection, in particular that of material carriers of information, in practice consists in identifying and recording external physical signs and properties of the object (weight, color, size, shape, etc.) (Law of Ukraine, 2012).

Such an analysis of the content of mandates (orders) certifies that when issuing relevant mandates (orders), investigators aim to obtain from the employees the analysis of information on communications contained on the provided physical storage media, as set out in the protocols based on the results of investigative (search) actions (Zhukova *et al*., 2023).

However, in the absence in the Criminal Code of Ukraine of such investigative (searching) actions as analysis of information on communications, specialists are forced to use terminological constructions not provided for by law ("perform an analysis by conducting an inspection", etc.), and in the case of using such materials, the court may recognize this evidence to be inadmissible because it was not obtained in the manner prescribed by the Code of Criminal Procedure.

In our opinion, measures indicated in orders given by the investigator can be carried out by an authorized employee of the respective operational unit on the basis of a resolution on involvement of specialists, with a direct description of the circumstances that need to be clarified, investigated, analyzed, or directly sent a corresponding letter about analysis or examination (Leheza *et al*., 2022).

In addition, it is possible to involve specialists in the field of telecommunications (who have special knowledge) to conduct such events.

Based on the results of the analysis, authorized employees of the operative unit shall prepare the relevant information, and resolution of the issue regarding the role of the specified information in the respective criminal proceedings, its use for giving evidence belongs to the competence of the investigator (Kobrusieva *et al*., 2021).

So, analysis of information on communications is an information processing process which is based on logical and creative thinking and is aimed at obtaining qualitatively new information

Conclusions

The proposed legal aspects of using criminal analysis methods during operational proceedings and pre-trial investigation will facilitate the use of materials of temporary access to information on communications and the results of their analysis (references, protocols or expert opinions) as evidence in criminal proceedings.

In addition, it is necessary to introduce amendments to the Law of Ukraine "On Operative and Search Activities", in particular, paragraph 4, Part 1 Art. 8 should be amended with two new paragraphs of the following content:

For the purpose of performing tasks of operational and search activities the procedure of obtaining information possessed by operators and telecommunication service providers, about communications, subscribers, provision of telecommunication services, in particular, about the receipt of services, their duration, content, transmission routes, etc. shall be carried out in accordance with the provisions of Articles 159 -166 of the Criminal Procedure Code of Ukraine, taking into account the features established by part two of Article 8 of this Law.

Permission to provide access to such information shall be granted by the investigating judge without a court summons to the person in whose possession it is. Access to such information may be carried out in accordance with the procedure provided for by Articles 159, 163 and 165 of the Criminal Procedure Code of Ukraine.

The decision of the investigating judge may be issued to carry out one or more of the above-mentioned operational and search measures and to provide temporary access to information held by operators and telecommunication providers about communications, subscribers, provision of telecommunication services, in particular about the receipt of services, their duration, content, transmission routes, etc.

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The budgetary mechanism of the national economic development model: Political aspects

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Abstract

The main objective of the article was to study the legal and economic aspects of the formation of the budgetary mechanism of the national model of economic development. It is possible to ensure the dynamic processes of economic development of Ukraine only through effective regionalization, which significantly increases the requirements for the formation and use of the financial potential of the regions, which requires the development of strategic priorities for public financial management of the region as a whole. The research methodology involved the use of modern theoretical methods of analysis within the framework of dialectics. As a result of the analysis, the key aspects of the budgetary mechanism of the national model of economic development in Ukraine were characterized. It is concluded that, the study has a number of limitations in conducting a purely theoretical analysis. Further research should be devoted to the examination of digital technologies for the formation of the budget mechanism of the national model of economic development, among other aspects.

Keywords: budget; economic policy; regional development; economic development; legal frameworks.

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El mecanismo presupuestario del modelo nacional de desarrollo económico: Aspectos políticos

Resumen

El objetivo principal del artículo fue estudiar los aspectos legales y económicos de la formación del mecanismo presupuestario del modelo nacional de desarrollo económico. Es posible asegurar los procesos dinámicos de desarrollo económico de Ucrania solo a través de una regionalización efectiva, que aumenta significativamente los requerimientos para la formación y aprovechamiento del potencial financiero de las regiones, lo que requiere el desarrollo de prioridades estratégicas para la gestión financiera pública de la región en su conjunto. La metodología de investigación implico el uso de modernos métodos teóricos de análisis en el marco de la dialéctica. Como resultado del análisis, se caracterizaron los aspectos clave del mecanismo presupuestario del modelo nacional de desarrollo económico en Ucrania. Se concluye que, el estudio tiene una serie de limitaciones al realizar un análisis puramente teórico. Se debe dedicar más investigación al examen de las tecnologías digitales para la formación del mecanismo presupuestario del modelo nacional de desarrollo económico, entre otros aspectos.

Palabras clave: presupuesto; política económica; desarrollo regional; desarrollo económico; marcos legales.

Introduction

In modern conditions, the social function of the state is becoming increasingly important, which necessitates the search for effective mechanisms to ensure the development and growth of the welfare of the country's citizens. Considering that it is the budget that is the basis for the development of the economy, its implementation has become a priority for the government. In the process of forming the budget policy, it is necessary to determine the directions for the use of the budget in accordance with the tasks of the economic development of society.

The economic and social development of the country depends on its effectiveness. The formation and successful implementation of the budget policy are carried out with the help of its most dynamic component, as a budget mechanism. This is due to the implementation of economic changes, where the active use of the budget is a tool to influence the acceleration of economic development. In the context of the implementation of the new economic strategy, public authorities are faced with a number of problems, the objective causes of which are the economic crisis, a significant level

of shadow economy, and the dominance of obsolete equipment and technologies in the structure of production.

The subjective reasons include manifestations of corruption, a tendency to deviation in the public sector, an insufficient level of investment and economic activity of budgetary relations. In general, the budgetary mechanism is a set of forms and methods of organizing budgetary relations used by the state in the distribution and redistribution processes of GDP to regulate socio-economic development.

In the economic system of any region, the budget and the budgetary mechanism occupies a special place. The budget is one of the main instruments of the state, which, with the help of the budgetary mechanism, is used for state regulation of the economy, stimulating production and social processes. Through the budgetary mechanism, the budgetary policy of the state is implemented, aimed at providing financial resources for the needs of the economic and social development of the country and its regions. Thus, the budget mechanism can be defined as a set of organizational, methodological, legislative and regulatory provisions that ensure the functioning of the state budget system, as well as a set of methods, tools (procedures) and levers through which management decisions are implemented in the process of formation and use of centralized funds, funds of the state and its territorial administrative units or respective regions.

The budgetary mechanism reflects the economic relations existing in the budgetary system on the use of certain methods, tools, levers for the formation and implementation of an effective budgetary policy to ensure the socio-economic development of the regions and the state as a whole.

When forming the budgetary mechanism, the state should try to change it in accordance with the needs of the budgetary policy in force at that time, which will make it possible to fully realize its goals and objectives. In this process, it is also necessary to ensure the correlation between the constituent elements of the budgetary mechanism and public interests. All this and much more actualizes the choice of this research topic.

The main purpose of the article is to study the legal and economic aspects of the formation of the budgetary mechanism of the national model of economic development.

1. Materials and methods

The research methodology is based on dialectical, systemic and institutional approaches, according to which the budgetary mechanism for the development of the state economy is considered inextricably linked and causal. In the process of research, general scientific and special scientific methods were used.

The interpretation of the main categories and concepts is based on the use of methods of analysis and synthesis, induction and deduction, abstraction, analogy, theoretical generalization and modeling. All this allows you to achieve the goal in the article.

2. Literature review

According to most authors (Abramova *et al*., 2021; Arefieva *et al*., 2021; Burdenko, 2021), the problems of national security caused by external threats and internal structural transformation require a revision of strategic priorities of economic development in order to ensure stable inclusive state growth, to determine the main regions of budget policy on their own field by the solution of the settings presented largely depending on the field the validity and harmonization of methods, forms, tools, tools and levers of the budget mechanism chosen for the implementation of budget policy as a means of direct influence of state bodies and local self-government on socio-economic processes.

Scientists note (Derhaliuk *et al*., 2021; Desiatniuk and Marchenko, 2021; Digdowiseiso, 2022) that the current state of economic development is characterized by the intensification of destructive processes caused by the economic crisis, military aggression in the east of the state, the beginnings of command and the administrative system, antagonism of the boundless growth of social needs and disabilities, a significant level of shading. Despite the fact that our country is recognized as a market economy in order to apply for the completion of market transformations, and the successful achievement of the results is not necessary.

According to scientists (Garafonova *et al*., 2021; Graziano and Hartlapp, 2019), the formation and functioning of the budget mechanism of socio-economic development of the state is accompanied by a number of theoretical, methodological and organizational legal problems of the period of transformation, which negatively affect the rate of economic growth and level of social security.

The inconsistency of the requirements of the time and the inconsistency of certain methods, forms, tools and levers of the budget mechanism deepens the budget imbalance and complicates the implementation of the budget policy, the manifestations of the low efficiency of which are a significant accessibility of reducing public services, taxpayers, deficit and low efficiency of expenditure budget, constant increase in public debt, small amounts of investment in the budget, worsening budget discipline by participants in the budget process.

Despite a significant amount of scientific research on the mutual influence of the budget policy on the socio-economic development of society, there are many gaps in solving problems of improving the effectiveness of budget policy in the field of social development of the state. The insufficient theoretical substantiation of the grounds for the budget mechanism causes insufficient use of the budget mechanism in solving socio-economic problems.

3. Research Results and Discussions

The mechanism for the formation of budgetary resources includes tax, loan, transfer, non-tax methods, and the mechanism for the use of budgetary resources - budgetary support. Budget forecasting and planning, budgetary regulation, budgetary control are common methods of both subsystems of the budgetary mechanism.

The instruments of the budgetary mechanism of the socio-economic development of the country reflect the specific form of cash flows. Any tool is a means of solving some problems or achieving a certain influence. The activity of monetary instruments is a determining factor in the effectiveness of the budget mechanism for the socio-economic development of the country.

The action of the mechanisms for the formation of budgetary resources is strengthened or weakened by such levers as: tax rates, fees, tax incentives, tax holidays, standards for transferring income to budgets of different levels, the amount of state duty, rent, fees for services of budgetary institutions, parts of net profit (income) of state or communal unitary enterprises and their associations withdrawn to the relevant budget, fees for the placement of temporarily free funds, interest on the use of a budget loan, financial standards for budgetary security, conditions for borrowing, issuance of securities, other standards, incentives (Lysiak *et al.*, 2021; Mcquestin *et al.*, 2022).

The provision of interbudgetary transfers occurs as a result of the redistribution of GDP using a centralized fund of financial resources. Therefore, they are reflected in the expenditure side of the budget, from which they are provided and serve as an instrument for the mechanism for using budgetary resources (formed using tax, loan, non-tax methods).

At the same time, interbudgetary transfers are revenues of the budget received from them, and, therefore, they are related to the instruments of the mechanism for the formation of budgetary resources. Actually, therefore, the transfer method of accumulating interbudgetary transfers, along with such basic methods as tax and loan, to a certain extent plays an

important, albeit secondary, role (Melnychuk, 2015; Nikiforov *et al.*, 2022; Stryzhak *et al.*, 2022).

The effect of transfers as an instrument of the budgetary mechanism for the economic development of the state is strengthened or weakened by such financial levers as: financial standards for budgetary security (used to calculate medical, educational subventions), the normative value of the tax capacity index, at which a basic subsidy is provided to the local budget or transferred to the state budget subvention, equalization coefficient, conditions for the use of subventions.

Budget support is a method of the budgetary mechanism of the socio-economic development of the state, through which cash flows in the form of budget financing, budget lending, financing for debt and active operations, associated with the implementation of budget expenditures of the appropriate level in order to meet the needs of public authorities and local self-government in budgetary resources for the proper performance of the functions assigned to them.

The main instrument of the budget mechanism for the socio-economic development of the state, used in the process of financing for debt and active operations, are budget expenditures, and the levers are the terms of repayment of loans, the purchase of securities.

When studying modern realities and conducting an analytical assessment of the practice of forming and using budgetary resources, it is advisable to use such methods of empirical research as observation, measurement, description, comparison, experiment, and expert assessments. For example, correlation and regression analysis can be used to identify links and dependencies between indicators of the volume of gross domestic product, the volume of budget expenditures on the operating, investment and financial activities of the state.

The modern realities of the organization of budgetary relations and the results of their changes due to the administrative-territorial, budgetary, tax reforms indicate that the significant problems that arise in this area are largely due to conceptual uncertainty in the system of institutions of society and require research in the context of institutional changes in budget management. That is why, using the institutional approach to the study of the budgetary mechanism of the socio-economic development of the state, first of all, it is advisable to determine the use of the term itself.

It is expedient to formulate fiscal rules by: determining the general purpose of introducing a fiscal rule; setting deadlines for achieving the goals set to monitor the effectiveness of fiscal restrictions; determination of the legal act regulating the application of this rule; detailing the entities that must comply with fiscal rules, and the objects in relation to which it applies; setting limits for specific benchmarks; determination of the

conditions for deviations from the restrictions established by the fiscal rule; a clear definition of the stage of the budget process at which the rule applies; determination of the subjects of control over the application of the fiscal rule; development of sanctions for violation of the fiscal rule.

Considering the functioning of the budgetary mechanism of the socio-economic development of the state through the prism of the theory of institutionalism, we summarize what happens in the institutional environment in the process of interaction between participants in the budgetary process based on certain established norms, rules, restrictions, and standards for managing budgetary resources. The above gives grounds to consider a harmoniously developed institutional environment as an important direction for overcoming the contradictions of the functioning of this mechanism.

The effectiveness of budget policy as an imperative dominant of the system of state regulation of socio-economic development depends on the targeted choice, consistency and effectiveness of methods, forms, tools and levers of the budget mechanism for the socio-economic development of the state. The need to solve such tasks of state policy: a gradual transition from a consumer to an innovation-investment model of economic development, intensification of investment activity, improvement of the business climate, reorientation of production potential to create competitive industrial and agricultural industries, overcoming the technical gap, pursuing a policy of promoting products of Ukrainian manufacturers to foreign markets, the development of human capital by strengthening the social orientation of the budget, increasing consumer demand requires a revision of the principles for the formation and functioning of the budgetary mechanism for the socio-economic development of the state.

The main threats to the implementation of the budgetary mechanism for the development of the national economy are presented in Fig.1.

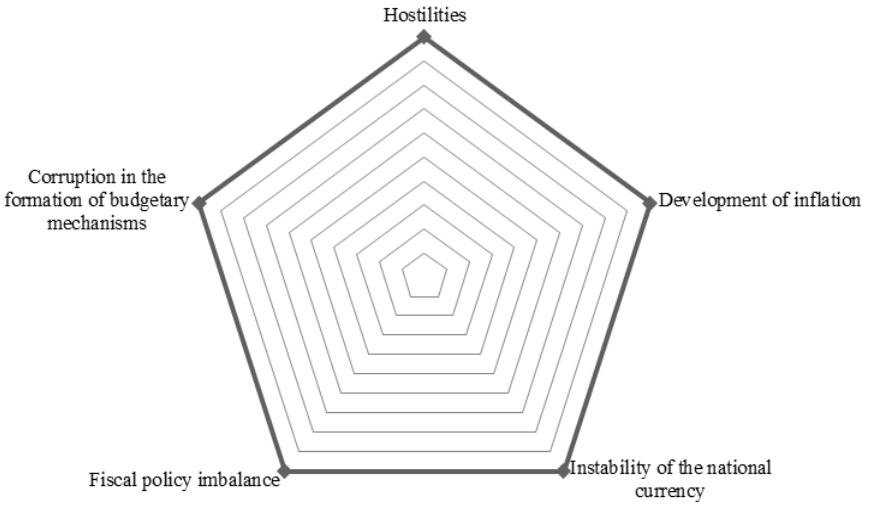

Figure 1. The main threats to the implementation of the budgetary mechanism for the development of the national economy. Formed by authors.

The effectiveness of the functioning of the budgetary mechanism for the socio-economic development of the state is an external manifestation of the influence of financial methods, forms, tools and levers of this mechanism on distribution processes and is determined by a set of indicators characterizing the degree of achievement of established goals. Therefore, it is possible to single out a positive, negative and zero result of the functioning of the budget mechanism.

The effectiveness of the functioning of the budgetary mechanism of the socio-economic development of the state shows whether it was possible to achieve the greatest results with the least expenditure of resources and can be low or high. It is also worth noting that not always a positive result of the practical application of the financial methods, forms, tools and levers chosen for the implementation of the budget policy indicates the high efficiency of the budgetary mechanism for the socio-economic development of the state, while a negative result unambiguously confirms the inefficiency of this mechanism.

The main measures to improve the effective budget mechanism for the development of the economy are presented in Fig. 2.

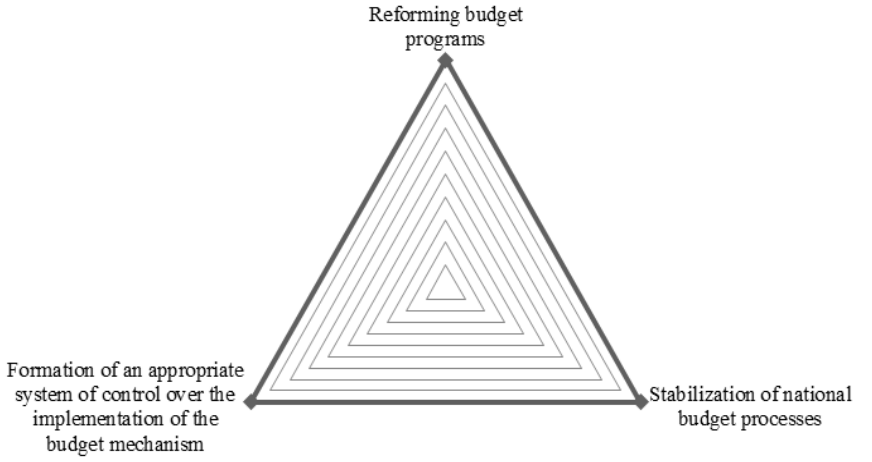

Figure 2. The main measures to improve the effective budget mechanism for the development of the economy. Formed by authors.

Thus, examining the relationship between the budget deficit, tax, state and local debts, we can state that the negative consequences of using the tax method of forming budget resources, which turned out to be in the growth of tax debt, led to an increase in the budget deficit.

At the same time, the borrowing method is used to provide budgetary support for the functions of state authorities and local self-government and cover the state budget deficit, which leads to an increase in the debt burden due to the growth of state and local debt and the costs of state and local budgets for its maintenance. Solving the problems associated with the use of tax and borrowing methods for the formation of budgetary resources requires the use of balanced approaches to improve the tax and debt policies of the state.

Conclusions

The leading role in the regulation of distribution relations related to the formation and use of budgetary resources, which results in quantitative and qualitative changes in economic phenomena and processes, is assigned to the budgetary mechanism, the clarification of the influence of which, in our opinion, is impossible without studying the conceptual foundations economic development of the state, economic essence, purpose, immanent functions of the budget as an instrument of state regulation

The formation of the budget is associated with the need to distribute a part of the cost of the gross domestic product, which the state centralizes to ensure the fulfillment of the functions assigned to it. Thus, society pays the state for the performance of its functions, this payment takes the form of taxes.

Economic processes are influenced by specific financial methods, forms, instruments, levers for the formation and use of budgetary resources. The choice of these elements occurs in the process of developing and implementing the budget policy (the conscious (subjective) activity of people to use objectively existing budgetary relations), and their combination forms the composition of the state budget mechanism. In foreign and domestic financial theory, we find a significant list and characteristics of methods, forms, tools, levers (tools) of the budgetary mechanism that are successfully used in financial practice and evolve with the development of budgetary relations.

Summing up, it should be noted that the impact of the budget on the economic development of the state is considered an axiom that the implementation of budget policy and its successful implementation can be ensured through the practical application of financial methods, forms, tools and levers of the budget mechanism. Justification of ways to improve the efficiency of the implementation of budgetary policy, in our opinion, is impossible without disclosing the conceptual foundations for the formation and functioning of the budgetary mechanism for the economic development of the state.

A harmonious combination of methods, forms, tools and levers of mechanisms for the formation and use of budgetary resources provides holistic architectonics of the budgetary mechanism for the economic development of the state. Through financial methods, forms, tools and levers of the mechanism for the formation of budgetary resources, the system of distribution and redistribution processes is regulated, a centralized fund of monetary resources is formed in the amounts necessary for the state to perform its functions.

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European Union migration policy: Current problems and prospects for analysis

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Abstract

The aim of this study was to examine the migration policy of the European Union EU and to identify its strengths and problems requiring improvement. In order to achieve the objectives, set, international standards, EU legislation, the analysis of EU statistical data and the study of scientific opinions on the problem have been analyzed. It is concluded that the main areas of EU migration policy are the following: the principle of human rights and freedoms; political equality and mutual assistance of the member states of the union; border protection and prevention of illegal migration; integration and inclusion of migrants in the social phenomena of the receiving country; management of migration processes and migration management; negotiation and cooperation policies with third countries; ensuring "circular migration"; active participation of the labor force, particularly highly skilled workers; active participation of migrants in the labor market and of their families, which is a key factor for the success of migration.

Keywords: migration crisis; integration of migrants; inclusion of migrants; circular migration; EU cohesion policy.

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Política migratoria de la Unión Europea: Problemas actuales y perspectivas de análisis

Resumen

El objetivo de este estudio fue examinar la política migratoria de la Unión europea UE e identificar sus puntos fuertes y los problemas que requieren mejoras. Para alcanzar los objetivos fijados se han analizado las normas internacionales, la legislación de la UE, el análisis de los datos estadísticos de la Unión Europea y el estudio de las opiniones científicas sobre la problemática. Se concluye que los principales ámbitos de la política migratoria de la UE son los siguientes: el principio de los derechos humanos y las libertades; la igualdad política y la asistencia mutua de los Estados miembros de la unión; la protección de las fronteras y la prevención de la migración ilegal; la integración y la inclusión de los migrantes en los fenómenos sociales del país receptor; la gestión de los procesos migratorios y la gestión de la migración; las políticas de negociación y cooperación con terceros países; la garantía de la "migración circular"; la participación activa de la mano de obra, en particular, de los trabajadores altamente cualificados; la participación activa de los migrantes en el mercado laboral y de sus familias, que es un factor clave para el éxito de la migración.

Palabras clave: crisis migratoria; integración de los migrantes; inclusión de los migrantes; migración circular; política de cohesión de la UE.

Introduction

The presence in the world of a large number of states with unfavorable living conditions causes a significant migration of people to the countries of the European Union. Wars, economic and social instability, poverty, unfavorable climatic conditions have always existed, but with the development of the information field, more and more citizens of third countries began to learn about democratic living conditions, economic stability, social security, equal rights, and real opportunities for protection in the EU countries, distinguished by their democracy and liberality. Thanks to the EU's chosen migration policy, it becomes a haven for hundreds of thousands of migrants every year.

a. Research Problem

Scholars are actively studying the migration policy of the European Union. Ceccorulli (2022) noted the need to improve the approach of tripartite migration diplomacy, using EU and Italian cooperation with Libya as an

example, which stopped significant flows of irregular migrants, prevented their trauma, and transformed these phenomena into legal ones. Giua *et al.* (2022) cited Italy's positive experience with the economic integration of immigrants in Italy. Suchyk (2022) noted the need to improve migration law and migration management as regulators of migration processes. Zardo (2022) concluded on the practice of creating a geopolitical space for Africa through migration policy instruments. Zastavna (2021) examined EU migration policy in the context of European Union security.

b. Research Focus

The focus of the study was on the directions of the migration policy of the European Union, issues of its practical implementation, successful cases of overcoming the migration crisis in the EU countries, new challenges caused by constant changes in the geopolitical situation of the world, the consequences of the pandemic, the military offensive in Ukraine and the policy of migrants from Ukraine.

c. Research Aim and Research Questions

The **purpose of this study** was to analyze EU migration policy in the context of the dynamics of migration phenomena in the world.

Objectives of the study: the research of EU legislation and academic papers was carried out, thanks to which the correlation between the EU migration policy enshrined in law and its implementation in practice was revealed. Achievements in overcoming the migration crisis and shortcomings of the EU migration policy were identified.

The hypothesis of the research: it is proposed to further solve the problem of implementation of the migration policy of the EU by individual countries, to conduct further research, including economic and social, to build a beneficial system of distribution of migrants in the EU countries, to reach an agreement between all EU countries regarding the implementation of migration policy in the direction of human rights, to use the workforce of migrants, to introduce inclusion and integration.

1. Research Methodology

1.1. General Background

To implement the objectives, the study was carried out by certain stages in a combination of analysis of theoretical material, statistical data. Such stages were: search of statistical data, analytical reports of international organizations, search of scientific literature; analysis of statistical data

and scientific sources; comparison and comparison of revealed data, development of conclusions and recommendations.

1.2. Sample / Participants / Group

The empirical basis of the study was the statistical data of the European Union Eurostat, international treaties, scientific works.

1.3. Instrument and Procedures

In order to implement the objectives, the study was carried out in certain stages in a combination of analysis of theoretical and statistical material and practical tasks. Such stages were:

1. searching for empirical data and scientific sources;
2. analysis of these data and sources;
3. comparing and contrasting data by year, providing conclusions and recommendations, forecasting.

1.4. Data Analysis

The system of general scientific and special scientific methods was chosen as the methodological basis. The main method chosen was the analytical method, which allows us to identify the impact of EU migration policy on migration processes and the effectiveness of its implementation. The integrated method allowed to combine the knowledge and practice of various branches, in particular sociological and legal research. The synergetic methodology allowed to determine further directions in the migration policy of the EU.

2. Research Results

Migration affects the internal situation in the country, the demographic, social, economic, and foreign economic spheres of life depend on it. Therefore, any country, based on its geopolitical position, develops its internal and external migration policy. Migration policy is a complex system of interconnections - economic, legal, informational, demographic structure (Suchyk, 2021).

The modern global community should focus more attention on active migration processes and carry out a revision of migration policy, update migration legislation, which is constantly being improved and developed. Migration processes should be more controlled and regulated. The new century is characterized by an increase in migration, refugees, and internally

displaced persons. And the most developed countries were not ready for joint solutions and actions (Suchyk, 2021).

Living conditions in European Union (EU) countries, their natural, political, economic components, democratic structure, liberal approach make these countries attractive for a significant number of people living in less developed countries, territories with unfavorable climate, military actions, etc. (Zastavna, 2021). Migration occurs constantly, increasing and changing its character over the years, at certain periods there are unprecedented events in migration processes, which cause migration crises and reveal all the weaknesses of EU migration policy.

There has been constant migration from existing hot spots in the Democratic Republic of Congo, Ethiopia, Mozambique, Myanmar, South Sudan, Syria, the Sahel region, Venezuela, and Yemen. The COVID-19 situation created new challenges that needed to be addressed quickly. The years 2021-2022 became a new test for the EU through a full-scale invasion of Ukraine and the coming to power of the Taliban in Afghanistan (EUAA, 2022). The issue of military action in Ukraine deserves special attention, as it has led to the emergence of large-scale population displacement, disruption of the international economy, logistics, energy supply, trade, the need for military and humanitarian aid to Ukraine, the introduction of sanctions on the aggressor states (Eurostat, 2022).

Within the EU, different countries apply the Union's migration policies differently, for example, in 2019 93% of asylum seekers from Afghanistan were granted protection in Italy and only 2% in Hungary (Malynovska, 2021). The migration policies of individual countries can lead to severe consequences for the fate of migrants, so their issue requires legal regulation and continuous improvement (Ceccorulli, 2022). Issues of migration policy were important and relevant, as they concern the fate of a significant number of people forced to seek protection or better living conditions.

In this regard, recent scholarship on EU migration policy "has focused on the transition from legally binding instruments to flexible instruments, such as mobility partnerships, migration agreements, and readmission agreements" (Zardo, 2022: 165). The need to transform European politics and overcome political struggles and cooperation in contentious areas has been identified (Zardo, 2022).

However, some scholars, in particular, Zastavna (2022) emphasize that migration policy cannot be the same for all EU countries, internally defined and related to the crossing of state borders. It is impossible not to agree because in the EU a country has independent social and economic processes, because modern science offers various tools that can be used to change statements (Melnychenko, 2021). At the same time, being part of the EU imposes the obligation to adhere to the principles of EU migration

policy. Therefore, this issue needs further economic research to achieve mutually beneficial results.

EU migration policy is marked by international regulations, conventions, and treaties. Thus, the Geneva Convention Relating to the Status of Refugees (1951) provides for the right of everyone to seek asylum for protection from persecution or the danger of war. It defines the concept of refugee status, its basic rights, and obligations, in particular the right to work, education, social security. A special international organization, the International Organization for Migration (IOM), was also created in 1951 to organize and coordinate the migration policies of states and organizations and to provide them with advisory, informational, and technical support (Suchyk, 2022).

The European Convention on the Legal Status of Migrant Workers (1977) defines the legal aspects of migrant workers, citizens of the contract party, in particular recruitment, medical examinations, work permits, professional tests, travel, residence permits, termination of employment contracts, working conditions, transfer of savings and social security, social and medical assistance, dismissal and reemployment, family reunification.

Issues of social responsibility today are most relevant in terms of achieving not only the goals of one socio-economic level, but also in terms of the goals of the higher level of development (Bulkot, 2021). These include the digitalization of the economy, the development of concepts of sustainable development and sustainability of the regional economy, functioning under the permanent action of various crisis phenomena (Buriak and Petchenko, 2021).

The joint migration policy of EU member states began to take shape after the Amsterdam Treaty came into force in 1999 and had the following areas: the prevention of illegal migration, the participation of migrants in the development of the economy of host countries, the integration of migrants into society, and joint actions in these areas (Malynovska, 2021). The Lisbon Treaty, which entered into force in 2009 and defined the role of the EU in EU foreign and internal security policy, contains more provisions for combating illegal migration. The Lisbon Treaty includes an interest in high-skilled migrants (Suchyk, 2022).

The process of agreeing on common principles and means of migration management took a long time, and countries had their own views and different benefits of adhering to certain principles, but nevertheless reached some agreements. In 2006, the Schengen Borders Code (2006) was adopted, which stipulated the rules of movement of persons at internal and external EU borders, the conditions for entry of third-country nationals, declaring that "Creating a space in which the free movement of people across internal borders is ensured is one of the main achievements of the Union. In 2009, the EU Visa Code" (Visa Code, 2009) was adopted.

It regulates the rules of stay for the citizens who are subject to visa requirements, the obligation of consular offices, the rules of transit through international airport areas in order to combat illegal immigration, setting a high standard of services for the population, monitoring of migration movements by means of statistical observation. Organizations enforcing these and other acts are the European Agency for External Borders Protection (FRONTEX), the European Asylum Support Office (EASO), and others (Malynovska, 2021). The European Union Asylum Agency (EUAA) is active in supporting member states, exchanging information between them, supporting improvements, and acting as a resource for practical, legal, technical, advisory, and operational assistance (EUAA, 2022). An informal expert group on the views of migrants took part in the development of the 2021-2024 action plan on integration and inclusion to provide expertise and advice on all migration and asylum issues (Malynovska, 2021).

The year 2021 brought advances toward the implementation of the Migration and Asylum Pact, while a further political agreement has yet to be reached on some key elements of the Pact. Also, in 2021 progress was made in other areas of asylum. In June 2021, the European Commission presented the Schengen strategy, while efforts continued to ensure the interoperability of large-scale IT systems in the areas of justice, freedom, and security. Because integration is integral to an effective migration management system, the Action Plan on Integration and Inclusion was launched in 2021 (EUAA, 2022).

In 2022, the EU introduced through Council Implementing Decision 2022/382 of 4 March 2022 (2022) the legal status of temporary protection for displaced persons from Ukraine due to military action on its territory. As the invasion was intended to undermine European and global security and stability, in flagrant violation of international law, the EU has demonstrated and will continue to demonstrate its strong support for Ukraine and citizens facing an unprecedented act of aggression.

This decision was part of the Union's response to the migration pressure caused by the Russian military invasion of Ukraine. Citizens of Ukraine were exempted from the visa requirement and were assisted with family reunification, employment, education, etc. A very large number of displaced persons were expected, from 2.5 million to 6.5 million (Council Implementing Decision 2022/382, 2022).

Despite the existence of a large number of regulations, there were still gaps in migration legislation, imperfect mechanisms of practical implementation of legal norms, which threatened the adopted norms due to the lack of common policies of member states. And the unregulated situation in migration processes can have dire consequences for all subjects. In particular, is the great mortality and injury of irregular migrants during movements between countries, in cargo or technical facilities, without

proper conditions. The danger of commercial transport vessels used to move irregular migrants and refugees.

Danger to EU residents due to being caught by criminals (Zastavna, 2021). In order to prevent the occurrence of these dangerous situations, the EU is engaged in considerable work in negotiations, particularly with African countries of origin of migrants to stop or prevent migration processes. During these negotiations, the EU focuses on stopping migrant deaths and exploitation (Ceccorulli, 2022).

The EU's external international relations, in particular, are aimed at managing migration processes. The emergence of the refugee crisis in 2015 was an occasion to intensify efforts to improve EU migration policy (Zardo, 2022). Suchyk (2022) concluded that the migration crisis within the European Union (EU) in 2014-2015 showed the vulnerability of migration policies and the failure of most European countries to stabilize large numbers of migrants and mutual benefits. And "the migration crisis within Europe was a consequence of the 'tolerant' migration policy of the European Union" (Zastavna, 2022: 277). Using the example of the 2014-2015 migration crisis, Suchyk I.V. (2022) assumed that mass migration processes caused by military actions in Ukraine could destabilize EU countries.

Therefore, it is necessary to revise global migration legislation, to form an effective migration policy of Ukraine. As a result of the "Arab Spring", the war in Syria, poverty, inhumane living conditions in 2014-2016, tens of thousands of illegal refugees illegally tried to get to Europe through the sea route in the Mediterranean Sea, from the North African coast to Malta, Italy, Spain, and from there to Greece.

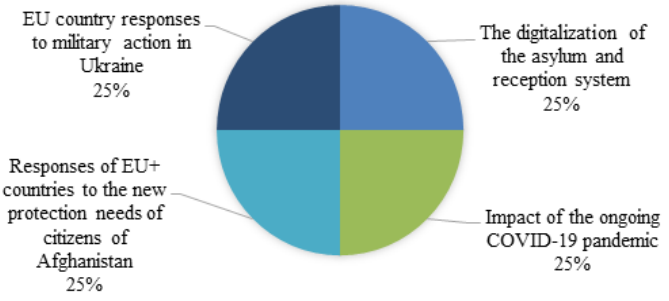
The death toll on these routes in 2015 was 4,054 and in 2016. - 5143 people (Malynovska, 2021). From 2016 to 2017, one of the largest transits of illegal migrants from Libya and Africa passed through the Central Mediterranean, with a landing in Italy. In 2016, there were a record 180,000 migrants. This entailed many immediate problems and the question of closing the corridor, particularly because of Libya's policies. Migration diplomacy was applied (Ceccorulli, 2022).

The reasons for the EU migration crisis were: hostilities in Africa and the Middle East; economic crisis, poverty of countries, unemployment; migrants' desire for family reunification, access to information about the procedure and rights of refugee status in the EU; climatic and natural conditions that threaten life (Zastavna, 2021).

One of the factors influencing the migration policy of the EU is the geographical proximity and historical past of certain countries with the countries of the European Union. In the example of relations between Italy and Libya, we can say that their colonial past, geographical proximity, and

mutual economic interests enhance migration processes between citizens of these countries. And the ability to control Libya's borders and maintain its sovereignty was a priority for the EU since Libya was the main gateway for illegal migrants to enter and spread across European Union territory (Ceccorulli, 2022).

Figure 1: Factors affecting asylum procedures.



Sources: (EUAA, 2022)

National asylum and reception authorities in EU countries have continued to digitalize processes. The COVID-19 pandemic and related restrictions continue to have a strong impact on asylum and reception systems around the world. The deteriorating security and human rights situation in Afghanistan in 2021 have led to waves of displacement in general, in addition to increased risks for certain populations. The full-scale invasion of Ukraine on February 24, 2022 caused an influx of asylum seekers from day one, with EU countries sheltering and providing living conditions for over a million Ukrainians, women with children, and the elderly (EUAA, 2022).

Because of this situation, it was necessary to urgently implement measures to resolve the situation and stop illegal migration flows. Control was restored at the external borders of the European Union, and the number of migrants was restored and contained. Already in 2019, compared to 2015, the number of attempts to cross the EU border illegally decreased by 92%, and the number of detected illegal migrants decreased by 70%.

After the COVID-19 pandemic restrictions, during January-November 2020, the number of attempts to cross the EU border illegally was 10% lower than the previous year. The number of foreigners applying for asylum was in 2019. 700,000. This was due to an increase in applications from citizens of Ukraine, Georgia, Moldova, the Western Balkans (Malynovska, 2021).

The EU received 648,000 international protection applications in 2021, a third of the 2020 level and the same as in 2018. In the first few months of 2021, the level of applications remained roughly stable. But around the middle of the year, the number of applications began to increase, culminating in two month-long peaks in September and November 2021. The peaks were largely the result of more applications from Afghans and Syrians, including many repeat applications from Afghans. The largest group of applicants were Syrians in 2021, with about 117,000 applications in the EU, followed by Afghans with 102,000 applications, Iraqi nationals with 30,000 applications, Pakistan and Turkey with 25,000 each, and Bangladesh with 20,020. After the start of full-scale hostilities in Ukraine in February 2022, Poland, Romania, Slovakia, and Hungary were the first to accept millions of displaced persons (EUAA, 2022).

Table 1: Number of Ukrainians who received temporary protection

Country	September 2022, persons	August 2022, persons
Poland	53 545	67 280
Germany	51 980	62 140
Romania	9 715	9 725
Ireland	4 925	5 825

Sources: *(UEAA, 2022)*

From the table above we can see how the number of Ukrainians who received temporary protection in EU countries is changing. We can conclude that the largest number of Ukrainians migrated to Poland and Germany, a process that continues. In these countries, the number of migrants is gradually decreasing, remaining stable in Romania and Ireland. We can conclude that even now countries unequally implement the norms of migration policy in the EU, which affects the unequal burden on the economies of other countries.

The International Organization for Migration estimates that the number of Ukrainians who have left the country since the start of the full-scale war had reached more than 3 million as of mid-March. From the beginning of the war until early May 2022, about 12.8 million people became refugees in Ukraine, of which 7.7 million people were internally displaced, representing 17.5% of the total population of the country. The UN High Commissioner for Refugees estimates that as of April 23, 2022, more than 5.1 million people left Ukraine, including about 2.9 million to Poland, 774,000 to Romania, 490,000 to Hungary, 443,000 to Moldova, 354,000 to Slovakia (Suchyk, 2021).

To solve the migration crisis, it is necessary to carry out a number of coordinated efforts at different levels, in all EU countries. First of all, the EU's position on the contradiction of expelling migrants or enforcing human rights needs to be clearly defined. After all, human rights are fundamental to all EU norms. It should be noted that despite such slogans, individual EU states are setting fairly strict policies toward migrants. The countries receiving migrants - Greece, Croatia, Italy (Zastavna, 2021), and from 2022 Poland, Romania, Slovakia, Hungary - are most interested in improving migration policy on issues of the expulsion of migrants while respecting their rights.

A policy of negotiation and cooperation with third countries to explore borders, the spatial impact of migration control, the construction of extraterritorial processing zones, camps, and "buffer zones" of detention in countries of origin or transit has been chosen as a way to resolve the migration crisis (Zardo, 2022).

In this sense, migration diplomacy seems useful. After all, it contains the potential to build mutually beneficial migration relations of actors and prevent irregular migration flows (Ceccorulli, 2022). According to a study conducted by Zardo (2022), it was concluded that "political instruments are not only signs of political choice, but also structure the political process and its outcomes".

The scholar investigated the impact of bilateral relations between EU member states and African countries, which consisted in creating models of geopolitical space with the EU's southern neighbors and helped to respond quickly to the migration crisis. Through the application of a semi-state instrument, the impact of migration from Africa on the "European representation of the EU-Africa geopolitical space" was studied (Zardo, 2022).

Another way to reduce the number of migrants is to provide EU-wide "circular migration," in which migrants with long-term visas are free to move across EU borders (Zastavna, 2021).

To reduce the effects of migration crises, EU countries are applying immigration policies to highly skilled workers (Suchyk, 2022). This was a new proposal by European organizations, Talent Partnerships, which offers active labor recruitment, training, and employment for migrants with professional skills. For this purpose, it was planned to increase cooperation with countries of origin (Malynovska, 2021).

Particular attention should be paid to regulating policies regarding newly arrived migrants who have committed crimes or other offenses within the EU and irregular migrants. It has been suggested that the new policy should be based on the integration of migrants, the organization of relations with the local population, and the provision of basic medical, educational, and

employment services. The establishment of political relations with EU member states in cooperation and interaction in the field of migration and building a dialogue based on compromise and equality of EU countries with third countries has a positive impact (Zastavna, 2021).

The modern world and the processes taking place in it have conditioned the necessity of applying the policy of cohesion of the EU countries for the inclusion and economic integration of migrants. An example of such inclusion is the experience of Italy, in which during 2007-2018 as a result of a number of measures, in particular, to support employment and mobility, it was achieved to reduce the wage gap between migrants and natives to 7.6% (Giua *et al.*, 2022). According to Malynovska (2021: 277): "migrant integration is seen in the broader context of social inclusion but occupies a key role in the relevant agenda". Information exchange processes, experiences, cooperation between cities and countries, and businesses within the EU are noted positively.

Giua *et al.* (2022: 44) find that little attention has been paid to the question of the impact of cohesion policy on inclusion. In their opinion, "This requires identifying a subset of interventions aimed at promoting inclusion and linking them to changes in inclusion pathways for the same recipients". So, focusing on the impact of projects promoting the integration of immigrants in Italy, the first evidence of a causal effect of EU policies on inclusion was found.

Ukrainian scholars agree on the positive impact of inclusion and integration on legal migration processes, noting separately the important role of local, national government policies. Contemporary migration policy is a continuation of established measures, characterized by dynamism, constant updating, and solving all new tasks, in particular, to reduce political discussions between member states, border protection, and solidarity with receiving countries of migrants, despite the denial of some countries, zarym Hungary, which insists on the need to stop migration to the EU (Malynovska, 2021).

Building an inclusive Europe is at the core of the era of the next generation of the EU. And the principle of inclusion dominates the revitalization of Europe's economy and society. The continuation of the policy of cohesion that has begun in Europe is a priority in the functioning of the EU (Giua *et al.*, 2022). The latest advances in science and technology demonstrate the need to transform public life (Filipova *et al.,* 2021).

3. Discussion

The results show that the EU migration policy aimed at the observance of human rights and freedoms is characterized by liberalism. This has led to an influx of migrants into the EU, illegal migration, and an uneven migration burden on EU countries. The work was analyzed by Zastavna (2021), who examined the migration policy of the EU in the context of the security of European Union countries and insisted on taking into account the interests of some countries that do not share the views on the migration policy of the EU and do not want to accept migrants. However, one must agree with the conclusions of scholars such as Giua *et al.* (2022) on the need to accept migrants in the future, while introducing new methods of implementing EU migration policy.

To confirm this, attention is drawn to Italy's positive experience with the economic integration of immigrants in Italy and the equation of their wage levels almost with those of the natives. Ceccorulli (2022) continues, noting the need to improve the tripartite approach to migration diplomacy on the example of EU and Italian cooperation with Libya, which has resulted in stopping significant flows of irregular migrants. At the same time, attention should be paid to the study of Suchyk (2022), who noted the need to improve migration law and migration management as regulators of migration processes, including in migrants' countries of origin.

The findings of Zardo (2022) on the practice of creating a geopolitical space for Africa through migration policy instruments are interesting for further research. as interconnected links of trade. This study was a logical continuation of scholarly works that raise issues of EU migration law and need further study.

Conclusions and Implications

After conducting this study, a number of conclusions can be made. Wars, cataclysms, political situation, limitation of human rights in Afghanistan, the Democratic Republic of Congo, Ethiopia, Mozambique, Myanmar, South Sudan, Syria, the Sahel region, Venezuela, and Yemen, countries of Africa created unbearable conditions for people. The war in Ukraine in 2022 caused danger for citizens.

Escaping from unfavorable living conditions people very often find them in the European Union, which is geographically conveniently located, receives migrants in large numbers, provides them with social, medical care, housing, and assistance in education and employment, pursues a policy of liberality and human rights. The situation with COVID-19 led to the necessity of promptly solving new tasks. However, all of the above has led to the migration crisis and other problems in the EU countries.

The causes of the EU migration crisis were: hostilities in Africa and the Middle East; economic crisis, poverty of countries, unemployment; access to information about the procedure and rights of refugee status in the EU; the desire of migrants for family reunification, climatic and natural conditions that threaten life. Within the EU, different countries apply the norms of the Union's migration policy in different ways. Yes, Poland shares the migration policy of the EU, while Hungary opposes the admission of migrants altogether.

Refusal to accept migrants can have grave consequences for their fate, and the presence of large numbers of migrants, including illegal ones, negatively affects the socio-economic situation of countries and poses a threat to the native population. Therefore, the first task is to achieve a balance between the interests of the EU countries. In order to solve the migration crisis, it is necessary to carry out a number of coordinated efforts at different levels, in all EU countries.

In particular, the directions for improving EU migration policy are the principle of respect for human rights and freedoms, which must be respected for both legal and illegal migrants; political equality and mutual assistance of the member states; protection of borders and prevention of illegal migration; integration and inclusion of migrants into the social phenomena of the country; migration management, migration management; policies of negotiation and cooperation with third countries; ensuring "circular migration"; active involvement of labor force, in particular highly qualified specialists in employment; EU cohesion policies.

The scientific study continued to consider the problems of EU migration policy, taking into account the new challenges and tasks of the modern world, provided conclusions and recommendations.

Prospects for further research. The works of scholars who have studied the problems of EU migration policy have received follow-up attention. It has been revealed that the majority of authors support the liberal EU policy on migrants and emphasize the need to solve the problems arising in this connection in the EU countries. The scientific literature reveals ambiguous conclusions on the observance of the interests of individual countries and deviations from the EU migration policy. This issue will have to be investigated in the future.

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Cross-Border Mediation under Current Threats: Ukraine-Poland (Some Aspects of Interaction)

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Abstract

Using the documentary research technique, this paper outlines certain aspects of Ukraine-Poland cross-border mediation interaction in the context of contemporary threats. In addition, it points out the main contemporary threats, which affect the cross-border interaction of Ukraine and Poland. It characterizes such threats as nuclear danger, environmental problems, humanitarian crisis, economic threats and food shortages. It points out that there are internal threats to Poland in connection with the war in Ukraine, the spread of infectious diseases, including COVID-19, due to the large number of refugees, the threat to food security, the threat to Poland's economic stability and poverty. It is shown that Poland interacts with Ukraine on all urgent issues: helps citizens seeking temporary protection, sends humanitarian aid, strengthens and stimulates market relations. It is concluded that all this led to increased cross-border interaction between the countries. The relevance of alternative types of conflict resolution, such as mediation, is highlighted. The scope of cross-border mediation is presented, the current state of mediation is analyzed and conclusions are drawn on the need for further development of this institution.

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Keywords: energy crisis; international mediation; cross-border cooperation; political mediation; international politics.

Mediación transfronteriza bajo las amenazas actuales: Ucrania-Polonia (Algunos aspectos de la interacción)

Resumen

Mediante la técnica de investigación documental, este trabajo esboza ciertos aspectos de la interacción transfronteriza de mediación entre Ucrania y Polonia, en el contexto de las amenazas contemporáneas. Además, señala las principales amenazas contemporáneas, que afectan a la interacción transfronteriza de Ucrania y Polonia. Se caracterizan amenazas como el peligro nuclear, los problemas medioambientales, la crisis humanitaria, las amenazas económicas y la escasez de alimentos. Señala que hay amenazas internas a Polonia en relación con la guerra en Ucrania, la propagación de enfermedades infecciosas, incluyendo COVID-19, debido al gran número de refugiados, la amenaza a la seguridad alimentaria, la amenaza a la estabilidad económica de Polonia y la pobreza. Se muestra que Polonia interactúa con Ucrania en todas las cuestiones urgentes: ayuda a los ciudadanos que buscan protección temporal, envía ayuda humanitaria, fortalece y estimula las relaciones de mercado. Se concluye que todo esto condujo a un aumento de la interacción transfronteriza entre los países. Se destaca la relevancia de tipos alternativos de resolución de conflictos, como la mediación. Se presenta el alcance de la mediación transfronteriza, se analiza el estado actual de la mediación y se sacan conclusiones sobre la necesidad de un mayor desarrollo de esta institución.

Palabras clave: crisis energética; mediación internacional; cooperación transfronteriza; mediación política; política internacional.

Introduction

The full-scale invasion was sharply condemned by the European community. Humanitarian aid and refugees were provided, but European countries long feared the threat of nuclear weapons by the aggressor country, so the war escalated into a long process that posed global real threats to the entire world. Poland became one of the countries that provided the most support to Ukraine. Therefore, there is an interaction between Ukraine and Poland on all issues aimed at speeding up the end of the war. In such circumstances, there is a need for conflict resolution - both in public and private law. The relevance of cross-border mediation between Ukraine and Poland is growing.

Research Problem

The paper points out some problems of interaction between Ukraine and Poland on cross-border mediation in the face of current threats. It is found that the scientific literature pays little attention to this issue, mostly studying the issues of domestic mediation or mediation in the resolution of international disputes. Many scholars, particularly Cooper (2023) Deininger *et al.* (2023), Grossmann *et al.* (2021), Kuzemko *et al.* (2022) Analyze contemporary threats affecting country relations. Davydchyk *et al.* (2018) examined the Ukraine-EU relationship. Goldthau and Boersma (2014) found the impact of the Russia-Ukraine war since 2014 on the world food situation. Dulia (2022) analyzed the amount of social assistance provided to Ukrainian citizens in need of temporary protection. Lewtak *et al.* (2022) conducted an analysis of Ukrainian-Polish relations under war conditions. Izbash (2022) investigated the issue of online mediation. Stepanenko (2021) analyzed European mediation standards in civil law disputes and their implementation in Poland and the Czech Republic.

Research Focus

The focus of this study was such aspects of the interaction between Ukraine and Poland as cooperation in the conditions of modern economic, environmental, food, military threats; economic cross-border cooperation and the establishment of new economic links; social and humanitarian assistance for persons seeking temporary protection, cross-border mediation as an alternative method of dispute resolution in the conditions of modern threats.

Research Aim and Research Questions

The purpose of this study was to identify specific aspects of the interaction between Ukraine and Poland on cross-border mediation in the context of current threats posed by military actions in Ukraine.

Research assignment: to investigate the main threats posed to Poland and Ukraine by military action, to characterize the nature of relations between the parties, to analyze the types of interaction between them, and to identify the specifics of cross-border mediation in the face of contemporary threats.

The hypothesis of the study: it is proposed in the future to pay attention to such type of alternative dispute resolution as cross-border mediation, to legislate it at the country level, to introduce the legislative consolidation and practice of online cross-border mediation.

1. Research Methodology

1.1. General Background

To implement the objectives, the study was carried out in certain stages in a combination of analysis of theoretical material, research data from around the world, scientific studies of applied and theoretical material. Such stages were: search for research data; search for scientific literature; analysis of research data and scientific sources; comparison and comparison of identified data, development of conclusions and recommendations.

1.2. Sample / Participants / Group

The empirical basis for research and scientific papers of scientists from different countries, legislation of the EU, Poland, and Ukraine, data from sociological and economic research, and surveys.

1.3. Instrument and Procedures

In order to implement the objectives, the study was carried out in certain stages in a combination of analysis of theoretical and statistical material and practical tasks. Such stages were:

1. searching for empirical data and scientific sources;
2. analysis of these data and sources;
3. comparing and contrasting data by year, providing conclusions and recommendations, and forecasting.

1.4. Data Analysis

The system of general scientific and special scientific methods was chosen as a methodological basis. The analytical method, which allowed revealing the influence of modern threats on the mutual relations of Ukraine and Poland, was chosen as the basic method. The integrated method allowed to combine the knowledge and practice of different branches, in particular computer technology, economics, and sociology. The synergetic methodology allowed to determine further directions of research of cross-border mediation in relations between Ukraine and Poland.

2. Research Results

The full-scale attack on Ukraine in February 2022 showed the imperfection of the international security system. In recent years, institutions for conflict mediation have been created and improved among

states, but in practice, they have not been effective. Despite the existence of international mediators, there are few resolved armed conflicts involving them (Moore, 2003). The international community strongly condemned the invasion, called for an immediate cease-fire, a peaceful end to the aggression. But recognized the violation of international humanitarian law, which leads to the damage and destruction of health facilities, education, leading to a significant deterioration in the health of children, the elderly, the disabled. Pointed out the nuclear risks (Lancet, 2022).

The problem of providing social protection to people fleeing the war, of which millions of Ukrainian citizens turned out to be, most of whom sought asylum in Poland (Matviichuk and Ryzhenko, 2022), has become especially relevant. Under such conditions, European democracies had to implement a number of effective measures to deal with the situation of migration of large numbers of people. Subsequently, these measures proved effective and showed organized concerted action to provide Ukrainian citizens with free transportation, housing, food, and educational and medical services (Lesniak, 2023).

"The Russo-Ukrainian armed conflict is a dramatic global event" that has had an impact on the natural environment, society, and the economy. Energy and food have suffered losses at the global level. Sustainable development goals are at risk for many countries (Pereira, Zhao, Symochko, Inacio, Bogunovic, Barcelo, 2022).

The war in Ukraine has resulted in a global humanitarian crisis, causing many deaths, destruction, and mass displacement of people. Many more citizens are potentially at risk. According to the UN High Commissioner for Refugees, as of April 17, 2022, more than 4 million Ukrainians, 2 million of them children, were forced to seek temporary protection abroad. Most Ukrainians left for Poland - 2.8 million people (Dulia, 2022).

Since 2022, the world has learned new real threats due to the invasion of Ukraine. Scholars have noted that the aggressor country of the Russian Federation was confident that NATO would not intervene in military action in Ukraine because of the possible escalation of the nuclear conflict.

But the fear of Russia's use of nuclear weapons prevented Western countries from providing military assistance to Ukraine in a timely manner, providing military aircraft, missiles, and equipment (Cooper, 2023). More recently, conclusions have been drawn that "Europe is no longer as peaceful as many had assumed", and "the geopolitical holiday" is over. The 2014 war in Ukraine shook the international community and intensified cross-border mediation and cooperation. In such circumstances, there are new needs for cross-border interaction between states and international organizations, both public and private law.

Among the current threats to the modern world is the looming energy crisis caused by military action in Ukraine since 2014 and the confrontation between the West and Russia. As the global energy industry moves into the next phase with a new emphasis on renewable energy and energy efficiency, and as energy markets become increasingly global and interconnected, many politicians and figures are engaged in resolving international disputes militarily. For all this time, Brussels and Washington have proposed sanctions against the Russian energy sector to force Russia to end its military intervention in Ukraine. However, there were still opinions about replacing energy sanctions with others and continuing to use sources from the aggressor country (Goldthau and Boersma, 2014).

The full-scale invasion of Ukraine in February 2022 has already shown the real threat of energy dependence of the whole of Europe on the aggressor country and the total dependence of the energy situation on the events in Ukraine. After all, some European countries have decided to abandon Russian fuel and introduce alternative energy sources, finding suppliers. Such important and difficult steps in the future will lead to the supply of clean energy, the achievement of sustainable development goals.

The energy issue was considered one of the most important for the geopolitical security of Europe (Kuzemko *et al.*, 2022). The use of Russian gas has become costly and unreliable for Europe, and the war and uncertainty surrounding the natural gas it produces will play an important role in the future development of the European energy transition. "At what will likely be one of the defining moments of European history, the fate of Europe's energy transition will be decided in the suburbs of Ukrainian cities" (Osička and Černoch, 2022: 21).

Access to energy becomes an instrument of influence for political entrepreneurs and undermines citizens' trust in power institutions (Grossmann *et al.*, 2021). Poland, as a European country on the border with Ukraine, is interested in purchasing energy sources, and fuel in Ukraine, solving the "Ukrainian-Russian issue" and ensuring peace in Ukraine.

Together with the energy war in Ukraine, it threatened the world's food crisis. As a result of the hostilities, the supply of a significant portion of crops from Ukraine has been cut off, leading to higher prices, inflation, fewer jobs, and slowing the world's recovery from COVID-19. Unemployment has skyrocketed in Germany and could grow in Poland, Romania, and Slovakia. The main impact of the war is yet to come and will lead to poverty and loss of purchasing power in European countries (Pereira *et al.*, 2022).

Ukraine is a major supplier, the "breadbasket" of wheat, sunflower oil, and other crops to Europe, with 41.5 million hectares of fertile land, compared to 11 million hectares in Poland, 18 million hectares in France, and 12 million hectares in Germany. Therefore, any obstruction of food

production across Ukraine could cause upheaval and conflict in other countries. In addition, the massive displacement of the population, the economic crisis, and the scarcity of resources suffered by Ukrainian farmers as a result of the war indicate that, in addition to the direct consequences, indirect ones may also be important (Deininger *et al.*, 2023).

The war has provoked dramatic changes in the global economy and geopolitics, changes in the humanitarian situation, and changes in the environment. The threat of ecological catastrophe due to intense fighting has emerged, as the consequences of military actions extend beyond Ukraine (Pereira *et al.*, 2022). Poland is one of the first to be affected by the environmental consequences of the war. Therefore, it is important to negotiate and work in this area.

Ukraine began the process of integration into the European Union, this was accompanied by various socio-economic, historical, political, legislative, international processes, which lasted more than a decade. If anyone had doubts about Ukraine's desire to join the European Union, then with the beginning of the war in February 2022 it became clear what vector of development Ukraine was seeking, and the majority of the population supported European integration and the end of any partnership with Russia (Shelemba, 2022).

The European Union, including Poland, in turn, changed its views and approaches to cooperation with Ukraine and considered Ukraine's membership in the EU to ensure peace in it. Views on cooperation with enterprises and entrepreneurs from Ukraine have changed, and the role of Ukrainian oligarchs in international cooperation has decreased.

These changes will determine the future vector of relations of Poland and other countries with Ukraine (Davydchyk *et al.*, 2018). Ukraine has passed the maturity test of its power institutions, law enforcement agencies, and defense sector, has shown coherent performance and law and order during the war (Kaplina, 2022), has made a number of changes in legislation, is active in combating corruption, is considering the circulation of firearms (Zakharchuk, 2022).

International management and cross-border cooperation depends on Central and Eastern Europe, which is a defining geopolitical territory, so it has been investigated since 2014 that strengthening relations between the EU and Ukraine is of importance for both sides politically and economically, given Ukraine's size and geographic location. Ukraine's accession to the EU will cause increased international trade, and promote Ukraine's economic modernization and integration with the EU's internal market (Spiliopoulos, 2014).

Poland was the first, since Ukraine took its course to the EU, to interact with Ukraine to establish socio-economic ties, so millions of refugees (about

2.5 million), mostly women, children, and the elderly, crossed the border with Poland in the first days of the war. This necessitated a rapid response to new domestic threats to that country, such as the spread of infectious diseases, including COVID-19 (Lewtak *et al.*, 2022). This strengthens international cooperation, cross-border mediation of Poland and Ukraine.

In order to provide adequate assistance to Ukrainian citizens fleeing the war, Poland passed the law "On Assistance to Ukrainian Citizens in Connection with the Armed Conflict on the Territory of that State" (O pomocy obywatelom Ukrainy w związku z konfliktem zbrojnym na terytorium ego państwa, 2022). This law provided various types of assistance for Ukrainians, which was an example of a quick response to the challenges and prevention of a humanitarian disaster due to a large number of refugees (Matviichuk and Ryzhenko, 2022).

Ukrainians were provided access to social services, temporary free housing, legal, medical, psychological, and humanitarian assistance (Dulia, 2022). The Polish Ministry of Justice ensures access to free legal assistance, counseling, and legal education.

For this purpose, the Ministry of Justice of Poland collects information on the availability of free legal aid services in Ukrainian, Russian, and English in all points of assistance works on the possibility of increasing the working hours of the specialist in the field of foreigners' rights in the points of free assistance, created a 24-hour hotline (Legal Aid, Undated). Free legal assistance is aimed at providing legal information about the rights and obligations of persons in need of temporary protection; assistance in solving legal problems and drawing up documents; mediation; representation in court.

Free civil consultations include individual consideration of a problematic situation by a civil advisor; selection of ways and means of solving it; explanation of rights and obligations; support for persons in solving the problem independently; assistance in developing an action plan to solve the problem and their implementation (About nieodpłatnej pomocy prawnej).

The Polish government website contains a list of services provided to Ukrainian citizens in need of temporary protection, including legal services and services for mediation and pre-trial dispute resolution. Where a citizen of Ukraine can fill out an interactive feedback form and ask a question about mediator's participation in dispute resolution (Legal Aid, Undated).

Poland adopted legislation on mediation in 2005, amending the Code of Civil Procedure, which establishes the basic principles of mediation (Stepanenko, 2021). Due to the large number of refugees from Ukraine, the latter had disputes with persons who were in other countries. Cross-border mediation was suggested for their resolution. Mediation in cross-border cases mainly concerns disputes and conflicts in family cases,

such as determination of a child's place of residence, exercise of parental authority, contact with the child, resolution of issues important for the child, child abduction abroad by one of the parents, property issues in civil and economic disputes to fulfill the terms of contracts (Mediacja w sprawach transgranicznych, n/y). In addition to the Ministry of Justice, the Public Council for Alternative Dispute Resolution, whose offices are located in each regional court and courts of appeal, and the mediation centers of notary councils (Stepanenko, 2022).

Mediation and conciliation are more demanding means of dispute resolution than arbitration because they involve the cooperation of the conflicting parties to reach an agreement. In addition to social issues and disputes over the fulfillment of economic and civil contracts, cross-border mediation can be applied in various spheres.

Thus, Grzybczyk (2022) pointed out the usefulness of mediation and conciliation in intellectual property disputes. Melnychuk (2022) concluded that mediation works successfully in administrative proceedings in European countries. Scholars have also noted the need to modernize the judicial process in view of digitalization, the decline of economic processes, and the need to change the format of the relationship between the participants (Melnychenko, 2021).

The military aggression of the Kremlin regime against Ukraine, the annexation of Crimea, and support of pro-Russian separatists in the Donbas actualized the restoration of special sections of Ukrainian law governing relations in the system of military and civil-military law (Gorinov and Mereniuk, 2022), also showed the need to improve standards of civil, economic, criminal, international and other areas of Ukrainian law.

There was a question in solving many social and economic problems, interaction with international organizations, other states. In particular, as noted above, Poland has become the state most closely cooperating with Ukraine in various spheres. Both countries are interested in Ukraine's victory and the elimination of threats caused by the war, and in further cross-border cooperation in various sectors.

In particular, cross-border mediation between these countries should be used as a quick and effective way to resolve both public and private law conflicts. Scholars have noted the universality of the mediation procedure, which has evolved because of the increasing intensity and international contacts. Mediation developed in the U.S. and spread to different countries of the world and has evolved, depending on the experience of certain countries in using it (Kurylych, 2022).

Cross-border mediation is capable of solving complex problems, can be the basis of fruitful international economic, legal, and social cooperation, a means of maintaining sustainable economic ties and cooperation. With

the development of digital technologies for rapid resolution of disputes, especially in conditions of rapid development of relations between Ukraine and Poland, it is advisable to use online mediation through modern means of communication, videoconferencing, and the Internet. This method allows the resolution of disputes almost at the moment of their occurrence (Izbash, 2022). Online mediation is appropriate in the context of the rapid increase of cross-border agreements, especially those concluded online between Ukraine and Poland (Izbash, 2022).

Negotiation processes in cross-border mediation are conducted by mediators with appropriate communication culture and skills of dispute resolution, knowledge of both Polish and Ukrainian legislation. Ogliastri *et al.* (2023) identified three prototypes of negotiations:

1. Focused on personal relationships, expression of emotions, and a flexible agenda for a polychronic procedure;
2. Formal, fact-focused and monochronic, maximizing economic value but ignoring personal relationships;
3. Can point to contexts where different modes of negotiation coexist.

Conflicts are characterized by omnipresence and brutality toward the parties, so mediation and negotiation have remained important methods of dispute resolution, including cross-border disputes, for many years. The results are not imposed on the parties by the courts or an influential outsider (Zartman, 2022).

At the same time, mediation is a flexible tool for resolving cross-border disputes. The introduction of mediation procedures in the national legal system is a way to ensure the human right of access to justice. Due to the globalization of the economy, the implementation of Ukrainian legislation into European legislation, and the increasing influence of international law, mediation is increasingly used in international relations (Krestovska, 2020).

Ukraine enshrined in law the procedure for mediation in 2021, this legalized mediators, inspired public confidence in this legal procedure, established cooperation with the courts, brought it closer to international cooperation, and ensured compliance with the requirements of the Singapore Convention on Mediation - UN Convention on Cross-Border Agreements (Romanadze, 2022).

3. Discussion

The results indicate that scholars have not sufficiently studied the problems of cross-border mediation in the context of contemporary threats.

However, threats arising from military action in Ukraine have been actively considered among scholars. Goldthau and Boersma (2014) proposed to pay attention to the energy independence of Europe from the Russian Federation since the beginning of its military aggression against Ukraine in 2014 and to take into account the creation of alternative energy sources and create an energy union.

As early as 2023, Cooper (2023) argued that the successful use of nuclear deterrence raises the specter of a paradox of stability and instability. The consequence of the lack of decisive swarms in 2014 was today's events and threats. Scholars are almost unanimous in agreeing on the crushing losses of this war, and its future threats, but in different ways emphasizing one consequence or another. Deininger *et al.* (2023) estimate war-induced crop losses, analyzing 10,125 rural councils in Ukraine, concluding a possible food crisis due to lack of supply.

Kuzemko *et al.* (2022) point out that the current situation in Europe is shaken, life in Europe is no longer carefree, Europe is phasing out imports of Russian fossil fuels, and is rethinking its approaches to energy security. Osička and Černoch, (2022) suggest further ways forward for European energy policy. Pereira *et al.* (2022) expressed sensible views that the Russian-Ukrainian armed conflict is pushing back sustainable development goals. Matviichuk and Ryzhenko (2022), exploring the legal regulation of state and local government support for Ukrainian refugees in the Republic of Poland, note the close cooperation and collaboration between Ukraine and Poland on social issues.

Izbash (2022), Grzybczyk (2022), Kurylych (2022), Krestovska (2020), Matviichuk and Ryzhenko (2022) Exploring the issues of mediation noted its usefulness for various state systems, expediency of further studying this institution and application in practice. This study was a logical continuation of scientific works, which raise many problems and require further study.

Conclusions and Implications

A number of conclusions can be drawn from this study. Modern dangers of both global and local level have influenced all spheres of activity of the countries. The relations between Ukraine and Poland have acquired a new level, cooperation of these countries has intensified in all sectors.

The countries, interacting, are aimed at achieving common goals of preserving peace, the natural environment, the economy, a stable standard of living of citizens, and their social protection. Therefore, cooperation in the issue of alternative dispute resolution, including through cross-border mediation, in the future will be of practical value for use by citizens, businesses, and at the interstate level.

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La exhumación de cadáveres como aporte a procesos ministeriales y judiciales en el Cementerio Municipal de la ciudad de Riobamba

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Resumen

Este articulo científico refleja los resultados de una investigación que se propuso como objetivo general, caracterizar las condiciones o circunstancias en las cuales se aprueba y se ejecuta una exhumación. El contexto empírico en el que se enfocó el estudio, fue el Cementerio Municipal de Riobamba. Metodológicamente, el estudio se orienta en un enfoque de carácter mixto porque recolecta, analiza y vierte datos cuantitativos y cualitativos adoptando así mismo, características de las investigaciones de tipo observacional, transversal y analíticas. Como técnicas de investigación se utilizó el análisis documental, aplicado a los archivos de las exhumaciones ocurridas en los años 2018 y 2020 en el cementerio referenciado y, se utilizó además un cuestionario con preguntas cerradas aplicado a las personas que laboran en el departamento encargado de las exhumaciones. Todo permite concluir que, entre los hallazgos más importantes de la investigación, se pudo evidenciar cierto desconocimiento de los protocolos estandarizados para las exhumaciones judiciales, aunque, desde el punto de vista positivo, se encontró, una observación integral a las normas de bioseguridad y, la disposición de los trabajadores a actualizar sus conocimientos, respecto al tema estudiado.

Palabras Claves: exhumaciones; exhumaciones judiciales; procesos judiciales; cementerio municipal de la ciudad de Riobamba; ciencias forenses.

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Exhumation of corpses as a contribution to ministerial and judicial processes in the Municipal Cemetery of the city of Riobamba

Abstract

This scientific article reflects the results of a research whose general objective was to characterize the conditions or circumstances under which an exhumation is approved and executed. The empirical context in which the study was focused was the Municipal Cemetery of Riobamba. Methodologically, the study is oriented towards a mixed approach because it collects, analyzes, and pours quantitative and qualitative data, adopting the characteristics of observational, cross-sectional and analytical research. As research techniques, documentary analysis was used, applied to the files of the exhumations occurred in the years 2018 and 2020 in the referenced cemetery and, a questionnaire with closed questions applied to the people who work in the department in charge of exhumations was also used. Everything allows concluding that, among the most important findings of the research, it was possible to evidence a certain lack of knowledge of the standardized protocols for judicial exhumations, although, from the positive point of view, it was found an integral observation of the biosecurity norms and the willingness of the workers to update their knowledge regarding the subject studied.

Keywords: exhumations; judicial exhumations; judicial processes; Riobamba municipal cemetery; forensic sciences.

Introducción

Desde el punto de vista criminalístico y de las ciencias forenses, el tema de las exhumaciones de cadáveres en el marco de procesos de carácter judicial es, además de interesante, muy complejo. Sus aspectos éticos y humanísticos son tan relevantes como todos aquellos que tiene que ver con los elementos que hay que cuidar en relación con los aspectos legales de cada país y, en Ecuador, esta realidad no es distinta. De hecho, es un tema que debe ser actualizado constantemente porque, tanto los reglamentos como la dinámica o manejo de lo que significan las exhumaciones de cadáveres pueden variar en el tiempo.

Considerando esta reflexión como punto de partida, esta investigación se ha propuesto como objetivo principal, caracterizar el proceso de exhumación de cadáveres y su manejo, cuando se trata de servir de apoyo a procesos judiciales y administrativos. Se ha tomado como referencia empírica de este trabajo, las circunstancias que rodean el proceso descrito,

en el Cementerio Municipal de la ciudad de Riobamba, cómo y en qué proporción se aprueban y ejecutan las exhumaciones en este centro lugar, en atención a mejorar las circunstancias que las rodean.

En este orden de ideas, se ha encontrado que en el año 2022 el Ministerio de Salud Pública (MSP) en Ecuador decidió que, a partir del primero de febrero de 2022 la autorización de exhumación de restos humanos, con o sin fines legales debería ser gestionada directamente en el lugar donde reposan los restos, es decir, los cementerios (MSP, 2022). Esta disposición, intenta, entre otras cosas, simplificar las diligencias para las exhumaciones, ahorrando tiempo y dinero, para contribuir al avance de aquellos procesos judiciales y administrativos que requieran este tipo de acciones.

Sin embargo, más allá de las buenas intenciones del legislador, en la práctica, el ordenamiento que dispone que los procedimientos de exhumación de cadáveres se podrán realizar directamente en el campo santo, sin necesidad de una autorización sanitaria, puede repercutir en que la operación no contemple todos los aspectos que garantizan el cuidad sanitario y los diferentes parámetros bioéticos y legales que se requieren en el caso de las exhumaciones con perspectiva administrativas o judiciales. En atención a esto, se hace necesario que los parámetros y el manejo que lleva cada establecimiento funerario sean confiables y se mantengan dentro de los criterios, en cuanto a aspectos como la confidencialidad de las personas cuyos cadáveres son exhumados, así como los ítems de carácter técnicos y profesionales en el manejo de este tipo de circunstancias.

Visto de esa forma, en este artículo se presentan los resultados de haber analizado con criterios científicos, los elementos que deben contemplar las exhumaciones de cadáveres no solo los profesionales de la materia si no todos los involucrados en el momento en que esta se solicita y se realiza. Toda exhumación, sobre todo, aquellas que se solicitan en apoyo a procesos judiciales o criminalísticos, deben regirse por los estándares establecidos. Además, hay que tener en cuenta que las solicitudes de exhumación de cuerpos forman parte de procedimientos altamente cuidadosos y delicados, pues tocan temas que van más allá de las leyes incluso, en muchas ocasiones, pueden verse condicionadas por factores culturales y hasta religiosos.

De cualquier manera, el estudio que se resume en este artículo, intenta arrojar algunas luces acerca de las necesidades que se presentan en el cementerio de Riobamba, cuando se refiere al proceso de exhumaciones, enfocando particularmente los elementos relativos al tiempo, las medidas de prevención sanitaria, los protocolos de bioseguridad, así como, el conocimiento del tiempo más prudente para realizar una exhumación de acuerdo al ministerio de salud pública y de acuerdo a las características o condiciones en las que ocurrió el deceso.

La idea de fondo que impulsa la investigación, es la demostración de la importancia que tiene el regirse por protocolos claros, sistemáticos y estandarizados que establezcan como prioridad, la seguridad de los trabajadores y de todo el personal que se encuentra al momento de una exhumación diferenciando, eso sí, todos estos procesos, según respondan a procesos administrativos o judiciales. El hecho de focalizar el contexto para la realización de la investigación, le agrega un mayor grado de pertinencia a los resultados que se obtienen pues, a partir de ellos, la administración del cementerio puede tomar medidas más convenientes para la salud y seguridad de sus trabajadores al momento de cumplir con sus labores allí.

Ahora bien, desde el punto de vista metodológico, el estudio estuvo orientado por un enfoque de carácter mixto porque recolecta, analiza y vierte datos cuantitativos y cualitativos como una manera de realizar una aproximación lo más acertada al objeto de estudio. En tal sentido, los datos se obtienen, por un lado, del análisis documental de los archivos que reposan en el cementerio de Riobamba, discriminando aspectos como: manejo de exhumaciones, motivos de realización, periodo de tiempo y, el resultado que se pretendía, todo esto, de acuerdo al objetivo general planteado. Así mismo, se realizan entrevistas a los responsables de exhumaciones en el cementerio Riobamba para pulsar sus impresiones acerca de la idoneidad de las condiciones en las que se realizan estos procedimientos.

1. Exhumaciones: dimensiones conceptuales

Desde el punto de vista terminológico, esta investigación requiere la puesta al día de lo que algunos autores llaman, “el estado del arte”, es decir, el contexto teórico del tema, el cual se ha ido constituyendo, a la luz de los estudios al respecto. En principio, es preciso tener claro la el término “exhumación”. Etimológicamente, se trata de una palabra compuesta que refiere a la acción de “sacar” o “extraer”, algo que yace enterrado, particularmente, cadáveres o restos humanos, en general. (García, 2017). En general, se ha convenido que se trata de “un procedimiento técnico-científico que consiste en la excavación y extracción de cadáveres sepultados en forma legal, accidental y clandestina, regido por la tanatolegislación propia de un determinado país” (Núñez, 1995: 15).

Cuando se llega al campo legal, los procesos que reviste una exhumación se encuentran descriptos en una terminología científico técnica, no obstante, hay que tener en cuenta que se trata de una acción compleja, en donde se encuentran involucradas otras variables de carácter social, cultural y religiosas, por lo que su definición, puede no incluir con claridad, todos esos elementos que la identifican. De esta manera, conceptualmente, hay mayor claridad cuando se incluyen descripciones que refieren a las diferentes

formas históricas en que se ha presentado este hecho social, así como las circunstancias en que se puede producir una exhumación, considerando, por ejemplo, motivaciones y objetivos de la misma.

Ahora bien, desde el punto de vista histórico, la práctica de exhumar cadáveres es un acto poco común, cuando se analiza el tema desde el punto de vista cultural. De hecho, la mayoría de las civilizaciones que tienen como costumbre, enterrar a sus muertos, consideran que desenterrarlos es una acción que atenta contra el descanso eterno y los preceptos religiosos. "Tanto la tradición judía como la romana consideraban la sepultura inviolable y su exquisito culto a los difuntos hacia el lugar del reposo eterno un lugar permanente para los restos, ya fuesen huesos o cenizas" (González, 2019: n/p). Estas creencias se transmiten de generación en generación y, aún al día de hoy, las exhumaciones son decisiones difíciles de tomar para los dolientes de un difunto.

No obstante, el paso del tiempo ha ido flexibilizando las concepciones socioculturales de las exhumaciones, de manera que, la decisión de apoyarlas o no, se considera fuera del ámbito de la institucionalidad religiosa y se asocia, cada vez más, a las circunstancias o normativa que estipulen las administraciones civiles al respecto. En todo caso, las regulaciones que han establecido las instancias judiciales sobre el tema de las exhumaciones, se consideran lo suficientemente respetuosas como para pensar que puedan violar algunas de las nociones religiosas, independientemente de la iglesia de la que se trate.

Por supuesto, en el discurrir del tiempo, el carácter sacro de una sepultura también ha tenido que ceder frente a otras variables que no son, necesariamente, inherentes a la religión o a las necesidades eventuales de una acción judicial. En algunos países, como Grecia, por ejemplo, las exhumaciones se han transformado en una práctica común, puesto que el crecimiento demográfico ha mermado considerablemente los espacios para la construcción de nuevos cementerios. De esta manera, las familias se han visto en la obligación de invertir grandes cantidades de dinero, solo para mantener el alquiler de las tumbas, caso contrario, los restos son exhumados y se le da un nuevo uso al espacio en donde se encuentra la tumba (Chloe, 2015). Por supuesto, a pesar de estas nuevas circunstancias, las exhumaciones no dejan de ser una acción que requiere ciertos procedimientos jurídicos o administrativos.

2. Clasificación de las exhumaciones

Como ya se ha dejado ver, exhumar un cadáver es una decisión compleja que tiene variables de diferentes tipos, tanto humanas como religiosas y, por supuesto, normativas o judiciales. Incluso, en la toma de decisiones

que involucra una exhumación, es fundamental considerar los aspectos sanitarios, pues, la exposición de un cadáver puede generar problemas en la salud, como ocurre cuando se trata de personas fallecidas el caso de la pandemia de Covid-19. Algunos autores consideran que ciertas afecciones "pueden contraerse por la simple inhalación del patógeno, bajo el riesgo especial durante la exhumación, cuando los restos están secos o durante las operaciones en las que pasan al aire en forma de partículas diminutas ciertas partes del cuerpo humano" (García, 2017: n/p).

Al clasificar las exhumaciones hay que tener en cuenta que estas se deben a motivaciones diversas. Por ejemplo, Salvatierra (2016), considera que una exhumación puede estar movida por razones de higiene, sospechas de delitos, traslados del cadáver, voluntad de los deudos, entre otras. Al respecto y, atendiendo a los objetivos planteados en esta investigación, en lo que sigue se desarrolla un marco conceptual que alude directamente a las definiciones o concepciones más relevantes respecto al tema.

2.1. Exhumaciones Administrativas

Visto en clave histórica, la sepultura es una de las prácticas socioculturales más comunes cuando se trata de cumplir con las normas sanitarias establecidas respecto a la disposición de los cuerpos de las personas una vez fallecidas. Se entiende que este procedimiento, más allá de regirse por el cumplimiento de ciertas disposiciones legales, forma parte también de los rituales que ancestralmente se han seguido en la mayoría de las religiones. Entendida esta situación, resulta más sencillo explicarse la aversión social que puede generar la necesidad de desenterrar un cadáver, es decir, exhumar unos restos humanos.

En el caso de las exhumaciones por motivaciones administrativas, estas involucran procedimientos que, comúnmente, responden a disposiciones locales, asociadas a patrones normativos establecidos en el contexto de los cementerios en que se hayan los restos o, en algunas ocasiones, por razones de salud pública (García, 2017). De acuerdo con este autor, este tipo de exhumación procede cuando los cuerpos deban ser cambiados de sepultura por vencimiento de contrato o, deban ser cremados por iniciativas relacionadas con lo establecido por las autoridades que regulan el proceso de inhumación en un determinado cementerio.

A las exhumaciones de tipo administrativo, también se les conoce como "no judiciales" y su aplicación puede ser orientada por acciones que no involucran específicamente a los deudos de la persona fallecida. De hecho, en la mayoría de los casos, su ejecución está asociada a requerimientos del Estado o la gerencia de los camposantos. Ahora bien, independientemente que exista la necesidad de realizar una exhumación administrativa, está claro que esta no se puede realizar si no ha transcurrido el tiempo mínimo

que, según las leyes respectivas es de 7 años, esa condición es indispensable para que no existan problemas, al momento de proceder.

Así mismo, el proceder administrativamente para realizar una exhumación, no acarrea diferencias al momento de tomar las medidas de cuidado para el manejo de los cadáveres, por el contrario, al ser más responsabilidad gerencial que de los deudos de las personas enterradas, es preciso resguardarse frente a cualquier queja legal que pueda darse. Quienes regentan los panteones públicos o privados, han de considerar la pertinencia de mantener un protocolo actualizado acerca de los procedimientos inherentes a todo acto de exhumación y, en tales circunstancias, velar porque el procedimiento se ajuste a dicho protocolo. A esto se refiere la municipalidad de Loja cuando establece que, "La orden o el permiso de la autoridad judicial y de salud señalarán el propósito de las exhumaciones, las mismas que se realizarán con las debidas precauciones sanitarias" (Alcaldía de Loja , 2021: 13).

2.2. Exhumaciones a solicitud de parte interesada

Al ser un procedimiento que puede involucrar diversas variables, muchas de ellas de carácter subjetivo, las exhumaciones, normalmente se realizan cuando son requeridas por aquellas personas que tienen algún interés particular en su realización. Esto significa que no se pueden realizar, normalmente, sin que exista alguna motivación que esté orientada por la consecución de objetivos planteados en la solicitud que se realice. Obviamente, al requerir el proceso de exhumación, debe haber una o más personas que se hacen responsables del evento en cuestión, manteniendo siempre los preceptos establecidos.

En el caso de este tipo de exhumaciones, lo que suele ocurrir es que los familiares del sepultado, bien sean sus albaceas u otra persona que alegue derecho o interés, plantee la necesidad de trasladar los restos mortales o proceder a su incineración. De acuerdo con García (2017), este tipo de exhumaciones se ejecutan por requerimientos cuyos objetivos implican la posibilidad de obtener nueva información que contribuya al esclarecimiento de algún acto delictivo y que pueda procesarse una vez se hayan realizado las pericias particulares en los restos que fueron desenterrados.

2.3. Exhumaciones judiciales

Judicialmente, las exhumaciones revisten una importancia que no tiene en otras esferas y, precisamente, en este artículo, se ha querido profundizar en esta tipología, manteniendo el foco sobre los procesos y procedimientos que deben realizarse para que esta acción pueda favorecer las acciones que emprendan tribunales o particulares respecto a esclarecer dudas sobre la muerte de la persona exhumada. Es preciso que quienes

tienen la responsabilidad de practicar este tipo de exhumaciones, tengan clara su relevancia para la consecución, bien sea de justicia o de respuestas planteadas por los familiares de los difuntos.

Conceptualmente, la exhumación judicial es un procedimiento que se aprueba y realiza con fines propiamente jurídicos, a solicitud del Ministerio Público y, previa orden y autorización del tribunal o juez competente con el objetivo de obtener datos necesarios y complementarios que ayuden a esclarecer la investigación de cualquier delito o aclarar una sospecha de índole penal. Generalmente se realiza como una valoración que permita obtener información que, de otra manera, sería imposible encontrar, por lo que debe demostrarse que, sin ese desenterramiento, hay probabilidades de dejar un delito impune. Se trata así de una iniciativa muy valiosa en la investigación judicial y médico legal pues, que coadyuva a integrar la carpeta de investigación como un aporte esencial para conocer una verdad de un hecho delictivo.

De acuerdo con Guzmán (2018), los motivos para su solicitud pueden ser:

- Corroborar la causa de la muerte: esto implica que no han quedado claras las razones por las que se produjo la defunción, bien sea porque no se realizó la experticia respectiva, es decir, la autopsia, o porque la misma no se ejecutó con los parámetros establecidos para tal fin. Igualmente, esta motivación puede existir en aquellos casos en los que se realiza una investigación criminalística y surgen evidencias nuevas.
- El no haber realizado una necropsia (omisión) o se haya simulado: relacionada con la motivación anterior, suele solicitarse una exhumación judicial, cuando hay serios indicios de una mala praxis por parte de los médicos forenses y, se considera que, de no haber sido así, se habrían podido generar responsabilidades jurídicas por la muerte de la persona, cuyo cadáver fue sometido a la exhumación. En relación con esto, Palomo y otros (2015), señalan que los forenses deben tener una información completa de las circunstancias en las que se produjo la muerte, para evitar caer en una mala praxis que motive, posteriormente, la exhumación del cadáver.
- Para realizar una identificación plena del cadáver: en casos de accidentes, desastres naturales o de personas que mueren en cautiverio, también es frecuente que se solicite la exhumación con la finalidad que los familiares puedan identificar a la persona muerta. En estos casos, también el procedimiento puede acompañar un proceso investigativo que permita, consolidar la acusación contra quien o quienes hayan cometido un delito, contra la persona cuyos restos humanos han sido exhumados.

- Efectuar estudios complementarios u omitidos al cuerpo como por ejemplo Rx, toxicológicos, ADN: Esto también ocurre en el caso en que se tengan dudas respecto a la importancia que tuvo una determinada lesión para provocar la muerte de la persona. Algunas veces, se puede sospechar que una persona murió como consecuencia de una sobredosis o, si es un accidente, que el mismo, fue producto del estado en que se encontraba la persona. Este as circunstancias son, con frecuencia la motivación para solicitar la exhumación judicial.

Así mismo, hay que tener presente que, en esta modalidad de exhumaciones, no se requiere esperar el tiempo establecido por los protocolos respectivos, se trata de acciones que acompañan a procesos de investigación criminal, en los que es preciso adelantar aquellos procedimientos que los tribunales o jueces, determinen que puedan servir de apoyo a esas investigaciones. Por tanto, la decisión de una exhumación judicial, recae absolutamente en la valoración que se haga del acto, relacionándolo, con sus aportes para apoyar o concluir las investigaciones criminalísticas.

En definitiva, las exhumaciones judiciales, tanto en Ecuador como en otros países de Latinoamérica, son acciones que por su complejidad y las variables que involucran, no se realizan muy frecuentemente, si se les compara con otros procedimientos en el campo de la medicina forense (Durán, 2013). Sin embargo, es común que estas ocurran, cuando los tribunales o jueces la sugieren como necesarias para aclarar dudas o recabar nueva información que pueda ayudar a quienes adelantan una investigación de carácter criminalístico. Por supuesto, en este tipo de iniciativas legales, es imprescindible que se demuestre la necesidad de solicitar la ejecución de la exhumación, una tarea que tienen los expertos.

3. Contexto de Estudio: Cementerio Municipal de Riobamba

La investigación que genera este artículo científico, se plantea una caracterización del proceso de exhumación de cadáveres y su manejo en el contexto particular que representa el Cementerio Municipal de Riobamba. La intención secundaria del trabajo, incluye algunas líneas gruesas para mejorar las exhumaciones de tipo judicial, cuando estas representan un apoyo para el desarrollo de procesos judiciales. Por supuesto, eso se encuentra adherido a la necesidad de plantear consideraciones respecto a la ejecución de las exhumaciones con especial cuidado para salvaguardad la seguridad de todos los presentes que se encuentran en este proceso

Riobamba es una ciudad ecuatoriana, capital de la Provincia de Chimborazo, ubicada a unos 180 km de Quito. “Según las descripciones de

los contemporáneos, Riobamba era una ciudad hermosa, plana, llena de iglesias y conventos, que podían competir con las joyas coloniales de Quito" (Ortiz, 1989: n/p). En la actualidad, la ciudad mantiene un ritmo de vida urbano cuya dinámica forma parte del proceso de crecimiento demográfico general en Ecuador. Desde el punto de vista religioso, como en el resto del país, su población es mayoritariamente católica y, por tanto, reproducen los ritos y cultura funeraria que establecen los cánones del catolicismo cuando se trata de tratar con la muerte y el tratamiento que se les da a sus difuntos.

En este sentido, el foco del estudio se dirige a la dinámica institucional del Cementerio General de la ciudad de Riobamba que también es conocido como cementerio municipal. De acuerdo a algunos documentos, la fundación de este sitio data de 1903, pues, al parecer las tumbas más antiguas ubicadas allí están registradas en esa época. En principio es una construcción a cargo de la iglesia católica que lo administró hasta 1924, aproximadamente, siendo transferido a la municipalidad 1928, desde cuya fecha es utilizado como el lugar en el que se producen las inhumaciones de las personas que habitan la ciudad (Gobierno Municipal de Riobamba, 2021).

4. Protocolos, procesos y procedimientos en la exhumación de cadáveres

El acto de exhumación de un cadáver, independientemente de las razones que lo motiven, lleva implícitas una serie de regulaciones que, aunque pueden variar de un país a otro, generalmente se ajustan a los protocolos internacionales establecidos para tal fin. Obviamente, cuando los objetivos de la exhumación tienen que ver con investigar y apoyar procesos judiciales y administrativos el manejo de los restos humanos contempla especiales cuidados. A esto se refiere la Organización de las Naciones Unidas (ONU), cuando señala que "La recuperación y la manipulación de los restos humanos requieren especial atención y cuidado, incluido el respeto de la dignidad de la persona fallecida y el cumplimiento de las mejores prácticas forenses" (ONU, 2017).

En relación a los protocolos o procedimientos estandarizados para la ejecución de las exhumaciones judiciales, hay que tener en cuenta que, en su mayoría, se producen por las sospechas de una muerte provocada o inducida. En esas circunstancias, algunos parámetros pueden dejarse de lado, debido a la urgencia con la cual se realizan estos eventos. De hecho, las acciones que emprenden en estos casos, los jueces o tribunales, tratan de enmendar errores que se hayan producido, precisamente por las premuras con las que se ejecutan algunas actividades forenses en países como Ecuador, con un alto volumen de muertes violentas que requieren la aplicación de procesos judiciales particulares.

De cualquier manera, es necesario atender los pasos o fases que se tienen que producir o seguir cuando un familiar o un ente jurídico proponen una exhumación. En cuanto a esto, hay que recordar que las exhumaciones tienen un marco normativo que toca las funciones de diversas instituciones, como puede ser ministerios, administraciones municipales o, gerencias en los cementerios respectivos. En Ecuador, las solicitudes de este tipo se realizan ante varias instancias, pero, como se trata de describir el proceso general, según el sitio Gob.ec (2022) se pueden listar los siguientes pasos o fases:

- Solicitud dirigida al Administrador del Cementerio.
- Solicitud dirigida a la Dirección Distrital de Salud.
- Comprobante de pago.
- Presentación de original de cédula de ciudadanía para verificar en el sistema. y certificado de no Adeudar del solicitante.
- Certificado de defunción.
- Autorización de exhumación por parte del Ministerio de Salud Pública.
- Partida de Defunción
- Comprobante de pago por re-inhumación,

Al cumplir con estos requerimientos, se procedería a la exhumación, pero, considerando que estos trámites son de tipo administrativo, lo complejo de estos actos, están en el proceso de extracción y manejo de los cadáveres, es allí donde debe prevalecer los protocolos, tanto sanitarios como judiciales, para cuidar la salud de los actores ejecutantes de la exhumación y, la información que pueda resultar del acto, respectivamente.

4.1. Cuidados en la ejecución de la exhumación judicial

Independientemente de las condiciones en las que se haya producido la muerte, cuando el personal sanitario, judicial o, la propia familia, realiza actividades con cadáveres, es preciso que recuerde los procedimientos de carácter integral que se deben realizar para resguardar la salud y, de ser el caso, preservar las circunstancias que puedan ser relevantes en la identificación de las causas de muerte. En tal sentido, quienes estén involucrados en estas gestiones, han de mantener medidas sanitarias precisas que les protejan de cualquier posibilidad de contagios o generación de enfermedades producto de la manipulación de los restos humanos (Santos, 2018).

- Cuidados sanitarios: el personal involucrado en una exhumación debe cuidar los aspectos que tienen que ver con la bioseguridad.

"En el contexto de precautelar la salud del personal que manipula cadáveres se debe considerar a todos los cadáveres como potencialmente infecciosos y deben aplicarse precauciones estándar para cada caso" (Ministerio de Salud Pública, 2018: 47). Aunque esta cita está referida a Ecuador, lo cierto es que estas condiciones son válidas para el caso ecuatoriano y otros países en Latinoamérica.

- Cuidados de tipo jurídico: puesto que la exhumación judicial suele ser un acto previsto como ayuda para apuntalar procesos judiciales y administrativos, se imponen reservas de carácter legal o procedimental entre los cuales, se hayan el conocimiento del historial clínico y familiar del fallecido; la información de las circunstancias en las que se produjo la muerte y; la utilización del instrumental adecuado para la exhumación (García, 2017).
- Cuidados de tipo administrativo: deben considerarse todos los elementos que, en un momento determinado puedan entorpecer el proceso de exhumación o invalidar sus resultados. Esto significa tener a mano la documentación que exigen las autoridades que regentan el cementerio en el cual se producirá la exhumación, así como, prever la presencia de todos y cada uno de los actores que, legitiman jurídicamente el acto.

En suma, cuando se realiza este tipo de exhumaciones, es necesario que se desplieguen todos los elementos médicos, técnicos y legales que le son inherentes. Si esto no se cuida, se puede incurrir en errores que requieran repetir el evento o resignar sus resultados. "Es necesario, además, desmitificar el ancestral concepto de que con las exhumaciones se resuelven todas las incógnitas que rodean la muerte de una persona" (Salvatierra, 2016: 13).

4.2. Fases del proceso de Exhumación Judicial

Tal como se ha mostrado hasta aquí, para poder proceder a un acto de exhumación es necesario el cumplimiento de una serie de pasos, los cuales garantizaran la ejecución de la normativa legal existente en el país y a nivel internacional. Puesto que las exhumaciones judiciales están orientadas al apoyo de investigaciones criminalísticas, no pueden darse en contextos azarosos o con personas que no tengan la preparación necesaria. Por el contrario, deben mostrar cierta rigurosidad que legitimen sus resultados desde el punto de vista científico-técnico. Entre las fases que reseña García (2017), respeto a esto, se encuentran:

- Justificación por parte de la fiscalía del ministerio público ante el juez, previo conocimiento del caso, de las circunstancias y de la posibilidad de recolectar indicios de interés criminalístico o medico legales que ayuden a una investigación.

- Autorización del tribunal competente quien informara a las partes de las notificaciones de fecha, hora y lugar por parte del tribunal de control a las siguientes personas:
  - Fiscal de ministerio Publico.
  - Integrantes de la defensa pública o privada.
  - Peritos expertos.
  - Gerente del cementerio.
  - Familiares solicitantes.
  - Otras personas que el juez considere prudente su asistencia a este acto.

4.3. Actuación de peritos y expertos en el acto de exhumación

En la exhumación judicial para apoyar procesos judiciales y administrativos, las figuras de los peritos y expertos son fundamentales. Son ellos los que cuentan con una perspectiva adecuada al momento de valorar lo que significa el cadáver como elemento comunicador o analizable que genera información valiosa. Los expertos deben mirar los restos exhumados, mediante una visión integradora que supere la mirada técnica, se trata de pesquisar todos los aspectos que involucra la manipulación del cadáver, manteniendo en todo momento el respeto a la dignidad personal del fallecido y sus familiares.

En este orden de ideas, al procesar una exhumación judicial, es necesario que, una vez que se encuentren debidamente notificados y con los permisos correspondientes los diferentes peritos y expertos, estos realicen una entrevista a los familiares y se proceda a la certificación geográfica del lugar de la inhumación, con límites y coordenadas exactas. Posteriormente el Juez de control indica la orden de excavación explicando los aspectos jurídicos que avalan la acción, poniéndose en contacto con las autoridades locales o institucionales para fijar el día y la hora del procedimiento, al igual que las personas que estarán presentes.

Cumplidas estas fases, se procede a la extracción del féretro, con el cuidado y los instrumentos adecuados para no contaminar las posibles evidencias que pretendan incorporarse al proceso investigativo que demanda la exhumación. Los familiares deben participar en el reconocimiento de las características de la persona fallecida, registrando si se mantienen intactas las características con las que se produjo la inhumación, en cuanto a la vestimenta u otros elementos que se hayan determinado previamente. Hecho esto, los peritos proceden a realizar sus diferentes labores (el patólogo, odontólogo, antropólogo, fotógrafo y técnicos forenses) y de ser preciso pueden tomar los indicios necesarios para evaluaciones ulteriores, previa participación tribunal allí constituido (Bossio, 2015).

5. Aspectos Metodológicos

Desde el punto de vista metodológico, este estudio tiene un carácter mixto observacional, transversal y analítico. En principio se trata de elaborar una síntesis de las exhumaciones judiciales que han ocurrido en el Cementerio Municipal de Riobamba, mediante el acceso a temporal a los archivos de la institución. Es observacional debido a que no se realizara ningún tipo de intervención sobre la población de estudio; transversal ya que de acuerdo al criterio temporal los datos van a ser obtenidos en un solo periodo de tiempo y se extraerán de los archivos de exhumaciones del área administrativa del cementerio de la ciudad de Riobamba mediante un formulario de recolección de datos.

En ese orden ideas el estudio se enfoca en exhumaciones ingresadas a los archivos de información del cementerio general de la ciudad de Riobamba, cuya muerte es de etiología accidental, homicida, suicida, muerte natural. En todo caso, es importante en este registro la identidad del fallecido, la fecha y tipo de exhumación, la identificación de la causa de muerte, el nombre de la persona que solicita la exhumación y, por supuesto, el parentesco o filiación de este, con el occiso.

Por otro lado, como complemento, se obtienen datos mediante la aplicación de un cuestionario con preguntas dicotómicas aplicadas al personal administrativo y operacional del cementerio, para indagar acerca del conocimiento que ellos tienen sobre el tema y, más importante aún, respecto a la aplicación de ciertos protocolos sanitarios y de bioseguridad en el proceso de ejecución de las exhumaciones. Este instrumento es el que puede proveer información valiosa para la elaboración de algunas observaciones y sugerencias en cuanto a la posibilidad de optimizar estos procesos para apoyar las investigaciones judiciales que así lo requieran.

6. Presentación y discusión de resultados

Esta investigación acerca de manejo de exhumación de cadáveres como aporte a procesos ministeriales y judiciales, enfocado en la realidad que se presenta en el Cementerio de Riobamba, ha permitido generar una serie de informaciones que tienen el propósito de describir lo que sucede en este contexto, pero también delinear acciones que potencien las posibilidades de mejorar las condiciones en las que se producen estos eventos en el contexto empírico seleccionado y las circunstancias que rodean el trabajo del personal que labora en este tipo de recintos.

En un primer momento se presentan los datos obtenidos del registro de exhumaciones realizadas en el Cementerio General de Riobamba, en los años 2018 y 2020. Aunque inicialmente se planteó la cobertura de más años,

el acceso a los archivos de 2021 y 2022, no fue posible, sin embargo, en la tabla 1, es posible observar que datos se solicitaron y eso da una perspectiva amplia del comportamiento de la temática en esta zona.

Tabla 1. Datos que incluyen el registro de exhumaciones en el cementerio de Riobamba.

Nº.	Nombre del/ la fallecido/a	Cédula de ciudadanía del/la fallecido/a	Fecha de exhumación	Causa básica de muerte	Nombre del solicitante	Parentesco del solicitante

Fuente: Registro oficial del cementerio.

En esta ficha, aún sin incluir los datos, es posible tener una visión general de la manera en que se estructura la información de las exhumaciones en este cementerio, esa organización permite que se mantenga un control antes y después de realizadas las acciones judiciales o administrativas que llevan al desenterramiento de un cadáver. Está claro que, la sola presentación de la ficha no esclarece la cantidad de exhumaciones que se han dado y las razones por las que estas se han considerado procedentes, en tal sentido, en la tabla 2, se presentan una información más extendida al respecto, resguardando datos personales, por razones obvias.

Tabla 2. Registro parcial de exhumaciones 2018.

Nº.	Nombre del/ la fallecido/a	Cédula de ciudadanía del/la fallecido/a	Fecha de exhumación	Causa básica de muerte	Nombre del solicitante	Parentesco del solicitante
1			04/01/2018	Insuficiencia renal aguda no especificada		Hija
2			09/01/2018	Traumatismos múltiples no especificadas		Hermana
3			26/02/2018	Fractura de fémur, parte no especificada		Hijo
4			17/03/2018	Traumatismos múltiples no especificados		Hija
5			29/03/2018	Asfixia por ahorcadura		Mamá
6			11/04/2018	Anemia		Hermana

7			18/05/2018	Intoxicación Alcohólica		Hija
8			12/06/2018	Edema Pulmonar		Familiar
9			28/08/2018	Falla Multiorganica		Esposa
10			13/09/2018	Infarto Agudo de Miocardio		Hijo
11			31/10/2018	Asfixia por ahorcadura		Familiar
12			17/10/2018	Toxicosis		Cuñada
13			17/11/2018	Sepsis de foco urinario		Hijo

Fuente: Registro oficial del cementerio.

En esta tabla que se expone a manera de muestra, se presentan las exhumaciones judiciales que se presentaron en el Cementerio Municipal de Riobamba en el año 2018, año en el cual se produjeron 128 exhumaciones en total. Como se observa allí, las personas fallecidas, cuyos cadáveres fueron sometidos a este procedimiento tienen causas de muerte diversas, pero independientemente de esas causas, se consideró pertinente proceder al acto de exhumación. Igualmente, en los datos destaca el hecho de ser, básicamente, familiares directos, bien sea hijos o padres, quienes presentan la solicitud de la acción.

La investigación también obtuvo resultados en cuanto a las exhumaciones ocurridas en el año 2020. En ese año el número de exhumaciones practicadas en el cementerio de Riobamba estuvo por debajo de las realizadas en 2018, pues solo se realizaron 85. Los datos recurrentes que permanecen aquí es la diversidad de causas de muerte, así como el parentesco de los solicitantes que, en su mayoría son los hijos de los fallecidos. En la tabla 3, se presenta una muestra de las exhumaciones ocurridas en 2020.

Tabla 3. Registro parcial de exhumaciones 2020.

Nº.	Nombre del/ la fallecido/a	Cédula de ciudadanía del/la fallecido/a	Fecha de exhumación	Causa básica de muerte	Nombre del solicitante	Parentesco del solicitante
1			04/12/2020	Enfermedad de Addison		Hija
2			03/01/2000	No registra		Familiar
3			24/12/2020	No registra		Hijo

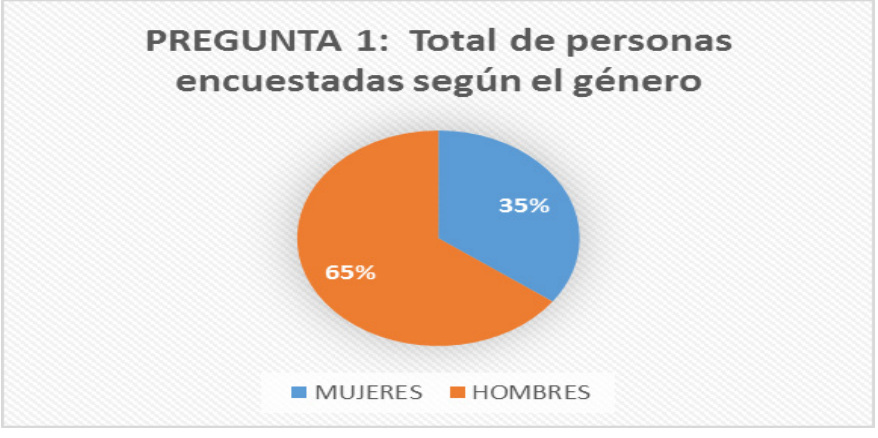
4			31/12/2020	No registra		Hijo
5			30/12/2020	Disparo con arma de fuego		Hijo
6			29/12/2020	No registra		Hija

Fuente: Registro oficial del cementerio.

En este año, el número de exhumaciones fue menor, pero se mantienen los protocolos administrativos en cuanto al registro de los datos que deben suministrarse al momento de proceder a la exhumación. Es importante el detalle que se observa en la ficha, en cuanto a la identificación de la causa de muerte. Cuando no se produce una autopsia o esta se realiza en términos no adecuados, es obligatorio dejar reseñada esa característica porque, justamente puede resultar de ahí, la justificación para que se haga la exhumación.

Ahora bien, aparte de estos datos del registro de exhumaciones, también se tienen los resultados que arrojó la aplicación del cuestionario a las personas que laboran en el departamento del cementerio que autoriza y ejecuta las exhumaciones. Puesto que la información es general y en algunos casos muy abundantes, en lo que sigue, se presentan una suerte de resumen de esos hallazgos. La gráfica 1, presenta resultados en cuanto al género de los trabajadores de esta sección.

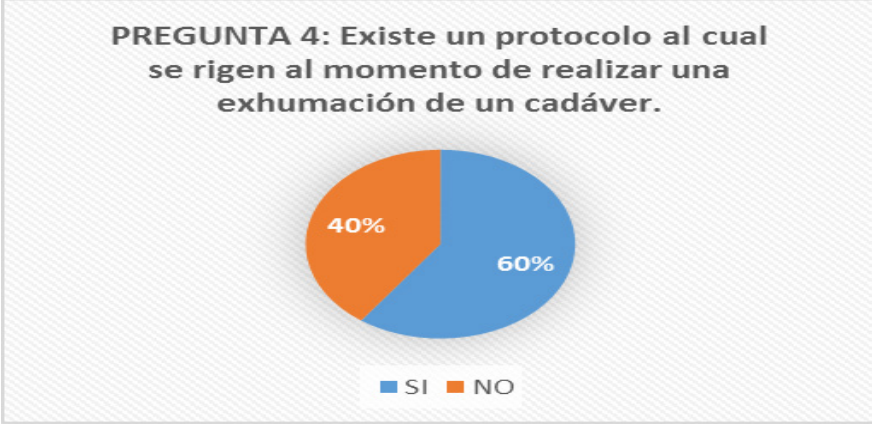
Gráfica 1. Genero de los trabajadores en el área de exhumación



Fuente: Elaboración propia.

La mayoría de los trabajadores en esta sección son hombres, quienes se desempeñan como obreros, peritos y técnicos. Las mujeres que laboran ahí, tienen la responsabilidad administrativa y en algunos casos trabajan atendiendo al público o, llevando a cabo el registro de las inhumaciones y el procesamiento de las exhumaciones. Específicamente en la ejecución de las exhumaciones, existe el trabajo especializado que lo realizan los médicos forenses y los técnicos, sin embargo, el mismo personal obrero que se encarga de la labor de excavar o desenterrar, debe ser instruido para que no exista la posibilidad de cometer errores que puedan invalidar la búsqueda o los hallazgos que derivan de la exhumación.

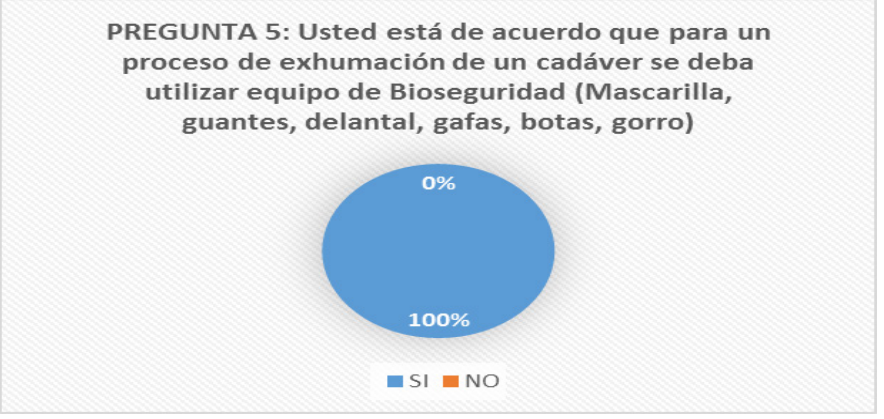
Gráfica 2. Existencia de protocolos de exhumación.



Fuente: Elaboración propia.

Aunque ´pareciera ilógico, porque es algo que está en la ley y debe cumplirse, al personal encuestado también se les pregunto acerca de la existencia o no, de protocolos para el momento de las exhumaciones. Llama la atención al respecto que el 40% de ellos manifestó no saber si este tipo de protocolos existe, esto es grave, en el entendido que ellos son los encargados de velar para que los requisitos de ley se cumplan y, como mínimo deben tener claro ese procedimiento.

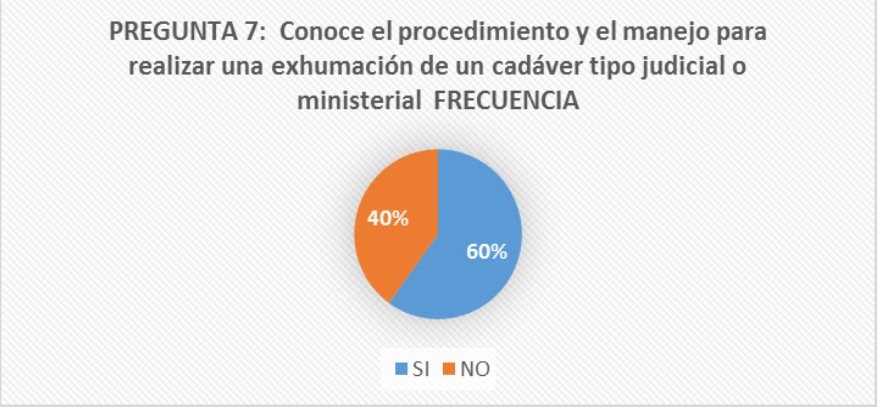
Gráfica 3. Acuerdo sobre el uso de equipamiento de bioseguridad.



Fuente: Elaboración propia.

En lo que respecta al equipamiento de bioseguridad para la ejecución de las exhumaciones, la totalidad de los encuestados manifestó acuerdo con el cumplimiento de este, así como con la labor de asistencia que cumple la gerencia del cementerio para esa dotación, considerando que sin ello no se podría adelantar ninguna exhumación.

Gráfica 4. Conocimiento del procedimiento en exhumaciones judiciales



Fuente: Elaboración propia.

Finalmente, considerando el objetivo de investigación planteado en este trabajo, se interrogó al personal encuestado, acerca de los conocimientos que poseen sobre los procedimientos inherentes al proceso de exhumación de un cadáver por orden judicial o criminalístico. Tal como se muestra en el gráfico 4, aunque un 60% de ellos afirmó tener conocimientos al respecto, el 40% respondió negativamente. Este último es el dato llamativo porque, tratándose de trabajadores que tienen a su cargo el departamento que apoyaría los procedimientos judiciales, tendrían que ser personas familiarizadas con el tema.

Ahora bien, hay que estar claros en que se realizó una encuesta que busca una perspectiva global del tema, es posible que, en esta última respuesta, algunos de los trabajadores hayan respondido negativamente, porque ciertamente, en el Cementerio Municipal de Riobamba, no existe un protocolo particular para el caso de las exhumaciones, no obstante, la institución se apega a los estándares normativos señalados por las instancias nacionales e internacionales sobre el tema.

Conclusiones y recomendaciones

El análisis precedente, más allá de su pertinencia criminalística, permite tener una perspectiva holística de los problemas que pueden generar, ciertos procesos forenses cuando no se siguen los protocolos estandarizados. Una necropsia con errores, el levantamiento e inhumación de un cadáver sin los cuidados que ello amerita, cuando la muerte no ha sido natural, entre otras cosas. En lo que respecta a la caracterización de los procesos de exhumación judicial en el Cementerio Municipal de Riobamba, el estudio permite corroborar que es una acción que produce con frecuencia y, al menos en los dos años tomados como referencia, se realizaron más de 200 exhumaciones.

Así mismo, en lo que se refiere al cumplimiento de los protocolos sanitarios y de bioseguridad al momento de exhumar un cadáver, se pudo evidenciar que la institución provee el equipamiento necesario para realizar las tareas que incumben a una exhumación judicial y, el personal que tiene a su cargo este tipo de actividades, se encuentra consiente de la necesidad de observar los cuidados que al respecto establece la normativa.

Sin embargo, es conveniente que la gerencia del cementerio promueva actividades de capacitación constante del personal, en lo atinente a los factores que involucra una exhumación judicial pues, algunos de los entrevistados para este estudio, manifestaron desconocer estos factores. Aunque, la mayoría se muestra receptivo al planteárseles la posibilidad de formarse en esa área y contribuir con los fines jurídicos y judiciales que puede tener la exhumación de un cadáver.

Es necesario atender los aspectos que regularmente interfieren en la idoneidad de la exhumación de restos humanos que están involucrados en acciones de búsqueda de justicia. La capacitación debería prever las funciones que cumplen los actores principales en una exhumación, desde los obreros que realizan el desenterramiento de los restos, pasando por los médicos forenses, hasta los familiares o solicitantes de la exhumación. Lo ideal, en todo caso, es que la dirección del cementerio pueda validar un protocolo interno que regularice o estandarice estos procedimientos, vinculados a los que ya existen en el contexto nacional.

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Formation of a security environment for personnel management of socio-economic systems before and during the war: Legal aspect

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Abstract

The aim of the research was to examine the legal aspects of formation of a security environment for personnel management of socio-economic systems, before and during the war in Ukraine. The following methods were used to support the set objective: induction and deduction, comparison and systematization. Military actions on the territory of Ukraine create a valuable information base for considering changes in personnel management through further external influences, in particular, in terms of transformation of the labor market due to the strengthening of labor migration processes, because after February 24, 2022 there is a significant number of refugees and internally displaced persons. The processed information allows to conclude that, the nature of certain threats in January 2022 and January 2023, together with the formation of a holistic view of the sources of occurrence and intensification of the impact of each threat based on the generalization of analytical materials, allowed to form the basis for making changes to personnel management, to maintain the viability of enterprises despite the materiality of legal changes in the labor market in the framework of the war.

Keywords: security environment; personnel management; legal aspects; socio-economic systems; war in Ukraine.

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Formación de un entorno de seguridad para la gestión del personal de los sistemas socioeconómicos antes y durante la guerra: Aspecto legal

Resumen

El objetivo de la investigación fue examinar los aspectos legales de formación de un entorno de seguridad para la gestión del personal de los sistemas socioeconómicos, antes y durante la guerra en Ucrania. Como soporte del objetivo plateado se emplearon los siguientes métodos: inducción y deducción, comparación y sistematización. Las acciones militares en el territorio de Ucrania crean una base de información valiosa para considerar cambios en la gestión del personal a través de mayores influencias externas, en particular, en términos de transformación del mercado laboral debido al fortalecimiento de los procesos de migración laboral, porque despues el 24 de febrero de 2022 hay un número significativo de refugiados y desplazados internos. La información procesada permite concluir que, la naturaleza de ciertas amenazas en enero de 2022 y enero de 2023, junto a la formación de una visión holística de las fuentes de ocurrencia y la intensificación del impacto de cada amenaza basada en la generalización de materiales analíticos, permitió formar la base para realizar cambios a la gestión de personal, para mantener la viabilidad de las empresas a pesar de la materialidad de los cambios legales en el mercado laboral en el marco de la guerra.

Palabras clave: entorno de seguridad; gestión de personal; aspectos legales; sistemas socioeconómicos; Guerra en Ucrania.

Introduction

The high dynamism of economic processes entails the transformation of the activities of each enterprise, which is directly manifested in a change in emphasis in personnel management as the most valuable resource, the qualitative parameters of which determine not only the possibility of achieving the set tactical and strategic goals, a competitive position in the market, but also trends in the existence and development.

At the same time, we are not talking about a labor force that is endowed with certain professional skills and is passive in performing certain tasks. For modern socio-economic systems, only highly qualified employees are valuable who are ready to pay significant attention to the development of their personal human capital, show creative thinking, are able to solve previously non-existent problems, and are able to actively participate in the development and adoption of managerial decisions not only of an operational, but also of a strategic nature.

The above fully corresponds to the nature of the changes caused by the direction towards the development of Industry 4.0, when there is a decrease in the need for physical unskilled labor, but there is a growing demand for intellectual and involving the use of information technologies for deep interaction with machines within the limits of increasing the pace of robotization. and automation.

Along with an attempt to attract and create favorable legal and security conditions for creative work, the fact that the labor force is not only the most valuable resource, but also the main source of threats to the economic and legal security of the socio-economic system remains out of focus. Technological advancement has not contributed to the reduction of such threats, but has provoked a modification of their content, an example of which may be an increase in losses due to the disclosure of trade secrets and the damage from the release of workers who are carriers of human capital, the development of which the employer has contributed to (Ashenden, 2008; Kormych *et al.*, 2020).

The active phase of hostilities that began on February 24, 2022 on the territory of Ukraine is quite an interesting moment to track the changing security aspects in relation to personnel management in the face of a sharp increase in external threats that directly affect the labor market due to a significant number of refugees and internally displaced persons. After COVID-19, the improvement of personnel management should be carried out based on the possible consequences of a military confrontation not only in Ukraine, but also in other countries based on the experience gained.

1. Materials and methods

The issues of adapting personnel management of socio-economic systems in conflict situations, in particular external large-scale and prolonged aggression using means of destruction and destruction of civilian infrastructure, have been little studied, but it is necessary given the increased instability in human development under the pressure of irreversible changes in the natural environment, population and reduction of natural resources necessary for the continuation of the existence of mankind (Mishra, 2021; Sopilnyk, 2020; Zhavoronkova, 2016).

To determine the aspects of security with the further development of management technology, the following methods were applied: induction and deduction, comparison and systematization - to characterize the modern understanding of the essence of personnel management; synthesis and analysis - to identify key threats related to the management of socio-economic systems; morphological analysis - to clarify the directions in personnel management regarding the main stages of interaction between an

employee and socio-economic systems; graphic - for clarity of presentation of the results of the study; abstract-logical - for the formation of theoretical generalizations and conclusions of the study.

2. Literature review

Technological advancement, manifested in the strengthening of trends and acceleration of robotization, automation and the more active use of artificial intelligence, did not overshadow, but provided a new impetus for theoretical research in the field of personnel management. The labor force has been and remains a key tool for ensuring the competitiveness and development of every socio-economic system.

Not the quantity of standardized products produced, but the ability to meet individual demand, which requires creativity and creative approach, becomes the basis for the competitive position of socio-economic systems in a geographically unlimited market. Therefore, there is a growing need to improve the efficiency of personnel management, taking into account all the requirements, the key of which were and remain those related to business security (Diorditsa, 2021; Shevchuk and Mentuh, 2020; Adil, 2020).

Today's understanding of personnel management is based on certain points cited with some clarification, including: 1) process; 2) activities; 3) systems (a set of actions). In accordance with the first approach, we are talking about constant changes in the interaction of socio-economic systems and the employee, contributing to the achievement of goals (Topolewski, 2020; Kopetyuk, 2013; Podobnij, 2015).

As scientists note, management is characterized by a number of specific moments, one of which is the object of management itself, that is, the applicant for the workplace and the employee. The complexity of management is determined by the very nature of a person as a living being, whose behavior in each situation is unpredictable, and personal interests act as an impetus for action or inaction. In such conditions, personnel management should be flexible and involve the constant formation of a holistic picture of the changes that take place both in the socio-economic system itself and in the labor marke (Waolowkski, 2022).

3. Research Results and Discussions

It can be argued that, taken together, all three approaches create the necessary basis for understanding personnel management and we have used them to detail the socio-economic systems focused on the manufacture of competitive high-tech industrial products (Fig. 1).

Figure 1. Subsystems corresponding to the main stages of interaction between socio-economic systems and an employee. Source: Authors.

In a graphical form, we both detailed the main priorities of personnel management that are relevant in the conditions of the formation of Industry 4.0, and supplemented with several important points that lead to the consideration of security aspects. The conditional division of workers into several groups according to their activity in the development and production of high-tech industrial products is substantiated. Such a division may include the following groups:

- employees («valuable»), endowed with professional and intellectual competencies, able to generate new ideas, creative in solving problems, aimed at self-improvement, interested in career growth, etc.;
- workers («useful»), characterized by activity, high labor productivity, the ability to acquire new skills;
- the passive part of the personnel ("necessary"), focused on the fulfillment of the tasks set for receiving material rewards.

Such a conditional division is aimed at differentiation in the application of personnel management methods, and, consequently, a more rational use of resources in achieving the goals. It is expedient to apply the maximum stimulation (moral and material) to the first group of workers ("valuable"),

who actually play the role of a locomotive. The second group ("useful") imitates the actions of the leaders, while the third group is passive and in its actions is guided only by the possibility of satisfying its own interests. Such a classification also contributes to the consideration of security aspects, when each employee not only benefits, but can also be a source of threats, and therefore cause losses and damage by their actions or inaction.

To clarify this important point, in January 2022, a survey was conducted among employees of 50 industrial socio-economic systems (the number of employees is from 50 to 200 people), who operate in different cities of Ukraine. The total number of people interviewed was 260, since within each socio-economic system responses were received from different groups of workers, including managers at all levels of management. The result of the survey was the identification of those threats that arise in the field of personnel management (in % of the total number of respondents):

- losses due to fraud and abuse of office (54%);
- lack of personnel reserve (31%);
- the absence or low efficiency of the personnel certification system (28%);
- imperfection of the employee development program (32%);
- low effectiveness of the career development system (30%);
- high level of staff turnover (35%);
- gender incompatibility and inequality in the team (24%);
- low level of qualification of workers (48%);
- insufficient level of labor motivation (73%).

Among labor migrants, the majority were men under 40 who had a secondary technical or higher technical education. The main motive was a significant difference in wages in Ukraine and other EU countries. The basic model of labor migration involved leaving for short periods of time, that is, seasons, to perform specific work under prearranged conditions with a foreign employer. A labor migrant spent three to four months outside the country, returned to Ukraine for one to two months, and then left to do other work.

During the year, up to five cycles occurred, which made it possible to receive a higher average annual income than in Ukraine and at the same time maintain contact with family members. The massive nature of such a process changed the Ukrainian labor market in terms of the limited supply of skilled labor for men at the most active age for work, which hampered industrial production not only within a separate socio-economic system, but in the country as a whole.

A negative consequence of labor migration was also its transformation into emigration. In 2021, Ukraine lost a record number of its population due to migration abroad, when 600,000 people left and did not return. He had the fact of family reunification by introducing their children and other family members, that is, younger and able-bodied persons, to labor migrants, which increased pressure on the domestic labor market in Ukraine due to a decrease in supply.

Along with labor migration, the labor market is also negatively affected by the decrease in the population of Ukraine. The largest number of Ukrainians was recorded on January 1, 1993 in Ukraine, when there were 52.2 million people, but over the next thirty years there was a decrease by 16.8 million, that is, by 32.2%. Economic instability, social and political tension, the military aggression of the Russian Federation, which began in 2014, led to a demographic crisis, in particular, in 2021 the birth rate was 7.5 per 1,000 people, when the death rate, respectively, was fixed at 14 ,8.

Summarizing, it can be argued that until February 24, 2022, the primary source of most threats was a combination of demographic changes in the external environment and the inability to respond to their impact within each socio-economic system. The availability of the opportunity to travel outside the country for work, the level of payment for which is 7-10 times higher, with a decrease in the population, and, accordingly, in the supply of labor, created the prerequisites for the existence of a labor market dominated by the interests of employees.

Employers, who for the most part were focused on the production of products and the provision of services in the domestic market, were not able to significantly raise the level of wages, that is, to compete for highly qualified and young workers with foreign companies. Under such conditions, the majority of participants in the domestic market were: inexperienced beginners who acquired the necessary skills with subsequent consideration of the possibility of leaving the country; older persons who had certain physical limitations or family circumstances that prevented them from participating in labor migration. The above is not only a statement of fact, but rather the basis for understanding the conditions of personnel management, which needed maximum flexibility in countering threats, the sources of which were the external environment.

We propose to single out such subsystems within the framework of personnel management that correspond to the main stages of interaction between socio-economic systems and an employee (Fig. 2).

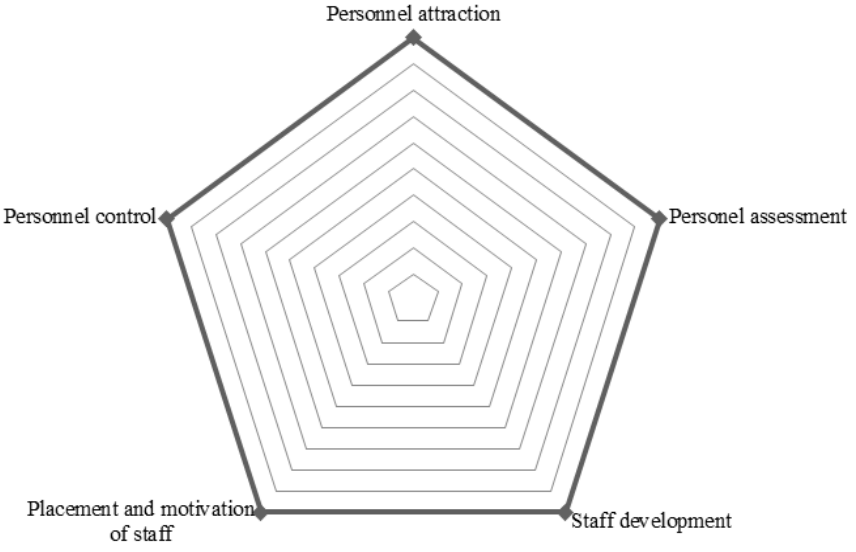

Figure 2. Subsystems corresponding to the main stages of interaction between socio-economic systems and an employee. Source: Authors.

It should be emphasized that such structuring allows considering possible threats at a higher level, that is, at the highest level of detail. We took as a basis the threats that took place before the active phase of hostilities, and were also updated after February 24, 2022. In addition, we identified those that occur in individual cases, that is, of a less massive nature, but before the elimination of which you need to be prepared in the conditions of each socio-economic system.

Accordingly, in the future, as a technology within each subsystem, we present a list of possible threats to specify areas in personnel management, which allows them to be neutralized. In addition, within the limits of each subsystem, certain measures should lie, the implementation of which should ensure differentiation with respect to individual groups of personnel ("valuable", "useful", "necessary"), as noted above.

Engagement of staff. Threats: selection of applicants and selection; shortage of qualified personnel; lack of a personnel reserve Directions of personnel management: changes in personnel policy, changes in the personnel management strategy, adjustment of personnel planning taking into account security aspects; development of a comprehensive system for checking candidates for jobs; analysis of personnel needs of socio-economic systems and monitoring of the regional labor market.

Personel assessment. Threats: appointing candidates who do not meet the qualifications; lack of incentives for self-improvement and maintaining the required qualification level. Directions of personnel management: development and improvement of the personnel assessment system (knowledge, skills, mastery); personnel loyalty analysis; periodic review of the set of competencies for the displacement of positions.

Staff development. Threats: low level of qualification of workers; inefficient system of personnel training and development; decrease in labor and creative activity; inhibition of innovative processes. Directions of personnel management: organization of training and advanced training of personnel; development of a system of incentives for self-improvement; organization of a system of service and professional promotion of employees.

Placement and motivation of staff. Threats: decrease in loyalty; workers' dissatisfaction with the level of wages; decrease in labor productivity; negligent attitude to the performance of official duties; lowering the level of organizational culture. Directions of personnel management: improvement of the personnel motivation system through the development of material and moral incentives; development of social protection of workers.

Personnel control. Threats: financial loss due to fraud and malpractice; loss of human resources; the spread of the negative impact of employees belonging to the risk group; lowering labor discipline and internal control; the emergence and aggravation of conflicts between employees. Directions of personnel management: management of industrial conflicts; socio-psychological diagnostics; detection of facts of fraud, theft, abuse of official position.

Release of staff. Threats: disclosure of trade secrets; loss of links between generations; loss of heredity transfer of knowledge; non-replacement of posts. Directions of personnel management: development of technology for the dismissal of employees; reduction of risks of loss of confidential information.

Despite significant changes in the labor market before and after February 24, 2022, personnel management should be focused both on creating favorable conditions for the effective use and development of personnel, in particular those persons who belong to the "valuable" and "useful" groups, as well as opposition threats arising from the actions or passivity of individual workers.

Conclusions

The military actions in Ukraine provide the necessary analytical basis for tracking changes in the labor market with further improvement in

personnel management. Until February 24, 2022, the Ukrainian labor market was characterized by the dominance of the positions of the labor force due to the demographic crisis and active labor migration to the EU countries, where the level of wages was 7-10 times higher when performing work of a similar complexity.

The hostilities provoked a significant number of refugees and internally displaced persons with a sharp increase in unemployment, but also a shortage of highly skilled labor for industrial socio-economic systems. These two stages are partially characterized by similar threats, which requires a revision of the foundations of personnel management based on the developed technology, which is based on the classification of employees into groups ("valuable", "useful", "necessary") and the allocation of the main subsystems ("attraction of personnel", "Personnel assessment", "Personnel development", "Staff placement and motivation", "Personnel control" and "Personnel release"). Integrity in understanding the processes associated with the emergence and impact of key threats contributes to the maximum flexibility of personnel management with the subsequent maintenance of competitive advantages due to this.

The consequences of the hostilities in Ukraine were also reflected in the changes in the labor market in the EU countries due to the influx of a significant number of refugees and the return of men in the opposite direction in accordance with the mobilization program for the defense of their country. Therefore, the results obtained regarding the list of threats to the Ukrainian industrial socio-economic systems can be used to adjust the personnel management policy of employers in the EU countries.

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Non-state social security: International legal comparative experience

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Abstract

Ukraine's social security system faces significant difficulties. The challenges of the war add to the previously existing economic and demographic problems. The painful issue of ensuring social standards of the population in conditions of shortage of funds brings to the forefront ways to reduce the burden on budgets. In this regard, non-state social security is of great importance. In view of this, it is important to study the international experience of the functioning of non-state social security systems. The purpose of the work was to analyze the effectiveness of the Ukrainian system of non-state social security in comparison with the corresponding systems of other countries and to study international standards. The methodological basis of this research used such methods as: historical, statistical, comparative legal, formal legal and emergency method. In the conclusions of the case, the peculiarities of the non-state pension system of Ukraine are explained and the problems it faces are investigated. Several mechanisms that can lead to an increase of its efficiency and popularity among the population are considered. It was remarked that it is necessary to introduce changes, including through the implementation of international legal documents.

Keywords: non-state social security; non-state pension funds; international social security; investment portfolio; non-state organizations.

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Seguridad social no estatal: Experiencia jurídica internacional comparada

Resumen

El sistema de seguridad social de Ucrania enfrenta importantes dificultades. Los desafíos de la guerra se suman a los problemas económicos y demográficos previamente existentes. El doloroso tema de asegurar los estándares sociales de la población en condiciones de escasez de fondos, pone en primer plano las formas de reducir la carga sobre los presupuestos. En este sentido, la seguridad social no estatal es de gran importancia. Ante esto, es importante estudiar la experiencia internacional del funcionamiento de los sistemas de seguridad social no estatales. El propósito del trabajo fue analizar la efectividad del sistema ucraniano de seguridad social no estatal, en comparación con los sistemas correspondientes de otros países y estudiar las normas internacionales. La base metodológica de esta investigación se sirvió de métodos, como: histórico, estadístico, legal comparado, legal formal y el método de emergencia. En las conclusiones del caso, se explican las peculiaridades del sistema de pensiones no estatal de Ucrania y se investigan los problemas a los que se enfrenta. Se consideran varios mecanismos que pueden conducir a un aumento de su eficacia y popularidad entre la población. Se remarcó que es necesario introducir cambios, incluso a través de la implementación de documentos legales internacionales.

Palabras clave: seguridad social no estatal; fondos de pensiones no estatales; seguridad social internacional; cartera de inversiones; organizaciones no estatales.

Introduction

Stable economic development of the country is impossible without the formation of a socially secure society. It so happened that the major source of financing the social protection system of the population of Ukraine was the funds of the state and local budgets, as well as the mandatory state social insurance funds.

However, now, in the midst of a bloody and destructive Russian aggression in Ukraine, there is no need to talk about a stable social security system. The war started by Russia against Ukraine has many negative consequences both for Ukraine and for the world in general (Tkalych and Arbelaez Encarnacion, 2022), one of which is a threat to the state social security system. In this context, non-state social security systems, in particular - accumulative pension funds, are of particular importance.

The development of non-state social (pension) provisions in Ukraine was conditioned by various factors. Increasing demographic aging of the population leads to an imbalance of the demographic burden on the working population.

In addition, the transition to a market economy led to the rejection of the main principles of the solidarity pension system, namely: "working people should provide money for those who are not working"; a decrease in the economic activity of the working population; spread of shadow employment and shadow incomes; the availability of a significant part of working benefits from the payment of contributions to the Pension Fund; low level of wages, high level of arrears for the payment of contributions to the mandatory state pension insurance.

The specified factors led to the need for fundamental changes in the pension system and the formation of a non-state pension system, which constitutes the third level of the pension system. The basis for the development of the system of non-state pension provision is the imperfection of the system of mandatory state pension insurance and pension provision. Even before the start of significant reforms in Ukraine, scholar Sydenko (1999) rightly noted that when creating a system of social protection in Ukraine, adequate to the principles of a market economy, it is necessary to carefully examine the world experience of the functioning of social protection systems in the most developed countries of the world, where they have been operating since the end of the last century.

Unfortunately, in Ukraine, unlike in other countries, the role of non-state financial institutions in ensuring the social protection of the population remains insufficient, and their potential in improving the well-being of Ukrainians is underestimated.

It is worth noting that under modern conditions, social policy reform is a critical issue for the EU as a whole and for individual EU member states. This is connected with migration, and economic and social problems, which have worsened recently. The above causes the need to change the priorities of the social policy of the EU member states and to direct it not only to ensure the social protection of citizens but also to overcome poverty, improve living and working conditions, ensure a high level of education, etc. In connection with the above, at the current stage of the development of Ukraine as a legal welfare state, its social policy should be aimed at citizens' realization of their constitutional rights, including the right to social protection.

Given the above, it is essential to investigate the existing features of non-state social security, including non-state pension security in the context of international legal comparative experience.

The article examines the essence of non-state social security and some forms of its implementation in domestic legislation, among which the leading place is occupied by the system of non-state pension security.

The investment portfolios of the primary non-state pension funds and regulatory regulation of investment restrictions of certain types of assets of non-state pension funds are analyzed in detail. The possibility of revising some types of restrictions in the direction of lowering their share, in particular regarding state securities and deposits in banks, was emphasized. The international experience regarding the amount of remuneration of non-state pension funds, which is collected from the funds of the trustees of the fund for relevant services, is studied separately.

Prospective directions for the reform of non-state social security institutions in Ukraine were noted.

1. Theoretical Framework or Literature Review

During the study of the international legal experience of non-state social security, the works of the following researchers were analyzed: Bond, Tartasyuk, Datsyuk, Dmytrenko, Tyshchenko, Melnyk, and Medvid.

A USAID report by Bond (2018) examines the relationship between pension reform and economic growth, labor markets, and capital market development. It highlights the main principles and considerations that should guide the discussion of pension reform in Ukraine. The report touches on several important issues of building a fair and balanced pension system (replacement ratios, the number of contributions, payment adjustment mechanisms, gender issues) and discusses the issue of financial sustainability of the solidarity system.

Another USAID report (2019) provides a brief overview of non-state pension provision in Ukraine and the problems of its development, emphasizing the importance of the main factors that determine the indicators of the non-state pension provision system: the size and regularity of payment of contributions, investment income, and operating expenses, emphasizing the importance of the main prerequisites positive results of the non-state pension system: a) political and macroeconomic stability; b) constant support of the general reform of the pension system; c) sufficient institutional capacity for regulation and supervision; d) strong financial infrastructure and availability of reliable financial instruments.

The work of Tartasyuk (2019) analyzed the number of participants, as well as the shares of assets in the investment portfolios of the largest non-state pension funds in Ukraine.

The structure of depositors by subject and prospects for the development of non-state pension funds is considered in the work of Datsyuk (2019).

The work of Dmytrenko (2022) investigated the peculiarities of the social protection of citizens in the conditions of the European integration of Ukraine. The components of the social protection mechanism, which includes, in particular, financial, legal, and organizational support, are defined.

Tyshchenko (2015) researched the peculiarities of the legal regulation of social security in certain countries of the European Union, and studied the functioning of the legal mechanism of effective implementation of social security of vulnerable population groups in foreign countries.

Melnyk (2018) examines key questions regarding the trends in the implementation of international (European) social standards in the process of legislative provision of social protection for persons with disabilities. The necessity and importance of the international and European integration of Ukraine into the international community and European community were noted. It is emphasized that the social protection of persons with disabilities is one of the most complex social and legal phenomena.

The main problems regarding the proper functioning of social protection for persons with disabilities, legislative provision, and implementation of international social standards are revealed. Key aspects of international and European social standards are noted.

The work of Medvid (2018) examines international legal standards in the field of non-state social security. Special attention is paid to international legal acts ratified by the state relatively recently (ILO acts, European Social Security Code). The author's proposals for improving the current legislation in the researched area are highlighted.

The problems of social security of people in the context of the upheavals of the current moment - from the COVID 19 pandemic to the armed aggression of Russia against Ukraine - are considered in the work of Tkalych, Kolomoiets, Davydova (2022).

2. Methodology

The historical method of learning social processes makes it possible to investigate the emergence, formation, and development of processes and events in sequence to establish regularities and contradictions. The use of the historical method made it possible to trace the development of non-state social security in Ukraine.

In particular, the study of a certain historical period associated with the adoption of the legal framework in the form of the Law of Ukraine "On Mandatory State Pension Insurance" (Law 1058-IV, 2003) and the Law of

Ukraine "On Non-State Pension Insurance" (Law 1057-IV, 2003) allows tracing the origins of the modern social security system of Ukraine. Thanks to the historical method, it becomes clear that the process of development of non-state social security began quite a long time ago, but until today it has not reached its logical conclusion following the modern challenges facing social security agencies.

The process of statistical research is quite complicated since there is a fairly large number of statistical regularities, which turn out to be a suitable method of learning about social processes. By applying a statistical method, it was possible to analyze how non-state pension funds dispose of available resources, namely, what share in the investment portfolio is occupied by such financial instruments as government securities, bank deposits, and current accounts, bonds of Ukrainian enterprises, shares of Ukrainian issuers, real estate objects, bank metals and securities of foreign issuers. In addition, the statistical method made it possible to establish the largest non-state pension funds in Ukraine by the number of participants, which provides information on the popularity of such savings among the population.

The application of the comparative legal method made it possible to compare the norms, institutions, principles, and practices of their application in different countries. The specified method is used to borrow foreign experience in the legislative process, international unification of law, interpretation of national legal norms, and raising the level of legal education and legal culture. Comparative legal studies are actively used in the science of international law and branch legal sciences.

The comparative legal method was used in the analysis of the experience of Poland, the United States of America, Great Britain, and other countries. The comparative legal experience made it possible to compare the amount of payment for the services of non-state pension funds, thanks to which it is possible to conclude the extent to which the cost of such services in Ukraine is justified.

Due to the connection with the rules of logic and language, the formal-legal method helps to define legal concepts, make classification and systematization, and create a coherent conceptual system. It provides an opportunity to study in detail the technical-legal and regulatory aspects of the law. The formal-legal method allows you to study the provisions that are highlighted in acts of national legislation and the main international legal documents that are implemented or should be implemented in the sphere of social protection of Ukraine for effective functioning of non-state social security.

The emergency method allows you to see the social security system as a whole with its shortcomings and advantages. The essence of this method is

that the properties of the whole can be greater than the sum of the properties of its parts. In the process of increasing (combining) subsets or components into larger functional units, these units acquire additional properties that were absent before. These properties are called emergent.

3. Results and Discussion

3.1. International Legislation (Poland, Great Britain, Germany, USA)

Legislation of different countries may set restrictions on some types of investments or, on the contrary, oblige to make certain investments in a certain amount. For example, the Polish government prohibited the State Pension Fund (SPF) from investing in government bonds and obliged it to invest most of its assets in shares. The scheme worked in 2016, Poland demonstrated the highest return on pension fund investments of 8.3% (MK web-site, 2021).

A significant share of bank deposits and government bonds in SPF portfolios contradicts the goals of diversifying the risk of pension income and raises more and more questions about investment management and storage of pension funds, the justification of charging excessively high fees for SPF administration. In addition, the lack of diversification of the investment portfolio after 13 years of operation of the SPF system raises questions about the legitimacy of the accumulation system. Indeed, the system of the third level in Ukraine is a system of SPFs, which have almost the same structure as the investment portfolio (Bond, 2018).

If the asset management company follows a cautious policy and chooses high-yielding instruments, the capital of NPF participants can significantly increase. In the case of investing savings in high-risk instruments, future retirees may even lose money. Compared to bank deposits, the state does not guarantee contributions to pension funds. We would like to remind you that the Deposit Guarantee Fund of natural persons guarantees the payment of deposits, in the event of bank bankruptcy, in the amount of up to UAH 200,000 (Law 4452-VI, 2012).

Despite the similarity of the structure of investment portfolios, fees for services in non-state pension funds can differ significantly. The limit of annual expenses that non-state pension funds can deduct directly from the accounts of participants is set by the National Financial Service Commission at the level of 7.0% of the net value of the pension fund's assets. This is a very high price for the services provided (International Monetary Fund, 2017). In connection with this, most non-state pension funds legally retain a very high fee for the provision of relevant services.

NPFs in Ukraine each year charge an average of more than 4% of the accumulated pension capital for service fees and therefore are very expensive for participants. As an example, in the United States, large mutual investment funds (FIDELITY, VANGUARD) today offer securities to investors with zero service fees. In turn, in Ukraine, these costs are not disclosed to the participants in an understandable form and properly. During several meetings of USAID Financial Sector Transformation Project employees with market representatives, most of them agreed that the maximum amount of expenses "should not exceed 3%." However, even 3% is too much (USAID, 2019).

International experience supports the claim that the commission fees of pension funds and other service providers are often opaque, hidden, and incomprehensible to ordinary investors.

It is important to note that they can significantly reduce retirement savings and future benefits/annuities. Many investors don't realize how much of their pension is lost in fees/fees. In the UK, a 2016 study by the Transparency Task Force found that pension funds can routinely charge members' funds more than 100 different types of fees and service charges, most of which are hidden from consumers (Bond, 2018).

Despite this, in Great Britain, the non-state pension system is the most popular among the population. And although the corresponding contributions are quite large, the private pension provision is gradually replacing the state one. To date, about 70% of the total amount of pensions paid in Great Britain is accounted for by non-state payments.

The decrease in the share of state pensions in the total amount of pension money is a logical and natural trend. Even though the UK government regularly indexes pensions, price inflation is taking its toll, and now the state pension is not only losing ground overall but is gradually losing weight even when compared to national average wages. This is why the non-state pension provision is gaining momentum in the UK, even though those pensioners who participate in the non-state pension scheme are subject to restrictions on the payment of the state pension (the state pension for years of service is no longer provided to them).

Accordingly, every Briton can choose for himself one, in his opinion, the most suitable pension scheme. As a rule, the third level is the so-called occupational retirement pensions, which are provided by the employer for its employees. The government usually encourages employers to run occupational pension schemes by providing various tax breaks to companies that operate such schemes. At the same time, pension contributions for non-state schemes can be paid by both employers and employees (Tyshchenko, 2015).

The practice of interaction between the state and non-governmental organizations (NGOs) in the field of social protection is quite common in EU countries. Such an example can be the cooperation of the Stockholm Social Services Administration with 150 NGOs in overcoming homelessness, and protecting the rights of women and persons with disabilities (Stockholm Satat, 2022).

In addition, in Germany, more than half of the services in the field of social work are provided by NGOs, and their financing is carried out by the state, although there is a format of self-financing and state subsidies (Caritas Germany, 2022).

In the USA, the state's participation in the social security of citizens is minimal, and only the poorest sections of the population receive state material support. This experience needs to be taken into account, because in Ukraine, due to citizens' distrust of non-state providers of social services, their number is insignificant (Dmytrenko, 2022). Therefore, the state should create conditions for their stable functioning, which will contribute to increasing trust in them.

At the same time, it is advisable in the legislation to provide financing mechanisms for non-governmental organizations that provide social services (grants, state loans, subsidies, reimbursement of the cost of services provided, tax benefits, etc.). This will contribute to the emergence of competition and increase the quality and availability of such services.

To implement pension reform activities, it is urgent that a stock market be created in Ukraine and the necessary guarantees that these funds will not disappear be formed (Boyko, 2022). It is quite a strange situation when the annual deposit in the bank is more protected by the state than the long-term pension contributions of citizens.

Today the number of active investors in our market is approaching zero. We have no other choice but to adhere to international standards and implement European practices. We cannot cultivate the domestic stock market and create comfortable working conditions for it to the detriment of the interests of the population. As soon as we bring the market in line with EU norms, we will see growth in the economy and confidence in financial instruments (Datsyuk, 2019).

3.2. International Social Standards

It should be noted that Ukraine's implementation of international social standards is an important component of our state's participation in leading international legal institutions (UN, ILO, and others), as well as the proper fulfillment of its international legal obligations in the field of social protection (Melnyk, 2018).

Key and fundamental international social standards are laid down in several international legal acts, in particular: Universal Declaration of Human Rights (United Nations, 1948), the International Covenant on Economic, Social and Cultural Rights (United Nations, 1966), the ILO Convention No. 159 on vocational rehabilitation and employment of the disabled (International Labour Organization, 1983), Standard rules for ensuring equal opportunities for the disabled (United Nations, 1993), the UN Convention on the Rights of Persons with Disabilities (United Nations, 2006), etc.

Active actions regarding the European integration of Ukraine determine the need for full ratification of certain documents of the European Union, which contain social protection standards. For example, Ukraine partially ratified the European Social Charter. Ukraine has not acceded to the following provisions: Article 2, paragraph 3 "Right to fair working conditions", Article 4, paragraph 1 "Right to fair remuneration", Article 12 "Right to social security" (joined paragraphs 3 and 4 in the 2017 year), Article 13 "The right to social and medical assistance", Article 19 "The right of migrant workers and members of their families to protection and assistance", Article 25 "The right of employees to the protection of their rights in the event of bankruptcy of their employer", Article 31 n 3 "The right to housing") (Council of Europe, 1996).

Also, the norms of Ukrainian legislation on the number of pensions and other social payments and benefits do not fully correspond to European social standards. The above determines the need to take into account the provisions of EU documents when improving the legislation of Ukraine.

Also, following the text of the ILO Recommendation No. 202 on minimum levels of social protection of 2012 (paragraph 16), it is declared that strategies for expanding the scope of social security must ensure support for vulnerable population groups and persons with special needs. And although these provisions are recommendatory, members of the International Labor Organization must take them into account during the legislative process in the field of social protection.

Yes, it is still too early to talk about the effectiveness of these measures due to the low level of support for such categories of the population as internally displaced persons, homeless persons, homeless children, the poor, etc., which is explained by the presence of gaps in the relevant special laws and insufficient funding. Therefore, the system of social protection institutions is insufficiently developed, which is not able to ensure the rights of the above-mentioned persons at the proper level, which, of course, negatively affects the improvement of their social situation (International Labour Organization, 2013). The solution may be their support by the non-state sector through means of social services and provision of in-kind assistance.

ILO Convention No. 117 (International Labour Organization, 1962) contains only one article that can be applied to non-state pension provision. Thus, Art. 13 of this act indicates that voluntary forms of savings are encouraged among employees and independent producers (Medvid, 2018). This suggests the possibility of their participation in the third level of the pension system of Ukraine – voluntary non-state insurance.

The existing legal framework for the functioning of the National Pension Fund within the framework of the third level of the pension system requires significant improvement. As World Bank experts (Santoro, 2017) noted, the third level of the Ukrainian pension system has a very vague concept of fiduciary obligations (Better Finance, 2017) and unsatisfactory regulation of conflicts of interest. NPFs can be freely created without establishing significant financial or other liability.

The Asset Management Company's liability is limited to the value of its assets. Decisions of NPF board members are not always binding and, therefore, board members are not legally bound by their decisions. Any person (who meets the qualification requirements) can be a member of the board of several NPFs. Finally, non-state pension funds of the third level do not meet international standards, in particular, the provisions of EU Directive 2016/234136 on the protection of participants' rights (IOPR II Directive) (Holzmann *et al.*, 2008).

3.3. National Legislation (Ukraine)

According to Article 46 of the Constitution of Ukraine, citizens of Ukraine are guaranteed:

> The right to social protection, which includes the right to support them in case of total, partial or temporary loss of working capacity, loss of a breadwinner, unemployment due to circumstances beyond their control, as well as in old age and other cases (Law 254к/96-ВР, 1996).

The Institute of Social Security and Social Protection acts as a kind of tool, with the help of which the most acute problem of society is solved – the problem of social inequality of personal incomes of individuals, which is not a consequence of the unequal distribution of labor, its productivity or the efficiency of production itself (Vizhunov, 2019).

According to the reasoning of Vakulenko V.M. and Orlatyi M.K. structurally, the social protection system is generally represented by the following components:

1. state social protection (which includes mandatory state insurance, state social assistance, additional social protection, and special social protection), and

2. non-state social security (which consists of non-state pension security and non-state social services) (Vakulenko and Orlatyi, 2010).

Hudz (2019) also develops this opinion, dividing the system of social protection of Ukraine into:

1. state social security, which is implemented at the expense of the state budget of Ukraine;
2. non-state social security, which is implemented by providing material support at the expense of non-state institutions (pension funds, insurance organizations, banking institutions, etc.).

The modern Ukrainian pension system is a significant component of the social protection system of Ukraine. It underwent a significant change in 2004 in connection with the adoption of the Law of Ukraine "On Mandatory State Pension Insurance" (Law 1058-IV, 2003) and the Law of Ukraine "On Non-State Pension Insurance" (Law 1057-IV, 2003). Then a three-level pension system began to be implemented: a solidarity system, a system of pension savings, and voluntary non-state pension savings.

The first level includes the solidarity system of mandatory state pension insurance, which distributes funds from enterprises and insured persons to current pensioners through the Pension Fund of Ukraine. At the second level is the accumulative system of mandatory state pension insurance. This system provides for the accumulation of a certain percentage of the employee's salary, which is paid equally by the employer and the employee. Funds are collected in the employee's pension account and payments are made after retirement.

The formation of a modern system of non-state social security is not possible without the functioning of non-state pension security institutions, which belong to the third level of the pension system. The Law of Ukraine "On non-state pension provision" was designed to change the existing pension system by creating non-state pension funds, that is, non-state institutes of the pension provision system.

It is these institutes that make it possible to form a system of non-state pension provisions parallel to the national one, which will allow its participants to receive additional pension payments. In addition, non-state pension funds effectively influence the country's investment development.

Currently, only the first and third levels are functioning in Ukraine. In addition, the introduction of the second mandatory accumulative level of the pension system is constantly postponed, and non-state pension provision has not yet become a generally accepted and widespread mechanism for the formation of pension savings.

If we compare the largest non-state pension funds of Ukraine by the number of participants as of the end of 2019, according to the data of the National Commission, which carries out state regulation in the field of financial services markets, the list will look like this: VNPF "Emerit-Ukraine" (70.8 thousand people), NPF "VSE" (55 thousand people), VPF "PrivatFond" (49.1 thousand people), ONPF "OTP Pension" (45.1 thousand people), VPF "Dynasty" (40 thousand people), VPF "Social Perspective" (14.7 thousand people), VPF "Ukraine" (4.5 thousand people), VPF "Social Standard" (4.3 thousand people), VPF "Pharmaceutical" (1.3 thousand people) and VPF "Ukrainian Pens.

According to Timur Khromayev, the former head of the National Securities and Stock Market Commission, the third level of the pension system can be considered voluntary quite conditionally, since 99.8% of people who participate in non-state pension funds have never deducted money there, because they do it for, they are employers who work in this case with affiliated enterprises (Datsyuk, 2019). And although this share is somewhat overestimated, about 90% of pension contributions are indeed made by legal entities.

It is quite interesting how non-state pension funds manage their available resources. The largest share in the investment portfolio of the largest non-state pension funds of Ukraine is made up of state securities, namely: VNPF "Emerit-Ukraine" (50%), VPF "Social Standard" (50%), VPF "Pharmaceutical" (50%), NPF " VSE" (49%), VPF "Dynasty" (49%), ONPF "OTP Pension" (45%), VPF "Social Perspective" (45%), VPF "Ukraine" (44%), VPF "PrivatFund" (43%), VPF "Ukrainian Pension Fund" (18%).

The second place in terms of the volume of investments of non-state pension funds of Ukraine is occupied by bank deposit and current accounts, savings certificates of banks, namely: VPF "PrivatFond" (50), VPF "Social Perspective" (50), VPF "Dynasty" (45 %), ONPF "OTP Pension" (42%), VPF "Emerit-Ukraine" (41%), VPF "Pharmaceutical" (37%), VPF "Ukraine" (35%), VPF "Social Standard" (32%), NPF "VSE" (29%), VPF "Ukrainian Pension Fund" (19%) (Tartasyuk, 2019).

Significantly smaller investments in bonds of Ukrainian companies, shares of Ukrainian issuers, real estate objects, banking metals, and very little in securities of foreign issuers.

It is possible to place pension assets in such simple, conservative instruments of the financial market without such expensive intermediation of pension fund administrators, asset management companies, and custodians. Today, it is achievable to legally save for retirement by investing in numerous international passives but diversified mutual (index) investment funds up to 50,000 euros per year with reasonable service fees (0.1%-1.5% per year).

The Law of Ukraine "On non-state pension provision" (Law 1057-IV, 2003) provides for the limitation of investment of assets of non-state pension funds: state securities - 50%, bank deposit accounts, and savings certificates - 50%, bonds of local loans - 20%, bonds of Ukrainian enterprises - 40%, shares of Ukrainian issuers – 40%, mortgage bonds – 40%, securities of foreign issuers – 20%, real estate objects – 10%, banking metals – 10%, shares not in circulation on the stock exchange – 10%, liabilities bonds of one legal entity – 10%, securities of one issuer – 5%, other securities – 5%. These regulations deter funds from too risky investments. Therefore, NPF investment strategies are called conservative (Palmar, 2021).

According to the structure of investments of non-state pension funds, it can be seen that there are not enough investment instruments on the Ukrainian market. According to the Report of the USAID Project "Transformation of the financial sector - non-state pension provision in Ukraine: assessment and recommendations" (MinFIN, 2021), 62 non-state pension funds of Ukraine have a similar investment portfolio structure. As of the end of 2018, 46% of pension assets (1,264 million UAH) were invested in government securities and 36% (986 million UAH) were placed on bank deposits.

According to the National Commission for Securities and Stock Markets, as of June 30, 2021, government securities occupy even more, namely 47.2% of NPF investments (National Securities and Stock Market Commission, 2023).

Conclusions

As a result of the study of the international legal experience of non-state social security, the following conclusions were made.

1. The experience of other countries, in particular Great Britain, allows us to state that the system of non-state pension institutions can cover more than half of pension payments and be very popular among the population. Cooperation of the state with non-state social security entities is also a common phenomenon in foreign countries.
2. The implementation of international legal norms in the spheres of social security and the stock market is not only a necessary component of the European integration of Ukraine but also a matter of improving the functioning of internal institutions for the effective operation of the non-state social security system.
3. The experience of the functioning of non-state pension funds in Ukraine allows us to conclude the inefficiency and low popularity among the population of this method of providing a decent pension.

About 80% of the investment portfolios of the respective pension funds consist of government securities and bank deposits. Since the population also, to some extent, has access to the specified financial instruments, it makes no sense to involve intermediaries in this process. It is believed that the state can stimulate participants of non-state pension insurance to reduce investment in these assets. In addition, the upper threshold of fees for services in non-state pension funds at the level of 7%, established by the National Financial Services Committee, is too high. In connection with this, pension funds receive excess profits regardless of the financial results of their activities.

With regard to further scientific research, we consider it necessary to analyze in detail the directions of regulating the structure of assets of non-state pension funds in order to preserve the assets of the population in war conditions.

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Corporate liability and white-collar crime: Comparative review

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Abstract

The aim of the research was to analyze academic approaches to understanding the legal nature of white-collar crime and what crimes it includes; based on this understanding, the model of corporate criminal liability was investigated to place it in various law enforcement contexts. Throughout the article, appropriate research methods have been used, such as: comparative law method, systemic-structural method, formal-legal method. Based on the results of the detailed comparative analysis, it has been established that there are no unified standards or models for both white-collar crime and corporate criminal liability. Furthermore, it has been argued that the concept of fraud (deception) constitutes the key element of white-collar crime and is also the foundation of most corporate crimes. In the conclusions, it is argued that corporate criminal liability in the United States, and to a lesser extent in some European countries (including Ukraine), is a powerful law enforcement tool capable of protecting society from massive crimes as well as deterring corporations from unlawful deviations.

Keywords: corporate liability; white collar crime; money laundering; fraud; corporate crime.

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Responsabilidad de las empresas y delitos de cuello blanco: Revisión comparative

Resumen

El objetivo de la investigación fue analizar los enfoques académicos para comprender la naturaleza jurídica de la delincuencia de cuello blanco y qué delitos incluye; sobre la base de dicha comprensión, se investigaron el modelo de responsabilidad penal de las empresas para situarlo en diversos contextos de aplicación de la ley. A lo largo del artículo se han utilizado métodos de investigación apropiados, como: el método de derecho comparado, método sistémico-estructural, método formal-jurídico. Sobre la base de los resultados del análisis comparativo detallado, se ha establecido que no existen normas o modelos unificados tanto para los delitos de cuello blanco como para la responsabilidad penal de las empresas. Además, se ha argumentado que el concepto de fraude (engaño) constituye el elemento clave de la delincuencia de cuello blanco y es también el fundamento de la mayoría de los delitos empresariales. En las conclusiones, se afirma que la responsabilidad penal de las empresas en Estados Unidos, y en menor medida en algunos países europeos (incluida Ucrania), es una poderosa herramienta de aplicación de la ley capaz de proteger a la sociedad de delitos masivos como de disuadir a las empresas de desviaciones ilícitas.

Palabras clave: responsabilidad de las empresas; delitos de cuello blanco; blanqueo de dinero; fraude; delincuencia empresarial.

Introduction

To this date various definitions of crimes in economic activities are proposed, and more or less successful attempts to classify (organize) such punishable acts are made. Specific nature of economic crimes, reference of white-collar crime (hereinafter – WCC) statutes to regulatory law, dependence of specific provisions on the level of development and protection of economic relations in the country refer any scholar to the issue of correct terminology behind economic offenses. "Commercial", "economic" (in some countries also "white collar", "corporate" and "professional"), "business environment related" – one can find many variations of concepts in the legal literature and across the nations' criminal codes.

Sometimes it is noted that the term "crimes of economic orientation" along with such definitions as "economic crimes", "crimes in the area of economy" and "crimes in the area of economic activity" have become a strong part of the conceptual framework of criminal law and other fields of

knowledge, and are widely used by employees of law enforcement agencies. This is the first prong of the complicated "corporate economic crime" phenomenon to be discussed in this scholarly work.

Being closely connected to the issues of white-collar criminality is the corporate criminal liability regime. Nowadays corporations are as big a part of any given society as are any other collective institutions – political, educational, non-profit etc. Corporations represent a distinct and powerful force at regional, national and global levels and they wield enormous economic powers. Besides governments and governmental agencies, corporations become ever more effective agents of action in any society.

The development of the society, at various points of time, has had a direct influence on the structure and functions of the corporation. However, there is another side of the medal: corporate wrongdoing has become an ever-growing issue in the modern business world. Almost daily we witness large companies and financial institutions enters into plea agreements with national prosecutorial offices as a result complicated white-collar crimes they have committed. Millions of dollars move from corporate accounts to sovereign treasuries in the form of fines and other financial penalties.

With regard to Ukrainian corporate criminal liability model in particular. On May 23, 2013 the Law of Ukraine with a long title "On Amendments to Certain Legislative Acts of Ukraine in Connection with the Implementation of the European Liberalization Action Plan Union of the Visa Regime for Ukraine Regarding Liability of Legal Entities" has been adopted (it entered into force on September 1, 2014).

As a result of such legislative intervention, Chapter XIV-1 has been added to the General Part of the Criminal Code of Ukraine with the title "Measures of a criminal law nature against legal entities". While commentating the specified legislative novel, M. Khavronyuk writes that the issue of criminal liability of legal entities, although it has been introduced in Ukraine in the form of the so-called quasi-criminal or limited criminal liability, still remains debatable in theory of criminal law (Dudorov and Khavronyuk, 2014).

1. Methodology

While working on this paper, the following methods of research have been employed extensively.

The major, for the purposes of the paper, comparative law method has enabled us to research WCC statutes and corporate liability regimes across several European jurisdictions (including Ukraine) as well as in the United States. Based on comparative paralels a conclusion has been reached that:

1) the phenomenon of WCC is extremely complicated and includes various offenses; 2) similarly, national approaches toward the issue of corporate criminal liability vary significantly and have different statutory foundations.

Overall, currently the comparative law method is widely used when researching various issues of white-collar crime (Reznik, *et al.,* 2020).

The system-structural method has been used to describe applicable statutes and their location within the structure of the national Criminal Codes. Legislative approaches toward constructing relevant statutory frameworks also fall under this scientific method. Based on the core laws of logic and reason, the system-structural method allows to evaluate, if the new legislative material fits the law and the "spirit" behind it.

Finally, the formal-legal method has enabled the authors to analyze in detail the legal meaning of the provisions of various legal acts, which cover issues of economic criminality and corporate liability.

Overall, extensive use of the methodological tools has eneblaed a closer comparative look at the issues of WCC and corporate liability in the United States, Ukraine and several other European jurisdictions, even more so in the context of the modern globalized world, with its various risks and challenges.

2. Recent research and findings

This research paper focuses on the advantages and flaws of corporate criminal liability within the wider scope of white-collar criminality in various world jurisdictionsб including United States of America and Ukraine. The American corporate liability model will play a virtual "sparring partner" role for the purposes of evaluating both progress and potential pitfalls on Ukraine's (and to less extent those of other European nations) way to establishing effective legal framework to combat corporate crime.

Obviously, a large body of academic literature has been devoted to the issues discussed in this paper. As such, issues of criminal responsibility for economic crimes in Ukraine, including in comparative context, has been studies by such Ukrainian commentators as P. Andrushko, P. Berzin, A. Boyko, N. Gutorova, R. Volynets, V. Navrotskyi, M. Panov, V. Popovych, A. Savchenko, M. Khavronyuk and some others.

The most consistent and systematic approach to solving problems related to the qualification of this category of crimes and the practice of applying the norms of the Criminal Code of Ukraine (hereinafter referred to as the Criminal Code), which establish them, is embodied in the scientific works of O. Dudorov. Authors of this paper has also extensively commented on the issues at hand (Pidgorodynskyi, *et al.,* 2021; Minchenko, *et al.,* 2021).

In the American criminal law doctrine, various pressing issues of liability for economic crimes and corporate crimes in particular have been studied by K. Brickey, S. Buell, S. Green, L. Dervan, U. Zagaris, J. Kofi, E. Luna, P. Morgan, J. Oh 'Sullivan, E. Podhor, R. Posner, J. Rakoff, E. Sutherland, K. Strader, P. Henning, and others.

Thus, as one might see, the topic of white-collar criminality (including corporate wrongdoing) is extensively researched and discussed at various professional forums. At the same time, such topic remains far from being "over-researched" – a number of issues remains unsolved, since economic criminial schemes constantly evolve as business and regulatory landscapes shift and chages globally on a regular basis.

a) White-Collar Crime: Its Origins, Meaning and Elements

Analysis of legal literature on the issues of criminal liability for business (or economic, white-collar) crimes, demonstrates a lack of focus from local scholars on the issues of adequately labeling such crimes, justifying their balanced name based on position of developing quality conceptual apparatus of the Criminal Code. With this being said, numerous authors' interpretations of generic and specific objects of economic offenses in criminal law treatises exist today.

For the record: to this date no clear, all-inclusive definition of WCC exists, and such description is not likely to appear anytime soon due to a variety of reasons. The term "white collar crime" is notorious for its ambiguity just in any global jurisdiction where it is used. At least some agreement among scholars exists on what types of criminal behavior this phrase should include.

Among various types of criminal activity, one can name antitrust violations, computer and internet fraud, credit card fraud, phone and telemarketing fraud, bankruptcy fraud, healthcare fraud, environmental violations, insurance fraud, mail fraud, government fraud, tax evasion, financial fraud, securities fraud, insider trading, bribery, kickbacks, counterfeiting, public corruption, money laundering, embezzlement, economic espionage and some other related offenses.

In particular, degree of effectiveness of criminal law protection of Ukrainian stock market largely depends, among other things, on the quality of the law on combating illegal use of insider information and on the substance of the relevant regulatory legislation rules. Just like in the United States, Ukrainian insider rule refewrs to the need for equal information flow – such approach is fundamental to the proper functioning of any stock market in the world.

The lack of specific law enforcement practice in Ukraine is explained by the internal characteristics of the national stock market, by its currently undeveloped status (Kamensky *et al.,* 2020). Within this particular case, we see a direct connection between the need to protect instruments of market economy (stock market specifically) and criminal liability for WCC.

The commonly used phrase "white-collar crime" was reportedly introduced in 1939 during a famous speech by sociologist Edwin Sutherland to the American Sociological Society. Sutherland defined this term as an offense committed by a person of respectability and high social status in the course of his occupation. Later in his scholarly paper Sutherland stated that different forms of illegal white-collar conduct "consist principally of violations of delegated or implied trust, and many of them can be reduced to two categories: misrepresentation of asset values and duplicity in the manipulation of power" (Sutherland, 1940). Such definition, as history has showed us, reveals the key elements of both individual and corporate economic crimes.

From the comparative standpoint, the framework of the criminal law of Ukraine, attributing the "market economy" concept to the body of legal relations protected by Chapter VII of the Criminal Code of Ukraine indicates that this form of organization of national system of production, distribution, exchange and consumption of goods covers areas of economic activity, which are protected by criminal law, in an overall comprehensive manner.

Thus, stock market, creditors' rights, fair competition – such components of Ukrainian economy are the embodiment of the market economy model. As one might see, WCC remains actively present in countries with both emerging and developed market economies.

Some real life numbers. According to some extensive research: 1) white-collar crimes are estimated to make up only 3% of federal prosecutions; 2) in 2021 white-collar crime prosecutions have been down 53.5% compared to 2011; 3) as of 2021, annual losses from white-collar crimes have been anywhere from $426 billion to $1.7 trillion – such wide range here is due to the lack of prosecutions; 4) there were 4,727 white-collar prosecutions in 2021 alone. Finally, by some estimates up to 90% of white-collar crimes go unreported (ZIPPIA, 2023).

Current political developments, globalized economy, and further synchronization of legal systems around the globes provide a unique forum for expanding existing national legal frameworks, establishing new principles and doctrines of law.

Of course, when outlining the "white collar" segment of criminal law studies, special attention should be drawn to the study of globalization trends in today's world and, accordingly, in interstate economic relations. Today

we are all able to follow the processes of digitalization,communication, erasure of language barriers, migration of labor and capital, joint space exploration, implementation of international research projects in almost all areas, transnationalization of business and more (Kamensky, 2021).

Such endeavors, while obviously gaining momentum, cannot but affect, at least indirectly, law in general and criminal law in particular. The emergence of new types of economic crimes, the growth of economic crime in general and its adaptation to various socio-economic changes are widely recognized.

Hence, it makes sense to refer to Guy Stessens's statement: modern societies are increasingly dealing with types of economic crime unknown in the XIX century, when most European criminal justice systems have been created. Nowadays, prosecutors and courts face the growing challenge of economic crime, which did not exist before. Corporations play an important role in it, as the lion's share of business activity in today's world is attributed to corporate business (Stessens, 1994). The latter notion will be explored in greater detail within the following pages of the article.

The annual numbers of federal prosecutions for economic crime in America over the two plus decades is demonstrated in Figure 1.

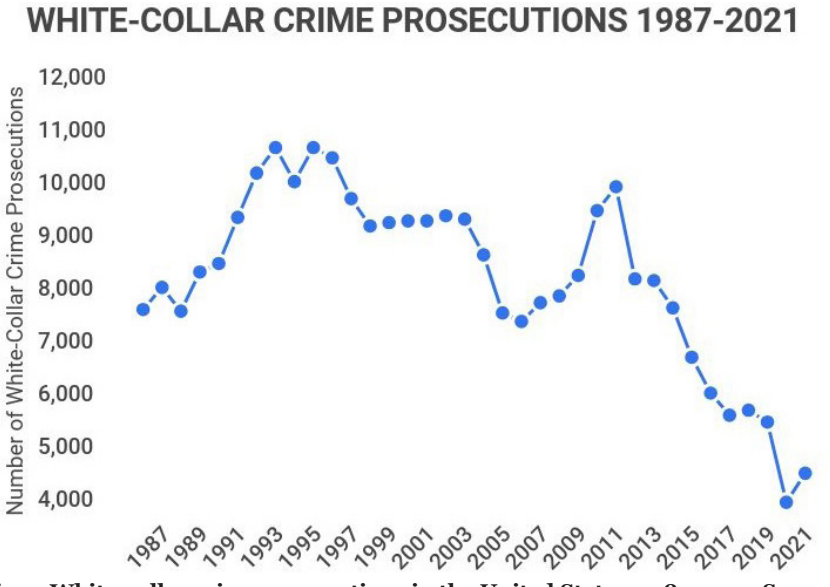

Fig. 1. White-collar crime prosecutions in the United States, 1987-2021. Source: Zippia. "20 Shocking White-Collar Crime Statistics [2023]: The State of White-Collar Crime in The U.S." Zippia.com. Sep. 28, 2022, https://www.zippia.com/advice/white-collar-crime-statistics.

Finally, we want to make a point that *fraud* is usually "at the heart" of any given WCC. This is true in any criminal law system as law enforcement practice proves.

b) Fraud as the key element of any white-collar crime

The word "fraud" is widely refered to in the WCC context. This term underlines "intelligent", nonviolent, and primarily for-profit nature of such offenses that are intended to deceive (an individual, a corporation, or public at large) in order to earn something of value, power, or both. The key message is "that fraud is typically the cornerstone of every white-collar offense, no matter how simple and meager or intricate and grandiose" (Bailey and Rothblatt, 1984: n/p).

In one of the first works devoted to the analysis of the term "white-collar crime", its author E. Sutherland wrote that crime in business is most often manifested in the form of distortion of financial statements of corporations, manipulation on the stock market, commercial bribery, direct or indirect bribery of public officials for the purpose of concluding profitable contracts or adopting favorable regulatory acts, distorting facts during advertising and promotion of goods and services, waste or misuse of funds, weighing and measuring, as well as knowingly false valuation of goods, tax fraud, incorrect use of funds received as a result of current activities or during bankruptcy.

It was precisely these and many other forms of illegal behavior of big business that the infamous American gangster and "Public Enemy No. 1" A. Capone aptly described as legal racketeering (Sutherland, 1940).

American commentator S. Buell writes that complex conceptual and definitional problem of fraud is further aggravated by the fact that such manifestations of socially negative behavior directly permeate many spheres of social life, not the least of which is the regime of legislative regulation of the market economy. Fraud is one of the most serious, costly and punishable causes of legal liability that apply to the modern corporate sector and financial markets.

Fraud permeates almost every sphere of the financial system and economic exchange relations. If the legal system is unable to develop a more or less accurate definition of fraud, then neither state regulators nor society in general will be able to objectively assess the legal significance of those events that negatively affected, say, national financial markets (Buell, 2011).

A few more words about the American realities of combating *fraudulent* manifestations in the economic sphere. In particular, the high level of legislative attention (and, accordingly, the recognition of its dangerous nature) to fraud in the economic sphere is evidenced by the fact that the structure of the current federal criminal code (Title 18 of the United States Code) contains two chapters that contain "anti-fraud" provisions.

This is Chapter 47 "Fraud and False Statements", which contains §§ 1001-1040, as well as Chapter 63 "Mail Fraud and Other Fraudulent Crimes", which contains §§ 1341–1351. Within these two chapters, we have counted forty-four prohibitions, most of which relate to manifestations of fraud in various spheres of the national economy.

c) Corporate Crime: Old Issues, New Methods

Corporate criminal liability is closely related to the issues of WCC in modern globalized world.

In one joint scientific study, attention has been paid to the fact that the answer to the question of the reasons for the emergence and further development of the institution of criminal liability of corporations in the USA lies not only (and not so much) in the area of criminal law, but in the field of requirements and tasks, related to the general development of society, primarily in the part of forming and protecting the foundations of the market economy.

Materials of federal judicial practice in this part clearly demonstrate the scale of corporate abuses and the level of danger to society that the activities of modern corporations can create in the absence of reliable regulatory and law enforcement barriers.

According to many representatives of the American legal community, it is the norms of criminal law and the high efficiency of law enforcement associated with them that are able to werve as such barriers, which is actually confirmed by the modern practice of criminal prosecution of corporations (Dudorov and Kamensky, 2015).

Though a lot of time has passed since the adoption of the Law on Liability of Legal Entities, the practice of applying criminal law measures against legal entities is still not stable; it has not become a common instrument of criminal law.

In particular, as evidenced by the nationwide statistics of court decision, the issue of seizure of the property of legal entities is often resolved at the stage of pre-trial investigation. However, it is hardly possible to count at least two dozen verdicts against authorized persons, in which criminal law measures are simultaneously applied against legal entities. The big question is: what exactly prevents this legal institution from working effectively and meeting the tasks set before it?

Markedly contrasting with the more or less established American approach, Ukrainian judicial practice in terms of the application of measures of criminal law influence against legal entities remains today in a, so to speak, a rudimentary state.

Our own analysis has demonstrated that reference to Art. 96-3 of the Criminal Code is often made in decisions of appellate courts and investigative judges, which cancel the decisions of investigative judges (investigative law enforcement agencies, respectively) on the seizure of the property of those legal entities, the activities of whose officials are investigated under the articles of the Criminal Code on liability for tax evasion, fees (mandatory payments) and terrorism financing (Articles 212 and 258-5). Relevant resolutions and petitions are annulled, in particular, on the grounds that Art. 212 of the domestic Criminal Code is not provided among the legal grounds for the application of criminal law measures to legal entities.

Despite the presence in judicial practice of certain materials that relate to issues regarding the possibility of applying measures of a criminal law nature to legal entities (Archive, 2015; Archive, 2016) in the dockets of Ukrainian courts, it was not possible to find any reference to the application of these measures to a legal entity on the grounds provided for in Art. 96-3 of the Criminal Code. Such law enforcement "silence" is somewhat alarming.

On the other hand, introduction of criminal liability of legal entities in the common law system owes a great deal to the doctrine of strict (absolute) liability, which, while being a feature of the Anglo-American legal system, actually means objective incrimination, that is, liability for criminal violations – no-fault legal norm.

We would like to add that such pragmatic concept is used during the criminal prosecution of corporations for violation of the requirements stipulated mainly by the norms of regulatory legislation, in cases where corporations carry out activities that are obviously harmful to society, and therefore prohibited by relevant regulations. In the famous case "New York Central & Hudson River Railroad Company v. United States" (1909) the Supreme Court of the United States has for the first time recognized that a corporation can be found guilty of committing even such a crime, where the relevant statute provides only for willfulness (criminal intention) as a form of guilt.

This case applied provisions of the Elkins Act, which back in the day regulated freight rates charged by railroad companies to carriers and prohibited those companies from granting discounts to preferred carriers. The U.S. Supreme Court decided that without criminal liability for legal entities, legislation such as the Elkins Act would not operate and the public would not be able to take advantage of its benefits.

The court also noted that at the beginning of the 20-th century in the texts of most court decisions and scientific commentaries, the possibility of crimes being committed by corporations was rejected, at the same time assuming the possibility of crimes being committed by their representatives – natural persons (New York Central, 1909).

The court also noted that the authority of the US Congress in terms of regulating economic relations between states, preventing undue protectionism and ensuring equal rights for all those who participate in economic relations at the national level should not be questioned. At the same time, the Court observed, it would be a marked step backward to enact a decision that would prohibit Congress from exercising control over those who conduct interstate commerce by prosecuting such persons for the intent and purposes of agents to whom those economic entities have delegated authority to act on their behalf.

The law cannot be "blind" to the fact that now the vast majority of economic transactions are carried out by organizations, and foreign trade operations are almost completely in their hands; as a result, the absence of criminal liability of such organizations will lead to the loss of effective state control in this area.

One can hardly argue that legal entities are artificial legal entities capable of subjective expression of will in the form of certain behavior regulated by the norms of national legislation. Among all legal entities provided for by the federal law, the corporation itself has the unique status of the aggregate impersonal expression of the will of the persons who are part of it, i.e. the shareholders.

It is this collective status that determines the noticeably higher and more perfect production, financial, economic and, of course, legal regime of a corporation compared to the legal capacity of an individual or, say, a limited liability company. This specificity of the legal nature of the corporation allows it to exert a significant influence on social and legal relations in the state. In the criminal law context, this means that corporations are potential carriers of a much greater public danger (social harm) to legal relationships protected by law than individuals (Kamensky, 2016).

The latter circumstance actually determines the need to adopt appropriate norms of a preventive, protective and punitive nature, capable of effectively "protecting" society as a whole and its individual law-abiding representatives from crimes and other violations by corporations. After many years of discussions and experiments, the United States, to be followed by other developed nations, chose the path of giving corporations the status of the subject of crime. Thus, the possibility of bringing corporations to criminal liability has become an undeniably effective form of state control over their activities.

The annual amounts of criminal fines paid by the U.S. corporate wrongdoers over the period of 2001-2018 are shown in Figure 2.

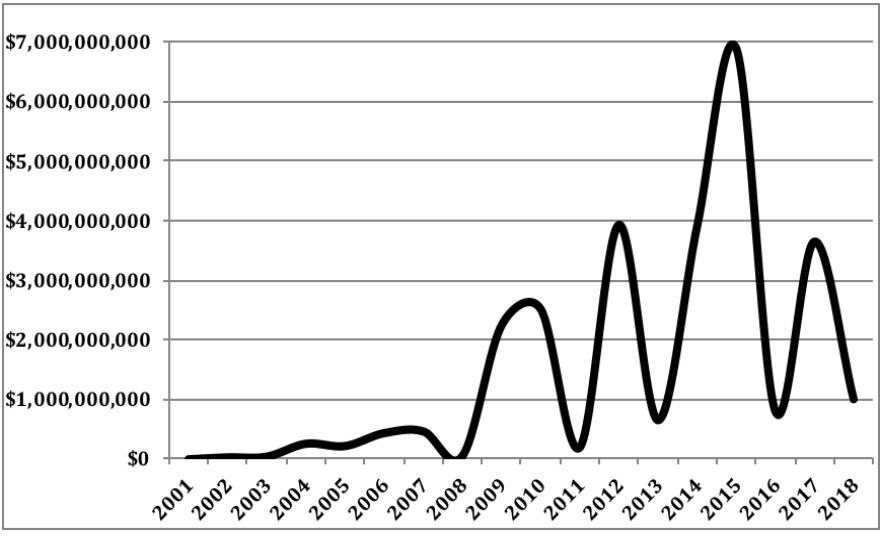

Fig. 2. Corporate Criminal Penalties, 2001-2018. Source: Declining Corporate Prosecutions. Corporate Prosecution Registry Blog. In: https://corporate-prosecution-registry.com/blog/declining-corporate-prosecutions.

In the research paper on the issues of rethinking principles of criminal liability of corporations in the USA, American commentator L. Dervan rightly focuses attention on the fact that such liability runs into many questions, problems and mistakes, since legal norms, which from the very beginning have been developed to apply to natural persons, should henceforth also cover legal fictions. Criminal laws, nevertheless, can and should be applied to corporations to ensure their liability to society, as long as companies develop, they increase their assets, as well as the degree of influence on important processes in public life.

At the same time, corporations are nothing more than an association of people primarily for the purpose of obtaining income, and therefore it is worth remembering not only the guilty individuals who embody the illegal behavior of companies, but also all those innocent employees and shareholders who may seriously suffer as a result of guilty verdicts against corporations. Therefore, in criminal cases initiated against companies the same high standard of fairness, balance and objectivity should be ensured, as during the actual criminal prosecution of individuals – representatives (employees) of companies (Dervan, 2011).

Historically, the prevailing criminal law theory was that corporations could not be held criminally liable due to their artificial personality (juristic

fiction approach) and lack of the moral blameworthiness element. For a long time, particularly for the past hundred years, American criminal law experienced several serious advancements in both rethinking and introducing corporate criminal liability into federal and state law systems. This was done primarily through judicial decision-making and prosecutorial enforcement (Brickey, 1993). Despite the ongoing discussions on the reasons and results of having corporate criminal liability, it is clear that it is established: it is routinely imposed on corporate wrongdoers, it brings its share of public benefits, and it seems to serve at least some of the criminal law goals.

d) European Model of Corporate Criminal Laibility

Throughout Europe, a large number of criminal offences are committed in the exclusive interest of legal entities by their directors, managers and employees. For a long time, civil law jurisdictions followed the principle derived from Roman law *societas delinquere non potest*, which constituted an obstacle to the acceptance in the respective legal systems of the possibility of holding a legal entity responsible in criminal law.

However, in recent years, owing in large part to the spread of offences connected with business activities and corporate globalization, and taking into account the influence of the OECD guidelines, the Council of Europe initiatives as well as EU and EC legislation, the regulatory framework has been constantly shifting. Within the European context, the domestic legal orders vary in their approach to the issue of legal entities liability.

On the one hand, some jurisdictions focus on individual liability, while others, in contrast, focus on corporate responsibility; conversely, some countries do not recognize any form of criminal liability of companies, while others provide for administrative sanctions for offenses. If it is not possible to discern a "common European model" of how to govern such corporate responsibility, one can nevertheless identify the guidelines that are followed in the European domestic jurisdictions.

Moreover, corporate globalization means that many companies have their headquarters in one country whilst at the same time having an important part of their business in other jurisdictions. This further underscores the importance of securing the introduction in Europe of legislation on the liability of legal entities, which will provide uniformity, and certainty in the prosecution of actions related to corporate crime.

If today in most of European legislations *societas delinquere potest*, it is also true that step-by-step European Countries are going towards a system in which also *societas publica delinquere potest*, which means that also public bodies can be liable for criminal offenses.

Thus, European corporate managers and administrators must have at least basic legal knowledge related to issues of corporate criminal liability, if they want to avoid incurring any form of liability, whether criminal or administrative.

While serving as a typical case for the European jurisdictions, the relevant approach by Dutch law and practice can be of particular interest here. Section 51, paragraph 1 of the Dutch Criminal Code provides: "Criminal acts can be committed by natural persons and *bodies corporate*." Furthemore, the Dutch Supreme Court (HR 21 oktober 2003, LJN: AF7938) has interpreted this general rule as to include corporate liability "... when the act has taken place within the sphere of the body corporate."

Non-limitative enumeration (HR 21 oktober 2003, LJN: AF7938) includes the following situations: 1) it is an act of an employee or someone working for the corporate; 2) the act fits the regular course of business of the corporate; 3) the act benefitted the corporate in its business; 4) the corporate was in a position to prevent the act, but the act was acceted or condoned – or in the past similar acts have been accepted or condoned (Brouwer, 2015).

B. Keulen and E. Gritter have also presented a thorough scholarly report, which provides a brief overview of the concept of corporate criminal liability in the Netherlands. Following a description of the historic development of this concept, they pay attention to the substantive law regarding corporate liability, including the concept of secondary liability and defenses, and to specific rules for the trial and the punishment of legal persons. The position in Dutch criminal law of the public law legal person, such as the provinces, has also been dicussed in this work. The report was completed with a short evaluation of the concept of corporate criminal liability in the Netherlands (Keulen and Gritter, 2011).

Some other major European economies also currently have some variations of corporate criminal liability models. For example, since coming into force of the new Penal Code on March 1, 1994, French law recognizes corporate criminal liability. The legislature chose a rather broad model of corporate criminal liability, which applies, in principle, to all offenses and to all legal persons, including companies (Deckert, 2011). However, the legislation requires that a department or representative of the legal person commits the offense "on the behalf of" this entity (Art. 121-2 of the French Criminal Code). Such approach resembles the current Ukrainian model.

Liability of a legal person may therefore arise out of offenses committed by their collegial bodies such as the board of directors or the supervisory board, or individual legal representatives. Individual representatives include individuals such as: (i) directors, managers, general managers and presidents, who are vested, by the law or the bylaws, with the power to administrate,

manage and control the entity; and (ii) de facto directors or managers, but also persons, vested with delegation of powers (including employees) or acting within a specific mission for the company (such as liquidators).

Regarding the issues of liability, arising out of acts of employees, and given that the delegation of powers does not need to be made in writing, certain Supreme Court cases refer to the status or quality of the employee to determine whether they have been acting as "representatives" of the legal person. Since December 31, 2005, any legal persons may be held liable for any criminal violation of French law (Lasry, 2023).

Penalties for legal persons may be of a monetary and non-monetary character. Also, some penalties can be incurred by the legal persons only. No general principles under French law constrain the judge when deciding the penalties incurred by a convicted legal person. The French legislator has also established some specific procedural rules with regard to legal persons. However, with a few exceptions, the majority of the rules of criminal procedure applicable to natural persons apply to legal entities as well.

In turn, the Criminal Code of Ukraine has embodied such a model of criminal law influence on a legal entity, within which the subject of the crime and only a natural person continues to be held criminally liable, and criminal law measures are applied to a legal entity, which itself is not a separate form of criminal liability (Orlovska, 2014).

Based on the current Criminal Code of Ukraine, manifestations of criminal and legal response to the commission of crimes and other social crimes dangerous encroachments provided for by this Code, criminal are not exhausted by responsibility; measures of criminal law influence can be applied as part of the implementation of criminal liability, as well as outside it (as it happens, in particular, when applying measures criminal law to legal entities).

Conclusions

Nowadays, criminal liability of corporations in the USA is a wide spread practice. Such liability regime is characterized by a close connection between provisions of substantive criminal law, criminal procedural law, and regulatory legislation. Corporate liability is a unique body of law, peculiar to the American legal system and at the same time significantly differs from European legal approaches.

In this research paper we have established that the answer to the question of the reasons for the emergence and further development of the institution of criminal liability of corporations in the USA lies not so much in the area of criminal law, as in the coordinate system of real needs related

to the general development of society, primarily in the part of forming and protecting foundations of the market economy. Federal case law on the issue demonstrates the scale of corporate abuses and, at the same time, the high level of harm to society that the activities of modern corporations can create in the absence of reliable regulatory and law enforcement barriers.

At the same time, it has been established that formation and development of the institution of criminal liability of corporations in the USA as in any other given country is a long and complex process, which will be specific for each state that introduces this type of liability.

As pointed out by legal commentators, corporate criminal liability in the United States, and to a lesser degree in some Western European nations, is a powerful law enforcement tool, which is capable of both protecting society of massive wrongdoings and deterring businesses from unlawful deviations.

Therefore, upon introduction of such type of liability to the criminal law of any given country, as is currently the case with Ukraine, detailed guidelines for prosecutors and judges need to be issued to ensure both responsible and effective use of such newly created statutory provisions. Organizational liability statutes have been initially designed and thus should be used for the purposes of punishing and detering corporate misconduct only.

By no means should they be used with the purpose of abusing discretion by judges or prosecutors or corruptly influencing lawful businesses. Unfortunately, such legal guidelines have not been developed and implemented in Ukraine yet. However, a balanced application of well-written organizational criminal liability standards empowers prosecutorial and judicial communities with higher integrity, professional responsibility, and impartiality – qualities, which are always important, when dealing with a powerful corporate world.

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Regulatory activities of the government of ukraine during marital status conditions

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Abstract

The peculiarities of the exercise of powers and the procedure for the implementation of regulatory activities of the Government of Ukraine under the conditions of martial law from February 24, 2022 are examined. This research was conducted through the classification of types of special legal regimes and current legislation on martial law in Ukraine, the requirements of the Constitution of Ukraine and the experience of introducing martial law in general, along with the analysis of the subject powers and the decisions made by them in the humanitarian, socio-economic and defense sphere. In addition, selected problematic issues granting legislative powers to the government are indicated. Axiological, analytical, historical-comparative, comparative-historical, comparative-legal, hermeneutical and formal-legal methods were used to achieve the research objectives. It is concluded that, despite the conditions of martial law, the government powers meet the requirements of the current Constitution of Ukraine. A significant simplification of the order of its normative activities requires the existence of appropriate mechanisms for their fulfillment. With the principles of the rule of law and the protection of human rights in these conditions.

Keywords: special legal regimes; martial law; government of Ukraine; normative powers; normative procedure.

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Actividades reguladoras del gobierno durante las condiciones de estado civil

Resumen

Se examinan las peculiaridades del ejercicio de los poderes y el procedimiento para la implementación de las actividades normativas del Gobierno de Ucrania, bajo las condiciones de la ley marcial, a partir del 24 de febrero de 2022. Esta investigación se llevó a cabo a través de la clasificación de los tipos de regímenes legales especiales y la legislación actual sobre la ley marcial en Ucrania, los requisitos de la Constitución de Ucrania y la experiencia de introducir la ley marcial en general, junto al análisis de los poderes sujetos y las decisiones tomadas por ellos en la esfera humanitaria, socioeconómica y de defensa. Además, se indican temas problemáticos seleccionados que otorgan poderes legislativos al gobierno. Para alcanzar los objetivos de la investigación se utilizaron métodos axiológicos, analíticos, histórico-comparativos, jurídico-comparativos, hermenéuticos y jurídico-formales. Se concluye que, a pesar de las condiciones de la ley marcial, los poderes del gobierno cumplen con los requisitos de la actual Constitución de Ucrania. Una simplificación significativa del orden de sus actividades normativas requiere la existencia de mecanismos apropiados para su cumplimiento. Con los principios del Estado de derecho y la protección de los derechos humanos en estas condiciones.

Palabras clave: regímenes legales especiales; ley marcial; gobierno de Ucrania; poderes normativos; procedimiento normativo.

Introduction

Attention to the rule-making activity of the Cabinet of Ministers of Ukraine has always been very high due to its significant role in the implementation of Government policy and influence on public relations. Therefore, the tasks of improvement of this activity and the improvement of the quality of Government acts have always been considered urgent. Although much has been done in this area in recent years, there is still a need to increase the level of systematization of the Government's rule-making activities, which would include proper planning, close coordination and effective control overrule-making activities.

The relevance of these issues has not diminished in the conditions of the introduction of martial law in Ukraine from February 2022, although the Government has focused on solving the most urgent problems of the country's vital activities, leaving for the future the general issues of optimizing rule-making activities.

Despite the existence of general legislation on martial law in Ukraine (The Law of Ukraine "On the legal regime of martial law", 2015), its introduction called for a more in-depth study of the conditions and requirements for the application of its many provisions regarding the entire spectrum of human rights and freedoms as well as citizen's rights and freedoms, the activities of state authorities and local self-government, and thereby also regarding the understanding of the requirements for the Government's rule-making activity in the conditions of martial law, the limits of the Government's rule-making powers, the rules and procedure for their implementation.

The developers of the Ukrainian legislation on martial law relied on the practice of state authorities in the conditions of martial law in November-December 2018 in ten regions of Ukraine, considered European and world experience in this field, used the works of domestic and foreign scientists devoted to theoretical and legal aspects of introducing martial law in different countries.

1. Literature review

Many academic works in Ukraine are focused on the study of theoretical and legal aspects and experience of introducing martial law. They covered, in particular, emergency legislation in foreign countries (Koliushko, 2020), the issue of the administrative and legal regime of the state of emergency (Andriy Basov, 2006), foreign experience and the Ukrainian model of martial law (Kuznichenko and Golub, 2019), problems of legal regulation of "martial law", "state of war" and "wartime" (Topolnitsky and Tychna, 2019), certain aspects of the procedure for the introduction and termination of the legal regime of martial law in Ukraine (Lobko *et al.*, 2019) observance of human rights in the conditions of martial law (Hvozd, 2018) etc.

Researchers from other countries considered the use of emergency powers in peacetime (Bonner, 2019), the emergency powers of the US President (Goitein, 2019), the conditions for the use of emergency powers in democratic countries and international conflicts (Rooney, 2019), practical and theoretical aspects of emergency powers (Head, 2016), typology of extraordinary powers (Ferejhon and Pasquino, 2004), extraordinary powers of the executive power (Friedman, 2009), etc.

2. Methodology

The methodological grounds of this research lie primarily in the following general scientific methods as axiological, analytical, comparative-historical, comparative-legal, hermeneutic methods, as well as the formal-

legal method. The axiological method has made it possible to focus the conducted research on the significant aspects of law-making activity, which consist in the need to ensure a high level of perfection of the current legislation adopted by the parliament, considering the need to observe human dignity, freedom, justice, and ensure free entrepreneurship.

The analytical method was aimed at a qualitative comprehensive analysis of the law-making activity of the parliament and the rule-making activity of the Government of Ukraine. Comparative-historical, comparative-legal, and hermeneutic methods were used to critically assess the state of legislation in the field of martial law in comparison with modern European and world achievements. The formal-legal method was used to assess the state of the regulatory framework of the Government's regulatory framework, the rule-making process.

3. Classification of types of emergency situations, their constitutional and legal regulation, experience of introducing martial law in different countries

In the constitutional legislation of foreign countries, several types of emergency situations (emergency situations; state of emergency) are enshrined, which entails the granting of emergency powers, in particular, a state of emergency (this includes such countries as the USA, Great Britain, Canada, India, Portugal, France, Germany, Spain, Poland, Finland, Turkey and others), martial law regime (USA, Great Britain, Poland, Romania and others) state of siege (Belgium, Italy), state of war (Belgium, Italy), state of defense (Germany, Finland). Legislation on emergency situations is quite heterogeneous, as is the scope of powers granted to state authorities or the military in the context of the introduction of martial law or other state.

Since the 19th century, more than 80 countries, including the USA, China, Canada, Japan, Turkey, Japan and many others, have faced the need to introduce martial law. The introduction of martial law mostly took place in peacetime and without a declaration of war. So, for example, in the USA, Article 1 of the Constitution allows the declaration of martial law in the event of an uprising or a situation that threatens public safety and traditional methods of security protection are insufficient.

According to the legislation in force today (National Emergencies Act, 1976), during a state of war, the President of the United States can perform actions necessary to maintain public order, in particular, to remove administrative bodies from performing their duties, transferring their performance to the Ministry of Defense, introduce military tribunals. The Emergency Powers (Defence) Act was passed in Great Britain in 1939.

This law allowed the Government to adopt the so-called "defense decrees", which allowed the Government to carry out a wide range of actions, in particular, to make arrests, enter premises and even impose the death penalty for certain crimes (breaking through roadblocks and robbery). The law was in effect until 1964.

In Canada is legislation on emergency powers (Emergencies Act, 1985), which provides for the introduction of a state of war and the granting of appropriate powers to the Government.

Article 16 of the Constitution of the French Republic (Constitution du 4 octobre, 1958) states that when the institutions of the Republic, the independence of the nation, the integrity of its territory are under serious and immediate threat, and the normal functioning of constitutional public bodies is suspended, the President of the Republic takes measures dictated by these circumstances, after official consultation with the Prime Minister, heads of chambers, as well as the Constitutional Council. These measures should be dictated by the desire to provide constitutional public bodies with the opportunity to fulfil their tasks as soon as possible.

The Constitution of Spain (Article 116) provides for three types of state of emergency regulated by organic law: state of threat, state of emergency and state of siege and establishes the corresponding powers and limitations and also provides that the declaration of a state of threat and state of emergency and siege does not cancel the principle of responsibility of the Government and its representatives It is the Government of Spain that has the right to declare a state of emergency.

Martial law in the countries of the world was mainly introduced in peacetime and was accompanied by restrictions on the rights and freedoms of people and citizens (primarily, restrictions on freedom of movement and change of residence), the introduction of curfews, expansion of the powers of the Government and restrictions on the powers of local authorities.

The extent of these restrictions depended on the severity of threats to internal security. In democratic countries, such restrictions were minimal in nature and based on the requirements of the relevant legislation, and the specifics of the exercise of powers by state authorities were largely determined by the form of state government.

On June 19, 2020, the European Commission "Democracy through Law" (Venice Commission) issued a Report (Report respect for democracy, human rights and the rule of law during states of emergency, 2020), which summarizes the constitutional and legal regulation of emergency situations (state of emergency): war or other emergency situation threatening the life of the nation, as well as emergency powers for all member states and observers of the Venice Commission and presents general legal standards in this area.

According to the general rules, the provisions of the International Covenant on Civil and Political Rights provide for the possibility of a derogation from a simple limitation of guaranteed rights, and the impossibility of a derogation from the so-called "absolute rights" (the right to life, the prohibition of torture and inhuman or degrading treatment and punishment, slavery, the principle of *nullum crimen, nulla poena* and others).

General legal standards include the presence of parliamentary and judicial control over the executive power to prevent the abuse of emergency powers by national authorities, the application of the principles of subsidiarity and proportionality of emergency measures and their compliance with the rule of law.

4. Limits of normative powers of the Cabinet of Ministers of Ukraine

The question of the limits of the Government's rule-making powers and the specifics of their implementation under martial law should be considered primarily in the context of the specifics of the legal regime of martial law as one of the important type of special legal regimes (along with the regime of a state of emergency, emergency situation, quarantine, etc.), as it is connected with the possibility of introducing the most significant restrictions on the rights and freedoms of a person and a citizen.

After all, that is why it is determined at the level of the Constitution of Ukraine that the introduction of martial law or a state of emergency must be accompanied by the indication of the term of these restrictions and a list of rights and freedoms that cannot be limited is established (Constitution of Ukraine, 1996: article 64). The Constitution of Ukraine regulates only the most general issues of the procedure for introducing martial law, not touching either the specifics of the application of the martial law regime or the powers of state authorities in the conditions of martial law.

The acuteness and need to protect the country determine the measures that can be implemented under the legal regime of martial law, as well as the scope of powers of state authorities and the procedure for their implementation (Articles 9 - 18 of the Law "On the legal regime of martial law", 2015). In 2021-2022, the current legislation of Ukraine on martial law was significantly adjusted. The Law comprehensively regulates the activities of the Government in the conditions of martial law.

It is established, in particular, that the Cabinet of Ministers of Ukraine in the event of the introduction of martial law in Ukraine or some of its localities works in accordance with its Regulations; organizes and directs

central and other executive bodies under martial law; after the start of an armed conflict, takes measures to create safe zones in accordance with the norms of international humanitarian law, organized in a way that makes it possible to ensure the protection of civilians.

To fulfill these provisions and in connection with the need for further improvement of legal relations, the Verkhovna Rada of Ukraine during the period of the introduction of martial law from February 24, 2022, adopted a number of legislative decisions of a sectoral nature aimed at clarifying and expanding the powers of the Government during the period of introduction of martial law.

5. Discussion

The most significant, exclusive powers of the Government should be considered by the proposed changes to the current legislation (the Law of Ukraine "On amendments to certain laws of Ukraine on ensuring state management in martial law"), which, however, did not enter into force because the bill is not yet signed by the President of Ukraine.

Thus, this Law stipulates that the Cabinet of Ministers of Ukraine, in the event of the introduction of martial law in Ukraine or some of its localities, makes decisions on all issues that require legislative regulation under martial law conditions, in compliance with Article 64 of the Constitution of Ukraine regarding the restriction of constitutional human rights and freedoms and citizen, including decisions on determining tax payers, taxable objects, tax base, tax rates, tax calculation procedure, tax period, tax payment term and procedure, tax reporting term and procedure, tax benefits and their application procedure.

Within two days after the adoption of such a decision, the Government submits to the Verkhovna Rada of Ukraine a draft law regulating the relevant issues. If, based on the results of consideration by the Verkhovna Rada of Ukraine, such a draft law is rejected, the relevant decision of the Cabinet of Ministers of Ukraine loses its validity from the day following the day of adoption of the decision to reject the draft law.

If, within one month from the date of registration of such a draft law, the Parliament does not make a decision on its rejection or acceptance as a whole, the relevant decision of the Government becomes invalid after the expiration of the specified period or from the day following the day of termination or cancellation of martial law, if this happens earlier. Decisions of the Cabinet of Ministers of Ukraine provided for in this part shall not be applied in the event of adoption and entry into force of a law defining the specifics of resolving relevant issues under martial law. The procedure for entry into force of Government resolutions is also regulated.

Despite the fact that the introduction of martial law requires a significant strengthening of the Government's powers, giving it the power to regulate social relations by law actually means the transfer (delegation) of the Government's legislative function.

This is inconsistent with the requirements of the Constitution of Ukraine, Article 75 of which stipulates that the only body of legislative power in Ukraine is the Parliament - Verkhovna Rada of Ukraine. The specified provision of the project contradicts the requirement the Law of Ukraine on the legal regime of martial law, which states that "[d]uring the period of martial law, the powers of the President of Ukraine, the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine cannot be terminated..." (Part 1 of Art. 10 of the Law of Ukraine "On the legal regime of martial law", 2015).

Pursuant to the powers granted by law, the Government adopted several of its own decisions from February 24, 2022, which concern important issues of legal regulation of economic, social, humanitarian, financial relations and the budget, as well as a complex of issues of popular resistance, territorial defense under martial law. Decisions on humanitarian issues concern child protection, evacuation, children, etc.

The economic decisions connected with providing the Ukrainian army with everything necessary, simplifying the procedure for public procurement, food security, supporting the Ukrainian producer, regulating critical imports, compensation for material damage caused by the aggressor, and housing reconstruction.

The procedure for carrying out rule-making activities of the Government has also undergone changes, while preserving the general rule set forth in Article 12-1 of the Law of Ukraine that the Government "operates in accordance with the Regulations of the Cabinet of Ministers of Ukraine under martial law".

After all, all the key provisions of the Government's rule-making activity, including multi-stage control over the quality of the Government's normative acts, are reflected in the Regulation (Resolution of the CM "On Approval of the Regulations of the Cabinet of Ministers of Ukraine", 2007), and technical and legal norms - in the Rules for the preparation of draft acts of the Cabinet of Ministers of Ukraine (Resolution of the Cabinet of Ministers "On approval of the Rules for the preparation of draft acts of the Cabinet of Ministers of Ukraine", 2005).

It should be emphasized that the procedure of the Government's rule-making activity under normal conditions, namely before the introduction of martial law in Ukraine, provided for by the Regulation, was democratic and considered the holding of public consultations this, took into account the interests of the regions, compliance with the necessary examinations.

In the conditions of the introduction of martial law, the Government significantly simplified the procedure for consideration at the Government meeting of draft acts on urgent issues prepared during the period of martial law.

The amendments to the Regulations introduced in December 2022 established that during the period of martial law in Ukraine or in some of its localities, in urgent cases requiring immediate decision-making, the Prime Minister or another member of the Government, with the agreement of the Prime Minister the Minister may submit a draft act for consideration by the Government without complying to the requirements of this Regulation regarding approval and consultations, legal examination by the Ministry of Justice, consideration at a meeting of the Government Committee

In December 2021, the mandatory requirement for consideration of draft decisions by government committees, as well as the mandatory holding of public consultations with representatives of interested parties regarding draft acts of the Cabinet of Ministers, was abolished.

Obviously, these decisions should be considered as stringent, temporary, and extraordinary measures. After all, the Government's activity in the conditions of martial law does in fact require extraordinary and fast decisions, but it is hardly possible to neglect the fundamental principles of rule-making activity, in particular, the principles of democracy, the rule of law, the protection of human rights, the scientific validity of rule-making decisions, and others.

Therefore, in any case, the following examination of this kind of adopted acts should be carried out in order to have the possibility of adjusting them in the future. This is also important in view of the fact that the procedure for the implementation of rule-making activity and its separate stages and elements of its mechanism, although they indicate that in recent years the professionalism and quality of Government acts have improved, however, the entire mechanism of rule-making activity did not constitute a single highly effective training system, adoption, publication, implementation and monitoring of relevant Government acts; many of its elements worked inefficiently and needed improvement.

It is obvious that with the return to peaceful life, measures aimed at improving the government's rule-making activities should be developed. This necessity is recognized by the Government itself (Strategy for reforming public administration of Ukraine for 2022-2025, 2021).

Regarding the activities of the already mentioned Government committees and public consultations, we believe that they should be restored as fast as possible after the abolition of martial law. Government committees should be the "sieve" that would sift out the lion's share of imperfect projects and correct the shortcomings of the procedure for

passing and approving Government acts. It should be emphasized that the positive role of Government committees at many stages of the formation of the Ukrainian state has not been fully utilized.

What has been said about the role and importance of the activities of Government committees fully applies to the importance and importance of public consultations with representatives of interested parties regarding draft acts of the Government.

In such public consultations, a wider participation of public organizations as institutions of civil society should be ensured, since public consultations are not only a form of dialogue between executive authorities and the public, but also contribute to the quality and real testing of Government decisions on important issues of state and public life.

Even under the conditions of martial law, there is a need to ensure free access to information on government decisions that are being prepared for consideration, including the publication of draft government acts on the Government website for their public testing, a thorough generalization of the expressed critical assessments of these projects and their consideration in the final drafts, which submitted to the Government for consideration.

Conclusions

The constitutional and legal principles of regulating states of emergency in Ukraine, in particular, martial law, are generally similar to the corresponding practice of democratic countries. The introduction of martial law in Ukraine based on the current Constitution of Ukraine and the corresponding legislation led to a significant expansion of the Government's powers and significant changes in the procedure for the exercise of its rule-making powers. In general, it should be recognized that the Government has actively used the given powers by making a significant number of decisions in all spheres of public life.

It is positive that despite attempts to grant the Government the authority to legislate social relations, which would contradict the Constitution of Ukraine, the final adoption of this decision did not occur. As for the rule-making activity of the Government, it has been significantly simplified in comparison to the procedure for the rule-making activity of the Government under normal conditions provided for by the Regulation, including the cancellation of public consultations on important issues of Government policy, the possibility of suspending the activities of Government committees, the need to hold legal and other types of examinations.

Considering the application of these measures as temporary and extraordinary, it is necessary to emphasize the need for the existence of

appropriate mechanisms for compliance with the principles of the rule of law and protection of human rights in these conditions. For this purpose, legal and other types of examination of Government decisions should be preserved in the form of examination of already adopted decisions, which would make it possible to review decisions that contradict the Constitution or current legislation.

Despite the state of war in the country, the issue of improving the rule-making activity remains relevant, as well as the task of improving the sub-legal legal regulation of social relations with the aim of carrying out urgent socio-economic and management reforms, comprehensive reforming of the Government's rule-making activity itself.

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Formation of military political leadership through the lens of history

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Abstract

By means of a documentary analysis methodology, the purpose of the article was to determine the main characteristics of the formation of military political leadership. The sources of the study are the classical works of Greek philosophers: Plato, Aristotle, and also the treatise "The Art of War", in which the famous Chinese general Sun Tzu stresses the need for self-control, emphasizes the possibility of avoiding confrontation without a prior in-depth analysis of the situation and one's own capabilities. In the process of research, the authors defined the concept of the military-political leader, as well as highlighted the fundamentals of the quality of the leader's personality. The authors come to the conclusion that the military manager is a professional leader, a person who has special knowledge, talent and also has some information about the news in the field of combat organization, the use of weapons and management of a military organization. He is also a person who not only knows how to influence subordinates to his will, but also knows how to organize teamwork and be responsible for his actions.

Keywords: political-military leader; personality traits; military unit; leader image; historical perspective of leadership.

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Formación de liderazgo político militar a través de la lente de la historia

Resumen

Mediante una metodología de análisis documental el propósito del artículo fue determinar las principales características de la formación del liderazgo político militar. Las fuentes del estudio están conformadas por las obras clásica de los filósofos griegos: Platón, Aristóteles, y también el tratado "El arte de la guerra", en el que el célebre general chino Sun Tzu subraya la necesidad del autocontrol, hace hincapié en la posibilidad de evitar el enfrentamiento sin un previo análisis profundo de la situación y de las propias capacidades. En el proceso de investigación, los autores definieron el concepto de líder político-militar, así como destacaron los fundamentos de la calidad de la personalidad del líder. Los autores llegan a la conclusión de que el gerente militar es un líder profesional, una persona que tiene un conocimiento especial, talento y tiene además alguna información sobre las noticias en el campo de la organización del combate, el uso de armas y la gestión de una organización militar. Igualmente es una persona que no solo sabe cómo influir en los subordinados a su voluntad, del mismo modo, sabe cómo organizar el trabajo en equipo y ser responsable de sus acciones.

Palabras clave: líder político militar; rasgos de personalidad; unidad militar; imagen del líder; perspectiva histórica del liderazgo.

Introduction

- **Problem statement**

The history of human life demonstrates that people live and act in different group associations. Thus, there is an impact of both formal and informal leaders on the individual, as well as their (leaders) importance on the development of society and humanity in general. On the assumption of the creation of a group that involves more than two people, there will be a division of people into groups – those who lead the group and followers – who are subordinate to a certain extent to the recognized leader in this community. The appearance of a chain of command is inevitable if quantitative growth of the group occurs. At a certain stage of its existence, some members of the group begin to play a more active role in common livelihoods organization and become leaders (Metelska, 2022).

The military unit can be considered as a group with variable size because its members constantly arrive to or depart from it. However, its core

members remain the same. Changes in this group are due to the expiration of service, rotation, and other factors.

- **Literature review**

The issue of military leadership has its origins in ancient times and was determined by such commanders as Sun-Ji, Alexander Suvorov, Mikhail Kutuzov, and Helmuth von Moltke the Elder. The issues of public administration, monarchy, aristocracy, and leadership have long been reflected in the philosophers Aristotle, Plato, and Confucius. Michael Armstrong, Max Weber, Mykola Berdyaev, Niccolo Machiavelli, F. Taylor, and many others analyze the problem of leadership and single leadership in governing bodies already in the scientific context. In modern science E. Egorova-Gantman, L.E. Orban-Lembryk, V.S. Pokalyshyn, S.Y Polyakov, V.V. Stasiuk, and others develop the problem of leadership and organization of military management in modern socio-economic realities (Taylor, 2002; Taylor, 2014).

The problem of establishing leaders has been actual since ancient times (Hretsa *et al*., 2022). But a systematic, purposeful study of the leadership principles began with F. Taylor studies (early 19th century). Early research aimed to discover successful leaders' qualities or characteristics. According to the "great people" theory, the best leaders have a certain set of general and individual qualities. Research has shown that there is no such combination of individual qualities that all successful leaders have, because the leadership effectiveness is situational.

The domain of leadership as the effectiveness of military leadership was chosen by us not by chance, but because human history has shown a fruitful synthesis of prominent generals, military and political leaders of states, empires, republics of Persian kings Cyrus and Darius, Indian king Ashoka (Asoka), Roman leaders Gaius, Marcus Anthony, Julius Caesar, Russian emperor and general Peter I, Ukrainian Hetman B. Khmelnytsky; Napoleon Bonaparte, in the twentieth century. D. Eisenhower, S. de Gaulle in the XXI century.

The purpose of the article is to conduct a scientific and practical analysis of the history of development and formation of military leadership on the example of ancient China, to reveal the philosophy of leadership in a historical perspective, to illustrate modern requirements to the military commander as the sole leader of the military structure.

1. Methods

In the framework of the study authors used general scientific research methods including specialized research methods of comparative history science, logical and legal analysis, and concretization. The methodological basis of the study is constituted by the epistemological method.

In the course of the study, we analyzed legislation and historical literature, a comparative analysis of international approaches of leadership formation.

2. Results and discussion

Until the beginning of the twentieth century Plato was one of the first to raise the problem of leadership. He suggested three types of leaders in his treatise "State":

a) philosopher - a statesman who governs the republic on the basis of reason and justice;

b) a military leader who protects the state and subordinates other people to his will;

c) a businessperson who provide satisfaction of material needs (Bloom and Kirsch, 2016). Aristotle and later Montesquieu also contributed to the study of leadership. They identified three types of power. Aristotle – monarchy, aristocracy and democracy as the power of one, few and many, respectively, and Montesquieu - despotism, monarchy and republic. Machiavelli had an undoubted influence on modern research on political leadership as well as on the creation of methods for studying the phenomenon named after him in his work "The Emperor", that was written in the XVI century (Ford, 2004).

The famous Chinese mastermind Sun-Tsu is one of the most prominent military philosophers and strategists of antiquity (Tzu and Giles, 2021). His works on the art of war were developed by his follower Sun-Bin and are highly valued by contemporaries. The ability to maintain a balance of strength and weakness, devotion and agility, attack and peace is a valuable skill that is still studied in business schools. The science of negotiating, evaluating the enemy and always achieving personal goals is still the primary task for modern managers and is especially important for a modern commander of a military unit."

Considering leadership in foreign sources prior to the beginning of the 20th century, it would be better to start with the fact that the disputes about leadership are more than two thousand years old. Even in ancient China

during the time of Confucius, there were discussions about what is more important for leadership – power, control, or knowledge of the laws. In the 3rd century BC. Believed that the main purpose of the art of government – to separate the loyal and crafty officials, to test their abilities and monitor success in order to strengthen government based on the law (Schiller, 2011).

In the understanding of Confucius, the welfare of the state should rest on the education of the people and on their conscious fulfillment of the requirements of state ethics and morality. And the rulers were charged with the task of correcting the morals and increasing the knowledge of the people (Schiller, 2011).

Lao Tzu, on the other hand, believed that an educated person was unhappy. Here is how he explained his position:

> If you do not value the wise men, then there will be no quarrels among the people. If you do not appreciate rare items, then there will be no thieves. If you do not show what can cause envy, then the hearts of nations will not worry. Therefore, in governing, the perfect wise man makes hearts empty and their stomachs full. It weakens their will, but it strengthens their bones. He always strives to ensure that the people do not have knowledge and passions, and those who have knowledge would not dare to act ... (Tzu, 2011: 36).

An example of such a government is Sparta, which gave the state great commanders, but not a single philosopher. Sparta as a state existed for five hundred years and only after departing from the laws given by Lycurgus did it fail. Two circumstances contributed to the fall of the state: greed burst out, which nestled somewhere in the depths of the consciousness of the citizens of Sparta, and the actions of those with knowledge despite the prohibitions.

The book Science of Victory (Nauka Pobezhdat) written by the outstanding generalissimo of the Russian army A. Suvorov is the greatest contribution to the military management treasury.

Mikhail Kutuzov (1745-1813), in the new changed conditions of the war, relied on his activities on the staff, fully using it to exercise command and over the troops. Consequently, he substantiated and created the line-and-staff structure of the army, 100 years ahead of the classic of American military management G. Emerson (1853-1931), who substantiated the line-and-staff management in production, using the works of the military theoretician of the Prussian Field Marshal General Molke the Elder (1800-1891).

As noted by L. Orban-Lembrik, “the commander must stick to the following points to conduct proper assessment of the situation and make all necessary adjustments to his/her activities:

1. To have sufficient understanding of the abilities and capabilities of subordinates;
2. To know your own abilities, capabilities;
3. To understand the nature of the goals and objectives faced by the group (organization);
4. To be clearly aware of the needs, interests and aspirations of group members;
5. To see clearly the lines of authority;
6. To be able to carry out the assessment of the accuracy of information and to strengthen the information on the basis of which the decisions and action plans are made and implemented" (Orban-Lembrik, 2003).

Throughout the Art of War, Sun Tzu emphasizes the necessity of self-control, insisting on avoiding engagements, without deep analysis of the situation and friendly forces capabilities. Haste and fear or cowardice, as well as anger and hatred, are unacceptable when making decisions in the state and in command. The army must never be hastily engaged, pushed into war, or assembled without important reasons. Instead, restraint should be exercised, although every effort should be made to ensure the invincibility of the army.

In addition, some tactical situations and types of terrain should be avoided and, if so, they should become advantages. Special attention should then be given to the implementation of the campaign's strategy and the use of appropriate tactics to defeat the enemy (Tzu and Giles, 2021).

The basic principle is, "Go forward where you're not expected; attack where they're not prepared." This principle can be realized only thanks to the secrecy of all actions, complete self-control and iron discipline in the army, and also "incomprehensibility". Throughout the book, Sun-Tzu discusses the most important problem of command: the creation of a clear organization controlling disciplined, obedient troops.

The essential element is the spirit known as chi, the most important life power. This component is associated with will and motivation; when people are well-trained, properly fed, clothed and equipped, if their spirits are ignited, they will fight fiercely (Tzu and Giles, 2021).

However, if their physical condition or material conditions dull their spirit; if, in the relations between commanders and subordinates, the people have lost their motivation; army will be defeated. On the contrary, the commander must manage the situation so as to avoid the enemy when he is strong in spirit - as, for example, at the beginning of the day - and

take every opportunity when this condition weakens and the troops are unwilling to fight, such as when they return to camp.

Sun Tzu in his treatise "The Art of War" (Tzu and Giles, 2021) gives advice to the military commander that is still relevant for modern iron discipline in the Armed Forces. First, the commander has five dangers: if he strives to die at all costs, he may be killed; if he strives at all costs to stay alive, he can be captured; if he is quick to anger, he may be despised; if he is too scrupulous to himself, he may be insulted; if he loves people, he can be weakened. Secondly, a commander, who during his speech, does not seek glory, but, retreating, does not evade punishment, who thinks only about the welfare of the people and the benefit of the head of state, such a commander is a treasure for the state.

And thirdly, if the commander looks at the soldiers as children, he will be able to go with them to the deepest gorge; if he looks at the soldiers as beloved sons, you can go with them even to death. But if he is kind to them, but will not be able to dispose of them; if he loves them, but does not know how to order them; if they have riots, and the commander is not able to establish order, this means that they are naughty children of the commander, and it will be impossible to use them.

Leadership is not just a set of qualities, traits, techniques. It is the ability to direct one's efforts to oneself, to a dynamic, qualitative change. The leader changes others, changing himself at the same time. Hence the conclusion – you cannot learn leadership; you can become a leader (Bakhov *et al.*, 2018; Guk *et al.*, 2019).

According to the survey conducted in higher military educational institutions of Ukraine: "How do you see your commander (leader)?" For cadets (future officers) the commander (leader) is a senior comrade, mentor, bearer of knowledge, culture, morality, the one who is able and wants to understand and help; it is also the one they look up to and the one who cannot be neglected. The commanders (leaders) are as demanding of themselves as they are of their subordinates; they are organizers who value not only their opinions but those of others as well.

The leadership qualities of a military commander can be seen in the order. A sense of personal responsibility of a military leader, who is definitely a commander and has to be able to command is concentrated in the order. The commander's order must be prepared in advance and thus could be realized by the executors.

Therefore, without the commander-to-subordinates cooperation, an order is like an arrow flying against the wind. Even the suddenness of the order must be foreseen. Then it will turn into an experienced tension. A military commander knows how to evoke cooperation not only in deeds but also in thinking. Only then the soldier can be let off. The order obliges oneself to act independently (Bakhov *et al.*, 2018; Guk *et al.*, 2019).

First of all, leadership problems are especially relevant for the army and navy, where urgent solutions are required in emergency situations. It would seem, where, if not during exercises, you can select and improve leadership skills. Daniel Kahneman (2013) in his book "Thinking, Fast and Slow" gives an example of the selection of future officers in the Israeli army, which used the methods developed in Great Britain, in particular, the test "The fight without a commander". Eight unfamiliar applicants for the officer rank were asked to overcome the obstacle. Observing the candidates, the experts noted who undertook to command the "operation", who tried to show leadership qualities.

The experts were confident that in the future the officers would act in accordance with their conclusions regarding their suitability as leaders. In the future, the experts received information about the candidates' service. By processing the feedback data, they were convinced that, alas, their predictions came true with the probability "a little better than guessing by the thrown coin". Understanding that the teaching and the actual situation are different from each other, they influenced the behavior of candidates. This is probably due to the understanding of the difference in the degree of risk during exercises and under real conditions in battle (Kahneman, 2013).

The current officer is the leader – the leading official who is able to organize the effective activity of the military formation and lead subordinates.

Jim Collins (2017) in his book "Good to Great" argues that the hierarchy of skills consists of four levels:

The first level. Highly professional employee. Actively uses his abilities, knowledge, experience, ability to organize his work and the work of others.

The second level. Valuable and competent manager. Makes a personal contribution to the common cause. Effectively interacts with other team members, organizes people and rationally allocates resources.

The third level. An effective leader. Forms the vision of the group and consistently ensures that the organization, the team as a whole move along the planned path. Provides high standards of work quality.

The fourth level. A leader of high professional level. His leadership allows to achieve exceptional and long-term and stable results due to the paradoxical combination of outstanding qualities of a leader and managerial abilities.

Conclusions

Nowadays, a good leader of an organization is a person who is both a leader and effectively manages his subordinates, there are many examples

of such a transformation in the past and today. The combination of the qualities of a formal and informal leader is optimal for a leader. However, such a symbiosis in one person of these social roles, especially the roles of official leader and emotional leader is complex, and requires time, desire, appropriate traits.

According to many scholars, leaders are "born"", but to an even greater extent they become them through learning, hard individual work, full of knowledge of practical experience and skills. Based on all this, almost every competent and far-sighted leader can become a business, in many ways an emotional leader who looks to the future, developing himself and his team.

Thus, the system of requirements for the level of professional competence of a commander as a leader of a military unit should include the following necessary components:

1. Personal qualities: - adherence to the principles of military service; - self-improvement; result orientation; - responsibility.
2. Information handling skills: - collecting and sharing data; - analyzing information; - implementing improvements and innovations; - strategic planning; - making command and control decisions of the military commander at the appropriate level.
3. Management skills: - using and managing resources; - planning, organizing, and executing work; - adapting to and managing change.
4. Communication skills: - effective communication; - teamwork skills; - managing and supporting others.

Accordingly, military leadership cannot be taught; it can be improved, but only in those whose leadership qualities are inherent in nature. But a military commander (leader), besides the ability to give orders, should be taught the ability to understand and execute orders.

Therefore, the basics of military leadership must be known to all, both commanders and subordinates. Especially when in a combat situation we have to act in extreme situations, when there is no time to understand and clarify orders.

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Psicología política de los líderes transformadores en las escuelas del siglo XXI

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Resumen

Las escuelas del siglo XXI no son ya solo espacios sociales dedicados a la reproducción de los procesos de enseñanza-aprendizaje, de los saberes instruccionales básicos para la consolidación de las capacidades humanas, sino también, motores para la enseñanza de las mentalidades necesarias que hagan de los actores clave del sistema educativo (profesores y alumnos), potenciales lideres transformadores de las comunidades en las cuales están inmersos, como ciudadanos responsables y sujetos políticos de comprobado valor. Por lo tanto, el objetivo de este artículo fue identificar los contenidos de psicología política que requiere la formación de liderazgos transformadores en el del siglo XXI, como condición de posibilidad para desarrollar escuelas con vocación de formación política de los liderazgos que la sociedad de hoy necesita. Metodológicamente, se empleó la técnica de investigación documental y la reflexión filosófica. Los resultados obtenidos permiten concluir que al encarnar las características de los líderes transformadores

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y comprender las dificultades de la psicología política, estos líderes no sólo fomentan un entorno de crecimiento e innovación, sino que también garantizan que las consideraciones éticas estén a la vanguardia de la toma de decisiones, para beneficio de sus comunidades de aprendizaje y de la democracia en general.

Palabras clave: psicología política; liderazgos transformadores; escuela en el siglo XXI; pensamiento crítico; formación cívica y ciudadanía.

Political psychology of transformational leaders in 21st century schools

Abstract

The schools of the 21st century are no longer only social spaces dedicated to the reproduction of the teaching-learning processes, of the basic instructional knowledge for the consolidation of human capabilities, but also, engines for the teaching of the necessary mentalities that make the key actors of the educational system (teachers and students), potential transforming leaders of the communities in which they are immersed, as responsible citizens and political subjects of proven value. Therefore, the objective of this article was to identify the contents of political psychology required for the formation of transforming leaderships in the XXI century, as a condition of possibility to develop schools with a vocation for the political formation of the leaderships that today's society needs. Methodologically, the documentary research technique and philosophical reflection were used. The results obtained allow us to conclude that by embodying the characteristics of transformational leaders and understanding the difficulties of political psychology, these leaders not only foster an environment of growth and innovation, but also ensure that ethical considerations are at the forefront of decision making, for the benefit of their learning communities and democracy in general.

Keywords: political psychology; transformational leadership; school in the 21st century; critical thinking; civic education and citizenship.

Introducción

Este trabajo desarrollado enteramente en español con predominio de fuentes digitales en castellano, significa para los autores, un acercamiento a la prominente cultura científica latinoamericana e Iberófona, que se caracteriza por su rigurosidad y por su generosidad con los científicos de Europa del este en general y de Ucrania en particular, al poner a disposición un conjunto de revista arbitradas de alto impacto certificadas por los principales índices del orbe. Esta tradición académica que inicia hace un lustro ha permitido, entre otras cosas, la construcción de puentes y alianzas académicas entre personas e instituciones de ambos continentes y no se ha debilitado, ni siquiera, por los duros tiempo de la guerra.

La relación lógica y dialéctica de las categorías: psicología política, liderazgo transformador y escuela es evidente en el siglo XXI, si se entiende a la escuela como una plataforma primordial es las luchas y reivindicaciones de los jóvenes ciudadanos. Esta afirmación no debe confundirse con un intento de *partidizar a la escuela*, sino más bien, con entender su elevada labor de formación de la conciencia ciudadana de niños, niñas, jóvenes y adolescentes, conciencia ciudadana de la que emerge paulatinamente un conjunto de comportamientos políticos, en términos de los posicionamientos que los actores sociales y sujetos políticos hacen en torno a los intereses y necesidades propias y, más aún, de las comunidades en las cuales se está inmerso activamente. Además, toda cognición de identidad nacional y de conciencia histórica, parte fundamentalmente de los saberes socializados en las escuelas.

La noción de psicología política es muy amplia y varia en su alcance y significación en razón de la perspectiva teórica e ideológica en la que se utilice el concepto, sin embargo, para los autores de esta investigación se trata de una disciplina con autonomía epistemológica que relaciona de forma íntima a la psicología contemporánea con la ciencia política en su afán de otorgar centralidad al estudio de las relaciones que se dan entre los procesos psicológicos y los fenómenos políticos, que experimentan las sociedades humanas y las personas concretas en la organización de sus comunidades, las administración de sus recursos materiales y simbólicos y en la gestión de sus conflictos cotidianos (Vallès, 2006; Garzón, 2008).

Sin duda, la psicología política tiene mucho que ofrecer entonces no solo en el posicionamiento de contenidos formativos en los diferentes niveles y modalidades de un sistema educativo determinado, para entender los fenómenos psicopolíticas que sirven para configurar los modelos interpretativos de la realidad que las personas usan, negocian y resignifican en cada momento para entender las realidades políticas en las que participan de forma consciente o inconsciente; contenidos que en la forma de paquetes cognitivos varían de un país a otro. De hecho, la acción benéfica

de la psicología política es fundamental también en la estructuración de las conductas y valores democráticos que los jóvenes del siglo XXI deben desarrollar como herramientas cognitiva-conductuales en su lucha contra las fuerzas autoritarias que se oponen con su accionar --abierto o solapado-- al goce y disfrute de los derechos humanos en el orden local, nacional e internacional respectivamente.

Por lo tanto, el objetivo de este artículo fue identificar algunos contenidos instruccionales de psicología política que requiere la formación de liderazgos transformadores en el del siglo XXI, como condición de posibilidad para desarrollar escuelas con vocación de formación política de los liderazgos que la sociedad de hoy necesita. Sin duda, los autores de la investigación, parten de la hipótesis predictiva, correlacional y no experimental: a) que visualiza en todos los jóvenes insertos en la escuela a potenciales lideres con capacidad real para transformar a su entorno para mejor, o ¿Es que acaso los actuales lideres políticos, empresariales, militares o intelectuales que detentan las principales posiciones de toma de decisiones en sus respectivos contextos, no fueron, en su momento, niños y jóvenes que asistieron a la escuela?

Igualmente, y como epifenómeno de esta hipótesis se postula b) la idea relacionada a la primera hipótesis de que, la mejor forma de combatir a los totalitarismos del siglo XXI impulsados por "lideres carismáticos o mesiánicos" de izquierda o de derecha, está precisamente en el desarrollo de las cualidades de liderazgo transformador de los jóvenes, entendido esto, como un estilo de liderazgo democrático, ganado al uso del pensamiento crítico y contrahegemónico. Desde esta perspectiva, se infiere lógicamente que la escuela tiene la doble función de ser en esencia y existencia: lugar de construcción intersubjetiva de saberes y aprendizajes significativos y, al mismo tiempo, de liderazgos con compromiso social que se irán desplegando, o no lo harán, paulatinamente, en cada caso, en el marco del éxito o fracaso de la relación escuela-maestro-alumno-sociedad (Shatrava *et al.,* 2023).

En este hilo argumentativo, resulta realmente esclarecedora la carta que el premio nobel de literatura de 1957, Albert Camus, escribiera como tributo a su maestro de la infancia:

> Querido señor Germain:
>
> He esperado a que se apagase un poco el ruido que me ha rodeado todos estos días antes de hablarle de todo corazón. He recibido un honor demasiado grande, que no he buscado ni pedido. Pero cuando supe la noticia, pensé primero en mi madre y después en usted. **Sin usted, la mano afectuosa que tendió al pobre niñito que era yo, sin su enseñanza y ejemplo, no hubiese sucedido nada de esto.** No es que dé demasiada importancia a un honor de este tipo. **Pero ofrece por lo menos la oportunidad de decirle lo que usted ha sido y sigue siendo para mí, y le puedo asegurar que sus esfuerzos, su trabajo**

> **y el corazón generoso que usted puso continúan siempre vivos en uno de sus pequeños discípulos, que, a pesar de los años, no ha dejado de ser su alumno agradecido**... (En: Fernández, 2016: s/p) (negritas añadidas).

En esta cita *in extensa*, queda claro que el grande filosofo existencialista francés tiene plena conciencia de la impronta que su maestro desempeño en la formación de su pensamiento y que, de hecho, sin la labor benéfica de las enseñanzas recibidas en la escuela cuando niño, logros con el premio Nobel y el liderazgo intelectual que conforman en la escena internacional, muy seguramente no hubieran sido posible. De lo que se trata aquí es de visualizar esa relación de suma positiva que se da entre la *mentalidad del líder transformador* y las condiciones formativas que se estructuran en y desde la escuela.

1. Influencias teóricas identificadas

Para el desarrollo de esta investigación fue importante el concepto de liderazgo trasformador, que al decir de Guerra (2022), refiere a un estilo particular de liderazgo que actúa como una fuerza potenciadora de cambios organizacionales positivos enmarcados en la dirección estrategia de las tecnologías disruptivas. Mas específicamente:

> La dirección estratégica de las tecnologías disruptivas se conjuga en una transformación organizacional profunda que implica la ruptura del viejo contexto para dirigirse a un nuevo contexto social y económico orientado a la transformación digital (TD) e innovación disruptiva (ID), como factores taxativos de creación de valor en el nuevo escenario de las organizaciones (2022: 42).

Ante estas ideas se debe responder en principio entonces ¿Que significa o puede significar la creación en la escuela de experiencias de liderazgo trasformador? Todo indica que el liderazgo se construye mediante una relación social que da la posibilidad a un conjunto de personas de interpretar las necesidades y aspiraciones de su grupo de referencia (una empresa, una comunidad, una región, la nación), y darle expresión concreta mediante la formulación de programas, proyectos y acciones transformadoras. En este contexto, el uso de tecnologías disruptivas simboliza simplemente la interrupción de las tecnologías tradicionales que no han sido capaces de impulsar los cambios que se necesitan y su sustitución por otras más eficaces y eficientes en términos de obtención de resultados.

De esta idea se infiere que la construcción de un estilo de liderazgo transformador en los niños, niñas y jóvenes que asisten regularmente a la escuela, significa el despertar en su conciencia de las posibilidades y recursos que tienen para mejorar de forma autónoma sus propios espacios de convivencia. Al hacer esto, el chico entiende que la realidad social no es una entidad metafísica estática, sino el resultado dinámico de una

interacción social, simultáneamente objetiva y subjetiva que puede ser hasta cierto punto cambiada por un conjunto de relaciones intersubjetivas en las que se articulan dialécticamente diversos actores y factores, como: el gobierno, la empresa, la sociedad civil organizada y los liderazgos, entre otros.

En cuando a la psicología política este artículo científico fue subsidiario de la lectura minuciosa de los trabajos de Garzón (2008) y fundamentalmente de Staerklé (2015). Mas allá sus particulares ideas, ambos autores coinciden en señalar que la psicología política se muestra no tanto como una disciplina particular sino como un campo de estudio de franco carácter interdisciplinario, que tiene la capacidad de analizar científicamente las cogniciones y comportamientos políticos de las personas en el marco de sus comunidades de vida, políticamente organizadas en diferentes instituciones.

Especial interés adquiere para este campo de estudio, los procesos de transformación social impulsados en cada momento por las elites de poder, en sus diferentes modalidades y manifestaciones. Por lo demás: *"Key topics in political psychology include political beliefs and values, cognitive processes in political decision making, political communication, media effects, political rhetoric, international conflict, racism and prejudice, ethnic identities, and collective action*[7]" (Staerklé, 2015: 427)

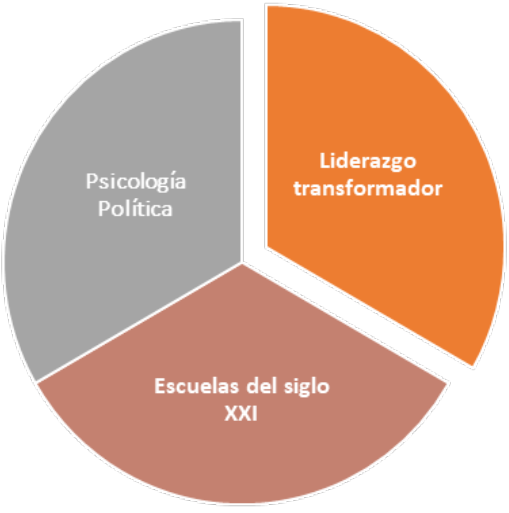
Por último, nuestra idea de la escuela en el siglo XXI fue influida por las ideas de Fuenmayor (2020), para quien la escuela del siglo XXI se identifica por una visión de la educación que debe conjugar, en lo posible, las identidades locales y nacionales que le dan sentido ontológico a las personas y a sus comunidades de referencia, con las realidades globales que integran a las economías nacionales, en un todo relativamente moderno en el que se comparten además valores cosmopolitas como: la igualdad, la necesidad de la justicia social, los derechos humanos, la democracia como forma superior de gobierno y el desarrollo sostenible, entre otros.

En este orden de ideas, la escuela del siglo XXI se trata de un modelo en construcción que, más allá de sus contenidos instruccionales particulares, que varían normalmente de un país a otro, apuesta en general por el desarrollo de aprendizajes personalizados en función de las necesidades de cada estudiante; la integración de las nuevas tecnologías de la comunicación e información (TIC) en los procesos de enseñanza-aprendizaje; la formación en el respeto de la diversidad en todas sus expresiones socio-culturales, fortalecida además por la socialización de herramientas de inclusión; con la apertura de las relaciones más estrechas con las comunidades cercanas; la

7 "Entre los temas clave de la psicología política se incluyen las creencias y los valores políticos, los procesos cognitivos en la toma de decisiones políticas, la comunicación política y la participación política. Los procesos cognitivos en la toma de decisiones políticas, la comunicación política, los efectos de los medios de comunicación, la retórica política, los conflictos internacionales, racismo y prejuicios, identidades étnicas y la acción colectiva." (Staerklé, 2015: 427) (Traducción libre por los autores).

inclusión de programas de formación ciudadana, todo lo cual repercute en la formación de los primeros liderazgos transformadores.

Figura No. 01: Relaciones conceptuales



Fuente: Elaborado por los autores (2023).

Los autores del estudio suponen que los conceptos o categorías: piscología política, liderazgo transformador y escuelas del siglo XXI, se relacionan tanto en la teoría como en la realidad social. En este orden de ideas, es precisamente la escuela el espacio donde se forman las primeras experiencias de liderazgo transformador que, llegado el momento, pueden tener la fuerza relacional de impulsar cambios beneficiosos para la comunidad.

No obstante, la construcción de estas experiencias de liderazgo requiere, como se verá a continuación, del uso y socialización de las herramientas propias de la psicología política, bien sea a través de unidades curriculares directamente implicadas en la cuestión políticas, tales como: formación ciudadana, historia, filosofía o sociología, o asumiendo la psicología política como un eje transversal dentro una maya curricular determinada para potenciar las condiciones de liderazgo transformador en la mentalidad de los niños, jóvenes y adolescentes según las pautas de la realidad puntual de cada comunidad de aprendizaje.

2. Metodología

Como ya se dijo en el resumen metodológicamente, en esta investigación se empleó la técnica de investigación documental y la reflexión filosófica. En este contexto argumentativo, conviene explicar que se entiende por reflexión filosófica y, hasta que punta, esta forma de reflexión se constituye, por un lado, en una metodología autónoma por derecho proprio y, por el otro, que diferencia a la reflexión filosófica de otras formas de reflexión, muchos mas cuando existen, desde la antigüedad hasta el tiempo presente, un conjunto diferenciado de escuelas filosóficas que varían en sus métodos y procesos de reflexión para acceder a la verdad de las cosas.

Aclarado lo anterior, por reflexión filosófica se quiere expresar siguiendo a Kant (citado por Ferrater, 2004), no solo la reflexión de los objetos y sujetos mismo que en su devenir componen a la realidad fenomenológica, distintas al noúmeno, sino que, además, se trata de un estado de conciencia que se ocupa de examinar las condiciones subjetivas bajo las cuales llegamos a formular los conceptos. De modo que la verdadera reflexión filosófica: "Es la conciencia de la relación de representaciones dadas a nuestras distintas fuentes de conocimiento. Solo mediante tal conciencia puede determinarse correctamente la relación que mantienen entre si las fuentes del conocimiento" (Ferrater, 2004: 3035),

Desde esta perspectiva, el intento de reflexión filosófica que se implemento para lograr el objetivo general de la investigación, no solo se centró en el examen minucioso de psicología política de los líderes transformadores en las escuelas del siglo XXI, sino que, del mismo modo, se intento develar cuales son las condiciones subjetivas necesarias para comprender estos fenómenos en su dimensión relacional, a través de la formulación de preguntas como: ¿Cuáles son los sesgos que el equipo de investigación ha desarrollado en torno a este temática de interés general? ¿De que modo se puede comprender mejor estos conceptos?

3. Psicología política de los líderes transformadores en las escuelas del siglo XXI

El objetivo de este artículo fue identificar los contenidos de psicología política que requiere la formación de liderazgos transformadores en el del siglo XXI, como condición de posibilidad para desarrollar escuelas con vocación de formación política de los liderazgos que la sociedad de hoy necesita. En este sentido, en esta sección se profundiza en el papel de estos líderes, explorando sus características, consideraciones éticas y el impacto que tienen en el rendimiento escolar. Al comprender la psicología política que subyace al liderazgo transformador, podemos obtener información

valiosa sobre las estrategias y los enfoques que emplean estos líderes, en su contexto, para lograr un cambio positivo en los entornos educativos del siglo XXI (Delval, 2013).

Según Bolívar (2010), el papel desempeñado por los líderes transformadores es esencial para el éxito de la escuela moderna. Estas personas no son simples administradores o supervisores; son agentes de transformación, que inspiran y motivan a los demás para que desarrollen su potencial. Con una visión clara del progreso educativo, lo comunican eficazmente y lo llevan a buen término. Al crear una atmósfera positiva y abierta, hacen que todas las partes interesadas se sientan valoradas y capacitadas. A través de su liderazgo, fomentan la innovación, la colaboración y el crecimiento continuo en el entorno académico. Además, abogan por la equidad y la justicia social en la educación, garantizando en lo posible a todos los estudiantes el acceso a una enseñanza de calidad y la oportunidad de alcanzar el éxito.

En consecuencia, queda claro que el liderazgo transformador no solo se busca potenciar en los chicos, sino, además, en los maestros y profesores que participan activamente en la construcción del modelo renovado de la escuela en el siglo XXI y, como generantes del proceso de enseñanza-aprendizaje. El papel de los maestros como líderes transformadores requiere un conjunto de habilidades diversas. No se limita al liderazgo pedagógico, sino que también hace hincapié en la creación de relaciones cooperativas, la colaboración intersubjetiva y el logro de un entorno escolar positivo. Como modelos y mentores, asumen riesgos orientados a innovar y crecer cada día en la profesión docente. Al fomentar el liderazgo distribuido, implican a los chicos y al personal profesional que hace vida en la escuela, como: (psicólogos, orientadores, pedagogos e instructores deporticos) en el proceso de toma de decisiones, lo que al decidir de Muñoz (2011) beneficia a la democracia en la escuela.

Una de las labores clave fundamentales del liderazgo trasformador es fomentar el crecimiento profesional proporcionando apoyo y retroalimentación. Asimismo, los líderes transformadores reconocen la importancia de crear asociaciones con los padres, las organizaciones comunitarias y otras partes interesadas para establecer un entorno unificado y de apoyo continuo a los estudiantes. En esta estrategia, la comunicación y la transparencia son prioritarias para mantener a todos los implicados informados de la visión y los objetivos de la escuela. En última instancia, el papel de estos líderes es crear una atmósfera de colaboración e inclusión, en la que todos puedan alcanzar su máximo potencial, más allá de las múltiples problemáticas existentes.

3.1. Características de los líderes transformadores

Los líderes que poseen cualidades humanas extraordinarias se diferencian de los liderazgos tradicionales. Estos individuos sobresalientes poseen no sólo un don para inspirar y motivar a otros hacia una visión unificada, sino también un nivel excepcional de inteligencia emocional. Comprenden sus propios sentimientos y los de quienes les rodean, les permite gestionar las exitosamente sus relaciones y resolver conflictos sociales con habilidad. Además, estos líderes destacan en comunicación y son capaces de articular su visión de forma cautivadora, incitando a los demás a la acción transformadora en la escuela (González *et al.,* 2013).

De igual modo, los lideres transformadores saben escuchar con agudeza y buscan activamente la opinión y los comentarios de su equipo, sin importar la crítica. También, al menos en lo teórico, poseen una naturaleza adaptable, capaz de navegar por un mundo en constante cambio y tomar decisiones inteligentes. Por si fuera poco, estos líderes se esfuerzan constantemente por crecer y desarrollarse personalmente, estableciendo un punto de referencia a seguir por su equipo. En conclusión, las características de los líderes transformadores los hacen extremadamente eficaces a la hora de fomentar el cambio positivo y cultivar una cultura de innovación y crecimiento.

3.2. Psicología política de los líderes transformadores

Según Saad (2021) la psicología política ofrece valiosas perspectivas sobre el comportamiento y la mentalidad de los líderes escolares del siglo XXI. El análisis de este campo proporciona una comprensión de sus motivaciones, procesos de toma de decisiones e impacto en las instituciones educativas. En este sentido, la exploración de la intersección entre política y psicología permite observar científicamente cómo estos líderes manejan complejas dinámicas de poder, desarrollan coaliciones e innovan estrategias para lograr el cambio.

Todo indica que, las características de los líderes transformadores son esenciales para comprender la psicología política de estas figuras. Poseen una visión convincente y están impulsados por un propósito positivo, demostrando carisma e inculcando una narrativa que resuena entre las partes interesadas. Además, muestran inteligencia emocional, empatía y capacidad para generar confianza. El examen de estas características puede crear un marco para el desarrollo de futuros líderes transformacionales en la educación.

Según Simonetta (2017), la ética es un elemento clave de la psicología política de estos líderes. Deben abordar dilemas morales y tomar decisiones que reflejen su visión de la realidad. Esto implica a menudo equilibrar las necesidades de la comunidad escolar con objetivos sociales más amplios, al

tiempo que se consideran las implicaciones éticas de sus acciones. Evaluar estas consideraciones éticas ayuda a identificar los retos del liderazgo y las estrategias para promover el liderazgo ético en las instituciones educativas, impulsando en los chicos un visón moral que ayuda a diferenciar en cada momento, lo bueno de lo malo, lo valido de lo inválido y lo correctos y los incorrecto, en términos de lo que significa la dignidad humana junto a la dignidad de todas las formas de vida superior.

3.3. Consideraciones éticas de los líderes transformadores

Las consideraciones morales son un elemento vital del liderazgo transformador en los entornos educativos actuales. Los liderazgos de este tipo deben ser conscientes del alcance y significados de sus decisiones y asegurarse de que no sólo promueven un cambio positivo, sino que también defienden las normas éticas, fundamentales para la convivencia social. Es esencial que estos líderes sopesen cuidadosamente las implicaciones de sus elecciones, asegurándose de que el bienestar y el crecimiento de los estudiantes y del personal tengan prioridad. En consecuencia, se impone el dilema existencial de lograr en cada momento la transformación desea, al tiempo que se mantienen los valores éticos que identifican a la comunidad, esto es primordial para crear un entorno de aprendizaje justo y equitativo.

En el contexto de una moral laica y universalista como la que identifica al discurso de los derechos humanos, la inclusión y la diversidad son preocupaciones éticas clave en el ámbito del liderazgo transformador. Los líderes deben esforzarse por crear una atmósfera de aceptación y seguridad para todos los estudiantes, independientemente de su raza, sexo o nivel socioeconómico. Además, deben aspirar a proporcionar igualdad de acceso a las oportunidades y los recursos educativos y tomar medidas para erradicar la discriminación y los prejuicios infundados. Igualmente, los líderes transformadores deben fomentar un espíritu de respeto y comprensión, valorando y celebrando las diferentes ideas y perspectivas sobre una misma problemática (Simonetta, 2017).

Tal como sostiene Vallès (2006), en términos políticos, es decir, en lo concerniente a las relaciones de saber y poder que se dan en las escuelas, los líderes transformadores también deben practicar un uso responsable del poder y la autoridad. La influencia que tienen en sus escuelas es significativa y debe ejercerse de manera que tenga en cuenta a toda la comunidad escolar. En este sentido, debe evitarse abusar de la autoridad o utilizarla en beneficio propio, y en su lugar, deben tomarse medidas hacia la transparencia, la participación de los interesados en cada asunto de interés colectivo y la práctica de rendición de cuentas permitiendo la contraloría social, de los proyectos, acciones y decisiones. Demostrando un liderazgo ético, estos líderes pueden desarrollar la confianza entre sus estudiantes, el personal docente y la comunidad en general.

3.4. Liderazgo transformador en las escuelas del siglo XXI

La dirección orientada al logro en las escuelas actuales es un factor central de las instituciones educativas que intentan ajustarse a las peticiones en constante evolución del mundo actual. Con los avances tecnológicos, la globalización y las cambiantes situaciones socioeconómicas, los centros educativos necesitan líderes que puedan gestionar eficazmente estas complejas dinámicas y, al mismo tiempo, impulsar cambios[8] beneficiosos en términos materiales y simbólicos (Guerra, 2022).

Los líderes transformadores asumen una importante labor en la formación del futuro de la instrucción mediante la actualización de estrategias imaginativas, el fomento de un clima de esfuerzo conjunto y el avance del aprendizaje centrado en el alumno, los cuales deben reproducir en su momento estilos de liderazgos que están a la altura del momento que les toque vivir como ciudadanos activos. En general, los lideres de la escuela (personal directivo) poseen un conjunto único de habilidades y cualidades que les permiten conmover, estimular y empoderar, tanto a su personal docente como a sus alumnos. Al hacer de la inclusividad, el valor y la equidad social una necesidad, los pioneros transformadores crean un clima educativo que prepara a los alumnos para el progreso en el siglo XXI (Special Olympics, 2023).

Para comprender completamente la magnitud del liderazgo transformador en las escuelas, es esencial explorar los rasgos que caracterizan a estas experiencias en su contexto. Por regla general, el líder transformador tiene una visión sólida del destino de la instrucción y, por lo tanto, se dedican a crear unas condiciones de aprendizaje que impulsen la inventiva, el razonamiento básico y las aptitudes para abordar problemas. Los líderes transformadores son capaces de establecer y mantener relaciones sólidas con sus socios, como: educadores, alumnos, tutores y personas de la zona. Fomentan una atmósfera de mejora continua y perfeccionamiento experto entre su personal, instándoles a captar el cambio e investigar técnicas imaginativas.

Estos pioneros debe ser además comunicadores competentes, que transmiten con viabilidad su visión y sus objetivos a todas las personas de la red escolar. A través de su liderazgo estratégico y su esfuerzo conjunto, los lideres transformadores crean una cultura escolar positiva que refuerza el desarrollo integral de los alumnos y los prepara para progresar en el mercado laboral del siglo XXI.

8 No todo se debe o se puede cambiar, hay muchas cosas que se deben conservar también como los valores ancestrales que identifican a la comunidad.

4. Desarrollo del liderazgo para líderes transformadores

Según Mendoza y Ortiz (2006) la formación en liderazgo para formar precisamente líderes transformadores es un componente vital para el éxito y la eficacia de las escuelas del siglo XXI. En esencia y existencia, los líderes transformadores son aquellos que tienen la capacidad de motivar y dar a otros las herramientas para crear un cambio positivo. Un plan de desarrollo eficaz para estos líderes debe incluir entonces el perfeccionamiento de las cualidades de liderazgo en las personas, la mejora de la inteligencia emocional y la comprensión en profundidad de la intrincada dinámica política de los entornos educativos. Al proporcionar dicha formación, las instituciones educativas pueden garantizar la presencia de individuos experimentados y capaces de ser, hacer y convivir, con independencia de su edad.

Otro elemento clave de la formación para Líderes Transformadores es cultivar la autoconciencia. Mediante la autorreflexión y la retroalimentación, las personas pueden conocer sus puntos fuertes y débiles, lo que les permite maximizar su potencial. Estos programas instruccionales también deben centrarse en perfeccionar las habilidades de comunicación interpersonales, ya que los líderes de éxito deben ser capaces de establecer relaciones y colaborar con diversas partes interesadas. Ofrecer oportunidades para practicar y desarrollar estas habilidades ayuda a generar una cultura de liderazgo eficaz y transformador.

Un segundo aspecto importante de la capacitación para líderes transformadores es proporcionar a las personas los recursos cognitivos y el conocimiento para maniobrar con éxito el complejo panorama político dentro de los entornos educativos. Esto incluye comprender los mecanismos de poder e influencia, así como las múltiples partes involucradas en los procesos de toma de decisiones. Enseñar a los líderes esta información les capacita para tomar decisiones sabias y estratégicas que estén en consonancia con los objetivos y las necesidades de sus escuelas, desde la perspectiva del pensamiento crítico. Además, estos programas deben dotar a los líderes emergentes de las capacidades necesarias para abogar hábilmente por sus escuelas y estudiantes, garantizando que sus voces sean escuchadas en los debates políticos.

Por otra parte, tal como supone Staerklé (2015) la Formación de Líderes Transformadores debe incluir oportunidades para que los profesores participen en el desarrollo profesional continuo y el aprendizaje permanente. El campo de la educación está en constante cambio, y los líderes deben mantenerse actualizados sobre las investigaciones más recientes, las mejores prácticas y los desarrollos existentes para dirigir eficazmente sus escuelas. Dando acceso a talleres, conferencias y oportunidades de establecer contactos, los centros educativos pueden animar a los líderes en

su crecimiento y desarrollo continuo. Este apoyo al aprendizaje continuo no sólo beneficia al líder individual, sino que también tiene un efecto constructivo en toda la comunidad escolar y debe, por lo tanto, convertirse en una especifica política educativa a nivel nacional.

5. El impacto del liderazgo transformador en el rendimiento escolar

El liderazgo transformador puede tener una enorme influencia en el éxito y el desarrollo de las instituciones educativas. A través de su presencia inspiradora y motivadora, estos líderes pueden fomentar mejoras considerables en el compromiso de alumnos y profesores, así como en los resultados académicos y la cultura escolar en general.

Los líderes transformadores son conocidos por su capacidad para crear una visión y un propósito para su centro educativo, así como por sus excepcionales dotes de comunicación y de creación de relaciones (Villasmil, 2023). Se comprometen a capacitar a los profesores y a proporcionarles los recursos y el apoyo que necesitan para crecer profesionalmente. Igualmente, comprenden el valor de la toma de decisiones basada en los datos y la utilizan para poner en práctica planes que pueden producir resultados tangibles. En resumen, los líderes transformadores son actores clave para maximizar el rendimiento escolar y, mas aun, para el fortalecimiento de la cultura democrática.

En el siglo XXI, los líderes con un enfoque transformador aportan una plenitud de cualidades que pueden marcar una diferencia sustancial en el rendimiento escolar. Son capaces de elaborar una visión clara y significativa en términos de programas, planes y proyectos de interés general, uniendo a todas las partes interesadas y conduciéndolas hacia el logro del objetivo común.

Estos líderes son también maestros comunicadores y expertos en cultivar relaciones de confianza y colaboración. Conjuntamente, dan prioridad a la capacitación de los profesores, proporcionándoles los recursos necesarios para impulsar su crecimiento profesional. Definitivamente, son defensores de las prácticas basadas en pruebas, que se fundamentan en la toma de decisiones basadas en datos. En última instancia, el liderazgo transformador sienta las bases de un entorno educativo próspero y progresista.

Conclusión

En definitiva, no se puede exagerar el papel de los líderes transformadores en las escuelas del siglo XXI, pero su capacidad para inspirar e impulsar

un cambio significativo es crucial para dar forma al futuro de la educación en el complejo mundo de hoy. Al encarnar las características de los líderes transformadores y comprender las dificultades de la psicología política, estos líderes no sólo fomentan un entorno de crecimiento e innovación, sino que también garantizan que las consideraciones éticas estén a la vanguardia de la toma de decisiones, para beneficio de sus comunidades de aprendizaje y de la democracia en general.

El impacto del liderazgo transformador en el rendimiento escolar es innegable, ya que crea una cultura de excelencia y empodera a estudiantes y profesores por igual. De cara al futuro, es imperativo que los programas de desarrollo del liderazgo se centren en fomentar y cultivar las habilidades necesarias para convertir a los niños, jóvenes y adolescentes en líderes transformadores. De este modo, se podrá seguir revolucionando la educación y crear un futuro mejor para todos a pesar de las contradicciones y limitaciones de los sistemas y estructuras actuales, para el desarrollo y reproducción de la vida buena, de la que hablan los filósofos antiguos.

A diferencia de los que se piensa en la cultura popular el liderazgo no es una condición innata a algunos individuos "predestinados por la providencia" a dirigir a sus comunidades de vida, se trata más bien de un conjunto de capacidades y condiciones propias de la psicología política que puede ser desarrollas en la escuela, como condición de posibilidad para que romper la apatía reinante y modelar la convicción cierta de que la realidad social es una construcción colectiva que se edifica en cada momento a partir de las acciones, omisiones e interacciones de los individuos con conciencia histórica y políticas, dispuesto con su praxis a marcar la diferencia.

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Administrative coercion as the method for providing state defense order

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Abstract

Using the logical and semantic method the purpose of the research was to reveal the essence of administrative coercion as a method of ensuring the state defense order. In the results of the research the article defines administrative coercion as the method of ensuring the order of defense of the state in the system of legal and administrative measures to assert compliance with the duties and requirements related to the implementation of the studied institution. In terms of practical significance, it is established that administrative coercion is aimed at ensuring the smooth, efficient and operational functioning of the military-industrial complex and other important sectors providing production, supply and development of military equipment, as well as scientific research institutes and organizations engaged in the development of new technologies for defense needs. It is concluded that administrative coercion is an important and necessary method in the process of ensuring Ukraine's security and defense capabilities, as it allows controlling the production and supply of strategically important goods and services.

Keywords: administrative coercion; control mechanism; method and arrangement; state defense order; goods and services.

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La coerción administrativa como método para proporcionar una orden de defensa del Estado

Resumen

Mediante el método lógico y semántico el propósito de la investigación fue revelar la esencia de la coerción administrativa como método para asegurar el orden de defensa del Estado. En los resultados de la investigación el artículo define la coerción administrativa como el método de asegurar el orden de defensa del Estado en el sistema de medidas legales y administrativas para afirmar el cumplimiento de los deberes y requisitos relacionados con la aplicación de la institución estudiada. En términos de significado práctico, se establece que la coerción administrativa tiene como objetivo garantizar el funcionamiento fluido, eficiente y operativo del complejo militar-industrial y otros sectores importantes que proporcionan la producción, suministro y desarrollo de equipos militares, así como institutos de investigación científica y organizaciones dedicadas al desarrollo de nuevas tecnologías para las necesidades de defensa. Se concluye que la coerción administrativa es un método importante y necesario en el proceso de garantizar la seguridad y la capacidad de defensa de Ucrania, ya que permite controlar la producción y el suministro de bienes y servicios de importancia estratégica.

Palabras clave: coerción administrativa; mecanismo de control; método y disposición; orden de defensa del Estado; bienes y servicios.

Introduction

The relevance of the study of administrative coercion as a tool for securing State defense order lies in the fact that the effective implementation of a defense order requires proper control, coordination and enforcement of duties by enterprises, organizations and citizens related to the defense sphere, especially considering the processes, threatening social existence of the society (Kharytonov *et al.* 2021) and struggle between freedom and dependence (Panchenko *et al.*, 2022). State defense procurement is a complex system of planning, implementation and control over the manufacture and supply of military products, weapons, equipment and services.

Ensuring successful implementation of defense order requires the availability of effective tools enabling compliance with the established norms, rules and restrictions. Administrative coercion, or administrative measures, are one such tool, the study of which can contribute to the

implementation of effective management mechanisms aimed at preventing violations, ensuring the implementation of agreements and monitoring compliance with safety, quality and technological standards in the production of defense products.

Thus, administrative coercion in the aspect of ensuring State defense order is an acute scientific issue, which in turn necessitates new scientific research within the symbiotic combination of administrative and military law.

Therefore, the purpose of the article is to reveal administrative coercion as a method for securing State defense order based on the theory of administrative and military law, rules of national legislation and the views of scientists.

1. Methodology

The methodological basis for the Article is a set of methods and techniques of scientific knowledge. Their application is guided by a systematic approach, which made it possible to investigate the problems in the unity of their social content and legal form, to carry out systematic analysis regarding the application of measures of administrative coercion.

Separate methods of scientific knowledge were also used in the work.

With the help of the logical and semantic method and the method of ascent from the abstract to the concrete, the conceptual apparatus was deepened, the essence and features of administrative coercion were determined.

The methods of classification, grouping, system and structural, system and functional approaches were used to identify the problems connected with State defense order, as well as the range of measures and control mechanisms of administrative coercion, which are used by state bodies to support the implementation of the State defense order.

Dogmatic and legal method was useful when considering legal instruments governing State defense order in Ukraine.

Logical method was applied when analyzing scientific approaches to the issues under consideration.

The method of legal abstraction helped to formulate the authors' view on the administrative coercion in general and as a method of ensuring a state defense in particular.

2. Literature Review

In the theory of administrative law, the definition of administrative coercion is approached ambiguously. Thus, Kliushnychenko (1979) defines administrative coercion not only as a set of certain measures applied by the relevant State bodies to certain subjects, but also reveals its purpose – preventing illegal acts, bringing to justice for administrative offenses, ensuring public safety.

Riabov (1974) defines administrative coercion as certain measures, without delineating either their types or purpose, while emphasizing only the extrajudicial nature of their application.

According to Kolpakov and Kuzmenko (2003), administrative coercion should be understood power exercised on behalf of the State against the subjects of offences unilaterally and in cases provided for by law, firstly, measures to prevent offences, secondly, measures to deal with offences, thirdly, penalties for violations of regulations.

Komziuk (2002) proposes to understand administrative coercion as the application by relevant actors of moral, property, personal and other influence measures to persons outside their control, regardless of the will and desire of the latter with the aim of protecting social relations, which arise in the sphere of public administration, through prevention and cease of offenses, punishment for their commission.

The topic of the state defense order is always under the close attention of society, since the state of the defense capability of the country in general and the Armed Forces in particular depends on its completeness.

The state defense order envisages providing the Armed Forces of Ukraine and other paramilitary formations with new promising weapons and military equipment: modern artillery systems, armored missile boats, unmanned aerial vehicles, armored vehicles, means of observation, aiming and night vision, modernization of airplanes, helicopters and other military equipment, etc. (Matvuishin and Otsabryk, 2018).

Usachenko (2020) assures that the essence of the state defense order can be defined as a special method of management to meet State needs. It acts both as an economic tool for regulating macroeconomic processes on the part of the state, and as a means of balancing supply and demand for certain goods. With its help, one can influence the organization of private production processes, develop competition between producers and increase the competitiveness of the economy in general.

As an object of administrative and legal support, Povydysh (2021) defines state defense procurement as the system of relatively diverse range of social relations that arise, change or terminate due to the planning,

formation, placement, adjustment and execution of a state defense order for the purpose of supplying (procurement) goods, works and services to meet the military needs of the law enforcement agencies of Ukraine in weapons, military equipment, other material means and ensuring national security and defense.

3. Results and Discussion

The State defense order is formed and implemented within the framework of the Resolution of the Cabinet of Ministers of Ukraine "Some issues of the State defense order for 2021" (Resolution of the Cabinet of Ministers No. 614, 2021), which approves the following documents:

- Temporary procedure for placement, adjustment of the state defense order, as well as control over its execution;
- Standard state contract for the supply (purchase) of products under a state defense order;
- Standard state contract for the performance of works (providing services) under a state defense order;
- Typical state contract for the performance of research and development (research, technological) work under a state defense order.

The customers of the state defense order are: Ministry of Internal Affairs, Ministry of Economic Development and Trade, Ministry of Defense, Ministry of Justice, State Emergency Service, Security Service of Ukraine, Foreign Intelligence Service, State Space Agency, State Border Service Administration, State Service Administration special communications and information protection, the Main Intelligence Directorate of the Ministry of Defense, the State Security Office, the National Anti-Corruption Bureau, the National Guard, the National Police, the State Special Transport Service.

The Law of Ukraine "On Defense Procurement" No. 808-IX (2020) and "On the National Security of Ukraine" (Law of Ukraine No. 2469-VIII, 2018) serve as the main tool for management of the orders for the purposes of State consumption. It is the economic and legal, organizational, management, and administrative mechanism through which the State realizes its financial, material, and other resources in the country's economy for the fulfillment of various state programs of orders, primarily in the military area.

A sound procurement process for defense-related goods and services is extremely important for the defense forces, their capability and readiness. Problems and contradictions related to defense procurement are well known

in Ukrainian society. Some cases from the past directly affected the political rating of the country's top leadership. Despite some positive changes, the Ukrainian defense procurement system needs significant reforms.

The main stakeholders of the process of reforming the procurement system constantly expressed their expectations regarding the successful implementation of the key provisions of the reform and the introduction of a new well-functioning system. Stakeholders are the Ukrainian government, the Ukrainian Armed Forces (as the end user of the procurement system), an active part of Ukrainian civil society, and the international community.

Defense procurement reform is one of the main requirements of the road map of Euro-Atlantic integration of Ukraine and a condition for receiving international military aid. The adoption of the Law "On Defense Procurement" was an important milestone in this regard, as it establishes new principles for the procurement system. At the same time, the best principles alone are not enough; in order for the system to work, developed and detailed algorithms of procedures are necessary. The quality of these procedures will determine the quality of the reforms (Center of Defensive Strategies, 2021).

According to the Law No. 808-IX (2020), defense procurement is procurement by the state customer of goods, works and services intended for the implementation of State programs in the spheres of national security and defense, as well as other goods, works and services for the guaranteed provision of security and defense needs.

In doing so, State contract is an agreement concluded in writing by the State customer on behalf of the state with the executor in accordance with the approved plans for procurement of defense goods, works and services.

State customers in the field of defense are central bodies of executive power, other State bodies, military formations formed in accordance with the laws of Ukraine, determined by the Cabinet of Ministers of Ukraine;

State customer carries out defense procurement planning, on the basis of which:

1. form proposals for a consolidated three-year plan for the procurement of defense goods, works and services under closed procurement in accordance with the State programs and submits them to the main body in the field of defense procurement planning within the time limit set by the said body;
2. draws up and approves three-year and annual plans for procurement of defense goods, works and services, amends them. These plans and amendments are previously agreed with the committee of the Verkhovna Rada of Ukraine, whose powers include issues of national security, defense and intelligence;

3. organizes and carries out procurement of goods, works and services for defense purposes;
4. submit reports on the results of procurement, conclusion and execution of State contracts (agreements) to the main body in the field of defense procurement planning, within the time limit determined by it;
5. concludes purchase agreements and state contracts, including import ones;
6. ensures payment in accordance with the terms of state contracts (agreements), including advance payment (advancement);
7. provides the executors of state contracts (agreements) with a technical specification;
8. organizes tests (state, inter-agency, departmental and other tests of the state customer, and, if necessary, certification) of samples of weapons, military and special equipment, accepts them for armament (use), supply, allows them to be used;
9. participates in tests of prototypes, experimental and serial samples (complexes, systems) of weapons, military and special equipment, materials and components;
10. evaluates the participant's selection of information regarding on the cost of the life cycle of defense goods, etc.

Planning the procurement of goods, works and services for defense purposes is a component of defense planning and is carried out in accordance with the Law of Ukraine "On the National Security of Ukraine" (Law of Ukraine No. 2469-VIII, 2018) and this Law, taking into account the number of expenditures necessary to finance the security and defense sector.

The basis for planning the procurement of defense goods, works and services is the needs, priorities of the security and defense sector, the amount of financial resources necessary for their satisfaction, provided by strategies, other strategic documents and state programs in the spheres of national security and defense, the development of the components of the security sector and defense, in particular, equipping them with modern weapons and military equipment, creating the necessary stocks of material and technical means and the necessary capacities of the defense-industrial complex for this, implementation of other measures to strengthen the state's defense capability.

Currently, there are a number of problems in the procurement system with State defense orders:

1. The current State defense order procedure allows relevant departments to specify a type of equipment with an indication of the model and/or manufacturer, while there is no formal requirement to consider alternative options and justify their choice. This excludes competition, and even with the existence of real alternatives between the options presented, the final choice is based solely on individual decisions.

At the same time, there is no procedure for purchasing from a single supplier, which would resemble similar international practices.

2. The government approves State defense order every year through a time-consuming process in a short time frame. Long-term projects, whose implementation period reaches more than a year, every year risk being interrupted. Open-ended projects, such as renovations, are also regularly interrupted. The projects, the term of which extends for more than three years, are not allowed under any circumstances.

Despite the possibility of concluding three-year contracts, state customers have the right to accept obligations under contracts for no more than one year. Suppliers are unable to plan their long-term operations (including staffing, financing and facility maintenance) due to uncertainty about future sales in each subsequent year. We are talking about all goods, including expensive equipment and equipment with a long manufacturing cycle. The state-owned defense industry and its lead ministry are unable to agree on their plans at the same time.

3. The State defense order system is based on the fact that the armed forces formulate their needs in an opaque, overly complex and completely obsolete way. In the case of the Armed Forces, this process takes place at the General Staff of the Armed Forces. However, it is in no way related to the availability of budgets to support these requirements, since these budgets are managed by the Ministry of Defense. Thus, the needs of defense forces are often very unrealistic. The Ministry of Defense, which is formally responsible for procurement, does not have a requirements planning policy. Therefore, it is very difficult to connect the strategies of the armed forces and their vision of future capabilities within the framework of the State defense order system. Besides, there is the distribution of responsibility for this process between the Ministry of Defense and the Chief of the General Staff.

4. State defense order may include only products that are part of the adopted military equipment (which makes it impossible to have a transparent procurement process, starting from development, and putting into service "in the process" of procurement, when the necessary technical solution is formed in the process of negotiations) and produced by suppliers that are registered in the non-transparent register of weapons and military equipment producers. This process is full of

classified decisions, which leads to corruption and delays. As a result, the introduction of new products becomes difficult, and customers can choose only those products that are already in the "list of adopted military equipment." Because of this, old and obsolete equipment is often purchased from year to year (Center of Defensive Strategies, 2021).

As one can see, the solution of these and a number of other problems requires administrative and legal regulation, including the use of administrative coercion measures. Therefore, the latter in the aspect of ensuring the state defense order is an actual scientific issue, which in turn necessitates new scientific research within the symbiotic combination of administrative and military law.

In legal science, any definition of a right contains an indication of its binding character – compulsory provision by the State. That is why coercion carried out by the State within the limits and on the basis clearly defined by the legislation can be considered a means of ensuring law and order, compliance with the requirements determined by the rules of law (Kolomoiets, 2005).

In the scientific literature, there is an opinion that one of the problems of understanding "administrative coercion" is the lack of normative consolidation of this concept and the shortage of unity of the conceptual apparatus among practical workers and researchers. Analyzing scientific and educational literature, we can conclude that this is due to the application of various features characterizing this administrative and legal phenomenon when designing an appropriate definition of the concept by scientists, as well as certain indifference on the part of the legislator to its creation.

Although administrative coercion is primarily legal coercion, because the application of appropriate measures is strictly regulated by law, it is carried out on the basis of and in compliance with regulatory prescriptions. Unlawful use of coercive measures is a de facto arbitrary measure (Shestak, 2011).

Kolomoiets (2007) notes that administrative coercion is a special type of state-legal coercion, i.e. methods of official physical or psychological influence of authorized state agencies (and in some cases public organizations) on individuals and legal entities in the form of personal, property, organizational restrictions of their rights, freedoms and interests in cases of illegal acts committed by these persons (in the sphere of public relations) or in extraordinary circumstances within the scope of separate administrative proceedings for the prevention, termination of illegal acts, ensuring proceedings in criminal cases, Accountability, prevention and containment of consequences of emergency situations.

Holosnichenko, Stakhurskyi and Zolotariova (2005) defines administrative coercion as the method of purposeful influence on the

behavior of citizens, as well as the activities of enterprises and organizations, bodies, services and employees of the state executive apparatus in the interests of ensuring the optimal level of compliance with the requirements of legislation.

In turn, Bytiak (2006) interprets administrative coercion as the system of means of psychological or physical influence on the consciousness and behavior of people with the aim of achieving clear fulfillment of established duties, development of social relations within the law, ensuring law and order and legality.

Stetsenko (2007), in his turn, interprets administrative coercion as a type of state coercion applied by the relevant state bodies (officials) to individuals and legal entities in order to prevent and cease offenses and holding the perpetrators accountable.

Thus, the term administrative coercion should be understood as a legal instrument used by the state to ensure compliance with the established norms, requirements or decisions. Administrative coercion is a complex approach including various measures and mechanisms of control, regulation and influence on individuals and legal entities.

In domestic scientific literature, method is understood as means of achieving a set goal, and administrative and legal methods are ways and means of direct and purposeful influence of executive bodies (officials) on subordinate bodies and citizens on the basis of their competence, within the established limits and in the appropriate form. As a result of the fact that some methods are common to all government activities, all state bodies, and others – to only some of them, management methods are divided into general and special ones.

The authors refer persuasion and coercion, administrative and economic influence, supervision and control, direct and indirect influence, regulation, leadership and management to general methods. At the same time, they consider persuasion and coercion as universal methods (Bytiak, 2007).

As Kysil (2011) correctly point out, "coercion" is an additional method of state administration, which is the psychological or physical influence of state bodies or officials (subjects of administration) on certain persons (objects of administration) with the aim to compel them to comply with legal provisions. This method of state administration manifests itself in two forms: judicial and administrative and is based on the authority of the state and the force of the law. The method of coercion is aimed at developing certain forms of behavior, as well as maintaining social discipline.

Complementing the above, attention should be paid to the opinion by Dembitska (2014), who noted that the method of coercion is an integral component of the system of state management methods. This method

belongs to the most rigid and undeniable means of influence, therefore, in the activities of management bodies and their officials, coercion is used, as a rule, in combination with other management methods.

Thus, administrative coercion as a method of ensuring a state defense order is a system of legal and administrative measures to ensure the fulfillment of duties and requirements related to the implementation of a state defense order. This method aims to ensure smooth, efficient and operational functioning of the military-industrial complex and other important sectors ensuring the production, supply and development of military equipment, as well as research institutes and organizations engaged in the development of new technologies for defense needs.

Administrative coercion can include a wide range of measures and control mechanisms used by government agencies to ensure compliance with State defense order. These can be measures such as:

1. licensing and registration of enterprises engaged in the production of military products and equipment. The State can establish special requirements and restrictions for such enterprises, as well as monitor compliance with these requirements;
2. establishment of mandatory standards and technical requirements for military products. The state may require manufacturers to use certain quality and safety standards that guarantee compliance of products with the established requirements;
3. control over the supply and distribution of military products. The State may supervise the supply of military equipment and other products, control the volumes, delivery and destination;
4. financial control and financing. The State may establish special financial rules and procedures for the enterprises engaged in the production of military goods. This may include the provision of financial support, involvement in special funding programs, as well as control over the use of allocated funds and compliance of expenditures with the approved budget volumes;
5. application of sanctions, including fines. In the event of non-compliance with the requirements of a government defense order or violation of the established rules and restrictions, the government may apply administrative sanctions such as fines, license suspensions or other restrictions;
6. audit and verification. State bodies may conduct audits and inspections of enterprises involved in the execution of a state defense order, in order to verify compliance with requirements, product quality, financial activity and compliance with established procedures.

Conclusion

The ongoing large-scale armed aggression of Russia against Ukrainian independence necessitates an effective response to all illegal phenomena that can have a destructive effect on the stability of social legal relations in Ukraine (Odnolko *et al*., 2023). A sound procurement process for defense-related goods and services is extremely important for the defense forces, their capability and preparedness.

Problems and contradictions related to defense procurement are well known in Ukrainian society. Some cases from the past directly affected the political rating of the country's top leadership. Despite some positive changes, the Ukrainian defense procurement system needs significant reforms.

Administrative coercion is an important and necessary method in the process of ensuring the security and defense capability of the country, because it allows to control the production and supply of strategically important goods and services, to ensure the uniformity of standards and quality, as well as to respond to the changes in defense needs and geopolitical environment.

Along with this, it is worth noting that administrative coercion should be carried out taking into account transparency, efficiency and fairness. The state should provide all the necessary resources and support for the development of the military-industrial complex, including research activities, innovative projects and cooperation with the private sector, because such an approach will help ensure competitiveness, thereby increasing the appropriate quality and reliability of military equipment.

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Government financial support for businesses in the period of global threats

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Abstract

The aim of the article was to analyse the available approaches to the formation and implementation of governmental financial support for enterprises in the period of global threats. The research methodology is based on the identification of key risks and their nature; graphical method of classification of fiscal constraints; construction of scatter diagram; methods of sociological study and comparison of groups; grouping of the main approaches to government policy. The results identified the dependence of fiscal instruments of government support on the possibility of internal indebtedness and external economic problems in middle and low-income countries. The conclusions of the case identified the most effective instruments of government financial policy as a whole and by economic groups of countries and economic sectors. Finally, the need to expand the financial instruments of governmental support of enterprises in view of the consequences of the Russian aggression in Ukraine is emphasized.

Keywords: global threats; asymmetric wars; public policy; financial support; enterprises and authorities.

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Apoyo financiero del gobierno para empresas en el período de amenazas globales

Resumen

El objetivo del artículo fue analizar los enfoques disponibles para la formación e implementación de apoyo financiero gubernamental para empresas en el período de amenazas globales. La metodología de investigación se basa en la identificación de riesgos clave y su naturaleza; método gráfico de clasificación de las restricciones fiscales; construcción de diagrama de dispersión; métodos de estudio sociológico y comparación de grupos; agrupación de los principales enfoques de la política gubernamental. En los resultados se identificó la dependencia de los instrumentos fiscales de apoyo gubernamental de la posibilidad de endeudamiento interno y de los problemas económicos externos en países de mediano y bajo nivel de ingreso. En las conclusiones del caso se determinaron los instrumentos más efectivos de la política financiera estatal en su conjunto y por grupos económicos de países y sectores económicos. Finalmente, se enfatiza en la necesidad de ampliar los instrumentos financieros de apoyo gubernamental a las empresas con miras a las consecuencias de la agresión rusa en Ucrania.

Palabras clave: amenazas globales; guerras asimétricas; política pública; apoyo financiero; empresas y autoridades.

Introduction

It is necessary to take into account the constant influence of the external environment when creating and selling goods, performing works and providing services by economic entities in the sphere of social production. The external environment can have both a favourable and a negative impact on the functioning of business entities, which must be constantly taken into account both in current and strategic management.

The factors related to volatility, uncertainty, risks, threats or global world crises quite often put pressure on business entities. Current experience shows that the manifestation of global threats and crisis situations can lead to a critical situation for entrepreneurship, which exacerbates the problem of insolvency, mass bankruptcy, layoffs, and the impossibility of doing business. The impact of the COVID-19 pandemic can be a vivid example, which has caused negative global economic consequences that still affect different countries and areas of economic activity.

Most governments have made enormous efforts to contain the spread of the COVID-19 pandemic, even if it meant shutting down economic sectors for varying periods of time and thus causing serious consequences for

businesses and workers. At the same time, significant government funding is aimed at supporting businesses in overcoming the negative economic consequences caused by the pandemic. More than 70% of enterprises were willing to take advantage of government support, as it was calculated that 35.1 million jobs may be lost in the US if the crisis lasts more than 6 months (Bartik *et al.*, 2020).

It should be noted that the duration of the crisis forced the states to urgently develop appropriate policies that would contribute to financial and other support for businesses. In general, the approaches to government support and anti-crisis measures, their actual implementation had quite significant differences between countries.

In response to the manifestations of the pandemic (Gentilini *et al.*, 2020), 80% of countries began to use various forms of financial assistance to business entities in order to minimize economic problems for enterprises (International Monetary Fund, 2021). Different countries provided different amounts of the large-scale financial support, while certain middle- and low-income countries provided partial support.

The realities of geopolitical processes constantly demonstrate the consequences of ongoing military crises, intensifying the destructive impact on the socio-economic condition of certain countries or regions. Likewise, global crises should include the consequences of Russian military aggression in Ukraine, which led to large-scale internal and external migration, destruction of infrastructure, industrial facilities, housing, and termination of business entities.

According to the calculations of the World Bank, the total needs of Ukraine for the restoration and construction of new infrastructural, production and social facilities are estimated at $349 billion, which is more than one and a half times the size of the Ukrainian economy in 2021 (World Bank, 2022a). The specified problem involves the combination of both internal resources and the capabilities of the countries that help Ukraine to reduce the negative impact of the crisis on society and promote the recovery of all industries, including economic and entrepreneurial activities.

When implementing government financial support for businesses, it is important to clarify the possibilities of crisis management, choose effective tools, and avoid ineffective ways of state intervention. The issue of promoting proper financing with the aim of guaranteed support for the solvency of viable enterprises is urged. Identifying the positive market effects that affected the financial access and costs of enterprises will help to identify the most effective government financial support programmes, which prevented mass closing down of businesses, dismissal of employees, improved the functioning of market mechanisms and the stability of the credit system during the crisis.

The aim of the article is to study existing approaches to government financial support for businesses in the period of global threats. The aim provided for determining the issue, which is the search for effective tools of government support for the financial and economic state of enterprises. This implies the need to identify the main crisis situations and threats that arise in the market environment; measure the effects of global crises on business; analysis of the state's possible financial instruments; search for the main approaches to shaping state policy of financial support for businesses in the period of global crises.

1. Literature review

In the recent decade, an adaptive approach has dominated the state monetary policy in the developed countries with the aim of strengthening market liquidity and borrowing costs. At the same time, the growth of corporate debt was facilitated by the provision of loans at significantly low interest rates. Global financial reforms implemented by the G20 countries could not protect against economic troubles at the beginning of the pandemic, given low-quality assets, inefficient work of the banking sector and increased vulnerability of the market financial system.

The public sector and enterprises increased debts under the influence of crisis phenomena during the COVID-19 pandemic in order to overcome financial and economic problems. Government policy focused on economic assistance programmes, while businesses saw the possibility of continuing to function through loans and debts (OECD, 2021).

Numerous studies on financial assistance to businesses deal with the approaches to public policy directions for countering the consequences of COVID-19 in countries with a high level of economic development (Baldwin and Di Mauro, 2020). Some researchers (Cororaton and Rosen, 2021; Core and De Marco, 2020; Kozeniauskas *et al.*, 2020) examine the features of existing business support programmes in some countries of the European Union and the United States of America. They focus on the analysis of the problems of the effective state programmes to help businesses to overcome the consequences of the pandemic (Chetty *et al.*, 2020).

The existing studies on the issue under research refer to various directions of crisis manifestation. For example, the use of high-frequency data revealed the negative impact of quarantine restrictions on economic activity based on the analysis of transactions using bank cards (Chetty *et al.*, 2020), income report data.

Another part of the academic literature concerns the differences in the impact of the pandemic on the labour market and business in different

countries (Germany, Great Britain, USA) (Adams-Prassl *et al.*, 2020). A survey of almost 6 thousand American companies (Bartik *et al.*, 2020) proved their financial weakness and the consequences of the pandemic (temporary suspension of 43% of enterprises, reduction of employment by 40%), which indicated the importance of external financial assistance.

Another direction was the analysis of the consequences of the state policies implemented in different countries to minimize the manifestations of the pandemic. Most of the mentioned studies were country-specific, for example, the United States of America (Granja *et al.*, 2022), Switzerland (Bruülhart *et al.*, 2020), Italy (Core and De Marco, 2020), and other countries. Regarding the financial support of American companies under the Paycheck Protection Programme ($ 349 billion), which was supposed to preserve jobs through non-refundable loans, the programme did not provide the required effect. Many companies did not use loans for their intended purpose (salaries and creation of reserves), but directed the funds to other payments (Granja *et al.,* 2022).

A survey on the impact of the pandemic on businesses was used in (Nelson, 2021; Wagner, 2022; Webster *et al.*, 2022) and other studies. Some researchers studied developing countries and showed negative sales and employment results, and revealed the problems of support policies (Cirera, 2021).

A study (Nelson, 2021) examined 20 companies in developing countries. It was found that the shutdown of businesses had a negative impact on permanent workers, temporary employed were affected to a lesser extent. Another study (Webster *et al.*, 2022) concerned the situation on labour markets in Central American countries and European companies (Janzen and Radulescu, 2022).

The government financial support policy to companies was based on the principles of sequential or parallel use of various economic tools: prevention of bankruptcy in order to simplify restructuring and fulfilment of corporate objectives. Another approach was state regulation mechanisms: stimulating the capital inflow, suspending certain tax payments, which allows for debt recapitalization and maintaining the openness of capital markets.

It is possible to provide direct government support in the form of debt. It will remain important to determine the conditions that will stimulate companies, and public authorities will gradually begin to minimize the indicated tools based on the results of financial recovery (OECD, 2020b).

Recovering from difficult conditions and consequences of the pandemic, companies were unable to fulfil their financial obligations, which increased the essential role of government support as an economic rescue programme. During the crisis, more than 160 countries and institutional entities turned to large-scale programmes for monetary and fiscal support (state guarantees

for lending, debt moratoriums, direct loans and grants, tax breaks, direct capital support).

These tools helped most companies that had limited access to financing to continue their activities. The results of the 2020 and 2021 OECD Committee on Financial Markets (CMF) surveys emphasize that OECD countries have sufficiently supported businesses by introducing government programmes and a set of economic instruments. Another result was an understanding of time limits and algorithms for exiting support programmes in order to prevent the recovery rate decline (OECD, 2021).

2. Methods

The research design is based on several stages. The initial stage provided for the identification of the key risks that may arise in the long run and determining their nature based on the World Economic Forum methodology (WEF, 2023). The World Bank data were used to determine the ranking of fiscal restrictions for groups of countries with different income levels based on a graphical method.

The next step is to build a scatter diagram to analyse the existing problems of financial instability arising in the post-crisis period, taking into account the consequences of public policy actions (additional debt obligations of the financial system) by groups of countries with different income levels. The method of sociological survey combined with group comparison identified the government support programmes and the directions of the most required support by groups of countries with different income levels and main economic sectors. This is followed by a comparison to determine the main approaches to the government financial support for businesses, based on the needs of updating the tools and starting new assistance programmes.

3. Results

Global threats and risks accompany human civilization, and the number of threats is constantly increasing as society develops. The researchers are concerned with issues of global threats and risks, which implies the emergence of different approaches to their classification. the Global Risks Report published by the World Economic Forum every year is one of the well-known methods, which identifies global threats that can turn into significant problems for the many economies around the world.

The latest report for 2023 defines the main clusters of global risks, which include: deterioration of natural capital (water and forest resources, living organisms); problems related to the deterioration of human health

(consequences of pandemics); violations of people's security (ceasing demilitarization, conflicts); weakening of digital rights (reduction of digital autonomy and privacy); decreased economic stability (debt crisis, curtailment of social services). The indicated directions are not exhaustive and carry warning information for the purpose of adjusting the relevant state policy (WEF, 2023).

Table 1 presents the results of analysis of threats for the next 10 years. Moreover, the majority of threats are predicted in the environmental sphere, of which 4 are the most dangerous. But crises related to geo-economic confrontation and geopolitical problems are no less global and tragic in their consequences. For example, in addition to other tragic consequences the Russian military actions caused significant losses to Ukrainian businesses, which were forced to stop their activities, save human and material resources, relocate their businesses to the western regions of the country, or were forced to go bankrupt.

Table 1. Global risks by degree of danger in the long run

Degree of danger	The risk	The nature of the risk
1	Failure to stop climate change	Environmental
2	Failure to adapt to climate change	Environmental
3	Natural disasters and extreme weather phenomena	Environmental
4	Biodiversity loss and ecosystem collapse	Environmental
5	Large-scale forced migration	Social
6	Crises of natural resources	Environmental
7	Decrease of social cohesion and polarization of society	Social
8	Wide spread of cybercrime	Technological
9	Geoeconomic confrontation	Geopolitical
10	Large-scale environmental events	Environmental

Compiled on the basis of (WEF, 2023).

If we analyse the results of the state policy of mitigating the crisis for businesses, it involved the provision of grace periods and the temporary suspension of loan payments, which reached enormous scale (Figure 1). Analysis of data on the response to the pandemic shows that fiscal action is limited because of difficulties in obtaining domestic borrowing in 72% of low-income countries and 57% of lower-middle-income countries (Figure 1). States that have had significant fiscal constraints will find it very difficult

to sustain business during the recovery period. In lower-middle-income countries, recovery processes will depend significantly on the reduction of external economic problems.

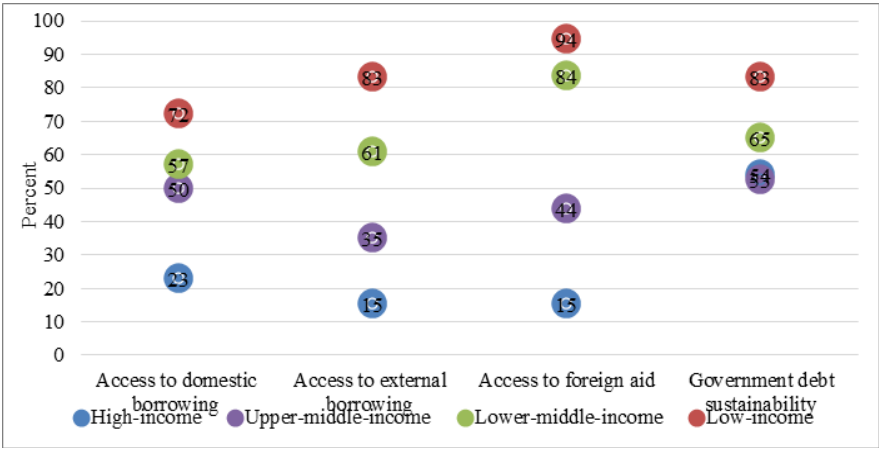

Figure 1. Fiscal constraints in response to the pandemic by country income group. Built on the (World Bank, 2022b).

Problems of financial instability in the post-crisis period may be caused by the consequences of government actions (Figure 2). Most states provided financial support to businesses during the pandemic at the expense of new debt obligations of the domestic financial system. As the state's fiscal position deteriorates, its credit rating decreases, limiting the ability of financial institutions to provide new loans.

So, the possibility of a combination of crises in the financial sector and public finances is increasing. The rating and forecast expectations of the largest banking institutions are decreasing in some countries. The growth of the banking sector can also disrupt the stability of the relationship between the state and the banking sector, making it difficult for the state management system to implement anti-crisis measures (Feyen and Mare, 2021).

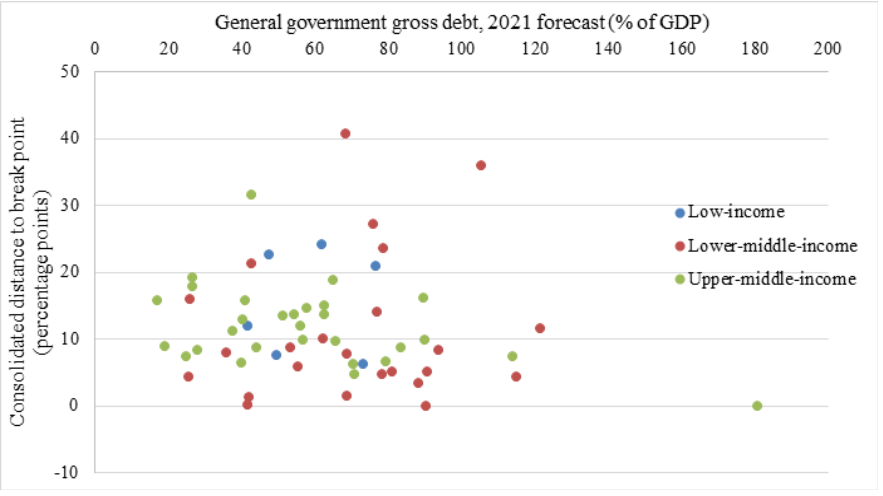

Figure 2. Public debt and banking sector volatility during the COVID-19 crisis by country income group. Built on the basis of (World Bank, 2022b).

During the pandemic, the countries with different economic development used different approaches to financial support for businesses, depending on the economic situation and the available capabilities of the country. The conducted research on the provision of government support for enterprises of 27 countries in different economic sectors demonstrated the advantage of companies from key sectors of the economy, which mostly received subsidies for wages and cash receipts.

Other companies were mostly supported through indirect government measures (better access to credit, deferment of payments). So, the public policy of different countries implemented their own approaches to the type of support for businesses operating in key and non-key economic sectors (Stemmler, 2022).

In general, the possibilities of financial instruments (suspension of interest payments, access to loans with deferred payments, extension of debt obligations) and stimulating taxation (tax restrictions, discounts and tax deferrals) have become the most necessary in the government business support policy (Table 2). These approaches prevail over other necessary tools, such as remittances (30%), wage subsidies (24%).

Table 2. The most desirable government business support policy (share of companies)

	Monetary transfer	Payment's deferral	Access to credit	Tax support	Wage subsidies
Total	30.04	23.54	49.46	46.73	23.89
Low	9.53	8.43	25.65	50.38	14.19
Lower-Middle	29.80	26.02	59.16	46.07	16.64
Upper-Middle	36.06	23.77	49.37	46.52	41.96
High	31.52	15.00	25.39	65.24	45.99
Agro and mining	33.57	18.85	52.11	37.53	21.02
Manuf	30.00	22.94	49.85	46.40	24.77
Const and untilities	29.12	19.99	51.47	46.51	21.82
Retail and wholesale	28.22	25.09	48.97	48.75	22.37
Transp and storage	30.75	20.82	49.50	46.75	25.57
Accom	31.32	22.41	47.17	48.57	31.55
Food prep and serv	33.49	31.48	49.44	45.88	23.62
Info and comm	29.82	24.83	47.79	52.06	22.11
Fin serv	24.78	20.92	48.69	50.10	21.85
Other serv	30.62	26.76	47.69	46.27	26.13

Source: Cirera (2021).

Table 2 shows the differences in the needs for financial instruments depending on income groups. The need for wage subsidies increases as incomes rise. Remittance needs, deferred payments and access to loans are important in middle-income countries. Tax reductions and deferrals are used in low- and high-income countries.

Differences and needs for government financial assistance in relation to various sectors were identified, but the general trends should also be noted. The need to reduce and defer taxes are key priorities for businesses from various groups. At the same time, the need to receive a wage subsidy generally increases according to the income level in the country (Cirera, 2021).

The long duration of the pandemic forced the continuation or introduction of new measures to limit economic activity, which intensified the crisis state of businesses. As a result, the state was forced to expand business financial support programmes. Studies of government financing support programmes for businesses demonstrate ongoing provision of loans and guarantees for them, for example, in some OECD member countries (Table 3) (OECD, 2020a).

Table 3. New programmes and notified changes to existing financial support programmes

New programmes	Updating expiring programmes New programmes for individual sectors Recovery support programmes Filling existing sectoral gaps
Changes to existing programmes	Borrowing cost Budget allocation Lending criteria Extending the duration of the loan Acceptable pledge Access to government programmes Loan size
Sustainable development issues	Inclusion of sustainability aspects in government programmes

Source: OECD (2020a).

Further approaches to the government financial support for businesses involve the updating of already completed programmes based on changed instruments, and the formation of new programmes that are aimed at certain important industries. The tools are mainly focused on the improved distribution of budget resources and the expansion of the programmes by simplifying requirements, expanding compliance and sectors of application). Regarding new programmes, the example of state guarantees in Belgium is worth noting, where loans with extended repayment terms are offered to businesses.

Starting in 2020, Finland directed new state financial support to companies that had a 30% decrease in turnover and problems with cost refund because of the pandemic. Similarly, Greece introduced additional business support measures of €3.3 billion to offset the costs of the second national lockdown. Other approaches were aimed at change processes at companies. For example, the Credit Guarantee Programme in Japan provided subsidies to help businesses carry out reforms of the company management system.

Lithuania introduced the Business Assistance Fund Programme, which helps to obtain financing for companies that do not have the opportunity to obtain funds from financial institutions. In this case, the support involves obtaining debt securities, loans, and hybrid instruments. Slovenia introduced funding opportunities for innovative research and development and infrastructure projects aimed at combating the pandemic (OECD, 2021).

It can be argued that the need to increase financing of different support programmes by the state provides for special mechanisms and tools for

providing financing and the possibility of receiving it by companies in different countries to overcome the crisis. As the analysis of the instruments introduced by the state to provide financial assistance to businesses show, the following main areas should be identified: interest-free loans, low-interest loans, interest cancellations for cost compensation (rent, wages, bill payments, employee protection), production support, business recovery, subsidizing unemployment insurance, supporting infrastructure projects.

Fiscal measures should be defined as another direction in government policy: tax reduction, tax benefits, deferment of tax payment. Besides, the provision of financial assistance in the form of non-refundable grants and financial support of high-tech and innovative companies based on the attraction of investment funds and the provision of scholarships for research turned out to be appropriate.

4. Discussion

A general limitation of the study is the focus on financial measures of countries during the COVID-19 pandemic. There is no doubt that this crisis became one of the largest and caused huge financial problems in the business system. The research was focused on the analysis of the said crisis because of the availability of a significant data volumes both on the companies' performance and the government business support policy. At the same time, it would be appropriate to expand the available cases on the impact of crises related to global and local environmental, political, financial and geopolitical reasons and ways of solving them through government support on businesses.

The study emphasized that the nature of problems in each country with an emphasis on global trends but with strengthening/mitigation according to local favourable or unfavourable internal factors is the peculiarity of the consequences of crises and threats. In the same way, the formation and implementation of the state policy of financial assistance to businesses is based on taking into account a combination of global and local problems.

This vision is confirmed, for example, by the results of identifying the greatest risks for each country in comparison with the list of the degree of danger at the global level (WEF, 2023). Moreover, it is methodologically appropriate to expand the economic sectors in which government support was provided and, likewise, to increase the number of government business support policy instruments (Cirera, 2021).

The global crisis caused by the spread of the pandemic proved that the need for government business support is the main mechanism for compensating for private losses, bankruptcy, and unemployment.

A significant number of studies substantiated state restrictions and necessary business support policies. Research findings confirm the thesis about the different impact of restrictions on businesses depending on the economic sector (Gryshchenko et al., 2022). For example, quarantine restrictions caused a 100% drop in sales in the hotel and restaurant business. But this business makes up about 5% of the studied companies. At the same time, manufacturing companies, which make up 55% of the studied companies, were affected to a lesser extent (Janzen and Radulescu, 2022).

In general, the study identified potential threats and risks that can lead to significant complications of doing business, when one of the key ways will be the provision of government support based on the available tools. But we should dwell on individual issues. Some researchers focus on increasing gender inequality.

The companies headed by women faced the greatest problems in operation and restrictions on receiving financial assistance during the crisis. Another aspect of the problem emphasizes the decreased opportunities to receive government financial support for companies from countries with lower economic development than in countries with a high income (Cirera, 2021).

The state's initial vision for the possibility of providing support to companies was based on exclusion, rather than a priority of strict direction. This helped many companies that received support to survive the pandemic without problems. Studies show that some public policy instruments (direct liquidity inflows based on loans and wage subsidies) have sufficiently weakened fiscal constraints and reduced dismissals (Cirera, 2021).

Different instruments of state financial support enabled companies to overcome negative consequences. Some results show that the applied job preservation tools compared to other support saved 0.74 to 1.5 jobs per company were, which also proves the importance of government support for businesses during the global crisis.

If it is impossible to implement the mentioned programmes, the resulting sales losses may cause a loss of liquidity and the company's ability to operate, and consequently a loss of employment. Despite the significant costs for the budget, which in some cases led to excessive financing of some companies, the use of government support instruments can prevent further deterioration in the labour market and contribute to the improvement of economic situation in the long run (Janzen and Radulescu, 2022).

Taking into account the potential environmental, social, geopolitical risks and threats, both on a global scale and at the country level, it is appropriate to develop, a government financial support strategy for businesses in the event of crisis situations with due regard to the available experience. The

models of financial support for businesses, which have already been used by many countries during past crisis periods, should be taken into account when preparing the future recovery strategy of Ukraine. Existing approaches need to be strengthened with various instruments of state compensation for destroyed production facilities and priority financing of new construction or reconstruction of facilities, with the aim of stimulating business activity on the territory of Ukraine.

Conclusions

The large-scale pandemic, which enveloped the whole world, caused an unprecedented deterioration of the economic activity of business entities. Measures to combat the spread of the disease had a negative impact on businesses. As a result, a significant number of companies ceased operations, causing massive job losses. The issue of combating the manifestations of crisis situations and threats requires the involvement of significant financial resources, which are lacking in companies of different economic sectors.

It was found that the lack of working capital forced the businesses to turn to the state for support. The results of the study prove that the lack of existing experience made it difficult for the state to respond to a large-scale crisis. The government financial support policy to businesses used programmes to support monetary and fiscal direction, namely: state guarantees for loans, moratorium on debt obligations, direct loans and grants, preferential taxation and direct capital support.

In general, the study demonstrated the essential role of government financial support for businesses, but revealed the heterogeneity of the results of such support and the appropriateness of using different tools depending on the economic state of the country and the economic sphere. An important area of further research should be the development of a strategy for the recovery of Ukraine with the involvement of international institutions. The tools of government financial support for businesses should be expanded separately, taking into account the additional needs for the construction of the destroyed transport and logistics infrastructure and new facilities related to the intensification of entrepreneurial activity.

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The role of mass media in the information security public management system

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Abstract

Information security is vital for national security, especially during martial law. The influential role of the media in the socio-political landscape of Ukraine underscores the need to study its impact on the system of public management of information security. This research aims to identify the extent and directions of such impact, using statistical analysis and comparative law methodology. The findings reveal information security challenges related to social media in Ukraine, such as distorted information, manipulation, propaganda, imperfect regulation and subordination of media to the interests of their owners. International experiences suggest addressing these problems by promoting digital literacy, facilitating fair competition and fostering relations between the state, media and citizens. By way of conclusion, the significant influence of the media on public opinion and political processes is confirmed, with both positive (coverage of important information) and negative (misinformation, manipulation) aspects in the system of public management of information security.

Keywords: media; public management; information security; media literacy; disinformation.

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El papel de los medios de comunicación en el sistema de gestión pública de la seguridad de la información

Resumen

La seguridad de la información es vital para la seguridad nacional, especialmente durante la ley marcial. El influyente papel de los medios de comunicación en el panorama socio-político de Ucrania subraya la necesidad de estudiar su impacto en el sistema de gestión pública de la seguridad de la información. Esta investigación tiene como objetivo identificar la extensión y las direcciones de dicho impacto, utilizando análisis estadístico y metodología de derecho comparado. Los hallazgos revelan desafíos en materia de seguridad de la información relacionados con los medios de comunicación social en Ucrania, como información distorsionada, manipulación, propaganda, regulación imperfecta y subordinación de los medios de comunicación a los intereses de sus propietarios. Las experiencias internacionales sugieren abordar estos problemas mediante la promoción de la alfabetización digital, la facilitación de una competencia justa y el fomento de las relaciones entre el Estado, los medios de comunicación y los ciudadanos. A modo de conclusión, se confirma la influencia significativa de los medios de comunicación en la opinión pública y los procesos políticos, con aspectos positivos (cobertura de información importante) y negativos (desinformación, manipulación) en el sistema de gestión pública de la seguridad de la información.

Palabras clave: medios de comunicación; gestión pública; seguridad de la información; alfabetización mediática; desinformación.

Introduction

Mass media provide citizens with access to information and play a leading role in shaping public opinion (McCombs and Valenzuela, 2020). This determines the high importance of mass media as an information security management tool for the state. In turn, information security has a direct impact on national security, because the storage of important information of the state, business entities and citizens depend on the effectiveness of the information security public management system (Pandey, 2021; Semenyshyn et al., 2020).

Mass media can contribute to combating the illegal use, disclosure or loss of such information, and the implementation of appropriate legal, organizational, and technological measures. The importance of media activity in the field of information security determines the need for appropriate state control (Gehlbach and Sonin, 2014).

The above-mentioned issues are particularly acute for Ukraine, because the Russian Federation (RF) waged the war on its sovereign territory, and national security, including information security, is one of the main targets for the aggressor under martial law (Sługocki and Walkowiak, 2020). Mass media play a special role in such conditions, because they provide society with critically important information and a true vision of the current situation (Pavlik, 2022; Prokopenko *et al.*, 2023). The main tasks of mass media in the field of information security include:

- ensuring freedom of speech and equal access to information — an important function of mass media is the timely publication of reliable information about the activities of government bodies, government decisions, and their impact on public life. Freedom of speech must be balanced with certain restrictions related to national security, especially in wartime, which must be taken into account by the mass media (Guyvan, 2020; Datsenko, 2021);
- countering the spread of false information (misinformation) – professional and ethical standards oblige the mass media to properly respond to the spread of unreliable facts, refute fakes, and counter propaganda (Green *et al.*, 2021; Panchenko, 2021);
- detection and prevention of crimes – mass media can be involved in monitoring terrorist threats, prevent cybercrime and other crimes (Odnol'k, 2020; Sevruk, 2021);
- informational support for state national security measures — for example, military operations, emergencies, in particular, pandemics, etc. (Anwar *et al.*, 2020; Hussain, 2020; Mheidly and Fares, 2020).
- The aim of this study is to determine the place and identify the directions of mass media influence in the information security public management system. The aim involved the fulfilment of the following objectives:
- analyse international experience of interaction between mass media and the state in information security matters;
- study Ukrainian legislation on mass media and information security, determine the place of mass media in the information security public management system;
- provide recommendations based on international experience.

1. Literature review

Panchenko (2020) reveals the features, advantages and disadvantages of different types of information presentation by mass media. The researcher considered such types of information presentation as printed publications (press), radio, television. Special attention was paid in the study to the ability of the mass media to manipulate public opinion and to the degree of mass media's influence on the political process. Besides, the researcher identified the main threats in the field of international information security, and outlined the directions for countering such threats.

Zakharenko (2019) examines aspects of media responsibility in the information security system. The researcher describes six interaction models between the state and mass media, namely: independent press model, social responsibility model, democratic representation model, the Soviet model, the authoritarian model, and the development model.

Gonina *et al.* (2020) recognize the important role of the media in the fight against terrorism and ensuring security in general, while identifying a number of threats generated by the media themselves.The researchers identified espionage, propaganda, regulatory issues, cultural imperialism, manipulation and threats generated in the Internet as the main threats. Agubor *et al.* (2015) classify threats to telecommunication networks (terrorist, technological, criminal, and general types of attacks), and offer a number of recommendations to improve information security.

Studies on improving the population's media literacy as one of the most effective information security measures are worth noting. The state in cooperation with mass media may conduct special campaigns to improve media literacy.

Guess *et al.* (2020) examine how media literacy improvement affect citizens' recognition of inaccurate information. Jones-Jang *et al.* (2021) identify several types of literacy in the studied area — media, information, news and digital literacy — and determine the most effective types for recognizing fake news. Hameleers (2022) and Clayton *et al.* (2019) found how a combination of media literacy and fact-checking helps correct communicative misrepresentation.

In the context of this research, it is also important to study the international experience in the system of interaction between the state and mass media in the field of information security. A number of studies identify the features of such systems in particular countries. Mkhitaryan (2020) studies the legal framework for the information society model in Japan. Bagmet and Harkusha (2020) examine the experience of the EU countries in the field of public information policy.

2. Methods and materials

Research design

In this study, it is proposed to consider the role of mass media in the information security public management system in three aspects: the study of international experience, the study of the existing legal framework of Ukraine, the analysis of the results of television news monitoring and outlining of the main directions for improving the interaction of the mass media and the state in information security matters. This determines the division of the research process into three stages.

The first stage of the study provided for the description of the international experience of building effective interaction between the mass media and the state in order to ensure information security. The study examines the experience of the USA, the EU, and Japan as the most successful countries in terms of building an effective information society model, and the relationship between the state and the mass media.

At the second stage, the place of mass media in the information security public management system of Ukraine was determined by analysing the legal framework. At this stage, a list of the main laws and other regulatory acts related to mass media, information security, access to information and other related areas was made, and some aspects of individual legislative acts were outlined. The results of news monitoring carried out by the online publication Detector-media for the following leading Ukrainian television channels: Channel 5, 112/Pershyi Nezalezhnyi, 1+1, Inter, Ukraina, UA:Pershyi, STB, ICTV were also analysed at this stage. The study provides statistics on the number of custom-made materials.

The third stage of the study involved the provision of basic recommendations for improving the interaction between the state and mass media in the field of information security in Ukraine. Such recommendations are based on the analysis of the experience of countries with the most effective information society models and information security protection systems, as well as on the objective needs determined as a result of the analysis of the Ukrainian legislative framework and practices. Special attention is paid to the analysis of the Japanese model of the information society, because this model contains separate solutions for the problems existing in Ukraine.

Information background of the research

The information background of the study is the academic periodicals of Ukraine and other countries, the legislative framework of Ukraine in the field of mass media, information security, access to information, etc., the

2013 Cybersecurity Strategy of the European Union, the Basic Act on the Formation of an Advanced Information and Telecommunication Network Society of Japan, data from the online publication Detector-media and information that is publicly available on the official websites of the Federal Communications Commission and the Department for Culture, Media and Sport.

Research methods used

The research involved well-known scientific methods, as well as statistical analysis to evaluate the results of television news monitoring, and the comparative law to analyse the Ukrainian legislative framework and the experience of other countries.

3. Results

3.1. International experience of building effective interaction between mass media and the state for ensuring information security

The experience of foreign countries shows that mass media are as one of the most influential tools for ensuring the information security of the state. This explains special attention paid by the governments to the development of balanced strategies and policies for ensuring national security, taking into account the role of mass media in countering informational threats.

In the USA, the Federal Communications Commission (FCC) regulates the mass media, controls the circulation of information, helps combat cybercrimes, etc. The FCC regulates interstate and international radio, television, wireline, satellite, and cable communications in all 50 states, the District of Columbia, and US territories.

The FCC operates as an independent government agency and is supervised by the Congress, it is the main body of the United States for regulation, legislation, and the introduction of innovative technologies in the field of communications. The main tasks of the FCC are: stimulating competition, promoting innovation and investment in broadband services and related equipment; promoting the goals of the national economy by providing an adequate competitive basis for the communications revolution; revision of the media-related legal framework; maintaining a leading position in the field of protection of the national communications infrastructure, etc. (Federal Communications Commission, 2023).

Certain aspects of the interaction between mass media and regulatory bodies are also enshrined in EU legislative documents. The 2013

Cybersecurity Strategy of the European Union states that, in cooperation with Member States, the Commission and the High Representative should, inter alia, promote and protect fundamental rights, including access to information and freedom of expression, focusing on the following issues:

- development of new guidelines for the community on freedom of expression online and offline;
- monitoring the export of goods and services that can be used for censorship or mass use;
- online monitoring;
- promoting the expansion of access to the Internet, maintaining openness and resilience to counter censorship or mass monitoring through the use of communication technologies;
- empowering stakeholders to use communication technologies to promote fundamental rights (European Commission, 2013).

The Japanese model is often mentioned as one of the most effective models of the information society. The Basic Act on the Formation of an Advanced Information and Telecommunications Network Society adopted by the Government of Japan in 2000 (hereinafter referred to as "the Basic Act") stipulates the obligation of mass media to adhere to ethical standards in the field of information security.

Article 22 of this Act (Security of Modern Information and Telecommunication Networks, etc.) states that the strategies developed for establishing a progressive information and telecommunication network community ensure the application of measures to achieve and maintain the security and reliability of the latest information and telecommunication networks, to protect personal information and other actions aimed at ensuring safe use of such networks by citizens (Japanese Law Translation, 2000).

The analysis of international experience identified the key areas of improvement of the interaction between the state and mass media in the field of information security. This document can be adapted for Ukrainian realities and applied to improve information security at the national level.

3.2. Determining the place of mass media in the information security public management system of Ukraine

The legal framework of Ukraine includes a number of laws and other acts that are directly or indirectly related to mass media and information security, in particular, the Laws of Ukraine "On National Security", "On Information", "On State Support of Mass Media and Social Protection of Journalists" and the Decree of the President of Ukraine on the Decision of

the National Security and Defence Council of Ukraine of 15 October 2021 "On the Information Security Strategy".

The last of these documents reveals the main global and national challenges in the information sphere. The national challenges include imperfect regulation of relations in the information sphere. It is noted in this regard that the regulation of relations in the information sphere does not meet the actual challenges and threats, thereby hindering the development of the media market of Ukraine, as well as preserving the dependence of mass media on their owners and does not ensure compliance with professional standards of journalists (Decree No. 685/2021, 2021).

The analysis of the existing laws and other regulatory legal acts gives grounds to state that much attention is paid in Ukraine to the development of legislation on information security and the mass media. The government has taken a number of significant steps to improve the legal framework in this area, but numerous problematic issues remain.

Therefore, the state and mass media exert a mutual influence: the state promotes the development of mass media by enshrining relevant provisions in legislation, providing financial support, etc. types of support, regulation of issues related to monopolization, privatization, and guarantee the rights of mass media representatives.

In turn, mass media convey information about the activities of government bodies and critically important events to the public. It is important how the mass media present the necessary information, because the line between the presentation of reliable facts and manipulation or distorted information is sometimes very thin. Determining whether information has signs of manipulation or propaganda may require specialized knowledge. Moreover, the mass media often shape public opinion using both ethical and manipulative means.

The information security issue is especially relevant under martial law, because the country's national security is the most vulnerable during this period, and the outcome of the conflict may depend on the effectiveness of measures to ensure it. Threats to information security intensify even more because of the Russia's information against Ukraine even before the full-scale invasion, as well as the unprecedented information aggression observed even after it.

In these conditions, constant monitoring of mass media for an appropriate and timely response to the manifestations of manipulation or threats to information security becomes important. For example, the monitoring carried out by the online publication Detector-media for February 2022 (the month of the beginning of the full-scale invasion) revealed certain custom-made materials in Ukrainian television news (Figure 1).

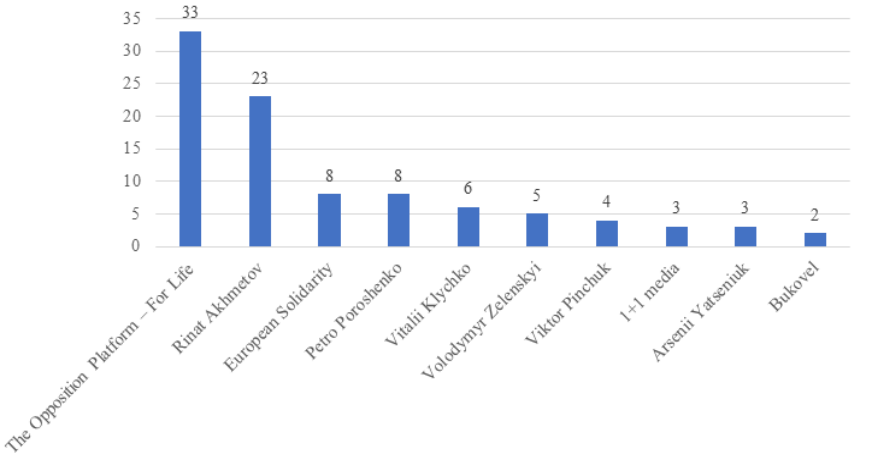

Figure 1. Number of custom-made materials
(built by the author based on Detector-media (2022).

Custom-made media materials can mostly be beneficial to the pro-Russian party The Opposition Platform – For Life, so they can carry propaganda and misinformation for the purpose of manipulation by the aggressor.

It can be concluded that the role of mass media in the information security system of the state can be both positive (expanding access to important information, increasing the transparency of the actions of political figures and parties), and harming the interests of the state in cases of non-compliance with ethical and professional standards (presentation of custom-made materials, assistance to pro-Russian organizations).

3.3. The main directions of improving the interaction between the state and mass media in Ukraine based on the analysis of foreign experience

It can be noted based on the analysis of foreign experience that the countries with the most effective information society models pay much attention to the interaction between the state and mass media. They focus on the following areas:

- improving media literacy of the population;
- constant monitoring of the information sphere;
- development of innovations in the field;

- expanding access to information and the ability to freely express views, etc.

The analysis of the experience of Japan identified the following main directions of state policy of creating a progressive information and telecommunication network community, as well information security and transparency, which should be considered and adapted for Ukrainian practice:

- the realization of the creative potential and other abilities of society through free access and use of a wide range of information;
- improving the quality of life and comfort of the population through the use of information and communication technologies;
- elimination of the digital divide between citizens;
- ensuring the appropriate level of digital literacy of the population;
- creation of conditions for free and disciplined competition in the field;
- active cooperation with the world community in order to exchange information, advanced technologies, etc.;
- increasing government transparency through the opening of government data;
- stimulating the participation of citizens and their cooperation with the state, etc. (Japanese Law Translation, 2000; E-Japan Strategy, 2001).

Some of the indicated directions have been successfully implemented in Ukraine (for example, expanding access to information, improving the quality of life, increasing the transparency of government actions, international cooperation, etc.). Given the importance of the outlined directions, the government's work on their improvement should be improved. The analysis of the legislative framework of Ukraine and news monitoring gives grounds to identify the following priority areas:

- providing an appropriate level of digital literacy of the population;
- creating conditions for free and fair competition in the field;
- developing relations not only between the state and the mass media, but also between the state, the mass media and citizens for achieving information security.

4. Discussion

The results of the study show that the priority directions for making the interaction between the state and the mass media in the context of information security more effective are campaigns aimed at improving citizens' media literacy, stimulating free and fair competition, and involving citizens in cooperation in the field.

Panchenko (2020) emphasizes the importance of mass media, noting that their activity determines the dependence of national security on the information security. The role of the state in ensuring information security in the context of mass media activity should consist, among other things, in countering the subordination of mass media and increasing influence on them by certain government agencies and businesses, regulating the monopolization and concentration of mass media, etc. It can be noted that the researcher focuses on creating conditions for proper competition in the field of mass media, which is consistent with the results obtained in this research.

Gonina *et al.* (2020) also provide a number of recommendations for improving the effectiveness of state-media interaction in Nigeria. In their work, in contrast to this article, improving public awareness is primarily related to informing about the potential threats of new technologies, and not to improving skills in using them and understanding the information received. This may be related to the insufficient information literacy of the population of the region, because threats that are known to citizens of developed countries may be new to residents of developing countries.

Agubor *et al.* (2015) suggest taking measures to counter threats to telecommunication networks, including cybercrime, in the following areas: security of telecommunication networks (through the introduction of necessary technologies), operational security (prevention of information leakage), security by default (prevention of attacks, stability of systems even after failure, system recovery), criminalization of cybercrime, restriction of sensitive areas, implementation of security infrastructure. The results obtained by the researcher indicate the importance of the technological component of information security along with the directions outlined in this article.

Zakharenko (2019) considers increasing the transparency of information, preventing the presentation of distorted information the main tasks of the information policy of the state in the introduction of an effective public broadcasting system following the example of leading states. This approach is aimed at counteracting the subordination of mass media and ensuring pluralism of information, which is identified in the article as one of the priority tasks for Ukraine.

The works of researchers who focused on improving the media literacy of the population are also worth noting. It is impossible to control all information flows in the information age, therefore it is important to form critical thinking in citizens, the ability to evaluate and filter out information, as well as to increase social responsibility in the fight against harmful information (propaganda of violence, inequality, etc.).

The work of Guess *et al.* (2020) on the effects and ways of improving media literacy is worth noting. The researchers established that a lack of media literacy largely determines people's trust in fakes, and conducting a media literacy campaign reduces these negative effects. However, such intervention should be regular, because later the positive effects decrease. Jones-Jang *et al.* (2021) also testify that the intervention to improve the literacy of the population in the media sphere is effective, but only information literacy among the types of literacy (media, information, news and digital) significantly increases the ability to recognize misinformation.

Hameleers (2022) and Clayton *et al.* (2019) found that the combination of media literacy and fact-checking is the most effective tool for disproving false information for citizens. Such recommendations should be taken into account in the development of media literacy campaigns by the state in cooperation with mass media. In the author's opinion, the most effective measures and programmes for improving media literacy can be implemented when studying in educational institutions, because they require their completion for all students and form critical thinking at a young age.

A number of researchers also studied international experience in the field. Studying the information society model in Japan, Mkhitaryan (2020) notes that the following aspects can be adapted and used in Ukrainian practice: development and phased implementation of target strategies with plans for their implementation, comprehensive regulation of IT reform, appropriate and timely response to problems, elimination of the main causes of problems, automation of public services.

Studying the experience of the EU countries, Bagmet and Harkusha (2020) came to the conclusion that information policy strategies and programmes should take into account the guarantee of the constitutional right to receive, distribute and store information, to freely express one's views, as well as gender and age aspects in the course of information environment development. As a supplement to the previous studies, this research examines, among other things, the experience of the United States, and contains relevant recommendations.

The limitations of the study are related to the extensive legal frameworks in the countries under consideration, so covering all important legal aspects is an unattainable goal within a single study. The results of the study can be

used by the representatives of the government and mass media to improve their interaction in the field of information security. A direction for further research may be determining the level of media literacy of Ukrainian citizens and its impact on information security using a sample of citizens taking into account gender and age characteristics.

Conclusions

The place of mass media in the information security public management system was determined as a result of the research. The analysis of international experience established that the countries with the most effective information society models focus interaction between the mass media and the state on the following areas: improving media literacy of the population, constant monitoring of the information sphere, development of innovations in the field, expansion of access to information, and opportunities to freely express opinions, etc. Creating conditions for honest and free competition deserves special attention.

The legal framework of Ukraine related to the information security, mass media, freedom of speech, etc. was analysed. The analysis showed that the government of Ukraine has being implemented a number of important steps to improve the legislative framework in the studied area and harmonize it with the provisions of the EU regulations. However, there are a number of unfulfilled objectives which require the fastest and most effective solutions in the context of a full-scale invasion.

The results obtained in the course of the study can be applied in the practice of representatives of the government and mass media to improve their interaction in the field of information security. Further research may focus on determining the level of media literacy of the population of Ukraine and its impact on the information security using a sample of citizens, taking into account gender and age characteristics.

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Peculiarities of protection of personal non-property intellectual rights on the internet

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Abstract

Using a documentary analysis method, it examines the legal issues that exist in the field of application and protection of non-proprietary personal intellectual rights on the Internet. The first section examines the legal consequences of the active development of information technologies and their impact on relations in the field of intellectual property. It identifies some issues that arise when placing intellectual property objects on the Internet. The second section of the article provides an overview of approaches to the legal regulation of intellectual property relations under the legislation of Ukraine. The third section highlights the types and features of violations of non-proprietary personal intellectual rights on the Internet, as well as legislative and technical methods of their protection. It is noted that the main types of violations of non-proprietary personal intellectual rights on the Internet are piracy and plagiarism. It is concluded that, among the problems that hinder the adequate protection of intellectual property rights on the Internet, the main ones are the legal uncertainty of many key concepts or their insufficient development and the lack of effective mechanisms for the protection of personal non-property rights.

Keywords: intellectual property; non-proprietary personal rights; copyright; information technologies; piracy and plagiarism.

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Peculiaridades de la protección de los derechos intelectuales personales no patrimoniales en Internet

Resumen

Con un método de análisis documental, se examina las cuestiones jurídicas que existen en el ámbito de la aplicación y protección de los derechos intelectuales personales no patrimoniales en Internet. La primera sección examina las consecuencias jurídicas del desarrollo activo de las tecnologías de la información y su impacto en las relaciones en el campo de la propiedad intelectual. Se identifican algunas cuestiones que surgen al colocar objetos de propiedad intelectual en Internet. La segunda sección del artículo ofrece una descripción general de los enfoques de la regulación legal de las relaciones de propiedad intelectual bajo la legislación de Ucrania. La tercera sección destaca los tipos y características de las violaciones de los derechos intelectuales personales no patrimoniales en Internet, así como los métodos legislativos y técnicos para su protección. Se advierte que los principales tipos de violaciones de los derechos intelectuales personales no patrimoniales en Internet son la piratería y el plagio. Se concluye que, entre los problemas que dificultan la adecuada protección de los derechos de propiedad intelectual en Internet, los principales son la inseguridad jurídica de muchos conceptos clave o su insuficiente desarrollo y la falta de mecanismos efectivos de protección de los derechos personales no patrimoniales.

Palabras clave: propiedad intelectual; derechos personales no patrimoniales; derechos de autor; tecnologías de la información; piratería y plagio.

Introduction

In the modern era, which is called the "information society", we are witnessing the rapid development of human intellectual and creative activity. At the same time, society faces problems of a global nature, the solution of which requires maintaining a balance between meeting the needs of society and preserving individual rights.

The issue of legal regulation and protection of personal non-property intellectual rights on the Internet is becoming more and more relevant every year, as the number of offenses related to the use of intellectual property rights is constantly growing, and the level of legal regulation and protection of these rights does not change.

Personal non-property rights are an integral part of every person, their individuality, a special indicator, a characteristic of the author's personality.

That is why the violation of these rights is unacceptable from the point of view of respect for the honor and dignity of a person, business reputation and other non-property rights, which are recognized at the international level in all human rights documents.

The last few years have been characterized by the development of Internet technologies that allow downloading, storing and distributing various types of information in social and other networks, on various media and devices. Objects protected by copyright are subject to both legal and illegal, and sometimes even arbitrary distribution, so the insufficient protection of a person's personal rights on the Internet and an uncertain legal field of protection can harm human rights, which is unacceptable. That is why it is important to know the rules that protect from violations of intellectual rights and should guarantee sufficient regulation of this issue at the international and national level, since nowadays the Internet has become the most important source of information, more popular than any printed sources and publications.

Due to the fact that the regime of legal regulation of relations on the Internet is not clearly defined, and identifying the offender and bringing him to justice is not a simple enough task, the issue of protecting personal non-property intellectual rights on the Internet is one of the most difficult and the most pressing issues.

1. Information technologies and intellectual property rights

Modern socio-economic development is characterized by the growth of the role and importance of factors related to the intellectualization and informatization of the economic life of society. The share of people who become mental workers is constantly growing. Information and knowledge are both the source material and the product of their activity. Analyzing the long-term trends of economic development and technological progress, modern researchers single out the following main features of the information society:

- transformation of information into the most important economic resource, which has a global character and ensures increased efficiency, increased competitiveness and innovative development of business entities;
- the growing influence of information on all areas of human life, its transformation into a subject of mass consumption by the population;
- intensive formation of the information sector of the economy, which occupies a dominant position in the new society;

- transformation of the information sphere into a foundation, the basis of all types of economic activity (Pozhuev, 2011).

In terms of the intellectual economy (knowledge economy), information acts as a special object of contractual relations related to its search, selection, preservation, processing, distribution and use in various spheres of human activity. As a specific economic benefit, it is an important means of obtaining additional benefits by reducing the uncertainty and risk of business entities. Circulating in the market economy as a product (information product, service) or a resource used in the process of economic activity, information has certain features, namely:

- is an intangible good (an ideal component of existence) and is not reduced to physical objects that are its carriers;
- is characterized by inexhaustibility, does not decrease in the process of use and is not consumed in the traditional sense of this term;
- it is not localized in space, easily spreads, replicates (at the current level of technology) and changes the form of fixation;
- does not disappear in the process of consumption, but in order to obtain a useful effect from the latter, it requires certain intellectual skills;
- it is practically not subject to physical wear, but it can age morally;
- there is no monopoly on its possession and use, except for the part that is an object of intellectual property (Bilan, 2016).

The uniqueness of information is determined by the inherent dichotomy of prevalence and rarity, inexhaustibility and finitude. Despite the fact that in the conditions of a market economy, information can be an object of ownership and exchange, the right to own information not only does not contradict the possibility of its maximum distribution, but also provides for the latter as a source of growth of the owner's income.

- The transition to the information economy is inextricably linked with the rapid development of electronic means of communication, the latest digital technologies, which significantly shorten the terms of reproduction of information, provide opportunities for its use, making changes and quick delivery of intelligent products to consumers (Voronkova, 2016).

Modern information technologies, and in particular the Internet, have formed as a powerful information space. Freedom of communication aims at equal access of users to information from any, even the most remote point. Unfortunately, we often think about the problems of legal relations that arise. Works presented in electronic form and available online can be

used by an unlimited number of users at any time. Every work posted on the Internet becomes easy prey for copyright infringers (Dubov, 2010).

The widespread use of the Internet in the field of intellectual property creates not only new opportunities, but also a number of problems regarding the effective protection of intellectual property rights. First, the Internet as a super media means of communication facilitates information exchange, accelerates the flow of information, contributes to the further development of the global market of rights to intellectual property objects and the improvement of mechanisms for coordinating the interests of all interested parties.

For example, in 1998, the WIPO General Assembly adopted the WIPONET project, which aims to simplify intellectual property transactions by creating a global network infrastructure capable of making intellectual property information available to the general public. Second, the formation of cyberspace, which has global and digital characteristics, creates problems of protecting intellectual property rights that have territorial and temporal parameters, as well as geographical and physical boundaries. Current regulations are generally focused on the distribution of works on physical media protected by copyright, while their use on the Internet is practically unlimited (Kharchenko *et al.*, 2021).

In addition, the use of programs in the global computer network makes it possible to carry out practically unlimited export and import of intellectual property objects. Information is transmitted via the Internet in the form of objects protected by intellectual property rights, in particular: literary, musical and audiovisual works, photographs, illustrations, drawings, maps, plans, schemes, etc.

The processing and transmission of data by the network and its functioning itself occurs thanks to such an object of intellectual property law as a computer program, and the storage and search of information is usually carried out using electronic databases, which are also the object of legal protection in the field of intellectual property (Goncharenko *et al.*, 2019). In addition, the Internet also uses means of individualization of participants in civil circulation, goods and services, in particular: trademarks, commercial (brand) names, geographical indications (indication of the origin of goods), domain names (Tomarov and Netska, 2015).

Fixation of the above intellectual property objects in electronic form and the cross-border nature of the Internet simplifies the possibility of infringement of the rights of intellectual property subjects. At the same time, an increase in the scope of intellectual property rights or the introduction of a complex procedure for their implementation, on the contrary, will lead to the restriction of the rights of Internet users (Nekit *et al.*, 2019). That is why the task of modern intellectual property law is to achieve a fair and viable

balance of interests of rights owners and users of intellectual property objects placed on the Internet.

The transfer of a growing number of literary works, films, and computer programs to the digital environment creates a real threat of alteration and falsification of these works, creation of cheap and high-quality copies, and their wide distribution in violation of copyright. Computer users with special devices get the ability to record and re-record and then play them back on any household device. There is also a real threat of forgery of trademarks, the spread of computer piracy, etc. (Zharov, 2005).

Thus, the penetration of commercial relations into the Internet creates qualitatively new problems related to the protection of rights to intellectual property objects. This necessitates the revision of traditional approaches to the protection of these rights, the realization that the institutional environment of the functioning of intellectual property in the industrial era turned out to be unsuitable for the information society, in which the problems of protecting copyright and related rights in the digital space are becoming more and more relevant; protection of business methods and prevention of violation of rights regarding means of individualization of unfair competition in electronic commerce.

Systematization and reform of intellectual property rights in the field of protection of materials and other objects transmitted over the Internet is an urgent issue when information is becoming an increasingly important factor production and an increasingly valuable object of civilian circulation (Tsybulev, 2005).

Intellectual property is one of the components of the information society. Intellectual property is an intangible resource, the result of human creative activity reproduced in an information product. Information product is documented information that is intended to meet the needs of users, use in the information society. It can be bought, sold or transferred for use. As with a tangible product, it can be subject to illegal acts such as theft, misuse, etc. Information products are objects of copyright.

Most often, the following are distributed through the world network: literary works, musical works, audiovisual works, computer programs, works of art, photographs. Information product is a driving factor in the field of information technology (IT), which contributes to the expansion of the IT industry, because its sale, service and support creates a new type of human activity – IP marketing and related functions.

In general, there are two views regarding copyright protection of intellectual property objects on the Internet. According to the first, the global Internet network as a man-made phenomenon develops according to the laws that apply in other areas of human life. And, therefore, it should be regulated by the same laws. Such an opinion is held by those users who believe in the principles of copyright.

On the other side are those who support the principles of copyleft. The latter argue that the Internet was conceived as a free environment, based on the provisions of public access and openness of information, and therefore cannot obey any laws, especially those that are unable to regulate it. Its development should be self-regulated based on internal rules (Orlova and Perevalova, 2014).

The widespread use of the Internet gives rise to significant legal problems concerning, in particular, such important issues as: information security; rights and freedoms in the field of information; access to information, information resources, information products and obtaining information services; electronic commerce (trade); taxation of commercial activities on the Internet; concluding contracts electronically; use of computer software; use of domain names; illegal behavior of users in the network (cybersquatting, typesquatting, hacking); protection of intellectual property rights (copyright and related rights, patent rights, rights to means of individualization, etc.). The system of free distribution of software with subsequent paid maintenance and provision of various information services is gaining more and more importance.

Protection of rights to intellectual property objects on the Internet by traditional means is impossible, so there is an objective need to create a new institutional environment in this area. Emphasizing the fact that property generally loses any meaning in the information society (knowledge society), researchers claim that, unlike traditional society, in which law was the guarantee of protection, in the information economy moral norms play the main role.

Proponents of this approach pay attention to changes in human psychology, the system of motivations, preferences, norms of behavior and emphasize the emergence of a new "informational" morality, in which access to information acquires an ethical meaning. Therefore, each individual is interested not only in one's own knowledge, but also in access to this knowledge by all members of society (Ketrar, 2012).

Attempts by the world community to adapt information technologies to the protection of rights to intellectual property objects were reflected in DRM systems - digital rights management. These systems are aimed at approving certain rules regarding the use of intellectual property objects based on the definition of: subjects who are granted access to the works; prices of intellectual property objects; conditions of access to works, including granting users the right to copy and make changes to works, determining the time during which they are granted the right to access these works.

Thus, DRM systems are aimed at automating the process of licensing works and ensuring clear compliance with license terms. DRM technical

means ensure the protection of the rights of copyright holders in the digital environment, contribute to curbing piracy of copyrighted objects, their effective and adequate protection during distribution in the global network, and the further development of international cooperation in the field of science, culture and art (Nekit, 2020).

The issue of safety, honesty and good faith in the possession and management of information are highly important for the formation of information relations. Inadmissible is the situation when the subjects of relations manipulate the norms of the law, or, in some cases, their absence.

2. Peculiarities of the concept and types of intellectual property rights on the Internet under the legislation of Ukraine

Objects of intellectual property rights are the results of intellectual, creative activity, expressed in an objective form, that is, recorded on a certain material medium (including electronic or digital) that meet the criteria of protection established by legislation. To define the category "intellectual property object", the legislator in Ukraine provides a non-exhaustive list of objects, as well as a definition of individual objects, mainly by listing their main features, criteria of protection.

The Civil Code of Ukraine mentions among the objects of intellectual property rights, in particular: literary and artistic works; computer programs; compilation of data (databases); phonograms, videograms, broadcasts (programs) of broadcasting organizations; scientific discoveries; inventions, utility models, industrial samples; layout (topography) of integrated circuits; rationalizing proposals; varieties of plants, breeds of animals; commercial (brand) names, trademarks (marks for goods and services), geographical indications; commercial secrets (Verkhovna Rada of Ukraine, 2003).

It is common to divide intellectual property objects into four categories depending on the scope, purpose of creation and use, conditions of legal protection: objects of copyright and related rights; objects of industrial property law (patent law); means of individualization of participants in civil circulation, goods, works and services; non-traditional objects of intellectual property law.

Copyright plays a primary role among types of intellectual property on the Internet. In the clarifications of the International Bureau of WIPO, the concept of "copyright" is defined as follows: it is the exclusive right granted by law to the author of a work to declare himself the creator of this work, reproduce it, distribute it or make it known to the public by any means, as well as to allow others individuals to use the work in a specified way (Butnik-Siverskyi, 2008).

Copyright has an exclusive character and is considered as a set of non-property (personal) and property rights of the author, granted by law, to declare one an author of a work, to publish the work, reproduce and distribute or use it in any other ways and means, and give permission to others to use the work in certain ways.

The definition of the concept of "copyright" is not fixed in the legislation of Ukraine. In Art. 433 of the Civil Code of Ukraine and Art. 6 of the Law "On Copyright and Related Rights", it is established that the objects of copyright include: literary and artistic works, including digital (novels, poems, articles, and other written works; lectures, speeches, sermons, and other oral works; dramatic, musically – dramatic works, pantomimes, choreographic works, other stage works; other groups of objects); computer programs; compilation of data (databases), if they are the result of intellectual activity by selection or arrangement of their component parts; other works (Verkhovna Rada of Ukraine, 2022). That is, the objects of copyright are quite diverse, and with the development of culture and society, new objects will appear. Thus, with the development of the global Internet, such objects as computer programs and data compilations appeared.

Article 434 of the Civil Code of Ukraine and Article 8 of the Law "On copyright and related rights" define object which are not covered by the concept of copyright, these are:

1. reports on news or other facts of the nature of ordinary press information;
2. expression of folk creativity (folklore);
3. acts of state authorities, local self-government bodies, official documents of a political, legislative, administrative and judicial nature (laws, decrees, resolutions, decisions, state standards, etc.), as well as their drafts and official translations;
4. state symbols, state awards; state signs, emblems, symbols and signs of state authorities, the Armed Forces of Ukraine and other military formations of Ukraine, approved by state authorities; symbols of territorial communities of Ukraine, approved by relevant local self-government bodies;
5. money signs;
6. timetables of vehicles, schedules of television and radio programs, telephone directories and other similar databases that do not meet the criteria of originality and are covered by the right of a special kind (sui generis);
7. abbreviations;

8. photographs that do not have signs of originality (are not photographic works) (Verkhovna Rada of Ukraine, 2022).

In addition to the fact that copyright objects are in constant development, they need high-quality protection. This issue became especially relevant after the development and spread of the global Internet. The global system has become an integral part of the development of society and the world. In fact, with the use of the Internet, various kinds of relationships emerge. But in addition to the creation of new relationships, the implementation of a number of other relationships and all other useful directions, the Internet has become a space for violation of the rights of individuals and copyright in the first place.

As noted by scholars, data filling the global Internet, that is, content, are objects of copyright. But in order to gain access to this computer network, it is necessary to use various software, which, in turn, is also an object of copyright. According to specialists' estimates, the total amount of information on the Internet is more than 500 billion gigabytes, and this indicator is constantly growing (Rippa, 2011).

As already mentioned, copyright in Ukraine is regulated by the Civil Code of Ukraine and the Law of Ukraine "On Copyright and Related Rights". According to the recent amendments, placing a work in digital form on the Internet is considered a publication or distribution of the work and therefore requires the permission of the copyright owner. Placing a copy of a work or its part on the Internet without the permission of the author is a violation of the Law and may be challenged in court with a demand for compensation for moral damage and material damages.

Legal relationships on the Internet are very diverse, so there are various rights that can be violated, in particular:

- copyright of providers on computer programs and databases that implement access to the Internet itself or hosting websites on their technical platforms (servers);
- copyrights of software manufacturers for these providers' servers;
- copyrights of website owners on the actual content of the website, its software part and other objects of copyright placed on it - articles, images, music, databases, etc.
- copyrights of specific owners of rights to objects posted on websites: computer programs, music, articles, images, databases, etc., which are actively used (Abdulina, 2014).

Thus, copyright is one of the main types of intellectual property on the Internet for at least two reasons:

- firstly, most of the materials that are transmitted using the network are works in the legal sense, and therefore, copyright applies to them;
- secondly, since the very nature of electronic communications involves multiple copying of data in the process of their transmission through communication channels, naturally, the question of compliance with such copying of copyright arises (Denysova, 2013).

3. Legal issues in the field of copyright protection on the Internet

In the field of copyright protection on the Internet the following legal issues caused by the development of information technologies can be notified:

1) absence of specific legal provisions to regulate this sphere of relations; legal uncertainty of many key concepts or their insufficient development.
2) the cross-border nature of the use of copyright objects via the Internet. Open access to the object of intellectual property right on the Internet makes it possible to use it virtually all over the world, therefore there are cases when the objects of copyright are used by the Internet user in the territory where the relevant legal norms do not apply.
3) after placing an object on the Internet, a problem arises regarding the possibility of tracking by whom and how this object of copyright or related rights will be used. This is primarily due to the fact that access to the corresponding object of exclusive rights is opened simultaneously for an extremely wide range of persons, reaching millions of Internet users.
4) a large and constantly increasing number of copyright violations, since lack of effective copyright protection mechanisms.

According to some scholars, the legislator should increase the level of penalties for violations in the specified area depending on the level of public danger. The government must take active actions to prove to society that it will not condone copyright violations in the field of information technologies and with their help.

The facts of illegal distribution of works on the Internet, their public notification in public places, trade establishments, catering, etc., have also become widespread (Melnikov, 2003).

Offenses related to the use of copyright objects are becoming more and more widespread on the Internet.

The most common types of copyright violations on the Internet are: plagiarism - publishing completely or partially someone else's work under the name of a person who is not the author of such a work on the Internet; forging, changing or removing information, in particular in electronic form, about rights management without the permission of the subjects of copyright and (or) related rights or the person who carries out such management.

A separate group of violations on the Internet consists of piracy in the field of copyright, in particular, Internet piracy - copying and distribution of copies of musical compositions; distribution of copies of films or television programs via computer networks; illegal distribution of author's works.

One of the main problems in the fight against piracy is its support by the network society through: the creation of political movements that fight for the free exchange of information on the Internet, protests in defense of sites that were closed for posting unlicensed content, attacks hackers to the websites of state bodies of various countries (Grigoryants, 2015).

Among the most famous cyberattacks, which disabled the sites of the FBI, the White House, the Department of Justice, the Universal Music Group, the Recording Industry Association of America, the Motion Picture Association of America, and the American Copyright Office, was the Anonymous DDoS attack.

A popular way of distributing content (both legal and illegal) on the Internet is using the p2r protocol. The problem of solving the issue with the activity of torrent sites is that they do not contain the copyright object itself, but only have links to the persons who own it, and such persons, in turn, are not necessarily within the same countries and can be anywhere.

Of course, there are other ways of sharing files, uploading them to the Internet using various systems, programs, and it is impossible to control these processes regarding the number of copyright violations, as well as to find out who exactly uploaded the file to the Internet (the right holder or another person) due to the anonymity of Internet users (Kulinich, 2016).

Talking about measures to protect copyright on the Internet from piracy, it is necessary to introduce fines for the distributors of pirated content, as this way the violators will be punished more quickly than enduring a criminal trial. Other experts believe that in order to protect copyright objects from piracy, it is necessary to have legal and at the same time accessible content, since the main reason for copyright infringement is the high cost of the content from a financial point of view and from the point of view of its inaccessibility in search.

Only then can we talk about driving pirates out of the market. The experience of foreign countries shows the effectiveness of the fight against piracy. For example, in France, the principle of "three warnings" applies: the first warning is sent to the user of Internet services by e-mail, the second is considered an official notification of a violation, as a result of the third warning, a special agency has the right to deprive the violator of access to the Internet (Galyantych, 2011).

Unlike piracy, where someone else's work is distributed without the permission of the author, but without concealing his name, in plagiarism someone else's authorship is assigned, and in this way both the property and personal non-property rights of the author are violated. Among all, the nature of electronic libraries as an online resource that hosts literary works that can be viewed by any Internet user remains controversial.

On the one hand, such libraries save time searching for the work of even a little-known author, and their maintenance is cheaper, compared to a regular library. However, readers of such libraries do not buy books, authors risk losing profit from the sale of copies of works, and it is impossible to check whether the reader saves the book on a technical device for educational or personal purposes (Kovalenko, 2018).

Of course, if the main condition for the use of material in the electronic library is registration and payment of funds for access to the work, and the author of such a work is aware of the placement of his work in the electronic library system, and later receives profit from the online sale of copies, then there is no violation of copyright.

Somewhat similar in nature are web depositories, a kind of archives of copyright objects, where there is an indication of the author of the work, the date of publication, its coordinates and the options that can be exercised with this work, which are determined by the author himself (whether it is possible to reprint his work, translate, is it mandatory to indicate his authorship for a specific work).

There is a large amount of illegal distribution of copyright objects on the Internet, and the type of violation is of great importance for the protection of author's rights in pre-trial or judicial proceedings, as well as for determining the sanctions that should be applied to violators. One of the types of illegal distribution of copyright objects is their publishing on the Internet by a violator and their use (listening, reading, recording on media, etc.) by a recipient. Another case is when the recipient must pay to the person who posted something.

However, if the copyright holder has given permission for such posting, and the author receives funds from payment for copying, downloading, viewing, there will be no violation of copyright. In another case, if there was no such permission, then all the grounds for applying civil liability to the

offender are fully available. There are other cases where ISPs reward people who place copyright objects on the Web for expanding the network's archive, and payment is made for the distribution of each unit of information that comes from its archive. Therefore, users do not pay anything to the owner of such an archive, except for the payment for Internet services of the provider (Ennan and Mazurenko, 2021).

The actions of the owner of copyright, aimed at the protection of a created object, should be planned in advance, in order to prevent a possible violation of copyright on the Internet. The copyright protection measures proposed by scholars differ among themselves only taking into account the features of the Internet and the means by which copyright infringement occurs. However, the majority of scholars point out that, regardless of the chosen method of copyright protection, even at the stage of creating one's own object, the author must follow at least one fairly simple recommendation: to not publish the created object until the copyright registration, because in case of violation of such a right, the process of its restoration will be more difficult and time-consuming (Kalitenko *et al*., 2021).

The order of copyright protection, among others, should include: the copyright owner's own actions aimed at preventing the leakage of information about the object of the right and the directions of its application; creation of own specialized services; involvement in the protection of the rights of specialists; close cooperation with retailers and distributors of media of intellectual goods; active use of the capabilities of law enforcement agencies and the judicial procedure for the protection of rights by filing lawsuits against violators of intellectual property rights (Ulianova, 2008).

Of course, the proper protection of copyright is provided by a perfect legal framework and a system of state bodies whose task is the protection of human rights. However, in the era of technological development, it is worth noting that effective prerequisites for copyright protection on the Internet are the availability of a wide range of techniques at the author's disposal, which, together with others, act as preventive measures for the protection of copyrights, and their proper application will avoid court proceedings.

Among technical means of copyright protection on the Internet, we can name: the ISBN identification code, which is intended for the protection of phonograms; ISAN is a number used to protect films and other audiovisual works; DOI is a digital identifier that accompanies works or their parts, thus allowing to trace the "fate" of the object in trade circulation, etc. For example, with the help of a digital signature, the real author of a particular work is identified, this in turn promotes trust relations between the author and his counterparty, since the latter is sure of who he is dealing with (Asongu, 2021).

The most well-known and appropriate way to designate a person as the author of a work is the copyright mark (©), the name of the author, the year of publication, but the absence of this mark does not mean the absence of copyright, since the appearance of copyright is not tied to their designation with signs and arises from the very fact of the creation of the work. The copyleft sign (an expanded copyright symbol) has a slightly different legal meaning.

By copylefting, the author does not require permission to use his original work when creating a derivative. Copyleft is a type of free public license, but its legal regulation is not yet developed in Ukrainian legislation. Thus, the Ministry of Economy of Ukraine determined that free public licenses are a publicly available contract of affiliation, which provides a person who has joined such a contract free of charge permission to use the object of copyright and (or) related rights in certain ways under the conditions specified by the license.

Other technical methods of copyright protection include the use of a system of "digital watermarks", which the user does not see with the usual visual examination of the image and text, but in case of copyright infringement, with the help of special software, it is possible to prove that the file contains information about the author. Authors can also use so-called special "fingerprints", which indicate the author and the determination of which will be sufficient evidence in court in case of copyright infringement.

Also, as a means of protection, authors can use: passwords, the entry of which will be the only condition for the user's access to the copyright object; provision of a limited volume of the work, the purpose of such placement is to get acquainted with the work for further use, but after payment (most book applications, for example, Google Play books, work according to this principle); providing a time limit for using the work (for example, after the tenth viewing of the file, it will not be possible to view it); also by giving authors, for works posted on the Internet, the authority to license their rights to clearinghouses, and users, in turn, pay a fee for issuing such a license to the clearinghouse, which distributes the received funds among copyright owners (Kiema, 2008).

Among the drawbacks of the Internet, which makes it difficult to resolve a conflict related to the violation of copyright on the Internet not only during defense in court, but also in a claim procedure, the difficulty of proving the committed offense and its fixation is mentioned, because it can be quickly deleted. And after it was deleted it is almost impossible for the author to prove the fact of an offense, since there could be several sites on the same server.

Among the measures that confirm the illegal publishing of copyright object on a web page are: contacting companies that record information

posted on Internet pages that has been deleted or recorded using the Internet Archive, Way back Machine service, or contacting an expert on the research of telecommunication systems, as well as before applying to the court, to contact the offender in order to stop the copyright infringement and record this application.

In view of the above, it is worth noting that proper protection of copyright can only take place in a complex of procedures, actions not only on the part of government bodies, but also Internet users, providers, the authors themselves and all other persons who daily get acquainted with any amount of information. A sufficient system of copyright protection can be noted if there is proper public awareness of the need for such measures, clarification of the value of copyrights, since the observance of the rights of other persons has not only a legal basis, but also a moral and ethical one in the first place.

The creation of progressive, special legal norms for the regulation of Internet relations, proper legal awareness, culture of citizens, awareness by authors of the consequences of indifferent treatment of their own copyright objects, and therefore the application of preventive measures to avoid possible violations of their own copyrights, will contribute to the prevention of copyright infringement on the Internet.

Based on the global nature of the Internet, pursuing the goal of protecting human rights and freedoms and the further development of the global information space, the following methods of solving existing problems in the field of copyright protection on the Internet seem to be appropriate:

1) use of a digital signature. The essence of a digital signature is that it allows to identify the real author of a particular work, thereby removing any doubts from the counterparty about who he is dealing with;

2) use of digital stamps. The most common is the system of so-called "digital watermarks", embedded into objects (texts, graphic images, etc.) published on the Internet. Their advantage lies in the fact that during a normal visual examination of the image, the user does not see any encoded markings, such as the copyright icon (©), the author's name, the year of publication. But then, using a certain software tool, you can prove that the files contain additional information that points to the person who recorded them;

3) limiting access to materials posted on the Internet. For example, databases of commercial sites and some electronic libraries and archives are available only for an upfront fee;

4) methods of cryptographic transformation of materials, such as encryption, the use of which allows to limit or completely eliminate the possibility of copying works;

5) creation of web depositories that allow recording intellectual property objects on the Internet and securing their legal status;

6) limited functionality: under this approach, the copyright owner provides the user with a copy of the work that has functional limitations. This approach is one of the ways to implement such business models as "try before you buy" and "sell improved versions";

7) "time bomb": under this approach, the copyright owner distributes a functionally complete intellectual property object, but sets a date after which access to it will not be possible. One option for this approach involves the seller closing access to the work after a certain number of uses (for example, after viewing a computer file 10 times, it will be impossible to view it again);

8) contracts are one of the most effective and, unfortunately, underestimated means to prevent infringement of author's rights. When properly drafted, contracts can give copyright holders greater powers to control the use of their works than is available to them under the law;

9) clearing centers: under this approach, owners of copyright and related rights in works posted on the Internet grant clearinghouses the authority to license their rights. The user pays a license fee to such a clearinghouse, which in turn distributes the received funds among copyright owners.

The above methods of preventing violations in the sphere of protection of intellectual property rights on the Internet are promising, and some have already proven their effectiveness (Kovalenko, 2018).

Conclusions

In connection with the increase in the number of offenses on the Internet, where any person at any time has the opportunity to obtain information, it is very difficult to trace the occurrence of an offense and identify the person who committed it. Nowadays, the rapid development of technical mechanisms and IT-technologies gradually make it possible to ensure access and transfer of intellectual property objects and to complement the legal protection provided by law and contracts with effective technical protection.

The specified problems regarding legal regulation and protection of personal non-property intellectual property rights on the Internet require further development, in particular in the legislation of Ukraine. In our opinion, some basic concepts in the field of protection of personal non-

property intellectual property rights on the Internet are still not clearly defined by the current legislation, which significantly complicates the regime of their legal protection and negatively affects the formation of contractual relations in the field of copyright implementation on the Internet.

It is advisable to introduce clearer and stricter rules regarding the use of intellectual property objects on the Internet and to establish strict means of punishment in case of violation of the rights to use them in order to ensure the protection of personal non-property rights. It is also necessary to create and implement limits on the use of intellectual property objects on the Internet, which were made without obtaining the consent of a person, but within the limits of existing legislation.

Taking into account the rapid development of new technologies and the constant increase in the level of opportunities for commercial and non-commercial activities of private and public persons on the Internet, it would be appropriate to create special committees, which would deal with the development appropriate software and the formation of a mechanism for the protection of intellectual property rights on the Internet, in particular in social networks.

It is also necessary to constantly improve existing security systems and create new ones, since new types of offenses, illegal schemes and cases of cybercrime periodically appear in the network, which require appropriate countermeasures in their practical implementation.

We would like to note that it is extremely important to be ready to quickly respond and eliminate the consequences of violations in the field of intellectual property on the Internet, as well as to constantly develop new mechanisms to prevent their recurrence in order to protect the personal non-property rights of intellectual property.

In general, controlling copyright infringement on the Internet today is quite complicated. That is why, in modern conditions, it is most appropriate for authors to take care of the protection of their legal rights in advance, using various technical means of protection that allow creating technological obstacles to the violation of copyright or related rights.

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The essence of administrative legal relations in the sphere of social security for persons with disabilities

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Abstract

The purpose of the study was to learn the essence of administrative and legal relations in the sphere of social protection of persons with disabilities, to identify their characteristic features and, at the same time, to provide a legal description. A complex of scientific knowledge methods were used, based on the technique of analysis and synthesis, formal-legal, logical-semantic and statistical generalization. Administrative and legal relations in the sphere of social protection of disabled persons are an integral part of the state administration, whose policy is aimed at ensuring their social protection on an equal footing with other citizens, in terms of their participation in public life. It is concluded that, the state policy in the field of social protection of persons with disabilities consists in providing a certain list of social payments, social services and implementation of rehabilitation measures, etc., which determines the special legal status of these persons. It has been shown that military actions on the territory of Ukraine are associated with an increase of citizens suffering from various degrees of damage, leading to persistent disorder of health and life activities, in terms of disability.

Keywords: social protection; persons with disabilities; administrative legal relations; subjects of legal relations; human rights.

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La esencia de las relaciones jurídicas administrativas en el ámbito de la seguridad social de las personas con discapacidad

Resumen

El objeto del estudio fue conocer la esencia de las relaciones administrativas y jurídicas en el ámbito de la protección social de las personas con discapacidad, identificar sus rasgos característicos y, al mismo tiempo, proporcionar una descripción jurídica. Se utilizaron un complejo de métodos de conocimiento científico, basados en la técnica de análisis y síntesis, generalización formal-jurídica, lógico-semántica y estadística. Las relaciones administrativas y jurídicas en el ámbito de la protección social de las personas discapacitadas son parte integrante de la administración estatal, cuya política tiene por objeto garantizar su protección social en igualdad de condiciones con los demás ciudadanos, en cuanto a su participación en la vida pública. Se concluye que, la política estatal en el campo de la protección social de las personas con discapacidad consiste en proporcionar una lista determinada de pagos sociales, servicios sociales e implementación de medidas de rehabilitación, etc., lo que determina el estatus legal especial de estas personas. Se ha demostrado que las acciones militares en el territorio de Ucrania están asociadas con un aumento de ciudadanos que suferen diversos grados de daño, lo que conduce a un trastorno persistente de la salud y las actividades vitales, en términos de discapacidad.

Palabras clave: protección social; personas con discapacidad; relaciones jurídicas administrativas; sujetos de relaciones jurídicas; derechos humanos.

Introduction

Having ratified the foundations of the UN Convention "On the Rights of Persons with Disabilities" (Convention on the Rights of Persons with Disabilities, 2006), Ukraine undertook to define a political state course aimed at social protection of persons with disabilities.

The Preamble of the UN Convention on the Rights of Persons with Disabilities defines disability as an evolving concept, and that disability is the result of the interaction that occurs between people with health impairments and relational and environmental barriers that prevent their full and effective participation in society on an equal basis with others (Convention on the Rights of Persons with Disabilities, 2006). That is why the government of the state introduced a social political model of support

for persons with disabilities with the introduction of a barrier-free social environment for them, with the opportunity to become an active layer of a progressive society and the opportunity to realize their potential.

The government of the state took a number of measures aimed at ensuring the independence of persons with disabilities, the implementation and realization of constitutional rights and freedoms in all spheres of life, taking into account their characteristics.

1. Objective of the research

The purpose of the study is to reveal the object of administrative and legal relations in the field of social protection of persons with disabilities, with the determination of their fullness of constitutional rights and the granting of a special legal status. To identify signs of legal relations in the field of social protection of persons with disabilities and to provide their characteristics.

2. Methodology

In the course of the research, a complex of general scientific and special methods of scientific knowledge was used, taking into account the peculiarities of building relationships in the field of social protection of persons with disabilities. Thus, the method of analysis and synthesis made it possible to determine the object of legal relations in the field of social protection of persons with disabilities based on the opinions of leading scientists; logical and semantic allowed to form the essence of administrative legal relations in the field of social protection of persons with disabilities; formal and legal – to highlight and characterize the signs of administrative and legal relations in the field of social protection of persons with disabilities; the method of statistical research.

By analyzing the data of the dead and persons who received various degrees of injuries as a result of hostilities on the territory of the country, indicating the number by regions of the country, to determine the connection with the increase in the percentage of people with various degrees of persistent health disorders and impossible implementation of life activities to the full extent compared to other members of society; scientific generalization - on the basis of successive analytical operational actions, the main directions of the state's social policy regarding persons with disabilities and providing them with ways of social adaptation as full-fledged citizens of society are determined; cause-and-effect relationships - in the process of arguing for an increase in the number of people with

persistent disorders of the body's functions, which leads to the limitation of their life activities, the ways of social and legal protection are determined.

The study of legal aspects of the formation of state policy in the field of protection of persons with disabilities was carried out by such scientists as: Serhiy Kandyba (Kandyba, 2020), Oleksandra Parovyshnyk (Parovyshnyk, 2015), Tetyana Kolomoiets (Kolomoiets, 2011), Svitlana Pasichnichenko (Pasichnichenko, 2010) and others.

The issue of state support in the field of social protection of persons with disabilities and the formation of rehabilitation programs for this category is becoming relevant, especially today, in wartime conditions, when the number of people who have received physical and psychological injuries, which leads to the limitation of life activities, as a result of military actions, is constantly increasing.

3. Results of the research

Disability is a social phenomenon that requires social and legal protection, because according to the State Statistics Service of Ukraine as of January 1, 2020, 2.7 million people in Ukraine have a disability, including 222.3 thousand people with the I group of disabilities , 900.8 thousand people with the II group of disabilities, 1416.0 thousand people with the III group of disabilities and 163.9 thousand children with disabilities (Official website of the Ministry of Social Policy of Ukraine, 2023).

Today, the high percentage of obtaining a permanent degree of incapacity for work, in other words – disability, as a result of the performance of work duties has become particularly acute. One of the main reasons for this situation is the conduct of hostilities on the territory of Ukraine due to the full-scale military invasion of the Russian Federation.

Thus, as of January 3, 2023, as a result of hostilities at Ukrainian enterprises since the beginning of the war, 771 workers died and received a certain degree of incapacity for work, 222 of them died. The largest number of victims among employees of enterprises registered:

- in Kyiv – 160 victims, 41 of whom were fatally injured;
- in Dnipropetrovsk region – 99 injured, 33 fatal;
- Kharkiv region – 79 injured, 17 fatal;
- Mykolaiv region – 76 injured, 28 fatal;
- Donetsk region – 68 injured, 12 fatal;
- Zaporizhzhia region – 60 injured, 12 fatal;

- Vinnytsia region – 40 injured, 12 fatal;
- Sumy region – 28 injured, 12 fatal;
- Chernihiv region – 28 injured, 8 fatal;
- in the Kyiv region – 27 injured, 11 fatally;
- and also in the Kirovohrad region – 23 injured, 11 fatally (Bakhmat city community – 2017-2023, 2023).

The above data do not include statistics of persons killed in the performance of functional duties and persons who received the appropriate degree of incapacity for work - disability, from the number of policemen, rank-and-file and senior staff of the internal affairs bodies of Ukraine, civil protection bodies and units of the State Emergency Service, and military personnel during the defense of Ukraine.

Also today, the number of people becoming disabled is increasing due to receiving shrapnel injuries as a result of mine-explosive injuries, which are the most widespread as a result of military actions on the territory of Ukraine. This was felt from the very beginning of the Anti-Terrorist Operation, which was later transformed into the Operation of the United Forces, which was conducted against the Russian aggression launched in the east of Ukraine.

Thus, according to the results of the analysis of medical scientists during the conduct of ATO/OS on the territory of Ukraine, it was shown that in the structure of sanitary losses of the surgical profile, wounded with limb injuries make up 56.7–62.6%. The results of clinical-epidemiological and clinical-anatomical studies prove that 80.4% of the wounded with shrapnel injuries of the limbs, 13.1% with bullet injuries, 2.2% with mine-explosive injuries, and 4.3% with explosive injuries (Khomenko Igor *et al.*, 2021: 128).

To date, the number of injured persons - citizens of Ukraine as a result of military operations, which would lead to disability, has not yet been announced, as the war continues. According to the official information of juvenile prosecutors, as of January 13, 2023, 453 children died and more than 877 were injured of various degrees of severity (Official website of the Ofis Heneralnoho prokurora Ukrainy, 2023), which led to varying degrees of health and vital activity disorders.

All these affected persons with the acquisition of a persistent health disorder, the number of which is constantly increasing, need social protection and the implementation of an effective social and legal policy. This and the indicated numbers already speak of the necessity and relevance of conducting a study of the peculiarities of legal regulation of administrative relations of social protection of the disabled.

To begin with, let us define the subject of legal regulation of relations. Turning to the theoretical foundations of administrative law, administrative and legal relations are an integral part of social relations arising in the process of state administration as organizational ties between their participants. Administrative and legal relations are public relations in the sphere of public administration, the participants of which act as bearers of rights and obligations regulated by the norms of administrative law (Harashchuk and Bohutskyi, 2010).

Accordingly, legal relations arise between the participants of these relations, on one side of which is the subject of authority, who exercises management in this sphere of relations, on the other - the corresponding person, endowed with rights and obligations. The basis for the emergence of these relations and the establishment of the specifics of their regulation are the relevant legal norms. To confirm this thesis, one should turn to the foundations of the theory: administrative-legal norms serve as the basis for the emergence of administrative-legal relations. Norms themselves do not directly create them, but only predict in a general form the conditions for their occurrence (Harashchuk and Bohutskyi, 2010, 57).

Therefore, the behavior of the subjects of legal relations is regulated by the norms of administrative law, which, based on the nature of law, form the corresponding mutual rights and obligations. In the framework of this thesis, Olena Kharitonova defines administrative and legal relations as social relations regulated by administrative and legal norms, consisting in the field of public administration and administrative protection of public law and order, one of the participants or all of which are the bearers of power and subjective rights and legal obligations that are under the protection of the state (Kharytonova, 2004).

Solidarity in this is expressed by Tetyana Kolomoets, who believes that administrative and legal relations are social relations regulated by the norms of administrative law, the subjects of which are endowed with rights and obligations in the sphere of ensuring the implementation and protection of rights and freedoms by executive power bodies and local self-government bodies and legitimate interests of individuals and legal entities (Kolomoiets, 2011).

Valentyn Halunko defines administrative and legal relations in two meanings: broad and narrow. In the narrow sense, these are social relations regulated by the norms of administrative law (Halunko, 2015).

The author reveals the broader meaning of the concept of administrative and legal relations, relying on the theory, which is based on the understanding that the norms of administrative law regulate public-law relations in the field of internal state administration (Halunko, 2015). Accordingly, according to the scientist, relations between: 1) public administration and natural

persons (citizens, foreigners, stateless persons) are regulated; 2) public administration and legal entities that do not have a powerful status, and natural persons with a special non-powerful status (for example, natural persons-entrepreneurs); 3) between higher and lower bodies and officials of public administration (Halunko, 2015: 38).

Valentyn Halunko singled out the following features that characterize administrative and legal relations:

1) they are inextricably linked with administrative and legal norms, arise and are implemented on their basis;
2) their main goal is to ensure the rights and freedoms of a person and a citizen, the normal functioning of civil society and the state;
3) they regulate a wide range of social relations between public administration and objects of public administration;
4) the leading feature of administrative and legal relations is their public nature, they arise at the initiative of any party, while the consent of the other party, as a rule, is not mandatory;
5) administrative and legal relations are mainly executive and administrative: in a narrow sense, subjects of public administration are endowed with authoritative competence, and objects are obliged to fulfill their legal requirements; along with this, under a broad approach, parties to administrative and legal relations always have subjective rights and legal obligations that are interconnected: each subjective right of one party corresponds to a legal obligation of the other, and vice versa;
6) they have a conscious-volitional character, because the state expresses its will to the people of Ukraine through the issuance of relevant administrative and legal norms, the participants of these relations exercise their will, realize the meaning of their actions and can bear responsibility for them;
7) administrative and legal relations are protected by the state, which promotes the implementation of subjective public rights and legal obligations, and in the case of an offense brings the guilty person to administrative or other legal responsibility;
8) do not belong to administrative and legal relations between public administration and objects of public management, if they are not based on law (Halunko, 2015: 39-40).

Based on the foundations of the theory of administrative law, any legal relationship consists of three elements: its object, the content of these relationships, and its subjects. Within the scope of our research, we are

interested in revealing the object of administrative and legal relations and revealing its content.

The basis of revealing the essence of the object of administrative and legal relations is the views of leading scientists and their commitment to the concept of defining the essence of the object of legal relations.

Representatives of the classical monistic concept, pointing to the unity of the object of legal relations, understand by the object what legal relations are aimed at: the behavior of subjects. In contrast to them, other scientists recognize as the object of legal relations what the subjective rights and obligations of the participants are aimed at (Chernadchuk, 2004; Tkachenko, 2020).

We are closer to a pluralistic concept regarding the object of legal relations, therefore, in our opinion, the object of legal relations in the field of social protection of persons with disabilities includes social rights and protection of a person who has persistent disorders of body functions, which in interaction with the external environment can lead to to the restriction of her life activity (Law of Ukraine, 1991).

Based on the above, we will define the essence of administrative legal relations in the field of social protection of persons with disabilities, which should be understood as relations created by the norms of administrative law, the main purpose of which is to create social and legal and other rights and opportunities, to ensure social protection of persons with disabilities at the level with other citizens to participate in public life.

Based on the analysis of the works of leading scientists, we will highlight the signs of administrative and legal relations in the field of social protection of persons with disabilities.

The first sign is the subject composition of relations that arise between state management bodies at the level of central and local executive bodies, as specified in Art. 8 of the Law of Ukraine "On the Basics of Social Protection of Persons with Disabilities in Ukraine" dated March 21, 1991 No. 875-XII, and persons with disabilities.

The Ministry of Social Policy of Ukraine is the central body in the field of social policy provision, one of whose tasks is to ensure the formation and implementation of state policy in the field of social protection of the population, in particular persons with disabilities (Resolution of the Cabinet of Ministers of Ukraine, 2015).

The next feature is the range of rights and responsibilities of these subjects in the field of social protection. Based on the foundations of international and current legislation in this area, the legal spectrum of the rights and obligations of persons with disabilities is characterized by all the constitutional rights of a citizen of Ukraine. On the other hand, persons

with disabilities have additional benefits as a person who has certain persistent disorders of body functions (health defects), respectively - has a special legal status.

Social protection of persons with disabilities is a component of the state's activities to ensure the rights and opportunities of persons with disabilities on an equal basis with other citizens and consists in the provision of pensions, state assistance, compensatory and other payments, benefits, social services, the implementation of rehabilitation measures, the establishment of guardianship or provision of third-party care (Law of Ukraine, 1991).

The specifics of the special legal status of a person with a disability are formed by international acts, starting with the UN Convention on the Rights of Persons with Disabilities, precedent practice of the European Court of Human Rights, and including national legislation that creates this status, primarily the Law of Ukraine "On the Basics of Social Protection of Persons with disabilities in Ukraine" dated March 21, 1991 No. 875-XII, "On the rehabilitation of persons with disabilities in Ukraine" dated October 6, 2005 No. 2961-IV, etc.

As we have already noted above, large-scale fighting is currently ongoing throughout the territory of Ukraine with the Russian Federation, as a result of its illegal invasion of the territory of our country. As a result of hostilities, a large percentage of the country's citizens are injured and killed, including not only military personnel and employees of internal affairs bodies, but also civilians and children.

As of January 15, 2023, the UN confirmed the number of dead among the civilian population in Ukraine since the military invasion of Russia is 7,031 people: 2,784 men, 1,875 women, 177 girls and 221 boys, as well as 35 children and 1,939 adults, whose gender is still unknown. Another 11,327 people were injured: 2,472 men, 1,764 women, 240 girls and 325 boys, as well as 262 children and 6,264 adults, whose gender is still unknown. Experts estimated that only from January 1 to 15, 104 civilians were killed and 284 were wounded. The UN notes that the majority of recorded civilian casualties are caused by the use of large-area explosive weapons, including heavy artillery and rocket launchers, as well as rocket and airstrikes (Sobenko, 2023).

As a result, the number of people with persistent health disorders and body functions is increasing, which leads to the limitation of their vital activities. Today, the indicated category of persons needs additional guarantees of social protection from the state, since these persons have received another type of trauma, such as psychological, and need special professional help. Current legislation does not provide for a specific type of social protection for persons who have suffered as a result of hostilities,

armed aggression or armed conflict. To date, there is no similar special legislative act that would provide for social protection of persons injured as a result of hostilities, armed aggression or armed conflict.

As for central and local bodies of executive power, the latter in accordance with Art. 9 of the Law of Ukraine "On the Basics of Social Protection of Persons with Disabilities in Ukraine" dated 21.03.1991 No. 875-XII with the participation of public associations of persons with disabilities, within the limits of their powers, carry out the development and coordination of long-term and short-term programs for the implementation of state policy regarding persons with disabilities and monitor their implementation, promote the development of international cooperation on issues related to persons with disabilities (Law of Ukraine, 1991).

The next feature of administrative and legal relations in the field of social protection of persons with disabilities is their legal nature, which is determined by the legal principles that form the basis of the formation of the state policy for the implementation of social protection of persons with disabilities and influence the formation of the relations of these subjects.

The fourth is their personification, which is expressed in the fact that state bodies, carrying out their activities in the field of social protection of the disabled and ensuring compliance with their rights and freedoms, enter into legal relations with the latter, which are expressed in the creation of legal, economic, political, social and household and socio-psychological conditions to meet their needs for health restoration, material support, vigorous work and social activities.

Social protection of the disabled by the state consists in the provision of financial assistance, means of transportation, prosthetics, orientation and perception of information, adapted housing, in the establishment of guardianship or third-party care, as well as in the adaptation of the development of settlements, public transport, means of communication and communication to the peculiarities of disabled (Law of Ukraine, 1991).

This feature should also include the function of coordination and control over the provision of social benefits, keeping records of persons who use these benefits. This function is entrusted to the central body of executive power, which implements state policy in the field of social protection of persons with disabilities. To automate the data bank, the Unified State Automated Register of Persons Entitled to Benefits was created in order to provide a unified state record of individuals entitled to benefits on social grounds (Resolution of the Cabinet of Ministers of Ukraine, 2003).

The fifth sign of administrative and legal relations in the researched area should include the onset of legal liability in case of violation of the legislation regulating these relations. According to Art. 42 of the Law of Ukraine "On the Basics of Social Protection of Persons with Disabilities in Ukraine" dated March 21, 1991 No. 875-XII, persons guilty of violating the requirements of

this Law shall bear the material, disciplinary, administrative or criminal liability established by law (Law of Ukraine, 1991).

Also, Art. 161 of the Criminal Code of Ukraine for violation of the equality of citizens depending on their racial, national, regional affiliation, religious beliefs, disability and on other grounds - shall be punished by a fine of two hundred to five hundred tax-free minimum incomes of citizens or restriction of freedom for a period of up to five years, or deprivation of liberty for a term of up to three years, with or without deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years (Criminal codex of Ukraine, 2001).

Conclusions

As a result of the study of the essence of the administrative and legal relations of social protection of persons with disabilities, which are one of the components of the construction of state policy aimed at providing these persons with ways of social adaptation as full-fledged citizens of society, and providing the opportunity to exercise their rights and responsibilities in full on a par with other citizens, it is advisable to make the following conclusions.

1. The essence of administrative and legal relations in the field of social protection of persons with disabilities lies in the legal nature of these relations, the basis of which are the norms of administrative law, the main purpose of which is the creation of social-legal and other rights and opportunities, ensuring social protection of persons with disabilities at the level with other citizens to participate in public life.
2. Features that reveal the legal nature of administrative and legal relations of social protection of persons with disabilities are highlighted, among which are highlighted:
    - the subject composition of legal relations, endowed with a range of rights and obligations for the implementation, on the one hand, of social protection of persons with disabilities, and on the other hand, the acquisition by these persons of a special legal status;
    - the legal nature of the relationship, determined by the legal principles that form the basis of the formation of the state policy for the implementation of social protection of persons with disabilities and influence the formation of the relations of these subjects;
    - personification of relations in the field of social protection of the disabled and ensuring compliance with their rights

and freedoms, which includes the coordination function of providing social benefits, keeping records of persons who use these benefits;

- legal responsibility in case of violation of the legislation regulating these relations.

3. Today, in connection with the mass armed attacks of Russia on the territory of Ukraine with the use of explosive weapons with a large area of damage, the number of injured persons with various degrees of severity has increased, which leads to permanent disorders of the body - disability. In this regard, there is an urgent need to adopt a special legislative act that would provide for social protection of persons injured as a result of hostilities, armed aggression or armed conflict.

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Impacto de la invasión rusa a Ucrania en las finanzas mundiales

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Resumen

La invasión de la federación rusa a Ucrania, país soberano, ha sido interpretada desde diversos puntos de vista: políticos e ideológicos, no obstante, más allá de las diferentes opiniones queda claro que esta guerra, acontecida en Europa del este, ha significado un duro golpe para las finanzas globales, con efectos concretos en el aumento de los precios del combustible (gas y carbón), en las altas tasas de inflación y, según datos del Banco mundial (BM, 2023), ha creado además un entorno internacional de condiciones financieras restrictivas que dificultan la recuperación macroeconómica en términos del desarrollo económico sostenible, posterior a la pandemia de COVID-19. En este orden de ideas, mediante una metodología documental propia del análisis geopolítico, que valor las condiciones geográficas de cada país, su historia particular y sus relaciones internacionales, el objetivo del artículo fue interpretar el impacto de la invasión rusa a Ucrania en las finanzas mundiales. Los resultados obtenidos permiten concluir que la invasión rusa de Ucrania ha tenido consecuencias de gran alcance en las finanzas mundiales. Los impactos económicos de esta invasión han sido significativos, con interrupciones en las cadenas de suministro, fluctuaciones en la inflación y los precios de las materias primas, entre otros aspectos.

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Palabras clave: finanzas mundiales; análisis geopolítico; invasión rusa a Ucrania; costos económicos de la guerra; inflación.

Impact of Russia's invasion of Ukraine on world finance

Abstract

The invasion of the Russian Federation into Ukraine, a sovereign country, has been interpreted from different points of view: However, beyond the different opinions, it is clear that this war, which took place in Eastern Europe, has meant a hard blow for global finances, with concrete effects in the increase of fuel prices (gas and coal), in high inflation rates and, according to data from the World Bank (WB, 2023), it has also created an international environment of restrictive financial conditions that hinder macroeconomic recovery in terms of sustainable economic development, after the COVID-19 pandemic. In this order of ideas, using a documentary methodology of geopolitical analysis, which values the geographic conditions of each country, its particular history and its international relations, the objective of the article was to interpret the impact of the Russian invasion of Ukraine on world finances. The results obtained allow us to conclude that the Russian invasion of Ukraine has had far-reaching consequences on world finance. The economic impacts of this invasion have been significant, with disruptions in supply chains, fluctuations in inflation and commodity prices, among others.

Keywords: world finance; geopolitical analysis; Russian invasion of Ukraine; economic costs of the war; inflation.

Introducción

Las guerras son fenómenos multidimensionales que se desarrollan simultáneamente en múltiples teatros de operaciones de tipo: informático, comunicacional, psicológico, social, político, tecnología y financiero, de modo que, la victoria o derrota de los actores y factores involucrados depende en buena medida de su capacidad para operar exitosamente en cada uno de estos teatros o escenarios, derrotando a las fuerzas enemigas. No obstante, como es lógico suponer, la guerra no solo implica un costo económico y político para los estados, grupos y comunidades inmersas directamente en el conflicto, en este caso Rusia y Ucrania, sino, además, para todo el orden mundial al socializar costos materiales y simbólicos a todas las sociedades que participan en el sistema mundial, cercanas o lejanas al conflicto.

La invasión de la federación rusa a Ucrania, país soberano e independiente, ha sido interpretada desde diversos puntos de vista: políticos e ideológicos, no obstante, más allá de las diferentes opiniones queda claro que esta guerra en Europa del este ha significado un duro golpe para las finanzas globales, con efectos concretos en el aumento de los precios del combustible (gas y carbón), en las altas tasas de inflación y, según datos del Banco mundial (BM, 2023), ha creado además un extorno internacional de condiciones financieras restrictivas que dificultan la recuperación macroeconómica en términos del desarrollo económico sostenible, posterior a la pandemia de COVID-19.

En este orden de ideas, mediante una metodología documental propia del análisis geopolítico, que valor las condiciones geográficas de cada país, su historia particular y sus relaciones internacionales, el objetivo del artículo fue interpretar el impacto de la invasión rusa a Ucrania en las finanzas mundiales. Por lo demás, conviene precisar que los análisis de impacto financiero pueden ser cuantificados con datos numéricos científicamente y, también, valorados cualitativamente, en el marco de la hipótesis propia de la *escuela de geopolítica crítica*, que destaca la relación objetiva y subjetiva existente entre economía y política, de modo que, todo coste en términos de finanzas públicas representa, a su vez, un costo político, observable en los climas de opinión de cada país, producidos, gestionados o invisibilizados por los medios de comunicación social y por las estrategias de comunicación política.

El presente artículo científico se desarrolló en cuatro secciones con contenidos particulares: en la primera, se describen las influencias teóricas que identifican a los autores de la investigación, al menos en términos de lo que son sus concepciones geopolíticas y de política internacional, como sujetos situados en un contexto de guerra, injusto y desigual que ha destruido en su decurso miles de proyectos de vida. En la segunda, se describen los materiales y métodos que hicieron posible el logro del objetivo general del artículo. En la tercera sección, se analizan y discuten los resultados obtenidos, como condición de posibilidad para llegar a las principales conclusiones del caso.

1. Perspectiva teórica

En los últimos años la perspectiva teórica de la geopolítica crítica a marcado la pauta en la escena del análisis de las relaciones internacionales, por al menos dos razones particulares, por un lado, su capacidad para integrar diferentes constructos teóricos y metodológicos no ortodoxos, en el intento de explicar situaciones particulares como la conducta de los Estado en el complejo mundo de hoy; por el otro, su elasticidad para hacer de las

realidades políticas concretas con sus contornos y contradicciones la razón de ser del análisis geopolítico, sin forzar los fenómenos para que cuadren con los modelos teóricos de preferencia del analista, lo que no significa que no se use la teoría disponible con sus conceptos y categorías de análisis (Shatrava *et al*., 2023).

En palabras de Cabrera en el plano de los epistemológico la geopolítica crítica significa un intento fructífero de revisionismo del cuerpo doctrinal de la geopolítica clásica centrado en el estudio de la territorialidad y sus implicaciones concretas en los procesos políticos:

> En este plano, la postura crítica de la geopolítica, deconstruye los postulados clásicos, desde un punto de vista tanto de su puesta en práctica, como de los aspectos que influyen en su elaboración, aportando otras perspectivas analíticas para observar un determinado fenómeno social, preferentemente vinculado al territorio y sus representaciones (2020: 63).

En efecto, el enfoque geopolítico clásico, pecaba de determinista al suponer que las realidades geográficas determinaban en última instancia la praxis y los objetivos estratégicos de los Estado, sin entender que la territorialidad misma, si bien es cierto condiciona a los actores y factores del poder, nunca establece su actuación ya que toda geografía es también subjetiva al ser representada de muchas maneras diferentes por las personas y comunidades asentadas históricamente en ella. Esta realidad es la que explica como Estados y sociedades que viven en una misma región geográfica tiene objetivos, metas y formas de ser en el mundo, categóricamente opuestas, esto más allá de sus similitudes en climas, lenguaje, recursos naturales o grupos étnicos, tal como lo muestra por ejemplo el caso latinoamericano o de Europa del este, entre otros.

En palabras de Estenssoro y Orellana (2021), la geopolítica crítica surge en la década de los ochenta del siglo XX, como una posición crítica a la hegemonía internacional de los Estados Unidos en el mundo, sustentada por lo demás en los postulados de la geografía política clásica y su metodología positivista. En contraste, la geopolítica crítica se ve a sí misma más bien como una narrativa en construcción, próxima a la tradición filosófica postmoderna, que postula la incapacidad de los grandes relatos como: el marxismo, el cristianismo o el liberalismo, para entender y explicar el mundo de hoy. De lo que se trata ahora es de revindicar la hermenéutica y fenomenología política como herramienta de interpretación de la política global, evitando caer en posiciones esencialistas que intentan justificar, de forma abierta o solapada, los modelos totalizantes o la justificación de las conductas imperialistas de los Estados hegemónicos, postura que hoy cobra una inusitada vigencia.

2. Materiales y métodos

Las fuentes empleadas para en desarrolla de esta investigación fueron en su mayoría artículos científicos publicados en formato digital en revistas científicas de alto impacto, en idioma español e inglés, respectivamente. De igual modo, también se consultaron notas de prensa, informes de organismos multilaterales como el Banco Mundial y El Fondo Monetario Interaccional y Naciones Unidas, entre otros.

En lo metodológico, se hizo uso de la técnica de investigación documental que, tal como señala Arias (2006: 27), consiste en:

> (…) un proceso basado en la búsqueda, recuperación, análisis, crítica e interpretación de datos secundarios, es decir, los obtenidos y registrados por otros investigadores en fuentes documentales impresas, audiovisuales o electrónicas, como en toda investigación, el propósito de este diseño es el aporte de nuevos conocimientos.

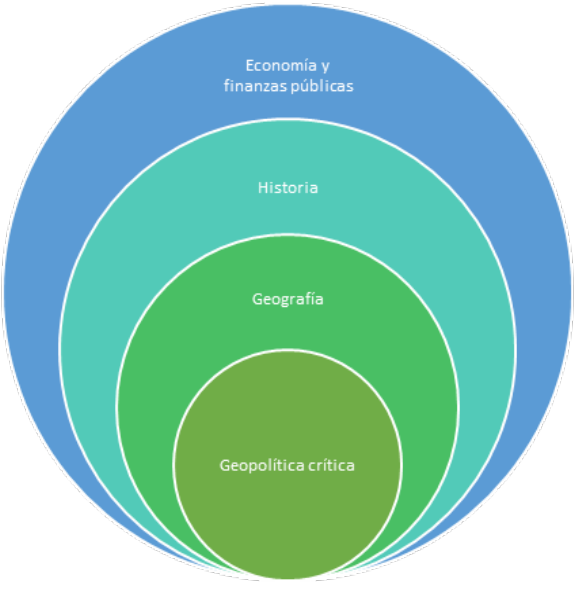
En cuanto al método propio del análisis geopolítico, Voss y LLona sostienen que, en principio, se valoran exhaustivamente las condiciones geográficas en las que está inmersa una sociedad determinada, lo implica lógicamente la comprensión de: "(…) las limitaciones impuestas por sus recursos naturales, su acceso al mundo exterior o su red interna de transportes" (2017: s/p). Además, los citados autores indican que las relaciones geográficas entre Ucrania, hoy país soberana e independiente, con Rusia, son complejas y cargadas de tenciones, y es que:

> En ocasiones, la geografía bendice o maldice las relaciones con los países vecinos. Ucrania, por ejemplo, está situada entre dos áreas mucho más grandes y con más recursos: Rusia y Europa. La situación geográfica de Ucrania bloquea el acceso de Rusia al mar, y con ello sus posibilidades de establecer relaciones comerciales. Adicionalmente, debido a que su frontera con Europa es una gran llanura, Rusia necesita Estados que actúen como defensas de sus fronteras. Así, si Ucrania no está en la órbita de Rusia, el acceso a su interior no se verá obstaculizado por defensas naturales (Voss y Llona, 2017: s/p).

En consecuencia, todo indica que, en términos objetivos, el control de los paisajes geográficos en fundamental para las potencias hegemónicas en las políticas de aseguramiento de sus áreas de influencia o espacios vitales. Sin un espacio concreto, delimitado y suficientemente amplio, la existencia de los Estados es simplemente una entelequia, de ahí que sean categorías fundamentales del análisis geopolítico la relación dialéctica que se da entre el espacio (geografía) y el tiempo como la historia que identifica y diferencia en cada momento el ser y hacer una nación determinada, sin lo cual no se puede entender en profundidad sus objetivos de desarrollo, su proyecto de país o sus líneas estratégicas en materia de relaciones internacionales. Debido a estas razones, en buena media todos los conflictos bélicos tienen un sustrato geopolítico y geoestratégico.

En este orden de ideas, también es fundamental en el análisis geopolítico la economía y finanzas públicas que sirven de base material y sustento efectivo a los actores políticos fundamentales del escenario internacional, como lo son los Estados modernos. Normalmente, las relaciones económicas de los países, esto es, lo que se produce en términos de bienes y servicios, como se produce (mediante qué modelo económico, mediante que empresas o corporaciones, propiedad de que grupo) y el comercio, que se expresa en intercambios de mercado, determinan, junto a la comprensión de la historia y de la geografía el análisis geopolítico básico, lo que no significa que no se puedan incluir otras variables y categorías.

Figura No. 01: Categorías básicas del análisis geopolítico



Fuente: Elaboración propia (2023).

La figura No. 01 evidencia que el análisis geopolítico se sirve al menos de tres categorías baicas: geografía, economía e historia, de las que se desprenden además un conjunto de subcategorías como: sistema político, comercio y finanzas públicas, relaciones internacionales, ideología y conflictividad, las cuales explican en su conjunto y en sus múltiples interacciones las realidades geopolíticas del mundo actual. No cabe duda, que todas estas categorías pueden estudiarse científicamente mediante una multiplicidad de fuentes, siempre y cuando las fuentes seleccionadas

sean fidedignas, contrastables y coherentes con los objetivos de cada investigación en materia geopolítica.

3. Análisis y discusión de resultados

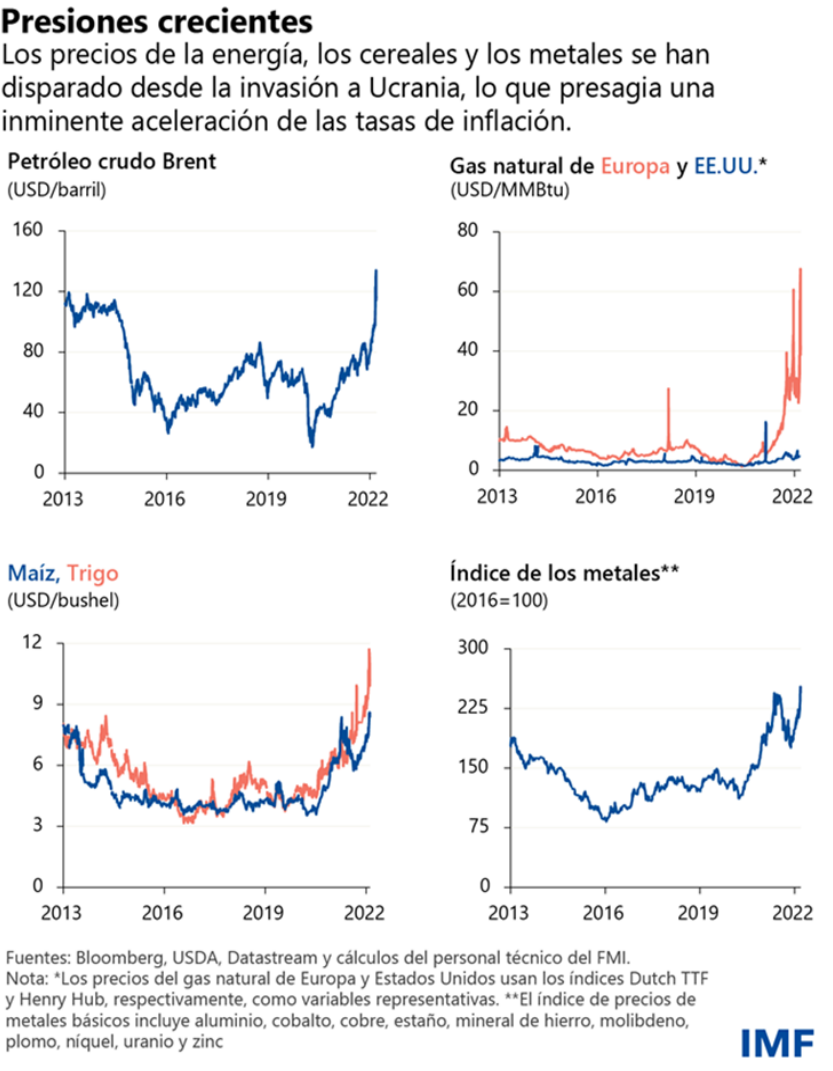
3.1. Panorama del impacto de la invasión rusa a Ucrania en las finanzas mundiales

La reciente invasión rusa a Ucrania, acontecida en febrero de 2022, ha desencadenado un efecto dominó que está repercutiendo, de forma directa e indirecta, en todo el panorama financiero mundial. A medida que aumentan las tensiones y se cierne la incertidumbre, las repercusiones en la economía mundial son cada vez más evidentes. Desde la desestabilización de las cadenas de suministro hasta la escalada de los precios de las materias primas, las consecuencias de este conflicto son de gran alcance.

> "«La economía había comenzado un camino de fuerte recuperación y crecimiento al salir de la pandemia. Pero, ahora, la UE ha recortado su previsión de crecimiento del 4 % al 2,7 %, y ha elevado su previsión de inflación», indica la reportera Naomi Lloyd" (Lloyd y Desjardins, 2022: s/p).

Por estas razones y por otras que no viene al caso enunciar ahora, son cada vez más necesarias las investigaciones científicas que se adentran en la intrincada red de implicaciones económicas derivadas de la invasión rusa, destacando, su profunda influencia en el sistema financiero mundial. La evidencia empírica demuestra a todas luces que, desde el Reino Unido hasta las naciones de Asia-Pacífico, ningún rincón del mundo queda al margen de este acontecimiento sin precedentes.

Cuadro No. 01: Tendencia inflacionaria en el mundo.



Fuente: Fondo Monetario Internacional (2023).

3.2. Impactos económicos de la invasión rusa

El conflicto en Ucrania ha causado todo tipo de repercusiones en el mercado mundial, lo que ha provocado una disminución de la inversión extranjera directa y una ralentización del crecimiento económico en

muchos países cercanos y no tan cercanos al conflicto bélico, denominado eufemísticamente por Rusia como *operación militar especial*. Además, los precios de las materias primas, especialmente en el sector energético, se han disparado a niveles sin precedentes. Esto ha provocado al mismo tiempo presiones inflacionistas que se dejan sentir en todo el mundo. Por lo tanto, las implicaciones de esta invasión militar en la economía mundial son complejas y de gran alcance, y requieren un examen minucioso y respuestas estratégicas, tanto por parte de los responsables políticos, como de los agentes del mercado, sin importar sus visiones ideológicas del conflicto (ONU, 2022; Padinger, 2022).

La interrupción de la cadena de suministro mundial ha sido una de las principales consecuencias de la guerra en Ucrania. Los desafíos logísticos han causado dificultades en el transporte de bienes y servicios, lo que ha provocado un aumento de los costes y la escasez de materiales y componentes esenciales. En este contexto, industrias como la manufacturera, la de la construcción y la minorista se han visto afectadas por ello, teniendo que buscar materiales alternativos y diversificar sus bases de suministro. Esto se ha sumado a la ya de por sí elevada carga de costes y ha traído consigo riesgos e incertidumbres financieras adicionales. En conjunto, las consecuencias del conflicto en las cadenas de suministro mundiales son considerables, y es necesario concertar esfuerzos para superar estos problemas y restablecer el equilibrio geopolítico a largo plazo. Las tasas de inflación en el mundo, se han visto profundamente afectadas por la crisis ucraniana (FMI, 2022).

3.3. Efectos sobre las cadenas mundiales de suministro

Las repercusiones del conflicto ruso-ucraniano se han dejado sentir en todo el mundo, provocando una alteración de las cadenas mundiales de suministro. Los efectos combinados de la pandemia y el conflicto han hecho cada vez más difícil e, impredecible, el transporte de bienes y materiales, lo que ha provocado retrasos en la entrega de artículos de primera necesidad en muchos países de Europa y sureste asiático. Esto ha creado retos para las empresas, que intentan planificar y tomar decisiones ante las cambiantes políticas y restricciones comerciales que ocasiona la guerra. Por lo demás, este incidente ha puesto de manifiesto la interconexión de la economía mundial y la vulnerabilidad de las cadenas de suministro ante los riesgos geopolíticos**.**

En consecuencia, la interrupción de las cadenas de suministro mundiales ha provocado un aumento de los precios en diversos sectores. El coste del transporte de mercancías se ha disparado, junto con la demanda y la competencia por materiales y componentes esenciales, lo que se ha traducido en precios más altos para los consumidores. Fabricantes, agricultores y muchos otros actores económicos se han visto afectados, ya que las empresas luchan por abastecerse de los insumos necesarios para la

producción en un escenario de incertidumbre. Esto ha puesto de manifiesto la importancia de diversificar las fuentes de suministro y la necesidad estratégica de fortalecer las cadenas de abastecimiento frente a posibles riesgos geopolíticos. En este sentido son comunes desde el inicio de esta guerra noticias como:

> De acuerdo con Forbes, sólo en Estados Unidos y Europa hay unos 300.000 proveedores rusos y ucranianos, y las repercusiones de la guerra se dejarán sentir también en los países que tienen negocios interconectados.
>
> Las tensiones entre Rusia y Ucrania, el conflicto comercial entre China y Estados Unidos y la continua presión sobre las cadenas de suministro provocarán un desequilibrio entre la oferta y la demanda, el aumento de la inflación y el estancamiento de la economía.
>
> En todo el mundo la tendencia es un fuerte aumento de los precios de los alimentos y de la energía. El petróleo, que ya ha subido unos 20% desde el inicio de la guerra, está afectando a los precios más que a la oferta de productos (Mercado electrónico, 2022: s/p).

Las repercusiones de la contienda ruso-ucraniana se han dejado sentir también en las industrias que dependen de las cadenas de abastecimiento mundiales, obligándolas a buscar fuentes alternativas de materias primas y componentes. Esto ha modificado los patrones comerciales y ha fomentado la exploración de nuevas asociaciones y rutas de suministro. Desgraciadamente, algunas industrias han tenido dificultades para encontrar alternativas adecuadas, lo que ha provocado disminuciones de la producción y posibles desabastecimientos en sus rubros de producción. Este hecho subraya la importancia de contar con planes de contingencia y la capacidad de ajustarse a circunstancias imprevistas para mantener la continuidad operativa en lo gerentes y hacedores de políticas económicas.

3.4. Inflación y precios de las materias primas

El nivel mundial de inflación ha alcanzado cotas alarmantes, resultado de los efectos económicos de la pandemia de coronavirus y la escalada bélica entre Rusia y Ucrania. La interrupción de las cadenas de suministro mundiales y el encarecimiento de las materias primas han creado una tormenta perfecta para la presión inflacionista. Además, la escasez de suministros y el aumento de los costes de transporte han afectado a las empresas, provocando un aumento del coste de los bienes y servicios esenciales y, en consecuencia, repercutiendo en los clientes de todo el mundo.

Según el Banco Mundial (BM, 2022) las repercusiones de las subidas de precios se han dejado sentir en todo el mercado mundial. Los precios de las materias primas, en particular, se han visto muy afectados por la incursión rusa en Ucrania. Esto ha causado una interrupción en la producción y el

transporte de materiales clave como: el petróleo, el gas y el carbón, lo que ha provocado además un fuerte aumento de los precios. Esto ha aumentado aún más los ya altos niveles de inflación observados a nivel mundial, agravando los problemas a los que se enfrentan las economías de todo el mundo.

El riesgo potencial para las fuentes de energía europeas ha causado una aprensión adicional en lo que respecta a la inflación y los precios de las materias primas. La dependencia de Europa del gas ruso en países como: Hungría, Eslovaquia, Moldavia, Austria y Alemania es grande y (AS. Com, 2022) ha suscitado debates sobre la diversificación de las fuentes de energía y la reducción de la dependencia de Rusia. La incertidumbre de la situación en Ucrania ha aumentado el temor a posibles interrupciones en el suministro de energía, lo que podría hacer subir aún más los precios. Así pues, encontrar fuentes de energía alternativas y estabilizar el mercado energético europeo se ha convertido en una misión crucial a nivel mundial, teniendo en cuenta los efectos de largo alcance de las fluctuaciones del coste de la energía en diferentes industrias y economías y la posibilidad realista de la prolongación de esta guerra por varios años más.

En definitiva, la invasión rusa de Ucrania ha echado, metafóricamente hablando, leña al fuego de unas tasas de inflación ya de por sí elevadas, provocando unos niveles de volatilidad sin precedentes en los mercados de materias primas. El efecto dominó de este aumento de los precios ha causado muchas dificultades a las empresas y los clientes de todo el mundo, y puede tener un gran impacto en la economía mundial. Es esencial, por lo tanto, asegurar fuentes de energía alternativas y estabilizar el mercado energético europeo para reducir las consecuencias negativas del aumento de la inflación y de los precios de las materias primas**.**

3.5. Riesgo para las fuentes de energía europeas

El caos y los trastornos causados por la guerra en Ucrania han provocado ansiedad en relación con las fuentes de energía europeas. Europa depende en gran medida de las importaciones del exterior, lo que la hace susceptible a las rupturas de la cadena de suministro. Esto ha provocado la exploración de opciones alternativas para garantizar un suministro energético seguro y estable, como la inversión en recursos renovables como la energía eólica y solar, y la búsqueda de alianzas con otros países productores de gas. Sin embargo, el riesgo potencial para las fuentes de energía europeas subraya la importancia de formular y ejecutar estrategias de seguridad energética a largo plazo, para protegerse de las interrupciones creadas por conflictos como éste.

De hecho, en la ficha técnica de la política energética de la Unión Europea se estable taxativamente que: “El núcleo de la política energética

europea está constituido por una serie de medidas destinadas a lograr un mercado de la energía integrado, la seguridad del suministro energético y la sostenibilidad del sector energético" (Parlamento europeo, 2023: s/p).

El conflicto de Ucrania también ha puesto de relieve la necesidad de diversificar las fuentes de energía europeas. Los países de la Unión Europea han estado trabajando para reducir su dependencia del gas extranjero, ya que esta dependencia crea una amenaza para su seguridad energética. Esto ha supuesto un mayor esfuerzo en la construcción y ampliación de infraestructuras energéticas, como gasoductos e instalaciones de almacenamiento, para facilitar la importación y distribución de gas de múltiples fuentes. Igualmente, se está debatiendo la posibilidad de aumentar las importaciones de *Gas natural licuado* GNL para sustituir al gas ruso. Estas iniciativas pretenden reducir la vulnerabilidad de las fuentes de energía europeas a las tensiones geopolíticas y garantizar un suministro energético más diversificado y sólido, de conformidad con los parámetros de su política energética común.

La guerra ucraniana ha provocado volatilidad en el mercado energético mundial, causando inestabilidad en las fuentes de energía europeas. La incertidumbre generada por el conflicto ha generado fluctuaciones en los precios del gas y preocupaciones sobre la fiabilidad de su suministro. Los países europeos siguen de cerca la cuestión para evaluar los posibles riesgos para sus sistemas energéticos y están dispuestos a tomar las medidas necesarias para salvaguardar sus fuentes de energía. Estas medidas pueden incluir la puesta en marcha de planes energéticos de emergencia, el aumento de la producción nacional y la profundización de la cooperación con los países vecinos, para garantizar un suministro constante de energía.

El riesgo que supone la guerra en Ucrania para las fuentes de energía europeas ha suscitado llamamientos en favor de una mayor autonomía y autosuficiencia energéticas. Los países europeos están buscando activamente formas de disminuir su dependencia de fuentes energéticas externas, especialmente de aquellas que pueden ser propensas a tensiones geopolíticas. Esto ha supuesto un renovado énfasis en el desarrollo y la expansión de la producción energética propia, como las fuentes de energía renovables y la energía nuclear. Al diversificar su combinación energética y reducir la dependencia de las importaciones, los países europeos tratan de aumentar su seguridad energética y reducir los probables riesgos asociados a conflictos geopolíticos impredecibles.

3.6. Consecuencias para la agricultura y los mercados energéticos

La invasión rusa a Ucrania ha tenido también efectos drásticos en la agricultura y los mercados energéticos mundiales. El sector agrario

también se ha visto afectado, ya que la invasión rusa ha perturbado las rutas comerciales y las cadenas de suministro, provocando posibles perturbaciones en el mercado mundial de alimentos. Las consecuencias para los mercados de la agricultura y la energía son de gran alcance y, sin duda alguna, requieren un examen y una planificación cuidadosos para disminuir los riesgos potenciales y garantizar la estabilidad de estos sectores vitales (Mulders, 2022).

Este conflicto bélico ha desencadenado una cascada en los mercados mundiales de la agricultura y la energía. La interrupción de las cadenas de suministro, combinada con el caos ya existente provocado por la pandemia, ha causado importantes subidas de precios en materias primas como el petróleo, el gas y el carbón. Esto ha tenido un impacto directo en los costes energéticos y también ha afectado a la producción agrícola. Como es lógico inferir, el encarecimiento de la energía eleva los costes de producción de los agricultores, lo que puede provocar un aumento mayor de los precios de los productos agrícolas. Igualmente, la interrupción de las cadenas de suministro ha dificultado el acceso de los agricultores a insumos esenciales, como fertilizantes y maquinaria, lo que puede influir aún más en la productividad agrícola. Las consecuencias para los mercados agrícolas y energéticos están interrelacionadas y requieren una comprensión global de la compleja dinámica en juego (Mulders, 2022).

Definitivamente, la invasión rusa de Ucrania ha creado un efecto adverso en los mercados agrícolas y energéticos mundiales. El conflicto ha provocado un aumento de la inseguridad y la volatilidad de los precios de los productos básicos, y los productos agrícolas no son una excepción. La interrupción de las cadenas de suministro, las rutas comerciales y el acceso a los mercados ha dificultado el actual panorama para los productores agrícolas.

Entre las consecuencias para los agricultores destacan: las posibles fluctuaciones de los precios, la reducción del acceso a los mercados y las dificultades para abastecerse de insumos esenciales. Las consecuencias para la agricultura y los mercados energéticos tienen múltiples facetas y requieren una cuidadosa revisión de los impactos a largo plazo sobre las finanzas mundiales.

Conclusiones

En conclusión, la invasión rusa de Ucrania ha tenido consecuencias de gran alcance en las finanzas mundiales. Los impactos económicos de esta invasión han sido significativos, con interrupciones en las cadenas de suministro mundiales y fluctuaciones en la inflación y los precios de las materias primas. Además, las fuentes de energía europeas se han enfrentado

a un mayor riesgo, mientras que la agricultura y los mercados energéticos también se han visto afectados. El conflicto en curso y la incertidumbre que rodea la situación siguen planteando retos para la economía mundial.

Es crucial que los responsables políticos y las instituciones financieras sigan de cerca y aborden las implicaciones de la invasión rusa, sobre todo en relación con la estabilidad de los mercados de crudo y su impacto financiero en la economía mundial. El análisis geopolítico de este conflicto bélico en pleno desarrollo permite vislumbrar tres escenarios en materia de los que será el curso de las finanzas mundiales en el próximo año:

1. Escenario de intensificación del conflicto.
2. Escenario de estancamiento de la guerra.
3. Solución negociada del conflicto.

En el primer escenario que como sería lógicamente suponer es el más peligroso de todos, para la estabilidad política y económica del mundo, la escala del conflicto llegara a un nivel cualitativamente superior involucrando directamente a otros Estados u organizaciones como la OTAN, aumentando, por lo tanto, significativamente los costos financieros de la guerra para todos los actores beligerantes. Un escenario así, aunque se piense como poco probable, pudiera ser el preámbulo de una tercera guerra mundial con efectos impredecibles para el orden mundial vigente, pudiéndolo transformar de forma parcial o total, en su arquitectura económica, política y jurídica. Sin duda, esta situación incrementaría todos los problemas antes mencionados: inflación mundial, recesión, erosión de las cadenas de suministros para las empresas, crisis en las cadenas de producción agrícola, incremento del costo de fuentes de energía y carencias de bienes y servicios básicos, entre otros problemas de interés global.

El escenario de estancamiento de la guerra, seria para el momento en que se escribió este artículo, el más consistente y probable de suceder, porque de hecho ya está sucediendo en el sentido de que Rusia se ha mantenido sin avances significativos en la ocupación y control de los territorios invadidos en Ucrania y, la resistencia ucraniana por su parte, no ha podía expulsar definitivamente de sus territorios ancestrales a las fuerzas invasoras. Un escenario así, mantendrá por el tiempo que se prolongue la guerra, las mismas condiciones económicas y financieras problemáticas que han afectado de forma multidimensional y multinivel a los mercados globales y a las realidades económicas de la mayoría de los países del mundo.

En tercer escenario planteado es, por su esencia y significación el mas prometedor para Ucrania y, para el mundo democrático de occidente. La solución negociada del conflicto representaría el final de la guerra y la aceptación por parte de la elite política que dirige a la federación rusa, de que Ucrania es un país independiente y soberana que puede, por derecho

propio, integrarse a la Unión Europea y definir de forma autónoma cuáles son sus modelos, alianzas e intereses estratégicos como nación. Un escenario así, significaría la superación paulatina de los problemas económicos y financieros descritos en las líneas anteriores y, de igual modo, la recuperación integral de Ucrania, si tomas en cuenta se desarrollarían planes y proyectos de reconstrucción del país al estilo del Plan Marshal, para beneficio de las redes financieras mundiales.

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Aproximaciones a la capacidad de autodesarrollo informativo del futuro profesor: Una mirada política del fenómeno

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Resumen

El propósito del estudio fue desarrollar una aproximación crítica a la capacidad de autodesarrollo informativo del futuro profesor, desde una mirada política. Metodológicamente los autores de la investigación utilizaron modelos como: las leyes de la dialéctica, los principios de objetividad, determinismo, desarrollo, sistematicidad e interacción, para revelar la dinámicas del proceso educativo pedagógico, que conduce a la aplicación del concepto de desarrollo de la madurez social; identificando en el proceso discursivo, sus contradicciones y las interrelaciones de los cambios cuantitativos y cualitativos inherentes al desarrollo de la personalidad, en la etapa de formación profesional en una institución de educación superior; estudiando además, para ello, los patrones de progreso de los sujetos de la educación pedagógica en el contexto de la actualización de la cultura informacional de la sociedad. En las conclusiones, el estudio demostró que los científicos asocian la solución de los problemas de la capacidad de autodesarrollo informativo, como un fenómeno comunicacional desvinculado de la política, cosas que es un error, ya que todo proceso de autodesarrollo implica esencialmente un empoderamiento del sujeto, con diferentes implicaciones en las relaciones de saber y poder de las que forma parte.

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Palabras clave: mirada política; información; cultura de la información; autodesarrollo; pensamiento crítico.

Approaches to the informative self-development capacity of the future teacher: A political look at the phenomenon

Abstract

The purpose of the study was to develop a critical approach to the informative self-development capacity of the future teacher, from a political point of view. Methodologically, the authors of the research used models such as: the laws of dialectics, the principles of objectivity, determinism, development, systematicity and interaction, to reveal the dynamics of the pedagogical educational process, leading to the application of the concept of development of social maturity; identifying in the discursive process, its contradictions and the interrelations of quantitative and qualitative changes inherent in the development of personality, at the stage of professional training in an institution of higher education; also studying, for this purpose, the patterns of progress of the subjects of pedagogical education in the context of updating the informational culture of society. In the conclusions, the study showed that scientists associate the solution of the problems of informational self-development capacity, as a communicational phenomenon detached from politics, which is a mistake, since any process of self-development essentially implies an empowerment of the subject, with different implications in the relations of knowledge and power of which it is a part.

Keywords: political gaze; information; information culture; self-development; critical thinking.

Introducción

La naturaleza global de la informatización actualizó de algún modo la popular tesis del destacado científico, escritor y figura política inglesa Ch. Snow (Snow, 1959) sobre «dos culturas», la cual destaca la oposición entre lo natural-científico y lo humanístico, y obligó a la sociedad a mirar esta dicotomía de una manera nueva. Según Snow: “Solo hay una solución: es, por supuesto, un replanteamiento de nuestra educación» (Snow, 1959: 37).

El resultado de la informatización de la sociedad, como un proceso de transformación profundo y a largo plazo se refleja en la dinámica sociocultural del potencial humano, con profundas implicaciones políticas, ya que la información se traduce en algunas condiciones sociales en poder y autonomía de la persona. El concepto de potencial humano captura, a su vez, tanto la capacidad de ser creativo como el deseo de superación personal y autodesarrollo. La esencia del potencial humano es social, tanto en su origen como en sus manifestaciones. El componente central del potencial humano significa el potencial de desarrollo de las personas. Por estas razones, Bobukh señala que el potencial humano es un componente clave de la riqueza nacional (Bobukh, 2019).

Según Adelson (1980), en el proceso de dominar varios tipos de actividades, los contactos del individuo con otras personas y la sociedad se expanden y multiplican. Es en el proceso de comunicación real que se intercambia información: experiencia y habilidades, así como los resultados de las actividades, que es una condición y factor necesario, no solo para la socialización y adaptación social de una persona, sino también, para la formación y el desarrollo de la sociedad y la personalidad. En la mayoría de los casos, la comunicación moderna es cada vez más una transferencia de información codificada y simbólicamente simplificada. Tales cambios en el sistema simbólico de comunicación conducen a la pérdida del significado semiótico y semántico de la mayoría de los conceptos tradicionales y, al mismo tiempo, dan lugar a innumerables categorías nuevas, a menudo ambiguas (Eco, 2000).

Las contradicciones en la comunicación interpersonal de las generaciones mayores (adultos mayores) y los jóvenes están aumentando: padres e hijos, educadores y alumnos, maestros y estudiantes, en realidad hablan diferentes idiomas y, por lo tanto, la generación mayor pierde la función socializadora de mentor, autoridad y maestro, lo que genera relaciones asimétricas de poder de tipo intergeneracional. El ideal juvenil de pautas personales y modelos de comportamiento a menudo se manifiestan en personajes surrealistas y héroes virtuales, a quienes la mayoría de los jóvenes aspiran a imitar.

Este fenómeno se ve facilitado por la ausencia de aspectos perceptivos e interactivos en el proceso de comunicación virtual, lo que empobrece significativamente la transferencia de experiencias, conocimientos y habilidades, que son la base de la existencia social de las personas, lo que complica el desarrollo de roles y funciones sociales *básicas para la construcción de la realidad social y la edificación de la gobernabilidad democrática* (Camou, 2020).

Además, en las contradicciones entre la forma, los medios de comunicación y su contenido, la brecha material y simbólica está aumentando; concretamente, entre las necesidades del individuo de recibir

información adaptativamente valiosa y la amplia variedad de formas de su provisión, lo que complica su selección y causa disonancia cognitiva y desorientación en flujos de información contradictorios (Haleta *et al.*,2022). Las circunstancias descritas conducen inevitablemente a tensiones a nivel de la autoconciencia de cada individuo afectando la imagen de su «yo» específico.

1. Marco teórico y revisión de la literatura

El análisis teórico de la literatura científica (Barón y Barón, 2011; Bueno, 2016; Roberts, 2007) permitió concluir que cada una de las épocas históricas presentaba diferentes requisitos para el proceso de autodesarrollo, en función de los valores y actitudes de la época. El examen de la dinámica de los cambios en el significado semántico de los términos "autoconocimiento y autoconciencia", que caracterizan el proceso de autodesarrollo de un individuo en un aspecto filosófico, que entre otras cosas permitió determinar los enfoques primarios para identificar la esencia del autodesarrollo.

Por lo tanto, la era de la Antigüedad se asocia con el surgimiento del conocimiento sobre la esencia humana, en este momento, el proceso de autodesarrollo de un individuo se identifica con el conocimiento del propio mundo personal. Por su parte, una persona medieval es un ser completamente dependiente de las creencias religiosas, por lo tanto, esta era se caracteriza por el autodesarrollo del individuo a través del conocimiento o representación religiosa de lo divino (Roberts, 2007).

El Renacimiento propone el estudio del individuo dentro de los límites de su individualidad, por lo tanto, el autodesarrollo se lleva a cabo a través del conocimiento verdadero del propio "yo". El conocimiento del "yo" se basa en parte en el conocimiento de las posibilidades internas de ser y hacer, sobre la base de las cuales se forma el camino de la vida. En la era de la Ilustración temprana, el proceso de autodesarrollo se considera en términos de *conocerse a sí mismo* con la ayuda de la introspección.

Los filósofos posteriores intentan revelar la dependencia del autodesarrollo de una persona en el entorno externo, y los problemas de moralidad y espiritualidad también se tocaron profundamente. En los tiempos modernos, el proceso de desarrollo moral y espiritual como parte principal del autodesarrollo del individuo adquiere gran importancia. Los problemas de autoestima del individuo y la mejora moral de la sociedad se ponen de relieve en la perspectiva psicológica

En la literatura psicológica y pedagógica, el autodesarrollo se distingue como un fenómeno independiente y como un nivel parcial de desarrollo de la personalidad. Utilizando este último enfoque, el autodesarrollo es

uno de los criterios para el éxito de los procesos de desarrollo. Habiendo considerado el proceso de autodesarrollo de la personalidad como un fenómeno multifacético independiente, hemos destacado los siguientes enfoques desde el punto de vista del cual se estudie:

1. Una persona como un ser dotado de propiedades, procesos y estados mentales, que está en constante búsqueda de sí mismo.
2. Una persona como ser biológico.
3. Una persona como un ser que cambia la dirección del autodesarrollo dependiendo de la experiencia de vida acumulada.
4. Una persona como ser social y político.
5. Una persona como un ser que obedece al sistema pedagógico y es modelada por este.
6. Una persona como ser que vive en una sociedad de la información plagada de contradicciones de todo tipo.

Por lo tanto, la escuela psicológica y pedagógica divide todos los tipos de influencias y acciones que afectan la formación y el autodesarrollo de la personalidad en dos grupos: externo e interno, además, cada uno de los factores consiste en un grupo de elementos. De modo que, la educación y la influencia del medio ambiente se clasifican como factores externos.

Las inclinaciones e impulsos naturales, así como todo el conjunto de sentimientos y experiencias de una persona, que surgen bajo la influencia de acciones externas, son factores internos. Teniendo en cuenta lo anterior, se puede concluir que los enfoques para el estudio del proceso de autodesarrollo de la personalidad son polares con el predominio de uno de los elementos, sin embargo, todo dependerá en último término de la perspectiva teórica y metodológica del investigador (Hogg y Abrams, 1999).

En nuestra opinión, el papel principal en el sistema polar de autodesarrollo se otorga a los factores internos con un predominio de los psicológicos y conductuales (a saber, la experiencia de vida y la actividad interna). En primer lugar, los factores biológicos son la base fundamental, pero no la principal, del autodesarrollo del individuo, como resultado del hecho de que la herencia transfiere depósitos o capacidades, y su desarrollo depende de factores externos de acción y actividad interna. En segundo lugar, los factores externos tienen una mayor influencia en el alcance y el momento de la aparición del autodesarrollo y son básicos, ya que los cambios en los componentes internos de los factores de comportamiento tienen lugar sobre su base.

Convencionalmente, las etapas del autodesarrollo se pueden representar de la siguiente manera: con la ayuda de impulsos internos, se activa la

personalidad, que fluye suavemente hacia la elección de una estrategia de vida (y esta elección depende activamente de la experiencia de vida adquirida). Después de la formación de la estrategia bajo la influencia de factores externos, se crean condiciones óptimas en las que el proceso de autorrealización avanza gradualmente.

Una persona es capaz de encontrar decisiones correctas e incorrectas basadas en su experiencia de vida y actividad interna. Al analizarlos, puede cambiar su personalidad. Estas etapas de autodesarrollo no son lineales, sino dialécticas, ya que, con el más mínimo cambio en el entorno externo, no solo es posible un cambio radical en la estrategia de vida, sino también, un cambio en las condiciones en las que se desenvuelve la vida.

El curso completo del proceso de autodesarrollo se lleva a cabo bajo la influencia de ciertos mecanismos. Por el mecanismo de autodesarrollo entendemos lo que asegura el funcionamiento del sistema (Haleta *et al.*, 2021; Kryvylova *et al.*, 2022). Por lo tanto, los mecanismos son componentes dinámicos del sistema de autodesarrollo del individuo.

El análisis de la literatura mostró también la presencia de diferentes puntos de vista sobre los mecanismos de autodesarrollo del individuo. Al mismo tiempo, cada uno de los autores intenta estructurar los mecanismos por etapas. Se destacó un marco común para todos los enfoques.

> Etapa 1: «Buscarse a sí mismo»: esta etapa tiene una capacidad específica para autoidentificar al individuo, evaluar la situación, elegir objetivos, encontrar soluciones, predecir resultados. Se pone en marcha el mecanismo de autorreconocimiento, clave de toda identidad ontológica.
>
> La etapa 2 es la realización práctica del proceso de autodesarrollo del individuo a través de los mecanismos de autoorganización y autoeducación.
>
> Etapa 3: máxima manifestación del propio potencial, logro de los objetivos establecidos a través del mecanismo de autorrealización.

Hablando de educación superior, varios autores como: Oleksenko y Khavina (2021) enfatizan la necesidad de desarrollar cualidades que deben ser características de una persona para la expresión más completa y adecuada de sí mismo, como portador de una cierta cultura, valores espirituales, lo que se traduce en una actividad creativa e innovadora, con impacto directo no solo en la vida psíquica del individuo, sino también en su realidad política y social, ya que el desarrollo de cualidades como la autorrealización fortalece a los liderazgos.

A este respecto, se destacan las características innovadoras de una persona educada, que también se obtienen en el nuevo sistema educativo, que se aprueba a nivel internacional (transición al principio de «educación a lo largo de la vida»), y su aceptación individual se caracteriza por:

- Disposición a cambiar de profesión 3-5 veces durante la vida.
- Capacidad para comunicarse, interactuar con otras personas, con tolerancia a las diferencias de puntos de vista.
- Universalidad y flexibilidad de la competencia profesional;
- Iniciativa, independencia, responsabilidad, capacidad de trabajo, disciplina: tales rasgos de personalidad su fundamentales porque, en ausencia de ellos, el trabajo exitoso en cualquier campo es imposible hoy en día.

En las condiciones de renovación de la cultura de la información de la sociedad, el complejo general de cualidades socialmente importantes y necesarias para el éxito de la actividad profesional, se complementan con cualidades específicas que caracterizan el nivel de la cultura de la información de un individuo. Esta lógica nos permite analizar además el contenido de la capacidad de autodesarrollo informativo a través de los siguientes indicadores:

- la necesidad de una actualización constante de los conocimientos;
- movilidad profesional y adaptabilidad en la sociedad de la información;
- responsabilidad cuando se trabaja con medios técnicos;
- relación con la información, los objetos y los fenómenos en el entorno de la información;
- actitud crítica hacia el consumo de la información;
- autoevaluación y reflexión a nivel de contactos informativos.

2. Metodología

Las principales bases metodológicas de la investigación fueron los enfoques de sistema y actividad, que permitieron considerar el autodesarrollo informacional como un sistema completo, identificar sus elementos, determinar la base de su interacción, establecer conexiones e interdependencias internas y externas, entre ellos, y considerar cada elemento como parte de un sistema.

Es necesario señalar que el concepto de cultura de la información se introdujo en la circulación científica hace relativamente poco tiempo. La mayoría de los investigadores definen la cultura de la información como un elemento de la cultura general. En contraste, el contenido de este concepto está asociado al nivel que se ha desarrollado en la sociedad, la implementación de los procesos de recolección, almacenamiento y

procesamiento de información, así como los procesos de su producción y transmisión. Esto se refiere tanto a la información social como a la información no social (Shrejder, 1991).

Hoy en día, la información se ha convertido en un factor principal en el desarrollo socioeconómico, político-legal y cultural de la sociedad moderna. Sin lugar a dudas, las tecnologías de la información y la comunicación influyen cada vez más en diversas esferas de la vida, la ciencia y la educación. También es natural que, con transformaciones cualitativamente nuevas en la vida social y política, causadas por el proceso de informatización, la cuestión de las peculiaridades de la integración del individuo en el sistema social se haya vuelto un tema muy actual (Robertson, 1990).

Bajo las condiciones de la introducción de la informatización en todas las esferas de la vida y la actividad humanas y bajo su influencia directa, se forma un complejo de necesidades en ella, que corresponde al desarrollo global de la sociedad de la información (Haleta, Babenko, Liashenko, 2019), esta realidad se evidencia en:

- En la autorrealización mediante el uso de las tecnologías de la información y la comunicación en todos los aspectos de la propia existencia;
- En el autodesarrollo en las condiciones de formación de la sociedad de la información;
- En constante actualización y mejora continua de las capacidades profesionales. La realización de estas necesidades es una de las condiciones fundamentales del autodesarrollo informativo de una persona.

3.Resultados y discusión

El uso de las nuevas tecnologías de la información amplía las posibilidades de remover la actividad cognitiva tal como lo afirmara Maslow (1954), mejorando el conjunto de técnicas generales de pensamiento lógico y el repertorio de técnicas especiales de actividad mental, así como procurando en cada momento el aumentando de la eficacia de los métodos de enseñanza.

Los objetivos del aprendizaje en un entorno informativo y educativo son el desarrollo de aquellas habilidades de un individuo que actualmente necesita desarrollarse de forma integral, para beneficio de la sociedad en la que está inmerso, como un ciudadano participativo. Sobre la base del contenido temático de los programas y manuales educativos, así como el uso de métodos adecuados y técnicas de presentación del material, se

modela un espacio sociocultural, que tiene una expresión en la formación de sus ideas sobre el mundo circundante y la determinación de su lugar en él, lo que se sin duda una cuestión política, porque tiene que ver con la relación ontológica de el ser con la vida de la polis.

La aplicación práctica de las nuevas tecnologías de la información puede mejorar o incluso, reemplazar parcialmente en el proceso educativo métodos clásicos de enseñanza, como métodos de presentación oral de material educativo (conferencia, cuento, explicación, etc.), métodos de capacitación visual y práctica, métodos de consolidación de conocimientos adquiridos y métodos de trabajo independiente, entre otros.

Como parte del proceso de integración del sistema educativo nacional en el espacio educativo global, la actividad cognitiva independiente en el entorno informático adquiere especial importancia. En tal entorno, el trabajo independiente no es un complemento del trabajo educativo, sino un tipo de actividad sistémica especial que lleva el proceso educativo y político más allá de los límites de una institución educativa, que no es reducible a otras, lo que abre el acceso a muchas nuevas fuentes de información y simultáneamente equipa al alumno con nuevos medios de recibo. Claro está, si se entiendo lo político como el marco social donde se realiza la administración de los recursos compartidos, la gestión de los conflictos comunitarios y la organización de las comunidades de aprendizaje (Vallès, 2000).

En este sentido, se destacan dos etapas principales de creación e integración de recursos del entorno informativo y educativo en el proceso educativo tradicional.

1. La etapa inicial o la etapa de "innovación" que generalmente se caracteriza por el hecho de que el perfil del curso tradicional no cambia, al igual que los componentes establecidos del curso no cambian en porcentaje: lo que involucra el tiempo asignado para las clases presenciales, para el trabajo independiente, para la realización de tareas individuales y el control sobre el movimiento del proceso educativo. Pero dentro de estos límites, el maestro encuentra formas de implementar elementos individuales del proceso pedagógico de una manera nueva, utilizando los recursos del entorno informativo y educativo. Esta etapa coincide también en el tiempo, con el proceso de formación y desarrollo de la infraestructura de información y telecomunicaciones de la institución educativa y se identifica por la limitada participación de los estudiantes en esta infraestructura.
2. La segunda etapa se llama etapa de "modernización pedagógica", cambiando el perfil del curso. Se entiende más ampliamente en términos de uso cualitativo y cuantitativo de los recursos ambientales en el proceso educativo. La implementación de proyectos grupales

> o individuales en un entorno informático, transfiriendo la mayor parte del trabajo independiente al modo de telecomunicaciones como elementos constitutivos del proceso educativo. El nivel de modernización tecnológica implica una mayor independencia del alumno y la transición de ejercicios de tipo reproductivo, realizados en un entorno informático para un proceso de aprendizaje individualizado, distinguido por un alto nivel de motivación.

Con la ayuda de estas tecnologías de la comunicación, obtenemos nuevas oportunidades. La posición del participante del curso cambia de pasiva a activa. Estableciendo conexiones lógicas de bloques de información y siguiendo su propia lógica de su comprensión, el estudiante se convierte en coautor del proceso educativo. Como un solo organismo, todo interactúa entre sí en el proceso educativo: el maestro tiene la oportunidad de presentar el material y observar la reacción de la audiencia; en consecuencia, puede cambiar la velocidad de presentación del material y acercarse a cada uno de los oyentes de manera diferente.

Los multimedios deben permitir a los usuarios abrirse camino a través del material y las oportunidades para adquirir ciertos conocimientos significativos. Al interactuar con el entorno educativo, manipulando sus objetos, el estudiante puede determinar su propio comportamiento en este entorno, lo que le permite evitar repetir acciones ya dominadas con el objeto. Estas tecnologías acceden hacer que este proceso sea creativo, interesante y brillante, con el fin de sentar las bases de la preparación para el autodesarrollo informativo basado en el interés generado.

La transición a un nuevo paradigma de educación, en cuyo centro está la personalidad del estudiante y la cultura como su dominante, requiere tal enfoque para la organización del entorno educativo con la participación de las TIC y el espacio de comunicación global, cuando se crean las condiciones para el funcionamiento equilibrado y uniforme de todos sus componentes estructurales. Su funcionamiento está garantizado por la interacción de tres componentes: sustantivo, organizativo y tecnológico.

4.Etapas de implementación

En el curso de la investigación, desarrollamos un proyecto para crear un entorno informativo y educativo: un sistema dinámico tal como lo entendía Parsons (2005), que es un conjunto integrado de situaciones educativas que cambian gradualmente entre sí. La situación educativa se entiende como un sistema de condiciones e incentivos psicológicos, pedagógicos y didácticos, que presentan a una persona la necesidad y posibilidad de elección, ajuste e implementación consciente del propio modelo de aprendizaje, es decir, la implementación de actividades educativas independientes, en

un contexto político y social mayor que no debe ser ignorado, ya que todo proceso de enseñanza aprendizaje está condicionado ideológicamente por lo dispositivos y discursos propios del tiempo y espacio en el que se da (Foucault, 2002).

El entorno informativo y educativo que se está desarrollando implementa las siguientes funciones:

- Pronta entrega de información educativa al alumno.
- Implementación de la interacción entre todos los participantes del proceso educativo y retroalimentación al profesor;
- Garantizar el trabajo independiente individual y grupal.

La creación de un entorno informativo y educativo tiene además como propósito la:

- Creación de condiciones objetivas y subjetivas para que los estudiantes comprendan las características específicas de la actividad profesional futura.
- Énfasis en el desarrollo de las cualidades personales necesarias para el dominio exitoso de la futura profesión.
- Determinación del nivel de desarrollo de cualidades profesionalmente importantes disponibles para cada estudiante, y la construcción de trayectorias educativas individuales.

El mecanismo para gestionar el proceso de aprendizaje en el entorno se basa en la retroalimentación directa y en el sistema "Maestro - entorno - alumno", sobre la base del cual hay muchas modificaciones, por ejemplo, "el alumno - el entorno - el alumno - el alumno - el entorno - el maestro" y similares. En el plan estructural, el entorno de la información y la educación es un complejo de componentes que garantiza la integración sistemática de las tecnologías de la información y la comunicación en el proceso de aprendizaje.

De acuerdo con la estructura del entorno, desarrollamos el curso "Fundamentos de la informática con elementos de programación y tecnólogos modernos de la información de la educación". El contenido del curso implica no solo la orientación temática del estudio, sino también, la orientación para crear condiciones favorables para el desarrollo de la personalidad del estudiante, lo que contribuye a:

- apelar a motivos, objetivos de estudio y trabajo, experiencia personal del estudiante;
- dar un significado personal a sus actividades educativas y profesionales;

- Desarrollo de la capacidad del estudiante para formar sus propios puntos de vista sobre la futura profesión.

Cabe señalar que el entorno informativo y educativo se caracteriza por un alto grado de control de quienes se están enseñando a lo largo del aprendizaje, en el que la computadora solo crea un entorno operativo, la actividad educativa, en este caso, requiere una mayor gestión por parte del profesor para revelar todas las posibilidades del entorno, ya que la nueva información no se convertirá en el "conocimiento" del estudiante hasta que estos fragmentos de información se integren en el bagaje existente de conocimiento personal.

Por lo demás, el uso del entorno para llevar a cabo un curso separado implico:

- diagnóstico del nivel de educación, formación de intereses profesionales, personales y motivos de actividad profesional;
- asignación de grupos de nivel basados en ella;
- determinación de trayectorias educativas individuales, en base a las cuales se asegura la combinación óptima de requisitos temáticos y profesionales para cada estudiante.

La forma de enseñanza de conferencias se complementó con el uso de capacidades multimedia de tecnología moderna, lo que nos permite preparar conferencias electrónicas con soporte audiovisual del material presentado. Además, todos los componentes del curso son complicados: se introducen tareas con contenido práctico de la vida, formas grupales de trabajo, que brindan la oportunidad de modelar situaciones de cooperación, explicar, controlar e identificar las causas de los errores que entorpecen en algunos alumnos los procesos de enseñanza.

En la siguiente etapa, la orientación motivacional y de objetivos está conectada con la formación de habilidades creativas del individuo en el proceso de aplicar el conocimiento en una situación desconocida: aquí, los límites de la cooperación se expanden y se actualiza la comprensión de la necesidad de responsabilidad personal por los resultados del trabajo. En esta etapa, se utilizan métodos de aprendizaje estimulantes, parcialmente buscadores, controlados y auto monitoreados. La estructura del curso supone un uso extensivo del control mutuo, la participación de futuros especialistas en el autoanálisis de su trabajo, el establecimiento de objetivos para futuros trabajos.

Para estimular la aplicación de los conocimientos y habilidades adquiridos durante el curso, se utilizaron situaciones motivacionales y estimulantes orientadas profesionalmente, que implican ciertos pasos y secuencias de implementación, a saber:

1. llevar a cabo una orientación conjunta en un área temática que sea personalmente significativa para los estudiantes;
2. identificación de problemas de interés para los estudiantes como futuros profesores;
3. consideración de problemas en el contexto de valores profesionales y personales significativos para los estudiantes. El trabajo exitoso en el entorno de la información y la educación sólo es posible bajo la condición de garantizar flujos efectivos de información y conocimiento que proporcionen retroalimentación y control (Fig. 1).

La conexión con la actividad educativa principal y, por lo tanto, aumentar la importancia del proceso de aprendizaje se logró con la ayuda del uso intencional de los recursos de la información y el entorno educativo en el modo de modelar la futura actividad profesional de los estudiantes. En la etapa inicial, se utilizaron los recursos del entorno para ampliar los horizontes profesionales y para que los estudiantes adquirieran conocimientos sobre las peculiaridades del campo de su actividad profesional.

La confianza en este principio en el proceso de aprendizaje en el entorno está diseñada para contribuir a la construcción de un escenario único de la futura actividad profesional del estudiante, ganado a la mejora constante de sus habilidades profesionales. Esto permite revelar y explicar el conocimiento informal que los profesionales utilizan todos los días en su práctica, para convertirlo en un tema de estudio y así garantizar la naturaleza anticipatoria del aprendizaje.

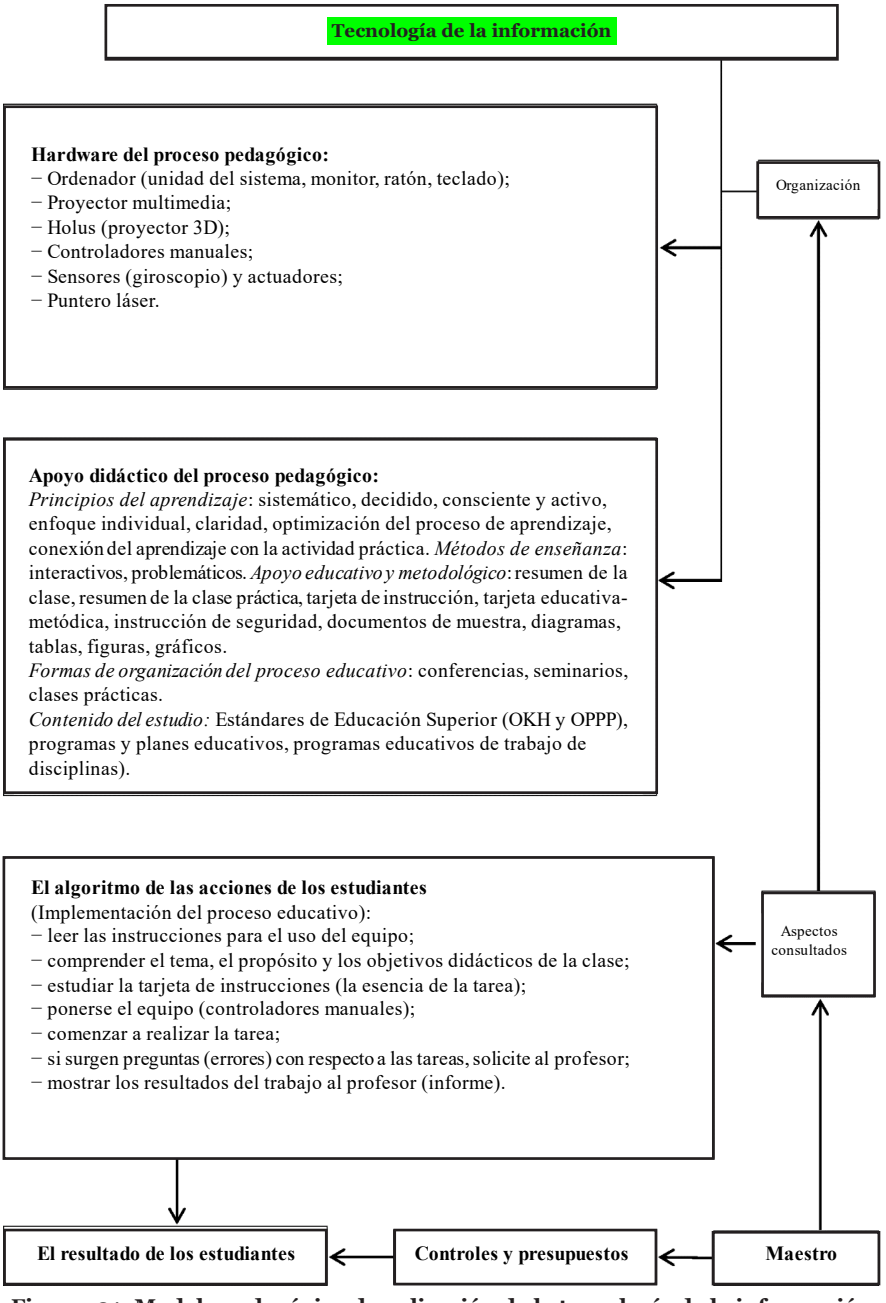

Figura. 01: Modelo pedagógico de aplicación de la tecnología de la información en el proceso educativo

El factor clave en la efectividad de la capacitación es tener en cuenta las diferencias individuales de aquellos que están estudiando. La actitud hacia el estudiante como sujeto protagónico del proceso educativo en el entorno informativo y educativo está relacionada con el derecho de cada persona a elegir su propia tecnología, para adquirir conocimientos y habilidades, teniendo en cuenta las características psicológicas individuales del sujeto: atención, memoria, pensamiento, tipo de actividad nerviosa.

Todo lo cual, se basa en el estudio de los procesos y métodos de cognición típicos de los individuos, en la identificación de los mecanismos psicofisiológicos que subyacen a las formas específicas de la persona de dominar la nueva información. El principio de individualización también se implementa, siempre que se tengan en cuenta las actitudes motivacionales, la selección de la estructura del curso y la selección de los socios de capacitación.

Por último, la actividad formativa en el entorno informativo y educativo será lo más eficaz posible si alcanza el nivel de co-crecreción de todos los participantes en el proceso educativo: los que reciben enseñanza y el profesor, los que estudian entre sí, los que reciben enseñanza y los representantes de la comunidad de la red. Al utilizar los principios de la educación para el desarrollo orientada a la persona, el entorno informativo y educativo aparece como un organismo en constante desarrollo y mejora, caracterizado por la participación personal de todos los participantes en el proceso de aprendizaje.

La co-creación se manifiesta en el desarrollo conjunto del medio ambiente, la renovación de sus recursos, así como en la divulgación de las cualidades personales de cada uno. El uso activo de la productividad del entorno, lo que significa la realización para aquellos a quienes se les enseña de oportunidades, no solo para adquirir conocimientos lingüísticos, sino también, para crear y presentar sus propios productos de actividad creativa, incluso si no son muy realizados, es una característica pronunciada del entorno informativo y educativo, que debe ser constantemente requerido por el maestro al organizar el trabajo independiente (Kulish *et al.,* 2020).

Conclusiones

El problema del desarrollo óptimo de ciertas cualidades de la personalidad en relación con su desarrollo holístico es extremadamente urgente, y su solución en la práctica se complica por la falta de métodos de diagnóstico probados del desarrollo holístico de la personalidad. Un análisis comparativo de diferentes sistemas de criterios conceptuales para identificar paradigmas y teorías permitió, a los autores de la investigación, centrarnos en las posibilidades del método de evaluación de expertos

(Haleta *et al*., 2022). Definitivamente, la evaluación colectiva de expertos permite un procesamiento matemático más profundo.

Después de realizar una encuesta a un grupo de expertos, se procesan los resultados. La entrada para este procesamiento son datos numéricos que expresan las preferencias de los expertos y la justificación sustantiva de estas preferencias. La finalidad del tratamiento fue obtener datos generalizados y nueva información contenida de forma oculta en las evaluaciones periciales. Sobre la base de los resultados del procesamiento, se forma una solución al problema.

El método aplicado de diagnosticar el nivel de desarrollo de la capacidad de autodesarrollo informativo da razones para afirmar que las formas bien fundadas son efectivas. El desarrollo del fenómeno mencionado de acuerdo con los indicadores relevantes se presentará gráficamente (Fig. 2).

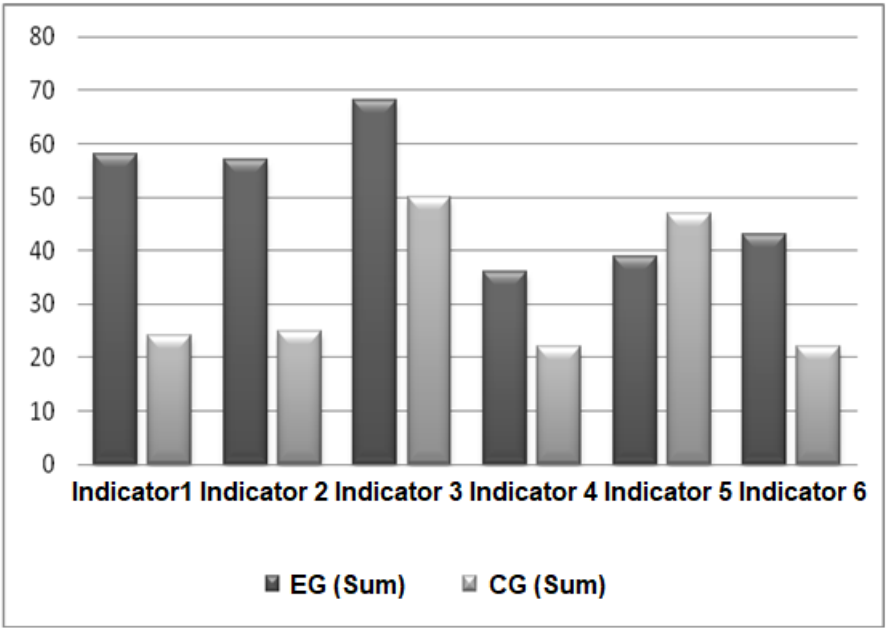

Figura 2. Desarrollo de la capacidad de autodesarrollo informacional. Elaborado en ingles por los autores.

Los resultados del diagnóstico del nivel de desarrollo de la capacidad de autodesarrollo informativo, de acuerdo con los indicadores especificados dan motivos para afirmar que las formas bien fundadas e implementadas son efectivas.

Habiendo considerado las interpretaciones dadas de los conceptos clave relacionados con la educación orientada al medio ambiente, y habiendo realizado un análisis de los rasgos característicos del sistema educativo moderno, utilizando tecnologías de la información, llegamos a la conclusión de que un nuevo tipo de entorno educativo actúa como un medio y condición para la formación de la capacidad de autodesarrollo informativo del futuro maestro.

Cabe señalar que el centro del proceso de aprendizaje, utilizando las tecnologías de la información y la comunicación representa una actividad cognitiva independiente de los estudiantes y su trabajo autónomo en la formación de las habilidades, habilidades y competencias profesionales necesarias. Sin embargo, el éxito y la calidad del aprendizaje utilizando las TIC dependen en gran medida de la efectividad de la organización de IOS y de la calidad metódica de los materiales utilizados, así como la orientación, las habilidades de los maestros que lo modelan de acuerdo con los objetivos pedagógicos de la educación.

La investigación realizada no agota todos los aspectos teóricos y prácticos del problema considerado. Otras investigaciones científicas requieren el desarrollo de una metodología para estudiar la capacidad de autodesarrollo informativo del individuo y determinar las posibilidades de la virtualización como una nueva forma de desarrollo personal.

Los científicos modernos creen que el medio ambiente es uno de los factores decisivos en el desarrollo de la personalidad, de modo que una persona activa los elementos del entorno por sus acciones y resultados, por lo tanto, recrea la realidad para sí misma. La principal fuente de desarrollo humano es la voluntad propia para evolucionar a pesar de las dificultades de la vida, la fuerza motriz está en la persona misma. Sin embargo, para que se incluyan los mecanismos internos de crecimiento personal, se requieren ciertas condiciones. En las etapas iniciales de desarrollo, el lugar principal entre estas condiciones está ocupado por las condiciones sociales contenidas en la interacción de los participantes en el entorno educativo.

El componente social del entorno implica la experiencia de las relaciones sociales, que una persona puede adquirir en el proceso de interacción con otros estudiantes y profesores. Las cualidades profesionales y personales, así como el estilo y la naturaleza de sus relaciones, son importantes. La naturaleza dialógica de las relaciones se considera como una característica importante de este componente, ya que es un factor de humanización de todo el proceso educativo, la base para adquirir experiencia positiva de actividad conjunta y resolución de problemas.

Además, el componente social del entorno profesional y educativo debe proporcionar la cultura corporativa como un sistema de valores materiales y espirituales, manifestaciones que interactúan entre sí, reflejan su

individualidad y percepción de sí mismos y de los demás en el entorno social y material. Estos factores se manifiestan en comportamiento, interacción, percepción de sí mismos y del medio ambiente.

Junto con el proceso de internalización, hay un proceso muy importante y dirigido de manera opuesta: la individualización. Una persona no es solo un objeto de varias acciones, sino también un sujeto autónomo que, vive cambiando creativamente el entorno externo, manifiesta su individualidad única y transforma su propia personalidad. La formación de la esfera personal de un especialista se lleva a cabo bajo la influencia no solo de un proceso educativo con propósito, sino también de un entorno profesional específico en el que se encuentra mientras estudia en una escuela superior (Kohlberg, 1981).

El entorno social ofrece un gran número de opciones para el autodesarrollo, activa la capacidad del futuro maestro para repensar los métodos existentes de actividad e, incluso, crea otros nuevos mediante la introducción de elementos de la propia visión del problema, las cualidades de la personalidad individual y la formación del propio estilo de actividad. Esto contribuye, en su conjunto, a la formación de la preparación de los estudiantes para el desarrollo independiente y la resolución de tareas profesionales, la necesidad de autodesarrollo, autorrealización del individuo, que se expresan en: una relación valiosa con la profesión futura, la identificación de las propiedades esenciales del individuo, su desarrollo en la medida necesaria para la autorrealización más completa posible y la autoafirmación en el entorno de información.

Así, vemos que el enfoque ambiental permite identificar el sistema de condiciones para el desarrollo profesional y personal y el autodesarrollo de los estudiantes, que amplían las posibilidades del proceso de formación de la capacidad de autodesarrollo informativo del futuro docente, especialmente en las condiciones de actualización de la cultura de la información de la sociedad (Oleksenko *et al.,* 2023). Por lo demás, el estudio demostró que los científicos asocian la solución de los problemas de la capacidad de autodesarrollo informativo, como un fenómeno comunicacional desvinculado de la política, cosas que es un error, ya que todo proceso de autodesarrollo implica esencialmente un empoderamiento del sujeto, con diferentes implicaciones en las relaciones de saber y poder de las que forma parte.

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Legal Aspects of the authoritarian regime in Latin America

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Abstract

The purpose of the article was to study the legal aspects of the authoritarian regime in some Latin American countries. The research methodology included the use of general and special scientific methods of knowledge, such as: dialectic, historical-legal, formal-logical, hermeneutics, generalization and comparison. It should be pointed out that the results of the research identified four Latin American countries with authoritarian regimes (El Salvador, Cuba, Nicaragua and Venezuela). The legal aspects of the authoritarian regime of each selected country were considered. In addition, different areas of analysis were covered and characterized in the course of the work: (government, protection of human rights, freedom of expression, legislation and prisoners' rights). It was concluded that each of these countries has common legal aspects of authoritarianism, including the concentration of power in the hands of the president or government, control of the judiciary and legislature, within the framework of dynamics of corruption and systematic violations of human rights.

Keywords: authoritarianism; Latin America; legal aspects; political regime; rule of law.

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Aspectos jurídicos del régimen autoritario en América Latina

Resumen

El propósito del artículo fue estudiar los aspectos legales del régimen autoritario en algunos países de América Latina. La metodología de investigación incluyo el uso de métodos científicos generales y especiales de conocimiento, tales como: el: dialéctico, histórico-legal, formal-lógico, hermenéutica, generalización y la comparación. Conviene precisar que en los resultados de la investigación se identificaron cuatro países latinoamericanos con régimen autoritario: (El Salvador, Cuba, Nicaragua y Venezuela). Se consideraron los aspectos legales del régimen autoritario de cada país seleccionado. Por lo demás, en el curso del trabajo se abarcaron y caracterizaron distintas esferas de análisis: (gobierno, protección de los derechos humanos, libertad de expresión, legislación y derechos de los presos). Se concluyó que cada uno de estos países tiene aspectos legales comunes del autoritarismo, incluida la concentración de poder en manos del presidente o el gobierno, el control del poder judicial y legislativo, en el marco de dinámicas de corrupción y violaciones sistemáticas de los derechos humanos.

Palabras clave: autoritarismo; América Latina; aspectos legales; régimen político; Estado de derecho.

Introduction

There has always been the struggle between good and evil, light and dark, democracy and fascism, freedom of speech and dependence (Panchenko *et al.*, 2022). It is argued that unquestioning obedience to authority is a fundamental factor in ensuring public order and security, as well as preventing chaos and causing any harm to the state regime. Interestingly, it is inherent only in supporters of authoritarianism – a political regime characterized by centralized, but at the same time, concentrated power, which is in the hands of the government or the president.

Authoritarianism has clear features that distinguish it from other regimes: 1) limitation of political pluralism, legislative power and political parties; 2) political legitimacy; 3) suppression of anti-regime activities; 4) executive powers are not defined, which allows them to be abused, etc.

Thus, countries with an authoritarian regime are characterized by:

- the absence of free and competitive elections;
- the change of government over a long period of time and the violation of civil rights and human freedoms.

A vivid example of the neglect of democratic values and other legal elements are the countries of Latin America – El Salvador, Cuba, Nicaragua and Venezuela, which have confirmed signs of authoritarian rule. A few more – Guatemala, Bolivia, Haiti, Honduras (countries of Latin America and the Caribbean) have hybrid authoritarian-democratic regimes (Ramírez, 2022). This indicates that the number of authoritarian regimes in the region is growing, so the topic we have chosen is quite relevant for its study.

The study of the legal regime of the Latin America countries allows on the other hand to look at the interests of ruling elites, which are accompanied by anti-legal methods of governance: corruption, breach of human rights, restriction of freedom of speech, falsification of elections, concentration of power in the hands of the president, etc. Therefore, we consider it necessary to examine the legal aspects of the authoritarian regime prevailing in El Salvador, Cuba, Nicaragua and Venezuela in detail, which is the aim of our research.

1. Methodology

The methodological basis for the research is the complex use of principles and means of philosophical, general scientific and theoretical and legal approaches, as it is it is necessary to provide quality methodological support (Kharytonov *et al*., 2021). The authors proceed from the unity of socio and legal and epistemological analysis, objectivity, historicism, concreteness.

- Systemic method helped to allocate Latin America countries with authoritarian regime.
- Structural and functional method made it possible to identify the features of authoritarian regime, as well as legal aspects of the authoritarian regime of the selected countries.
- Comparative and legal method was used to compare the process of authoritarian dynamics in the least democratic Latin America States.
- Historical and analytical, as well as retrospective methods were applied to investigate the development of authoritarian characteristics in the *mode of government* in the named counties.
- Formal and legal method was helpful when defining the legal nature of the state regime in the selected countries and in the scientific processing of legal materials.
- Summarization method was used to determine general legal aspects of authoritarianism.

2. Literature Review

In the process of preparation, we got acquainted with many fundamental works devoted to this topic, which are of great scientific interest.

Ronald Chacín Fuenmayor in his study "The new Latin American authoritarianism: A challenge for democracy and human rights (analysis of the Venezuelan case)" (2019), using theoretical and political approach, focuses on the problem of authoritarianism in Venezuela. The author also emphasizes that the country is characterized by violations of values, principles, constitutional and fundamental human rights.

Botero's work entitled "The Rule of Law in Latin America: From Constitutionalism to Political Uncertainty" (2019) is quite interesting in this aspect. The author thoroughly characterized the rule of law in the region and the problems that arise in the way of compliance: regression of democracy, constitutional promises, inability of countries to control their territory, violence, the lack of independence of the judicial system, corruption, hyper-presidency and inequality [3].

The study by Fuenmayor and Orozco "Conflict between Democracy and Authoritarianism in Latin America: The Role of the Judiciary" (2019) is also noteworthy. The scholars examine the crisis of democracy in the countries of Latin America – Venezuela, Bolivia and Nicaragua, and also describe how the government exercises control over the judiciary and with its help consolidates authoritarianism in the territory.

Rodríguez-Pinzón and Rodrigues (2020) demonstrate that the violent actions of the governments of certain Latin American countries are a way to destroy the rule of law. In their work "Mano dura" and Democracy in Latin America: Public Security, Violence and Rule of Law", the authors analyze the experience of four countries – Brazil, Mexico, Colombia and Guatemala through the prism of "violent pluralism".

López and Quevedo Pereyra (2021) point out that Latin America is going through a stage of asymmetric development, observing polarization – from states with a high level of democracy, such as Costa Rica, Uruguay, Chile, to authoritarian – Cuba, Nicaragua and Venezuela. The authors examine the authoritarian regimes of Nicaragua, Venezuela, Honduras, and Bolivia, and conclude that the Latin American continent is experiencing a gradual minimization of political and social rights, democratic values, and the separation of powers.

Clearly, these works are quite valuable achievements in relation to the fact that at present the issue of authoritarianism and the fight against it in the civilized world arises more and more often. However, the number of studies devoted to the legal aspects of the authoritarian regime of Latin American countries is quite small. Therefore, we believe that there is a need for a comprehensive study of this topic.

3. Results and Discussion

Legal norms in the countries of Latin America have always been considered as an important social phenomenon. After all, on the one hand, the law allows for the regulation of social relations, and on the other hand, it "organizes a heterogeneous and complex social reality" (Villegas and Rodríguez, 2003: 33). The best example of this is the Latin American experience – the experience of the struggle between the legal norms of authoritarianism and democracy.

It is no secret that authoritarianism is on the rise and democracy is on the decline. This fact is confirmed by wars, military coups, transfer (gift) of power, restriction of rights and freedoms, etc.

The least democratic Latin American countries are El Salvador, Cuba, Haiti, Nicaragua and Venezuela, whose governments are authoritarian ones. Along with this, there is a growth of hybrid "authoritarian-democratic" regimes, which now number eight in 2022. This indicates the gradual decline of democracy in the region (Graphic Detail, 2023).

Fig. 1. EIU Democracy Index, 2022 (Democracy Digest, 2023).

A change in the political regime always implies modification in social relations, legal instruments, legal culture, public consciousness, etc. First of all, these are targeted actions aimed at changing people's behavior with the help of various legal means – rules and principles of law, law enforcement actions, contracts, legal facts, subjective rights and legal obligations, prohibitions, benefits, realization of rights through separate mechanisms, etc. That is, such legal means carry legal consequences, which determines the effectiveness or nullity of legal regulation.

Analyzing the experience of Latin America, we can conclude that the process of authoritarian dynamics was accompanied and continues to be accompanied by abuse of power, social and cultural values, use of repeated coercive measures, which tends to interfere with established legal norms.

This regime is formed on the ideal of slavery and freedom, independence and subjection, justice and inequality, wealth and poverty. All these signs are rooted in authoritarianism, and are also deeply disguised as democracy. Then the question arises: how to can live in a system of dictatorship, endless struggle, but at the same time promises of freedom, autonomy and independence? Perhaps authoritarianism is the essence of Latin American existence, inherited by culture and time? (Cuevas Silva, 2014).

García Hamilton (2004) notes that "there is an authoritarian political culture in Latin American society – a set of beliefs, feelings, ideas, thoughts and attitudes that make possible accepting guardianship, giving up self-government and situations that often lead to the denial of minority rights, cruelty and genocide".

That is, countries that maintain the «appearance» of democracy but are dictatorial, violating human rights and freedoms, concentrate power in the hands of one person or elite, fail to adhere to the principle of separation of powers and the rule of law, belong to the category of countries with an authoritarian regime (Borges, 2023).

Therefore, the countries of the Latin American region – El Salvador, Cuba, Nicaragua, Venezuela, which we propose to consider, are a vivid example of authoritarian rule.

a. Salvador

Abuse of power and impunity are the norm. For example, the 2016 trial of the rape and killing of nearly 1,000 civilians, including 553 children, by army soldiers, has been suspended with the support of incumbent President Bukele. And the judge who conducted this process was dismissed due to the fact that he is over 60 (El Salvador 2022).

In 2021, the President and his allies dismiss the Supreme Court judges and remove prosecutors, whose decisions they did not like. Shortly after

that, the judges of the Constitutional Chamber of the Supreme Court issued a ruling on Bukele's candidacy for early re-election, despite the fact that it is prohibited by the Constitution (Human Rights Watch 2021a).

The government also proposed to amend the Constitution and provide for the extension of the president's powers from 5 to 6 years, the reform of democratic institutions, the liquidation of the Constitutional Chamber of the Supreme Court and other changes (Delcid, 2021).

It should also be noted that "control" over certain territories (mainly poor ones) in the country is carried out by armed groups. According to mass media, there are about 60,000 members of the gang (Europa Press Internacional, 2021). Note, that the total population of El Salvador is 6.3 million.

El Salvador ratified the Convention on the Rights of Persons with Disabilities (Naciones Unidas, 2008), adopted the Special Law on the Integration of Persons with Disabilities (CONAIPD, 2021), but the problem of violation of the rights of such citizens still exists. Especially vulnerable are women and girls who are constantly attacked by gangs.

b. Cuba

There is an ongoing economic crisis, which directly affects social and economic rights of the population. Dissent is punished by arrests, intimidation, and bullying (Redacción Radio Televisión Martí, 2023).

Thus, during peaceful protests in July 2021, 17-year-old Gabriela Zequeira Hernández, who passed by the demonstration and witnessed the process, was arrested. She was forced to strip and squat, after which the court imposed an eight-month sentence of deprivation for public disorder. Later it became known that the minor was detained by members of the Special National Brigade of the Cuban government (BBC News Mundo, 2021).

The government controls all mass media and information from abroad. Independent journalism is prohibited in the region. In 2019, the situation with access to the Internet improved, so journalists, researchers, and bloggers were able to report on cases of cruelty against Cuban residents. But the high cost of the Internet and services prevent them from becoming widely known. Along with this, the government blocks access to various websites and blogs, as well as mobile phones (communication) (DDC, 2021).

Law 35/2021 of August 17, 2021 (Consejo de Estado, 2021) establishes that providers should interrupt, suspend or cancel all services (not calls!) when a user publishes or proclaims information that is "false" or affects "public morality".

The Resolution on Cyber Security (Ministerio de Comunicaciones, 2021), published along with the specified Law, also includes provisions on actions, statements contributing to «social indiscipline and damage to the prestige of the country», which must be destroyed.

The government also has the authority to ban departure from (or entry into) the country in order to protect national security. For example, Cuban journalist Karla Pérez was banned from entering the country after studying in Costa Rica (SAMAN, 2021).

If we talk about detainees and prisoners, there is no mechanism to ensure their rights, in particular to involve a defender or a representative or to report ill-treatment. This is due to the fact that the government does not recognize human rights activities as legitimate. Those who try to do so are subjected to more abuse and denial of medical care. The government also prevents international organizations from inspecting prisons (Human Rights Watch, 2021b).

With regard to violations of labour rights, legislation permits the establishment of trade unions, but de facto only the state-controlled Central de Trabajadores de Cuba trade union operates.

c. Nicaragua

There are strict restrictions on freedom of speech and political discrimination.

In 2016, President Ortega's government abolished all restrictions on presidential power and prevented other political parties from participating in the elections. The latter was elected for the fourth term in a row, which indicates that these elections do not conform to at least universally recognized legal norms the field of the electoral process (**McConnell,** 2021).

The path to "success" was expressed in the persecution and detention of other government representatives, presidential candidates, members of political parties, journalists, lawyers, businessmen and simply leaders of speech (Human Rights Watch, 2021c).

It is very interesting that in December 2020, the government adopted the Law on the Protection of the People's Rights to Independence, Sovereignty and Self-Determination (Prensa-Asamblea Nacional, 2020), the provisions of which prohibit the above «traitors» to run for and hold public office.

As for law enforcement agencies, the reform of the criminal procedure legislation allowed them to detain a person for up to 90 days without charge (Human Rights Watch, 2021d).

That is, the proper legal procedure for detention and custody is not respected – there are harsh conditions of confinement, bullying, malnutrition and constant interrogations. The authorities prevent the right of a person to have a lawyer, while appointing "their" public defenders.

Nicaragua Nunca and Human Rights Collective report that persecution and oppression by the Ortega government forced journalists to leave the country to escape repression (Broner, 2021).

d. Venezuela

Mysterious disappearances, executions, imprisonment, torture and repression, which have only intensified with the Covid-19 pandemic, have helped the Venezuelan government to further control the country's population. The judiciary is also fully under the control of the government.

The following armed groups operate in Venezuela: National Liberation Army (el Ejército de Liberación Nacional (ELN)), Patriotic Forces of National Liberation (las Fuerzas Patrióticas de Liberación Nacional (FPLN)), Special Action Forces (las Fuerzas de Acciones Especiales (FAES)), etc., which help maintain the so-called "order" in the territory (Human Rights Watch, 2021e).

The UN Independent Mission found a number of violations in the country that constitute crimes against humanity – abuse of judicial authorities, illegal arrests without warrants, pre-trial detention, torture and lack of evidence (Naciones Unidas, 2022).

Overcrowding, staff shortages, corruption have helped gangs to take control over the prisoners. This is accompanied by a lack of water and food, medical services, and as a result – hunger and deadly diseases.

As for the freedom of speech, the government has absolute authority to regulate the media. In 2017, the Law against Hate (Comité para la protección de los Periodistas (CPJ), 2017) was adopted, which prohibits "promoting fascism, intolerance or hatred" and provides punishment for those who publish "intolerant messages" – imprisonment for a term of up to 20 years.

Another interesting fact is that Venezuela withdrew from the American Convention on Human Rights in 2013 (El pais International, 2013). This means that the struggle for human rights in this country is short-lived, but punishment is inevitable.

Thus, after analyzing the legal aspects of the authoritarian regime of the selected countries, it is possible to determine their common features. And in this matter, we fully agree with Ronald Chacín Fuenmayor and Giancarlo Leal Orozco, who note that the authoritarianism of the Latin American region is accompanied by:

1) weak institutions of political control;

2) concentration of the President's power;

3) obsession with the goal of re-electing the President;

4) high level of corruption;

5) control over the judicial system and other law agencies;

6) lack of accountability of state funds;

7) democratic elections as a way to come to power;

8) no legal restrictions – according to the principle of «will be as I want»;

9) adoption of laws limiting people's rights and freedoms;

10) aggressive attitude towards their political opponents (Fuenmayor and Orozco, 2019).

Finally, we would like to note the following: the model of legal regulation in the specified countries is ideal to achieve the management goals of the authoritarian leaders «without title»: such a policy does not have legal control, but has signs of abuse of power through law and coercion; the lack of judicial independence helps to rule society with the help of gangs and armed groups; fear and poverty are not an obstacle in the formation of a political system, but a value; corruption is a tool of domination, and human rights violations are the most striking example of the absence of the guiding principle of the rule of law.

Conclusions

The analysis of the research topic allowed us to come to the following conclusions:

International or national legal norms cannot limit the aggressive political power in the conditions of an authoritarian regime. Sometimes, the same legal norms are used in the opposite direction - to violate freedom of speech, personal rights and freedoms, concentration of power, evasion of responsibility for violation of the law or, on the contrary, illegal attraction to it.

We can observe a pronounced authoritarian regime in El Salvador, Cuba, Nicaragua and Venezuela - Latin American countries with rather interesting anti-democratic ways of governing.

The conducted research allowed us to understand that legal awareness, legal culture, and freedom of speech do not work in the selected regions; there is excessive abuse of power, intimidation, falsification of elections,

violations of the rights of detainees and prisoners, armed conflicts and gang activity.

In El Salvador, Cuba, Nicaragua, and Venezuela, the authoritarian regime is an instrument of social control and shares some common features, including: concentration of power in the hands of the president or government, government control of the judiciary and legislature, corruption, and human rights abuses.

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Expropriation and other forms of reparation in terms of compensation for damage caused as a result of war crimes: International legal experience

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Abstract

As a result of international armed conflicts, questions always arise about the payment of post-war reparations. Although the process of reparation for damages caused as a result of war crimes, in most cases, begins only after the end of such a conflict, its duration and effectiveness depend on the preliminary analysis and choice of an existing reparation or development of a new model. The purpose of the work was the analysis of existing mechanisms for the payment of post-war reparations, and the search for the most effective models of compensation for Ukraine by Russia for the damage caused as a result of military aggression and the commission of international crimes. The dialectical, systemic-structural, historical, comparative, logical-formal, comparative-legal and systemic-functional methods were used. In the results, the legal nature and historical mechanisms of reparation of damage are explained, as well as problematic issues of this institution of the law of international liability are outlined. In the conclusions, different mechanisms of reparation that can be used by the State and those available to individuals, victims of violations of international crimes committed on their territory and mixed models are considered.

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Expropiación y otras formas de reparación en términos de compensación por daños causados como consecuencia de crímenes de guerra: Experiencia jurídica internacional

Resumen

Como resultado de los conflictos armados internacionales, siempre surgen interrogantes sobre el pago de las reparaciones de posguerra. Si bien el proceso de reparación de daños causados como resultado de crímenes de guerra, en la mayoría de los casos, comienza solo después del final de dicho conflicto, su duración y efectividad dependen del análisis preliminar y la elección de una reparación existente o desarrollo de una nueva modelo. El propósito del trabajo fue el análisis de los mecanismos existentes para el pago de las reparaciones de posguerra, y la búsqueda de los modelos de compensación más efectivos para Ucrania por parte de Rusia, por los daños causados como resultado de la agresión militar y la comisión de crímenes internacionales. Se utilizaron los métodos dialécticos, sistémico-estructural, histórico, comparativo, lógico-formal, comparativo-jurídico y sistémico-funcional. En los resultados, se explica la naturaleza jurídica y los mecanismos históricos de la reparación del daño, así como se esbozan cuestiones problemáticas de esta institución del derecho de la responsabilidad internacional. En las conclusiones, se consideran diferentes mecanismos de reparación que puede utilizar el Estado y los que están a disposición de los particulares, víctimas de violaciones de crímenes internacionales cometidos en su territorio y modelos mixtos.

Palabras clave: expropiaciones; reparaciones; indemnizaciones; responsabilidad internacional; crimen de guerra.

Introduction

Taking into account the position of the Russian Federation, which consists of its reluctance to be responsible for committing international crimes and the need to receive compensation for damage by Ukraine, it is important to carry out a deep analysis of the possibilities of paying reparations to the aggressor. On the one hand, Ukraine should not count on

voluntary payment of reparations by the aggressor. Even if the corresponding provision is established in the ephemeral cease-fire agreement, it seems unlikely that Russia will cover the damage caused by Russia.

On the other hand, Ukraine needs to take into account the limited list of international mechanisms that will allow it to receive compensation, as well as to ensure the availability of sources where such compensation can be obtained. However, despite the lack of compensatory instruments and the inefficiency of the institutional security system in Europe and the world in general (Tkalych and Arbelaez Encarnacion, 2022), we can analyze some potential opportunities for collecting reparations from the aggressor country.

By its legal nature, reparations are full or partial compensation by the state that launched the aggressive war for the damage caused to the state that was attacked. That is, if one country attacked another, occupied its territory in whole or in part, destroyed part of the population, or destroyed industry and infrastructure, it must pay for it and compensate for the damage caused.

That is, international law guarantees victims of aggression adequate compensation - reparations. In turn, expropriation consists of nationalization, requisition, and/or confiscation. Currently, Ukraine, together with its partners, is developing mechanisms for expropriation and other forms of reparations. In general, international law only in general terms regulates the principles of recovery of assets, and therefore the correct legal procedure is a task for states.

Given the above, it is important to examine existing models of reparations collection, as well as those models historically used by states to obtain reparations.

The article analyzes the mechanisms for obtaining compensation, namely, attention is paid to how many there should be, who created them, and how their activities are regulated. The political side of such actions is also noted.

The methods of obtaining compensation are analyzed in detail, including lawsuits to the European Court of Human Rights (ECHR), the International Court of the United Nations, and the International Criminal Court, consideration of the issue of compensation within the relevant UN committees.

Also, the possibilities of contractual settlement of reparations and the peculiarities of the functioning of compensation mechanisms within the framework of the UN Security Council were investigated by the authors. Prospective directions for reforming reparations collection mechanisms and problematic issues in this aspect were noted.

1. Theoretical Framework or Literature Review

During the study of the international legal experience of the application of expropriation and other forms of reparations in terms of compensation for damage caused as a result of war crimes, the works of the following researchers were analyzed: Volyanska, Koshman, Pavlovska, Rashevska, Sudachek, Khutor, Shapovalova, Shulyak, Emerson, Blockmans, Lawder.

In the work of Volyanska (2022), a step-by-step algorithm for compensation for damages caused by the armed aggression of the Russian Federation is considered. In particular, the lawyer draws attention to the fact that there are additional factors that affect the destruction of property, and therefore the introduction at the legislative level of the presumption of guilt of the Russian Federation for the destruction of the property of Ukrainian legal entities and individuals as a result of the armed aggression of the Russian Federation is necessary because it affects the establishment of causal consequence and resolution of the issue of compensation for losses at the expense of the Russian Federation.

Koshman (2022) conducted a review of national and international mechanisms for the protection of property rights violated due to Russian aggression. The researcher analyzed judicial and extrajudicial methods of protecting property rights, as well as investigated potential mechanisms for compensation of damages and concluded that currently there is no clear, unequivocal answer to the question of which court or which competent authority it is advisable to contact to receive real compensation.

Poland's experience in receiving reparations from Germany was analyzed by Pavlovska (2022). Rashevska (2022a, 2022b) studied in detail both judicial and contractual mechanisms for reparations and analyzed international models and mechanisms for payment of reparations: international experience and ideas for Ukraine. The author concluded that regardless of which model of compensation Ukraine chooses to receive reparations from the Russian Federation, it is important to take into account the specifics of the existing situation, as well as the fact that the Russian Federation remains a permanent member of the UN Security Council with the right of veto, and also preserves the existing political regime, and therefore, the reparations payment mechanism must have a sound legal basis.

In the opinion of the author, it is considered most expedient to provide a corresponding obligation for the Russian Federation in the future Ceasefire Treaty, which would contain a clause on the mandatory jurisdiction of the UN IC. The aforementioned agreement should also introduce a special body (for example, the Compensation Commission), in which Ukraine's Western partners would act as members and guarantors.

Also, in the author's opinion, the existing multi-link system of compensation funds at the national level should be reviewed, simplified as much as possible, sources of income diversified, transitioned from volunteer foundations to investment, and finally harmonized with initiatives at the international level.

Sudachek (2022) investigated the post-war reconstruction of the Federal Republic of Germany in the context of the payment of reparations and the restoration of Ukraine. The author states that the history of the restoration of the Federal Republic of Germany can hardly be a model for Ukraine.

The very approach of the post-war economic reconstruction of Germany was based on the consistent structural development of democratic practices, which formed the basis of the new Constitution, to avoid the rise to power of authoritarian (and communist) forces, and the Marshall Plan became an important impetus for the economic development of Germany, but a much larger role was played by competent monetary policy and the political will to implement all other reforms (in particular, the launch of the free market).

Khutor (2022) analyzed the peculiarities of the confiscation of property of Russians and Belarusians on the territory of Ukraine. Thus, the author noted the essence of the law and the idea of sanctions: a collection of assets belonging to individuals or legal entities, as well as assets that they can directly or indirectly dispose of, into state income.

The activity of the International Criminal Court, as well as the International Court of the United Nations in solving war crimes, in particular, the problems of compensation for damage caused by such crimes, was considered by Stupnyk *et al.,* (2022).

The peculiarities of the functioning of the international register of damages as a prerequisite for the payment of reparations were analyzed by Shapovalova (2023). The author noted that after the Supreme Court indicated that Russia does not have judicial immunity in tort claims as a result of armed aggression against Ukraine, and the dispute about compensation for damages can be considered and resolved by a court of Ukraine, Ukrainian citizens and businesses filed more than 150 lawsuits against Russia about compensation for damages to the courts of Ukraine.

Also, the author noted that the reparation mechanism for Ukraine will work with the careful documentation of damages by an independent international institution, and therefore it is important that a compensation commission and a fund for timely payment of victims' claims be created as quickly as the registry. At the same time, potential applicants need to understand that the process of gathering evidence, proving the facts, and the extent of the damage is up to them.

Shulyak (2022) analyzed the peculiarities of the evaluation of objects destroyed and damaged as a result of the military aggression of the Russian Federation. In the work of Emerson and Blockmans (2022), proposals were put forward for compensation for the damage caused by war crimes of the Russian Federation. The same ideas are considered in the work of Lawder (2022) taking into account foreign experience.

2. Methodology

The use of the dialectical and systemic-structural method of learning about social processes made it possible to consider reparations in their systemic connection with other ways of compensation for damage caused by military armed aggression by the Russian Federation. In addition, the use of the dialectical method of cognition allows one to understand the legal nature of various models of reparations collection in their development and cause-and-effect relationship. At the same time, the application of the system-structural method, which is based on the consideration of the object as a whole set of elements and a set of relations and connections between them, served as a method not so much for solving, but for setting tasks.

Through the application of historical and comparative methods, the genesis of the use of such a compensation mechanism as reparations was studied, and it was also noted what conditions and historical events contributed to the implementation of effective tools for compensation for damage caused by war. In general, a historical method is based on the study of the emergence, formation, and development of objects in chronological order.

Thanks to the use of the historical method, a deeper understanding of the essence of the problem is achieved and it becomes possible to formulate more reasonable recommendations for the new object. Therefore, the historical method was used in the study of the historical prerequisites for the implementation of various mechanisms for the collection of reparations in international law at various stages of its development.

The formal-logical method served as a guiding principle that contributed to clarifying and clarifying the content of certain concepts and research categories (reparation, compensation for damage, armed conflict). Thus, the formal-legal method allows you to define legal concepts, identify their features, carry out classification, interpret the content of legal prescriptions, etc.

Its specific feature is a distraction from the essential aspects of the law, and the task that is set at the same time is to clarify and explain the current legislation, in its systematic presentation and interpretation for law-making

and law-enforcement practice. Therefore, the content of the formal legal method includes legislative techniques and methods of interpretation of legal norms, as well as the study of those factors and conditions in which these norms operate and which affect their nature.

The considered method consists of the study of categories, definitions, and constructions used in law by special legal methods. It provides an opportunity to study in detail the technical, legal, and regulatory aspects of law and, on this basis, to professionally engage in legal activities. Therefore, with the help of this method, an analysis of the norms of current legislation, both national and international, was carried out, which contributed to the identification of gaps in it and made it possible to formulate proposals for improving the legislative regulation of the mechanism of recovery of damages for violations and destruction due to war.

Given the specifics of the formal legal method, it is important to find out the specifics of the prerequisites for compensation of damages to study the cause-and-effect relationships, taking into account the laws of logic, because this contributes to the reliability of the results.

The application of the comparative legal method contributed to a comprehensive study of the content of the norms that are the basis for the application of expropriation and reparation in the countries and territories affected by the war. In the general sense, the comparative legal method is a method of studying the legal systems of different states by comparing the legal norms, institutions, principles of the same name and the practice of their application.

The use of the comparative legal method is necessary during the study of world experience, and knowledge of constitutional and legal phenomena in the context of existing concepts of legal understanding. Also, the application of this method made it possible to understand how to effectively establish the obligation to compensate for the damage caused. Turning to the system-functional method made it possible to distinguish types of methods of reparations regulation, as well as problematic issues in this context.

3. Results and Discussion

In the modern conditions of military aggression of the Russian Federation and the commission of war crimes on the territory of Ukraine, the legislative regulation regarding the seizure and confiscation of the assets of the aggressor state is changing.

In particular, a law was adopted, the implementation of the norms which allows for the compulsory seizure in favor of the state of objects of property rights of the Russian Federation, its residents, natural persons – citizens

of the Russian Federation, persons who are not citizens of the Russian Federation, but have a close connection with the aggressor (occurring residence or are engaged in the main activity in the Russian Federation), legal entities working in Ukraine, but whose beneficiary is the Russian Federation, and legal entities in Ukraine, in which the Russian Federation directly or indirectly owns a share in the capital or is the founder or beneficiary (Law 2116-IX, 2022). At the same time, there are international mechanisms for collecting reparations.

Let's consider the possibilities for collecting reparations on the example of international legal experience.

According to Chapter VII of the Charter of the United Nations, the UN Security Council has the authority to act on threats to the peace, breaches of the peace, and acts of aggression. Within such powers, a multilateral commission or mechanism may be established to manage the reparations process. At the same time, Russia's right of veto, as a permanent member of the UN Security Council, makes this mechanism practically ineffective (Unated Nations, 1945). However, the competent authority, including for consideration of the issue of compensation for damages, may be the consideration of an interstate case at the UN International Court of Justice. It is worth noting that during its existence, the International Court of Justice of the United Nations only made decisions on monetary compensation 4 times, of which only once the case concerned military actions.

Thus, in February 2022, the International Court of Justice of the United Nations issued a decision in the case of the Democratic Republic of the Congo against Uganda. Following an oral hearing in April 2021, the UN International Court of Justice issued its judgment on reparations on 9 February 2022, awarding US$225,000,000 for personal injury, US$40,000,000 for property damage, and US$60,000,000 for damage related to natural resources. The amount of compensation awarded was only 3% of the declared 11 billion dollars, in particular, Congo's demands for compensation for macroeconomic damage to the state were rejected due to failure to prove a causal link between military actions and damage to the Ugandan economy (Koshman, 2022).

No less interesting is the experience of collecting reparations from Poland from Germany. The Sejm of the Republic of Poland called on Germany to take responsibility — political, historical, legal, and financial — for all the consequences of the Second World War. The unilateral statement of the Council of Ministers of the Polish People's Republic from 1953 on the settlement of claims for losses in the war has significant legal flaws because it was adopted under pressure from the USSR and signed by a body that did not have the authority to make such decisions. In addition, the Council of Ministers of the Polish People's Republic renounced claims to the then GDR, not all of Germany (Pavlovska, 2022).

As for bringing responsibility for war crimes, the experience of using international tribunals is no less interesting (Table 1).

Use of tribunal mechanisms to prosecute war criminals	
The Nuremberg Tribunal	operated in Nuremberg from November 1945 to October 1946 against the leaders of Hitler's Germany and showed the possibility of international justice against a criminal political regime, not against a country and a people.
Tokyo Tribunal	The International Military Tribunal for the Far East (3/05/1946-12/11/1948) over Japanese war criminals, following the Nuremberg trials in the Eastern region (International organization for migration, 2008).
International tribunals under the auspices of the UN	**International Tribunal for the Former Yugoslavia (1993)** investigated crimes committed during the wars in the former Yugoslav republics in 1991-2001. Permanent judges of the tribunal were elected by the UN General Assembly, deputy judges were appointed by the UN Secretary General on the recommendation of the UN General Assembly. In addition, the tribunal for the former Yugoslavia introduced the principle of command (hierarchical) responsibility - military commanders or officials could be tried for the fact that they did not prevent crimes committed by their subordinates or did not punish them. The jurisdiction of the tribunal included: violations of the Geneva Conventions, which define the standards of treatment of civilians, prisoners, and wounded; violation of the rights and customs of warfare; crimes against humanity (murder, extermination, deportation, imprisonment, torture, rape, persecution for political, racial or religious reasons); genocide. The territorial jurisdiction of the tribunal extended to all former Yugoslav republics except Slovenia. (USAID, 2022)
	International Tribunal for Rwanda (1994) In April-July 1994, the leadership of Rwanda, represented by politicians and soldiers from the Hutu people, carried out the mass extermination of several hundred thousand people from the Tutsi tribe by the Tutsi and the opposition Hutus. Rebels from the Rwandan Patriotic Front, representing ethnic Tutsi, recaptured most of the country and the capital by July 1994, prompting a mass exodus of Hutu to the neighboring Democratic Republic of Congo. Among the fugitives were Hutus, who gave orders to exterminate Tutsis and many perpetrators of murder and rape. Rwanda's new government has asked the United Nations to create a judicial body to try people who committed crimes during the Rwandan genocide. In the resolution of the UN Security Council of November 8, 1994, it was decided to create a tribunal to punish those involved in genocide and violations of international humanitarian law. The tribunal was located in the city of Arusha, in Tanzania, neighboring Rwanda, and the appeals chamber was located in The Hague. In terms of organizational structure, this tribunal differed little from the International Tribunal for the former Yugoslavia. He was empowered to prosecute people accused of violating international humanitarian law on the territory of Rwanda and to prosecute Rwandan citizens who committed such violations on the territory of neighboring states. (Crimes committed from January 1 to December 31, 1994). The jurisdiction of the tribunal included: genocide, crimes against humanity, and violations of the provisions of the Geneva Conventions, which related to internal military conflicts. Crimes against humanity included assaults on physical and psychological well-being, hostage-taking, terrorism, rape, forced prostitution, looting, robbery, slavery, the slave trade, etc. as well as threats of such actions. During its 20 years of operation, the Rwandan tribunal has indicted 96 people. 61 of them were sentenced to various terms of imprisonment, 14 were acquitted, and 10 cases were transferred to courts of national jurisdiction. Proceedings against 8 defendants were suspended due to various circumstances. In 2016, the tribunal stopped working. (USAID, 2022)

	Special Tribunal for Lebanon (2007) Prosecutes individuals guilty of terrorism for the first time in history. It is about the murder of former Prime Minister of Lebanon Rafik Hariri and 21 other people. (USAID, 2022)

Table 1. International experience of international tribunals. Source: own elaboration based on the sources consulted.

So, as can be seen from the above, the models of international tribunals have been quite effective in prosecuting international crimes.

Separate contracts regarding reparations are worthy of attention (Table 2). Let's consider them in more detail.

Model	Essence	Implementation
Versailles Peace Treaty (1919)	reparations to civilians	declared Germany responsible for the outbreak of the war, and also obliged her, despite limited resources, to pay reparations in full, including covering all damages that were caused to the civilian population and their property during the war. Annex I to the Treaty lists the categories of damage that should have been covered by the aggressor state: 1) regarding deprivation of the right to life as a result of military actions and/or their consequences, including bombings or other attacks on land, at sea or in the air, as well as any military operations of both sides of the conflict in any place - to relatives and dependents; 2) regarding acts of cruelty, violence or inhuman treatment (including encroachment on life or health, as a result of imprisonment, deportation, internment or evacuation, abandonment at sea or forced labor) - to victims and their relatives/dependents; 3) regarding damage to health, work capacity and honor of persons and their relatives/dependents; 4) regarding the inhumane treatment of prisoners of war; 5) payment of pensions and awards to soldiers, victims of war, disabled, wounded, sick or disabled and persons supported by the victims; 6) deduction of aid to prisoners of war, their families or persons they supported; 7) assistance to families and dependents of mobilized and military personnel; 8) regarding damage caused to civilians as a result of the imposed obligation to work without fair payment; 9) in respect of any property (except military or naval fortifications and materials) that has been captured, seized, or damaged, as well as in respect of any damage caused to such property as a result of hostilities; 10) damages caused by Germany in the form of taxes, fines, and similar compulsory charges to the detriment of the civilian population.

Luxembourg Agreement between Israel and the Federal Republic of Germany (Feldman, 2019)	Compensation payments to victims of the Nazi regime.	According to the Luxembourg Agreement, the total amount of 3.45 billion German marks was to be paid over 14 years: 1/3 – for funds from the supply of German goods, the other third – through oil purchases, and the rest – in cash payments.

Table 2. Models of contractual recovery of reparations. Source: own elaboration based on the sources consulted.

Appeal to the International Criminal Court is an equally progressive mechanism for collecting reparations. In particular, after the indictment enters into force, the Trial Chamber of the International Criminal Court (1998) may decide on compensation for victims of international crimes, the guilty party. In advance, victims must submit a request for compensation using standard application forms. Review of applications is a lengthy process, and the specific amount and generally the possibility of compensation remain at the discretion of the Court.

Measures that are intended for reparation can be individual or collective (given to groups of victims) and include monetary compensation, restitution of property, and satisfaction in the form of a public apology or commemoration. The Court's reparations activities required the establishment in 2004, according to Article 79 of the Rome Statute, of an independent Trust Fund for Victims.

So, as we can see, international practice provides some possibilities for collecting compensation, which has its characteristics.

Regarding the prospects of Ukraine's recovery, scientists Michael Emerson and Steve Blokmans raised the topic of the growing scale of Russia's destruction of Ukrainian infrastructure, as well as the question of how these losses will be compensated, and at what cost the reconstruction will take place. In this situation, the confiscation of the assets of the Russian Central Bank for about 300 billion dollars, which are frozen in the EU and other G7 states, became an "extremely obvious solution", provided that it is possible to exclude from the immunity of sovereign assets in international law, which is applied in foreign jurisdictions.

The authors note that in the absence of codified international law, there are compelling arguments for expanding the legal doctrine regarding the temporary freezing and confiscation of such assets, the origin of which can be proven as sources of international criminal activity. The contribution is especially thorough. The authors of the study confirm that it is necessary to proceed without delay with executive and judicial actions to confiscate

Russian assets for 300 billion euros and use them to compensate Ukraine as compensation for the losses caused by the war (Website of the International Renaissance Foundation, 2022).

In this context, it is worth noting that losses from Russian aggression are increasing and their total amount (direct documented losses to residential and non-residential real estate, and other infrastructure of Ukraine) as of November 2022 is almost 136 billion dollars. (At replacement cost) (Kyiv School of Economics, 2022).

Currently, intending to collect reparations for the damage caused as a result of war crimes of the Russian Federation, Ukraine is developing mechanisms for collecting funds. In particular, Ukraine is improving the sale of confiscated Russian assets.

Ukraine is improving the procedure for selling confiscated Russian assets. In particular, the management of assets confiscated from the Russians and their henchmen requires significant expenditures from the state budget, and as experience shows, the state is not an effective owner. In connection with this and problems with the management of confiscated assets, the Cabinet of Ministers of Ukraine adopted Resolution No. 125 on February 10, which regulates the sale of confiscated Russian assets and property, the funds from which are one of the sources of filling the Fund for liquidation of the consequences of armed aggression of the Russian Federation.

Also, Ukraine is working to involve other countries in the development of legal mechanisms for the seizure and confiscation of sanctioned Russian assets. One such country is Japan, where the assets of 12 Russian banks and four Belarusian banks are frozen. Ukraine cooperates with Japan on the creation of a compensation mechanism for Ukraine and the confiscation of Russian assets in foreign countries, the issue of forming an international register of losses, and cooperation with international partners in this direction.

Work is underway to block Russian assets in the US. The US Department of the Treasury's Office of Foreign Assets Control (OFAC) has imposed full blocking sanctions on several countries linked to sanctions evasion that supports Russia's military-industrial complex. As a result, all assets and interests in property of said such persons that are located in the United States or owned or controlled by US persons are attached. In addition, any entity that owns, directly or indirectly, 50% or more of one or more blocked legal entities is blocked.

All transactions by these persons in or within (or transiting) the United States involving any property or interest in the property of designated or blocked persons are prohibited. OFAC noted that these actions were taken as part of the U.S. Treasury Department's commitment to the Russian

Elites, proxies, and oligarchs (REPO) Task Force, which seeks to identify, freeze, and seize the assets of sanctioned Russians throughout the world (Ukrainian Energy website, 2023).

The most important issue on the agenda is not whether Russia will pay reparations to Ukraine, but when and how. Therefore, it is important to analyze effective mechanisms for the payment of reparations and to work on developing new ways of collecting funds for compensation, caused by criminal actions of the Russian Federation.

Conclusions

As a result of the study of the international legal experience of the application of expropriation and other forms of reparations in the conditions of compensation for damage, as a result of an international armed conflict, the following conclusions were made.

1. International law provides for various possibilities for payment of compensation for damages caused by the armed aggression of another state through judicial or quasi-judicial mechanisms. Some claims for compensation for material damages can be brought in national courts and the International Criminal Court or the International Court of the United Nations, state courts of foreign countries, or in specially created funds or commissions.
2. The mechanism of obtaining compensation for damage caused to property, according to the decisions of national courts, has legal obstacles. Among them, are the limitation of the jurisdictional immunity of a foreign state in cases of damages and the availability of sufficient funds for the execution of decisions. Not only leading international lawyers, scientists, and politicians are looking for optimal ways to confiscate Russian assets.
3. Currently, there is no clear legal way to create an appropriate and effective mechanism for real compensation for the losses incurred, but it is still important to record the losses and establish a cause-and-effect relationship concerning their being caused by Russia's armed aggression.

Regarding further scientific research, we consider it necessary to analyze in detail the problematic issues of collecting reparations and ways of solving them, taking into account international experience.

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Public official as a victim of criminal insult and defamation: Comparative Research

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Abstract

The paper analyzes various issues relating to criminal liability for insulting and defaming a public official in several jurisdictions. The objective of this study was to clarify, by comparative reference to the criminal laws of various countries, whether insult and defamation constitute a crime or are perceived as non-criminal conduct. Based on the provisions of criminal legislation and international case law, as well as the case law of the European Court of Human Rights, the fine line between the fundamental principle of freedom of expression and abusive insults (defamation) has been demonstrated. It has been concluded that both public officials and private citizens can be victims of defamation and insult, which can give rise to criminal liability in some states. The specific models of such liability differ significantly. Based on our analysis of legislative and enforcement approaches in various jurisdictions, it is concluded that some countries vigorously protect both public officials and lay citizens from insult and defamation, while other states rely more on the broad principle of "freedom of expression".

Keywords: criminal liability; insult; defamation; defamation; public official; compensation for damages caused by criminal offense.

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El funcionario público como víctima de injurias y calumnias: Investigación comparativa

Resumen

El documento analiza diversas cuestiones relativas a la responsabilidad penal por insultar y difamar a un funcionario público en varias jurisdicciones. El objetivo de este estudio fue aclarar, haciendo referencia comparativa a las leyes penales de varios países, si el insulto y la difamación constituyen un delito o se perciben como conductas no delictivas. Basándose en las disposiciones de la legislación penal y la jurisprudencia internacional, así como en la jurisprudencia del Tribunal Europeo de Derechos Humanos, se ha demostrado la delicada línea que separa el principio fundamental de la libertad de expresión y los insultos abusivos (difamación). Se ha llegado a la conclusión de que tanto los funcionarios públicos como los ciudadanos particulares pueden ser víctimas de difamación e injurias, que pueden dar lugar a responsabilidad penal en algunos Estados. Los modelos específicos de dicha responsabilidad difieren significativamente. Basándonos en nuestros análisis de los enfoques legislativos y de aplicación de la ley en varias jurisdicciones, se ha llegado a la conclusión de que algunos países protegen enérgicamente, tanto a los funcionarios públicos como a los ciudadanos legos de los insultos y difamaciones, mientras que otros Estados, se basan más en el amplio principio de la «libertad de expresión».

Palabras clave: responsabilidad penal; insulto; difamación; funcionario público; indemnización por daños causados por delito penal.

Introduction

> "[…] the imposition of a prison sentence for a press offence will be compatible with journalists' freedom of expression […] only in exceptional circumstances, […] as, for example, in the case of hate speech or incitement to violence"[5]

Any true democracy is founded on the principle of holding those in power accountable for their behavior and actions in public as well in private context. Acceptable criticism with regards to public persons must be considerably higher than that regarding private individuals; elected offices must be open to scrutiny since the powers of the state rest in their hands (Gūtmane, 2018). However, that is not fully reflected in the laws of the

5 Cumpănă and Mazăre v. Romania App no 33348/96 (ECtHR, 17 December 2004), §§ 115.

majority of the EU member states. Fourteen member states have separate provisions protecting public officials and figures against reputational harm, and a dozen states have codified separate provisions against insulting the head of the state, including some symbols of state and authority, its institutions (e.g., flag, anthem, coat of arms).

Moreover, more than ten states provide for procedural advantages to public officials in cases of defamation: whereas private individuals must bring criminal cases to court on their own or must file a complaint in order to initiate a police investigation, public prosecutors can take action on their own when the offended party is a public official. This might lead to the abuse of prosecutorial discretion in public insult and defamation cases. Among the twenty-eight EU members, only Croatia, Cyprus, the Czech Republic, Finland, Ireland, Latvia, Romania and the United Kingdom do not specify for any special form of firmer protection for public officials (Out of Balance, 2015).

When the law talks about public official as a victim of crime, the emphasis should be placed on an employee of state authorities and state institutions, legally authorized within the limits of his competence to make demands, as well as to make decisions, which are mandatory for physical execution and legal entities, regardless of their departmental affiliation or subordination, encroachment on life, health, property and other rights protected by law, which cause significant damage to the image of state authorities. It can be implied that by causing harm to a specific public official, damage is also implicitly done to state authorities, even at a larger scale.

Even brief survey of national models of protecting public officials from various offenses reveals that insults and defamation constitute a significant part of such "anti-government" criminality. As will be further illustrated in this paper, almost any jurisdiction in the world has to deal with offensive behavior against public officials.

1. Methodology

The following research methods have been used extensively while working on this paper. The comparative law method, which has been the leading one, has enabled the authors to research criminal liability for insulting and defaming a public official in various jurisdictions and compare various liability models between themselves. It is worth adding that comparative method has been actively used in legal research recently (Minchenko *et al.*, 2021).

The system-structural method has been used to describe applicable criminal statutes and their structural positions in the national Criminal

Codes. Decisions of various high level courts, as the U.S. Supreme Court and the European Court of Human Rights, also helped to elaborate on the system of national criminal law with regard to protecting public officials from insults and defamation.

The observation method also made it possible to identify legislative trends throughout the world with regard to decriminalization of the offenses discussed and strengthening of the freedom of speech guarantees. The observation method has also indicated the need for further academic research in this evolving area of law.

Finally, the statistical method of collecting and summarizing legally relevant information was also used throughout the paper with the purpose of illustrating how laws against criminal insults and defamation operate in various jurisdictions.

Overall, the chosen combination of research methods has proved to be effective in the sense that it allowed to conduct an in-depth analyses while also to formulate novel conclusions and observations.

2. Discussion

The analysis of foreign literature devoted to the issue of criminal liability for insulting a public servant in connection with the performance of his official functions demonstrates a high level of activity in this area of criminal law regulation. In this research paper we will refer to the normative, doctrinal and law-enforcement experience of certain countries in this specific area of criminal law.

We will start with the international approach to the issue at hand. The U.N. Human Rights Committee's 2011 General Comment 34 recommended against punishing "statements not subject to verification," in other words, expressions of feelings and opinions. Expressions of feelings and opinions do not carry the same risk that the false allegations asserting to be factual carry.

The latter can mislead people into taking specific actions but expression of feelings and opinions are themselves neither false nor true and beyond blame for what happens afterwards. If the hearer takes any action in response, it is the legitimate result of the mental processes in the hearer, which the state has strict obligation not to intervene in under international human rights law (International Covenant on Civil and Political Rights, 2011).

A brief notice on the relevant European jurisprudence. Based on the widely recognized European legal standards, the prohibition of defamation

raises the issue of the appropriate balance to be struck between freedom of expression, as protected by Article 10 of the European Convention of Human Rights (ECHR) Article 19 of the International Covenant on Civil and Political Rights (ICCPR), on the one hand, and the right to respect for private and family life, as protected by Article 8 ECHR, on the other hand. Freedom of expression carries with it duties and responsibilities, which are of particular significance when the reputation of a named individual and the "rights of others" are at risk (Opinion of the European Commission, 2013).

Based on Article 10 (2) ECHR and well-established case law of the European Court of Human Rights, "interference by authorities into the area of freedom of speech must be "prescribed by law", correspond to a "pressing social need", be proportionate to one of the legitimate aims pursued within the meaning of Article 10 (2), and be justified by judicial decisions" that give relevant and sufficient reasoning (Sunday Times v. United Kingdom, 1979).

On the other hand, the right to protection of one's reputation comes under Article 8 ECHR as part of the right to respect private life. The European Court has stressed out that under Article 8, in addition to the primarily negative obligation of the State to abstain from arbitrary interference in the exercise of the right to private and family life, there are also positive obligations to ensure effective respect for private life, in particular the right to protection of one's reputation (Somesan and Butiuc v. Romania, 2013).

Thus, we observe a rather delicate balance between the freedom of speech and respect for one's private (family) life and reputation. Legal protection of private life, including the right to confidentiality of correspondence has been widely accepted in international and domestic law; a lot has been written on the subject (Oliinyk *et al*., 2020).

L. Gūtmane is to the point in this regard: although European states, especially those, which are part of the European Union, advocate for democracy and fundamental freedoms around the globe, they are still behind with reference to international standards on freedom of expression.

> Too often the nature of the violation does not match the proposed penalty; in short, the punishment disproportionately restricts the freedom of expression. This has a chilling effect on press, which holds a fundamental role in educating public, demanding the responsibility from public servants and contributing to public debate in general. However, this is not to say that infringement upon somebody's right to reputation and public image should not be followed by fair consequences, but it is necessary to weigh out the effect of the punishment against the legitimate aim of the law in a democratic society (Gūtmane, 2018: 17).

As one Ukrainian commentator put it, many world legislators (though not all of them) consider insult and defamation to be crimes against honor and dignity. He continues by noting that in recent decades developed

countries have demonstrated a rather restrained attitude to the application of criminal liability for defamation, since the corresponding practice of criminal prosecution is often incompatible with the freedom of expression and its guarantees. For example, in Australia, the last known case of imprisonment for defamation took place more than 50 years ago, while in Norway – in 1933.

Today the majority approach in Western Europe is that civil-law sanctions for defamation are more appropriate than criminal enforcement; the latter is no longer justified given the widely recognized and protected freedom of speech principle (Andrushko, 2020).

Criminal law of some states also contains special norms on liability for insulting the head of state, judges and other representatives of the authorities, for insulting national, racial and other groups, as well as for insulting the nation and the state as a whole. Structurally, such norms are commonly contained in chapters of the national Criminal Codes, which protect authority and dignity of the government and its officials.

According to IPI (International Press Institute) report, only two out of twenty-eight Union member states have changed their legislation to fit the situation nowadays, while other twenty-five have kept some form of defamation and insult laws as a part of their Criminal Codes. Although it may seem that criminal penalties exist only on paper and in reality, other (non-criminal) laws are applied in the relevant cases, the IPI report has found that within the last decade in at least fifteen EU countries journalists have been convicted under criminal defamation laws, where criminal fines or prison terms have been imposed) (Out of Balance, 2015).

It is worth adding that, depending on specific jurisdiction, insults and defamation may trigger not only criminal but also civil or administrative liability. Knowing both parameters and enforcement advantages of any given type of legal liability becomes very important (Pidgorodynskyi *et al.*, 2021).

A lot has been written on the subject of criminal liability for insulting or defaming a public official. Hungarian commentator Z. Toth provides the in-depth overview of the legal framework for regulation of defamation and insult in various European jurisdictions. His research covers Germany, Austria, Switzerland, Italy, France, Benelux countries, Scandinavian, Central and Eastern European countries.

This author implies that Europe has a long-standing tradition of using criminal law tools to protect human dignity and self-respect, and this tradition is still preserved in most European legal systems. Out of the 29 European countries (28 EU Member States plus Switzerland) reviewed, a total of 24 countries applies civil law damages and *solatium doloris* in combination with penal sanctions against persons who violate the dignity

or honor of other natural persons by asserting or disseminating true or false statements of fact, or by other acts of similar nature.

However, he implies, an opposite trend also seems to emerge in the last ten to fifteen years as more and more countries cease to apply criminal law to sanction such actions. Such abolition process is most apparent in the countries of Eastern and South-Eastern Europe (countries, which reject criminal sanctions include Ukraine, Bosnia-Herzegovina, Cyprus, Georgia, Estonia, Montenegro, Macedonia, Tajikistan, Armenia, Romania, and – standing for partial abolition – Moldova, Kyrgyzstan, and Serbia), while the traditional punitive approach is more common – at least at the formal legislative level – in the Central, Southern, Northern, and Western parts of Europe (Toth, 2015).

The following text will cover criminal insult and defamation laws in various world jurisdictions. The idea is to demonstrate how the balance between the freedom of speech and the right to privacy and good reputation is kept in different countries, even more so when we talk about speech 'attacks' on a public official in his or her formal capacity.

A. The United States of America

Historically in the United States, criminalizing speech is negatively perceived by the citizens because of their deep respect for the First Amendment of the Constitution (freedom of speech); Americans strongly believe in an unlimited variety of ideas as one of the best guarantees of freedom. Freedom, however, is not inherently inconsistent with the restrictions; every society necessarily outlaws behaviors which "harm" others and, in so doing, threaten the elemental fabric of social order (Brenner, 2004). Nowadays, with the ever-increasing access to various Internet resources it is worth rethinking how people use legal rules to deter harmful speech.

The drafters of the U.S. Model Penal Code concluded that personal calumny is inappropriate for penal reaction "and that this probably accounts for the paucity of prosecutions and the near desuetude of criminal libel legislation in this country." (Model Penal Code § 250.7, 1961). They therefore chose not to include a criminal libel provision in the final version of the Model Penal Code, which appeared in 1962.

Herbert Wechsler, the main figure behind the code development, argued in the Supreme Court on behalf of the New York Times in a landmark civil libel case, New York Times Co. v. Sullivan (1964). Although *Sullivan* involved civil libel, the decision also influenced criminal libel. In *Sullivan*, the Supreme Court held that the First Amendment requires that public officials, in order to recover damages in a civil libel trial, must show that a defendant acted with the element of "actual malice". It means that

defendants either knew that an alleged defamatory statement was false, or they acted with "reckless disregard" for the truth or falsity of the statement (New York Times Co. v. Sullivan, 1964).

Later, in Garrison v. Louisiana (1964), the Supreme Court ruled that truth must be an absolute defense to criminal libel. In that case the Appellant, who served as a District Attorney in Louisiana, during a dispute with certain state court judges of his parish, accused them at a press conference of laziness and inefficiency and of hampering his efforts to enforce the vice laws.

He was convicted by the state court of violating the Louisiana Criminal Defamation Statute, which, in the context of criticism of official conduct, includes punishment for true statements made with "actual malice" in the sense of ill-will, as well as false statements if made with ill-will or without reasonable belief that they were true. The state supreme court affirmed that conviction, holding that the statute did not unconstitutionally abridge appellant's rights of free expression.

However, the U.S. Supreme Court, while relying on the prior *Sullivan* ruling, has reversed the guilty verdict by holding that the Constitution limits state power to impose sanctions for criticism of the official conduct of public officials, in criminal cases as in civil cases, *only* to false statements concerning official conduct made with knowledge of their falsity or with reckless disregard of whether they were false or not (Garrison v. Louisiana, 1964).

As we see from this decision, public officials are protected by the federal Constitution's 'freedom of speech' clause in the sense that they can speak freely within their official capacity so long as they speak truth or, otherwise, are genuinely mistaken in the falsehood of the official statements made.

Finally, in Ashton v. Kentucky (1966) the Supreme Court held that Kentucky's unwritten, common-law crime of libel was too indefinite and uncertain to be prosecuted. That ruling had effectively 'killed' the common law criminal libel. The result of the three mentioned decisions is that criminal liability for libel can be imposed only if: 1) it is enacted by a specific statute; 2) does not place limits on truth as a defense (cannot require "good motives and justifiable ends" to use truth as a defense) – merely truth is enough; and 3) requires "actual malice" for conviction for statements regarding public officials (Ashton v. Kentucky, 1966).

As put but one commentator: "These rulings, and the influence of the restatement, has led several state jurisdictions to repeal their criminal libel provisions", while in other places "courts struck down these provisions, either totally or as they applied to statements regarding public officials and matters of public concern" (Robinson, 2009: 22).

According to S. Brenner, a narrowly focused defamation offense should be incorporated into the criminal law, in part because civil liability is not an effective means of controlling online defamation. This author adds: some may point out that efforts to impose criminal liability will encounter at least some of the same obstacles that impair civil liability's efficacy in this context.

The fact that a perpetrator is judgment-proof is not relevant when criminal liability is involved, but his/her ability to remain anonymous is. Another issue which can complicate enforcement – one that also arises in civil defamation suits – is the problem of jurisdiction, which becomes particularly difficult when online publication is involved (Brenner, 2007).

From the comparative perspective, it is worth adding that there have been several legislative attempts to introduce criminal liability for defamation in the national criminal law. One such draft law provided, within Article 151-1 of the Criminal Code of Ukraine, legal grounds for such liability. It defined defamation as dissemination of deliberate fabrications, which defame another person.

Aggravated liability should be imposed, according to the draft authors, for: 1) defamation in a printed or otherwise reproduced work, in an anonymous letter, as well as committed by a person previously tried for defamation; 2) defamation, combined with accusations of committing a crime against the foundations of national security of Ukraine or other grave or particularly grave crime (Draft Law of Ukraine, 2010). So far, such legislative initiatives have not been transformed into the law itself.

B. South Korea

The South Korean approach to imposing criminal liability for defamation and insult is also worth exploring in some detail.

In Korea, ordinary citizens can easily be brought to criminal liability for defamation, often in overzealous defense of reputation of public officials.

Under Art. 138 (Contempt of Court or National Assembly) of the Criminal Code of the Republic of Korea a person who, among other violations, insults a court or the National Assembly "for the purpose of disturbing or threatening the conduct of a court or the discussion of the Assembly, shall be punished by imprisonment for not more than three years or by a fine not exceeding seven million won."

Furthermore, under Art. 311 (Insult), "a person who publicly insults another shall be punished by imprisonment or imprisonment without prison labor for not more than one year or by a fine not exceeding two million won."

According to the congressional disclosure made by the Korean Supreme Court, 136 people were incarcerated over a fifty-five-month period between January 1, 2005 through July 2009 (Ho, 2009).

The harsh enforcement trend continues to this date and with greater intensity. For instance, in 2011, 3,340 people were tried for criminal defamation and forty-seven were actually incarcerated (this is a conservative estimate, since the number does not include sixty-three people who received deferred sentences). In 2010, 2,193 people were indicted for defamation, including forty-three incarcerations for defamation (Park and You, 2017).

As the U.N. Special Rapporteur of Freedom of Expression and Opinion Frank La Rue pointed out in his report on Korea, many of these criminal prosecutions are cases where private persons are subjected to criminal prosecution for defamation in defense of public officials' reputation (U.N. Human Rights Commission, 2011). There are strong speculations about the political nature of such prosecutions, backed up by facts from law enforcement realities.

According to K. Sin Park, the crime of insult is also vigorously prosecuted in Korea at alarming growth. Insult law has been used by government officials to crack down on the people who shared negative feelings and opinions against the police. In 2013 alone, out of 9,417 indictments for the crime of insult, 1,038 of them (about 11%) were for insulting police officers. These "police insult" cases have been used to suppress participants of demonstrations and assemblies concerning government policies.

This law has not been vigorously used by the Korean government for the specific purpose of action against government criticism. The reason is that insult is a crime, which requires a formal accusation to be filed with the police by the insulted person. As Park writes, "the socially established victims, who are the likely victims of the insult, have been deterred from filing such formal accusations for fear that such filing might trigger negative publicity" (Park, 2017: 15).

C. United Kingdom

In the historical perspective, the early English law recognized a distinction between seditious libel and criminal libel (untrue defamatory statement that is made in writing). Criminal statutes punishing defamatory statements date from as early as the thirteenth century in England. Criminal libel law can be traced directly to the English Star Chamber, which, during the time of King Henry VIII (1509–1547), became a forum for prosecuting critics of the monarch. Although the Star Chamber dealt primarily with prosecution of seditious libel against the state, it also increasingly applied the developing law of libel to defamatory statements made by one private individual about another (Robinson, 2009).

After 1605, when defamation involved a public official, it was considered a direct threat to the security of the state' and prosecuted as seditious libel; and when it involved a private person, 'it was considered to risk a breach of the peace' and prosecuted as criminal libel.

The crimes of defamation were abolished in the United Kingdom (in England, Wales, and Northern Ireland) by the Coroners and Justice Act 2009 – after blasphemous libel was abolished by the Criminal Justice and Immigration Act in 2008. For comparison and in contrast, the Defamation Act 2013 only amended the conditions of awarding compensation for damages under civil law.

In Ireland, the Defamation Act 2009 also abolished the penalization of common law crimes regarding defamation, as well as the practical applicability of blasphemous defamation ('publication or utterance of blasphemous matter'), while the latter remained punishable only in such a narrow field that its practical use seems to be questionable (Toth, 2015).

D. Hong Kong

In Hong Kong, the mere act of verbally insulting another person (including a public officer) is not currently a criminal offence, as long as it does not involve offenses stipulated in other ordinances (primarily at the local, municipal level), such as assault, obstructing police officers in execution of duty and provoking a breach of peace. In the most recent years, there have been increasing reports that police officers on duty were insulted by abusive language or gestures, mostly in demonstrations and protests, and especially in 2019. As a result, there have been increasing calls for new statutory provisions against insults to public officers, as seen in some other jurisdictions (Legislation against insults to public officers, 2021).

Members of the Hong Kong's Legislative Council (expert draft legislation body) have discussed this pressing subject at least seven times over the past several years. The key question to decide is whether it is prudent and timely to introduce criminal liability for insults and defamation of public officials, especially law enforcement agents. In its March 2017 response, the Government declared that it would extensively study foreign legislation against acts of insulting public officers on duty, but without a specific legislative road map for doing this.

In May 2017, three Members announced their intention to amend the Public Order Ordinance through a private Member's bill and make insults to law enforcement officers a criminal offence – but the lawmaking process have not moved anywhere since. As of April 2021, the Security Bureau indicated that it was still working on the study and was consulting the Department of Justice.

However, criminalization agenda on insults was not given a "very high priority", as the Government has recognized that it needed to be cautious and expedient in striking the much-needed balance between protection of public officers, on the one hand, and "rights of individuals including freedom of speech, freedom of expression, freedom of assembly", on the other hand (Insulting public officers Enforcing the Laws, 2017).

E. Germany

The Federal Republic of Germany, with its strong legal tradition and established criminal law system, serves as a role model for many other European jurisdictions, including liability for insult and defamation. The discussed crimes are punishable under Chapter 14 (Libel and Slander Beleidigung) of the German Criminal Code (Strafgezetzbuch or StGB).

According to Section 185 on insults, an insult shall be punished with imprisonment not exceeding one year or a fine and, if the insult is committed by means of an assault, with imprisonment not exceeding two years or a fine. And with reference to Section 186 on defamation, whosoever asserts or disseminates a fact related to another person which may defame him or negatively affect public opinion about him, shall, unless this fact can be proven to be true, be subject to punishment.

In aggravated cases, where the offense is committed publicly or through the dissemination of written materials, the punishment is imprisonment not exceeding two years or a fine. Insult may also be committed by asserting or disseminating certain facts. However, in such cases proof of truth does not exclude punishment, if the insult to the victim is triggered by the specific assertion or dissemination or the nature of circumstances under which it was made (German Criminal Code, 2021).

Furthermore, the crime of 'intentional defamation' is recognized as a serious crime under Section 187 of the Criminal Code. This crime is quite similar to insult as defined in Section 186.

The main differences include the criterion that, with regard to intentional defamation, the act defined therein must be specifically committed with an intent to defame ('knowingly' by the perpetrator; in other words, defamation under Section 186 may be committed with an oblique (indirect) intention, but direct intention is required for the crime specified in Section 187), and the fact must be untrue. Another difference is that the actual humiliation of the victim and negative public opinion about him/her is not required, and the act does not need to be capable of having such impacts, as it is enough that the committed act may simply endanger the good name of the victim.

Nowadays, there are not many legal systems where public figures and politicians are specifically given not less, but more protection than

citizens in general. The substantive criminal law of Germany is one of such exemptions, as Section 188 of the STGB defamation of persons in the political arena defines as a *sui generis* crime. This delict is present if an offense of defamation (Section 186) is committed publicly, in a meeting or through dissemination of written materials against a person involved in public political life, and if the offense may make their public activities substantially more difficult; the penalty shall be imprisonment from three months to five years.

If the act against such public figure constitutes 'intentional defamation' under Section 187, the penalty is imprisonment for between six months and five years. Apparently, defamation committed against public figures entails imprisonment under all circumstances (at least in the base case), while the perpetrators of similar acts against other persons may 'get away' with a fine up to 10,800,000 euros (Toth, 2015).

German law enforcement statistics provides some interesting numbers with regard to prosecuting discussed crimes. For example, defendants in 30,508 such cases were sentenced in 2012 (1,720 crimes were committed by minors and 26,109 crimes by men). Most of the 30,508 cases were defamation cases (Section 185 –29,594 cases); there were 450 insult cases (Section 186), 450 intentional defamation cases (Section 187), 5 cases of defamation of persons in the political arena (Section 188), and 9 cases of the violation of the memory of the dead (Section 188) (Police Crime Statistics of Germany, 2021).

F. Italy

Like many other European legal systems, Italian criminal law also distinguishes between insult and defamation offenses, but the distinction does not seem to be clear enough. According to Article 594 of the Penal Code (*Codice Penale*), the crime of insult is committed by a person who insults the honor or dignity or another person (for which they can be imprisoned for up to six months or to a fine of up to 516 euros). The law recognizes that insult can be made verbally (being present in person), via phone, telegraph, or any other written form or depiction. An aggravated type of insult is where the insult is caused by asserting a specific fact (in such cases, the punishment may be imprisonment for up to one year or a fine of up to 1,032 euros). Article 594 of the Italian Criminal Code embodies a specific sentencing principle, according to which insults caused in front of several persons are to be punished more harshly than other insulting acts (Toth, 2015).

Under Article 595 of the Criminal Code, the delict of defamation is committed by a person who harms reputation of another person before others (in communication with others) without committing offensive insult.

In general cases, the punishment is imprisonment for up to one year or a fine of up to 1,032 euros; aggravated cases (which are the same as for insult, meaning the insult is caused by asserting a specific fact) may be punished by imprisonment for up to two years or a fine of up to 2,065 euros.

Defamation can also be committed in an aggravated form: if the crime is committed in the press or by any other similar means that is publicly available, or by a public act (e.g., a concert, public rally, other open gathering), the perpetrator may be sentenced to imprisonment for a period of between six months and three years or they may be punished with a fine of at least 516 euros (Codice Penale, 1930).

Similar to German approach, Article 595 of the Italian Criminal Code provides: if the act is directed against a political body (e.g., the Parliament), a public administrative body, or a court (or any member or unit thereof), the perpetrator is punished more harshly (but still within the punishment limits described above) than a perpetrator of the 'general' crime aimed against an ordinary citizen.

These two crimes are of great practical significance in Italy. Recently, the Constitutional Court of the country had made public its position by urging lawmakers to initiate a comprehensive reform of defamation provisions and ruling that incarceration in such cases is unconstitutional and should be envisioned exclusively in criminal defamation cases of 'exceptional severity' (Italy, 2022).

In addition, reforms to the law of defamation have been elaborated by the Italian legislator for several years now. Such approach toward significant changes was caused, in part, by the 2013 opinion of the European Commission for Democracy through Law (Venice Commission) on the Legislation on Defamation of Italy (Opinion of the European Commission, 2013).

Since then, many international human rights watchdog organizations in Italy had taken a stand that Italy must fully decriminalize defamation, undertake comprehensive reform of civil defamation law and adopt other comprehensive measures against encroachments on the freedom of speech principle by the powerful political figures (Italy, 2022). As for 2023, the issue remains somewhat controversial in the society.

G. France

In France, the freedom of expression was enshrined by the proclamation of the Declaration of the Rights of Man and of the Citizen in 1789, the spirit of which can be summarized by its article 4:

> Liberty consists in the freedom to do everything which injures no one else; hence the exercise of the natural rights of each man has no limits except those

> which assure to the other members of the society the enjoyment of the same rights. These limits can only be determined by law (Guedj, 2021: 16).

The French penal code (Code pénal) does not provide for any crime against the dignity of persons. However, such offenses are defined by the Act of 29 July 1881 on the Freedom of the Press. Chapter 4 of the act specifies certain acts that are punishable under criminal law, while Section 3 defines crimes against individuals. Article 29 is the first article of this section and sets forth the prohibition of defamation and libel.

Under French law, defamation is committed by a person who asserts a fact about another (person, organization, or group) that harms the honor or goodwill of the given person or entity. Even attempting to communicate or disseminate such a fact (as a targeted act) is punishable, even if the victim is not mentioned by name specifically but can be easily identified. Although the crime is defined in the Act on the Liberty of the Press, it may be committed by publication in the press (in a broad sense) or even by verbal communication (Toth, 2015).

Defamation under French law is not punishable by imprisonment, although a significant fine may be imposed on the wrongdoer. The maximum amount of the fine depends on legal characteristics of the victims: the fine is 45,000 euros (Articles 30–31) for defaming state bodies (constitutional and government bodies, armed forces and courts, and members of such bodies, if the insult is related to the operation of the body or the official function of the person, and any other person acting under the mandate of the state).

However, the fine is 12,000 euros for private persons; the fine is 45,000 euros if the victim is a private person or a group of private persons and the offense is related to the origin, ethnic group membership or non-membership, nationality, race, religion, gender, sexual orientation, or disability of such a person or group (Article 32). For insult, the maximum amount of fine is 12,000 euros for any victim as a general rule; however, the fine goes up to 22,500 euros or imprisonment for up to six months for hate crimes.

Finally, public insult is covered by Article 33 of the 1881 Act. It is distinguished from defamation insofar as defamation supposes the allegation of a specific fact, the truth or falsehood of which may be proved without difficulty. The offense of defamation or insult is established only if the allegations or expressions causing outrage have been made public by one of the means stipulated in the 1881 Act (Press Freedom Act, 2014).

As an interesting side note: the former Article 26 of the French Freedom of the Press Act, which punished injuries to the honor and reputation of the President of the Republic of France, was repealed in 2013. However, acts against the President of the Republic remain punishable under Article 29, similarly to other constitutional bodies.

Again, based on the French approach, one can see that every country decides for itself on how to best address the issue of liability for insult and defamation against public officials, even the heads of the state. Some jurisdictions are silent on the issue, while other chose a direct or hybrid approach. There seems to be no best practice solution here – every single country chooses how to address the balance of "freedom of speech v. private life and reputation" in the best possible way.

As an illustrative example, the maximum criminal penalties for insult in several world jurisdictions are demonstrated in Figure 1.

	Country	Penalties for general insults		Penalties for insults to public officials	
		Fine	Imprisonment (months)	Fine	Imprisonment (months)
1.	South Korea	₩ 2,000,000	12	₩ 7,000,000	36
2.	France	€ 38	-	€ 30,000	24
3.	The Netherlands	€ 4,100	3	€ 5, 467	4
4.	Italy	€ 516	6	-	24
5.	Singapore	S$ 10,000	12	S$ 10,000	24
6.	Germany	not specified	24	-	36
7.	China	-	60	-	-
8.	India	not specified	24	₹ 1,000	6

Fig. 1. Maximum criminal penalties for insult offenses in some world jurisdictions. Source: Criminal Codes of the respective countries.

Conclusions

Under foreign criminal law, both public officials and private citizens can become victims of illegal defamation and insult, which may trigger criminal liability in some states. The specific models of such liability differ significantly. Based on our analyses of legislative and law enforcement approaches in the United States, Germany, South Korea, Italy, France, Hong Kong and Ukraine a broad conclusion can be drawn: some countries vigorously protect both public officials and lay citizens from insults and defamations; other nations rely more on the "freedom of speech principle"; while yet other states try to maintain a healthy balance between these two conflicting concepts.

The criminal laws for insult and defamation United States, as we have discussed earlier in this paper, have gradually evolved to the current standard: public officials are protected by the federal Constitution's 'freedom of speech' clause in the sense that they can speak freely within

their official capacity so long as they speak truth or are genuinely mistaken in the falsehood of the official statements made. At the same time, American officials are protected from deliberately false accusations and insults by means of criminal law. Thus, freedom of speech is a very broad constitutional concept in this country.

While Europe, and the United Kingdom in particular, has an established tradition of using criminal law tools to protect human dignity, nowadays the trend is not to enforce insult and defamation laws as aggressively, as was the case before. There are still such criminal prosecutions, especially in Italy, but the European community looks upon them negatively. Within the last ten to fifteen years, more and more countries have ceased to apply criminal law to sanction such actions.

Also, case-law of the European Court of Human Rights indicates that imprisonment can be replaced, via step-by-step approach, during the next several years by other forms of criminal punishment (especially fines), which do not involve restriction of liberty.

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Control simultaneo para la toma de decisiones oportunas en la gestión pública, 2022

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Resumen

El objetivo fue determinar si el control simultáneo contribuye para la toma de decisiones oportunas en la gestión pública. La metodología utilizada fue aplicada, diseño no experimental de corte longitudinal, nivel descriptiva, documental y relacional, la población de estudio fue 108,395 informes de control simultáneo obtenidos del portal CGR del periodo, 2018 hasta 2022, de las 3,396 entidades al ámbito del SNC. Se aplicó técnica de análisis documental a 25,265 informes de control simultáneo, 19,275 visitas de control y 63,855 de orientación de oficio, con análisis documental. Además, se realizó entrevistas a gestores públicos y funcionarios que laboran en SNC. En los resultados, los servicios de control realizados por la CGR y OCIs corresponden a control simultáneo el 89% en 2018, 71% en 2019, 75.2% en 2020, 67% en 2021, el 71.1% se orientó a gobiernos locales a junio 2022. Los gestores públicos corrigieron (mitigaron) en promedio < 25%; se adoptaron en parte las medidas correctivas para mitigar los riesgos advertidos. Existe relación positiva media entre control simultáneo y la toma de decisiones (coeficiente de Pearson 0.5), En las conclusiones se demuestra que hay relación positiva media entre control simultáneo y la toma de decisiones oportunas en la gestión pública.

Palabras claves: Control simultáneo; toma de decisiones; gestión pública; control concurrente; visita de control.

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Simultaneous control for timely decision-making in public management, 2022

Abstract

The objective was to determine whether simultaneous control contributes to timely decision making in public management. The methodology used was applied, non-experimental design of longitudinal cut, descriptive, documentary and relational level, the study population was 108,395 simultaneous control reports obtained from the CGR portal of the period, 2018 to 2022, of the 3,396 entities within the scope of the SNC. Documentary analysis technique was applied to 25,265 simultaneous control reports, 19,275 control visits and 63,855 ex officio guidance, with documentary analysis. In addition, interviews were conducted with public managers and officials working at SNC. In the results, the control services performed by the CGR and OCIs correspond to simultaneous control 89% in 2018, 71% in 2019, 75.2% in 2020, 67% in 2021, 71.1% was oriented to local governments as of June 2022. Public managers corrected (mitigated) on average < 25%; corrective actions were partly taken to mitigate warned risks. There is a positive average relationship between simultaneous control and decision making (Pearson's coefficient 0.5). The conclusions show that there is a positive average relationship between simultaneous control and timely decision making in public management.

Keywords: Simultaneous control; decision making; public management; concurrent control; control visit.

Introducción

Los servicios de control simultáneo es para adoptar las medidas correctivas en forma preventiva, las diversas modalidades de control simultáneo aplicados por la Contraloría General de la República (CGR) y los Órganos de Control Institucional (OCIs) y las Sociedades de Auditoría (SOAs) designadas y contratadas por CGR, en las entidades públicas permite ayudar a los gestores públicos en la toma de decisiones a efectos de prevenir el fraude y la corrupción y se formula las siguientes interrogantes: "De qué manera el control simultáneo puede convertirse en el instrumento para la toma de decisiones oportunas en la gestión pública, 2022", ¿De qué manera el control concurrente contribuyen para mejoramiento de la toma de decisiones en la gestión pública?, ¿De qué manera las visitas de control, orientación de oficio contribuyen para la toma de decisiones en la gestión pública? Suarez y Chapoñan (2021), refieren que el control concurrente como acción simultánea, orientación de oficio, visita de control, identificó los riesgos respecto del cual el titular de la entidad adopta acciones preventivas de forma inmediata.

En por ello, el estudio se orienta a determinar si el control simultáneo contribuye para la toma de decisiones oportunas en la gestión pública, a efectos de conocer si contribuye para el mejoramiento de la toma de decisiones en la gestión pública, realizados por parte del sistema nacional de control tales como, control concurrente, visita de control, y orientación de oficio, analizar y evaluar el cumplimiento de los resultados del control simultáneo en la gestión pública. Romero *et al.,* (2021), indica que el Perú es un país profundamente afectado por la violencia psicopolítica provocada por años de corrupción y fraude que le ha permitido ganar poder en todas las altas esferas públicas.

Respecto a los antecedentes, Ninaja (2019), se refiere al logro de las metas institucionales, así como a la eficiencia y eficacia en el uso de los recursos públicos, lo que sustenta la implementación de sistemas de control interno, reduciendo así los riesgos inherentes, control y detección; la conclusión final es que el control simultáneo tiene un impacto significativo en la gestión de recursos humanos en la administración regional de Tacna. Hernández y Rojas (2018), enfatizan la importancia de las inspecciones simultáneas por parte de inspectores o supervisores para promover el cumplimiento técnico del contrato y aumentar el alcance de las inspecciones sin imponer responsabilidad y/o contratar más profesionales. Villar (2021) concluyó que se debe fortalecer el nivel de control simultáneo y medidas correctivas en el municipio de Piura.

Ore y Ordoñez (2020), determinaron de los informes analizados que el 41% fueron orientación de oficio, el 31% acciones concurrentes, el 26% informes de visita de control y solo el 2% informes de visita preventivo. En el 31,5% de los auditores encuestados durante controles simultáneos, los hechos relacionados con la determinación de responsabilidad potencial fueron claros, variando de muchos y bastante. Suarez y Chapoñan (2021) mencionaron en sus hallazgos que el personal de la OCIs ha identificado riesgos por los cuales las instituciones deben tomar medidas preventivas. Y preparó información sobre el control simultáneo si presenta de manera objetiva y concreta las condiciones que amenazan el logro de las metas del programa en curso.

Los servicios de control que brinda el Sistema Nacional de Control (SNC), se realizan principalmente a través de auditorías de control posterior, y aunque son importantes, cree que el nuevo enfoque de las auditorías en el sector público son las auditorías simultáneas y tienden a proceder con cautela, un enfoque que acompaña las formas de gestión pública para evitar situaciones adversas que amenacen el logro de las metas institucionales (Vidal, 2017). El control concurrente y la administración tienen una amplia relación con el éxito de la gestión, pues la implementación de dichos mecanismos que permitan el control y/o verificación de las condiciones de la institución le permitirán mantenerse alerta y prevenir riesgos irresolubles

en forma oportuna (Gámez, 2022), en dicho contexto el control simultáneo sirve como herramienta para la prevención de actos adversos en la ejecución de actividades en la gestión del sector público.

El control previo y concurrente no busca identificar irregularidades ni responsabilidades de los funcionarios y/o trabajadores, sino busca identificar posibles riesgos o anomalías en la entidad, que tiene la posibilidad de modificar por parte de la Institución. El control debe llevarse por el principio de cordura y evitar juzgar los hechos (Rojas, 2017). Las auditorías que realiza SNC a través de diversos tipos de servicios de control gubernamental, si bien son fundamentales, sin embargo, se considera que el nuevo enfoque de auditoría pública protege a la administración estatal al sincronizar la ejecución del control, orientando sus actividades con antelación para evitar riesgos. situaciones, dificultan el logro de las metas y objetivos institucionales (Collantes, 2021).

El control concurrente incluye el examen objetivo y sistemático de los hitos o actividades de control en los procesos en curso para identificar condiciones adversas e informar oportunamente a las unidades sobre las acciones correctivas anticipadas y las acciones correctivas apropiadas, promoviendo así la eficacia, la eficiencia, la transparencia, la eficacia económica y legal. uso y distribución de los recursos y activos nacionales (Contraloría, 2022).

El ejercicio control simultáneo por el SNC no interfiere con los procesos de la administración estatal, no implica coherencia en el comportamiento de la gestión del sector público, no limita la realización de otras auditorías estatales, tampoco la paraliza o exige al SNC declarar o verificar con carácter previo la continuidad de los procesos en curso sujetos a control simultáneo (Contraloría, 2023). Es decir, se caracteriza por la prevención. El órgano rector del SNC regula los parámetros de su intervención mediante varias modalidades de control simultáneo, como control concurrente, visitas de control y la orientación de oficio.

De acuerdo con las Normas de Auditoría de la INTOSAI de la Organización Internacional de Entidades Fiscalizadoras Superiores: El control gubernamental incluye la certificación de la cuenta general nacional; seguimiento de los sistemas operativos y financieros y evaluación del cumplimiento de los requisitos legales y reglamentarios aplicables; auditoría de los sistemas de auditoría y control interno; revisión interna de la objetividad y corrección de las decisiones administrativas adoptadas e informes sobre otras cuestiones derivadas o relacionadas con la auditoría y que, a juicio de la EFS, deban hacerse públicas

De conformidad con la Ley N° 27785 (2002), Ley Orgánica del SNC y la CGR, establece que se realice las auditorias públicas a través de control previo, control simultáneo y posterior, el ente rector CGR vigila

y verifica la corrección la correcta aplicación de las políticas públicas, el uso y aprovechamiento de los recursos y bienes nacionales, a través del OCIs, SOA designados y contratados por la CGR, Las Normas Generales de Control Gubernamental emitidas por la CGR, guardando concordancia con el artículo 82° de la Constitución Política del Perú y la Ley 27785 y se basa en buenas prácticas internacionales de control y auditoría gubernamental, entre las que se destacan las Normas Internacionales de Entidades Fiscalizadoras Superiores - ISSAI y las Normas Internacionales de Auditoría - NIA. (Contraloría, 2022).

Control simultáneo

El control concurrente incluye verificaciones de puntos de referencia de control o procesos en curso de manera real, objetiva y sistemática con el fin de identificar y comunicar oportunamente, la existencia de condiciones adversas y para que la administración estatal tome las acciones preventivas y correctivas apropiadas. promoviendo así el uso y la asignación eficiente, eficaz, transparente, económica y legal de los recursos y bienes nacionales (Contraloría, 2022). El control en ningún caso supone una injerencia en el proceso de gestión y no comprueba la coherencia de las actuaciones del responsable público de la gestión.

Sus características son oportunas, rápidas, sincrónicas y preventivas. La Contraloría – CGR determina el alcance de su intervención a través del servicio de control simultáneo y determina las condiciones y procedimientos aplicables a su desarrollo de acuerdo con su autonomía funcional y criterios (Contraloría, 2023). El nuevo enfoque de auditoría proporciona un marco teórico y práctico que permite a los auditores liderar una mejor gobernanza pública, una mejor toma de decisiones, una mayor comprensión y una mayor rendición de cuentas (Argandoña, 2007). la psicopolítica es mal utilizada para incrementar y normalizar la corrupción; es decir, la gobernabilidad se ve obstaculizada por la corrupción y la participación ciudadana se obstaculiza poco o nada (Romero *et al.*, 2021).

La realización del servicio de control simultáneo corresponde a la CGR, OCIs y, en casos excepcionales, también a SOAs firmas auditoras encargadas por la CGR (Contraloría, 2023), el control concurrente se realiza como un seguimiento sistemático, interdisciplinario, que tiene como objetivo tener puntos de referencia de control ordenados, continuos e interrelacionados durante la ejecución, utilizando diferentes técnicas. Molina (2022) señaló que los respondientes indicaron que estaban muy de acuerdo con la importancia de los servicios de control simultáneo como una herramienta de alerta de riesgos que pueden afectar el desempeño de las instituciones.

Señaló que los encuestados estuvieron totalmente de acuerdo en que es importante monitorear la implementación de las recomendaciones

relacionadas con la mala gestión de riesgos. y concluye que existe una relación significativa entre los servicios de control concurrente y la gestión de riesgos adversos en la Municipalidad de Lima Metropolitana. En el sistema de control estatal, el modelo de control simultáneo es uno de los ejes centrales de la reforma y modernización del control del gobierno estatal, diseñado para apoyar la mejora de la eficiencia y calidad de la auditoría estatal y una mejor comprensión de los servicios públicos por parte de la ciudadanía (Ley 31358 que establece medidas para la expansión del control concurrente, 2021).

En cuanto a las fases de control concurrente, la Directiva núm. 002-2019-CG/NORM "Servicios de Control Simultáneo" establece que se desarrolla en tres fases, entre las se menciona las siguientes: (Contraloría, 2023):

1. *Etapa de planificación:* Tiene por objeto elaborar un plan de control concurrente a partir de la información obtenida y considerando la naturaleza del proceso en curso y comprende: el inicio, plazo y modificación del plan de control concurrente.

2. *Etapa de ejecución*: En esta fase, los procedimientos definidos en el plan se desarrollan y documentan de manera sistemática e iterativa para obtener documentación para determinar si existen condiciones adversas. El plazo de la fase de ejecución en Control de Concurrencia se calcula de forma independiente para cada hito de control, hasta un máximo de cinco (5) días hábiles por hito de control y comprende: Inicio, desarrollo de procedimientos, reporte de avance de situaciones adversas, reunión de coordinación con la gestión,

3. *Etapa de elaboración de informes*: Como producto del desarrollo del control concurrente, se preparan dos informes de hito de control y el informe del control concurrente.

En visita de control, se utilizan principalmente métodos de inspección u observación de actividades o puntos de referencia de control individual como parte de un proceso en curso en el lugar y momento de su ejecución para verificar que se lleva a cabo de conformidad con la normativa aplicable y, en su caso, identificar las condiciones adversas que afectan o pueden afectar la continuidad (Contraloría, 2023). En cuanto a las etapas de la visita de control, la Directiva N° 002-2019-CG/NORM, señala que esta se desarrolla de la siguiente forma:

1. *Etapa de planificación*: Tiene por objeto elaborar un plan de control de acceso en base a la información obtenida durante las actividades previstas, teniendo en cuenta la naturaleza del proceso en curso y comprende: Inicio, plazo, contenido, modificación del plan.

2. *Etapa de Ejecución*: Es la etapa en que los procedimientos definidos en el plan se desarrollan y documentan de forma sistemática e iterativa para obtener evidencias que permitan determinar la existencia de condiciones adversas y comprende: Inicio, desarrollo de procedimientos, reporte de situaciones adversas y reuniones de coordinación con la gestión de la entidad.
3. *Etapa de Elaboración de informe*: Como producto del desarrollo de visita de control, se elabora el informe de visita de control que contiene situaciones adversas identificadas.

La orientación de oficio, es la modalidad que realiza principalmente la revisión de documentos y el análisis de información relacionada con una o más actividades en un proceso en curso para verificar que se realicen de conformidad con las normas aplicables e identificar las condiciones desfavorables que afecten o puedan afectar la continuidad, el resultado o el logro de los objetivos del proceso. La Orientación de oficio se realiza sobre la base de información procedente u obtenida de diversas fuentes, no exige la ejecución estricta de actividades previstas o etapas previstas, ni está limitada por plazos predeterminados. Y en cuanto a las etapas de la orientación de oficio, la Directiva N° 002-2019-CG/NORM "servicio de control simultáneo", comprende: la ejecución y la elaboración del informe de orientación de oficio (Contraloría, 2023).

Del mismo modo, el Operativo de control simultáneo según Directiva N.' 002-2019-CC/NORM, es una intervención a gran escala para controlar el acceso de manera estandarizada y con un objetivo común a un conjunto predefinido de entidades o dependencias a los mismos puntos de referencia de control o actividades en un proceso en curso. Los responsables del operativo determinan las condiciones para su desarrollo, teniendo en cuenta, entre otras: la naturaleza del proceso en curso bajo control, el número de unidades implicadas y los objetivos comunes fijados a tal efecto y se desarrolla en tres fases: planificación, ejecución y elaboración del informe del operativo de control simultáneo (Contraloría, 2023).

1. Material y métodos

La investigación de tipo aplicada, enfoque cuantitativo, diseño no experimental de corte longitudinal, diseño no experimental, descriptivo, documental y relacional (Hernández et al., 2014), como población se tomó 108,395 informes de control simultaneo del periodo 2018 hasta el periodo 2022, del portal web de la (CGR)https://buscadorinformes.contraloria.gob.pe/BuscadorCGR/Informes/Avanzado.html, de 3,396 entidades sujetas a control. Se aplicó técnica de análisis documental a 25,265 informes de control simultáneo, 19,275 visitas de control y 63,855 de orientación de

oficio. Se utilizó guía de análisis documental. Se realizaron entrevistas a gestores públicos y los auditores que trabajan en SNC, los datos fueron procesados en Excel y en software estadístico SPSS V.26 (Arias y Covinos, 2021).

2. Resultados

En la Tabla 1, se observa control simultáneo ejecutado en los años 2018 a 2022. El SNC a través de sus Órganos como CGR y el OCIs realizaron 25,265 informes de control simultáneo, 19,275 informes de visita de control, y 63,855 informes de orientación de oficio, los informes de control concurrente fueron presentados a gestión de la entidad para el mejoramiento de la toma de decisiones en la gestión pública, con el propósito de prevenir las irregularidades o riesgos detectados, en forma oportuna.

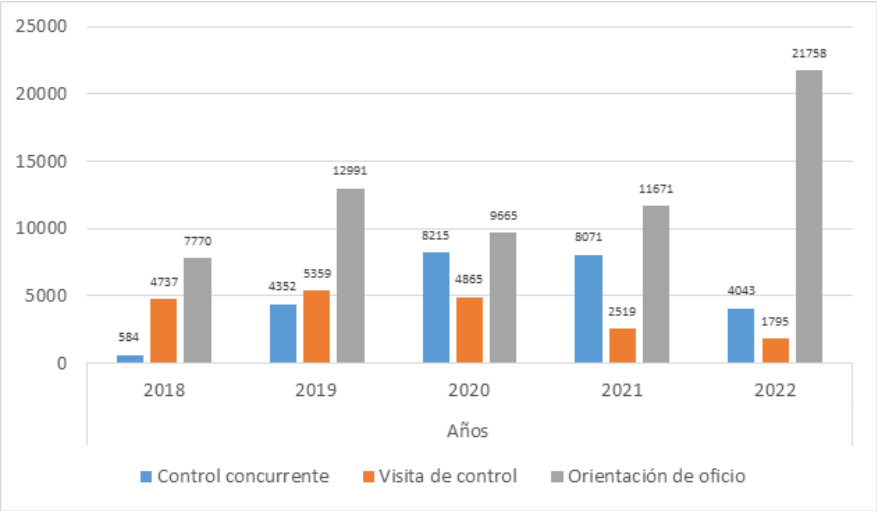
Tabla 1. Modalidades de control simultaneo – Informes

	Años					Total
	2018	2019	2020	2021	2022	
Control concurrente	584	4,352	8,215	8,071	4,043	25,265
Visita de control	4,737	5,359	4,865	2,519	1,795	19,275
Orientación de oficio	7,770	12,991	9,665	11,671	21,758	63,855
Total	13,091	22,702	22,745	22,261	27,596	108,395

Nota: Elaboración propia con información de portal de CGR (2022).

Como se observa en la Figura 1, los resultados en los informes de control simultáneo, se puede señalar la modalidad de orientación de oficio (21,758), fue desarrollado en su mayor cantidad en año 2022 y 12,991 en año 2019, 11,671 en año 2021, luego seguido de la modalidad de control concurrente con 8,215 informes en año 2020, y con 8,071 en el año 2021, es decir la CGR y el OCIs realizó el control simultáneo a modo de acompañamiento a la gestión; la cual es utilizado por parte de gestión para la toma de decisiones oportunas.

Figura 1. Modalidades de control simultaneo – Informes



Nota: Elaboración propia con información de portal de CGR (2022).

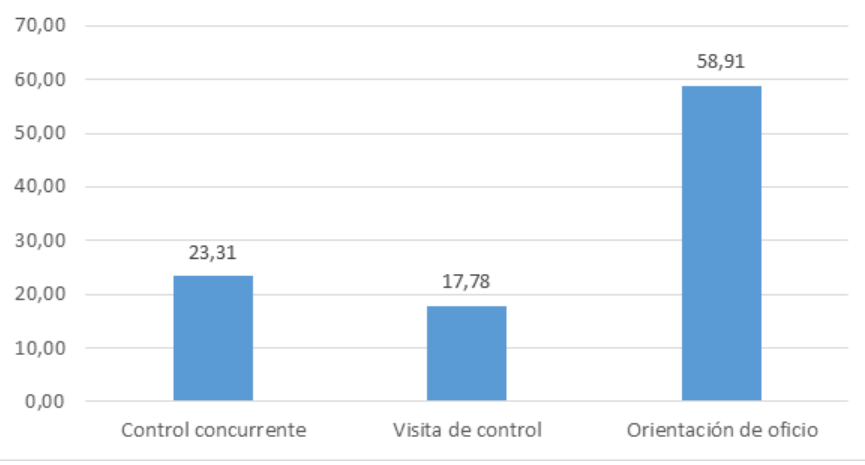
Según la Tabla 2 y Figura 2, se muestra informes de control simultáneo realizados por el SNC, sus órganos como la CGR y OCIs, en mayor cantidad con 58,91% la orientación de oficio, con 23.31%, el control concurrente, y 17,78% las visitas de control, los riesgos fueron alertados a la gestión y se adopte las acciones preventivas.

Tabla 2. Informes de control simultaneo de 2018 a 2022

	Frecuencia	Porcentaje	Porcentaje válido	Porcentaje acumulado
Control concurrente	25,265	23.31	23.31	23.31
Visita de control	19,275	17.78	17.78	41.09
Orientación de oficio	63,855	58.91	58.91	100.00
Total	108,395	100.00	100.00	

Nota: Elaboración propia con información de portal de CGR (2022).

Figura 2. Informes de control simultaneo de 2018 a 2022



Nota: Elaboración propia con información de portal de CGR (2022).

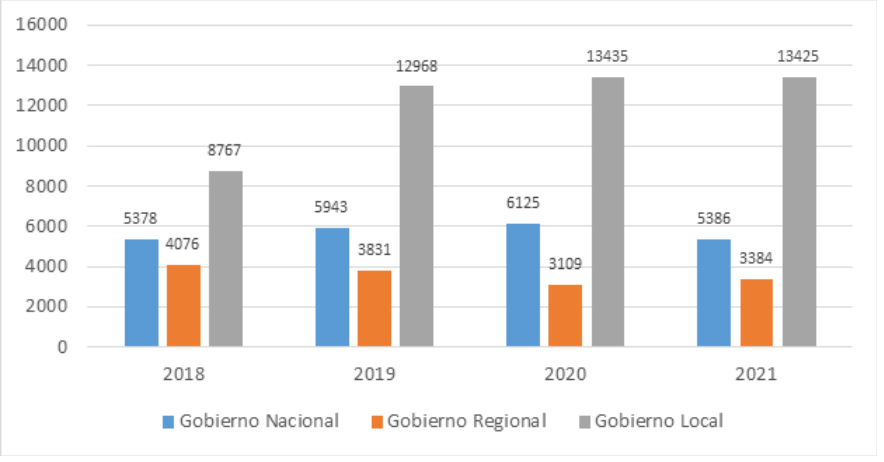
La Tabla 3 y la Figura 3, muestra resultados de control simultáneo del SNC por niveles de gobierno años 2018 a 2021, en gobiernos locales con 56.62% (48,595), en gobierno nacional con 26,60% (22,832) y en gobierno regionales 16,78% (14,400), podemos señalar los esfuerzos del SNC a través de la CGR y OCIs se orientaron principalmente a los gobiernos locales para el mejoramiento de la gestión y prevención de errores e irregularidades, seguido luego las instituciones del gobierno nacional.

Tabla 3. Control simultáneo por niveles de gobierno 2018 – 2021

	Frecuencia	Porcentaje	Porcentaje válido	Porcentaje acumulado
Gobierno Nacional	22,832	26.60	26.60	26.60
Gobierno Regional	14,400	16.78	16.78	43.38
Gobierno Local	48,595	56.62	56.62	100.00
TOTAL	85,827	100.00	100.00	

Nota: Elaboración propia con información de informes de gestión y memoria anual CGR (2022).

Figura 3. Control simultáneo por nivel de gobierno 2018 - 2021



Nota: Elaboración propia con información de memoria anual CGR (2022).

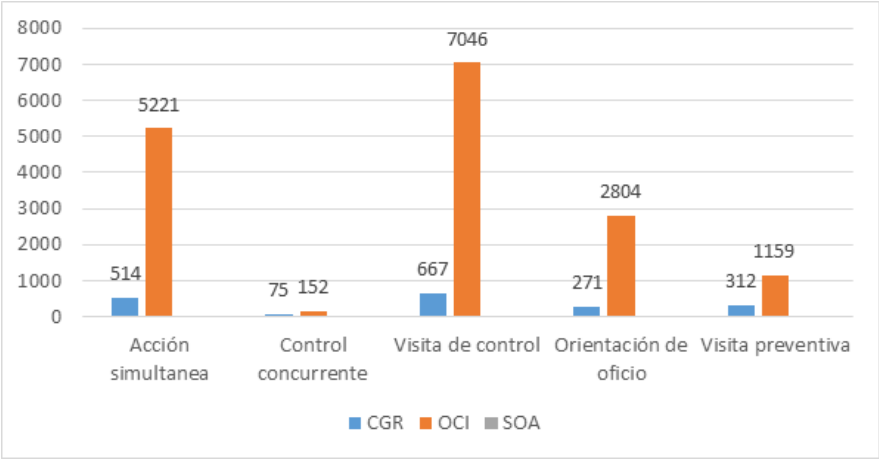
Tabla 4 y Figura 4, muestra los resultados de control simultáneo, en este caso realizados por la CGR y OCIs y las SOAs en periodo 2018, en mayor proporción fueron realizados por OCIs las visitas de control con 42.33%, acción simultánea con 31.47%, orientación de oficio con 16,88%, las diferentes modalidades de control simultáneo fueron desarrolladas por OCIs y CGR, en este caso conforme a la normatividad de CGR no participan las SOAs el control simultáneo.

Tabla 4. Modalidades de control simultáneo en año 2018

	CGR	OCI	SOA	Total	Porcentaje
Acción simultanea	514	5,221	0,00	5,735	31,47
Control concurrente	75	152	0,00	227	1,25
Visita de control	667	7,046	0,00	7,713	42,33
Orientación de oficio	271	2,804	0,00	3,075	16,88
Visita preventiva	312	1,159	0,00	1,471	8,07
TOTAL	1,839	16,382	0,00	18,221	100

Nota: Elaboración propia con información de memoria anual CGR (2022).

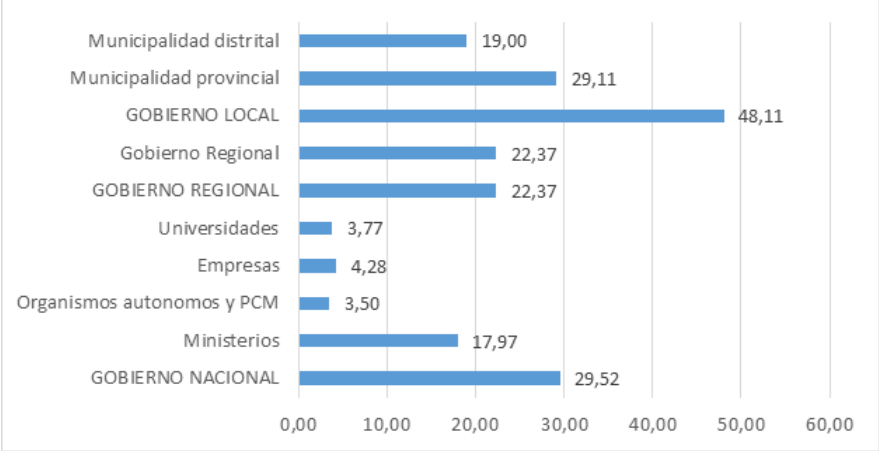
Figura 4. Modalidades de control simultaneo de 2018



Nota: Elaboración propia con información de memoria anual CGR (2022).

La Figura 5, muestra el nivel de gobierno y tipo de entidad donde los esfuerzos de control simultáneo se orientaron a las municipalidades provinciales con 29.11%, gobiernos regionales con 22,37%, municipales distritales con 19,00%, ministerios del gobierno nacional con 17.97%, las cuales fueron desarrollados por OCIs y la CGR con el objeto de alertar los riesgos

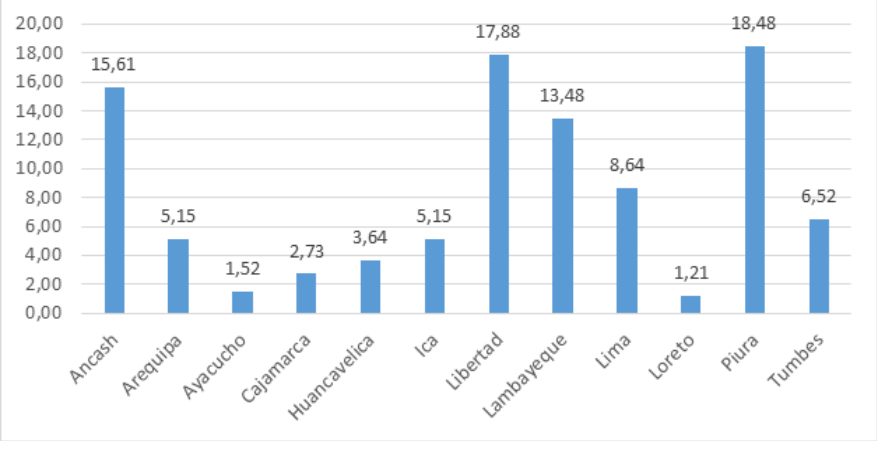
Figura 5. Control simultáneo por nivel de gobierno y tipo de entidad 2018



Nota: Elaboración propia con información de memoria anual CGR (2022).

La Figura 6, muestra las situaciones adversas o riesgos comunicados al titular de la entidad por Región, en servicios y obras, podemos observar en Piura con 18.48%, en Libertad con 17.88%, en Ancash con 15.61%, en Lambayeque con 13.48%, en Lima con 8.64%, Arequipa con 5.25% respectivamente, los informes de control simultáneo inciden en hechos que ponen en riesgo la ejecución contractual de las obras de prevención y reconstrucción contempladas en el Plan Integral de Reconstrucción con Cambios, que ha permitido la toma de decisiones en la gestión pública.

Figura 6. Situaciones adversas – en servicios y obras según Región 2018



Nota: Elaboración propia con información de memoria anual CGR (2022).

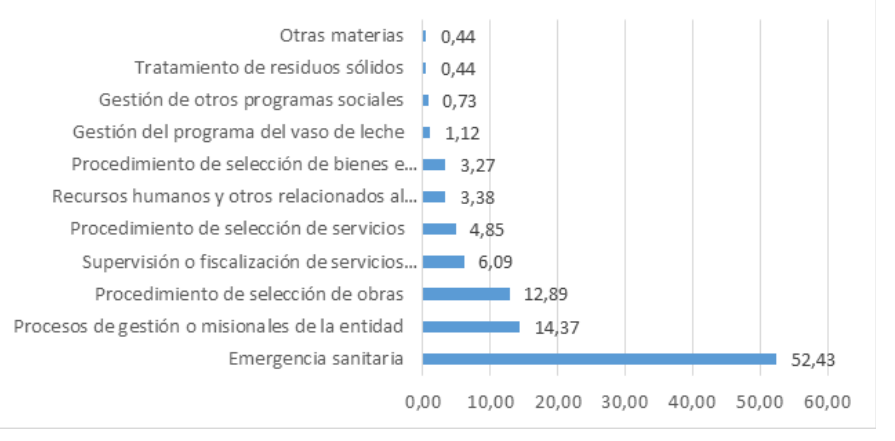
Podemos observar en Tabla 5 y Figura 7, el control simultáneo se orientó en 2020 a emergencia sanitaria de COVID con 52,43%, a procesos de gestión con 14.37%, procesos de selección de obras con 12.89%, supervisión de servicios públicos con 6.09%, procesos de selección de servicios con 4.85%, en diversas modalidades como de control concurrente, visitas de control y las orientaciones de oficio, los informes de control concurrente elevados al titular de la entidad fueron para el mejoramiento de la toma de decisiones para prevenir los riesgos adversas en forma oportuna.

Tabla 5. Materia examinada control simultáneo en año 2020

Materia examinada	Frecuencia	Porcentaje	Porcentaje válido	Porcentaje acumulado
Emergencia sanitaria COVID	11,886	52.43	52.43	52.43
Procesos de gestión o misionales de la entidad	3,257	14.37	14.37	66.80
Procedimiento de selección de obras	2,922	12.89	12.89	79.69
Supervisión o fiscalización de servicios públicos	1,380	6.09	6.09	85.78
Procedimiento de selección de servicios	1,100	4.85	4.85	90.63
Recursos humanos y otros relacionados al personal de la entidad	766	3.38	3.38	94.01
Procedimiento de selección de bienes e insumos	741	3.27	3.27	97.28
Gestión del programa del vaso de leche	253	1.12	1.12	98.39
Gestión de otros programas sociales	166	0.73	0.73	99.13
Tratamiento de residuos sólidos	99	0.44	0.44	99.56
Otras materias	99	0.44	0.44	100.00
Total	22,669	100	100	

Nota: Elaboración propia con información de portal CGR (2022).

Figura 7. Materia examinada en control simultáneo 2020



Nota: Elaboración propia con información de portal CGR (2022).

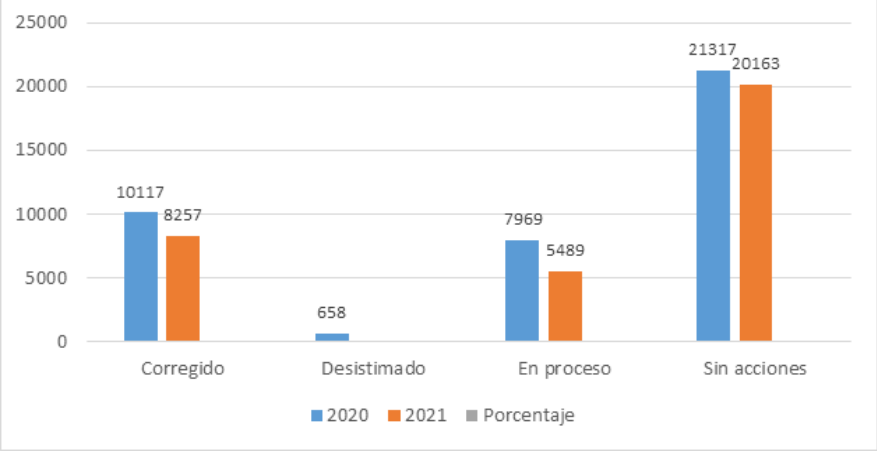
Según la Tabla 6 y Figura 8, se muestra sobre las situaciones adversas en las entidades 2020 - 2021, el control simultáneo por parte de la entidades fueron corregidas (mitigados) en un 24.84% (18,374) no se adoptaron las acciones correctivas representa 56,08% (41,480), se encuentran en proceso 18,19% (13,458), para corregir (mitigar) los riesgos identificados por la CGR y el OCIs, por tal razón las de situaciones adversas fueron subsanadas en los períodos indicados 24,84% por parte de la entidad sujeta a control, es decir el gestor público de alguna manera utiliza como herramienta para tomar medidas correctivas oportunas.

Tabla 6. Estado de situaciones adversas 2020 - 2021

	Frecuencia	Porcentaje	Porcentaje válido	Porcentaje acumulado
Corregido	18,374	24.84	24.84	24.84
Desestimados	658	0.89	0.89	25.73
En proceso	13,458	18.19	18.19	43.92
Sin acciones	41,480	56.08	56.08	100.00
Total	73,970	100	100	

Nota: Elaboración propia con información de portal CGR (2022).

Figura 8. Estado de situaciones adveras 2020 -2021



Nota: Elaboración propia con información de portal CGR (2022).

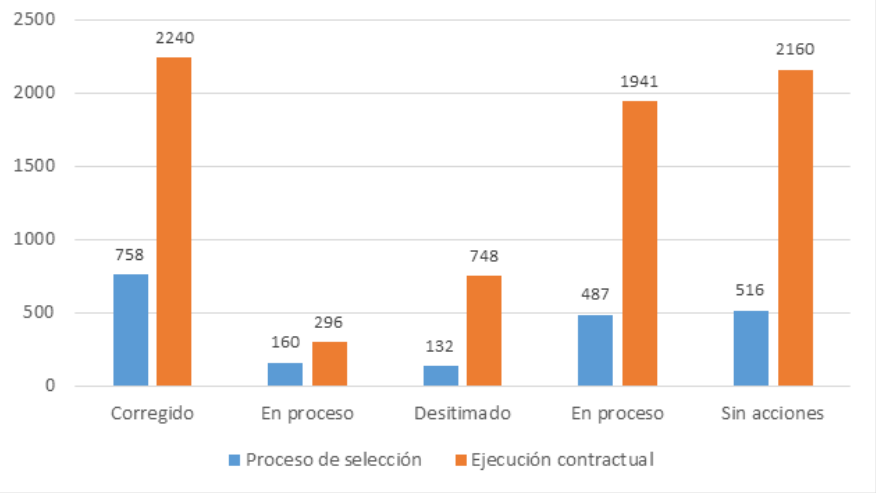
Podemos observar en la Tabla 7 y Figura 9, que el control simultáneo realizados desde el 2017 - 2021, se han identificado 9,438 situaciones adversas, en situación corregido (mitigados) representa 31.77%, en proceso 25,73%, sin acciones 28,35% respectivamente. 2,053 conciernen a procedimientos de selección y 7,385 a ejecución contractual, como se muestra en el cuadro siguiente.

Tabla 7. Situaciones adversas de control concurrente a reconstrucción de cambios RCC 2017- 2021

	Proceso de selección	Ejecución contractual	Frecuencia	Porcentaje	Porcentaje válido	Porcentaje acumulado
Corregido	758	2,240	2,998	31.77	31.77	31.77
En proceso	160	296	456	4.83	4.83	36.60
Desestimado	132	748	880	9.32	9.32	45.92
En proceso	487	1,941	2,428	25.73	25.73	71.65
Sin acciones	516	2,160	2,676	28.35	28.35	100.00
Total	2,053	7,385	9,438	100	100	

Nota: Elaboración propia con información de informe de control CGR (2022).

Figura 9. Situaciones adversas de control concurrente a reconstrucción de cambios RCC 2017- 2021



Nota: Elaboración propia con información de informe de control CGR (2022).

Como resultado el sistema nacional de control, a través de CGR y OCIs en año 2018 ejecutaron 20,363 servicios de control, el 89% corresponde a servicio de control simultáneo en las 2,429 entidades públicas y alrededor de 1,100 órganos desconcentrados. En el año 2019 realizaron el control simultáneo al 71% (2,553) de 3,621 entidades. En el año 2020 realizaron el control simultáneo al 75.2% (2,552) de 3,394 entidades.

En año 2021 se ejecutó el control simultáneo al 64% (1303) de las 3,396 entidades sujetas al ámbito del SNC, y en periodo de enero a junio 2022 se han concluido 8245 servicios de control simultáneo, enfocándose el 71.1% gobiernos locales, 19.1% en entidades de gobierno nacional como ministerios y un 9.8% en gobiernos regionales. El control concurrente de alguna manera es una herramienta de gestión para mitigar los riesgos comunicadas a la entidad estatal, para que adopte las medidas correctivas del caso amerite (Contraloría, 2022).

Tabla 10. Coeficientes de correlación de Pearson

Ítems	Coeficiente
Control simultaneo	0.5
Toma de decisiones	0.4
Control concurrente	0.3
Visita de control	0.2
Orientación de oficio	0.4

Nivel de significancia 0.00

Fuente: Elaboración propia (2022).

La Tabla 10, muestra que existe relación positiva media entre el control simultáneo y la toma de decisiones en 50%, es decir los informes de control simultáneo se aplican medianamente por la gestión pública para la toma de decisiones oportunas en 40%. En la medida que se valore, utilice y se aplique los informes de control simultáneo por parte de los gestores públicos, se podría prevenir mejor los riesgos en la gestión pública.

Contrastación de hipótesis 1; existe relación positiva débil (30%) entre el control concurrente y la toma de decisiones, es decir cuando se apliquen parcialmente los informes de control concurrente en la gestión pública, podría corregirse o mitigar parcialmente (débil) los riesgos identificados y las medidas correctivas.

Contrastación de hipótesis 2; existe relación positiva débil entre las visitas de control (20%), orientación de oficio (40%) y la toma de decisiones en la gestión pública, es decir; en la medida que se implementen adecuadamente

y se adopten las medidas correctivas oportunas sugeridas en los informes de orientación de oficio y las visitas de control, contribuirá también para el mejoramiento de la toma de decisiones en la gestión pública previniendo los riesgos advertidos.

3. Discusión

Del estudio, los resultados indican que existe relación positiva media 0.5 entre control simultáneo y la toma de decisiones. Los servicios de control realizados por la CGR y OCIs corresponden en su mayor proporción al tipo de control simultáneo el 89% en 2018, 71% en 2019, 75.2% en 2020, 67% en 2021, el 71.1% se orientó a gobiernos locales a junio 2022. los informes de control simultáneo por parte de las entidades fueron implementados parcialmente en promedio menor a 25%, y no se adoptaron en forma oportuna las acciones correctivas, y se encuentran en proceso para mitigar los riesgos advertidos.

Contraloría (2022), indica que el control concurrente permite alertar los riesgos identificados en los procesos en curso, en forma oportuna a los responsables de la gestión. (Oré, 2022), indica que el 35,60% y 30,30% de las situaciones adversas de los informes de control simultáneo como la orientación de oficio y visita de control, se han corregido en 85,71%. Y concluye que existe una relación positiva entre el control simultáneo y la implementación de acciones en entidades (Ramón, 2016), refiere que el SNC no permite la evaluación integral de la gestión, para validar el uso eficaz de los recursos públicos. Ninaja (2019), refiere que la implantación de control interno permite reducir (mitigar) riesgos inherentes, de control y de detección; y concluye que el control concurrente incide en forma significativa en la gestión.

Según **Ávila** *et al*. (2022), refiere que la toma de decisiones estratégicas ayuda a desarrollar planes de acción efectivos para comprender las necesidades de la población y desarrollar políticas nacionales que puedan superar los desafíos administrativos. Fuenzalida (2018), concluye que existe una correlación entre los índices de evaluación del informe del auditor y la implantación de las decisiones. Es decir que existe un 0, 61 % de posibilidad que el informe del auditor tenga una relación directa en la implantación de las decisiones. Villar (2021) propone fortalecer el nivel del control concurrente y medidas correctivas en una entidad municipal.

Ore y Ordoñez (2020), indica de los informes de control simultáneo analizados, el 31,5%. Los auditores consultados en los controles simultáneos, se prueban hechos relacionados con la tipificación de supuesta responsabilidad. Suarez y Chapoñan (2021) señalan que el titular de la institución debe facilitar acciones anticipadas, para el logro de las metas

institucionales. La Resolución de Contraloría Nº 115-2019-CG, el control simultáneo tiene por objeto de identificar y comunicar las situaciones adversas, en forma oportuna a la entidad (Contraloría, 2023).

El control simultáneo tiene un carácter anticipado y permiten advertir en forma oportuna a los gestores públicos sobre las irregularidades o situaciones contrarias del proceso en curso, con el objeto que se corrijan de inmediato (mitigar) las situaciones adversas. Y comprende en tres modalidades: *Control concurrente,* es el acompañamiento permanente y multidisciplinario a un proceso en curso, con el propósito de verificar si están cumpliendo la normativa aplicable. *Visita de contro*l, se realiza la verificación a una actividad del proceso en curso, para evaluar si se efectúa de acuerdo a la normatividad. *Orientación de oficio*, consiste en examen documental y verificación de información de un proceso en curso (Contraloría, 2023).

El control simultáneo aplicados por la CGR - Contraloría General de la República y OCIs - Órganos de Control Institucional, fueron el control concurrente, la orientación de oficio, y la visita de control, de igual manera la visita preventiva (Contraloría, 2022). La Resolución de Contraloría Nº 115-2019-CG, indica que consiste en verificar de forma objetiva y sistemática los hitos de control o actividades de proceso en curso (Ochoa, 2021), refiere que se requiere innovar en gestión pública, crear procesos y sistemas con las demandas y las políticas públicas, y aplicar estilos de gestión pública transformadores, en otras palabras, de lo que se trata es de innovar. En este contexto, Romero *et al.,* (2021), concluye que la gobernabilidad se ve obstaculizada por la corrupción, por lo que no involucra a los ciudadanos y la participación de la sociedad civil en las organizaciones democráticas.

Para la toma de decisiones es importante los resultados de servicios de control simultáneo con el propósito de mitigar la corrupción. Jinchuña y Fernández (2021), concluyeron en SNC no se aplica un control completo en las instituciones del Estado. Rojas (2017), supone que el control concurrente no responsabiliza a los funcionarios, sino busca riesgos o anomalías. El control debe llevarse por el principio de cordura y evitar juzgar los hechos. El nuevo enfoque de auditoría mediante ejecución de control simultáneo, es preventiva para proteger la gestión pública e impedir situaciones de riesgos que detengan el cumplimiento de metas y los objetivos institucionales (Collantes, 2021). De igual manera Belloso (2020), refiere si bien las normas legales determinan los parámetros necesarios para el control administrativo, existen evidentes falencias en las instituciones.

Conclusiones

Se demuestra que existe relación positiva media (Coeficiente de correlación de Pearson 0.5) entre control simultáneo y la toma de decisiones oportunas en la gestión pública, en la medida que se implementen las situaciones adversas y los riesgos identificados en control simultáneo podría contribuir eficazmente para la toma de decisiones en la entidad pública.

Se concluye que existe relación positiva débil (Coeficiente de correlación de Pearson 0.3) entre el control concurrente y la toma de decisiones en la gestión pública, cuando se implemente parcialmente los informes de control concurrente por parte de los gestores públicos, podría corregirse o mitigarse en parte los riesgos identificados.

Se demuestra que existe relación positiva débil entre visita de control (0.2), orientación de oficio (0.4) y la toma de decisiones en la entidad pública, cuando se implementan parcialmente y no se adopten las medidas correctivas oportunas comunicadas en la orientación de oficio y las visitas de control, contribuirá parcialmente para el mejoramiento de gestión pública.

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Estrategias de atención socioeducativa a la conflictividad multifactorial que atraviesa la escuela. Aportaciones referenciales del Anteproyecto de Ley de Convivencia Escolar Pacífica

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Resumen

Esta investigación como resultado de una revisión documental, propone una serie de estrategias de atención socioeducativa enfocadas en reducir las implicaciones de la conflictividad multifactorial por la que atraviesa la institución educativa, para lo cual, se toman las aportaciones referenciales del Anteproyecto de Ley de Convivencia Escolar Pacífica, iniciativa legislativa en la que se precisa como propósito el abordaje de los factores de riesgo que posibilitan la emergencia, permanencia y práctica sistemática del acoso escolar en sus diversas manifestaciones. Parte de los resultados obtenidos indican que, la reducción del maltrato psicológico, social, moral, emocional y físico que se dan en la escuela, requiere de esfuerzos sinérgicos entre el aparato institucional del Estado venezolano, la comunidad educativa y la familia, quienes en común acuerdo y desde el sentido de la corresponsabilidad, deben promover acciones estratégicas que fortalezcan la convivencia fundada en el respeto activo y la reciprocidad compartida. Se concluye que, garantizar el bienestar psicosocial y el desarrollo pleno de la personalidad, requiere el involucramiento de la educación para el ejercicio de la ciudadanía, como antídoto que coadyuve con la gestión de los conflictos, la aceptación de la diversidad y el respeto a los derechos fundamentales que le asisten al otro.

Palabras clave: convivencia socioeducativa; gestión de conflictos; cultura de paz; dignificación humana; estrategias de intervención preventiva.

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Strategies for socio-educational attention to the multifactorial conflict that the school is experiencing. Referential contributions of the Draft Law for Peaceful School Coexistence

Abstract

This research, as a result of a documentary review, proposes a series of strategies of socio-educational attention focused on reducing the implications of the multifactorial conflict that the educational institution is going through, for which the referential contributions of the Draft Bill of the Law of Peaceful School Coexistence are taken, a legislative initiative in which the purpose is to address the risk factors that make possible the emergence, permanence and systematic practice of school bullying in its various manifestations. Part of the results obtained indicate that the reduction of psychological, social, moral, emotional and physical mistreatment at school requires synergic efforts between the institutional apparatus of the Venezuelan State, the educational community and the family, who in common agreement and from a sense of co-responsibility, must promote strategic actions that strengthen coexistence based on active respect and shared reciprocity. It is concluded that guaranteeing psychosocial well-being and the full development of the personality requires the involvement of education for the exercise of citizenship, as an antidote that contributes to conflict management, acceptance of diversity and respect for the fundamental rights of others.

Keywords: socio-educational coexistence; conflict management; culture of peace; human dignity; preventive intervention strategies.

Introducción

El Anteproyecto de Ley de Convivencia Escolar Pacífica, como propuesta del poder legislativo frente a la inminente realidad violenta que se vivencia al interior de la institución educativa, involucra explícitamente la tarea de los diversos factores de socialización en el compromiso de abordar, prevenir y erradicar uno de los fenómenos socioeducativos con mayor impacto en el deterioro del bienestar psicosocial, del clima escolar y de los procesos de relacionamiento positivo de los que depende la convivencia en condiciones de respeto, justicia y reconocimiento recíproco. Para Delors (1996), quien reitera el compromiso de educación en el abordaje de la crisis social, su rol debe apuntalar: "El desarrollo de vínculos de pertenencia que garanticen la conciliación, el ejercicio del contrato social, las libertades individuales y una organización común de la sociedad" (1996: 58).

Según propone Sarramona (2007), la institución educativa enfrenta en la actualidad diversos desafíos que van desde el establecimiento normas que respondan adecuadamente al orden y la disciplina, hasta la construcción de un ambiente positivo que le provea a los estudiantes las condiciones de seguridad, crecimiento integral y desarrollo psicosocial; de allí, que el compromiso de la escuela como factor de socialización del ser humano, gire en torno a la formación para el ejercicio de la ciudadanía, lo cual implica, ayudarles a enfrentar la conflictividad mediante experiencias significativas en las que se logre: "Enseñar destrezas sociales con las que le sea posible mantener una mejor relación con sus compañeros; logrando de este modo, afrontar con éxito las situaciones de conflicto que se encuentran en el aula" (Sarramona, 2007: 9).

Una revisión del artículo 1 del Anteproyecto de Ley de Convivencia Escolar Pacífica, deja ver los referentes que guían el objeto de esta iniciativa legislativa, entre los que se precisan dos dimensiones importantes, a decir: por un lado, la protección al estudiante de cualquier modalidad de acoso y, por el otro, el despliegue de acciones entorno a la prevención; ambos procesos se entienden entonces, desde el sentido de corresponsabilidad del Estado, la comunidad educativa y la familia en lo referente al resguardo de la integridad psicosocial personal como requerimiento sobre el que se sustenta el desarrollo pleno de la personalidad.

Para Nardone, Giannotti y Rocchi (2005), la formación de sujetos funcionales socialmente, requiere de la puesta en marcha de modelos positivos de interacción familiar, en el que los hijos aprendan a gestionar sus problemas a través de mecanismos pacíficos que eviten la perturbación del equilibrio y sí, en cambio, potencie la asunción de responsabilidades sobre la resolución de las crisis mediante el despliegue de actitudes tolerantes cuyo sentido de apertura posibilite el diálogo, y no la incomprensión y los enfrentamientos. Esto como parte de la formación para el ejercicio pleno de la ciudadanía, constituye una tarea desafiante que insta a los factores de socialización a avocarse en el compromiso de reforzar el desarrollo pleno del ser humano, mediante la praxis de principios rectores de la "libertad y la igualdad entre los hombres, mediante el trato justo, solidario y el respeto activo tanto a su persona como a terceros, lo cual demanda el trabajo por la paz social y el bien común" (Cortina, 2009: 193).

En correspondencia Maalouf (1999), propone que dadas las condiciones hostiles y violentas por la que atraviesa la humanidad y, que atentan contra la búsqueda del equilibrio sustentado en la justicia social, la misión del Estado en acuerdo con la institución educativa debe ser el cumplimiento de objetivos estratégicos como "el tejer lazos de unión, disipar los malentendidos, hacer entrar en razón unos, moderar a otros, allanar y reconciliar; pues su vocación es de ser enlaces, puentes, mediadores entre diversas comunidades y diversas culturas" (1999: 6). En razón de estos

cometidos, esta investigación como resultado de una revisión documental, propone una serie de estrategias de atención socioeducativa a partir del Anteproyecto de Ley de Convivencia Escolar Pacífica, en un intento por reducir las implicaciones psicosociales de la conflictividad por el acoso que se da al interior de las instituciones.

1. Estrategias de atención socioeducativa. Aportaciones referenciales del Anteproyecto de Ley de Convivencia Escolar Pacífica

Convivir en condiciones armónicas y desde la reciprocidad, como valor universalmente reconocido, ha conseguido un sitial importante dentro de los programas educativos en todos los niveles; por esta razón, las agendas globales y los programas de educación plantean como eje transversal la promoción de la tolerancia a la diversidad sociocultural y, la búsqueda del bien común, la justicia y la paz, como principios rectores de los que depende la vida en comunidad (Morales, 2022). Al respecto, el Anteproyecto de Ley de Convivencia Escolar Pacífica, como una iniciativa para el abordaje de las múltiples formas como se manifiesta el acoso escolar, entraña dentro de sus cometidos, el trato igualitario que dignifique al ser humano mediante acciones de inclusión y resguardo de la integridad individual, como aspectos sobre los que cimienta el desarrollo psicosocial pleno de la personalidad.

Una revisión de la exposición de motivos de esta iniciativa legislativa deja ver, como parte del proceso estratégico relacionado con el abordaje del acoso escolar, la integración sinérgica de esfuerzos provenientes de la familia, la institución educativa, el Estado a través de los órganos competentes en la materia y la sociedad en general. En Olweus (2020), se logran identificar algunas actuaciones que involucran la participación conjunta de los factores de socialización y, en los que se percibe la definición de acuerdos de crianza y educación, entre los que se precisa: el refuerzo de la cordialidad, el interés positivo en la protección del otro, el establecimiento de límites y la tipificación de los comportamientos inaceptables, la definición de reglas de conducta y de modelos coherentes relacionamiento, así como las sanciones no punitivas pero si disciplinares por comportamientos impropios contra terceros. En razón de lo propuesto, se mencionan las siguientes estrategias:

1. Accionar desde la intervención preventiva en el abordaje de la discriminación, la exclusión y la intolerancia. Según propone Maalouf (1999), la actuación preventiva de los órganos del Estado y de la escuela, requiere de esfuerzos reivindicativos de la identidad, en el que se reconozca a los marginados histórica y socialmente, hasta lograr la reducción de los efectos de la hostilidad, la persecución sistemática fundada en la desconfianza y la incomprensión, como factores de riesgo a los que se le

atribuye la mayor parte de los obstáculos que impiden la convivencia a plenitud. Por consiguiente, lograr el reconocimiento de la diversidad requiere de actividades de acompañamiento educativo que "reivindiquen plenamente a los excluidos, pero además, que amplíen las mentalidades que le permitan a los sujetos asumir la armonía proveniente de la comprensión y pertenencia a una identidad compuesta, que remite a lazos del pasado" (Maalouf, 1999: 5).

Al respecto Delors (1996), propone que el rol de la educación en la formación para el ejercicio de la ciudadanía, constituye el antídoto estratégico para sustituir patrones violentos por estilos de vida dignificantes, en los que se privilegie el resguardo de la integridad de humana mediante la ampliación de "la libertad, la paz, el pluralismo auténtico y la justicia social, como valores sobre los cuales establecer los cimientos de una sociedad democrática que reivindique los derechos humanos" (1996: 58). Esto supone, luchar contra la exclusión y la discriminación, mediante la generación de espacios para la reflexión, que conduzcan al sujeto a la revisión de las raíces culturales e identitarias sobre las que sea posible establecer puentes de encuentro que sumen a la convivencia como ideal social.

2. Potenciar la autoestima constituye un compromiso de la institución educativa, para lo cual, se considera imprescindible ayudar al sujeto en la tarea de auto-valorarse positivamente, descubrir su valía y el potencial que entraña, con la finalidad de instarle a actuar con libertad, autonomía y sentido de apertura frente a la realidad. Se trata entonces, de consolidar la confianza en sí mismo y la autoafirmación, a los que se entienden como procesos que, además de favorecer el relacionamiento con terceros, potencian el crecimiento personal que le permite al sujeto definir límites, confrontar potenciales situaciones de riesgo y gestionar con éxito sus propias necesidades. Esto significa apuntalar la estabilidad psíquica y el equilibrio emocional que reduzcan el complejo de inferioridad, al que el victimario pudiera apelar para desplegar su destructividad (Brandoni, 2017).

En consecuencia, generar acciones en dirección a potenciar la autoestima y el autoconcepto, requiere el acompañamiento psicológico que ayude al sujeto en el proceso de reemplazar la sensación de inferioridad por el sentimiento de valía, que le conduzca a reconocer su potencial, su autenticidad y, más importante aún a aprender a aceptarse, a trabajar sobre las debilidades y, en específico sobre los rasgos de la personalidad que aporten a su actuar social mayor seguridad (Monbourquette, 2004); desde la psicología humanista, lograr el nivel apropiado de bienestar psicológico demanda de la consolidación de apreciaciones positivas sobre sí mismo, como sustento tanto de la realización como del crecimiento personal que fortalezca procesos importantes como la maximización del rendimiento, la creatividad y las posibilidades de desempeño (Cloninger, 2003; Rogers,

2015). Es a partir de este estado de equilibrio, que el sujeto puede expresar emociones en libertad, con responsabilidad y confianza, logrando de esta manera reducir el poder destructivo del victimario contra su dignidad.

3. Fomentar la participación activa de la familia en la concreción de planes, programas y proyectos asociados con la consolidación de la convivencia educativa. Proceder en dirección al abordaje estratégico e integral del acoso escolar dado entre grupos de pares, requiere la formulación de normas claras, adecuadas y fundadas en la atención a los requerimientos psicosociales tanto de la víctima como del victimario; según Sarramona (2007), esto demanda el: "Trabajo cooperativo de los docentes y su talante dialogador y democrático que, como factores positivos apunten a la creación de un ambiente que no fomente conductas agresivas y sí, en cambio, coadyuve con el diagnóstico y tratamiento de los conflictos" (2007: 95).

4. Impulsar la enseñanza de las prohibiciones legales establecidas en la normativa nacional e internacional. Lograr la consolidación de la institución educativa como un espacio seguro, demanda erradicar el temor, el miedo y el asedio sistemático, como factores de riesgo frente a los cuales se requieren acciones contundentes que amplíen la activación de dispositivos jurídicos en torno a la erradicación del maltrato en sus diversas manifestaciones; en tal sentido, enseñar a los miembros de la institución educativa los derechos que le asisten como ciudadano, instan la responsabilidad de las autoridades, de los docentes y el personal administrativo no solo a intervenir, sino a denunciar situaciones que pudieran atentar contra el bienestar psicosocial de los más vulnerables (Olweus, 2020).

Desde la perspectiva de Cortina (2009), el rol del Estado como garante del resguardo de la integridad personal, debe partir de respeto a la condición humana y a su dignificación, como requerimientos que, además de exigirse deben: "Garantizar la igualdad ante la ley y la igualdad de oportunidades, propone la protección a los derechos y garantías inherentes a la idea de ciudadanía social, por entrañar exigencias morales, cuya satisfacción es indispensable para el desarrollo de una persona" (2009: 200).

Esto plantea revitalizar la defensa de los derechos humanos, como el medio para fortalecer los procesos de relacionamiento que se dan al interior de la institución educativa y, frente a los cuales el Anteproyecto de Ley de Convivencia Escolar Pacífica, es reiterativo al considerar que la lucha contra la discriminación, el acoso y la exclusión, debe partir de la promoción de competencias sociales que ayuden a estrechar lazos entre grupos, mediante la praxis de la ciudadanía socialmente activa que reconozca el enraizamiento de valores preciados como la reciprocidad en lo referente al trato paritario que dignifique a las personas.

Lograr el afrontamiento positivo de estos factores responsables de la destructividad social, la tarea del Estado como agente socializador debe involucrar el despliegue de acciones fundadas en la educación en y para la defensa de los derechos humanos que le asisten a todo ciudadano y, que requieren ser preservados como mecanismos a partir de los cuales "luchar contra los grandes azotes de la humanidad, responsables de la vulneración y degradación de la integridad psicosocial y, frente a los cuales es perentoria la actuación institucional que conduzca a reconsiderar nuestras actitudes, nuestros hábitos" (Maalouf, 1999: 21).

4. Integrar en los planes de formación curricular, el trabajo experiencial enfocado en el aprendizaje de valores y principios rectores de la convivencia socioeducativa. El trabajo en torno a la construcción de espacios para la convivencia y el ejercicio pleno tanto de la libertad responsable como de la autonomía, debe partir de la transversalización de acciones que, inmersas en contenidos curriculares, actitudinales y procedimentales se conviertan en dimensiones para trabajar el hacer, el ser y el convivir, como desafíos a los que gran parte de las agendas internacionales en lo que a ciudadanía se refiere pretenden apuntalar para reducir los índices de violencia escolar. Para Sarramona, esto implica actuar en función de persuadir al sujeto hasta lograr que racionalice lo pernicioso de su proceder; lo cual constituye una invitación al desarrollo de las siguientes acciones: "Acompañar con actuaciones específicas de diálogo, aceptación de compromisos, ayudas personales, búsqueda de actividades gratificadoras que no le aboquen irremisiblemente al fracaso" (Sarramona, 2007: 96).

Consolidar estos cometidos demanda esfuerzos formativos enfocados en la familia, en los que se ofrezcan métodos de crianza aceptables y permitidos, que eviten las medidas represivas y castigadoras, por mecanismos de relacionamiento positivo y de escucha activa, en el que padres e hijos amplíen la confianza y la comunicación, así como la manifestación de inquietudes e intereses; para Bowlby (2014), se trata de fortalecer los patrones de interacción familiar que ayuden en el crecimiento evolutivo sano y el reforzamiento positivo que le otorguen al sujeto en formación la seguridad emocional que, fundados en: "Patrones de apego redimensionen la construcción de los modelos internos que guiarán las percepciones individuales, emocionales y pensamientos del niño" (2014: 7). En otras palabras, estrechar los lazos de comunicación entre padres e hijos, además de reducir la inseguridad, ampliará los canales de interacción que le aporte a los padres las evidencias para accionar frente a los potenciales efectos destructivos del acoso escolar.

En tal sentido, potenciar el estilo de crianza con límites y responsabilidades, aporta la estabilidad emocional y el desarrollo coherente de la personalidad, que le permita al sujeto actuar en contextos conflictivos con respeto, reconociendo al otro desde la igualdad y aceptando el sentido

paritario de quien integra su entorno. Para Bowlby (2014), la construcción de hogares estables afectiva y socioemocionalmente, requiere el trabajo en función de los siguientes factores de riesgo: "La dominación social, las estructuras jerárquicas de poder, las coaliciones nocivas, la sumisión y la humillación que conducen a la dependencia, así como a la indefensión crónica" (2014: 9).

Para Nardone y otros (2005), la edificación de familias comprometidas con la crianza respetuosa requiere definir roles claros: "En el sentido de devolver al hijo la responsabilidad de sus acciones, lo cual representa el fundamento de la interacción funcional entre padres e hijos" (2005: 43). Accionar desde esta perspectiva, constituye un modo de respetar el mundo del otro y su condición humana, con el propósito de disuadir actuaciones extremas de violencia y maltrato, que al ser reproducidas en otros contextos vulneren la integridad psicosocial ocasionando daños en ocasiones irreversibles.

5. Articular esfuerzos entre los órganos del Estado y la Escuela en lo relacionado al abordaje preventivo, ofreciendo a los estudiantes las herramientas que eviten la exposición de su integridad psicosocial y física; esto sugiere actuar desde el punto de vista institucional en al menos dos direcciones estratégicas: por un lado, trabajar para sensibilizar sobre el uso consciente y el manejo responsable de las redes sociales, instando a la comunidad educativa a convertirse en veedores responsables de situaciones que pudieran vulnerar la dignidad de sus miembros.

Para ello, parte de los mecanismos de abordaje preventivo deben involucrar el uso de los medios de comunicación como instrumentos al servicio de la sensibilización permanente y continua, a través de los cuales lograr mayor radio de acción informativa en temas como: estilos de crianza saludables, bienestar psicosocial, relaciones de ayuda, superación de las crisis derivadas del maltrato en sus diversas manifestaciones (Corkille, 2010), mecanismos jurídicos e institucionales que pueden activarse en función de garantizar el resguardo de las víctimas; pero además, los efectos de la violencia directa, estructural, cultural, juvenil, domestica, escolar, cotidiana, ente otras (Puglisi, 2012). Esto significa, precisar comportamientos y conductas que atentan contra la dignidad humana, dejando ver sus efectos y las consecuencias tanto visibles como destructivas, que una vez detectadas pueden ser combatidas.

6. Promover encuentros socializadores de experiencias, en las que la red institucional no solo diseñe procesos de intervención y prevención, sino que definan el establecimiento de acciones conjuntas producto del compartir de situaciones que pudieran enriquecer las posibilidades de abordaje integral transformador. Al respecto Cortina (2009), propone que la actuación sensibilizadora de la comunidad socioeducativa debe ser el resultado del involucramiento activo y sinérgico de los órganos del Estado

venezolano en torno a la promoción del ejercicio pleno de la libertad en al menos tres dimensiones fundamentales; en primer lugar, la libertad para participar de la vida educativa y social sin ningún tipo de coacción, de amenaza o maltrato de terceros; en segundo lugar, la libertad como valor unido al proceder independiente, en cuya praxis el ser humano alcance el nivel de conciencia necesario para expresar su voluntad y profesar tanto sus creencias como los modos como concibe el mundo; y, finalmente, la libertad como sinónimo de autonomía, a la que se asume como el punto de partida para el desenvolvimiento coherente de la personalidad, lo que implica a su vez, la disposición plena para tomar decisiones, escoger alternativas y proceder de manera responsable.

7. La construcción de equipos de apoyo multidisciplinario, a través de los cuales articular esfuerzos estratégicos que redunden no solo la erradicación de las situaciones de acoso, sino en la creación de condiciones positivas en las que cada estudiante se perciba seguro dentro del escenario educativo. Desde la perspectiva de Olweus (2020), el trabajo inter y multidisciplinario debe favorecer la integración de la planta profesoral en torno a objetivos precisos y alcanzables, que respondan con efectividad a los requerimientos de los estudiantes; para el autor, la conjugación de esfuerzos disciplinares no solo debe entenderse como la aportación de metodologías, herramientas de intervención preventiva y la aplicabilidad de protocolos con enfoque holístico-integral, sino además, la definición de procesos de implementación, supervisión y monitoreo de acciones, en un intento por determinar los avances y su efectividad.

Por consiguiente, el proceder científico conjugado con el trabajo grupal constituye una estrategia en favor de ampliar la comprensión de las actividades emprendidas, del comportamiento de los componentes del programa y de las evidencias que, como demostraciones concretas dejan ver posibles líneas de acción, aspectos por reforzar y soluciones prácticas sobre las cuales afianzar los procesos de intervención preventiva; en los cuales se integren diversas posiciones epistémicas que transformadas en estrategias aporten a la formulación de prácticas efectivas que apuntalen la consolidación de la escuela como un lugar seguro.

Este proceder multidisciplinario involucra también, el tratamiento efectivo de los estresores que ocasionan estados de inestabilidad socioemocional producto de la exposición prolongada a abusos sistemáticos, los cuales se exteriorizan en espacios sociales y educativos a través conflictos recurrentes en los que subyace la inadaptación del sujeto a las pautas de comportamiento social.

8. La atención integral tanto a la víctima como al victimario. Según Puglisi (2012) y Morales (2023), el trabajo con los sujetos que conforman el espiral de la violencia, requiere procesos de intervención y prevención asociados con el desarrollo de competencias sociales, emocionales y afectivas

que reduzcan la victimización, al que se entiende como un propósito enfáticamente defendido por el Anteproyecto de Ley de Convivencia Escolar Pacífica.

Algunas de los factores de riesgo que requieren especial atención responden a las secuelas psicológicas que alteran significativamente la salud mental, entre los que se precisan la reducción del estrés producto del asedio, la frustración y la depresión, el manejo de sentimientos y emociones como: el temor, la indefensión aprendida o condicionada, el miedo y la tristeza, la culpa y la sensación de autopercepción negativa.

En consecuencia, la búsqueda del equilibrio psico-socio-emocional y el funcionamiento de la víctima y el victimario dentro del contexto socioeducativo, requiere la revisión de las fuentes directas de la violencia que se reproduce en la institución educativa y, en función de esta indagación, precisar estrategias de acompañamiento individualizado y grupal que reduzcan los episodios de acoso que ocasionan disrupción en el aula, maltrato y hostigamiento entre pares, problemas de disciplina y conflictividad, discriminación y agresión física (Camps, 2000).

9. Potenciar los procesos de indagación que le permitan a la comunidad educativa y al Estado profundizar en los estilos de vida, en los modos de relacionamiento y en las prácticas socioculturales sobre las que se sustenta la reproducción del maltrato psicológico, emocional y físico. Emprender acciones de investigación en torno a la detección de los factores de riesgo responsables del acoso escolar, debe entenderse como la oportunidad para elaborar diagnósticos que precisen actores responsables, posibles protocolos de actuación y ajustes institucionales en lo referente a mecanismos normativos, así como propuestas y recomendaciones que redunden en la construcción de un clima seguro, armónico y mediado por la paz.

Un acercamiento a los planteamientos de Olweus (2020), deja por sentada la necesidad de fusionar esfuerzos mediados por la investigación socioeducativa y familiar, con la finalidad de identificar los factores que ocasionan la reproducción del acoso en el contexto escolar; lo que demanda la participación sinérgica que favorezca la recogida, análisis y estructuración de acciones en torno a nuevas medidas de intervención estratégica.

Esto debe asumirse a su vez, como una alternativa de transformación de la que depende el compromiso razonable y la elevación del nivel de consciencia de los factores de socialización, en la compleja tarea de adoptar medidas de intervención preventiva que modifiquen hábitos y prácticas destructivas por modos de relacionamiento anti-acoso, que redimensionen la confianza, el trabajo sistemático y comprometido con la convivencia en condiciones de respeto.

10. Promover la cultura de paz, la gestión pacífica de conflictos y los procesos de acuerdo fundados en el diálogo respetuoso, simétrico y

empático. El compromiso con respecto a la construcción y establecimiento de la paz positiva demanda esfuerzos formativos destinados no solo a la comunidad educativa, sino a la sociedad en general. De allí, que los docentes, estudiantes, padres-representantes y personal administrativo se involucren en procesos educativos en los que se potencien las relaciones interpersonales, el uso de la comunicación asertiva y el reconocimiento al pluralismo, así como la convivencia democrática y paritaria en lo que respecta a derechos y obligaciones.

Se trata entonces de tomar conciencia sobre el uso de mecanismos alternativos que pudieran conducirlos a los sujetos en conflicto a soluciones pacíficas, que movilicen los ánimos de la solidaridad y reduzcan el: "Sentimiento de miedo o de inseguridad que, por ser opuesto a la racionalidad, ocasionan que los sujetos se autoperciban excluidos de la comunidad humana, lo que deviene en la creación de un ambiente amenazante que amplía la resignación" (Maalouf, 1999: 18). En tal sentido, la cultura de paz pretende motivar la reflexión sobre los conflictos que nos han sido heredados del pasado y, que por ser responsables de las más cruentas tragedias, requieren el cuestionamiento que amplíe la visión del mundo, como resultado de la identificación de aspectos destructivos de la convivencia saludable, entre los que se precisan: sufrimientos históricos, lamentos y persecuciones así como injusticias.

Lo dicho implica, abordar los elementos que nos han distanciado y a los que se les adjudica la descomposición de la relaciones entre la humanidad, a decir: la arrogancia, el racismo y la xenofobia que, aunado a vulnerar los derechos del otro nos han hecho coparticipes de injusticias contagiosas y de conflictos sangrientos.

Frente a este degradante panorama, educar para la paz supone la búsqueda de puntos de encuentro fundados en la resignificación de las ideas y creencias, en un intento por consolidar personalidades con sentido de corresponsabilidad y dispuestas a adoptar como parte de sus estilos de vida, la convivencia en torno a intereses comunes para todos los seres humanos, de valores como la aceptación desde la reciprocidad y el intercambio cultural enriquecedor, a los cuales entender como factores de protección de los que dependen el resguardo del mayor patrimonio de la humanidad, la convivencia digna.

11. Fomentar la actuación ciudadana fundada en la comprensión empática y el reconocimiento recíproco. Proceder en esta dirección plantea como desafío, trabajar en función de la aceptación de la diversidad que acompaña al otro, de sus formas de vida y las percepciones propias sobre el mundo. Para Delors (1996), la sociedad del futuro demanda la construcción de lazos positivos entre sujetos, en quienes se hace perentoria la necesidad de reforzar la cohesión en torno a vínculos referenciales que fundados en: "El sentimiento de pertenencia y solidaridad, ayuden en el desarrollo del

ser humano en su dimensión social, propiciando el respeto a la diversidad de los individuos y de los grupos humanos mediante la práctica de reglas comunes" (1996: 55).

Educar para el ejercicio pleno de la ciudadanía, debe asumirse como una estrategia asociada con el enseñar y aprender a vivir juntos, pero además, a convertirnos en sujetos activos, conscientes y corresponsables de la edificación de las condiciones necesarias para vivir en armonía; según propone Cortina (2009), la formación de una sociedad en la que prime la inclusión y la tolerancia, demanda esfuerzos institucionales que atiendan la práctica de valores universales, a partir de los cuales edificar el proyecto común que nos debe instar al: "Descubrimiento del sentido de la equidad y la justicia, que acondicione nuestro mundo para hacerlo habitable" (2009: 190). Esto refiere a la motivación esperanzadora que nos invita a construir un mundo cada vez más armónico, en el que la praxis de ciertos valores ayude en la tarea humanizadora de elevar las cualidades individuales y colectivas, así como la conciencia moral que ayuden a vivir en condiciones de respeto recíproco.

Este desafío como parte de los propósitos de las agendas globales en materia de educación en derechos humanos, reitera la necesidad de promover estrategias de intervención preventiva que ayuden en el proceso de transformar los estilos de relacionamiento, la flexibilización de la mente y la adopción del sentido de corresponsabilidad en torno al bienestar del otro.

Estas estrategias como parte de la educación en valores cívicos, precisa la potenciación de "la libertad, la igualdad, la solidaridad, el respeto activo y el diálogo, o mejor dicho, la disposición, para resolver los problemas comunes a través del diálogo" (Cortina, 2009: 193). En otras palabras, la consolidación de los ideales de los que depende la dignificación de la vida humana, requiere del trabajo por la igualdad y la justicia, como el proceso necesario para lograr la erradicación de la opresión y la desigualdad socio-histórica y cultural.

12. Integrar la educación intercultural y multicultural como parte de los procesos formativos, además de pertinencia social, le otorga a la institución educativa la posibilidad para lograr la verdadera inclusión como parte de la denomina democracia social, que procura el logro de puntos de encuentro en el que cada sujeto logre ver al otro desde la aceptación y el reconocimiento, como valores que aporten a la erradicación de la exclusión y la violencia. Según propone Sarramona (2007), la educación intercultural cuenta con propósitos precisos de los que depende el entendimiento entre agrupaciones socioculturalmente divergentes, en quienes procura estrechar lazos de encuentro que, mediante el: "Compartir de valores universales, amplíen la concepción del mundo y de la vida, lo cual supone, la praxis principios básicos que provean las condiciones para el desarrollo

de actitudes tolerantes" (2007: 82). Este nivel de reconocimiento recíproco según Delors es el resultado del denominado igualitarismo intercultural que "acepta con tolerancia y respeto al otro, como condición para vivir en paz y en democracia" (Delors, 1996: 63).

Para Delors, algunas acciones estratégicas que deben promoverse desde los procesos educativos tienen que ver con la revalorización del pluralismo cultural: "Presentándolo como fuente de riqueza humana; la erradicación de los prejuicios como factores de violencia y exclusión, los cuales deben combatirse mediante una información mutua sobre la historia y los valores de las distintas culturas" (Delors, 1996: 64). Esto significa desde la praxis de la educación intercultural, flexibilizar el pensamiento para comprender el indiscutible valor de la diversidad cultural, a la que se debe estimar desde la cohabitación que reduzca la conflictividad entre agrupaciones; este sentido de apertura debe entenderse como el resultado de la adopción del espíritu crítico y de la capacidad para descifrar similitudes entre acontecimientos históricos, prácticas y sistemas de creencias, en un intento por garantizar: "La armonía social que estimule el diálogo democrático y el alcance de la paz" (Delors, 1996: 64).

13. Formar a los administradores de justicia. Proceder en dirección a la educación para la atención oportuna a las víctimas de acoso, requiere facilitar una serie de condiciones que redimensionen la empatía, la confianza y sentido de apertura, como aspectos necesarios para establecer una relación de ayuda coherente y apropiada. Esto implica generar acciones de asesoramiento y acompañamiento, que propicien en la víctima la sensación de seguridad y resguardo de su integridad; en razón de estas condiciones, los funcionarios de justicia deben recibir formación ética que, además de elevar el compromiso y la corresponsabilidad, ayuden al manejo y la superación de las crisis multidimensionales ocasionadas por la conflictividad.

En tal sentido, parte de los principios rectores del quehacer de los funcionarios del poder judicial deben girar en torno a la: "Honestidad, integridad, respeto, responsabilidad, confianza, sinceridad, compartir, cooperación, tolerancia, justicia, equidad, y capacidad para el diálogo" (Centro de Documentación del INDESOL, s/f: 24). Ampliar los procesos de atención a las víctimas debe asumirse entonces, como parte de los requerimientos para satisfacer las necesidades psicosociales que por encontrarse en desequilibrio y disfuncionalidad, demandan especial consideración hasta lograr la estabilidad emocional y afectiva, que le permita al sujeto pasivo de la relación violente ajustar su dimensión cognitiva, social y psicológica para racionalizar, tomar decisiones y comprometerse con su recuperación.

14. La conformación de los Consejos Convivencia Pacífica Escolar. Según pauta el Anteproyecto de Ley de Convivencia Escolar Pacífica,

estos órganos tienen la responsabilidad de diseñar, formular y organizar programas tanto de intervención como de prevención, que propicien la transformación de la escuela en un espacio seguro, libre de acoso en sus diversas manifestaciones. Esto implica tareas importantes que deben complementar sus actuación, entre las que se precisa motivar la integración de esfuerzos de los diversos actores sociales e institucionales, quienes en su quehacer activo aporten ideas, estrategias y experiencias que, desde el compromiso y la participación, ayuden en la construcción de un ambiente de paz positiva y de respeto a la diversidad.

Lo anterior refiere, entre otros aspectos, al manejo de valores importantes como la coordinación de actuaciones y el sentido de la cooperación en función de convertir a la institución educativa en un espacio para el alcance de la plenitud individual y colectiva, pero además, para el desenvolvimiento cognitivo, social, físico y emocional que predispongan al sujeto para aprender y convivir en armonía. Para ello, se considera imprescindible trabajar aspectos medulares que determinan la convivencia escolar, entre los que se mencionan: el reconocimiento de los derechos humanos propios y del otro, el respeto a la dignidad y a la integridad de los pares, aprender a vivir en paz, en igualdad y en orden, mediante la praxis de la cordialidad, la tolerancia y la no violencia, así como el ejercicio de la ciudadanía con apego al manejo vivencial de valores que potencien conductas sociales positivas.

Conclusiones

Enfrentar el acoso escolar como fenómeno multifactorial demanda el concierto de esfuerzos de los factores de socialización en torno a la formación para el respeto, la tolerancia y el reconocimiento desde la reciprocidad, cuyo enfoque sea apuntalar los cimientos de una sociedad plural como el contexto en el que cada sujeto asuma con responsabilidad la sustitución de prácticas nocivas por el diálogo simétrico y respetuoso que coadyuve con el entendimiento de las particularidades relacionadas con las formas de ver el mundo.

Esto implica, adoptar el compromiso con el establecimiento de un clima escolar positivo, en el que la conflictividad logre manejarse a través del uso de mecanismos vinculados con el acuerdo mutuo y el consenso mediado por la flexibilidad del pensamiento, que ayude en la valoración del otro como sujeto social de derecho.

En tal sentido, maximizar las posibilidades para convivir en armonía y desde el encuentro, requiere el operar institucional en torno a la construcción del proyecto común denominado sociedad, desafío que invita a la transformación de los modos de relacionamiento destructivos, la renuncia a la intolerancia y al individualismo, como factores de riesgo que

atentan contra la diversidad inter e intrasocial; lo cual refiere al tratamiento de las corrientes sociales globales que sustentadas en el fundamentalismo, han exacerbado la conflictividad colectiva hasta ocasionar desorientación moral y distorsión en los vínculos positivos de los que depende tanto el equilibrio personal como la predisposición del sujeto para relacionarse positivamente con sus pares.

Lograr estos cometidos debe entenderse como el resultado del afrontamiento de las prácticas disruptivas que han sido transmitidas generacionalmente y, en las que subyacen actuaciones como la sumisión y la dominación, como rasgos que por asociarse el patriarcado conducen a la denominada indefensión aprendida o condicionada, estado emocional que ocasiona la entrega de la voluntad de la víctima al victimario, en quien se amplía las posibilidades para perpetrar actos atroces que atentan contra la integridad personal y la dignidad humana; dadas las condiciones particulares por las que atraviesa Venezuela, atender con especial énfasis estos factores destructivos de la individualidad, requiere el abordaje del abandono familiar y los efectos de la deprivación social que, como reforzadores del resentimiento ocasionan la alteración del clima escolar, la elevación de los abusos de poder entre agrupaciones y la emergencia del maltrato en sus diversas manifestaciones.

En síntesis, el compromiso del Estado venezolano en lo referente a los procesos educativos, debe girar en torno a la promoción de formación de ciudadanos con la disposición para participar de la vida social sin con respeto a la dignidad e integridad de quienes hacen parte de su entorno de convivencia cotidiana; por ende, conviene reiterar el valor de la ciudadanía, que invita a actuaciones civiles, respetuosas de la diversidad y de las particularidades socioculturales de quienes integran el contexto socioeducativo. Esto sugiere, el involucramiento de los factores de socialización, quienes en actuación sinérgica impulsen políticas públicas, acciones de intervención preventiva y programas acompañamiento que apuntalen la búsqueda del entendimiento recíproco y empático, como requerimientos para consolidar el proyecto común de la humanidad, una sociedad funcional y pacífica.

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Financial control as a kind of state control over the activities of public railway transport

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Abstract

Using the scientific method, the purpose of the article was to study financial control as one of the types of state control over the activity of public railway transport. In the results of the research, the scientific approaches to the concepts of: "control", "state control" and "financial control" are considered. The place of the latter in the general system of control over the management of state (local) resources and its specific use is studied. In addition, the characteristics and purpose of the regulation of financial control are established. In terms of its practical significance, it is determined that state financial control is carried out by conducting financial audit activities, monitoring financial transactions, identifying violations of the use of funds, etc., activities which are carried out by special state authorities and their authorized representatives. In the conclusions, it is stated that the state financial control over public railway transport should be understood as the system of measures aimed at ensuring the effective use of funds from the state budget and other state financial resources, in order to achieve national, economic and social goals.

Keywords: audit; financial transactions; financial control; state audit service; public transport.

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El control financiero como forma de control estatal de las actividades del transporte público ferroviario

Resumen

Mediante el uso del método científico, el propósito del artículo fue estudiar el control financiero como uno de los tipos de control estatal sobre la actividad del transporte público ferroviario. En los resultados de la investigación, se consideran los enfoques científicos de los conceptos de: «control», «control estatal» y «control financiero». Se estudia el lugar de este último en el sistema general de control sobre la gestión de los recursos estatales (locales) y su uso específico. Además, se establecen las características y el objeto de la regulación del control financiero. En términos de su significado práctico, se determina que el control financiero estatal se lleva a cabo mediante la realización de actividades de auditoría financiera, el seguimiento de las transacciones financieras, la identificación de violaciones del uso de los fondos, etc., actividades que se llevan a cabo por las autoridades estatales especiales y sus representantes autorizados. En las conclusiones, se establece que el control financiero estatal sobre el transporte público ferroviario debe entenderse como el sistema de medidas destinadas a garantizar el uso eficaz de los fondos del presupuesto estatal y otros recursos financieros del Estado, con el fin de alcanzar los objetivos nacionales, económicos y sociales.

Palabras clave: auditoría; transacciones financieras; control financiero; servicio estatal de auditoría; transporte público.

Introduction

The modern stage of socio-economic development of Ukraine, which is characterized by the establishment of market relations, processes, threatening the stable functioning of economic mechanisms (Kharytonov *et al.*, 2021), struggle between democracy and fascism (Panchenko *et al.*, 2022) requires an increase in the role of the State in the system of economic management, strengthening of the fight against corruption and offenses in the economic sphere.

At the same time, the desire for constant improvement of the state administration process demands a scientific analysis of transformations and understanding and awareness of the organizational and economic mechanisms used by the state during the implementation of its main functions. The most important in this regard is the system of financial and economic control, which should ensure equilibrium and balance in the functioning of society. The State cannot function effectively and

develop without a clearly organized system of control over the production, distribution and redistribution of the public product and other spheres of public life (Dmytrenko, 2011).

Financial control over the activities of business entities is a complex category, the essence of which is being tried by the representatives of legal and economic sciences, public administration specialists, since the concepts of purpose, subject and object of control are interpreted in different ways. Solving the problem is complicated by differences in the current legislation, the uncertainty of the essence of the concepts "financial control", "state supervision", the functions of state financial control bodies and their powers. It is not by chance that there are numerous draft laws on financial control, in particular on the activities of economic entities, as well as increased interest in these problems by scientists.

That is why the purpose of the article is to reveal financial control as one of the types of State monitoring of the activities of public railway transport based on the theoretical foundations of financial and administrative law, the norms of current legislation and the practice of executive authorities.

1. Methodology

The methodological basis for the article is a system of general scientific and special methods and techniques, the cognitive potential of which is aimed at achieving the research goal.

Dialectical method made it possible to comprehensively consider the phenomenon of financial control over the activities of public railway transport in its development and interrelationship with a number of related concepts, to identify established directions and regularities of the mechanism of its implementation.

With the help of formal logic methods (analysis and synthesis, induction and deduction, generalization, abstraction, etc.), the essence of State financial control in general and in the considered sphere in particular is clarified.

Logic and semantic method is applied to formulate the relevant definitional constructions regarding the concepts of control, State control and financial control.

As part of the systemic approach, the systemic and structural method is used to clarify the features and system of financial control.

Structural and functional method helps to clarify the place of this form of control within the types of State control.

Analytical method is the basis for the study of the legal instruments governing the procedure of implementing financial control over the activities of public railway transport.

Hermeneutic and formal and dogmatic methods are applied for interpreting the views of scientists and the provisions of legislative acts.

2. Literature Review

The current state of the national economy, its shadowing, the rapid growth of economic offenses specifically in the field of financial activities of enterprises, institutions and organizations determine the need to control the circulation of financial resources, as well as the legality and correctness of the formation of data on the financial status of a certain business entity. Financial control is designed to ensure this.

The latter is control over the legality and accuracy of the distribution and re-distribution of financial resources in the economic sphere, as well as supervision of appropriateness of information on the financial state of the enterprise in terms of all the provided indicators. Its purpose is to establish the accuracy and lawfulness of the financial activity of a business entity.

Financial control involves a thorough examination of all aspects of financial activity and is applied to all economic entities. This is due to the fact that all of them, without exception, conduct financial activities. A state audit is conducted at state-owned enterprises and budget institutions in terms of the effectiveness of the use of budget funds (this also concerns the public railway transport enterprises) (Dikan and Syniuhina, 2011, p. 20).

Nastenko (2018) remarks that financial control is a legal instrument for regulating the country's financial system, in particular the finances of business entities, and depends on the tasks of the State's economic development, political and social objectives that must be solved by the government in its current situation. At the same time, the control covers the areas that are of particular importance for society: education, health care and social protection of the population, science and culture, housing and communal services, fuel and energy and agro-industrial complexes, transport, defense, etc.

Sidorenko et al. (2012) in this regard note that railway transport enterprises in most cases refuse to conduct external audits, relying on their own service of control and audit work and financial investigations. The main tasks of the internal audit of railway transport should be methodical support, consulting, analytical examination of the decisions made for their compliance with the current legislation and the interests of the industry, optimization of taxation, development of measures to exclude losses,

assessment of the correctness of the determination of revenues from transportation, etc.

The authors believe that an internal audit, in contrast to external one, is a control system organized at an economic entity in the interests of its owners and regulated by its internal documents over compliance with the established accounting procedure and the reliability of the functioning of the internal control system at railway transport enterprises.

Shinkarenko *et al.* (2012) stress that the implementation of the process of reforming the financial control system in this sphere should take place in stages, with a clearly defined action plan indicating the goals, deadlines and responsible actors.

The performance of this plan will allow to create a control system of a vertically integrated structure – a state joint-stock company of public railway transport, capable of functioning effectively in the conditions of intensified international technological competition, to increase the efficiency of the functioning of the industry and, as a result, will lead to an increase in the competitiveness of Ukrainian railways on the market of transport services, increasing the employment of the population in all regions of Ukraine and deduction of taxes, fees (mandatory payments) to the budgets of all levels.

Prokopiev (2020) believe that the transition to a new model of the organization of railway transport should be accompanied by the complete separation of the functions of state regulation from economic activity. To implement structural changes in the railway transport sector, it is important to pay attention to the property used in the economic activity of railway transport enterprises: 1) property which must necessarily be publicly owned (a critical property, without which economic activity in the field of railway transportation is impossible), that is, what defines the industry as a monopoly; 2) assets that may be used for engaging private investments, on a competitive basis. This distribution of property will make it possible to build an economic mechanism for the functioning of railway transport, which will combine a natural monopoly and the provision of public interests of society (traffic safety, accessibility of transportation, etc.) and services provided on commercial basis.

3. Results and Discussion

In the unified transport system of Ukraine, railway transport objectively takes the leading place, satisfying the transportation needs of both the industrial sector and the population, being an important factor in the development of not only the transport industry, but also the national economy in general. Railway transport provides internal and external transport

and economic connections of the economy of Ukraine, contributes to the normal functioning of all industries, as well as international cooperation (Dubynskyi, 2018), ensures connections between industries, enterprises, regions of the country, and foreign countries (Sirko *et al*., 2022).

When studying the state financial control over the activity of railway transport of Ukraine, first of all, it is necessary to define such legal categories as "control" and "State financial control". Thus, according to the Academic Explanatory Dictionary, the term "control" means checking, accounting for the activities of someone, something, or supervision of someone, something (Bilodid, 1973).

According to Harashchuk (2013), the word "control" is more correctly interpreted as an inspection, as well as observation for the purpose of inspection to counteract something undesirable, that is, detection, prevention and termination of illegal behavior by anyone.

In turn, Leontovych (2008) notes that control in a broad sense is a process associated with ensuring that the management object functions are complied with the administrative decision and is aimed at the successful achievement of the set goal.

Kolomoiets (2008) came to the conclusion that control is "a management function, a means of performing management tasks, the peculiarity of which is that it has an active nature, i.e. control subjects have the right to intervene in the activities of controlled objects".

Along with this, Kolpakov and Kuzmenko (2012) correctly point out that control is an organizational and legal means of ensuring legality and discipline, which is characterized by observation and verification of the control object activity and the actual compliance of certain actions with the requirements of current legislation with the possibility of intervention in operational and economic activity to eliminate identified deficiencies and bring violators to justice.

Bandurka (2004) characterizes control as a peculiar form of feedback that allows to see and detect how precisely the set parameters of the control system are being followed, i.e. the process of ensuring that the object of control achieves the goals set for it.

Thus, this term can be understood as a certain process of checking actions, decisions, documents or behavior of a person, institution or organization in order to ensure compliance of their actions with established rules, norms, standards or laws.

It is worth noting that there is no unified approach to the definition of the concept of «financial control», its structure, principles, functions and due to the variety of studies on the problems of financial control in Ukraine. Some scientists interpret financial control as legally regulated activities of

public entities and non-governmental organizations, business entities or their structural units, natural persons endowed with appropriate powers or rights, which is aimed at ensuring validity of the formation of public funds, the completeness of the revenues to the relevant funds, legality and effectiveness of their distribution and redistribution and use (Nastenko, 2017).

According to Malein, «financial control» should be considered as the activity of financial, credit, and economic bodies (organizations), regulated by law, aimed at ensuring financial, budgetary, tax, credit, settlement, and cash discipline in the process of implementing plans and which consists in checking the legality, reasonableness and rationality of monetary expenditures (Pivovarov, 2013).

A significant and special place in the general system of control is occupied by State control, that is, control over the activities of the economic entity by the State. In its essence, state control is verification by the State of the compliance of public officials with their duties, how the civil service functions as a whole (Razumtsev, 2009). It is not without reason that Blihar (2017) notes that in domestic science "state financial control" has an extremely complex meaning and multi-vector manifestation.

The analysis of the views by scientists allows us to distinguish several approaches to defining the essence of this concept:

1. managerial – lies in evaluating the effectiveness of state management at all stages of the budget process;
2. functional – is reduced to control over the formation, distribution and use of financial resources of the state and local self-government;
3. targeted – support for national and regional socio-economic development and verification of legality, efficiency and expediency of formation, distribution, redistribution, use of financial resources;
4. legal – related to the activity of financial bodies regarding the detection of any offenses in the field of economic activity, financial and tax discipline, as well as taking appropriate measures to eliminate these offenses.

The Draft Law No. 2020 (2008) provides a definition of this term and notes financial and economic activity as the object of this control. State financial control is considered in a broad sense as control over the legality, expediency and effectiveness of the use and disposal of state property rights (property rights to shares of enterprises, etc.), assessment of the effectiveness of the organization and implementation of the transformation of forms of ownership (privatization), legality, appropriateness and effectiveness of the disposal of intangible assets objects of state ownership (which create financial resources), the state and use of state stocks and reserves, etc.

The object of state financial control is the financial economic activity of a business entity related to the adoption of management decisions operations connected with resources and assets.

The Draft Law No. 9086 (2018) determines that state financial control is government supervision, which is carried out by state financial control bodies in order to ensure legal, efficient, economical and effective formation, distribution, management and use of state resources by the controlling actors and aimed at prevention, detection and elimination of violations of financial and budgetary discipline. Therefore, the definition of state financial control is related to state (government) institutions as controlling subjects.

The authors of the draft law name the State Audit Service the main body entrusted with the responsibilities of state financial control. The authority of the controlling subject provides for the right to conduct monitoring of the activities of a wide range of business entities that use both state and private funds, but it is about checking the share of state funds. Among the powers of this agency is the right to perform state financial audit, in particular, revision of the activities of business organizations, investment projects, individual economic operations and others, as well as inspection and monitoring of purchases.

Investigating the organization and implementation of financial control in Ukraine, Dmytrenko (2011) recognizes it as the legally regulated activity of state authorities and management to control the timeliness and accuracy of financial planning, the validity and completeness of receipts and movement of state financial and material resources, the correctness and efficiency of their use.

Kolisnyk (2020) notes that, in general, the system of establishing a domestic model of financial control over the management of state (local) resources and their use is as follows:

- state external financial control (audit), which is carried out by the Accounting Chamber on behalf of the Verkhovna Rada of Ukraine (parliamentary control);
- state financial control, which is performed by the bodies of the State Audit Service, authorized by the Cabinet of Ministers of Ukraine (government control);
- state internal financial control, in particular internal control and internal audit, which is provided by the managers of budget funds and the internal audit unit in the budget institution, respectively.

As it has been previously noted, state financial control is implemented by the bodies of the State Audit Service, in particular by the Department of Control in the Industry, Energy, Transport and Financial Services, whose area of responsibility includes:

1. extractive industry (coal, lignite and peat extraction; hydrocarbon extraction and related services);
2. processing industry (production of oil refining products and nuclear materials; production and distribution of electricity and gas);
3. activity of railway, water, aviation, pipeline transport);
4. financial activity.

Public joint-stock company Ukrzaliznytsia and its units are included in the list of controlled institutions. We should note that in Ukraine railway shall mean a separate division of the joint-stock company of public railway system (hereinafter referred to as JSC Ukrzaliznytsia), which transports passengers and cargo in a certain region of the railway network. That is why the representatives of the abovementioned Department are entitled to conduct state financial audits and inspections in these organizations.

Ukrzaliznytsia includes:

1. Public railway transport enterprises:

– railways;

– state enterprises belonging to the sphere of management of the central executive body, which ensures the formation and implementation of State policy in the transport area.

2. Institutions and organizations of public railway transport:

health care institutions, educational institutions belonging to the management sphere of the central executive body, which ensures the formation and implementation of state policy in the transport sphere, as well as higher educational institutions of the 1st level of accreditation, which prepare specialists for railway transport (Prokopiev, 2020).

State financial audit of business entities is a type of state financial audit, which lies in checking and analyzing the state of affairs regarding the legal and effective use of state and/or communal funds and property, other state assets, the correctness of accounting and the reliability of financial reporting, the state of internal control at economic entities (Resolution No. 252, 2019).

State financial audit is a type of state financial control, which lies in checking and analyzing the actual state of affairs regarding: legal and effective use of: state funds; utility funds; state property; communal property; other state assets; the correctness of accounting; reliability of financial statements; functioning of the internal control system.

The inspection lies in a documentary and actual inspection of a certain complex or individual issues of financial and economic activity of the object of control and is carried out in the form of an audit, which should ensure the detection of facts of violations of the law, the identification of officials and responsible persons who are guilty of their admission (Resolution No. 550, 2006).

Conclusion

Financial control covers all areas of activity of subjects of any legal status related to the formation, distribution, redistribution and use of public financial resources. With the help of financial control, legality is ensured in financial and economic activities. It is one of the means of prevention of mismanagement, detection of abuse and waste.

Analyzing the opinions of some scientists, we can come to the conclusion that the state financial control over public railway transport should be understood as a system of measures aimed at ensuring the effective use of the state budget and other financial resources of the state, with the aim of achieving national, economic and social goals. Such control is implemented by conducting financial audit activities, monitoring financial transactions, identifying violations of the use of funds, etc., which is carried out by special state authorities and their authorized representatives.

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Una perspectiva de la patria potestad en América Latina: Especial referencia al caso ecuatoriano

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Resumen

La patria potestad implica, un conjunto de obligaciones, jurídicas y morales, que los padres tienen para con sus hijos y, por tanto, un derecho de protección de la niña, niño y adolescente no emancipado, cuyo único límite es su interés superior. La patria potestad en Colombia se encuentra desarrollada en disposiciones como el Código Civil y el Código de la Infancia y la Adolescencia; en Venezuela esta figura jurídica encuentra normación en la Ley Orgánica para la Protección de Niños, Niñas y Adolescentes. En el caso ecuatoriano, desde el punto de vista legislativo está preceptuada en Código Civil y en el Código de la Niñez y Adolescencia. El trabajo pretende estudiar las disposiciones constitucionales y legales que regulan la patria potestad en Colombia, Venezuela y Ecuador, con mención expresa de este último caso. La investigación fue de tipo documental descriptivo, mediante la aplicación del método analítico. Se concluye que, en el marco de los tres países referidos, la patria potestad juega un papel trascendente en la cohesión y convivencia familiar, pero sobre todo en la garantía del interés superior del niño, y se trata de un conjunto de responsabilidades reconocidas de forma exclusiva a madres y padres.

Palabras clave: patria potestad; interés superior; responsabilidad parental; Ecuador; derecho comparado.

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A perspective of parental authority in Latin America: special reference to the Ecuadorian case

Abstract

Parental authority implies a set of legal and moral obligations that parents have towards their children and, therefore, a right of protection of the unemancipated child and adolescent, whose only limit is his or her best interest. Parental authority in Colombia is developed in provisions such as the Civil Code and the Code of Childhood and Adolescence; in Venezuela this legal figure is regulated in the Organic Law for the Protection of Children and Adolescents. In the Ecuadorian case, from the legislative point of view, it is precepted in the Civil Code and in the Code of Childhood and Adolescence. The purpose of this work is to study the constitutional and legal provisions that regulate parental authority in Colombia, Venezuela and Ecuador, with express mention of the latter. The research was of a descriptive documentary type, through the application of the analytical method. It is concluded that, in the framework of the three countries referred to, parental authority plays a transcendental role in family cohesion and coexistence, but above all in guaranteeing the best interests of the child, and it is a set of responsibilities recognized exclusively to mothers and fathers.

Keywords: parental authority; best interests; parental responsibility; Ecuador; comparative law.

Introducción

La patria potestad como institución jurídica se encuentra en proceso de redimensión, pues su objetivo central está perfilado en garantizar el interés superior de las niñas, niños y adolescentes, y a procurar el desarrollo integral y goce efectivo de sus derechos en un contexto social y familiar, libre, humano, protector y de bienestar.

El Estado, la sociedad y la familia configuran los elementos tripartitos para alcanzar ese objetivo, pero la madre y el padre constituyen el primer escalafón en la adjudicación de responsabilidades para atender de forma prioritaria a las hijas e hijos no emancipados. Los padres deben velar por la alimentación, salud, educación, cuidado y, en general, la calidad de vida de los hijos, todo lo cual se traduce en la denominada patria potestad.

Dada la trascendencia social y familiar de esta institución, la patria potestad se encuentra detalladamente delineada en los instrumentos jurídicos a nivel mundial, y particularmente, en el orden ecuatoriano, mediante el establecimiento de sus concepciones, características, formas de ejercicio, limitaciones y formas de suspensión o restricción. Ello

necesariamente es así, dado que la patria potestad implica la responsabilidad parental en la formación, crianza, cuido y manutención de los hijos, todos estos considerados aspectos fundamentales para la vida digna y el crecimiento sano de toda niña, niño y adolescente. En otras palabras, pese a su origen etimológico, la patria potestad implica, más que un conjunto de derechos para los padres, un conjunto de obligaciones, jurídicas y morales, que éstos tienen para con sus hijos y, por tanto, un derecho de protección de la niña, niño y adolescente no emancipado cuyo único límite es su interés superior.

A tal fin resulta interesante tener de forma general, una visión o perspectiva de la patria potestad en tres países latinoamericanos, como son Colombia, Venezuela y Ecuador, haciendo mención especial a este último. La patria potestad en Colombia, además de regulaciones propias de la Constitución de 1991, se encuentran desarrollada en disposiciones como Código Civil de 1873 (con sus posteriores modificaciones), y en el Código de la Infancia y la Adolescencia de 2006; en Venezuela esta figura jurídica encuentra normación en la Ley Orgánica para la Protección de Niños, Niñas y Adolescentes (LOPNNA) de 1998 (y sus correspondientes reformas), y tiene soporte en la Constitución de la República Bolivariana de Venezuela de 1999. En el caso ecuatoriano, la patria potestad, reconocida como derecho y obligación de los padres, se encuentra regulada, de forma indirecta, en la Constitución de 2008, y desde el punto de vista legislativo está preceptuada en Código Civil (cuya última reforma fue en el año 2019), y en Código de la Niñez y Adolescencia (cuya última reforma data del año 2014).

Por tanto, este trabajo tiene como objetivo general estudiar las disposiciones constitucionales y legales que regulan la patria potestad en Colombia, Venezuela y Ecuador, con mención expresa de este último caso. Para ello, se realiza un estudio de tipo documental descriptivo, mediante la aplicación del método analítico, además se hace mención de forma cualitativa a autores nacionales y extranjeros, y a jurisprudencia pertinente en la temática abordada.

1. Concepciones doctrinales de la Patria Potestad

Las interacciones familiares obedecen a vínculos tradicionales que han pasado por distintos cambios con el paso del tiempo, transformaciones que implican, incluso, diferentes concepciones de familia, pero uno de los nexos que se configuran de manera constante es el que existe entre padres[2] e hijos[3]. De este modo, los enfoques doctrinales se han abocado

2 Al hacer referencia al término padres, se incluye tanto el padre como la madre.

3 Cuando se establece la palabra hijos, a los efectos de este manuscrito, significa hijas e hijos sea uno o varios; en todo caso, no emancipados.

a la tarea de establecer criterios que permitan sustentar la dinámica familiar, específicamente entre padres e hijos. Anteriormente, la balanza de derechos se inclinaba a favor de los padres; en la actualidad, los factores determinantes son los que procuran defender los intereses de los hijos.

La figura jurídica que se aborda es la que se conoce como Patria Potestad, entendida como una institución del Derecho que contiene elementos familiares, civiles, sociales, de protección, que regula la relación entre padres e hijos. Desde finales de la década de 1980 tiene su sustento en la Convención sobre los Derechos del Niño (Asamblea General de las Naciones Unidas, 1989), pues se le reconoce prioridad a los derechos que tienen los hijos como sujetos en la dialéctica padre-hijos, con la mencionada Convención se promueven y protegen los derechos de cada una de las infancias, en este caso desde un enfoque familiar.

"La patria potestad es la facultad que tienen solo los padres de velar por las necesidades básicas y dar un ambiente satisfactorio para la crianza de su hijo, además de representar y administrar cada uno de sus bienes" (Suárez-Vega, Guzmán-Delgado, & Ramón-Merchán, 2020, pág. 592), por lo tanto, combina aspectos emocionales y fisiológicos con otros de índole económica, en todo caso el contenido es de bienestar para los hijos. Otra definición doctrinal de la figura jurídica que se analiza es la de Acuña San Martín (2015, págs. 56-57) para quien la patria potestad es:

> La función tuitiva que corresponde a los padres respecto de sus hijos, función que se despliega en el ámbito personal y patrimonial…no se alude a un derecho subjetivo del patriarca familiar o de ambos progenitores, sino a una potestad en sentido técnico.

Ahora bien, la potestad hace referencia un dominio o poder que se tendría de parte de los padres hacia los hijos, conlleva una suerte de subordinación por virtud de la cual los hijos estarían en la obligación de obedecer las directrices de sus padres, situación ésta que enciende las alarmas en los casos que tal sujeción pudiera dar lugar a daños para los hijos, es decir que aunque la patria potestad establece obligaciones para los hijos, ello no es sinónimo de derechos de los padres a ultranza o caprichosos, el ejercicio de la patria potestad tiene como aspecto central el bienestar de los hijos, su prioridad absoluta.

De manera que, las corrientes doctrinales que le dan soporte a la patria potestad desde una perspectiva patriarcal se transforman y conllevan a establecer que la relación familiar entre padres e hijos se vislumbra como una responsabilidad de aquellos en aras de la plenitud moral, psicológica, física, social, escolar, familiar, económica de los hijos. Entonces, los conceptos de la patria potestad conforme a costumbres que enaltecían a los padres por encima de los hijos y que, configuraban los hijos como objetos de derecho se han transformado, especialmente por la Convención sobre

los Derechos del Niño que sostiene en su artículo 27, numeral segundo, lo siguiente: "A los padres u otras personas encargadas del niño les incumbe la responsabilidad primordial de proporcionar, dentro de sus posibilidades y medios económicos, las condiciones de vida que sean necesarias para el desarrollo del niño". Actualmente, los niños y adolescentes (hijos no emancipados) son sujetos de derechos, en atención a ello es que la patria potestad cambia sus parámetros.

Aunque hoy nos pueda resultar paradójico y aún inadmisible, durante mucho tiempo, ni en la legislación de los Estados ni en el *corpus* de la normativa internacional de los derechos humanos, las niñas, niños y adolescentes eran percibidos como una categoría social y política *per se*, siendo ésta una inexcusable condición histórica de posibilidad y legitimidad para que el tiempo de la infancia y la adolescencia no se tradujese en naturalizada desigualdad y su espacio en impositiva carencia de autonomía y libertad (Fondo de Naciones Unidas para la Infancia (UNICEF, 2019: 04).

Dentro de estas consideraciones es menester señalar que, además de la prioridad absoluta, el interés superior repercute de manera decisiva en la revolución y evolución de la patria potestad, ya que enfatiza el carácter protector de los hijos, pero a través de la lente de la dignidad y no desde las restricciones, los hijos ya no tienen meras obligaciones o derechos inferiores a los de los padres. Bajo la figura de la patria potestad reciente se enaltece la especial dimensión del interés superior, un principio que es bastión de cada criterio doctrinal, decisión jurisdiccional, redacción normativa, en todo caso de las interpretaciones jurídicas que se suscitan en la sociedad.

Desde una perspectiva internacional, la evolución del interés superior como principio ha sido doble: por una parte, del mismo modo que en los derechos internos, se incorporó en tratados internacionales relativos al derecho de familia (adopción internacional, edad mínima para contraer matrimonio, entre otros temas) hasta la entrada en vigor de la Convención sobre los Derechos del Niño; por otra, algunos textos de naturaleza recomendatoria se referían al interés del niño de forma más amplia (como es la Declaración de Ginebra, adoptada en 1924 por la Sociedad de Naciones) (Torrecuadrada García-Lozano, 2016).

En suma, el interés superior, desde la plataforma internacional adecua los parámetros de las instituciones jurídicas relacionadas los hijos para protegerlos y resaltar los derechos que como sujetos les corresponden, incluso por encima de los de los padres dentro de la esfera de la patria potestad. Aunado a lo anterior, la patria potestad tiene distintos componentes que, si bien pueden variar entre una legislación y otra, en términos generales se manifiestan en tres atributos, a saber: la guarda y custodia, la representación y la administración patrimonial.

La primera de ellas, es decir la guarda y custodia se circunscribe a la obligación de los padres de prevenir cualquier tipo de riesgo en pro de los hijos, deben desarrollar diversos mecanismos que permitan su amparo. Esto es una terminología amplísima, pues en razón de las edades de los hijos serán distintos los posibles riesgos que puedan amenazarlos. Los padres deben permanecer alertas en una suerte de vigilancia para salvaguardar integralmente a sus hijos. En función de dicho cometido el progenitor con el que convivan los hijos es quien debe ejercer las actividades correspondientes permanentemente, pero no de manera exclusiva (salvo decisión que implique mayor beneficio para los hijos), pues amerita un cuidado personal y acompañamiento constante hacia los hijos.

Por su parte, la representación implica actuar en lugar del hijo, este último solo puede actuar por intermedio de sus padres; sin embargo, el ejercicio de algunos derechos no requiere la representación, como es el caso del derecho a trabajar, ya que no es requisito *sine qua non* la representación de los padres, sino que una vez que se alcance la edad mínima para trabajar, basta con cumplir con registros en instituciones públicas, el ejemplo se deriva del hecho que a mayor autonomía de los hijos no emancipados, menor será la representación por parte de los padres.

Este atributo opera con independencia de que el hijo tenga bienes y permite que se actúe por él o se le autorice tanto en el ámbito judicial como extrajudicial; por tanto, es posible que el ejercicio de la patria potestad solo se manifieste por la representación legal del hijo sin que existan, en el caso concreto, bienes que administrar y gozar (Acuña San Martín, 2015: 71).

En lo que respecta a la administración patrimonial, opera cuando los hijos tengan bienes para que los padres puedan realizar el manejo correspondiente; así, uno de los parámetros generales es que, las actividades de tal administración se perfilen para resguardar el patrimonio, calcular los riesgos de posibles inversiones, evaluar la correcta celebración de negocios, entre otras tareas en beneficios de los intereses actuales y futuros de los hijos. "Comprende la gestión normal u ordinaria de dichos bienes en provecho del patrimonio del hijo" (Acuña San Martín, 2015: 71). Este conferimiento hacia los padres se debe a que los hijos "…no poseen la capacidad necesaria para actuar sobre su patrimonio, es por esto, que los padres velarán por el sustento económico y por la educación de sus hijos teniendo como principio salvaguardar la integridad emocional del menor" (Suárez Vega *et al*., 2020: 597).

Conforme a lo anterior, son tres los contenidos de la patria potestad cuyo camino de transformación va a la par de las exigencias modernas de la sociedad: desde el establecimiento de derechos (incluso sobre la vida de los hijos) a favor de los padres en la antigua Roma, hasta el reconocimiento de los niños y adolescentes como sujetos de derechos, y que da lugar a una patria potestad con esquemas que priorizan los intereses de los hijos.

En este orden de ideas, "...el cambio responde a las propuestas y observaciones formuladas por el Comité de los Derechos del Niño de Naciones Unidas. De esta forma, la nueva redacción se refiere a la patria potestad como responsabilidad parental" (Boado Olabarrieta, 2019: 67). La intención es deslastrar del argot jurídico términos vinculados a poderíos patriarcales (o matriarcales) por encima de los derechos de los hijos, aunado a ello se enfatiza que se trata de responsabilidades por parte de los padres más que de derechos, en este sentido, no es una potestad en sí porque se trata de sujetos de derechos, sino que es un deber jurídico y, al mismo tiempo, en una obligación moral.

Una revisión democrática de la institución implica, de por sí, revalorizar lo individual o los sujetos en relación con lo familiar. En otros términos, se trata de salirse de la lógica ancestral y reconvertirla en un conectivo; es decir, se trata de proteger la autonomía y libertad de cada uno de los integrantes del grupo familiar, aceptando su individualidad sin perjudicar ni perder de vista los principios de responsabilidad y solidaridad familiar (Herrera & Lathrop, 2017). Es una adecuación de la institución tradicional a los requerimientos de la actualidad.

2. Patria potestad en Venezuela y Colombia

En Latinoamérica, cada país tiene sus particulares normas regulatorias de la patria potestad, en general se enmarcan en los contenidos de la Convención sobre los Derechos del Niño, es decir que otorgan especial relevancia los intereses de los hijos y se asumen como sujetos de derechos y no objetos de derecho. Bajo estas premisas la importancia de la institución recae en beneficiar el desarrollo integral de los niños y adolescentes, lo cual configura el rol de los padres que llevan a cabo la patria potestad. Para especificar algunos aspectos de países en la región, se traen a la palestra los casos colombiano y venezolano.

En Colombia, el artículo 44 constitucional (Asamblea Nacional Constituyente, 1991) determina que tanto la familia, la sociedad y el Estado tienen la obligación de asistir y proteger al niño para garantizar su desarrollo armónico e integral y el ejercicio pleno de sus derechos, además señala que "los derechos de los niños prevalecen sobre los derechos de los demás", por ello es posible afirmar que la Patria Potestad mantiene la protección y autonomía para los hijos. Sin embargo, el análisis de la patria potestad en Colombia requiere de rigurosidad toda vez que se encuentra regulada, de manera especial, por dos cuerpos legislativos, es decir el Código Civil (Congreso de los Estados Unidos de Colombia, 1873) (con sus posteriores modificaciones), y el Código de la Infancia y la Adolescencia (Congreso de Colombia, 2006).

El primero de ellos, define en su artículo 288 a la patria potestad, en el mismo prevalece la concepción de asumirla como derechos de los padres sobre los hijos no emancipados, incluso determina que la finalidad es "facilitar a aquéllos el cumplimiento de los deberes que su calidad les impone"[4]. Además, los padres tienen la facultad de administrar los bienes de los hijos a través de usufructo, sin necesidad de otorgar garantía alguna, pero son responsables en la administración de los bienes del hijo, por toda disminución o deterioro que se deba a culpa, aún leve, o a dolo, en todo caso, tal responsabilidad alcanza no solo a los bienes, sino también a los frutos generados y se limita a la propiedad en los bienes de que son usufructuarios.

Una prohibición expresa establecida por el Código Civil se encuentra en su artículo 304, pues señala que "No podrán los padres hacer donación de ninguna parte de los bienes del hijo, ni darlos en arriendo por largo tiempo, ni aceptar o repudiar una herencia deferida al hijo" solamente se permitirá en la forma y con las limitaciones impuestas a los tutores y curadores. Incluso, uno de los motivos de suspensión de la patria potestad es estar en entredicho de administrar sus propios bienes, por su demencia, y por su larga ausencia. Ahora bien, la extinción de la institución que se analiza opera una vez que se verifica la emancipación, sea voluntaria, legal o judicial.

La emancipación voluntaria requiere una declaración de los padres y el consentimiento del hijo, aunada a la autorización del juez. Por otro lado, la de tipo legal se verifica por la muerte real o presunta de los padres; o por el matrimonio del hijo; o por haber cumplido el hijo la mayor edad[5]; o por el decreto que da la posesión de los bienes del padre desaparecido. Y, la judicial se efectúa (por decreto judicial) cuando quien detente la patria potestad incurra en alguno de los siguientes hechos gravísimos pues atentan contra los hijos, a saber: por maltrato habitual del hijo, en términos de poner en peligro su vida o de causarle grave daño; por haber abandonado al hijo; por depravación que los incapacite de ejercer la patria potestad; por haber sido condenados a pena privativa de la libertad superior a un año;

4 Sin embargo, a criterio de la Corte Constitucional de Colombia (2018), la Patria Potestad es: "Una institución jurídica de orden público, irrenunciable, imprescriptible, intransferible y temporal, de la cual se deriva que los padres no pueden sustraerse al cumplimiento de las obligaciones constitucionales y legales que tienen con sus hijos, a menos que la patria potestad sea suspendida o terminada por decisión judicial cuando se presenten las causales legalmente establecidas. De allí que, la patria potestad sea reconocida en la actualidad no como una prerrogativa o derecho absoluto de los padres, sino como una institución instrumental que permite a éstos garantizar los derechos de sus hijos y servir al logro del bienestar de los menores".

5 A tenor del artículo 36 del Código de la Infancia y la Adolescencia, "en el caso de los adolescentes que sufren severa discapacidad cognitiva permanente, sus padres o uno de ellos deberá promover el proceso de interdicción ante la autoridad competente, antes de cumplir aquel la mayoría de edad, para que a partir de esta se le prorrogue indefinidamente su estado de sujeción a la patria potestad por ministerio de la ley".

cuando el adolescente hubiese sido sancionado por ciertos los delitos[6] y se compruebe que los padres favorecieron estas conductas sin perjuicio de la responsabilidad penal que les asiste. No obstante, la suspensión o privación de la patria potestad no exonera a los padres de sus deberes de tales para con sus hijos, tal como lo estatuye el artículo 315 del Código Civil.

Ahora bien, un aspecto que auxilia a la patria potestad establecida en el Código Civil colombiano es la denominada responsabilidad parental dispuesta por el Código de la Infancia y la Adolescencia, el cual en su artículo 14 la describe como un complemento de dicha patria potestad, tal como se indicara líneas arriba, las transformaciones sociales que dan cuenta de una mayor autonomía para los hijos y la superación de términos estrictamente patriarcales. Asimismo, dispone la referida norma que, es "la obligación inherente a la orientación, cuidado, acompañamiento y crianza de los niños, las niñas y los adolescentes durante su proceso de formación", se lleva a cabo de forma compartida entre el padre y la madre para que los hijos puedan lograr el máximo nivel de satisfacción de sus derechos.

En lo que al caso venezolano se refiere, la patria potestad no es concebida únicamente como un conjunto de derechos de los padres, sino que el artículo 347 de la Ley Orgánica para la Protección de Niños, Niñas y Adolescentes (LOPNNA) (Congreso de la República de Venezuela, 1998) (y sus correspondientes reformas) la define también como el conjunto de deberes del padre y la madre en relación con los hijos e hijas que no hayan alcanzado la mayoridad, cuyo objetivo principal es el cuidado, desarrollo y educación integral de los hijos e hijas. Por lo tanto, la legislación venezolana establece a la patria potestad desde una perspectiva más actual, pues determina que existen obligaciones a cumplir por parte de los padres, las mismas se encuentran configuradas a través de los contenidos de la institución, es decir, la responsabilidad de crianza, la representación y la administración de los bienes de los hijos e hijas sometidos a ella.

El ejercicio de la patria potestad le corresponde tanto al padre como a la madre, sean hijos nacidos dentro o fuera del matrimonio, según los artículos 349 y 350 de la LOPNNA, sin embargo, ésta puede extinguirse en casos de divorcio o de separación de cuerpos para el progenitor que hubiere incurrido en conato para corromper o prostituir al otro cónyuge, o a sus hijos, así como la connivencia en su corrupción o prostitución, o en adición alcohólica u otras formas graves de fármaco-dependencia que hagan imposible la vida en común. Aunado a ello, la patria potestad puede privarse (por orden del juez) para cualquiera de los padres (o ambos) que hubiere efectuado cualquiera de los siguientes actos u omisiones en contra de sus hijos, contemplados por la LOPNA en su artículo 352, a saber:

6 Homicidio doloso, secuestro, extorsión en todas sus formas y delitos agravados contra la libertad, integridad y formación sexual.

a) Los maltraten física, mental o moralmente.

b) Los expongan a cualquier situación de riesgo o amenaza a los derechos fundamentales del hijo o hija.

c) Incumplan los deberes inherentes a la Patria Potestad.

d) Traten de corromperlos o prostituirlos o fueren conniventes en su corrupción o prostitución.

e) Abusen de ellos o ellas sexualmente o los expongan a la explotación sexual.

f) Sean dependientes de sustancias alcohólicas, estupefacientes o psicotrópicas u otras formas graves de fármaco dependencia que pudieren comprometer la salud, la seguridad o la moralidad de los hijos o hijas, aun cuando estos hechos no acarreen sanción penal para su autor o autora.

g) Sean condenados o condenadas por hechos punibles cometidos contra el hijo o hija.

h) Sean declarados entredichos o entredichas.

i) Se nieguen a prestarles la obligación de manutención.

j) Inciten, faciliten o permitan que el hijo o hija ejecute actos que atenten contra su integridad física, mental o moral.

Los motivos expuestos en el ordenamiento jurídico venezolano plasman situaciones que conllevan a la protección de los intereses de los hijos, criterio que comparte la jurisprudencia, ya que el Tribunal Supremo de Justicia (Tribunal Supremo de Justicia, 2017) establece lo siguiente:

> Tanto el padre como la madre titulares de la P.P. (Patria Potestad), tienen una serie de deberes y obligaciones impuestas por ley que son de eminentemente orden público y que no pueden ser relajados de manera unilateral o en conjunto, pues, de ello deviene la amenaza o vulneración de derechos al niño, niña o adolescente que se trate. De ello la importancia de ésta institución para garantizar los derechos de los hijos e hijas que estén sometidos a la P.P. (Patria Potestad), ya que, es el espíritu propósito y razón de dicha institución familiar (Paréntesis nuestros).

Ahora bien, los padres que hubieren sido privados de la patria potestad podrán solicitar ante el juez la restitución de la misma, para ello se debe probar fehacientemente que el motivo por el cual operó la privación, haya cesado, tal como lo dispone el artículo 355 de la LOPNNA.

Por otro lado, si existiere reincidencia de las acciones u omisiones estipuladas en el artículo 352 de la LOPNNA y mencionadas líneas arriba, se aplicaría la extinción de la institución que se analiza. También se extingue la patria potestad por los siguientes hechos establecidos en el artículo 356 de la normativa especial venezolana en materia de niños, niñas y adolescentes

(LOPNNA): mayoridad del hijo o hija, o emancipación del hijo o hija, o muerte del padre, de la madre, o de ambos, o consentimiento legal para la adopción del hijo o hija, excepto cuando se trate de la adopción del hijo o hija por el otro cónyuge.

Conforme a lo anterior, ambos países regulan a la patria potestad con leves diferencias, se asume que cada uno establece criterios legales modernos; en el caso colombiano la responsabilidad parental, aunque no sustituye a la patria potestad, se le añade para convertirla en una institución integral y procurar que se asuman las obligaciones por parte de los padres y no solo asimilarla a prerrogativas. En Venezuela, la redacción normativa es determinante al precisar que la figura bajo comentario implica tanto deberes como derechos, además enfatiza que su finalidad es el interés de los hijos. En conjunto, revisten caracteres que van a la par con las exigencias de la actualidad, esto se traduce en mayor y mejor autonomía de los hijos (de acuerdo a la edad y madurez emocional), asimismo y de conformidad con la Convención sobre los Derechos del Niño a interiorizar y aplicar que, en efecto los niños, niñas y adolescentes son sujetos de derechos aun cuando se encuentren dentro de la patria potestad.

3. Patria Potestad en el Ecuador

En el contexto ecuatoriano, la Constitución de 2008 establece una obligación tripartita entre el Estado, la sociedad y la familia respecto de la promoción prioritaria del desarrollo integral de las niñas, niños y adolescentes, en atención a su interés superior, la prevalencia de sus derechos y el ejercicio pleno de los mismos (artículo 44). En este sentido, de conformidad con el mencionado artículo, se entiende por desarrollo integral como:

> ...proceso de crecimiento, maduración y despliegue de su intelecto y de sus capacidades, potencialidades y aspiraciones, en un entorno familiar, escolar, social y comunitario de afectividad y seguridad. Este entorno permitirá la satisfacción de sus necesidades sociales, afectivo-emocionales y culturales, con el apoyo de políticas intersectoriales nacionales y locales (Asamblea Nacional Constituyente, 2008).

Por consiguiente, el Estado debe garantizar su vida, cuidado y protección desde la concepción (Asamblea Nacional Constituyente, 2008, pág. artículo 45). Por ello, el artículo 69 constitucional prevé la importancia de la protección de los derechos de las personas integrantes de la familia, entre ellos, la promoción de la maternidad y paternidad responsables: "...la madre y el padre estarán obligados al cuidado, crianza, educación, alimentación, desarrollo integral y protección de los derechos de sus hijas e hijos, en particular cuando se encuentren separados de ellos por cualquier

motivo". Para esto, el Estado debe promover la corresponsabilidad materna y paterna, así como la vigilancia en el cumplimiento de los deberes y derechos recíprocos entre madres, padres, hijas e hijos.

En este orden, la Constitución Ecuatoriana reconoce la facultad que tienen los padres de criar en un ambiente favorable a sus hijos, ello implica, como se mencionó, un conjunto de factores que van desde el velar las necesidades básicas de las hijas e hijos hasta representar y administrar sus bienes y patrimonio. De forma más expedita, la Corte Constitucional Ecuatoriana (Sentencia No. 28-15-IN/21, 2021) expresa:

> En función de la patria potestad, tanto el padre como la madre tienen el derecho de supervisar el desarrollo integral de NNA, y el deber de cuidado (primer ámbito), así como la representación y administración de sus bienes (segundo ámbito). No obstante, por la separación o divorcio □figuras que usualmente impiden la convivencia y la cohabitación□ la tenencia se asignará a uno de los progenitores. De esta forma, uno de los mecanismos para ejercer la patria potestad es la tenencia; sin embargo..., no es la única forma para ejercerla, ya que el ejercicio de la patria potestad también supone obligaciones de educación o de representación judicial y extrajudicial, entre otras.

Debe concebirse que la patria potestad implica una responsabilidad de cuidado, en principio compartida entre la madre y el padre, en cuanto a la hija o hijo menor de edad, en el entendido de estos ser considerados como sujetos de derecho de especial protección. "La responsabilidad de dirigir y mantener un hogar, así como de cuidar, educar, proteger y velar por el desarrollo integral de los hijos en común, recae en el padre y la madre en igualdad de condiciones, aunque en la práctica no siempre ocurra de esta manera" (Espinoza, 2022, pág. 156). En otras palabras:

> La patria potestad no recae únicamente en razón de requerir que los padres tengan autoridad sobre sus hijos, suma el ámbito educativo y psicosocial del menor, además de inmiscuir todo el cuidado y protección para su crianza. Es decir, su alcance implica velar por el transparente desarrollo integral, con responsabilidad tripartita entre Estado, sociedad y familia de resguardando en todo sentido que los derechos del menor sean respetados (Rodríguez *et al.,* 2022: 204).

Por su parte, el Código Civil Ecuatoriano, dispone en su artículo 28, que son representantes legales de una persona "...el padre o la madre, bajo cuya patria potestad vive...", por lo que, según el artículo 58 "El que vive bajo patria potestad sigue el domicilio de quien la ejerce...". Así, según este texto normativo, la patria potestad es el conjunto de derechos que tienen los padres sobre sus hijos no emancipados (Congreso Nacional de Ecuador, 2019, artículo 283).

A este tenor, el artículo 105 del Código de la Niñez y Adolescencia, especifica que la patria potestad no es solamente el conjunto de derechos sino también el conjunto de "...obligaciones de los padres relativos a sus hijos e hijas no emancipados, referentes al cuidado, educación, desarrollo

integral, defensa de derechos y garantías de los hijos de conformidad con la Constitución y la ley". Entre tanto, se prevén un conjunto de reglas para el ejercicio de la patria potestad, previa opinión de la niña, niña o adolescente:

1. Se respetará lo que acuerden los progenitores siempre que ello no perjudique los derechos del hijo o la hija;
2. A falta de acuerdo de los progenitores o si lo acordado por ellos es inconveniente para el interés superior del hijo o hija de familia, la patria potestad de los que no han cumplido doce años se confiará a la madre, salvo que se pruebe que con ello se perjudica los derechos del hijo o la hija[7];
3. Tratándose de los hijos o hijas que han cumplido doce años, la patria potestad se confiará al progenitor que demuestre mayor estabilidad emocional y madurez psicológica y que estén en mejores condiciones de prestar a los hijos e hijas la dedicación que necesitan y un ambiente familiar estable para su desarrollo integral;
4. Si ambos progenitores demuestran iguales condiciones, se preferirá a la madre, siempre que no afecte el interés superior del hijo o la hija[8];
5. En ningún caso se encomendará esta potestad al padre o madre que se encuentre en alguna de las causales de privación contempladas en el artículo 113[9]; y,
6. En caso de falta o de inhabilidad de ambos progenitores para el ejercicio de la patria potestad, el Juez nombrará un tutor de acuerdo a las reglas generales (Congreso Nacional de Ecuador, 2014, artículo 106).

Sobre este aspecto, cuando se trate de niñas y niños menores de doce años, el Juez respectivo valorará su opinión, siempre en atención a su grado de desarrollo. En caso de los adolescentes, su opinión será obligatoria para ser considerada por el Juez, salvo que sea contraria a su desarrollo integral.

7 "…la norma referida fomenta estereotipos y la perpetuación de roles de género, ya que se presume que las mujeres deben criar al hijo, mientras que los hombres deben proveer en el hogar, lo que afecta significativamente el deber de corresponsabilidad, constitucionalmente previsto; el derecho a la igualdad; y, como efecto de lo anterior, la distribución de tareas en el cuidado de los hijos y el ingreso al ámbito laboral de las mujeres. Al respecto, esta Corte advierte que la norma impugnada no supera el test de igualdad, demostrando su inconstitucionalidad" (Corte Constitucional Ecuatoriana. Sentencia No. 28-15-IN/21, 2021).

8 Ídem.

9 Artículo 113. "Privación o pérdida judicial de la patria potestad. La patria potestad se pierde por resolución judicial, por uno o ambos progenitores, en los siguientes casos: 1. Maltrato físico o psicológico, grave o reiterado del hijo o hija; 2. Abuso sexual del hijo o hija; 3. Explotación sexual, laboral o económica del hijo o hija; 4. Interdicción por causa de demencia; 5. Manifiesta falta de interés en mantener con el hijo o hija las relaciones parentales indispensables para su desarrollo integral, por un tiempo superior a seis meses; 6. Incumplimiento grave o reiterado de los deberes que impone la patria potestad; y, 7. Permitir o inducir la mendicidad del hijo o hija".

Ahora bien, el tema acerca de la prevalencia de la madre como figura protectora de la hija o hija ha causado dinámicas encontradas:

> En este panorama se presenta cierto margen de discriminación al no considerar la obligatoriedad de ambos padres para asumir su obligación, prefiriendo la responsabilidad materna por sobre los derechos del otro progenitor. Visto desde esta perspectiva, el texto plantea un debate en razón de considerar estos preceptos como discriminatorios desde varias aristas. En tal sentido, al anteponer a la madre se condicionan los derechos del padre, y por otro lado se ratifican estereotipos de género y patrones culturales que afirman que las mujeres son las más idóneas en el cuidado de los hijos (Rodríguez *et al*., 2022: 203).

Otros autores, como Cedeño Cobeña (2022, pág. 946), manifiesta que: "…dicha distinción es un acto de discriminación y la preferencia materna no es adecuada para lograr una protección integral a sus hijos, además que representa una violación directa a la Constitución Ecuatoriana, y a derechos como la igualdad, corresponsabilidad parental, no discriminación e interés superior".

Precisamente, esta perspectiva trajo como consecuencia la necesidad de interpretación y aclaratoria de esta disposición –artículo 106 del Código de la Niñez y Adolescencia– por parte de la Corte Constitucional del Ecuador. A este tenor, en la referida sentencia No. 28-15-IN/21, el máximo tribunal expone que "…el artículo 106 del CONA se refiere exclusivamente a las reglas para encargar la tenencia pues el mismo Código señala que la patria potestad se ejerce en conjunto. Es decir que, el artículo 106 del CONA no se refiere a la atribución de la patria potestad a uno de los progenitores ya que esta se ejerce en conjunto y solo se puede limitar, suspender, privar o perder bajo las consideraciones de los artículos 111, 112 y 113 del Código referido".

Por otra parte, la patria potestad en ocasiones puede ser limitada, dicha limitación puede ser pronunciada por el juez cuando sea necesario para cuidar el interés superior de la hija o hijo, mediante la restricción de una o más funciones de la patria potestad, durante el tiempo que persistan las circunstancias que dieron lugar a dicha decisión, o por el tiempo señalado en ella (Congreso Nacional de Ecuador, 2014, pág. artículo 111). También, conforme al artículo 112 el comentado código, es posible la suspensión de la patria potestad, para ello se han configurado un conjunto de causales, tales como:

1. Ausencia injustificada del progenitor por más de seis meses;
2. Maltrato al hijo o hija, de una gravedad que, a juicio del Juez, no justifique la privación de la patria potestad con arreglo a lo dispuesto en el numeral 1 del artículo 113;
3. Declaratoria judicial de interdicción del progenitor;

4. Privación de la libertad en virtud de sentencia condenatoria ejecutoriada;
5. Alcoholismo y dependencia de substancias estupefacientes o psicotrópicas, que pongan en peligro el desarrollo integral del hijo o hija; y,
6. Cuando se incite, cause o permita al menor ejecutar actos que atenten contra su integridad física o moral.

En todo caso, la limitación, suspensión o privación de la patria potestad no puede proceder por razones económicas. En otras palabras, ni la carencia de recursos económicos, ni la migración por necesidades económicas son causales para limitar, suspender o privar la patria potestad. Eventualmente podría suspenderse la patria potestad cuando, por razones de migración, debe dejarse la hija o hijo bajo el cuidado de un pariente a quien se le confiará la tutela (Congreso Nacional de Ecuador, 2014, artículo 114).

En referencia a las normativas ecuatorianas mencionadas, siguiendo a Espinoza (2022), la patria potestad implica un régimen de protección de aplicación exclusiva a niña, niños y adolescentes no emancipados; se considera obligatoria, personal e intransmisible, "…dado que los padres la poseen y son los encargados de ejercerla siempre y cuando la propia ley no los haya privado o excluido del ejercicio de la misma" (Espinoza, 2022: 159); además, se considera indisponible, ello debido a que por: "…voluntad privada no puede atribuir, modificar, regular ni extinguir su ejercicio sólo en aquellos casos en que la misma ley lo permita" (Espinoza, 2022: 159). Otro aspecto apunta el carácter irrenunciable de la patria potestad puesto que solo son válidas los acuerdos expresamente autorizados por ley, cualquier acuerdo fuera de estos casos, adolecen de nulidad. También, la patria potestad es gratuita, en el sentido que se trata de un deber natural de los padres y, por tanto, ejercida directamente por ellos.

Conclusiones

Como conclusión se afirma que la patria potestad abarca la responsabilidad parental para la crianza, cuidado y manutención de los hijos. Por tanto, esta patria potestad respecto de los hijos implica su guarda y custodia, representación y administración patrimonial, es decir, es la representación legal que tiene toda niña, niño y adolescente no emancipado, por ambos padres o por uno de ellos. La patria potestad puede ser suspendida o restringida solamente por las razones taxativamente previstas en el ordenamiento jurídico.

Como se observó, en el marco de los tres países referidos –Colombia, Venezuela y Ecuador- la patria potestad juega un papel trascendente en la

cohesión y convivencia familiar, pero sobre todo en la garantía del interés superior del niño, por esta razón en instrumentos jurídicos especiales –reguladores de la situación jurídica de las niñas, niñas y adolescentes como sujetos de derechos-, se ubican regulaciones detalladas en cuanto al alcance y contenido de la patria potestad, y coinciden en afirmar que se trata de un conjunto de responsabilidades reconocidas de forma exclusiva a madres y padres.

En Ecuador, se destaca la intervención jurisprudencial para aclarar el alcance y contenido de la patria potestad, con interpretaciones jurídicas de avanzada y acorde con las nuevas tendencias, referidas al interés superior del niño, al principio de igualdad y al enfoque de género, y se invita a los órganos legislativos a hacer las reformas y precisiones en atención a estos aspectos. La Corte Constitucional Ecuatoriana prevé que es el interés superior del niño el principio rector para la determinación del encargo de uno de los elementos de la patria potestad como es la tenencia, independientemente sea para el padre o la madre, pero en atención a la corresponsabilidad parental.

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The role of intellectual property in the post-war development of the health care sector

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Abstract

Understanding the role and necessity of the use of intellectual property in the field of medicine is the basis for the proper development of this field in the postwar period, as well as for the entire healthcare system. Therefore, the purpose of the study was to determine the impact and prospects of the use of intellectual property in the development of the Ukrainian health sector, post-war. The methodological basis of the work consists of general and special scientific methods: analysis and synthesis, generalization, dialectical, axiological, legal-formal, legal-comparative and structural system. The result of the work shows the necessity of using heterogeneous objects of intellectual property, in particular, those in the field of copyrights and patents, for adequate reform and effective modernization of the health sector. It is concluded that intellectual property is designed not only to ensure the property and non-property interests of the subject of the specified property, but, in addition, is intended to ensure the needs of society in general in the appropriate sphere, where the objects of intellectual property find their concrete application.

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El papel de la propiedad intelectual en el desarrollo del sector sanitario en la posguerra

Resumen

Comprender el papel y la necesidad del uso de la propiedad intelectual en el campo de la medicina es la base para el desarrollo adecuado de este campo en la posguerra, así como para todo el sistema sanitario. Por lo tanto, el propósito del estudio fue determinar el impacto y las perspectivas del uso de la propiedad intelectual en el desarrollo del sector de la salud de Ucrania, en la postguerra. La base metodológica del trabajo consiste en métodos científicos generales y especiales: análisis y síntesis, generalización, sistema dialéctico, axiológico, jurídico-formal, jurídico-comparativo y estructural. El resultado del trabajo muestra la necesidad de utilizar objetos heterogéneos de propiedad intelectual, en particular, aquellos que se encuentran en el ámbito de los derechos de autor y patentes, para la adecuada reforma y modernización efectiva del sector de la salud. Se concluye que la propiedad intelectual está diseñada no sólo para garantizar la propiedad y los intereses no patrimoniales del sujeto de la propiedad especificada, sino que, además, tiene por objeto garantizar las necesidades de la sociedad en general en la esfera apropiada, donde los objetos de la propiedad intelectual encuentran su aplicación concreta.

Palabras clave: propiedad intelectual; derechos de autor; ley de patentes; invención en medicina; invasión a gran escala.

Introduction

The study is devoted to the importance of intellectual property objects in the field of health care during the recovery of Ukraine after the full-scale war with the Russian Federation. Thus, despite the fact that the prospects and deadlines for the end of hostilities are currently not clearly defined, there is already a need to build structured plans for the post-war reconstruction of the state and develop mechanisms for their implementation. The sphere of health care is no exception, which is an important segment in the everyday life of normal civilized society.

The full-scale invasion of the Russian Federation on the territory of Ukraine changed the outlook not only of Ukrainians but also of the whole world. From now on, security issues occupy the most important position among other issues of domestic and foreign policy, since its provision is the main condition for the successful implementation of all other vectors of public life.

The end of the military conflict will have the consequence of rethinking many internal and external processes in various spheres, in particular in the sphere of health care. This area should be one of the first to be modernized, since, firstly, after hostilities, many soldiers and civilians who suffered from the actions of the aggressor state will need treatment and rehabilitation, and secondly, the pro-European vector of Ukraine, which gained new momentum during the full-scale invasion, demands compliance of the medical field of Ukraine with the high standards of the European Union (hereinafter referred to as the EU).

The purpose of the study is to determine the impact and prospects of the use of intellectual property in the post-war development of the healthcare sector of Ukraine.

1. Theoretical Framework or Literature Review

The issue of the use and importance of intellectual property in the field of medicine and biotechnology has been repeatedly studied by many scientists, each of whom focused on the appropriate aspect of such use, thereby contributing to a common theoretical base on this topic.

For example, the contribution of Kashintseva (2013), whose huge number of works are devoted to various manifestations of intellectual property in the field of health care, both within the limits of copyright and patent law, is invaluable. As a candidate of legal sciences, and an active employee of the Research Institute of Intellectual Property of the National Academy of Sciences of Ukraine, the latter studied, in particular, the principles of the legal protection of intellectual property in the medical and pharmaceutical market from the position of priority of human rights, determined the relationship between human rights and the right to patent methods of diagnosis and treatment, established the features of an author's work on medical topics, insisted on the need to take into account the public interest when granting an exhaustive intellectual property right to a socially important object in the field of medicine.

Thanks to her, the theoretical base of the subject of this study was supplemented with a strong, well-founded position on the shift of priorities towards the accessibility of the achievements of modern medicine and pharmacy to society.

The works of Hlushchenko (2017) made a similar contribution to the mentioned topic, which detailed and summarized the features inherent in the objects and subjects of intellectual property in the field of medicine and biotechnology.

Problematic questions of the patent law in the field of medicine were reflected in the works of K. Datsko (2018), where there is an analysis of the norms of Ukrainian national and foreign legislation in this field within the framework of the classification of objects of intellectual property law in medicine and their tools, requirements for their recognition and protection, a complex of special procedures and measures, which are used not only for marketing and capitalization of the medical business but are also a means of providing domestic medicine with high-quality pharmaceutical products and the involvement of modern methods of treatment.

Korogod and Novorodovska (2020) supplemented the specified base by comparing the foreign practice of using objects of intellectual property rights in the field of biotechnology, in particular by studying the user experience of the USA and Japan, which can be considered leading states in the use of an intellectual property. The peculiarities of the functioning of the biotechnology industry in China, India, Switzerland, and the countries of Western Europe were also investigated.

According to the fact of carrying out the specified comparison of state policies, scientists focused on the possibility of effective development of the intellectual property market with the help of Internet technologies, university spin-off companies, transfer of technology and movement of human capital, and proper financing of the mentioned processes.

With the joint efforts of such personalities as V. Teremetskyi, A. Matviychuk, O. Muzychuk, M. Shcherbakovskyi, and O. Oderii (2019) the peculiarities of the legal protection of medical inventions were clarified, the prospects for its improvement were determined, the balance of interests, the rights of patients and patent holders were additionally analyzed, the need for the implementation of the norms of international law and the law of the European Union into the legislation of Ukraine was established. Scientists have proven that objects of intellectual property in the field of medicine have a species division and must meet ethical requirements.

The problems of private law in modern Europe, including the problems of the intellectual property institute, were considered by Kharytonov *et al.* (2019).

However, the waging of a full-scale war on the territory of Ukraine led to the emergence of a new vector of studying intellectual property objects in the field of health care, which consists of the study of their application in the post-war reconstruction of the state. Given the fact that the issue of the restoration of the state after the war began to arise relatively recently,

full-fledged research within the chosen topic is currently lacking, therefore there is an urgent need for additional study of the importance of intellectual property in the field of health care during the period of restoration of independent Ukraine.

2. Methodology

Achieving the above research result became possible due to the combined use of general scientific and special methods of scientific knowledge.

Thus, with the help of the dialectical method, a general idea of intellectual property in the field of health care was formed, which consists in establishing a system of its properties, connections, and regularities that are manifested in the mentioned field.

The analysis and synthesis served as the basis for characterizing the features of the use of individual intellectual property objects in medicine, which made it possible to draw conclusions about the prospects for their use in post-war development.

The axiological method made it possible to assess the importance of the health care sphere for Ukraine to realize its own integration goals and strengthen it as a sovereign state, and also helped to establish the importance of the specified intellectual property processes.

System-structural analysis revealed the content of the main objects of intellectual property in the field of medicine and determined the plane of their application. The specified method, in particular, became the basis for proposing different classifications of the investigated objects according to separate independent separation criteria.

The formal-legal method, in turn, also helped to clarify the essence and content of the main concepts on which the research is based, in particular, as an object of intellectual property and a medical invention.

With the help of the functional method, the purpose of intellectual property was determined for the proper functioning and development of the state in the period of post-war development and after it; the vectors of using the results of intellectual mental activity are determined.

Comparison of intellectual property objects of any other sphere with such objects in the field of health care became possible due to the comparative legal method. Thus, it was established that the objects of intellectual property in the field of medicine have a number of features that distinguish them from the same kind of objects in other spheres of social life. The specified method helped to identify the shortcomings of the legislation on intellectual property.

The method of generalization also contributed to the identification of shortcomings and problematic issues in the field of application of intellectual property in the field of medicine, which in turn made it possible to draw attention to the need for their urgent solution in the period of post-war development, in particular by changing the vector of domestic policy within the scope of patenting inventions and useful models.

3. Results and Discussion

The current stage of human development is characterized by instability associated with radical changes in world politics, economics, law and many other spheres of public life (Tkalych *et al.*, 2022). The field of medical care in different countries of the world is also undergoing significant changes.

One of the most effective ways to modernize and improve the healthcare sector is the active development and application of intellectual property objects in medicine.

The definition of the concept of an object of intellectual property is not established either in the Civil Code of Ukraine (Law 435-IV, 2003) (hereinafter referred to as the Civil Code of Ukraine) or in any other Ukrainian legal act. At the same time, Part 1 of Article 418 of the Civil Code of Ukraine establishes that the right of intellectual property is the right of a person to the result of intellectual, creative activity or to another object of intellectual property right, defined by this Code and another law. Thus, the legislator understands the object of intellectual property rights, in particular, as the result of a person's intellectual and/or creative activity. However, the result of such work is not always the object of intellectual property.

In order to bring clarity to this issue, the legislator fixed in Article 420 of the Civil Code of Ukraine an approximate list of those objects that can be considered an object of intellectual property. This list is approximate because the active development of the innovation sphere, in particular with the help of information technologies, leaves the niche of the intellectual property open for new objects that may be different from those already known and established at the legislative level.

Objects of intellectual property can be classified as complex objects of civil turnover since their existence and registration of such existence are associated with the presence of a large number of nuances. Thus, the object of real property is a material substrate that is limited in space and is used by a certain number of persons; in contrast, the object of intellectual property is an ideal substrate that exists in an immaterial form on a material medium (Kozyakova, 2008).

Objects of medical intellectual property, which represent material and other goods in such a field, which satisfy the relevant interests and needs of citizens and organizations and regarding which subjects of intellectual property in the field of medicine and biotechnology enter into defined legal relations and perform the necessary sub-objective rights and obligations (Hlushchenko, 2017), occupy an important place in the field of health care. Such objects can be divided into two main groups according to species characteristics:

1) objects of copyright, and;

2) objects of patent law.

Of course, the specified gradation is conditional, but it shows the main vectors of the use of intellectual property in medicine for the purpose of its improvement. Other objects of intellectual property, which are not included in the specific groups outlined above, can also be used in the field of health care, but it is not yet possible to imagine their use, since such examples are currently unknown in practice.

The first main group of intellectual property objects in the field of health care consists of copyright objects, which in this field should include:

- materials used in public presentations (theses, reports, lectures, seminars);
- results of conducted scientific research (scientific articles, dissertations, monographs);
- design and technological documentation for medical devices and instruments;
- reports on pre-clinical and clinical examinations of medicines and medical devices, regulatory documents;
- advertising brochures, methodical manuals, and guidelines for doctors;
- graphic demonstrative materials of the treatment process (pictures, drawings, illustrations);
- audiovisual demonstrations of medical interventions, photographic works, and slide films illustrating modern medical technologies, and;
- computer programs for medical and diagnostic profiles (Popovych and Koshova, 2021).

It is these objects of copyright that are necessary, in particular, for the study of various diseases and injuries, the consequence of which may be the invention of an effective method of treatment, which is why, in the opinion

of the author, such objects of intellectual property should be placed in public access as much as possible on publicly known platforms of doctors and other specialists in the field of health care.

Along with this, the situation of uncontrolled access to the object of copyright in the field of medicine may violate certain material interests of the author, who owns non-property and property rights to his object, however, in the opinion of the author, the social necessity of these results of intellectual activity should prevail over such an interest, in connection with which it is not necessary to limit access to the specified objects of copyright. Instead, it is expedient for an authorized entity from the state to consider the possibility of developing and implementing a mechanism for compensating the author for the material costs incurred by the latter due to open access to intellectual property objects in the field of health care, the author of which is himself.

Objects of patent law in medical practice include inventions. An invention is the result of a person's intellectual activity in any field of technology, which has novelty, inventiveness, and industrial applicability. The novelty of the invention does not limit territorial framework, it must have an absolute global character. Novelty is assessed not only by previously registered inventions or utility models but also by publicly available sources of information, including publications and articles. The inventive step is a non-obvious way of obtaining a technical solution that does not have to follow the existing state of the art. Industrial suitability is the possibility of using the invention in the treatment process (Popovych and Koshova, 2021).

The most common objects of inventions in medical practice are a product (device, substance) or process (method): devices for treatment and diagnostics; medicines; strains of microorganisms used for disease diagnosis or treatment; biotechnological inventions.

Medical devices include devices and apparatus for diagnostic and therapeutic purposes; surgical, ophthalmological, and other special instruments; equipment of operating rooms, laboratories, diagnostic and other offices; devices for physiotherapy and massage; x-ray equipment; medical products: prostheses, tires, bandages, hearing aids (Kashintseva, 2014).

The variety of intellectual property objects that can be used in the field of health care indicates the need for the development of such innovations both in the present time and in the post-war period since such inventions affect the possibility of receiving proper medical care and increase the level of the possibility of treating various human health disorders.

The specified variety of inventions for ease of classification can be conditionally divided into:

1. pharmacological, where the objects of intellectual property will be new or improved pharmaceutical preparations;
2. microbiological, accompanied by the study of various types of microorganisms (viruses, bacteria);
3. procedural, represented by ways and methods of diagnosis, prevention, and treatment, and;
4. technical-instrumental, representing a set of devices and tools used in medical practice.

Analysis of the Specialized Database of the State Enterprise "Ukrainian Institute of Intellectual Property" "Inventions (useful models) in Ukraine" by the search query "treatment" shows that the most popular intellectual property objects of patent law are methods of treatment, followed by devices for treatment, methods of medical diagnosis and forecasting of human diseases, strains of microorganisms, viruses, fungi. One of the examples of such a patented invention is the patent "Method of treatment of pulmonary tuberculosis" (patent No. 1808), which belongs to the Ukrainian Research Institute of Phthisiatry and Pulmonology named after F. G. Yanovsky (Teremetskyi *et al.*, 2019).

It is likely that in the period of post-war development, intellectual property objects in the field of health care, which will relate to the psychological and psychiatric component of human health, will become even more popular, since the full-scale militarized attack of the Russian Federation on Ukraine, which is accompanied by unprecedented cruelty and inhumane treatment of human rights and freedoms, aggravated both the general psycho-emotional state of the entire Ukrainian society and the state of its individuals who were directly affected by the criminal actions of the aggressor state, or suffered an irreparable negative impact as a result of their own excessive empathy and emotional instability.

At the same time, only relatively uniform active activity within each specified group will allow bringing the healthcare sector to a new level, which will be characterized by an adequate level of providing the population with high-quality medical services.

At the same time, it is worth noting that inventions in medical practice differ from other inventions in the field of industrial application, which determines their special status among objects of intellectual property that are used in other spheres of social life. Medical inventions have a special field of application - this is medical practice. Application of the invention in medical practice has a direct connection with human rights, in particular the patient's right to life and health care.

Therefore, medical inventions have a peculiarity, which is that they have their own species division determined by the field of application of the

invention (method of treatment and diagnosis); medico-biological or clinical research (tests) must take place in medical facilities, medical centers and sanatorium-resort facilities of Ukraine for further use in medical practice; must meet ethical requirements (Teremetskyi *et al.*, 2019).

The last criterion of the specificity of intellectual property objects in the field of medicine is quite debatable, in connection with which it affects the general state of the introduction of innovations in the specified field. Thus, any scientific medical discovery must be accompanied by thorough, in particular, experimental research, as it concerns human life and health.

The Declaration of Helsinki declares that scientific research in the field of biology and medicine is carried out without hindrance, subject to compliance with the provisions of this Convention and other legal provisions that guarantee human protection. Scientific research on humans can be conducted only if there is no alternative, the effectiveness of which would be similar to the effectiveness of research on humans. The risks to which such a person may be exposed must be commensurate with the potential benefit from the research (Kashintseva, 2013).

Thus, for objects of intellectual property in the field of medicine, it is important to maintain a balance between scientific novelty and its significance for treatment and philosophical humanism, which calls on scientists in this field to refrain from reckless research.

The field of health care is also connected with other objects of intellectual property, however, these objects are generally related to the commercialization of this field, so they are not particularly important, in particular, for post-war development. For example, a business entity engaged in the production and distribution of relevant drugs, or an entity engaged in medical practice, may own such intellectual property objects as a commercial (brand) name, a trademark (signs for goods and services), trade secret. The specified objects of intellectual property services distinguish their subjects from other representatives of their type of activity but are not directly related to the main purpose of the existence of the healthcare sector - maintaining the physical and psychological health of society.

In addition, the use of intellectual property in the field of health care can also be divided by purpose:

1) objects of intellectual property used in the process of providing direct medical care (such objects were mentioned above), and;

2) intellectual property objects used to improve service.

This group of objects can include, for example, various devices, programs, applications, and databases, which will help make the field of health care more understandable and accessible, as well as facilitate the administrative component of providing medical services. Such an object can be, for example:

- the database of patients of the relevant medical institution, which will minimize the need to spend time on re-filling personal data about the patient, his state of health, and the results of previous visits to the institution, and;
- a suitable mobile application for an independent, convenient, and accelerated appointment with a doctor in the relevant institution, obtaining prescriptions for medicines.

A striking example of organizational modernization at the state level in the field of health care is the introduction and mandatory use of the Electronic Health Care System in Ukraine (eHealth) - a two-component system in which the user interacts with the central database through the electronic medical information system. The specified system, in addition to the possibility of obtaining electronic prescriptions for drugs, and choosing a doctor, contributes to the creation of space for innovations in medicine (machine learning, big data, blockchain), which is stated in the main goals of the system (Electronic healthcare system in Ukraine, 2023).

Thus, the state clearly showed its desire for changes in the medical field and demonstrated its interest in it.

The above shows that Ukraine understands the importance of intellectual property, in particular, for the post-war development of the healthcare sector, and aims to encourage it, but it is currently impossible to speak of complete readiness for its effective and active implementation.

Thus, among the main systemic factors that prevent the formation and development of the medical and biotechnological industry of Ukraine, it is possible to single out the lack of a systemic legislative framework that regulates the relevant industries, including a certain imperfection of legislation in the field of intellectual property, which would take into account the specifics of medical and biotechnological objects of intellectual property (Nimko, 2017).

As an example, the Law of Ukraine "On the Protection of Rights to Inventions and Utility Models", which regulates the legal protection of relevant objects of intellectual property, in accordance with the provisions of Part 3 of Article 6 of the said legislative act, does not apply to surgical or therapeutic methods of treatment of humans or animals, methods of diagnosing the human or animal body. This provision does not apply to products (substances or compositions) used in diagnosis or treatment (Law 3687-XII, 1993).

However, practice shows that methods of treatment are objects of intellectual property and may well fall under the concept of the invention (utility model), therefore they need proper registration and protection, against the background of which there are gaps in the Ukrainian legal

framework, which currently does not cover all needs to ensure the proper level of implementation of some types of intellectual property objects in the field of medicine.

Among the most problematic issues for the healthcare sector are: patent protection terms, utility model and industrial design patent protection, "evergreen" patents, compulsory licensing, and exhaustion of intellectual property rights. These problems create negative phenomena in the form of the unavailability of medicines for the patient (Datsko, 2018).

Thus, within the limits of patent law, the issue of observing the public interest when inventing an invention (useful model) valuable from the point of view of human health is acute. Restrictions on the disposal of property rights to intellectual property objects are the reason for the impossibility of effective widespread use of the corresponding object, which results in irreparable deterioration of human health and even loss of human lives.

Currently, there is still no legal position in Ukraine regarding the limits of the inventor's right to his invention and the right of an individual to ensure the proper state of health on the part of the state. Thus, due to the lack of priority of public interest, many objects of intellectual property in the field of medicine are sold abroad with the aim of obtaining profit by the subject of copyright or due to the bureaucracy and difficulty of obtaining patents in Ukraine, lack of funding, while Ukrainians are forced to use such objects for significant costs or do not have the opportunity to use them at all.

For example, Ukrainian scientists invented the technology for the production of batulin, which is an antibiotic with a strong effect against staphylococcal infection, but due to the lack of appropriate funding in Ukraine, they were forced to sell such technology to Belgium for interest from the sale of the finished medicinal product on the European market (Ilyashenko, 2014).

A similar situation occurred with the Kharkiv scientist A. Malikhin, who invented a special device for conducting blood analysis of blood sampling bases. The specified device in the form of a sensor is placed on the patient's neck and stomach and reads the relevant data, which later appear on the computer monitor as 117 indicators of human health, necessary, in particular, for establishing a diagnosis. However, even here Ukrainians did not benefit from this invention, as it is produced by a private company and sold abroad (Ilyashenko, 2014).

Therefore, cases, when Ukrainian patients are forced to pay for the monopolization of treatment and diagnostic methods, are not an exception, which is unprecedented for Europe. At the beginning of the XXI century. the Baltic countries and Georgia faced similar problems. However, they quickly got rid of the philosophy of "absolutization of intellectual property rights"

imposed by the pharmaceutical and medical lobby and speculations about the financial costs of developing a new innovative product (Kashintseva, 2015a).

According to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), member states (signatories of the agreement) can use a significant number of its flexible provisions at their own discretion and decide, in particular, the issue of exclusion from legal protection by patent legislation of diagnostic, therapeutic and surgical methods of treatment. Currently, Ukraine has not used this privilege (Kashintseva, 2015b).

Thus, taking into account that Russia's war with Ukraine activated many internal political reform processes, it is worth addressing the issue of determining priorities between the property rights of intellectual property subjects in the field of health care and the public interest in ensuring the proper level of prevention, diagnosis, and treatment of the population. Just as in copyright in the field of health care, a fair solution to the problem of the inventor's property interest can be compensated for the use of the invention by the state.

The given examples of the leakage of important results of intellectual activity in the field of health care of Ukrainian medical scientists not only demonstrate the losses of Ukrainian society from the imperfect protection of their rights to an adequate level of medicine but also illustrate the unrealized possibility of economic growth of the state at the expense of foreign investments that could have been attracted for the production and distribution of certain object of medical intellectual property.

In the post-war period, more than ever before, Ukraine will need large funds to restore the improvement of temporarily occupied and other affected territories, infrastructure, and compensation for losses of human and housing stock, in connection with which the inflow of capital investments and other investments in Ukrainian products, in particular, created within the sphere of health care, is a necessary condition for the reconstruction of Ukraine and the achievement of its development goals.

An alternative for the effective development, in particular, of the healthcare sector in the post-war period is to also consider the issue of stimulating the creation and development of spin-off companies, in particular university ones.

The experience of the USA confirms that one of the effective mechanisms for identifying and using objects of intellectual property rights, in particular, in the field of biotechnology, is the creation of management structures, such as spin-off companies, which are widely a recognized way of commercializing the results of scientific research (objects of intellectual property rights). These university structures directly enter the market, accordingly, there is a great chance of success for spin-offs (additional

sources of income). The emergence of this new American model and its enormous popularity in the biotechnological sector forces other countries to reconsider the relationship between university science and industry (Korogod and Novorodovska, 2020).

Thus, the activity of such companies is risky, but it will allow expanding the opportunities of universities or other scientific institutions conducting relevant research in the field of medicine, the results of which fall under the characteristics of intellectual property objects, to enter the wide market, that is, to make an object of intellectual property, which has important public importance, more accessible.

Conclusions

Intellectual property is an important achievement of modern society, which is evidenced by the impossibility of proper development of any sphere of social life without its use since intellectual property is designed not only to ensure the property and non-property interests of the subject of the specified property but is aimed at ensuring the needs of society in general in the appropriate sphere, where objects of intellectual property find their application.

Despite the above, the role of intellectual property objects in the field of health care is currently not sufficiently appreciated, as a result of which there are gaps in the regulation and protection of such objects, an imperfect conceptual apparatus, and a limited worldview regarding their use in practical medicine.

The post-war development of the health care sector should be based on the principles of maximum involvement of the results of intellectual activity in the form of objects of copyright and patent law on issues related to medicine, as well as aimed at ensuring the digitization goals of the state, since only under the condition of such involvement is it possible there will be effective development of the specified area, which in turn will lead to the formation of a physically and morally healthy society, increase in the level of public trust in the government and its social programs, attraction of a significant amount of foreign and domestic investments, improvement of the reputational status of Ukraine at the international level.

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Formation of the ethnic symbolic politics as the mechanism of interaction between society and the political elite: Impact of information technologies

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Abstract

The purpose of the article was to examine the role of information technologies in the formation of symbolic politics through the prism of mass media, communications and new Internet technologies. The methodological basis of the study is formed by legislation and historical literature, using dialectical and comparative methods, as well as general methods of scientific analysis. Symbolic politics is one of the mechanisms of information interaction between society and the political elite; in a new form, it allows solving social and socio-political problems. It has been established that full communication between the political elite and the population is impossible without elements of symbolic politics, such as public relations agencies, Internet blogs and social networks, etc., whose purpose is not only to form a positive image of politics and leaders, but also, it serves to establish an agreement of understanding in society. The authors conclude that new mechanisms of interaction between the elite and society, such as e-receptions, destination portals and digital government, lead to greater government transparency and increased efficiency of its activities.

Keywords: symbolic politics; information technologies; digital government; political elite; political image.

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Formación de la política simbólica étnica como mecanismo de interacción entre la sociedad y la élite política: impacto de las tecnologías de la información

Resumen

El propósito del artículo fue examinar el papel de las tecnologías de la información en la formación de la política simbólica a través del prisma de los medios de comunicación de masas, las comunicaciones y las nuevas tecnologías de Internet. La base metodológica del estudio está formada por la legislación y la literatura histórica, utilizando métodos dialécticos y comparativos, así como métodos generales de análisis científico. La política simbólica es uno de los mecanismos de interacción de la información entre la sociedad y la élite política; en una nueva forma, permite resolver problemas sociales y sociopolíticos. Se ha establecido que la comunicación plena entre la élite política y la población es imposible sin elementos de la política simbólica, como agencias de relaciones públicas, blogs de Internet y redes sociales, etc., cuyo propósito no es solo formar una imagen positiva de la política y de los líderes, sino también, sirve para establecer un acuerdo de entendimiento en la sociedad. Los autores concluyen que los nuevos mecanismos de interacción entre la élite y la sociedad como las recepciones electrónicas, los portales de destino y el gobierno digital, provocan una mayor transparencia del gobierno y un aumento en la eficiencia de sus actividades.

Palabras clave: política simbólica; tecnologías de la información; gobierno digital; élite política; imagen política.

Introduction

In modern society, the media and communications, as well as new media and Internet technologies, have a significant impact on the thoughts and actions of people and thus play a large role in the life of society (Kuzmenkov *et al*., 2021). The interaction of power and society, in particular in the information field, is a common and necessary component of the current political situation. In turn, the most important tool for ensuring information and communication interaction between the government and society is symbolic politics. Such interaction is manifested, firstly, in the development of communications between ordinary citizens and the political elite, which ensures stable management of society and allows solving many social, socio-political problems.

For example, such as maintaining and improving the welfare of citizens, improving the administrative system, as well as promoting the

implementation of large-scale ideas and projects in the social sphere, economy and other areas. Secondly, information interaction ensures the exchange of valuable symbols, meanings and ideas necessary for the functioning and development of society (Buhaychuk *et al.*, 2022). Thus, symbolic politics is one of the mechanisms of information interaction between society and the political elite.

Modern politics is considered to be symbolic, due to the fact that the mass media have acquired the status of one of the most significant socio-political institutions in any modern society, regardless of the level of its socio-economic development.

The relevance of the research topic is also emphasized by the fact that at the moment, among researchers there is still no consensus on the phenomenon of symbolic politics.

Questions about the subjects, functions, mechanisms and types of manifestation of symbolic politics are debatable. This circumstance indicates the need to continue theoretical and practical research on this form of interaction between government and society, including the example of certain social groups and local authorities.

The need to analyze the role and place of mass consciousness in the process of political decision-making still remains relevant. In particular, the definition of tools and mechanisms for the influence of mass consciousness on the development of the agenda for the work of state institutions of power. It is necessary to study the perception by the mass consciousness of the place and role of various groups of the political elite, as well as the translation of political requests from the population, the prospects and opportunities for increasing the impact of public interests and needs on the content of the domestic and foreign policy pursued by the authorities.

1. Methods

In the framework of the study authors used general scientific research methods including specialized research methods of comparative history science, logical and legal analysis, and concretization. The methodological basis of the study, first of all, consists of dialectical and comparative methods, as well as general and special methods of scientific analysis, acting as tools of scientific knowledge, such as socio-philosophical analysis, structural-functional method.

2. Results and discussion

The theoretical foundations for the study of symbolic politics were laid by the American political scientist Murray Edelman (1985) and the German scientist W. Sarcinelli (1998), whose main achievement is the designation of the subject field and the main subjects of symbolic politics. Subsequently, the theory of symbolic politics became a fairly popular topic in the works of well-known specialists in the field of philosophy, sociology, political science and other areas of social knowledge.

For example, the symbolic aspects of the political sphere were considered in detail in the works of such foreign thinkers as J. Baudrillard (1992), P. Berger (1995), C. Manheim (1994), S. Moscovici (2011), P. Ricoeur (1995), P. Champagne (1997), A. Cohen (1969), Russian researchers S.G. Kara-Murza (2003), O.A. Karmadonov (2004), N.I. Shestov (2005), L.G. Fishman (2006) and others.

Subsequently, several models of symbolic "staging" were formulated: theatrical, dramatic and performance (Meyer, 1992). A special approach to the study of symbolic politics is considered to be cultural-anthropological, which pays more attention to the socio-psychological aspects of symbolic acts. Symbolic politics, despite being a subject of study for a long time, is still in the focus of modern political philosophy and political science. In domestic political science, this is a relatively new subject of study.

Such attention to symbolic politics is explained by the fact that at present this phenomenon is the main mechanism for the translation of meanings and interpretation of political events. The method of influence of power on the formation in the minds of the masses of the desired value norms and attitudes. The effectiveness of symbolic politics is determined in the construction of the emotional state of the population in the political process. Although this is not the only understanding of the meaning and purpose of symbolic politics.

The classical political and philosophical idea assumes the main provisions in the understanding of politics, pointing to its social characteristics, which means that any modifications in the political sphere will be conditioned by modifications of sociality. In the second half of the 20th century, a revolutionary upheaval took place in the history of mankind: the emergence of virtual reality and the global information space in human society (Lyubutin and Pivovarov, 1993).

This change is a natural result of the expansion of various spheres of human life, i.e. evolution of his scientific thought and creative abilities. First of all, we are talking about the transformation of the mode of legitimation of power in a democracy. Mass democracy is not so much a thought process of decision-making as feelings, emotions and experiences. A sort of new political style based on the principles of performance and show.

Modern power, unlike past eras, dramatizes itself through television, radio, photography and film production, which leads to an increase in the possibilities of symbolic politics. Today, visual information acquires a special role, changing the traditional, academic and bookish discourse for mosaic and iconographic imagery.

The technique of rational-rhetorical "persuasion" of the public is replaced by visual suggestion and advertising "temptation", which qualitatively increases the demand for symbolic politics (Potseluev, 1999: 138). The influence of the media and new digital technologies on modern society has led to a change in the perception of the world and man. A countless number of scenarios for the development of social processes taking place in the world have appeared. These authors in their works in different perspectives, the process of the impact of mass media on a person and society as a whole. At the same time, they all noted that the effect of the media on a person's worldview depends not so much on his personal characteristics: gender, age, education, political position, but rather on the individual's sense of his belonging to society.

Today, it is impossible to study society, ignoring virtual reality, where information technologies are not just a means of communication and information, but a formative and transformative construct of the relationship between a person and society. The perception of virtual reality as a form of manifestation of social life is limited only by the capabilities of computer technology.

In fact, a new social space has emerged, where there is no traditional space-time continuum. New social platforms have appeared and are actively functioning, where there are no borders and closed zones, where there is unlimited freedom and lack of control. A parallel reality arises, where, as in a "normal" society, there is money or means of exchange (cryptocurrency), labor is increasingly intellectual in nature, and the result of labor is a product of design and modeling (Prilukova, 2004).

Not surprisingly, the political sphere of activity is also undergoing significant changes. Its content today is determined by the communication strategy, and the form is increasingly reminiscent of a show with its mandatory attributes - entertainment and attractiveness. Politicians become the "stars" of the show, while sports, stage, movie stars, etc. in various capacities are involved in politics. Socio-political activity in all its forms is transferred to cyberspace and television. At the same time, it acquires the features of a business based not on the values and interests of the masses, but on the laws of entrepreneurship and marketing, which, in turn, are regulated and implemented by a narrow circle of professionals: consultants, image makers, political technologists, etc.

Politics is increasingly becoming a symbolic activity, it includes design, modeling and construction. Today, not a single serious politician, political movement or party in their activities can do without such important components as "creating a political image", "modeling elections", "political design", etc. Moreover, if until recently the formation of the image of a political leader was determined, first of all, by his personal qualities. That today is the construction of the image, the media, based on the expectations of the electorate.

Often both things happen at the same time. All this is possible if there is a political elite that has not only financial capital, but also resource capital: a management structure that makes it possible to put pressure on opponents, connections and influence on the adoption of political acts, the ability to control and manipulate public opinion.

In practice, there is a representation of political processes and power, which is based on the media image - there is a reincarnation of power, the image itself is not politics, it only "reveals" politics. The images of politics are formed by high-tech means of describing an object - modern technologies that assume the role of "creators of prototypes".

Representation takes place in politics - the process of replacing the original, sample, original, a kind of demonstration of a reproduction of something, but not the original itself, that is, this is the representation of one in the other and through the other. Although this is not surprising, even Plato said that "the image of an idea and the idea are not the same thing, the idea is the prototype" i.e. the mode of representation begins to give meaning to what should be represented, and as a result, what is represented (represented) becomes represented and, conversely, what is represented is what is represented.

In this connection, one of the most prominent French theorists of postmodernism, J. Baudrillard, proposed replacing the term "representation" with "simulation" (Baudrillard, 2000: 64-70) because the sign and meaning are identical in it. He called society a "society of simulation" or a society not of things, but of their images. At the same time, what conveys a sign does not have to be real.

Studying this phenomenon, we can conclude that the representation and its perception occurs with the help of consciousness, i.e. the combination of the individual's sensory abilities and knowledge, in the process of creating all kinds of collective images, sensory experiences and knowledge begin to intertwine, which has a significant impact on the process of forming an essential component of the image of power and politics.

A person who receives information will not think about the fact that there is an intermediary between him and the image on the screen. These can be: an editor, screenwriter, commentator, director, etc. Therefore,

the state needs step-by-step testing of all stages of the implementation of manipulations that lead to success.

This is especially important when the scenarios of the "color" revolution are threatened, since it is manipulative technologies that form an "alternative reality" among the population, a different vision of what is happening, form a distorted idea of what is right and what is not. In modern "color" revolutions, there are four information fields in which a fierce struggle is being waged: "Television, the press, the street and the Internet" (Morozova and Miroshnichenko, 2011: 56).

Human intervention can be carried out by technically changing the image in the process of shooting, set in a certain place by the camera, using neuropsychological mechanisms of influence, for example: information transfer rate, eye hypertrophy, etc. All these aspects make the image more attractive and more realistic than the prototype itself .

It follows from this that the direct instrument of image formation is the human brain at the mental-operational level. Therefore, the state and power structures, creating huge semiotic machines, constantly need a specialized mechanism. The vast growth of screen culture and the possibility of reaching a huge audience create favorable conditions for the existence of symbolic politics. The provided images are perceived emotionally convincingly, and the events are built into the everyday life of a person, making it impossible to rationally analyze the socio-political situation.

The information provided through the mass media has become the main form of manifestation of symbolic politics. Information has ceased to be just a message; it has become a carrier of various meanings and symbols that form the discourse of political situations. The power elite and the state stage themselves with the help of a computer and television, using, at the same time, the mass media, covering large masses of the population and actively influencing their consciousness.

The avalanche-like growth of incoming information, absorbed by ordinary consciousness through electronic sources and transmitted almost at the speed of light, leads to an increase in the possibilities for the manifestation of symbolic politics. Theoretically, symbols are necessary to maintain social order, but the current situation in society, through television and computer screens, translates authenticity into something artificial. The message about some event becomes more important than the event itself, the latter comes into existence only because it was reported.

The modern world is filled with virtual communication, which requires high-tech tools and organization principles. Entire social institutions have lost their role and place in the hierarchical structure of the culture of society: "Turning into a mass for which the habitat is the street, where people wander aimlessly, being subjected to police control" (Sirota, 2011: 23).

States and societies, regardless of the socio-economic level of development, are involved in virtual reality. The modern world has become fragile and transparent, filled with symbols that have no basis in any reality. The real world has become a world of simulacra, an exact copy of the reality that never existed. The current system of communications provokes a person to "fabricate" reality, information is transformed into an independent entity, and the mass media is transformed into a political institution (Cobba and Elder, 1983: 131).

Conclusions

Thus, in modern society, in ensuring the interaction between authorities and the population, the decisive role belongs to the media and communications. It is they who increase the efficiency and effectiveness of symbolic politics.

The use of symbolic policy methods contributes to the formation and consolidation of the community, the awareness and expression of public interests, and the political enlightenment of citizens. At the same time, the use of symbolic politics may be accompanied by negative phenomena, such as the manipulation of public opinion, a discrepancy between promises and real actions of the authorities.

An important component of symbolic politics is the information and communication interaction between the political elite and society. Known forms of communication between the authorities and the population, which are based on unilateral influence on the part of the authorities, are no longer sufficient and relevant today. There is a need for information exchange, which implies the conjugation of the interests of the political elite and society.

Today, full-fledged communication between the political elite and the population is impossible without elements of symbolic politics, such as PR agencies, Internet blogs, social networks, etc., the purpose of which is not only to form a positive image of political leaders, but also to establish an agreed mutual understanding in society.

New mechanisms for the relationship between the elite and society: electronic receptions, target portals, digital government and others, cause greater transparency of power and increase the efficiency of its activities.

The dissemination of positive information about the decisions of the authorities through official websites and blogs contributes to the awareness of the population about the intentions of the governing bodies, thus forming an information contact between the authorities and society. The technological means of symbolic politics are also important tools in the process of population mobilization.

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