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CUESTIONES POLÍTICAS

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

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

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

Cuestiones Políticas aparece dos veces al año y publica trabajos originales con avances o resultados de investigación en las áreas de Ciencia Política y Derecho Público, los cuales son sometidos a la consideración de árbitros calificados.

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Conflictividad política, pandemia de COVID-19 y nuevos paradigmas

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Jorge Jesús Villasmil Espinoza *

Resumen

Todo indica que el año 2020 va a terminar signado por altos niveles de conflictividad política que pudieran configurar un escenario internacional de entropía exponencial con resultados inciertos para el orden y la estabilidad global. Si a eso le sumamos los estragos económicos y sociales generados por la pandemia del nuevo coronavirus el panorama que se vislumbra para el 2021 no es nada alentador. No obstante, la pregunta obligada a responder por los científicos sociales y filósofos en general es ¿pueden estos acontecimientos configurar nuevos paradigmas políticos, económicos y socioculturales en el mundo? El objetivo de estas reflexiones radica en presentar el número especial, Vol. 38, II parte, y al mismo tiempo analizar los escenarios de conflictividad política en el mundo actual en el contexto del COVID-19. A modo de conclusión se destaca el hecho de que, a pesar de las expectativas de justicia social, democracia y Derechos Humanos de buena parte de las sociedades humanas, no se vislumbran en lo discursos de las elites académicas los elementos teóricos y epistemológicos necesarios para configurar nuevos o al menos renovados modelos de organización política, económica y social más allá de los trajinados sociales y liberalismos de antaño.

Palabras clave: conflictividad política; pandemia de COVID-19; nuevos paradigmas; editorial de Cuestiones Políticas; estabilidad global.

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Political conflict, COVID-19 pandemic, and new paradigms

Abstract

Everything indicates that the year 2020 will end up signified by high levels of political conflict that set up an international scenario of exponential entropy with testimonies for order and global stability. Add to that the economic and social havoc generated by the pandemic of the new coronavirus, the outlook for 2021 is not encouraging at all. However, the question for social scientists and philosophers in general is these events to shape new political, economic and sociocultural paradigms in the world? The objective of reflections lies in presenting in the special issue, Vol. 38, II part, and at the same time analyzing the scenarios of political conflict in the real world in the context of COVID-19. The conclusion highlights the fact that, in addition to the expectations of social justice, sorrow and human rights of much of human societies, the theoretical and epistemological elements necessary to shape new or at least models of political, economic and social organization beyond social and liberal trajinos are not apparent in what academic elites.

Keywords: political conflict; pandemic COVID-19; new paradigms; Editorial of Political Issues; global stability.

Presentación número especial (II parte)

Nuestra hipótesis que afirma que todo indica que el año 2020 va a terminar signado por altos niveles de conflictividad política que pudieran configurar un escenario internacional de entropía exponencial con resultados inciertos para el orden y la estabilidad global, se sustenta al menos en 3 acontecimientos puntuales por su trascendencia y significación internacional: a) el conflicto por los resultados de las elecciones presidenciales de EUA realizadas el pasado martes 03 de noviembre del año en curso; b) la guerra entre Armenia y Azerbaiyán por el control efectivo de la región Nagorno Karabaj denominada por los armenios como república de Artsaj y; c) el proceso constituyen adelantado en Chile que modificará la constitución instaurada por la dictadura militar en 1980.

En el primer caso, las elecciones presidenciales en EUA, la democracia paradigmática del mundo occidental desde sus orígenes en el siglo de las luces se evidencia que las poliarquías contemporáneas puede ser una estructura frágil incluso en sociedades como la norteamericana que han

desarrollado históricamente un sofisticado sistema institucional para su resguardo y adaptación a los desafíos que impone cada coyuntura. Basta con que algunos actores o factores de poder propaguen, con el debido fundamento o sin él, la duda sobre la legitimidad de los resultados del ritual electoral para que se erosione la confianza en las instituciones republicanas.

En este contexto de incertidumbre, el presidente Donald Trump afirma sistemáticamente que él es el ganador de la contiende electoral y que es víctima de un fraude orquestado por el partido demócrata y su candidato ganador Joseph Robinette Biden Jr, con la anuencia de las grandes cadenadas mediáticas de ese país. ¿posee el presidente Trump las evidencias necesarias que avalen su reclamo o, por el contrario, se trata de los desvaríos de un personaje egocéntrico que no ha podido asimilar su derrota? En el momento que se escriben estas líneas todavía es muy prematuro para saberlo, sin embargo, queda claro que sobre la democracia norteamericana y su sistema electoral se ha posicionado una atmosfera de sospecha.

En el segundo caso, la guerra entre Armenia y Azerbaiyán por el control efectivo de la región Nagorno Karabaj, guerra que se ha venido sucediendo en varios episodios desde el ocaso de la URSS, con resultados nefastos en perdida de vidas humanas, desplazados y violación a los derechos humanos de la población civil de armenios y azeríes por igual, evidencia que los mecanismos diplomáticos tradicionales no son suficientes para reducir los resentimientos etno-políticos de países que se perfilan como enemigos históricos.

Además, estas conflagraciones bélicas entre estados son de nuevo el escenario propicio para que potencias como Rusia y Turquía interesadas en el control de la región transcaucásica interfieran en el conflicto para sacar provecho de este, aunque siendo justos, la intervención de Rusia ha sido más, hasta el momento, la de un mediador que la de un factor beligerante y su despliegue de tropas en Nagorno Karabaj es parte del acuerdo para cesar el conflicto (infobae, 2020). Como fue la tendencia general en la guerra fría podemos suponer que: ¿Estos conflictos deparan el inicio de un conjunto de guerras proxy en la región? ¿Realmente busca Turquía desarrollar un proyecto hegemónico neo-otomano? Tal como señala Taspinar (2009).

El tercer caso aludido, tiene que ver con el proceso constituyente que se esta desarrollando en este momento en Chile, otrora país modelo por su estabilidad política y económica en la América meridional. Tal como explica Morales Quiroga (2020), el estallido social experimentado por el país austral el 18 de octubre de 2019 y que echo por tierra la estabilidad del país por más de dos meses se explica por la acumulación de varias crisis:

> Primero, una crisis de participación que se vio agudizada por la instauración del voto voluntario en 2012. Segundo, una crisis de representación reflejada en la

> menor adhesión a partidos y en la pérdida de confianza a instituciones claves de la de democracia (gobierno, tribunales, congreso). Tercero, una crisis de confianza en instituciones de orden público y de orden social (Carabineros e Iglesias). Cuarto, una crisis de probidad pública y privada reflejada en el incremento de casos de financiamiento irregular de las campañas políticas y colusiones empresariales (Morales, 2020: 03).

En este escenario dialéctico que conjuga a fuerzas contrarias democráticas y antidemocráticas, la sociedad civil organizada y autoconvocada en las manifestaciones de descontento junto el liderazgo político del presidente Sebastián Piñera coincidieron en adelantar un proceso constituyente como condición de posibilidad para gestionar la crisis y, fundamentalmente, construir de forma concertada otro contrato social que proporciona a las mayorías un umbral superior de justicia social y desarrollo con equidad.

Ante esta situación se justifican las siguientes preguntas: ¿Es una nueva constitución suficiente para superar los problemas de participación democrática, representación política y confianza institucional que erosionan a la democracia chilena? ¿Puede ser el proceso constituyen el caldo de cultivo para la posterior emergencia de liderazgo populistas-radicales que personalizan la política en detrimento del marco institucional? Esperamos de corazón que este no sea el caso, aunque en Latinoamérica abunden ejemplos que apuntan en sentido contrario.

Específicamente, la selección de artículos que resulto del arbitraje para publicar en este número da cuenta de excelentes investigaciones internacionales que reflejan legitimas preocupaciones jurídicas y políticas en íntima relación con el complejo mundo actual. Apertura el número **en la sección Ciencia Política** la investigación ***Civil Identity of Youth in the Conditions of Regional Social and Political Tensión*** de la autoría de **Iana Alexeevna Siruikova** y **Evgeniya Valer'evna Khramova** el cual se planteó por objetivo analizar el proceso de construcción de la identidad civil de la juventud en condiciones de tensión social y política, desde la perspectiva regional en Rusia.

En la **sección Ciencia Política y desarrollo social** el artículo de la autoría de **Ruslan Rustamovich Ibragimov** y otros, intitulado ***Religious Associations in Tatar Assr under Conditions of Mass Political Repressions of the 1930*** se plateo por objetivo en clave de historia política contemporánea, analizar la situación de las asociaciones confesionales en la República Socialista Soviética Autónoma de tártaro, durante el período de represiones políticas masivas de fines de la década de 1930. En la misma sección, Anvar Ajratovich Gafarov y Mariam Arslanovna Galeeva estudian los aspectos sociopolíticos de la peregrinación musulmana rusa a La Meca en el siglo XIX en su investigación ***Socio-Political Aspects of Russian Muslim Pilgrimage to Mecca in the XIX-Th Century.***

Seguidamente, en la **sección Ciencia política y desarrollo político**, Guzel Anvarovna Valeeva y colaboradores presentan los resultados de su investigación en un artículo intitulado ***Security In Rights as a Variety of National Security*** el cual tuvo por objetivo determinar los signos de seguridad jurídica sobre la base de los puntos de vista científicos existentes y la legislación vigente, excluyendo su comprensión excesivamente amplia. En la misma sección, Sabina Rafailevna Efimova y Evgeniya Valerevna Khramova en su trabajo ***Socio-Political Tension in the Russian Society: Case Study of Youths of the Republic of Tatarstan*** exploran el nivel de tensión sociopolítica en Tartaristán. El objeto del estudio es el grupo social juvenil como portador de activismo social. Por último, Elena M. Chertakova y otros en su trabajo ***Special features of vocational training institutions in the context of pandemics*** analizan la experiencia de implementar la educación a distancia en el contexto de la pandemia de coronavirus.

En la **sección Teoría política**, Ghasem Shariatikia y otros presentan un sugestivo trabajo intitulado ***Identifying the Mental Model of the Managers of Melli Bank Regarding Quantum Leadership using Q-methodology*** el cual tuvo por objetivo Identificar el modelo mental de los gerentes de Melli Bank en relación con el llamado liderazgo cuántico utilizando la metodología Q.

En la **sección Filosofía política** Ainur Razifovich Gilmullin y Eduard Vladimirovich Krasnov exponen su investigación ***Unity of law and legal act as a key principle of the rule of law*** con el objetivo de discutir uno de los principios clave del estado de derecho, como lo es el principio de la unidad de la ley. En consecuencia, se analizaron las opiniones de estudiosos que definen este principio y destacan sus principales características conceptuales. En la misma sección, Jaafar Naser Abdulridha y otros, presentan un trabajo intitulado ***Legal basis for the interaction between local with state authorities*** con el objetivo de analizar la base legal para la interacción entre autoridades locales y estatales en el marco de lo que estipula la constitución vigente de la república de Irak.

También en la misma **sección Filosofía política**, Jaafar Naser Abdulridha y colaboradores discuten la filosofía de la disuasión privada en el marco del código penal en su trabajo ***The philosophy of private deterrence in the penal code*** que da cuenta de una problemática jurídica y al mismo tiempo política. Asimismo, en esta sección, Oleksandr V. Kozachenko y otros presentan una investigación intitulada ***Taxonomy of compulsory and incentive legal consequences (legal measures) of committing illegal acts*** la cual se planteó por objetivo elaborar una taxonomía de las consecuencias legales obligatorias e incentivadoras de cometer actos ilegales.

En la **sección Política internacional** Ruslan Rustamovich Ibragimov y otros estudian las relaciones Estado e iglesia ortodoxa rusa en el contexto de la segunda guerra mundial y los primeros años de postguerra en un interesante trabajo intitulado ***Foreign policy factor in State-Church relations in the Soviet Union during World War II and early post-war***. En la misma sección, Victoria Ravilevna Sagitova y Andrey Valeryevich Ivanov presentan su investigación ***Conflicts associated with migratory processes: a political perspective*** la cual tuvo por objetivo discutir el carácter conflictivo de los procesos migratorios que se dan en el mundo de hoy. Por último, en la misma sección, Marat Zufarovich Galiullin y colaboradores presentan una investigación denominada ***Political, Military and Technical Cooperation of the Republic of Uzbekistan in the Framework of the Shanghai Cooperation Organization*** con el objetivo de analizar de los principales vectores de cooperación técnico-militar de la República de Uzbekistán en el marco de la Organización de Cooperación de Shanghai (OCS) en la región de Asia Central.

Por su parte, en la **sección Participación, democracia y gobernabilidad,** Hryhorii Bukanov y otros exponen los resultados de una investigación denominada ***Training and implementation of the environmental, economic, and legal development policy of the regions: main practice-oriented approaches*** que se planteo por objetivo estudiar las posibilidades de los enfoques orientados a la práctica en la administración pública, en el campo de la formación e implementación de la política de desarrollo ecológico de las regiones, entre las cuales destacan, las condiciones sociales y económicas modernas de Ucrania.

Seguidamente, en la **sección Informática jurídica** Damir Khamitovich Valeev y Anas Gaptraufovich Nuriev en su investigación ***Implementation of the Function of Maximizing the Security Level in the Administration of Justice in the Digital Economy*** analizan la implementación de la función de maximización del nivel de seguridad en la administración de justicia en el contexto de la economía digital. En la misma sección, Timur Giorgievich Okriashvili y otros se plantearon por objeto de estudio definir los activos digitales como una categoría legal y también precisar sus características para distinguir los objetos digitales de otros objetos civiles según las características identificadas en un interesante trabajo intitulado ***Digital Objects: The Legal Peculiarities, the Role and Prospects of Use.***

En la misma ***sección informática jurídica,*** el artículo ***Distance and Online Learning Solutions in the Context of Modern Legal Educational Policy*** de la autoría de Raviya Faritovna Stepanenko y colaboradores analiza e identifica las mejores estrategias y modelos de educación a distancia y en línea aplicables a las universidades rusas

en el contexto de la política educativa legal moderna, considerando su efectividad. También en esta sección Kateryna Danchenko y Olga Taran presentan un artículo denominado ***Criminal Liability of Medical Profecionals Negligience: Comparative Analysis***, el cual tuvo por objetivo identificar áreas de especializaciones donde la negligencia médica ocurre con mayor frecuencia con base a la jurisprudencia de Ucrania (los datos del único registro estatal de decisiones judiciales de Ucrania de 2016 a 2019). De igual modo, el trabajo de Olga Trishchuk y colaboradores intitulado ***Internet Media During the COVID-19 Crisis se planteo por objetivo*** definir las principales características de los medios durante la cuarentena, para analizar la peculiaridad de los medios online durante la crisis provocada por la pandemia de coronavirus COVID-19.

En la **sección Reforma del estado, Ruslan Faritovich Garipov y Denis Ivanovich Igonin presentan su artículo *Restriction of the Rights of Russian Senators as a Political Responsibility con el objetivo*** de explorar las características de la implementación de los derechos parlamentarios individuales por parte de los miembros del Consejo de la Federación y la cámara alta de la asamblea legislativa rusa.

En la **sección Cultura política y participación electoral,** destaca la investigación de Boris Perezhniak y colaboradores ***Electronic technologies during local elections: new challenges*** desarrollada con el objetivo de estudiar el papel de las tecnologías electrónicas durante las elecciones locales en Ucrania.

De seguida en la **sección Derechos humanos**, Lyaysan Renatovna Mustafina y otros presentan un trabajo intitulado ***Social and legal guarantees of the rights of convicts according to the legislation of the Russian Federation*** desarrollado con el objetivo de discutir las garantías sociales y legales de los derechos de los condenados según la legislación de la Federación de Rusia. Por otra parte, en la **sección Derecho público y participación social,** Stanislav Igorevich Golubev y colaboradores en su indagación denominada ***Environmental crime: dialectical and criminological visión*** examinan el estado, las causas y algunas medidas para prevenir los delitos ambientales.

En la **sección Derecho público**, Alexander Yurevich Epihin y otros presentan un trabajo denominado ***The investigator as an independent subject of criminal prosecution in cases of terrorist crimes*** con el fin de estudiar la teoría y la práctica del enjuiciamiento penal de delitos terroristas en la Federación de Rusia. En la misma sección, Ildar A Tarhanov y colaboradores identifican las cuestiones fundamentales de libertad condicional en el derecho penal de la Federación de Rusia y, al mismo tiempo, discuten los aspectos del impacto negativo del encarcelamiento en la identidad del reo, desde varios puntos de vista sobre el programa de "ascensores sociales".

En esta misma sección, Gulshan Gurezovna Bodurova y Sanavbar Nazirkulovna Tagaeva describen las tendencias de desarrollo de la regulación legal vinculada a colisiones que regulan los asuntos matrimoniales bajo las leyes de los países postsoviéticos en un interesante artículo titulado ***Tendencies for the Development of Marriage Conflict Legal Regulation with the Participation of Foreigners and Persons without Citizenship in the Post-Soviet Space.*** Del mismo modo, el artículo ***Features of Qualification and Prevention of Smuggling of Narcotic Drugs, Psychotropic Substances: their Precursors or Analogues*** de la autoría de Khayrullina Rezeda Gazinurovna y otros, analiza la legislación rusa en función de ofrecer opciones para resolver problemas en el campo del contrabando de estupefacientes, sustancias psicotrópicas, sus precursores y análogos.

Igualmente, en la misma sección, Jaafar Naser Abdulridha y Ghani Ressan Gadder presentan un estudio intitulado ***The problems of organization and legal responsibility (civil and administrative) in the field of telecommunications in Iraq*** *con la finalidad de describir los problemas de organización y responsabilidad legal (civil y administrativa) en el campo de las telecomunicaciones en Irak. Aquí mismo, Hedayatollah Soltani Nezhad y Javad Hazeri exponen los resultados de la investigación* ***Constituent elements of prohibited vertical agreements in the competition law of Iran and the European Union*** desarrollada con la finalidad de analizar los elementos constitutivos de los acuerdos verticales prohibidos por la ley de competencia de Irán y, con lo que se establece en la ley de competencia de la Unión Europea.

Por su parte, Alexander Sergeevich Baleevskikh y Oleg Ilyasovich Katlishin en su investigación ***State regulation efficiency of food companies of Russia in sanction period*** describen el nuevo curso político de la Federación de Rusia, destinado a superar las sanciones económicas de los países de Europa, así como de los Estados Unidos al país euroasiático. En esta misma sección derecho público, Motliakh Oleksandr y colaboradores en su trabajo ***Mediation in criminal proceedings: legal regulation in Ukraine and foreign experience of application*** estudian las peculiaridades del uso de la institución de mediación en los procesos penales de los países europeos para implementar esta experiencia positiva en la legislación de Ucrania. Del mismo modo, el artículo de investigación ***Dynamics of the implementation of the protective role in the conduct of crimes: the practice of the Convention for the Protection of Human Rights and Fundamental Freedoms*** de la autoría de Dariia Balobanova y colaboradores analiza la dinámica de la implementación de la función protectora en la condena por delitos en la interpretación de la Corte Europea de Derechos Humanos.

En esta misma sección, el articulo intitulado ***Jurisprudence of the European court of human rights in the choice of precautionary measures in criminal proceedings: legal realities and perspectives*** de la autoría de Svitlana Romantsova y otros, discute los problemas de aplicación de las decisiones del TEDH en la selección de medidas cautelares en casos penales de conformidad con la legislación nacional. Dado que la legislación procesal de Ucrania actualmente no es perfecta en el marco del establecimiento y regulación de la aplicación de medidas cautelares, las decisiones del TEDH sirven como un regulador indispensable de esta cuestión. Además, destaca el trabajo de investigación ***Victimological measures to prevent violent offences for gain committed by children*** de la autoría de Volodymyr Shablystyi y colaboradores que tuvo por objetivo proporcionar una descripción victimológica de los delitos violentos con fines lucrativos cometidos por niños en Ucrania.

Por su parte, la investigación de Marcia Jaramillo Paredes y otros, intitulada **Influencia de la innovación en la competitividad de las medianas empresas del Ecuador** tuvo por finalidad analizar la influencia de la innovación en la competitividad de las medianas empresas del Ecuador. Asimismo, y en la misma sección, el artículo de Nana Bakaianova y colaboradores ***Information technology in the litigation due to the pandemic COVID-19*** examinan las tecnologías de la información en litigio y su desarrollo en la pandemia del nuevo coronavirus.

En la misma sección, Tetiana Blashchuk y colaboradores presentan un artículo intitulado ***Virtual Mediation in the Field of Intellectual Property*** con la finalidad de analizar los aspectos teóricos del uso de las tecnologías de la información en el proceso de mediación, así como estudiar los puntos problemáticos de su implementación. También, Ernest Gramatskyy y otros, en su investigación ***Innovation IT-Payment Technologies as a Know-how and an Object of Intellectual Property Rights*** realizan un análisis de la introducción y funcionamiento del *know-how*, para determinar los vectores de su uso, teniendo en cuenta las necesidades de los participantes en las relaciones jurídicas que surgen en este ámbito.

Por último, Denysiuk Stanislav y colaboradores en su trabajo ***Foreign experience in professional development of private detectives*** analizan la experiencia internacional en el desarrollo profesional de detectives privados, con el fin de implementar algunos aspectos positivos en la legislación de Ucrania. Igualmente, Kozin Serhii y otros cierran el presente número especial, con su artículo ***Description of the legal basis for the protection of labor rights of migrants*** el cual tuvo por objetivo analizar el marco legal para la protección de los derechos laborales de los migrantes, identificando un rango específico de normativas relacionadas con esta categoría y considerando sus principales disposiciones en Ucrania.

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Civil Identity of Youth in the Conditions of Regional Social and Political Tension

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Abstract

The article discusses the process of building the civil identity of young people in conditions of social and political tension, from a regional perspective. The formation of civic identity is a real problem of modern Russian society. The process is complicated by changes in the socio-political of the various regions. The media stimulates public discourse around the protest activity of young people. In the context of this scientific interest, the research presented in this article is carried out. Its empirical material is obtained during a grant study by the authors at the end of 2019. The research methodology is based on conflict resolution technology. As an empirical basis, materials from three focus group surveys, fifteen in-depth interviews and regional-minded internet resource content analysis on the topics of socio-political youth activity were interpreted. It is concluded that the republic of Tartaristan, as one of the regions of the Russian federation that has specifics in its economic, ethnic, and religious life, has become a platform for gathering empirical information.

Keywords: civil identity of youth; social identities; conditions of social tension; regional policy in Russia; collective imaginaries.

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Identidad civil de la juventud en condiciones de tensión social y política regional

Resumen

El artículo analiza el proceso de construcción de la identidad civil de la juventud en condiciones de tensión social y política, desde la perspectiva regional. La formación de la identidad cívica es un problema real de la sociedad rusa moderna. El proceso se complica por los cambios en el entorno sociopolítico de las diversas regiones. Los medios estimulan el discurso público en torno a la actividad de protesta de los jóvenes. En el contexto de este interés científico se llevó a cabo la investigación presentada en este artículo. Su material empírico se obtuvo en el transcurso de un estudio de subvención realizado por los autores a finales de 2019. La metodología de la investigación se basa en la tecnología de resolución de conflictos. Como base empírica se interpretaron además los materiales de tres encuestas de grupos focales, quince entrevistas en profundidad y análisis de contenido de recursos de internet de relevancia regional sobre los temas de la actividad sociopolítica de la juventud. Se concluye que, la república de Tartaristán, como una de las regiones de la federación rusa que posee características específicas en su vida económica, étnica y religiosa, se ha convertido en una plataforma para recopilar información empírica.

Palabras clave: identidad civil de la juventud; identidades sociales; condiciones de tensión social; política regional en Rusia; imaginarios colectivos.

Introduction

The study of state identity in the conditions of instability in the formation of the modern russian youth form is relevant and timely. The article summarizes the research experience of young conflict scientists at kazan federal university. A survey of modern russian youth was carried out in the framework of actual methodology. The authors have chosen as an object of study - a highly interesting concept of civic identity, conducted an applied study to identify the specifics of its formation in the conditions of the republic of tatarstan.

The research is based on the methodology of conflict audit and a set of socio-political theories on the explanation of social identities. The marketing component offers a methodology to explain some aspects of youth protest activity in the region.

1. Methods

The theoretical discussion around the concept of "civic identity" today is very extensive, international, and interdisciplinary. Its basis is social and political sciences. Some authors acknowledge that at the present, the formation of identity is perceived as a continuous process, which includes the interpretation and reinterpretation of experiences experienced by subjects (Nikraftar, 2017). Sociological studies of identity show that a significant part of the formation of collective identity lies in the framework of establishing social boundaries between one's own and other social groups through social comparison processes. For this purpose, assessments within and outside groups are often biased and interpreted in favor of (Müller, 2013).

A fairly large number of applied researches is conducted in the direction of analysis of teenage and youth identity. They imply that teens must understand their relationships with groups with different identities. They recognize the importance of the internet environment in shaping identity. It is believed that this social environment is characterized by limited parental intervention and a strong presence of teenage peers. This environment makes it possible to socialize, as well as design and discuss the teenager his personality (Van Eldik *et al.,* 2019).

The authors pay special attention to the distinction between the concepts of "identity" and "belonging". When breeding these concepts, they usually mean that "identity" emphasizes the uniformity of any collective unit, and "belonging" emphasizes commonality, but not necessarily the same (Pfaff-Czarnecka, 2011).

In the scientific literature, the significance of each paradigm is noted. Each is recognized as useful for understanding phenomena in their respective fields of research. But it is noted that in the literature on identity, more attention is required to understanding the relationship of personal identity problems with socially constructed identity problems and their meanings for behavior, values, and well-being (Levitan et al., 2018). A common feature of the theoretical research presented in the literature, as a rule, is relying not on a quantitative, but on a qualitative research methodology.

The basis of the methodology of the study is a conflict resolution audit. This is a methodology for analyzing the socio-political tension of an object (a social group, community, location, or society as a whole), using marker and criterion technologies for analyzing discourse within the object of study as the main toolkit. The object is segmented by discourse (social, political, religious, ethnic, radical, gender, etc.) (Khramova et al., 2019). Markers of tension are identified in each segment. The degree of influence of marker

semantics on the growth or decrease in tension is determined using the criteria component. In our case, the method of semantic differential is used when conducting focus group polls. When answering certain questions of the interview guide, respondents were asked to determine the level of significance of the indicator on a one-dimensional scale (from 0 to +10 units) (Hramova, 2020).

The empirical base of the research is the materials of three focus-group surveys of youth and youth experts in tatarstan, fifteen in-depth interviews and content analysis of internet resources of youth identity discourse. Focus groups have a specific characteristic. The first focus group was held among representatives of the young generation in the historical center of tatarstan, the museum-reserve - the city of bolgar.

The sample consisted of seven people, adolescents aged 14-17, with different socio-economic characteristics according to family affiliation. The group included both conformal and non-conformal and indifferent adolescents. The focus group can be described as provincial in terms of assessing the views of its participants. The second focus group included young residents of the capital of tatarstan - the city of kazan, both the indigenous population and visitors from other regions of russia. The group brought together young people with different, often polar, socio-political views. This group included both conformal representatives of the student activism of a classical university and non-conformal, often radical, representatives of the political underground, the opposition, ethnic and religious communities. The age was 19-25 years. The third focus group included representatives of the expert community of the republic of tatarstan dealing with issues of education, upbringing, and political socialization of youth. The average age of the participants was 45 years. The main task of the focus group survey was to compare the views of the expert community on youth identity with the real situation on civic identity formed by the participants of the youth community itself.

Representatives of various youth communities operating both online and offline were selected as respondents to in-depth interviews on the issue of youth civic identity formation. These are both formal and informal communities. Their activities are of the most diverse nature: political activism, social activism, ethnic and religious organizations. Some communities to which respondents belong can be classified as radicalized groups. Among the respondents, for example, are representatives of the headquarters of alexei navalny, one of the most famous russian opposition leaders; and representatives of radical sexist communities on social networks; and representatives of the youth islamic movement.

The main markers for identifying civic identity were such linguistic constructs that reveal the presence of: aggressive rhetoric against representatives of another identification group; rhetoric of classifying a

subject as a member of a particular youth group (online or offline); the rhetoric of describing their objective socio-political reality; rhetoric of assessing the negativism and hopelessness of the future of modern youth; political protest rhetoric; rhetoric of social and political activism.

2. Results and discussion

The purpose of focus-group and in-depth interviews was to identify systemic manifestations (markers) of civic identity of youth in four groups: gender, confessional, opposition, subcultural. The reactions of society and the state to the manifestations of the civic identity of youth were analyzed. Civic identity is here the product of social differentiation and contradiction. Civic identity doesn't resolve them, but pushes the state and society to prohibitions and restrictions on youth, thereby provoking a civil youth protest.

The main objectives of the survey complex were:

- analysis of the rhetoric of youth on the problems of communication in online and offline communities, belonging to them, the use of the "language of aggression" and attitude to the state and society.
- identification of markers of ideological extremism in the expert discourse around the problem of civic identity.
- determination of the positions of young people in interaction with society and the state and their mutual obligations.
- study of the vision of modern youth by representatives of the expert community, its ideas about civic identity and the role of agents of political socialization and education of modern Russia in its formation.
- the search for a possible explanation for youth protest as an alternative to the current dominant "symbolic code" of elite groups.
- According to the results of an empirical study, in the communities of all examined segments, universal structural signs are found, such as:
- the dichotomy of "one's alien (enemy)".
- the presence of an ideological leader (only around which the community is viable).
- a certain set of supporters (according to experts, today it is 20-30 active people in the community).

- prescribed forms of behavior for all actors (intolerant of specific enemies).
- a non-alternative system of views on reality and a pessimistic vision of the future of russian society.

Based on the findings of focus-group surveys and in-depth interviews testifying to the case-based and casual nature of interactions among youth communities, it can be determined that the absence of one or two structural features does not affect the development of others. So, in the group of anarchists the ideological leader may not be observed, but in the opposition politicized community - ideological prerequisites, except for slogans. But both the first and the second function, reproducing rhetoric, mechanics of action and strict adherence to technology influence on all members of the community, forming a collective civic identity.

The crisis of identity of modern youth is manifested in its negative orientation - the denial of similarity with any other age, social, gender, political groups, as well as fragmentation. Thus, the "fan of identities" is often in a state of existential conflict since no basic identity has been identified. In this role may be a civic identity. This feature of youth identity is actively used by ideologists of extremist movements in their interests. This is usually done through manipulative practices.

The manipulative technologies used by the ideologists of the communities are unrivaled in relation to the practices of political actors, who, due to their functional responsibilities, are entrusted with the struggle for the ideologization and political socialization of modern youth. The ideologists of extremist movements build community activities from practice to theory, and then to specific technology. Testing one technology, they, according to all scientific foundations, elevate it to the regime of established practice or eliminate it. A good example is the network structure of the "headquarters of a. Navalny" or npos created by "victims of the hands of the political regime".

This was the case with the transfer of technology of open protests and resistance to the technology of ordered preventive legal protection. Unlike the first protests (bolotnaya square in moscow, etc.), when various lawyers worked randomly with the detained protestants, at the moment there is an institute of professional lawyers specializing in working with "bulk" and other "protestors", and the "headquarters of navalny" and other "protest" ngos are staffed by lawyers.

There were no particular differences among representatives of urban and rural youth communities. This is not to say that rural youth have fewer or more markers of protest rhetoric of civic identity than urban youth. The differences are related to location, but not to identity. The basis of the difference is the sedentary vision of the future urban youth of tatarstan and

mobile in rural areas. The lack of desire to change anything at the place of their rural residence does not encourage the youth of small towns and settlements to protest activity.

Conclusion

The study identified the following characteristics of the civic identity of modern youth:

- The lack of a clear formulation of political and social requirements both among young people in general and among representatives of youth communities of the most diverse kinds, in particular. The request for social justice, which is characteristic of all representatives of the youth socio-demographic group, does not structure at this stage clear requirements, except for a change of government.
- Substitution of requirements for the authorities and society with slogans of an extremist and radicalized nature, without a clear definition of strategies and tactics for their practical implementation.
- Lack of understanding among young people of the importance of isolating the interests of the opposite side of the conflict, that is, avoiding a rational awareness of the conflict, shifting unrealistic elements in the field with dominance (withdrawing the current government, social justice, fighting corruption);
- The transformation of protest from a form of political participation into a strategy to remove or increase social tension without looking for models of compromise or effective cooperation not only with the state, but also with society.
- The lack of a youth request for common ideological positions even within radicalized and purely political communities. The presence of stable ideological positions would facilitate the launch of internal integrative processes for these communities and stable recruiting. Here we can talk about the signs of the formation in russia of a kind of "generation of the thirteenth article" (article 13 of the constitution of the russian federation), which in its rejection of a unified ideology does not recognize constructive, system-forming, integrating principles of the significance of ideology.

An analysis of the rhetoric of a youth group around its civic identity when included in online and offline communities showed the presence of informal slang flowing from the internet environment into the real one. In verbal communication between communities, no differentiation

of rhetorical devices was revealed. Aggressive rhetoric appears only in response to triggers artificially created during the conversation. Ideal fixations in the consciousness of these triggers were not found. Markers of aggressive attitude towards society in youth rhetoric are not observed. The persistent rejection of some elements of government is recorded in the majority of young people surveyed.

Among the markers of aggressive rhetoric in expert discourse, we-they dichotomy can be distinguished with respect to government representatives / elites. Linguistic units are distinguished: elite, power, system.

In contrast to the opinion of the expert community, youth representatives feel and express their obligations to society, not displaying extreme negativity in relation to the state. This is more like a situation of confusion, misunderstanding. In our opinion, young people are forced to engage in a narrow circle of their problems using the situation of ideological chaos in society. In the event of a critical violation of their rights and freedoms, representatives of the youth group themselves are ready to defend not only personal interests, but the whole society on the idea of social justice.

Representatives of the expert community highlight the totality of dysfunctions of state and public mechanisms in relation to youth. Attitude to this socio-demographic group varies from sympathetic to paternalistic. A low level of self-criticism and opportunities for influence and interaction with young people in solving their problems is noted. The problem of education is acute. The problem of education is not declared on the agenda of the expert community.

The youth protest is explained by experts as an alternative to the existing dominant "symbolic code" of elite groups. Young people themselves do not think in terms of elitization and symbolization of protest. The ideological basis of the protest for the youth itself is social justice.

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Ciencia Política y Desarrollo Social

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Religious Associations in Tatar Assr under Conditions of Mass Political Repressions of the 1930

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Abstract

The paper discusses the situation of confessional associations in the Autonomous Soviet Socialist Republic of Tatar during the period of mass political repressions de in the late 1930s. The methodological basis was the civilizational approach, as well as the principles of objectivity, historicism, and social focus, which allowed the most effective development of the issue raised. The specificity of the period and the object of study are determined by the heyday of Stalinist repression and religious consciousness, which was carried by believers and clergy, and was not correlate with communist ideology. The very fact of the existence of the aforementioned believers and the clergy and the presence of Orthodox churches, mosques, Catholic churches and functioning religious buildings of other religions was fundamentally in line with the goals and objectives that the state authorities established during this period. By way of conclusion, the authors provide detailed statistical information (in support of their scientific arguments and conclusions) on the dynamics of the number of prayer buildings in the republic during the study period and at the same time account of the general conditions of mass repression that characterize the historical context.

Keywords: soviet state; Russian Orthodox Church; Islam, mass political repression; atheism and materialism.

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Asociaciones religiosas en Tatar Assr bajo condiciones de represiones políticas masivas en la década de 1930

Resumen

El documento analiza la situación de las asociaciones confesionales en la República Socialista Soviética Autónoma de tártaro durante el período de represiones políticas masivas de fines de la década de 1930. La base metodológica fue el enfoque civilizacional, así como los principios de objetividad, historicismo y enfoque social, que permitieron desarrollar de la manera más eficaz el tema planteado. La especificidad del período y el objeto de estudio están determinados por el apogeo de la represión estalinista y la conciencia religiosa, que fue llevada por los creyentes y el clero, y no se correlacionó con la ideología comunista. El hecho mismo de la existencia de los creyentes mencionados y del clero y la presencia de iglesias ortodoxas, mezquitas, iglesias católicas y edificios religiosos en funcionamiento de otras religiones fue fundamentalmente discordante con las metas y objetivos que las autoridades estatales establecieron durante este período. A modo de conclusión los autores proporcionan información estadística detallada (en apoyo de sus argumentos y conclusiones científicos) sobre la dinámica del número de edificios de oración en la república durante el período de estudio y al mismo tiempo dan cuenta de las condiciones generales de represión masiva que caracteriza el contexto histórico.

Palabras clave: estado soviético; Iglesia ortodoxa rusa; islam, represión política masiva; ateísmo y materialismo.

Introduction

The scientific issues presented in the paper have long been in the focus of the scientific attention of historians. In the Soviet period of Russian historiography, it could be considered only from the point of view of criticism of religious consciousness. In this regard, the works published in this period have certain ideological dogmas and stereotypes. Nevertheless, it should be noted that significant factual material was collected and systematized in them (Baltanov, 1973; Evdokimov, 1967; Filimonov, 1983; Ishmukhametov, 1979; Krylov, 1960).

Changes in the socio-political life of the country during the years of perestroika and the ensuing collapse of the USSR led to fundamentally new approaches to the study of this problem. In addition, historians gained access to previously closed archival funds, and to the possibility of cooperation with foreign colleagues. As a result, many works were published in the post-

Soviet period, when the problem under study received a fundamentally new and comprehensive analysis (Aralovets, 1995; Braslavsky, 1997; Braslavsky, 1995; Zemskov, 1995; Litvin, 1993; Mukhametshin, 2003; Nabiev, 2002; Odintsov, 1994; Pospelovsky, 1995; Yunusova, 1999; Yakunin, 2002; Nafikov and Nabiev, 2018; Fazliev *et al., 2018).*

A foreign historiography of the problem developed in a conceptually different format (Fletcher, 1973; Bennigsen and Wimbush, 1986; Devlet, 1991; Rorlich, 1986). Its specificity is largely determined by the sociocultural and sociopolitical conditions of work of researchers. At the beginning of the 20th century, the Russian Empire was a multi-ethnic and multi-confessional state. Religion played a decisive role in many spheres of life of the peoples of Russia regardless of their confession and ethnicity, in fact shaping the worldview of the people.

The coming to power of the Bolsheviks in Russia was a turning point for the country. Since that time, there has been a revolutionary change not only in the socio-political and economic structure of the state; the spiritual foundations of Russian society have also undergone radical changes. The Bolsheviks, whose views were based on a materialistic worldview, viewed religion as their ideological adversary capable of influencing the consciousness of individuals. Therefore, atheism became one of the postulates dominating in the ideology of the new state power.

By 1917, in addition to the traditional confessions of this region: Islam and Orthodoxy, other beliefs were spread in the territory of the Kazan province. There were operated the following communities: Catholics, Lutherans, Jews, Old Believers of the Belokrinitsky and Priestless Hierarchies, various Protestant movements (evangelists, Baptists, Pentecostals, Adventists) (Nabiev, 1997). In accordance with the legislation of the Russian Empire, the above religions were endowed with various rights and obligations. With the adoption by the Bolsheviks in November 1917 of the "Declaration of the Rights of the Peoples of Russia", all existing national religious privileges and restrictions were abolished; all confessions were granted equal rights to fulfil their religious needs (Collection of normative acts on Soviet state law, 1984).

In the first decade of Soviet power, its attitude towards confessions was to a certain extent differentiated: Muslims, as well as followers of the Gospel and Baptist sects were in a somewhat more preferred position. The reason for this, in each case, was specific. In a Muslim society, Islam is not just a religion, but a way of life. Violent changes in the traditional way of life of Muslim peoples could lead to large-scale protests against the new government.

Therefore, at a certain stage, the policy of the Soviet state regarding Islam was relatively flexible. Its manifestations were: "An appeal to the

working Muslims of Russia and the East", which affirmed the inviolability of their beliefs, customs and national-cultural institutions (Legislation on religious cults, 1971); the return to Muslims of relics such as the Koran of Osman, the Syuyumbike tower in Kazan, the Caravanserai in Orenburg (Legislation on religious cults, 1971); permission to teach Muslim creeds in mosques (based on the decisions of the Presidium of the All-Russian Central Executive Committee dated July 9 and July 28, 1924 (they were cancelled in 1928 by a decision of the Presidium of the Central Executive Committee of the USSR) (Nabiev, 2002).

Reflection of this trend in the Tatar Autonomous Soviet Socialist Republic was the continuation of the construction of the Zakabannaya mosque in Kazan and the construction of mosques in the villages of the republic (Nadyrov, 2000). However, already in the late 1920s, the Soviet state's policy regarding Islam was reduced to the level of other confessions, which in general terms was expressed in the forced closure of prayer buildings, and in repressions against believers and the clergy.

As for Evangelicals and Baptists, the authorities used them as a tool to combat with the influence of the Russian Orthodox Church. In this regard, taking into account the presence of pacifist ideas in sectarian dogma, on January 4, 1919, the Decree "On Relief from Military Duties for Religious Beliefs" was adopted. Directly in Kazan, there was a practice when, in the 1920-1930s the authorities transferred Orthodox churches to the communities of evangelical Christians (Kornilov, 2003).

In order to divide the Russian Orthodox Church, in 1923 the authorities initiated the creation of a Renovated Church. In this regard, the Renovated Church Diocesan Administration also operated in Kazan until 1938 along with the Orthodox Kazan diocese.

1. Methods

The civilizational approach is chosen as the methodological basis of the study. It allows us to explore the problem of interest in a multidimensional format, considering it in the social, political, cultural, and economic segments. Ultimately, this allows us to provide the most complete picture of the functioning conditions of the religious associations in the Tatar Autonomous Soviet Socialist Republic during the study period.

When working on the paper, the authors were guided by the principles of historicism, objectivity and a social approach. The first of them obliges to investigate facts and events from the point of view of where, when, for whatever reason they arose and developed in accordance with the historical situation. The principle of objectivity obliges to dissociate ourselves from

various subjective factors that can affect the purity and objectivity of the study. The principle of a social approach involves considering the events and processes that took place in the case within the framework of the studied problem and period, taking into account the interests of various layers of Soviet society.

2. Results and Discussion

The general political situation in the USSR at the end of the 1930s was characterized by the onset of "great terror", the aim of which was the final establishment of a totalitarian regime in the country. When this goal was achieved, all social layers of the Soviet state were subjected to repression, which, in turn, led to the creation of ideal conditions for total repression in relation to the society of believers and clergy who were initially alien to the official ideology.

During the anti-religious campaign at the turn of the 1930s and 40s, believers and clergy became acutely aware of their lack of rights. Stalin's thesis about the intensification of the class struggle under the conditions of advancing socialism, as applied to religious associations, was expressed not only in the intensification of atheist propaganda, but also in the intensification of the activities of the law enforcement agencies against them. A wave of repression swept across the country: it was directed against believers and especially the clergy.

The means of propaganda represented the believers only as "... opponents of socialism and the Soviet system" (Odintsov, 1995: 55), and worshipers were portrayed as "...an overt or covert counter-revolutionary force" (Odintsov, 1995: 39). A manifestation of the new onslaught on religion was the fact that in 1938 the publication of the newspaper "Nothingarian" suspended in 1934 was resumed. In such an environment of victimization and persecution, a significant part of the clergy was forced to abandon their activities, and those who did not do so were forced to be partly repressed. So, according to D.V. Pospelovsky, "...during the 30s the number of priests in the original territory of the Soviet Union decreased by 95%" (Pospelovsky, 1995: 511), and according to the Commission under the President of the Russian Federation for the Rehabilitation of Victims of Political Repressions, during the years of Soviet power, 500 thousand religious figures were subjected to repression, of which 200 thousand were executed (Krasikov, 2000).

The same insignificant part of the clergy who managed to avoid direct repression was taken into special account. Each minister of worship was obliged to go through a detailed questionnaire, which determined the

degree of loyalty of this person to the existing regime. The activities of the remaining religious associations were under the supervision of employees and secret informants of the NKVD; in the event that they discovered any violations of the law on cults by the former, representatives of the clergy and believers were arrested.

It cannot be argued that the facts of gross administration, victimization, persecution, and repression were perceived by the faithful and the clergy completely without complaint. The only form of disagreement with the actions of local authorities was the preparation of complaints to higher authorities or to the governing institution called upon to monitor compliance with the law on cults. But, during the anti-religious campaign, an event was carried out aimed at depriving religious associations of legal support, which for more than twenty years was provided by the state itself, mainly formally. Moreover, "... in the middle of the year 37th, there was widespread circulation among the party and Soviet activists... of an opinion about the need to completely eliminate the legislation on cults" (Odintsov, 1990: 57). In line with such trends, in 1938 the Permanent Commission on Cults under the Presidium of the CEC of the USSR was abolished. From now on, until 1943, believers and the clergy actually lost the opportunity to appeal against the facts of a gross and undisguised violation of their rights.

As in other regions of the country, a wave of repressions against the clergy and believers also took place in the Tatar Autonomous Soviet Socialist Republic. Back in 1930, the case "on the counter-revolutionary religious-monarchist organization as the branch of the counter-revolutionary centre of the "True Orthodox Church in the Tatar Autonomous Soviet Socialist Republic" was fabricated, during which former professors of the Kazan Theological Academy V.I. Nesmelov and N.V. Petrov, former Kazan vicar bishop I. Udalov, bishop N. Trezvinsky, priest N.M. Troitsky et al. were convicted (Litvin, 1993).

In contrast to the anti-religious campaign of 1918-1925, when the main blow was directed against the Russian Orthodox Church, in the late 1920s - 1930s. repressive measures were held against each and every confession. In subsequent years, according to A.L. Litvin, "... dozens of mullahs were executed in Tatarstan" (Litvin, 1993: 222). The number of repressed worshipers of all confessions in the TASSR only for 1932-1933 amounted to 234 people (Ivanov, 2000).

The most difficult time for the religious associations of the Tatar Autonomous Soviet Socialist Republic was the period of 1939–1941. Its beginning coincided with the 18th Congress of the CPSU (B), where it was announced that the construction of a socialist society in the USSR was (mainly) completed and, of course, "a country of victorious socialism" could not have a place for such a "relic" of social consciousness as religion. In this regard, the party and Soviet leaders on the ground began to eradicate eagerly

the remnants of the past. So, in the Kalininsky district (now the territory of the Aktanyshsky and Muslyumovsky districts of the Republic of Tatarstan), by 1941 out of 68 inactive prayer buildings, 52 were closed precisely during this period (National Archives of the Republic of Tatarstan).

In other regions of the republic, these figures were distributed as follows: in the Muslumovsky district - 48 and 29 (National Archives of the Republic of Tatarstan. Fund R-873. Inventory 2. Case 5); in the Yudinsky district - 25 and 18 (National Archives of the Republic of Tatarstan. Fund R-873. Inventory 2. Case 19); in Vysokogorsky district - 21 and 14 (National Archives of the Republic of Tatarstan. Fund R-873. Inventory 2. Case 16); in the Dubyaz district - 55 and 30 (National Archives of the Republic of Tatarstan. Fund R-873. Inventory 2. Case 16); in the Kaybitsky district - 23 and 17 (National Archives of the Republic of Tatarstan. Fund R-873. Inventory 2. Case 9); in the Telmansky district (now the territory of the Aksubaevsky, Bilyarsky and Oktyabrsky districts) - 23 and 17 (National Archives of the Republic of Tatarstan. Fund R-873. Inventory 2. Case 28); in Rybno-Slobodsky - 36 and 22 (National Archives of the Republic of Tatarstan. Fund R-873. Inventory 2. Case 30); in the Tyulyachinsky district - 45 and 40 (National Archives of the Republic of Tatarstan. Fund R-873. Inventory 2. Case 30), etc.

During this period, the closure of churches, mosques and houses of worship was really churned out. A common occurrence in the activities of the Presidium of the Supreme Council of the TASSR was the adoption of more than a dozen such decisions during one meeting. With this approach, there could be no question of a comprehensive and thorough investigation of each individual case concerning a particular religious building. So, 23 prayer buildings were closed by only one decree of the Presidium of the Supreme Council of the TASSR dated May 5, 1939.

It should be noted that until the second half of the 1930s, the closure of prayer buildings was not documented legally in many cases, that is, “decisions of the general meeting of residents” or strong-willed decisions of representatives of local authorities, as a result of which prayer buildings ceased to function, were not recorded anywhere. In the future, this practice could create significant difficulties in substantiating the legitimacy of the presence of new “owners” in the cult buildings. Therefore, in the late 1930s, the closure of many prayer buildings from those that actually ceased to function in the 1920s and early 1930s was legally formalized.

For example, among the prayer buildings closed in 1939 there was the Peter and Paul Church in Kazan. The reason for this was that “...the community of believers at the Peter and Paul Church does not ensure the full preservation of the extremely valuable architectural features of the Peter and Paul Church...” (National Archives of the Republic of Tatarstan. Fund R-873. Inventory 2. Case 1). A similar formulation of the Presidium of

the Kazan City Council entailed a Decree of the Presidium of the Supreme Council of the TASSR dated August 13, 1939, on "...closing the Peter and Paul Church in Kazan and transferring the church building to the TASSR People's Commissariat for use as an anti-religious museum and lecture hall" (National Archives of the Republic of Tatarstan. Fund R-873. Inventory 2. Case 1). Such actions by the authorities were widespread.

As a result of the frontal onslaught on religion, its associations lost their significance and status as quite independent and influential institutions of society, which they were until 1917. Moreover, by the beginning of World War II, the religious policy of the Soviet state (which was essentially anti-religious) almost reached its purpose, a society was built in which atheism became the dominant form of consciousness of the vast majority of its individuals. According to official data of those years, the number of believers was decreasing every day and vice versa, the number of villages, towns, cities and regions in which there was not a single officially functioning prayer building and religious association was constantly increasing (Barmenkov, 1979).

In this respect, the Tatar Autonomous Soviet Socialist Republic was no exception. By 1941, only two communities of the Russian Orthodox Church officially functioned on its territory in the cities of Kazan and Menzelinsk. Figures also speak about the scope of the anti-religious campaign: in 1935–1941, about 1.5 thousand prayer buildings were closed in the Tatar Autonomous Soviet Socialist Republic (National Archives of the Republic of Tatarstan. Fund R-873. Inventory 2. Case 1).

Atheistic propaganda has also achieved considerable success in educating a generation of die-hard atheists. By 1931, the number of members of the Union of violent Atheists in the TASSR was 16872 people only among citizens of Tatar nationality (Kasymov, 1932).

Conclusions

In the first decade of Soviet power, the attitude of the state towards various confessions was uneven. During this period, Muslim and Protestant communities were in a relatively better position in the republic. In the first case, this was dictated by the fear of the authorities concerning the upsurge of nationalist protests in response to the oppression of Islam, which in Muslim society was not just a religion, but also a way of life. As for Evangelicals and Baptists, the authorities used them as a tool to combat the influence of the Russian Orthodox Church.

In the 1920-1930s, a wave of repression against the clergy took place in the republic. Moreover, if in the first half of the 1920s they were mainly

affected by representatives of the Russian Orthodox Church, then in the late 1920s - 1930s the clergy of all faiths were repressed. The most difficult time for the religious associations of the republic was 1939–1941. During this period, mass closures of prayer buildings and repressions against clergy and believers were held.

By the beginning of World War II, religious associations in the Tatar Autonomous Soviet Socialist Republic were on the verge of complete destruction as a result of the massive ideological work of atheist propaganda, repressions against believers and the clergy, as well as after three all-Union anti-religious campaigns. Thus, religious life actually shifted to an illegal level; the vast majority of remaining believers and clergy were forced to meet their religious needs secretly from the authorities and a large part of atheistically inclined Soviet society.

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Socio-Political Aspects of Russian Muslim Pilgrimage to Mecca in the XIX-Th Century

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Abstract

Starting from the middle of the 16-th century, during the foreign policy expansion increase, the ethno-confessional diversity of the Russian state was steadily increasing. The imperial policy aimed at assimilating non-Russian peoples sharply raised the issue of their identity preservation. For domestic Muslims, an important factor in cultural and confessional identity provision was the preservation and development of their traditional ties with the Islamic world. Various political, economic, cultural, and other contacts maintained with the countries of the Muslim East have become the basis for the stability of the Muslim community in Russia under imperial pressure. In this system, a special role was originally played by the Hajj (Muslim pilgrimage to the holy places in the Hejaz), which the official administration had to reckon with. The aim of the proposed study is to identify socio-political aspects, socio-political conditions, and the specifics of the Hajj implementation in the 19th century. After the analysis of office documentation, travel notes of Muslim pilgrims, and expert assessments of orientalists, the authors concluded that, despite the increasing opposition from the authorities, the significance of the Hajj intensifies in the 19th century. Hajj became not only the factor of opposition to imperial acculturation, but also a channel for presentation the ideas of renewal.

Keywords: Hajj; Russian empire; Hijaz, Mecca; Muslim pilgrimage in the 19th century.

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Aspectos sociopolíticos de la peregrinación musulmana rusa a La Meca en el siglo XIX

Resumen

A partir de mediados del siglo XVI, la diversidad etno-confesional del estado ruso fue aumentando constantemente. La política imperial destinada a asimilar a los pueblos no rusos planteó agudamente la cuestión de la preservación de su identidad. Para los musulmanes domésticos, un factor importante en la provisión de su identidad cultural y confesional fue la preservación y el desarrollo de sus lazos tradicionales con el mundo islámico. En este sistema, originalmente el Hajj (peregrinaje musulmán a los lugares sagrados del Hejaz) desempeñaba un papel especial, que la administración oficial debía tener en cuenta. El objetivo del estudio fue identificar los aspectos sociopolíticos, las condiciones sociopolíticas y las particularidades de la implementación del Hajj en el siglo XIX. Para procesar las fuentes se hizo uso del método histórico. Después del análisis de la documentación recabada, las notas de viaje de los peregrinos musulmanes y las evaluaciones de expertos orientalistas, los autores concluyeron que, a pesar de la creciente oposición de las autoridades, la importancia del Hajj se intensifica en el siglo XIX. El Hajj se convirtió no solo en el factor de oposición a la aculturación imperial, sino también en un canal para presentar las ideas de renovación islámica.

Palabras clave: Hajj; Imperio Ruso; Hijaz, La Meca; peregrinación musulmana en el siglo XIX.

Introduction

The rapid expansion of the Russian state in the 16th - 19th centuries led to a significant increase of its population ethno-confessional diversity. The inclusion of numerous Muslim peoples in its composition caused the authority fears of “erosion” concerning the country ethnic-confessional foundations - the awareness of the so-called “Muslim issue” in Russia (Gafarov *et al*., 2017).

The specifics of the Russian state and religious system initially contributed to the manifestation of a rigid ethnic-confessional policy, which had a pronounced Christianizing character. The authorities took vigorous measures for the spiritual and cultural assimilation of the Muslim population. However, the effectiveness of rough persecution of disbelief, despite all its harshness, was insignificant (Solovyov, 1960).

The search for ways to resolve the "Muslim issue" prompted the authorities to turn to the policy of acculturation (Gafarov, 2019) and to further strengthening of administrative and political restrictive measures. It is obvious that the search for ways to resolve the ethnic-confessional issue in line with the indicated paradigm remained an insoluble problem of Russian imperial policy until recent times.

The tough ethnic-confessional policy of the tsarist government, aimed at the Christianization and russification of the "foreign population", posed an urgent problem for the Muslim community concerning their identity preservation. In the conditions of imperial pressure, they had to seek actively the ways of survival, and adaptation to the conditions of existence (Gafarov, 2015).

1. Methods

The theoretical basis of the proposed study is represented by the ideas of the civilizational approach, the conceptual provisions of the Eurasian school and the theory of social modernization. In line with these views, an attempt was made to identify the socio-political aspects (socio-political conditions and specifics) of the Hajj implementation in the 19th century. The source corpus of the work consisted of clerical documentation of the administration of Kazan, Ufa, Orenburg, Perm provinces (allocated from the corresponding archival funds of the Republic of Tatarstan, the Republic of Belarus, SAOO, GAAO, GAPK, etc.), the travel notes of Muslim pilgrims (Sh. Mardzhani, Sh. Ishaev, S.G. Sultanov, etc.), the expert assessments of orientalists, etc., which reflected the official policy regarding the hajj, the opinions of Muslim pilgrims and the recommendations of orientalist experts.

2. Results and Discussion

An important factor of religious and cultural tie preservation was the Hajj, which, whenever possible, is prescribed for every Muslim (Peters, 1994). The Muslims of Inner Russia and Siberia, as a rule, left through Odessa and Sevastopol, from Central Asia and the Trans-Caspian region - through Batum, from Warsaw - by rail through Vienna to Istanbul. Afterwards, "Turkish steamers also carried a lot of indigent pilgrims in both directions for free" (Report of Staff Captain Davletshin about his trip to Hejaz, 1899). The routes also went through Afghanistan and India from the Turkestan region, and through Persia and Iraq from the Caucasus (Tashkent, 1899).

Among Russian pilgrims, the immigrants from Central Asia predominated.

Out of 1795 respondents at the consulate in Jeddah, 90% were from the Turkestan region and the Bukhara Emirate, 2.8% - from the North Caucasus, 2.5% - Tatars, 4.7% declared Russian citizenship (Tashkent, 1899). According to official figures, "the usual number of Mohammedan pilgrims from the Russian Empire ranges between 25,000 - 30,000 per year" (Latest news, 1898). It is impossible to calculate more precisely, "since the overwhelming majority of them go without any passports" (Tashkent, 1899). According to the consuls in Baghdad and Jeddah, "there are approximately 18-25 thousand Russian pilgrims at least" (Tashkent, 1899).

Despite the fact that worship cost "no less than 1,000 rubles in silver" (Schiele, 1879), some performed the Hajj more than once, stayed for a long time in Mecca and Medina. For example, the future teacher of the Galia madrasah S. Dzhiganshin studied and worked in the Hejaz for 18 years (National Archives of the Republic of Bashkortostan). Sh.M. Ishaev (an employee of the Russian consulate in Jeddah, 1896) discovered "many of our Central Asians" in Mecca who "do not think to return to their homeland at all" (Ishaev, 1896). A-A. Davletshin also notes that during his travel (1898) "there were 42 Russian Tatar students in Medina" (Report of Staff Captain Davletshin about his trip to Hejaz, 1899). The Kazanli madrasah was founded there in 1893 for Sunni Muslims from Russia.

The intensity and relevance of such contacts is evidenced by the fact that wealthy pilgrims from Russia bought and donated houses (dormitories) to wakuf "for free accommodation" and to facilitate the life of their fellow countrymen (Report of Staff Captain Davletshin about his trip to Hejaz, 1899). The Bukhara emir donated 100 thousand rubles in 1901 (the kush-bei and the heir added another 100 thousand) "for the construction of the Hejaz railway to Mecca and Medina" (Galuzo, 1935: 41).[3] Sufi brotherhoods also took part in money collection; in particular, numerous students of the Sheikh Z. Rasulev (Rasulev, 2011).

Hajj who returned home enjoyed high authority and respect from their compatriots (Schiele, 1879). From such travels, pilgrims brought not only religious relics, but also a significant number of books that replenished private collections and school libraries. Thus, by 1913, the fund of the library of the Embaevsky madrasah (near Tyumen) amounted to 2,200 books, including those purchased by the famous philanthropist N. Saydukov in Egypt, Syria, Jerusalem during his travels in 1866, and 1880–1881. Some were quite rare, but the prints from the Middle East were generally rather inexpensive.[4]

3 Hijaz railway was built in 1900-1909.

4 The Egyptians "republish European editions in Cairo... and sell them twenty, thirty times less than European editions" (Krymsky and Miller, 1903: 31).

Returning from the Hajj, some pilgrims (Sh. Mardzhani, Sh. Ishaev, S.-G. Sultanov, etc.) published the travel notes in which they tried to convey to the reader not only their impressions of the colorful journey, but also cultural traditions and the achievements the Muslim world. M. Simeti (1697/1698) was one of the first who described his journey to the holy places. During the pilgrimage, he visited Maverannahr, Khorasan, Iran, Iraq, Syria, and Hejaz. In 1860, the printing house of Kazan University published the travel notes of two pilgrims of the 18th century (Fahrutdinov, 2019). One of them, I. Bekmukhammedov, is from Kargaly, Orenburg province. He went to Mecca in 1751 through Bukhara, Afghanistan and India. The other is M. Amin from the village of Yana Kishit, Kazan province. He completed the Hajj in 1783 through the Caucasus, Istanbul and Egypt. The book describes passing areas, cities, villages and peoples (Solovyev, 1896).

Pilgrimages led to a wide variety of contacts, sometimes beyond the scope of religious and spiritual searches.[5] For example, during the Hajj (1893), Mufti M. Sultanov was received by the Sultan and awarded the Order of Osmania, 2nd degree. Sh. Mardzhani, S-G. Sultanov cautiously notes the contacts with politicians, and prominent state dignitaries (Essays by Mardjani on the Eastern peoples, 2003; Sultanov Haji Salim Girey, 1901). Speaking about the Russian Muslims permanently living in Medina, S.-G. Sultanov writes that some of them have achieved a very high position. For example, the governor of Medina, Osman Pasha - a former Russian, Circassian from the Caucasus; his son-in-law is the son of the famous Shamil, Gazi-Muhammad and others (Sultanov Haji Salim Girey, 1901).

Probably, it is far from accidental that the Russian government, starting with the seizure of the Volga khanates, tried to limit the pilgrimage of subordinate Muslims at least temporarily. Along with political reasons, there were quite justified fears of bringing epidemics and diseases raging in the East into the country. In response to a warning about a pestilence that opened in Istanbul (1812), the Astrakhan governor ordered the adoption of the most "stringent ("quarantine") measures so that this evil could not penetrate, from which God forbid!" (State Archives of the Russian Federation (SA RF)). However, political motives still prevailed. In 1822, the petition by General Ermolov A.P. was answered as follows: "The Emperor deigned to prohibit the inhabitants of our Muslim regions to go to Mecca to worship for a while" (Imperial Russia and the Muslim World, 2006: 480).

In 1843, the Minister of Defense Chernyshev A.I. recommended to the Governor-General of Orenburg the following: "to reject pilgrims from traveling to Mecca and Medina under various plausible pretexts" in view of the fact that "many of them upon their return... produce an adverse effect for us on their fellow believers" (Imperial Russia and the Muslim World, 2006:

5 Hajj, in principle, became a convenient excuse for the departure of Russian Muslims outside the empire.

480). With the beginning of the occupation of Turkestan, a temporary ban on the issuance of passports to Muslims was reintroduced by the order of Count P.A. Valuev (1865).

The documents show that, despite the ban, permits for the Hajj were still issued (but in an exceptional manner, with the knowledge of the Minister of Internal Affairs) (State Archives of the Perm Region). In 1865 and 1869 the Ministry of Internal Affairs adopted secret circulars strictly regulating the departure of Muslims abroad. A person leaving had to buy 2 stamps (60 kopecks each) to pay for a certificate issue to the port city and submit 2 semi-imperials (or 10 rubles) to ensure the return home. He was also obliged to present a certificate of the volost government on the absence of arrears and the obligation of relatives to perform duties for him (State Archives of the Perm Region).

In 1866, due to unrest in the Tatar area, starting in May, they stopped issuing permission to leave for Muslim priests (National Archives of the Republic of Tatarstan; Sultanov Haji Salim Girey, 1901). At the same time, the permits continued to be issued to peasants, merchants, bourgeois and others. Some imams, such as M. Abdullin from the village Kutlu-Bukash (Laishevsky uyezd), having received a refusal, filed a second application a few months later, but was refused agin (National Archives of the Republic of Tatarstan). This practice continued in the future. For example, on the petition of the imam from Tatar Saraly village (Laishevsky uyezd) Kh. Mukhametsalimov (1879) the police chief wrote that in 1878 this imam went with other Tatars to St. Petersburg to file a complaint about the brutal actions of the administration during unrest suppression, that he was traveling around Spassky and Chistopolsky districts “probably with the aim of maintaining unrest and disobedience to local authorities among the Tatars.”

The Governor N.Ya. Skaryatin, against whom the complaint was filed, spoke out more definitely: Mukhametsalimov “was one of the people who campaigned among the Tatar population of the Kazan province in the past winter by spreading various false rumors about the alleged baptism of the Mohammedan Tatars.” The Director of the Department of Spiritual Affairs imposed a resolution accordingly: “In view of the information reported about this person, I find it necessary to reject his petition” (National Archives of the Republic of Tatarstan).

In 1881, the borders for pilgrims were opened and the faithful reached for the holy places again. The official press, trying to restrain the flow, described the “horrors” of travel: there was pandemonium in the Hejaz, 350 thousand pilgrims, the prices of camels from Mecca to Medina increased more than twice, there were robbers on the roads, etc. Eight years later, in 1889, and

then in 1890 (under the pretext of a cholera epidemic in Arabia[6]), a ban of traveling abroad was imposed on Muslims once again. In June 1891, the restrictions were temporarily lifted, but a month later the ban on traveling to Arabia was reinstated: "to prevent the introduction of infection into the Empire ..." (State Archives of the Perm Region), In 1893, 50 thousand hajis died from cholera, including 700 Russians. However, the next year the epidemic began to decline, mortality decreased by 8 times (Tashkent, 1899). Thus, the ban (with interruptions) lasted until 1900.

Conclusions

The routes of Russian pilgrims, as a rule, ran through Istanbul, Cairo, Damascus, Beirut, Baghdad and other centers of Islamic culture, social and political life. Long and difficult travels to holy places contributed not only to the acquaintance with cultural values, but also to closer communication of Muslims from different countries, exchange of views and awareness of the common problems of the Muslim world development. Assessing the significance of the Hajj, S-G. Sultanov, first of all, emphasized that "the Hajj was important, since it introduced Muslims to each other, broadening their mental horizons, presenting the idea of religious unity in a visual way" (Sultanov Haji Salim Girey, 1901: 20).

However, according to a number of experts, along with the Hajjis, radical ideas (Wahhabism, Mahdism, Sinusism, etc.) sometimes penetrated into Russia, "the unity of Muslims not only on a religious basis, but also on a political one" (Eliseev, 1886: 27). As N.P. Ostroumov notes: "the Muslim pilgrims - the Russian citizens who went to Mecca and Medina - strove to see and bow to Mahdi, who was already operating in Sudan," (Ostroumov, 1889: 99). "There is no doubt that the pilgrims bring the news of fermentation in Turkey," reports the Orenburg police chief, "spread them among the population" (State Archives of the Orenburg Region). The Astrakhan police believed that pilgrims brought Young Turkish literature, newspapers and magazines (State Archives of the Astrakhan Region). The Kazan governor also believed that the pro-Turkish sentiments were spread by the pilgrims returning from Mecca and Medina (National Archives of the Republic of Tatarstan). "Thus, Kaaba (according to the official bodies) serves as the center for religious propaganda, political upheavals, and unrest in the Muhammadan world during the Hajj" (Timofeeva *et al,* 2019),

6 During the Hajj, the first Russian consul in Jeddah Ibragimov Sh.M. died of cholera (1892). He was buried in the cemetery of Jeddah. The Mufti Sultanov M. fell ill with a fever. In 1897, due to the outbreak of an epidemic in India (which could spread to the Hejaz), he turned to the akhuns and mullahs to refrain «from traveling to the Hajj» (Collection of circulars and other guiding orders for the district of the Orenburg Mohammedan Spiritual Assembly, 1836).

the dissemination of ideas hostile to "the good objectives of order and our state life" (Tashkent, 1899).

Miropiev M.A., exposing the "political harm" of the Hajj, hoped for the publication of "a permanent ban on the travel of Muhammadan to Mecca" (Miropiev, 1881), which was practically implemented in Soviet times.

After a long period of severe religious restrictions in the USSR, with the liberalization of state-confessional relations in Russia, the problem of pilgrimage has regained its relevance, invoking the historical experience and traditions of the past (Timofeeva *et al.*, 2019).

In order to resolve the doubts of the Russian government about the Hajj, in 1898, under the guise of a pilgrim, the Captain A.A. Davletshin was sent to the Hejaz. At the end of his trip, he presented a Report in which he gave a fairly detailed description of the natural conditions, population, socio-economic state of the region - the conditions for passing the Hajj. To Davletshin's credit, he tried to "calm down" anxious minds. Describing the difficulties of travel (its high cost, discomfort, terrible climatic and hygienic conditions, abuses of local officials, etc.), without denying "that the Hajj serves a certain uplift of religious feelings," he claims that "almost all of our pilgrims return to their homeland with significantly changed views, more clear-cut and with a more conscious attitude to the political state of affairs, the coloration in which they previously imagined Muslim Turkey and its head, the Caliph, completely disappears." Hajj "does not lead to any rapprochement (of Muslims - A.G., M.G.) and this idea itself does not exist."

Moreover, our pilgrims, "perhaps unconsciously, carry the glory of Russia before the Hejaz", "with their enthusiastic stories" about the power of Russia, about the justice of the existing order, "about the wealth of our country, about the abundance and cheapness of food there", etc., contribute to the growth of its authority in the Muslim East (Report of Staff Captain Davletshin about his trip to Hejaz, 1899). As for epidemics, Davletshin also tried to "calm down" the government: diseases spread mainly among poor pilgrims, "it occurs between them as a very rare exceptional phenomenon" (Report of Staff Captain Davletshin about his trip to Hejaz, 1899).

In general, "it is difficult to indicate any valid measures so that, if necessary, it would be possible to stop the departure of our Muslims to the Hejaz" (Report of Staff Captain Davletshin about his trip to Hejaz, 1899). Soon, the issuance of pilgrim passports to Russian Muslims resumed again. This was announced to Muslims by the Orenburg Mohammedan Spiritual Assembly: "about the subsequent permission of the pilgrimage to the Hejaz and Arabia" (Collection of circulars and other guiding orders for the district of the Orenburg Mohammedan Spiritual Assembly, 1836: 228).[7] Since

7 In spite of the positive decision, the issue of "allowing the Mohammedans leave for Mecca" was later raised again in 1904 (State Archives of the Orenburg Region).

1903, the number of pilgrims from Russia began to grow steadily (History of hajj in Russia from 18th to 21st century, 2011).

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Security in Rights as a Variety of National Security

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Abstract

Study purpose is to determine the signs of legal security on the basis of existing scientific views and current legislation, excluding its overly broad understanding, leading to the fact that any legal requirement is included in the content of national security. *Methodology*: the basis is the dialectical method of cognition of the facts of social reality, on which the formal legal and comparative legal approaches are largely based. The methods of analysis and synthesis, abstraction, deduction and induction have found their application both individually and as part of other methods. *Main content*. We analyzed the features of legal security: normative; legal system stability; focus on eliminating legal threats and others, as well as criticized the widespread understanding of legal security as a form of national security. *Conclusions*. It is proved that it is necessary to distinguish between such phenomena as legal security and legal security as a form of national security, while the latter is part of legal security. In general, the entire block of legal security is not included in the content of national security.

Keywords: national security; security rights; legal security; signs of legal security; security strategy.

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La seguridad de los derechos como una variedad de seguridad nacional

Resumen

El propósito del estudio es determinar los signos de seguridad jurídica sobre la base de los puntos de vista científicos existentes y la legislación vigente, excluyendo su comprensión excesivamente amplia, lo que lleva a que cualquier requisito legal esté incluido en el contenido de la seguridad nacional. Metodología: la base es el método dialéctico de conocimiento de los hechos de la realidad social, en el que se basan en gran medida los enfoques jurídicos formales y jurídicos comparados. Los métodos de análisis y síntesis, abstracción, deducción e inducción han encontrado su aplicación tanto individualmente como como parte de otros métodos. Contenido principal. Analizamos las características de la seguridad jurídica: normativa; estabilidad del sistema legal; se centran en eliminar las amenazas legales y otras, así como critican la comprensión generalizada de la seguridad jurídica como una forma de seguridad nacional. Conclusiones. Está comprobado que es necesario distinguir entre fenómenos como la seguridad jurídica y la seguridad jurídica como forma de seguridad nacional, mientras que esta última forma parte de la seguridad jurídica. En general, todo el bloque de seguridad jurídica no está incluido en el contenido de seguridad nacional.

Palabras clave: seguridad nacional; derechos de seguridad; seguridad jurídica; signos de seguridad jurídica; estrategia de seguridad.

Introduction

First of all, it is necessary to note the features of the study object and pay attention to the article title. Thus, two relatively new scientific areas have been actively developing in science in recent years. Firstly, they include a study of national security, within the framework of which the efforts of specialists in various fields of scientific knowledge (lawyers, economists, political scientists, philosophers, sociologists, managers, representatives of technical sciences, etc.) are integrated. At the same time, national security is examined from its own point of view, taking into account the specific features of the subject and method of a particular science, but, at the same time, the achievements of the closest branches of scientific knowledge are actively used, since national security is a complex problem. Secondly, they include the study of legal security or compliance, as an integral part (variety) of national security. Scientific research takes place both from the

general to the particular, and from the particular to the general Thus, there are works devoted not only to the general theoretical problems of legal security, but also studies taking into account its division, both on the basis of the branches of law and the branches of legislation.

1. Methods

We used such general scientific methods of cognition as: analysis method, system research method; private scientific methods: method of comparative law, formal-legal method, intersectoral method of legal research.

2. Results and discussion

It is necessary to identify common signs of legal security and give its concept. Thus, according to I.S. Lapaev, compliance is:

> A state of security (protection, assurance) and streamlining of the vital interests of legal entities associated with their entry into the field of legal relations, due to effective lawmaking, uniform enforcement, stability and legal certainty of legal relations, high legal awareness (Lapaev, 2013: 29).

Khokhloev I.A. believes that:

> Compliance in the conditions of prevention and liquidation of emergencies is a state of protection of the vital interests of public relations subjects in the field of prevention and liquidation of emergencies, where these entities can fully exercise their rights in accordance with applicable regulatory legal acts, demand from other entities the right to perform duties without fear of harm to life, health or property, as well as the state in which, regardless of adverse circumstances, the law implementation mechanism and the protection mechanism for the fundamental rights and freedoms of human and society are operated (Khokhloev, 2008: 52).

According to T.B. Tyurina, "legal security of an individual is one of the types of personal security and is defined as the state of protection of his/her vital interests from the external and internal threats in the field of legal relations" (Tyurina, 2005: 58). The author proceeds from the need to determine legal security in two interrelated aspects. Firstly, legal security as a condition, and secondly, as a process of ensuring. Legal security in the form of a state is characterized by the absence of various threats, as well as the presence of legal that can level such threats. The process of legal

security itself already appears in the form of actions (dynamics) of various legal means used by the subject to eliminate the threat (Tyurina, 2005).

G.G. Gorshenkov defines legal security from the position of "the state of legal protection of an object in the presence of its necessary legal guarantees and legal support of normal life" (Gorshenkov, 2009: 44). V.A. Osipov proposes to consider legal security from a wide and narrow perspective. In his opinion, "legal security in the broad sense characterizes the protection of various spheres of life (state, political, economic, spiritual-moral, information, environmental, social, etc.) by legal means, because it is impossible to ensure national security without legal mediation in modern conditions" (Osipov, 2009: 22). In the narrow sense, it (legal security) is determined through the category of security of the legal system of society with the help of legal means, based on legal regulation (Osipov, 2009).

V.A. Osipov is not the first researcher who proposes to consider legal security in a narrow and a broad sense. Thus, according to A.F. Galuzin:

> In the broad sense, it represents the security of legal system, and within the framework of law, legislation and other elements, its protection from dangers and threats of a legal nature, legal means to ensure all types of security (economic, political, natural and technological, etc.), in the narrow sense - this is an activity to prevent and minimize legal dangers and threats both in the law-making and law enforcement process (Galuzin, 2008: 41).

The author, developing his concept, notes in another work that: "Legal security as an independent type of security is the protection of regulatory legal acts and enforcement from "legal" dangers, which determines the legal quality of security and secured types of social security through legislation and enforcement without risks" (Galuzin and Romashov, 2012: 42). The feature of A.F. Galuzina's position is the definition of legal security from the opposite, and most likely paired category - legal danger.

Other researchers provide concise definitions of legal security. For example, according to A.A. Ter-Akopova, it represents "a state of legal protection of the vital interests of the individual (society and state) from the external and internal threats" (Ter-Akopov, 2001: 11). B.V. Dreyshev also states his position very briefly. Thus, he indicates that: "Legal security should be understood as the state of security of the legal system" (Dreyshev, 1998: 18). A.S. Shaburov considers the legal security in a similar way. He writes that "legal security is the security of the law itself. This is the security of the legal system" (Shaburov, 2015).

Thus, despite the presence of a variety of concepts and approaches to legal security, the authors, revealing its features, use such concepts as: "state of security"; "threat"; "legal means", "interests", which brings them

together in many ways. Legal security is considered both in a static and in a dynamic state. The legal security objects are the legal system as a whole, as well as its elements such as the legal system and the legislation system.

At the same time, there was a tendency to distinguish two areas in understanding legal security. Firstly, it is considered as a state of guaranteeing the rights and legitimate interests of participants in legal relations created by legal methods, as a result of which the security of legal entities is ensured in various fields (environmental, financial, military, etc.). Secondly, it is understood as a special state of security of the legal system of society through law, law-making and law enforcement, that is, exclusively by legal means against legal threats.

It seems that both approaches are not mutually exclusive, but the first gravitates most to the concept of "legal regulation of national security". It seems that it is necessary to highlight the optimal "middle ground" between two approaches, which would not allow the phenomenon of legal security to turn into an infinitely broad concept. In view of the global regulation of public relations, penetration of law into an increasing number of the life fields of a state-organized society, the legal institutionalization of security, as such, and national, in particular, within which there is a special block of legal security, is ongoing.

Based on the foregoing, we can distinguish the most common signs of legal security, namely: formalization in legal norms of a different level of basic values of national security and threats; streamlining the interaction of social actors with the help of the power regulator - the law through which models of such interaction are created (institutionalized); direct or indirect participation in legal security relations of the state; high level of development of legal relations in society.

Based on the general signs of legal security, it is possible to determine its particular features, which more relate to legal security as an object of law enforcement activity, since legal security is not only a static phenomenon, but a process in which the threats are eliminated. Despite the very importance of the institutional aspect of legal security, the adoption of another law or by-law does not solve anything in itself, since its implementation and adjustment mechanisms are necessary, if there are various kinds of legal defects in it. The main drawback of all regulatory enactments regulating this area is the lack of systematic nature. Thus, ensuring legal security takes shape in two main areas: law-making and law enforcement, which means that it can be argued that there are two of its components in legal security. Firstly, it is a law-making component, the result of which is a high-quality regulatory legal act institutionalizing national security. Secondly, it is law enforcement, where extrapolation and implementation into reality of the result achieved within the framework of the law-making process takes place.

When the specific features of legal security are defined, it is also necessary to indicate a number of its other features. Thus, it appears in the form of a special property of the legal system, the state of individual, society and state. Then, "legal security from a functional point of view is also a certain activity, a form of purposeful activity of some entities related to law and legal sphere" (Fomin, 2007: 466). Another feature of legal security is its extension to both the protection objects and the sources of dangers in a particular sphere. It should be particularly emphasized the extension of security not to all interests, but only to the most vital ones. Another legal security features is its quantitative and qualitative indicators related to the legal field, living space (which is protected), where the interests of the law subjects are implemented.

The following feature of legal security is associated with the stability of the legal system (Burke-White, 2004), especially such elements as the legal system and the legislation system. The endless amendments to regulatory legal acts that are not caused by objective processes in public relations negatively affect legal security. The legal system cannot be stable without a uniform law enforcement process.

Earlier, we, like other researchers (Itzhak, 2016), pointed out that an important feature of legal security is the protection of precisely the basic vital interests of the society's and state's individual. In this context, it is necessary to turn to our assumption made at the very beginning of this article that legal security is only a part of the national security. This issue formulation is due to the fact that the law mediates most areas of society and various types of security. The "National Security Strategy", approved by the Decree of the President of the Russian Federation No. 683 dated 31.12.2015, states that "national security includes the country's defense and all types of security stipulated by the Constitution of the Russian Federation and the legislation of the Russian Federation, primarily state, public, informational, environmental, economic, transport, energy, as well as personal security". Thus, the strategy actually makes the list of types of national security open, creating legal uncertainty. In this regard, they began to write about food, educational, religious, cultural security as types of national security in legal science.

Based on this thesis, we can inevitably conclude that legal security in all these areas is a form of national security. Researchers (Donohue, 2011; Gordon, 2014; Williams, 2008) come to this conclusion as a result of an analysis of both the "National Security Strategy of the Russian Federation" and other regulatory legal acts in which various types of security are classified as national, for example, the Decree of the President of the Russian Federation No. 120 dated 30.01.2010 "On Approval of the Doctrine of Food Security of the Russian Federation"; the Resolution of the Government of the Russian Federation No. 1734 dated 22.11.2008 "Transport Strategy of the Russian Federation Until 2030" and others.

The economy and economic growth in the National Security Strategy are called national priorities and interests, and an unfavorable trend in the economy development, a lag in technological progress - the threats to life quality. The threats to economic growth include various types of economic offenses in a generalized form. If we turn to the level of a single, for example, particular infringement on the property of a citizen or a legal entity, and taking into account that the regulatory definition of national security contains the wording "the security state of an individual, society and state from the internal and external threats...", we can conclude that such an infringement is an offense against national security.

Conclusions

1. When determining the criteria whereon a particular block (part) of legal security will be included in the national security structure, it is necessary to proceed from a number of factors that should be identified, including using methods of other sciences (which are not legal). Firstly, they should be based on various kinds of statistical data, as well as expert assessments of latent offenses. On their basis, it is shown how certain processes are global and threaten a certain type of national security. Secondly, it should be borne in mind that certain legal threats (sometimes even single ones) in the regulation of critical infrastructures of potentially dangerous activities can lead to disastrous consequences for the entire cities, regions, affect the security of a significant number of citizens. Thirdly, it is necessary to take into account the fundamental international regulatory legal acts that counteract such negative phenomena as terrorism, extremism, slave trade, money laundering, etc.
2. 2. The concepts of "legal security" and "legal security as a form of national security" are not identical. Legal security as a form of national security is part of general legal security. Moreover, we can call it the backbone of all legal security. This phenomenon is not static, but dynamic, which is constantly transforming due to the emergence of new types of threats and changes in the existing ones.

By last, the legal security direction definitely refers to the new and rapidly developing. There are several approaches to determining legal security. The complexity of this category lies in the lack of a clear scientific definition and such basic components as principles, goals, functions and support means.

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Socio-Political Tension in the Russian Society: Case Study of Youths of the Republic of Tatarstan

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Abstract

This article explores the level of socio-political tension in Tatarstan. The object of the study is the youth social group as a bearer of social activism. The investigation methodology is based on conflict audit technology. Technology involves the use of markers to assess sociopolitical tensions. The main evaluation marker identified a request for social justice. The distinctive characteristics of youth groups are the discretion of group affiliation, the lack of formed ideological attitudes and the latent nature of the formation of the general ideology of various youth communities. The political activism of the Russian youth does not have a pronounced ideological character and is not a decisive factor in the formation of socio-political tensions. It is concluded that the interest in the study of young people who as a group lack common ideological positions is scientifically relevant, even within radicalized communities and with comparative political identities. Consequently, the presence of stable ideological positions will contribute, in principle, to the launching of internal integration processes in these communities and to a stable organization of their discourses and struggles.

Keywords: sociopolitical tension; Russian society; social justice; conflict resolution audit; youth in Tatarstan.

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Tensión sociopolítica en la sociedad rusa: estudio de caso de jóvenes de la República de Tartaristán

Resumen

Este artículo explora el nivel de tensión sociopolítica en Tartaristán. El objeto del estudio es el grupo social juvenil como portador de activismo social. La metodología de investigación se basa en tecnología de auditoría de conflictos. La tecnología implica el uso de marcadores para evaluar las tensiones sociopolíticas. El principal marcador de evaluación identificó una solicitud de justicia social. Las características distintivas de los grupos de jóvenes son: la discreción de la afiliación grupal, la falta de actitudes ideológicas formadas y la naturaleza latente de la formación de la ideología general de varias comunidades juveniles. El activismo político de la juventud rusa no tiene un carácter ideológico pronunciado y no es un factor decisivo en la formación de tensiones sociopolíticas. Se concluye que es relevante científicamente el interés por el estudio de los jóvenes que carecen como grupo de posiciones ideológicas comunes, incluso dentro de comunidades radicalizadas y con identidades políticas comparadas. En consecuencia, la presencia de posiciones ideológicas estables contribuirá, en principio, al lanzamiento de procesos de integración interna en estas comunidades y a una organización estable de sus discursos y luchas.

Palabras clave: tensión sociopolítica; sociedad rusa; justicia social; auditoría de resolución de conflictos; juventud en Tartaristán.

Introduction

Modern Russian mass media are filled with materials about youth protests in different regions of the country. Youth protest activities are designated as one of the risk-generating zones of Russian politics. In the wake of media interest in this problem, scientific and research interest is growing. The interest is supported by a request for analysis of the quality of the modern Russian youth formation. Attention is drawn to ideological and non-ideological meanings, the bearer of which is the young generation of modern Russia. That is why Russian researchers are increasingly turning to the methodology of generational theory in the study of the youth (Twenge and Generation, 2019; Radaev, 2019; Shamis and Nikonov, 2019).

In addition, there is a search for tools in the study of certain ideological attitudes that can explain the awareness and unconsciousness in the behavior of young people in defending their social and political interests.

These tools should help in finding out how independent the youths are in determining their political preferences and social activities. They should show how the protest activities of youths affect socio-political tension in society.

The main categories of such an analysis in the presented study are the concepts of "political identity" and "ideological youth extremism". In determining these categories, the authors of the study proceed from the general assumptions of the generative paradigm, which determines the specificity of each new generation of youths. The current generation of 14-30 years is defined as "Generation Z". It is non-ideological and has problems with socialization, including politics.

Based on this, modern Russian political scientists define the political identity of the young generation. In particular, G.V. Pushkareva notes the social nature of political identity. She suggests that the political identity of the modern "homo-politicus" is formed as a result of self-determination in the system of political relations (Pushkareva, 2014).

The influence of a group on a person is manifested not only in the additional regulatory regulation of his behavior. Inclusion in a group forms an identity, i.e. a special feeling connecting him with a particular group (Pushkareva, 2014). Based on the group characteristics of political identity, the definition is given to the concept of "ideological extremism". In this context, it is understood as a special kind of conflict (a specific form of negative interaction), characterized by an extreme degree of negation of the opponent.

The study of the processes of inclusion of a young man in political life, political behavior requires methodological tools that take into account the generational characteristics of the identification of subjects and extreme forms of their manifestation. The search for markers of manifestation of the categories "political identity" and "ideological extremism" in the consciousness and behavior of young people is carried out using the method of conflict analysis. This method is a method of qualitative interdisciplinary research (Khramova *et al*., 2019). It is based on the search for markers in the discourse of socio-political tension. These markers determine the presence or absence of the prerequisites for the growth of tension in the youth environment itself and in society as a whole. Marking is carried out on the basis of the manifestation of youth activity, including political protests.

1. Methods

The methodology of the presented analysis is based on the conflictology audit methodology, tested by a group of Kazan (Kazan Federal University)

and Petersburg (St. Petersburg State University) conflictologists (2019) as part of the Russian grant study. One of the authors of the study presented in this publication is a developer of the indicated methodology and a member of the grant team. Proceeding from this, a conflict resolution audit is considered as a system of technologies used in identifying destructive activities of youths and against them. The conflictology audit methodology is based on the criteria of evaluation, which consists of two components: marker and criteria. The marker component allows you to search for manifestations of activities in the youth discourse of socio-political tension. The criterion component allows you to determine the depth (in numerical equivalent) of the identified activities. The criterion component is based on the tool of the simplest (one-dimensional) scale of the semantic differential.

Markers defined in the study: the de-rationalizing effect of ideological youth extremism on awareness of dissatisfaction with social status; manifestation of requirements; strategies for participating in protest movements; The dominance of the "ideological unconscious" (quasi-ideologies); The presence of a negative model of identity (for example, excessive identification with the bearers of a particular radical ideology); Lack of formation of political attitudes; Lack of elaborated models of political participation; Lack of experience of political participation using traditional forms; Unrealistic conflict: The dissatisfaction of certain requirements of the participants, the unfair distribution of any advantages between the parties to the conflict, the subjectivity of the assessment (emotionality in the absence of argumentation); "Displaced" and "incorrectly attributed" conflicts (Khramova *et al*., 2019).

The technology used in conflict auditing is semantic in nature. With its help: the presence / absence of elements of manifestation of ideological youth extremism is determined; a descriptive picture is given of how deeply identified marker is included in the value system of the subject. Objectivization of the subjective nature of qualitative research methods (focus groups and in-depth interviews) is achieved by using the method of semantic differential. Scaling is carried out using detailed rating (point) scales with bipolar labels from 0 to 10. The studied segments in the structure of youth groups are confessional, gender, opposition and subcultural.

The empirical base of the study presented in the publication comprises of three focus group surveys and fifteen in-depth interviews conducted in Tatarstan, as well as an analytical bank of online materials on youth communities on social networks.

The objectives of the focus group surveys of youths were:

- Analysis of the youth socio-demographic group's rhetoric on communication problems in online and offline communities.
- Analysis of youth affiliation with online and offline radicalized communities.

- Analysis on the use of "language of aggression" by the young generation in relation to the state and society.
- Determining the position of representatives of the youth formation in cooperation with society and the state.
- Determining the level of understanding of mutual obligations between the youth and these institutions.

2. Results and Discussion

According to the results of the study, a number of trends can be identified that affect the formation of the political identity of modern youths and the role of ideological youth extremism in this process. Among the trends: the radicalization of the political mood of the youth group, an increase in the share of ideological youth extremism in the volume of its socio-political activities, the growth of protest activity in the youth environment. The main identified radical youth trends in the Republic of Tatarstan are right-radical (including gender-conflict groups), ultra-liberal, left-radical, street-criminals, and Islamist (Salafi).

Very often, right-wing youth ideological extremism is repelled by xenophobia and migrantophobia. Two categories are affected by it, students and young specialists. Activization of extremist right-wing radical youth occurs not only during a period of general political instability, but also after individual cases of injustice that affect its values and ideals.

Popular groups among urban youth are gender-masculine groups that see a way out of conflicts with the opposite sex in the creation of a national patriarchy. This is one of the right-wing branches that are gaining popularity among young people.

In fundamentalist communities, a pronounced "extremist text" is not typical. The emphasis is on religious rituals and on a visual bright series. First of all, it is intended for non-Turkic youths of school-student age. Content is popular and animated in nature. There are no voluminous quotes from religious texts and their discussion. The identification of community members follows the principle of differentiation into "We" and "They" similar to other communities.

An analysis of ultra-liberal youth communities revealed the following: The de-rationalizing influence of ideological youth extremism of awareness of dissatisfaction with a social situation; Conflict with the current government for all respondents became an end in itself; Manifestation of the requirements is also in the field of a de-rationalized conflict. Here, the

fight against corruption is ideologically dominant, without clear ideas about the tools and ways to achieve the demand; the lack of formation of political attitudes is a "red thread" of reasoning in the process of interviewing. Respondents do not declare any political principles, other than the requirement to change the current government.

The most obvious problems for the majority is corruption, polar differentiation between the rich and the poor, and the lack of political freedoms, which is noted both at the regional and national levels. All informants directly or indirectly mention the problem of corruption, believing that due to the presence of corruption in the country, many socio-economic and political problems are not resolved. No mechanisms other than protest are proposed.

Conclusion

According to the results of an empirical study, in all youth communities of the examined segments, universal structural signs are found, such as: "Own-Alien (Enemy)" dichotomy; the presence of an ideological leader (only around which a community is viable); a certain set of supporters (according to experts, today it is 20-30 active people in the community); prescribed behaviors of all actors (intolerant of specific Enemies); a non-alternative system of views on reality and a pessimistic vision of the future of society.

The main feature of ideological youth extremism is its reliance on the identity crisis of modern youth, expressed in its negative orientation (denial of similarity with any other age, social, gender or political groups) and fragmentation (a fan of identities is often in a state of existential conflict, because basic identity is not actualized, in the role of which civic identity could play).

This feature of youth identity is actively used by ideologists of extremist movements in their interests, including through manipulative practices. The ideologists positioning the existing government as an Enemy, regardless of the type of extremism, is also an essential feature. It is based on the clearly expressed request of youth (regardless of the type of extremist ideology) for social justice. Proceeding from this, the closer Enemy is opposed by the closer Enemy inner (Ivanov *et al.*, 2019).

The main marker of the formation of the identity of modern Russian youth in the research process is the request for social justice. The distinguishing features of the political identity of youth are discreteness of group affiliation, lack of forming ideological attitudes, and latent nature of the formation of the general ideology of a particular political / politicized youth group.

The interest for further scientific research, is the problem of young people lacking a demand for common ideological positions even within radicalized and purely political communities. The presence of stable ideological positions will in principle, contribute to the launch of internal integration processes to these communities and a stable recruitment.

In the context of the formation of the political identity of modern Russian youth, we can talk about the signs of the formation in Russia of a kind of "generation of the thirteenth article" (Article 13 of the Constitution of the Russian Federation), which, in denying a single ideology, does not recognize constructive, system-forming, integrating principles of the significance of ideology even within communities, with by which it identifies itself.

According to the results of a regional survey, modern Russian youth is not a significant politically active group for the formation of socio-political instability in the country. The thesis imposed by the media that the modern young generation is a generation that goes to protest on ideological convictions is nothing more than a media reason for the formation of discourse. In practice, the lack of formation of the ideological attitudes of young people, the amorphous nature of political identity, and the random (event) nature of its participation in protest actions under the influence of a request for social justice are determined.

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Special features of vocational training institutions in the context of pandemics

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Abstract

The coronavirus pandemic has had a profound impact on society. Educational institutions are taking steps to organize the learning process, which will not only preserve, but also improve its quality in the current critical situation. The purpose of the article is to analyze the experience of implementing distance education in the context of the coronavirus pandemic. The distance learning conditions created to guarantee epidemiological safety in order to preserve the health of students and teachers include the use of innovative technological means. We have proposed several solutions to the problems that have arisen in the process of organizing distance education: organizational problems on the technical side of the subject, reducing the burden of teachers and students, organizing effective independent work, and others. It is concluded that the distance learning media and technologies used in the teaching of professional disciplines contribute to the gradual development of the students' professional competence. The results of the study showed that distance education technologies implemented in the practice of a higher education institution expand the possibilities for students to master educational material.

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Características especiales de las instituciones de formación profesional en el contexto de pandemias

Resumen

La pandemia de coronavirus ha tenido un impacto profundo en la sociedad. Las instituciones educativas están tomando medidas para organizar el proceso de aprendizaje, lo que no solo preservará, sino que también mejorará su calidad en la crítica situación actual. El propósito del artículo es analizar la experiencia de implementar la educación a distancia en el contexto de la pandemia de coronavirus. Las condiciones de aprendizaje a distancia creadas para garantizar la seguridad epidemiológica en aras de preservar la salud de estudiantes y docentes incluyen el uso de medios tecnológicos innovadores. Hemos propuesto varias soluciones a los problemas que han surgido en el proceso de organización de la educación a distancia: problemas de organización del lado técnico del tema, reducción de la carga de profesores y estudiantes, organización del trabajo independiente eficaz, y otros. Se concluye que, los medios y tecnologías de aprendizaje a distancia utilizados en la enseñanza de disciplinas profesionales contribuyen al desarrollo gradual de la competencia profesional de los estudiantes. Los resultados del estudio mostraron que las tecnologías de educación a distancia implementadas en la práctica de una institución de educación superior amplían las posibilidades de que los estudiantes dominen el material educativo.

Palabras clave: pandemia del nuevo coronavirus; educación a distancia; educación vocacional; videoconferencia; formación profesional.

Introduction

The spread of coronavirus infection affected all spheres of society, including education. Restrictions related to quarantine measures led to changes in the learning process. The paramount task in a pandemic is the adoption of adequate measures to support the subjects of vocational education, contributing to the preservation and improvement of its quality

(Tsarapkina *et al.*, 2019a). In the current critical situation, the relevance of the implementation of remote sensing technologies sharply increases (Arbeláez-Campillo and Villasmil Espinoza, 2020). At a time when online learning is becoming the only opportunity to implement the educational process, consistent, promptly made decisions are important to enable professional educational institutions to carry out their activities.

The level of technological equipment of educational institutions and the preparation of teachers for the implementation of distance learning is one of the challenges of the crisis (Pichugina and Bondarchuk, 2019). The success of the implementation of distance education depends, among other things, on the ability to maintain active communication between students and teachers (Klinkov, 2018). In Russia, long before the outbreak of the COVID-19 virus, following the innovative development, measures were provided for the implementation of the distance educational process. According to the Federal Law "On Education in the Russian Federation" dated December 29, 2012 No. 273-FZ, the implementation of educational programs should be carried out using various educational technologies, including distance educational technologies, e-learning.

The procedure for the use of e-learning, distance learning technologies by organizations carrying out educational activities in the implementation of educational programs, approved by order of the Ministry of Education and Science of the Russian Federation No. 816 dated August 23, 2017, means that organizations must create conditions for the functioning of electronic information and educational environment, which will ensure that students master educational programs in full and regardless of their location. The document also stated that educational organizations can implement educational programs using exclusively distance technologies. Most of the implemented educational programs of higher education providers for the use of distance technologies in the process of educational activities (Vaskovskaya, 2018). And today, when in the current epidemiological situation, the use of online courses and distance technologies is an urgent need, Russian educational institutions are successfully implementing them in the preparation of students (Chertovskikh, 2019). However, during a pandemic, the load on distance learning systems and teachers increases significantly, the type of interaction between the subjects of the educational process changes (Filchenkova, 2019). The full transition to online classes leads to the emergence of specific features of training. There is a need to identify these features and the impact of distance learning on the quality of student training.

1. Theoretical framework

The coronavirus has become a global challenge for vocational education. Given the seriousness of the reasons for the transformation of the educational process and the prospects for its development in the existing conditions, this research topic in the current situation requires special attention. The features of the activities of educational institutions during the spread of coronavirus infection were reflected in the works of A.A. (Akhmetshin, 2020). The adaptation of vocational education to the "new reality" causes difficulties, since the remote form of work does not allow to fully implement the practical side of education. Many researchers draw attention to this issue as the most important in training students during a pandemic (Pliushch, 2018).

Scientists offered recommendations for organizing the activities of educational institutions in remote conditions during the COVID-19 period. These include: maintaining a balance between e-learning and activities outside the e-office; introduce open educational resources into use, develop new electronic educational platforms and courses; develop international cooperation to exchange educational online resources.

The issues of implementation of remote technologies are disclosed by S.G. Grigoriev (Grigoriev *et al*., 2019), O. Yu. Donetskova (Donetskova, 2019) and others. Features of the organization of the educational process are distinguished by G.M. Birzhenyuk (Birzhenyuk *et al*., 2020), T.V. Efimova, T.E. Davydova (Davydova, 2020), A.S. Tishchenko (Tishchenko, 2020) and others. Among the characteristic features of distance learning are: flexibility of training (each student can choose a convenient time for him to complete tasks) (Ivanov *et al*., 2020); modularity (the study of the discipline is carried out in blocks); the advisory role of the teacher and some others (Tsarapkina *et al*., 2019b).

In the context of the spread of coronavirus, the ability of students to educate themselves and self-organize is of particular importance, since a significant amount of materials are intended for independent study (Ponachugin and Lapygin, 2019). The questions of self-organization are revealed in his works by A.A. Andrienko (Andrienko, 2019a), (Andrienko, 2019b). The discipline during the online learning period contributes to achieving the best results without the direct supervision of the teacher (Cirdan, 2019).

2. Methodology

We have proposed several solutions to problems that have arisen in the process of organizing distance learning: issues of organizing the technical side of the issue, reducing the load on teachers and students, organizing effective independent work, and others. The existing requirements for conducting distance learning turned out to be ineffective, so there is a need for research in this area. We took into account the work carried out by experts in the field of distance education during the pandemic in 2020. The study involved 352 graduate students of three Russian higher educational institutions. We analyzed the summary sheets for professional disciplines for 2019 and exam results in 2020. Professional exam results in 2019 (before the pandemic) were compared with student learning outcomes in 2020 (after distance learning).

A survey was also conducted among students studying in a distance format, aimed at improving online learning. A fragment of the questionnaire is presented in Table 1.

No.	Question	Answer
1	Was it easy to concentrate on the educational process during the distance learning period ?	- Yes - No
2	Were there any difficulties in mastering the material?	-Yes -No
3	What are the main reasons for the difficulties in mastering the material ?	Free answer
4	What would you highlight the main advantages of the distance learning format?	Free answer

Table No. 1. Fragment of the survey of the students' opinion of graduate groups on the features of organizing distance learning during the coronavirus period (within the framework of our study)

3. Results and discussion

The learning process during the pandemic was built based on various technological solutions, including an electronic educational platform (Petrichev *et al.*, 2018). In Russia, this is a fairly common practice that has been implemented by universities for several years and remains relevant

today. The main burden for performing tasks during the quarantine period was assigned to the technological capabilities of LMS Moodle (Eliseeva *et al., 2020)*. Students carried out tests, essays, tests, projects and many other types of assignments using this platform. Also, teachers delivered content to students' e-mails (Oros, 2018).

To maintain the attentiveness of students and relieve the load, teachers used a frequent change of activities (every 15-20 minutes). During online classes, students could listen not only to the teacher, but also to each other, discuss topics, take part in a survey, take various tests, divide into groups and complete tasks in a team. Among the new electronic solutions, it is worth mentioning the Zoom service, which was actively involved in preparing students during the spread of the coronavirus. Its capabilities made it possible to organize the interaction of all participants in the educational process and ensure the involvement of all students in the educational process. Students completed assignments both synchronously (at a given moment) and asynchronously (performing assignments at a convenient time). Execution of case tasks is an example of a synchronous mode of operation. Students collectively discuss possible solutions in Zoom's virtual classroom. The combination of synchronous and asynchronous modes makes it possible to intensify the activity of students by changing their types. The asynchronous mode includes texts, video and audio that line up in a coherent course.

To conduct distance classes, tools such as Microsoft Teams and Webinar were used, which made it possible to conduct webinars and video conferencing. Students remotely conducted presentations of their works, participated in trainings with teachers from other cities. The instructors have also made it possible for students to use Coursera courses.

Note that the use of distance technologies is a fairly widespread practice in the university. Throughout the entire period of preparation of students, a blended learning format was used, so graduate students were adapted to the online format. The research participants were students of the 4th year of study. We analyzed the summary sheets for professional disciplines for 2019 and exam results in 2020. Professional exam results in 2019 (before the pandemic) were compared with student learning outcomes in 2020 (after distance learning).

Figure 1 shows the learning outcomes of 4th-year students in 2019 and 2020 in professional disciplines.

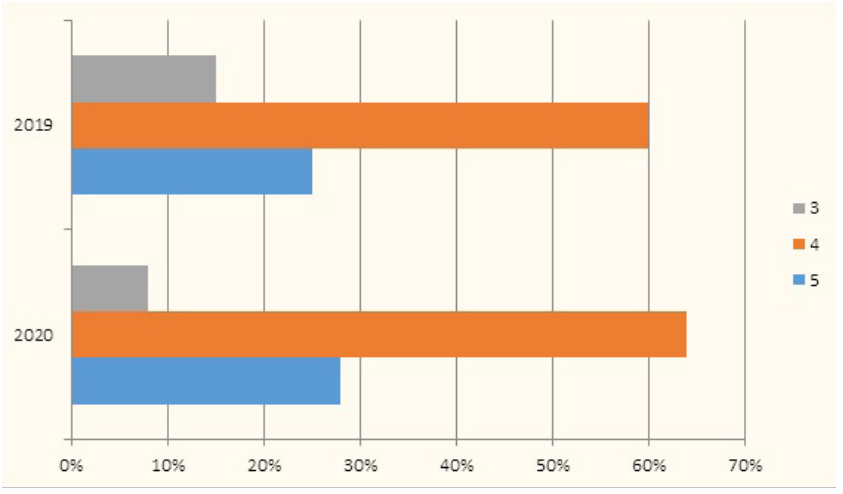

Fig. 1. Statistical analysis of the learning outcomes of graduate students in professional disciplines (as part of our research)

The learning outcomes in the professional disciplines taught in the 4th year reflect the good preparation of the students. However, we note that in 2020, in the context of a pandemic, training was carried out in a distance format and differed from 2019 in the complete absence of face-to-face studies and consultations with a teacher. As you can see from the chart, the numbers for 2020 are higher than those for 2019. The percentage of students with positive ratings has grown. That is, the organization of the learning process using distance learning technologies allows you to maintain and improve the quality of education (Kalinkina and Gorodetskaya, 2017).

A survey was conducted for students who completed the online training, which made it possible to identify the shortcomings of the implementation of distance learning during a pandemic to improve it.

A fragment of the survey results is shown in Figure 2.

No.	Question	Answer
1	Was it easy to concentrate on the educational process during the distance learning period?	-Yes - 65% - No - 35%
2	Were there any difficulties in mastering the material?	-Yes - 83% -No - 17%
3	What are the main reasons for the difficulties in mastering the material?	- growth of educational load - 69%; - technical shortcomings of electronic equipment - 35% ; - lack of live communication - 89%; - irregularity of the work / rest mode - 50%
4	What would you highlight the main advantages of the distance learning format?	- free access to educational materials - 95%; - the opportunity to receive individual advice from a teacher at a convenient time 88%; - Obtaining automatic test results for prompt reflection and filling in deficiencies - 86%; - flexibility of the educational process - 58%; - time-saving - 45%

Table 2. Results of a study of the opinions of graduate students on the specifics of organizing distance learning during the coronavirus period (within the framework of our study)

The most common answers among students were selected for the table. In the context of an epidemiological situation, students note that it was quite easy to concentrate on the educational process and the lack of face-to-face studies did not affect their mastering of the material. It is also worth noting that the period of distance learning nevertheless caused some difficulties, which are associated with an increase in workload, peculiarities of technical equipment, and non-observance of the work and rest regime. Also, students note the lack of live communication. However, this fact, given the spread of coronavirus infection, largely reflects the effect of self-isolation. Among the main advantages, students highlighted free access to educational materials (up-to-date information when completing assignments is always open to students), the ability to receive individual advice from a teacher at

a convenient time, receive automatic test results for prompt reflection and fill deficiencies, the flexibility of the educational process and time saving ...

For a holistic assessment of the distance educational process, students were asked to answer the question "How would you assess the level of organization of the distance educational process in a pandemic?"

The results are shown in Figure 2.

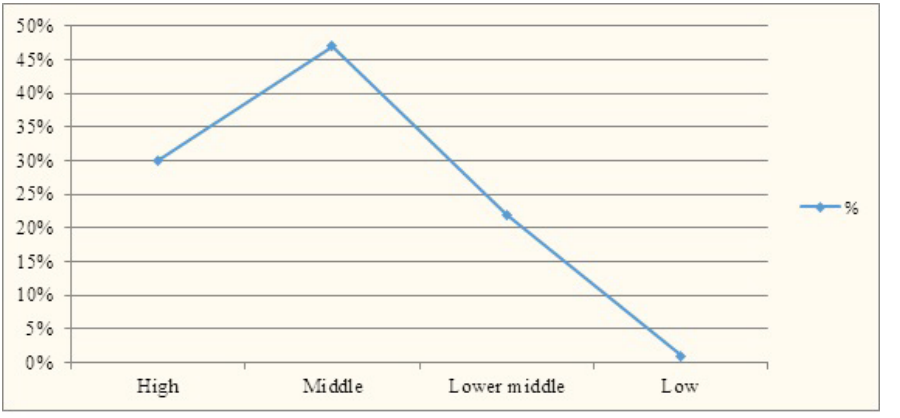

Fig. 2. Analysis of the results of students' assessment of the organization of distance learning during the COVID-19 pandemic (as part of our research)

Most students assess the level of organization of the educational process in the context of the spread of coronavirus infection as average (47%). 30% of respondents note a high level. 22% of students rate the level as "below average". The educational process in remote conditions today requires thorough revision. His organization in 2020 faced many challenges amid the pandemic. In a situation of urgent need to transfer students to an electronic educational environment, issues related to the insufficient information competence of teachers, the technical capabilities of the computer equipment of teachers and students, the speed and quality of the Internet, the rules for conducting classes and other issues have become aggravated. More students are forced to independently master the educational material. It becomes difficult to sort out difficult moments, since the load on teachers has increased dramatically and they cannot always provide advice to students. Many students find it difficult to organize their education in an electronic environment without the direct participation of a teacher.

Conclusions

The article analyzed the features of the activities of vocational education institutions in the context of the coronavirus pandemic. Distance learning conditions created to ensure epidemiological safety in the interests of preserving the health of students and teachers include the use of innovative technology means that ensure effective remote interaction.

The study showed that distance educational technologies implemented in the practice of a higher educational institution expand the possibilities for students to master educational material, however, in the emergency conditions of the transition to a distance educational process, several difficulties have arisen that have to be overcome. For this, it is necessary to provide teachers with methodological assistance in using electronic resources, eliminate the low quality of open materials, provide prompt technical support, instruct and consult technical specialists, reduce the number of reports on the work done. To soften the conditions for the stay of students and teachers in the virtual space and reduce the load, it is necessary to introduce monitoring of student attendance, alternate independent work and work in virtual conditions, record lectures for re-viewing at a convenient time. The technical side of the issue also needs improvement. Not all students can use the services to participate in webinars. Educational institutions must solve the problem by providing this opportunity for every student.

Despite the challenges posed by the spread of the virus, the implementation of distance education made it possible not only to avoid the termination of the functioning of professional educational institutions and prevent a decline in the quality of the educational process, but also to improve it.

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Identifying the Mental Model of the Managers of Melli Bank Regarding Quantum Leadership using Q-methodology

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Abstract

At Bank Melli Iran, which is the site of research, there are different opinions and views on quantum leadership, each of which is representing a specific intellectual model on the subject. These diverse opinions form a space for discourse. This study will identify this discursive space in detail and also analyze it in order to reveal organizational models to present strategies to plan the improvement of Bank Melli's policies and plans. The methodology used in this research is Q-sort or Q-methodology. This methodology was able to reveal several courses in the speech forum. Studying discursive space, 74 factors were detected. In analyzing these propositions, finally, 59 factors formalized Q expressions. These propositions that form the Q order, were written by paras on 59 cards. A sample of Bank Melli managers was then selected using Q-sort arrange for these cards on the Q-chart using defined instructions. In interpreting and the results obtained, three large models were identified including the ambassadors of change, the pioneers of protection and the drivers of stability.

Keywords: Melli Bank; leadership typology; intellectual model;; Q methodology;; quantum leadership.

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Identificación del modelo mental de los gerentes de Melli Bank en relación con el liderazgo cuántico utilizando la metodología Q

Resumen

En Bank Melli Irán, que es el lugar de la investigación, hay diferentes opiniones y puntos de vista con respecto al liderazgo cuántico, cada uno de los cuales es representativo de un modelo intelectual específico con respecto a este tema. Estas diversas opiniones forman un espacio de discurso. Este estudio busca identificar en detalle este espacio discursivo y también analizarlo con el fin de revelar los modelos intelectuales de organización para presentar estrategias para planificar la mejora de las políticas y planes de Bank Melli. La metodología utilizada en esta investigación es Q-sort o Q-metodología. Esta metodología pudo revelar varias mentalidades en el foro del discurso. Estudiando el espacio discursivo, se detectaron 74 factores. Al analizar estas proposiciones, finalmente, 59 factores formaron expresiones Q. Estas proposiciones que forman el orden Q, se escribieron por separado en 59 tarjetas. Luego, se seleccionó una muestra de los gerentes de Bank Melli usando Q-sort para organizar estas tarjetas en el Q-chart usando instrucciones definidas. Al interpretar y discutir los resultados obtenidos, se identificaron tres grandes modelos, incluidos los embajadores del cambio, los pioneros de la protección y los pilotos de la estabilidad.

Palabras clave: Melli Bank; tipología de liderazgo; modelo intelectual; metodología Q; liderazgo cuántico.

Introduction

In the changing and complicated world of twenty-first century, traditional methods of management and organization management. The leaders and managers of current era need novel methods and skills so that they can direct organization in an effective fashion (Mollayinejad, 2016). Today, managers are aware of this matter that the only fixed element of the equations of the current period is 'change'. Many of leaders know that stability in organizations, is an old-fashioned idea, and conventional management skills do not solve new organizational problems (Dargahi, 2013). Considering that Bank Melli, today, is the largest bank in Middle East with a capital of about 100 billion Rials, and a total of 3271 branches at home, 13 active branches and 4 subsidiaries abroad, and 180 working bank counters, as well as about 40 thousand staff, and which continued to use all its power for the development of the country with great national and

popular support, many transformations have taken place in the country's banking sector in recent years (Gobadi et al., 2019).

Actually, the highly competitive nature of service industry, and also the importance of cooperation and collaboration, learning and customer relationship in this industry requires more time and effort for leadership activities (Douglas and Fredendall, 2004, p. 395; Gupta et al., 2005, p. 391; Montes, Moreno, & Morales, 2005, p. 1163; Politis, 2003, p. 185). The intensification of Competitions in twenty-first century, has led to rapid changes in environment, and the increased complexity of the environmental interactions of organizations' business, thus increasing uncertainty in the environment and proving the need for quantum view in organizational analysis including banks. Therefore, given the need for shifting strategy towards quantum organizations, analyzing these kinds of organizations and their intricate relationships and interactions, calls for a new kind of leadership strategy so that it can further organization goals, and maintain the competitive ability of organizations by establishing proper mechanisms (Tavakoli et al., 2017, p. 35).

In the Bank Melli Iran set-up, established for ninety years, the focus has been on conventional methods of management and leadership in a totally traditional way, independent of novel, modern, and dynamic practical trainings, and also no required mechanism has been predicted and established to encounter the current competitive and dynamic situation. It appears that the theory of quantum leadership can provide required mechanisms to pursue high aims of Bank Melli Iran considering its dynamism, discovering, creativity, and uncertainty, and also to include categories of trust, thinking together, organizational learning, and celebrating differences, in the corporate culture of Bank Melli Iran. Thus, according to what was said earlier, the aim of current research is to design the model of quantum leadership in Bank Melli Iran using interpretive-structural modelling. Considering the aim of the research, research questions which drive the research are:

1. How is, currently, the mental model of the managers of Bank Melli Iran?
2. What components is the mental model of the managers of Bank Melli Iran composed of in terms of quantum leadership?

1. Literature Review

Gaedamini Harouni et al (2018) explore the impact of quantum leadership on the commitment to change through the quality of perceived communications of change and through preparing for change. The results

of the study indicated that quantum leadership has positive and significant effect on the commitment to change through preparing for change, but does not have an impact on the commitment to change through the quality of change, and also the direct influence on the commitment to change is barely significant. In their study, Tavakoli et al. (2017) examined the nature of quantum leadership as a new approach in the leadership of twenty-first century organizations.

The result of this study showed that quantum leaders employ six major strategies and actions including participatory decision-making, creating an atmosphere of trust and support for individuals, creating an interactive atmosphere and teamwork, facilitating information flow, encouraging self-organization and self-control, and supporting creativity and creating excitement. In his seminal paper entitled *The Analysis of Quantum Learning in Optimizing the Learning of Human Resources,* Mohammad Hadi (2017) focused on the application of quantum physics concepts in explaining practical and conceptual issues of the main core of this educational system, that is learning and teaching. The findings of this study highlighted that quantum approach is considered to be an effective method for optimizing the performance of educational systems in complex and obscure situations, and thus we can use this approach to improve the learning of human resources.

Based on the study conducted by Şenses & Temoçin (2018), quantum leadership is focus on the world full of the qualities of quantum physics such as disorder, chaos, uncertainty, and indecision, and combined leadership focuses on those leaders who manage their organizations using common methods. At the end of the research, these leadership models, which are able to manage twenty-first century, are investigated using an interdisciplinary given their similarities and differences.

In their seminal text, *The Analysis of Quantum View in School Leadership,* Haris et al. (2016) reviewed the principles of effective leadership in changing school nature. This study indicated that even if approaching quantum leadership is not enough in a high education school, effective management through quantum skill is required for implementing is in a good school, especially in changing the nature of school management. Mundiri and Wijhi Ningtias (2015) conducted a research entitled *The Role of Teacher's Quantum Leadership in Improving the Quality of Education on the Basis of Boarding University*. According to the results of this study, quantum leadership can be conducive, effective and efficient as a leadership concept that can affect students in the learning process.

2. Theoretical groundings of the research

2.1. Quantum leadership

Today, conventional beliefs regarding organizational environment are limited, influenced by mechanical thinking worldview. Environmental dynamics has led to the emergence of a new generation of organizations called 'quantum organization' (Agababayi et al., 2013). Effective leadership in quantum organization requires specific behaviors and skills that can be defined in the form of quantum leadership. Quantum leadership is a style of leadership where there is trust, security, dynamic interaction, and also learning among leaders and members, and where vertical interactions are decreased and horizontal interactions are increased (Deardorff and Williams, 2006).

Quantum leadership relies on non-hierarchical networks, influence is a function of individual characteristics, and there are extensive interactions between individuals in the group. Quantum leaders create a structure within the organization that eliminates the duality and conflict that has long existed in agencies and among the goals of individuals and groups, and helps individuals within the organization thrive as an individual in the creative team. A quantum leader gives out light and also the capabilities that s/he possesses, among organization's staff, and at the same time, is inspired by the group of employees under his or her supervision (Lazaridou & Fris, 2006). In fact, quantum leadership is a style of leadership that is grounded on progress with the flow of organization, and also on the tendency towards self-organizing and working with ambiguity and uncertainty about future (Afjeh and Hamzehpour, 2015). In quantum approach, leaders need a new approach towards human being, processes, and objects to boost the effectiveness of performance. Quantum leadership shifts the view of leaders from top to bottom, and from the inside to the outside of organization.

2.2. The psychology of quantum paradigm

Psychologically speaking, quantum paradigm has a unique viewpoint. Contrasted with Newtonian paradigm that focuses on individualism and focusing on functional components, quantum paradigm is totalitarian and focuses on relations (Zohar, 1998).

In this view, nothing is static (Stacey et al., 2000). Nature continues to change where uncertainty dominates (Zohar, 1998). In quantum paradigm, nature is assumed to be complex, turbulent, and unpredictable in a way that it can hardly be controlled by the direct involvement of human being (Fris & Lazaridou, 2006).

According to these assumptions from the viewpoint of quantum paradigm in management, achieving knowledge through analyzing research propositions is not possible under precisely controlled conditions. In this paradigm, knowledge is acquired through presenting various interpretations of reality, and creating agreed-upon model. Based on quantum paradigm, due to the nature of the obscure and highly interactive boundaries of quantum phenomena called 'conceptualism', to understand, measure, and use the model, we must observe them in a larger conception which defines the relationships in those phenomena. Therefore, quantum approach puts and emphasis on qualitative research method to understand reality (Gummesson, 2006). One of the salient features of this type of research, is that it sees the world as composed of multiple realities and assumes a kind of mental relationship between researcher, and participants or subjects (Sarantakos, 1998).

2.3. The dimensions of quantum leadership

This type of leadership based on the best decision in complex situations, requires having seven quantum skills that enables the leaders of organizations to think dynamically and intuitively. In other words, leadership cannot be defined as influencing others to realize specific goals, but it should be defined as a process where searching goal and moving in its direction is more significant and valuable than the goal itself (Stumpf, 1995).

The macro-dimensions of quantum leadership are as follows:

1. **Discovering:** quantum leader asks followers to express their questions and problems, and the needs of people are identified though discourse about organization's tensions.
2. **Authenticity:** this trait makes the discovering trait more meaningful. Not until the leader earns the trust of followers, can s/he discover their problems.
3. **Full of excitement and passion:** If human being does not have excitement and passion, there is no driving force for continuing life. Now, if the leader does not have this trait, how can s/he motivate his/her followers, help them overcome their fears, and have the initiative and power to transform?
4. **Creating:** We must always move in consort with world; We need novel ways of thinking, creating thoughts and new things in the future world. We "don't know what we don't know". If we can think, we can create (Guan McCaw). The creativity and knowledge of staff is vital for organizations' success.

5. **The builder of relationship:** The relationship between human beings and managers has changed in quantum era. We must be aware that we can't live individually. Thus, we must learn how to interact and to bridge the cultural and language gap. quantum leadership focuses on the relationship and awareness of products, services, and processes.
6. **Inquiry:** Research is a tool for developing discovery paradigm. People must be awarded for their questions because they are the driving force for research and for discovering realities. They identify the future needs of the organization so that they can detect the kind of research for discovering and developing effective factors.
7. **Fiscal astuteness:** the core of quantum leadership is fiscal astuteness and accounting (Shelton & Darling, 2001).

3. Research methodology

Regarding results, this study is primarily a developmental research, and secondarily a practical research. Also, regarding research aims, this study is primarily an exploratory research, and secondarily a descriptive research. Primarily, this study is qualitative research, and secondarily a quantitative research. In fact, we used mixed method in this study, a combination of quantitative and qualitative methods. In this research, we used Q-methodology. Therefore, considering the aim of research which is 'the typology of the mental model of the managers of Bank Melli with respect to quantum leadership using Q-sort', by conducting preliminary investigations, it was decided that thematic analysis be used to provide the ground for analyzing Q-methodology.

Thematic analysis is one of qualitative research methods. The managers of Melli Bank who have studied about leadership and have a long experience in senior management positions of bank Melli, and also have postgraduate education in management, have been selected as the statistical population of the research. In this research, a total of 12 samples were selected, and the sampling method was non-probability purposive sampling. The subjects selected were managers. Archive study was used to gather theoretical bases in this research, such as books and articles related to the topic, and the data were collected using interview. Of course, it should be noted that the interviews will continue as long as we are theoretically sure of the all-inclusiveness of discourse space.

Regarding goals, this study is secondarily is an explanatory research, and regarding results, a practical research, and finally regarding data, quantitative research. Considering that in the first phase of the research

using Q-methodology, the steps for identifying mental models have been taken, Q-methodology has been used in quantitative phase. In quantitative research, there is a population at the level of which the research results are applied, and includes a sample that was selected using random sampling and is generally the representative of that population. Q-methodology lacks such a populations and sample, and usually researcher selects people among those who either have specific relation with the research topic or have particular opinions. In this process, after selecting research topic, we, first, gathered whatever exists about that topic in various forms called 'concourse'. It should now be sorted out by evaluating and summarizing the contents of concourse.

For Instance, the texts of interviews, memoirs, articles, newspapers, etc. are converted into short and separate phrases so that, in the next step, a sample of phrases (i.e., Q-sample) can be selected from among them. Moreover, we can use the phrases prepared in previous researches for this purpose (Shinebourne, 2009). Each one of the phrases are written separately on one card to prepare Q-pack.

In the next stage, we select participants, i.e., those whose mentalities are supposed to be identified. Sorting constitutes the data collection stage where each participant sorts the Q-pack of cards according to specific instructions on a spectrum. The last stage is about analyzing collected data using factor analysis method and by interpreting extracted factors. The totality and appearance of the above process is very similar to making a scale like Likert scale. In Likert scale, also, researcher, primarily, collects a set of items, and then selects some that are more proper than others to make his/her scale. After finalizing the scale, a sample of subjects are selected using probability sampling, and the interview form is filled out by respondent. Finally, after entering questionnaire data into computer, data are processed and analyzed using statistical methods.

Generally speaking, various tools are used by researchers for collecting information. Field research and questionnaire were used in this research. In the previous section, the stages of studying Q-methodology were introduced until data collection was ended. Now, it is time to carry out a statistical analysis of that addresses the following questions:

1. What phrases did participants score in the same way?
2. In contrast, what phrases made a distinction between participants?
3. What different mindsets can we identify among participants?

Factor analysis, a multivariate method, is used to do a statistical analysis of the data derived from sortings. After finalizing sorting and before statistical analysis, data have to be entered into the computer so that dataset will be created for the statistical analysis by computer. To this end, it is

necessary to record the sorting of each participant, because the movement of Q-chart, while the cards are on it, will cause them to disintegrate.

After finalizing factor analysis, i.e., the extraction and alternation of factors and achieving significant factor loadings and important factors, it is time for accurate interpretation of factors, which is determining meaning and their definition. The factor analysis of phrases (cards) creates a link between the content of phrases and factors, thus allowing the interpretation of factors.

4. Research findings

4.1. Thematic analysis

In this section, we will deal with studying the findings of thematic analysis, and will extract associated themes. Obviously, due to the different framework that is required by qualitative analyses in studies, the reporting method in these researches is very different from quantitative studies. The following is a brief reference the step-by-step expression of research process. As was noted in methodology section, thematic analysis is composed of six steps in terms of structure, but due to its reversibility, it is possible to return to previous step(s) repeatedly. Table 1. shows initial concepts (themes) that researcher has identified.

Table 1. extracted themes

Row	Descriptive codes	References
1	Human perceptions are highly mental	{M_2,7};{M_1,3}; {M_1,1};{M_9,3}
2	The talent of leading staff should not be considered. The procedure management itself determines the selection of next manager.	{M_2,7};{M_{12},7}; {M_5,1}
3	If there is collective decision-making, there will be few benefits for the organization.	{M_{12},4}; {M_5,14}; {M_2,8};{M_2,1}
4	Doing things should focus on interaction, cooperation, equality, and relationship.	{M_8,1};{M_2,1}; {M_5,1};{M_4,1}

5	The work must be done in a directional manner.	$\{M_7,29\};\{M_2,9\}$
6	We need to look at events from a different angle, because we may understand new things.	$\{M_2,4\};\{M_{10},2\};\{M_{10},3\}$
7	Management in performing duties, should focus on details well.	$\{M_7,19\};\{M_1,3\};\{M_6,7\};\{M_2,12\};\{M_3,3\};\{M_2,5\};$
8	Due to the complex nature of factors, we must act with great flexibility in addition to observing fixed rules.	$\{M_{20},6\};\{M_3,13\};\{M_{20},17\};\{M_{13},10\}$
9	I believe in totalitarianism.	$\{M_7,12\};\{M_2,7\};\{M_8,7\};\{M_9,8\}$
10	Creating a procedure for doing things is more important than anything else.	$\{M_5,7\};\{M_1,5\};\{M_{10},14\}$
11	We need specific and pre-determined principles to achieve the goals of the bank.	$\{M_{12},4\};\{M_7,33\}$
12	To my opinion, applying the current procedures of organization, does not require the use of creative thinking.	$\{M_{10},6\};\{M_{12},21\}$
13		$\{M_3,15\};\{_{M2},4\};\{M_2,7\}$
14	I believe that all parts of the universe, including human being and universe are dynamic, aware and interrelated creatures.	$\{M_5,1\};\{M_5,3\};\{M_2,6\};\{M_9,13\}$
15	It would be better to be like a trainer in performing duties alongside staff.	$\{M_2,2\};\{M_7,3\};\{M_3,5\}$
16	The best method of doing things is able to be conducted by observing hierarchical structure.	$M_2,8\};\{M_2,2\};\{M_9,6\}$
17	Best type of banking staff are those who carry out current instructions.	$\{M_6,9\};\{M_6,4\}$
18	Qualitative research method is suitable to know reality.	$\{M_7,15\};\{M_{26},2\};$

19	Being energetic in workplace means working full-time.	{M_3,10};{M_3,8}; {M_1,6};{M_6, 3}
20	Decisions should be taken individually.	{M_7,18};{M10,6}; {M_8,2};{M_7,15}; {M_2,2};{M_9,1}
21	There is less commitment in implementing group decisions.	{M_7,27};{M_1,3}
22	Being in team contradicts the concept of creativity.	{M_8,8};{M_6,8}; {M_2,1}
23	Creativity has no application in banking workplace.	{M_7,2};{M_8,12};
24	Knowledge is gained through presenting various interpretations of reality, and creating agreed-upon model.	{M_8,6};{M_{10},4};
25	In performance evaluation, we must focus on the complexity of situations and events.	{M_7,13};{M_{11},8}
26	People have to work individually in performing duties.	{M_3,4};{M_4,5}
27	We need to pay attention to the context of events in analyzing situations.	{M_7,16};{M_3,6}
28	The mental nature of subjects and examiner, also, needs to be considered in analyzing events.	{M_3,16};{M_9,24}
29	In the world, not only nothing is predictable, but there is no sufficient information for understanding the situation.	{M_3,3};{M_4,6}; {M_{10},12}
30	Achieving knowledge is not possible by analyzing research propositions under precisely controlled conditions.	{M_6,5};{M_2,3}; {M_1,12};{M_7,22}; {M_5,13 };{M_2,3}
31	The world around us is based on fixed laws that must be known.	{M_7,21};{M_8,4}
32	Nature has a repetitive nature that needs to be looked at merely based on past thinking.	{M_7,18};{M_3,18}
33	Nature laws can be understood, predicted, and as a result, can be controlled even on social topics.	{M_{12},5};{M_4,5}

34	Work is in conflict with life situation.	{M_7,3};{M_8,8}
35	The function of each element must be considered in its analysis.	{M_8,3};{M_{10},5}
36	Competent staff are those who have enough motivation for performing their tasks.	{M_6,14};{M_7,4}
37	The whole world is composed of energy that is reflected in every event and element.	{M_6,13};{M_7,15}
38	The nature of life has stability that needs to be reflected in performing duties.	{M_7,9};{M_7,24}
39	The nature of nature is unpredictable, and is assumed to be out the direct control of human being.	{M_{10},11};{M_7,23}; {M_6,15}
40	Managers must foster creativity and innovation among their staff.	{M_8,4};{M_7,11}; {M_6,3};{M_6,2}
41	Future managers are currently at organization, and they only need to be known.	{M_{11},7};{M_2,10}; {M_{11},4}
42	Managers need a new approach towards human beings, processes, and objects to increase their performance effectivity.	{M_{11},8};{M_5,9}; {M_{10},8}
43	Successful managers need those staff who are simply following instruction well.	{M_4,8};{M_1,6};{M_{10},13};{M_6,34};};{ M1,10};{M_4,27}
44	Managers who perform on the basis of quantum theory, provide better quality services for customers and stakeholders.	{M_{11},9};{M_7,30};{M_{10},13};{M_6,7}; {M11,28}; {M_4,25}
45	Managers must think about the profit of organization, and staff need salaries.	{M_3,5};{M_1,19}; {M_3,11}
46	Managers must strive to maintain their motivated and creative staff in their group.	{M_{10},13};{M_6,7};};{M11,10}; {M_4,11}

47	Management must be based on rationality.	{M_{11},14};{M_3,16}; {M_2,20};{M_2,8}
48	Management means superintending the performance of tasks.	{M_7,11};{M_{11},6};};{M_6,40}; {M_6,31}
49	Traditional management is also the best method to achieve results in the current world.	{M_5,11};{M_9,16};{M_3,14};{M_7,13}
50	The management of staff depends on the participation of a limited number of them.	{M_8,3};{M_9,26};
51	Management means interaction for the better performance of duties.	{M_2,5};{M_7,20}; {M_3,8}
52	Management means issuing specific instructions for performing tasks.	{$M_1$0,9};{M_3,11}; {M_9,9};{M_{11},9}; {M_{27},12};{M_9,4}; {M_8,5};{M_4,3}; {M_5,8}
53	Management depends on creating the unity of procedure.	{M_3,12};{$_{M7}$,10}; {M_8,14}
54	We can consider conditions in performing tasks, and can be versatile.	{M_8,1};{M_6,7}{M_3,12};{M_7,10}
55	We can provide dynamic workplace for personnel to be able to live in comfort.	{M_7,6};{M_3,11};{M_9,2};{M_{12},8}
56	Each organization is a small world in terms of its complexity.	{M_{11},3};{M_3,2}; {M_6,1};{M_{12},7}; {M_{11},5}
57	All of the events can be interpreted individually, and not everything should be seen in relation to each other.	{M_6,4};{M_9,21};};{M_6,10}; {M_6,11}
58	Everything can be interpreted considering relations.	{M_3,2};{M_2,7};{M_3,11}
59	A manager is successful only when s/he provides his/her staff with creative space and environmental ambience.	{M_6,5};{M_3,1}; {M_5,8};{M_{11},2}; {M_5,1}

Own elaboration basedon the objective of investigation.

4.2. the descriptive analysis of research data

The results of demographic indicated that out of 42 people, 14 percent of them, that is 6 people were females, and the rest, that is 86 percent of them, were males who were 36 people. Out of 42 subjects, 39, equivalent to 93 percent of them, were married and 3, only 7 percent of them, were single. Out of 42 subjects, 14 (33 percent) held bachelor's degree, 22 (52 percent) held master's degree, and 6 (14 percent) held doctoral degree. Out of 42 subjects, 5, that is 12 percent of them, had working experience of between 5 to 10 years old; 11, that is 26 percent of them, had working experience of between 5 to 15 years old; and 26, that is 62 percent of them, had working experience of more than 15 years. Furthermore, the results of descriptive statistics including mean, standard deviation, and the number of observations were worked out for each one of variables.

4.3. hypothesis testing

The next step in carrying out factor analysis, is the sampling adequacy and analyzing the possibility of classifying data related to indices of measuring knowledge to a limited number of factors. Thus, sampling adequacy test (KMO index) as well as Bartlett's Test employed. The result of KMO test was equal to 0.64 which is greater than 0.6 (close to 1). Therefore, it could be concluded that the number of respondents was adequate for factor analysis, and the respective data can be reduced into underlying factors. Also, the results obtained from Bartlett's Test was found to be 59.419, suggesting that error less than 0.05 is acceptable at significant level. The possibility of symmetric error was found to be 0.000, indicating the lack of multiplicity problem in the process of implementing factor analysis, and so factor analysis was evaluated to be proper for identifying structure.

Initial and extraction intersection test, have application to present initial intersection, special values, and the percentage of described variance. The intersection of a variable equals multivariate correlation raised to the power of 2 (R^2) for relevant variable using factors as predictors. The results of this study showed that the extraction intersection of all factors was found to be 0.5, suggesting the desirable explanation of variables by extracted factors.

One of the basic issues in factor analysis is that each factor determines what percentage of the set of variables. Therefore, exploratory factor analysis was used for the main factor. The output of this part includes specific values, variance percentage, and the percentage of explained cumulative variance out of the set of variables through factors.

In this study, since the number of input variables of factor analysis is 59, initial 59 factors were formed, which 3 were left after extraction. Specific values shows variance percentage and cumulative percentage of variance for each one of factors, determining factors whose specific values are greater than 1 and remain in analysis. Factors whose value is less than 1 are excluded from the analysis or are placed in other groups. Factors excluded from factor analysis are those that will not lead to explaining variance. In this study, 3 factors remained in factor analysis.

Variance percentage is used to refer to the variance value that each factor could explain relative to the total variance of the set of variables. In this study, the first factor has the greatest variance of 45.467, and as we move on to the next factors, its value decreases. The cumulative percentage of each factor equals the sum of the variance percentage of previous factors and the factor itself. In this study, the cumulative variance percentage for 3 factors was found to be 70.024, suggesting that 3 extracted factors cover just about 97 percent of the variance of the whole data, which is a good result.

4.4. The map of Scree Plot

Figure 1 shows the Scree Plot based on the considerable number of extracted factors as a chart. As can be seen from the Figure 1, the value of justified variance (specific value) includes four ruptures (in the second, sixth, thirteenth, and seventeenth factors), and after the fourth rupture, the specific value of factors has equal slope. Each one of these ruptures set the groundwork for indices grouping in factor analysis. Considering the cumulative variance percentage of initial specific values, second rupture (on third factor) was defined as s standard for grouping, because it covers 76.026 percent of the cumulative variance of data. After this factor, the cumulative variance percentage of specific variables, increases with very slight changes, and so the researcher identified 3 factors for grouping.

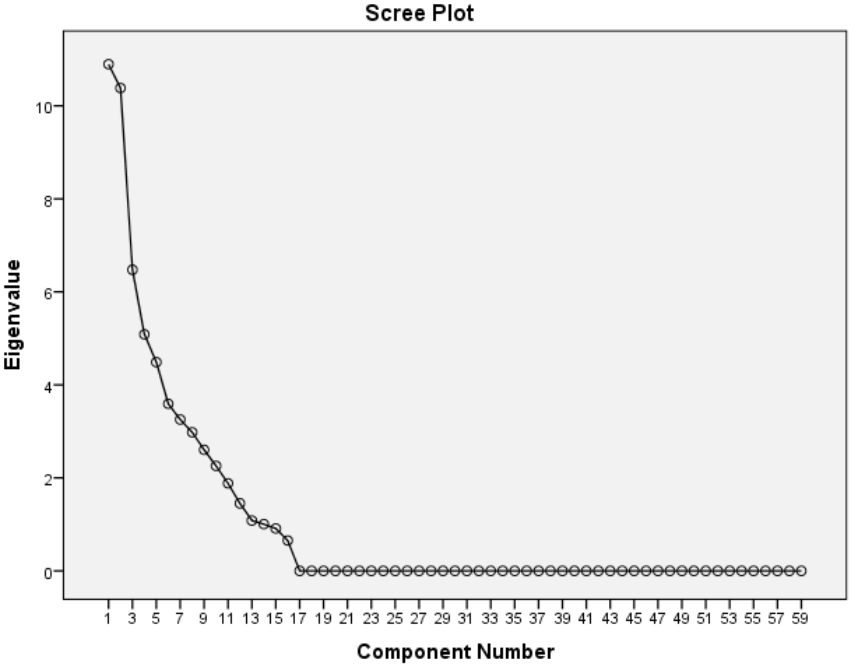

Figure 1. Scree Plot. Own elaboration basedon the objective of investigation

4.5. Rotation matrix

Researcher used SPSS software to perform this task and analyze data. In Table 2, rotation matrix has been shown. In this matrix, four available columns indicate extracted factor and before factor rotation, and rows also are representative of participants. As shown in table, factor loadings on each factor, have been sorted from the highest to the lowest, which leads to participants' classification based on Q-factor analysis. Accordingly, they have identified 22 propositions together in the first mental model, 23 in the second mental model, and 24 in the third mental model. Below the table, they also have referred to factor extraction method, factor rotation method, and the number of algorithm repetitions.

Table 2. the rotation matrix of factor

	Component		
	1	2	3
Q09	.902	.240	.308
Q15	.847	.006	.064
Q51	.847	.176	.197
Q55	.841	.220	.461
Q59	.788	.094	.237
Q01	.743	.145	.166
Q28	.712	.084	.082
Q39	.703	.095	.183
Q14	.694	.073	.320
Q56	.688	.059	.088
Q04	.671	.230	.265
Q07	.662	.185	.134
Q18	.658	.029	.132
Q58	.651	.023	.211
Q24	.629	.070	.128
Q44	.623	-.122	-.093
Q57	.569	-.047	.024
Q36	.551	-.122	.078
Q40	.541	-.067	.133
Q42	.539	-.165	.135
Q37	.525	.254	.147
Q29	.508	.249	.351
Q27	.14	.841	.148
Q32	.236	.814	.226
Q38	.093	.774	.127
Q03	-.220	.748	.125
Q26	.210	.745	.394
Q16	.172	.743	.124

Q19	.423	.714	-.235
Q08	.254	.694	.051
Q45	.279	.688	-.248
Q30	.332	.687	.47/
Q06	.110	.671	.112
Q54	.223	.669	.238
Q17	.145	.668	.412
Q22	.320	.662	.258
Q12	.215	.612	.358
Q34	.278	.608	.347
Q25	.361	.558	.314
Q46	-.112	.528	.218
Q13	.337	.511	.195
Q50	.412	.509	.057
Q21	.251	.507	.258
Q48	.418	.504	.326
Q41	.325	.501	.147
Q33	.254	.369	.821
Q35	.214	.325	.788
Q11	.324	.314	.743
Q52	.256	.482	.759
Q05	.288	.285	.702
Q23	.176	.392	.665
Q47	.325	.327	.662
Q10	.281	.214	.658
Q31	.301	.236	.621
Q20	.201	.223	.602
Q43	.206	.331	.592
Q49	.307	.428	.591
Q02	.021	.338	.584
Q53	.0281	.210	.559

Own elaboration basedon the objective of investigation

4.6. Factor interpretation

After finishing factor analysis, that is the extraction and rotation of factors and achieving significant factor loadings of significant factors, we move on to the full interpretation of factors, i.e., the meaning determination and their definition. The sorted phrases have been shown in Table 3, which given 59 available propositions, they have sorted from the highest to the lowest. Hence, the rank 59 is the highest rank, and 9 is the lowest rank, and the ranks between 1 to 8 represent indifference to the nature of job and the subject of their service.

4.7. Identifying factor arrangements

The factor arrangement I: considering the rotation matrix and the factor arrangements demonstrated in the form of Q-chart and Table 3, 22 propositions identify first mental model. They have identified factors 9, 15, 51, 55, and 59 as the most significant factors. This means that the above-mentioned expressions represent the highest rank in terms of participants in first mental model. Also, they believe that factors 29, 37, and 42 have the least application. That is, these factors constitute the lowest rank.

Factor arrangement II: Further in the Table 3, it can be seen that 23 propositions that are common in the second mental model, have identified factors 27, 32, 38, 3, and 26 as the most important factors.

Factor arrangement III: Further in the Table 3, we see that 14 propositions being common in identifying third model, have identified factors 33, 35, 11, 52, and 5 as the most significant factors.

Table 3. ranking propositions for each factor

Row	Proposition	Factor ranks of the first mental model	Factor ranks of the second mental model	Factor ranks of the third mental model
1	Human perceptions are highly mental	5	2	1

2	The leading talents of staff should not be considered; the procedure management itself determines the selection of the next manager	1	2	5
3	If there is collective decision-making, it will have fewer benefits for the organization	1	8	2
4	Performing duties should focus on interaction, cooperation, equality, and relationship.	6	1	1
5	The work must be done in a directional manner.	1	2	7
6	We need to look at events from a different angle, because we may understand new things.	1	5	1
7	Management in performing duties, should focus on details well.	6	1	1
8	Due to the complex nature of factors, we must act with great flexibility in addition to observing fixed rules.	1	6	2
9	I believe in totalitarianism.	8	1	1
10	Creating a procedure for doing things is more important than anything else.	1	2	5
11	We need specific and pre-determined principles to achieve the goals of the bank.	1	1	7
12	To my opinion, applying the current procedures of organization, does not require the use of creative thinking.	1	6	1

13	Budget needs to create complete and predictable procedures.	1	5	2
14	I believe that all parts of the universe, including human being and universe are dynamic, aware and interrelated creatures.	4	1	1
15	It would be better to be like a trainer in performing duties alongside staff.	7	1	1
16	The best method of performing duties can be conducted by observing hierarchical structure.	1	5	2
17	Best type of banking staff are those who carry out current instructions.	1	4	2
18	Qualitative research method is suitable to know reality.	4	2	2
19	Being energetic in workplace means working full-time.	2	5	2
20	Decisions should be taken individually.	2	1	5
21	There is less commitment in implementing group decisions.	2	5	2
22	Being in team contradicts the concept of creativity.	1	4	2
23	Creativity has no application in banking workplace.	2	2	5
24	Knowledge is gained through presenting various interpretations of reality, and creating agreed-upon model.	5	1	1

25	In performance evaluation, also, we must focus on the complexity of situations and events.	1	5	1
26	People have to work individually in performing duties.	1	7	2
27	We need to pay attention to the context of events in analyzing situations.	1	8	1
28	The mental nature of subjects and examiner, also, needs to be considered in analyzing events.	4	1	1
29	In the world, not only nothing is predictable, but there is no sufficient information for understanding the situation.	4	1	2
30	Achieving knowledge is not possible by analyzing research propositions under precisely controlled conditions.	2	5	2
31	The world around us is based on fixed laws that must be known.	1	2	6
32	Nature has a repetitive nature that needs to be looked at merely based on past thinking.	1	8	2
33	Nature laws can be understood, predicted, and as a result, can be controlled even on social topics.	1	1	8
34	Work is in conflict with life situation.	1	4	1
35	The function of each element must be considered in its analysis.	2	1	7

36	Competent staff are those who have enough motivation for performing their tasks.	5	1	1
37	The whole world is composed of energy that is reflected in every event and element.	4	1	1
38	The nature of life has stability that needs to be reflected in performing duties.	1	7	1
39	The nature of nature is unpredictable, and is assumed to be out the direct control of human being.	5	1	2
40	Managers must foster creativity and innovation among their staff.	4	1	1
41	Future managers are currently at organization, and they only need to be known.	1	5	2
42	Managers need a new approach towards human beings, processes, and objects to increase their performance effectivity.	4	2	1
43	Successful managers need those staff who are simply following instruction well.	1	3	4
44	Managers who perform on the basis of quantum theory, provide better quality services for customers and stakeholders.	4	1	1
45	Managers must think about the profit of organization, and staff need salaries.	2	4	1

46	Managers must strive to maintain their motivated and creative staff in their group.	2	4	1
47	Management must be based on rationality.	2	1	6
48	Management means superintending the performance of tasks.	1	5	2
49	Traditional management is also the best method to achieve results in the current world.	1	1	4
50	The management of staff depends on the participation of a limited number of them.	1	5	1
51	Management means interaction for the better performance of duties.	8	1	1
52	Management means issuing specific instructions for performing tasks.	1	1	8
53	Management depends on creating the unity of procedure.	2	2	4
54	We can consider conditions in performing tasks, and can be versatile.	1	3	1
55	We can provide dynamic workplace for personnel to be able to live in comfort.	7	1	1
56	Each organization is a small world in terms of its complexity.	5	2	1
57	All of the events can be interpreted individually, and not everything should be seen in relation to each other.	4	2	1

58	Everything can be interpreted considering relations.	4	3	1
59	A manager is successful only when s/he provides his/her staff with creative space and environmental ambience.	7	1	1

Own elaboration basedon the objective of investigation.

After creating factor arrangements and displaying them as Q-spectrum, it is essential to analyze these models in detail based on factor arrangements for identifying distinguishing and agreement phrases and by means of which differences and similarities between mental models, so that distinguishing phrases, i.e., those that cause two factors to be considered separately, will be identified. In fact, such expressions give factor identity and determine its meaning and concept.

As an example, a proposition can earn scores of 1, 8, and 3 in factors 1, 2, and 3, thus we see that this proposition is of significance for factor 2, however, this is not the case for other factors. Therefore, this proposition distinguishes factor 2 from other factors. It is possible that a proposition plays a distinguishing role for two factors at the same time, but it may be important in one of them and insignificant in the other. To analyze mental models, in addition to distinguishing phrases, the phrases on the two sides of the spectrum, that is the highest and the lowest rank, are also applied, because they indicate opinions with great intensity. This is because, in this study, factor scores that are in the rows 8, 7, 1, and 2, are also identified.

4.8. The typology of the mental model of the managers of Bank Melli regarding quantum leadership

On the basis of propositions that have the highest or lowest score in each mental model and distinguishing propositions that have the highest and lowest significance in each model (these propositions have been highlighted), the mentality of the managers of Bank Melli was typified regarding quantum leadership. As shown in Table 4, this classification is described as follows:

Table 4. the typology of mentalities

The priority and the score of propositions	Factor scores of the first menta model	Factor scores of the second menta model	Factor scores of the third menta model
8	I believe in totalitarianism.	If there is collective decision-making, there will be few benefits for the organization.	Nature laws can be understood, predicted, and as a result, can be controlled even on social topics.
	Management means interaction for the better performance of duties.	We need to pay attention to the context of events in analyzing situations.	Management means issuing specific instructions for performing tasks.
		Nature has a repetitive nature that needs to be looked at merely based on past thinking.	
7	We can provide dynamic workplace for personnel to be able to live in comfort.	People have to work individually in performing duties.	The work must be done in a directional manner.
	A manager is successful only when s/he provides his/her staff with creative space and environmental ambience.	The nature of life has stability that needs to be reflected in performing duties.	We need specific and pre-determined principles to achieve the goals of the bank.
2	Decisions should be taken individually.	The talent of leading staff should not be considered. The procedure management itself determines the selection of next manager.	Future managers are currently at organization, and they only need to be known.

	Creativity has no application in banking workplace.	Creating a procedure for doing things is more important than anything else.	Management means superintending the performance of tasks.
	There is less commitment in implementing group decisions.	Qualitative research method is suitable to know reality.	The world around us is based on fixed laws that must be known.
1	The management of staff depends on the participation of a limited number of them.	Knowledge is gained through presenting various interpretations of reality, and creating agreed-upon model.	I believe that all parts of the universe, including human being and universe are dynamic, aware and interrelated creatures.
	Work is in conflict with life situation.	The mental nature of subjects and examiner, also, needs to be considered in analyzing events.	Management in performing duties, should focus on details well.

Own elaboration basedon the objective of investigation

5. Discussion and conclusion

This study attempts to typify the mental model of the managers of Bank Melli with regards to quantum leadership in addition to analyzing these models. Thus, author sought to select the sample Q-sort using thematic analysis and after studying concourse and summarizing the obtained propositions. The expressions of this sample were analyzed using Q-methodology, which was identified at the end of three mental models including the ambassadors of transformation, pioneers of protection, and the steersmen of stability, and of course this naming was done by the researcher.

5.1. Initial mental type: the ambassadors of transformation

This group has given most of its scores to propositions that have looked at leadership as strategies present in quantum leadership. They conceive of

management as a cooperation mechanism, put value on staff, and expect that they can provide excellent services for their customer community using the creativity and innovation of their staff and due to their motivation and capabilities. They concentrate on interaction between working systems and staff, and view management as an interactive mechanism that is able to realize any goal using the capable hands of its employees.

Quantum leadership stresses interactive skills, dialogue, and trust in subordinates, and expects development and progress for both management and staff. In the analysis of Q-chart of these people, it can be seen that propositions like 'a manager is only successful when he can provide creative space and atmosphere' and 'it is better to be like a trainer in performing duties alongside staff', have the highest score and priority. By sharing leadership and management conditions with its employees in addition to listening to their voices, this group attempts to provide a dynamic and flexible working environment for its sub-groups, which both creates vitality and leads to intrinsic motivation in staff.

They ask followers to express their questions and problems, and so the needs of people are recognized through discourse about organizational tensions. They hold the view that there is no factor to continue life if there is no passion and excitement. Their orientation in the future world, is towards thinking about new ways of thinking, creating thoughts, and new things. The creativity and knowledge of staff is vital for the success of organizations. They acknowledge that we must be aware of the fact that we cannot live separately. So, we must learn how to interact and to close cultural and language gaps in our all-embracing communications.

5.2. Second mental type: the pioneers of protection

Those who fall into this group in the classification of this study, are those who continue management and inclination toward change after passing their dangerous career path. In this range of managers, there are those who tend to look at elaborate issues around them using quantum leadership style, but they are also afraid that they must fail by shifting from current procedures.

Although they believe in creativity, they consider themselves more as followers on this subject than to be the pioneers of this path and to take the risk. They apply smaller and slower changes in their services, compared with the managers of the ambassadors of transformation group, and are less likely to believe in stability and in defending past rules and protocols and unidimensionality. They struggle to attain limited and stable set of services, but follow carefully the selected set of new and upcoming transformations in similar activities.

They are barely the first to act. In this study, the items of high priority in their descriptions in Q-samples include those like 'we need to pay attention to the context of events in analyzing situations' and 'nature has a repetitive nature that needs to be looked at merely based on past thinking'. They, somehow, follow quantum leadership approach in some of their thinking, and in their ideas and roots of thought, they, somehow, have a brief look at the rationalist style of the steersmen of stability. They are thinking and acting somewhere between continuing past rules and creating new future. It is apparent that such approaches prepare the ground for gradual change towards continuing quantum leadership.

5.3. Third mental type: the steersmen of stability

In the third mental type, we witness managers who introduce themselves as the forerunners of continuing past, and tend to move towards continuing past by creating defined procedures and instructions. Meanwhile, the managers believe that their employees should not have creativity, and, generally, there is no need for innovative thinking in performing their duties.

In fact, organization needs empowered officials who contribute to the organization in achieving goals by observing pre-determined instructions. In this regard, it could be argued that this group of managers strongly believe in Newtonian leadership thoughts, and consider it indispensable for development. They don't trust in their juniors, and change them to yes-mans who are afraid of punishment.

In this management system and mental approach, managers have a tendency towards unidimensionality, and believe in unity of procedure in affairs. Reflecting on their intended items, we can see that the following cases have high mental priority among them: 'Nature laws can be understood, predicted, and as a result, can be controlled even on social topics' and 'The function of each element must be considered in its analysis'. Legalism, focus on authority and the formalization of organizational structure, restrictions on the formation of work teams, and management base on seniority are among the mental models prevailing in the range of managers, and their success can be seen to a large extent as a style governing most of traditional businesses by reviewing the needs of current organizations.

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Unity of law and legal act as a key principle of the rule of law

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Abstract

This article discusses one of the key principles of the rule of law, such as the principle of unity of law. Consequently, the opinions of scholars who define this principle were a naturalized and their main characteristics stand out. In addition, the article provides an attempt to compare the principle of unity of law with the principles of the rule of law and highlight its general characteristics and differences. In methodological terms, the technique of documentary research and comparative hermeneutics was used. It is concluded that the categories of «rule of law» are understood by several authors very differently, there is no consolidation in the definition of this concept; often the above principles contradict each other: they express the static or dynamics of the rule of law, so they require additional doctrinal legal awareness and study. Under modern socio-political conditions, it would be better to use unity of law as the principle of the rule of law; because, it is the principle of unity of law that can provide effective and rational protection and realization of the rights and freedoms of citizens, societies and states.

Keywords: rule of law; principles of the rule oflaw; unity of law; legal hermeneutics; state theory.

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La unidad de la ley y el acto jurídico como principio clave del Estado de Derecho

Resumen

Este artículo discute uno de los principios clave del estado de derecho, como lo es el principio de la unidad de la ley. En consecuencia, se analizaron las opiniones de estudiosos que definen este principio y destacan sus principales características. Además, el artículo proporciona un intento de comparar el principio de unidad de la ley con los principios del estado de derecho y se destacan sus características generales y diferencias. En lo metodológico se hizo uso la técnica de investigación documental y de la hermenéutica comparada. Se concluye que las categorías de "estado de derecho" son entendidas por varios autores de manera muy diferente, no hay consolidación en la definición de este concepto; a menudo, los principios anteriores se contradicen entre sí: expresan la estática o la dinámica del estado de derecho, por lo que requieren una conciencia y un estudio jurídicos doctrinales adicionales. En el marco de las condiciones sociopolíticas modernas, sería mejor utilizar la unidad de la ley como el principio del estado de derecho; porque, es el principio de la unidad de la ley el que puede proporcionar una protección y realización eficaz y racional de los derechos y libertades del ciudadano, las sociedades y los Estados.

Palabras clave: estado de derecho; principios del estado de derecho; unidad de la ley; hermenéutica Jurídica; teoría del estado.

Introduction

Such social phenomena as "law" and "right", their correlation and meanings for each other were chronically of particular importance for the theory and philosophy of law throughout the history of the state and law. At the same time, without exaggeration, it can be noted that it was the relation of law and right that became the forerunner for the metaphysical search of society political organization based on the free and safe development of a man, namely, legal statehood.

The rule of law as an abstract-idealistic construction of public life legal structure in a particular state undoubtedly needs a systematic disclosure of its content, axiological aspects, etc., where special importance is given to the fundamental principles. The principles of the rule of law are the most fundamentally general principles of state power exercise in the framework of a fair society development focused on the preservation and development

of a man and his rights, as well as on society freedom provision. It is worth noting that the principles of the rule of law express its foundation.

Modern scholars distinguish a large number of principles of the rule of law. For example, M.M. Utyashev identifies more than ten principles of the rule of law: the principle of popular sovereignty, the principle of legitimacy of power, the principle of priority of law over power, the principle of equality of state and personality, the principle of inviolability of a person, the principle of law and right identity, the rule of law, the principle of independence of the judiciary, the principle of power separation, the principle of political equality of citizens and the principle of universal suffrage (Utyashev, 2005).

1. Methods

It is worth noting that a fairly large number of works mentions the categories of "rule of law" as the principles of the rule of law. Moreover, quite often these terms are contrasted with each other. This is largely due to the existence of various concepts of legal understanding, when under legal positivism, under the law they understand only those acts that are authorized to issue by specially created legislative bodies of power, while in sociological legal understanding, the law also refers to the norms that can be created by various subjects of law, up to citizens and legal entities.

However, when it comes to the rule of law, as one of the most important principles of the rule of law, there is some uncertainty in its interpretation. So, if we look at the works of the same S.A. Kotlyarevsky, then we can conclude that in his works "the rule of law as a principle of the rule of law passes through a red thread" (Glushachenko, 2003). It is noteworthy that the law in this context does not consider the whole totality of its sources, but only constitutional laws. "They are the highest expression of state power, they receive powers and legislative institutions, and the legislative life of the country flows within them" (Kotlyarevsky, 1915: 451). Continuing his thought, he comes to the conclusion that the rule of law lies in the lawfulness of decrees for both the monarchy and the republics. He also believes that it is necessary to establish a legislative order during a legal norm determination.

It is worth noting that in Western European doctrine this principle is also understood ambiguously. The concept of the rule of law was developed in German jurisprudence, which either reduced to the formula "ordered by the law of bureaucracy". Such a formulation can be traced in the works by K.T. Welker and R.G.F. Gneyst (Gneist, 1879); or to the subordination of the executive and legislative branches of government, when, within the framework of a constitutional monarchy, the first submits to the second

(Welcker, 1813). At the same time, it should be noted that the languages of other nations also include this institution: in English, the phrase "rule of law" corresponds to it, and the case is the same in French (Nersesyants, 1996). In general, it is necessary to agree with M.M. Brinchuk, who correctly noted that "it is not accidental that the concept of the rule of law is used in some countries, instead of the category of the rule of law" (Brinchuk, 2005: 09). Based on this, we can come to the assumption that the institution and principle coincide in the above countries.

2. Results and Discussion

Meanwhile, not all authors are inclined to consider the category "rule of law" as the principle of the rule of law. So, for example, N.V. Shishkina singles it out as a sign of this state: "The rule of law is one of the essential features of a rule of law state, which means that law dominates all people and the state itself, that is, bodies and officials, the priority of law is affirmed" (Shishkina, 2006: 277). Such a substitution of concepts allows us to say that far from all authors distinguish the principles of the rule of law from its features. In our opinion, the main difference between these concepts is that the principles have doctrinal legal representations, i.e. theoretical standards, goals, and guidelines and they should also be expressed in law-making and law enforcement activities.

At the same time, the signs express our reality, and determine its most characteristic features. Strictly speaking, the principles express the state of law and related elements at the level of statics, while the signs reflect legal phenomena in dynamics, that is, in constantly changing conditions that characterize the real state of things. From this point of view, it was more appropriate to single out the principles of the rule of law in statics and dynamics (Krasnov, 2017).

Also, it should be noted that some scholars often use the term "rule of law" as a synonym. For example, S.S. Alekseev writes that "the rule of law is a specific social phenomenon, stipulated by the natural right of a person to freedom, inviolability and equality, since these universal values form the basis of an individual legal status" (Alekseev, 1997: 49). In another work, he uses almost identical definition, saying that "the rule of law is a specific social phenomenon, due to the natural, inalienable right of a person and a citizen to freedom, equality, justice, and personal privacy" (Alekseev, 1999: 52). In this regard, a logical question arises concerning the relationship between the principle of the rule of law and the rule of law.

First of all, it should be noted that not all authors use the terminology "rule of law". More often you can see the use of the phrase "rule of law." So,

in particular V.N. Khropanyuk among the main features that are inherent in the rule of law, includes "the rule of law in all areas of public life" (Khropanyuk, 2008: 384). It can be assumed that in this case, scholars try to give this principle the role of a certain power principle, thanks to which it will be possible to ensure and respect the rights and freedoms of citizens. However, if we adhere to the sociological concept of legal understanding, then in this case not only the acts emanating from the state on behalf of its competent authorities will have the highest legal force.

Recently, the number of sources of law has been steadily increasing; as such, they stand out not only for legal acts, legal contracts, legal customs and legal precedents, but also for legal doctrine as "a product of intellectual activity and, to some extent, the result of scientific creativity" (Gilmullin, 2017: 159), as well as for situational law, which refers to the law in dynamics, "living" law - the normative basis of complex legal implementation (Pogodin, 2013). The essence of this concept is that any person can be engaged in law-making within a specific relationship. It seems that in relation to the principles of the rule of law, this source of law should also be taken into account, despite still weak theoretical study of the described legal phenomenon.

Also, it is worth noting the interesting approach by F.M. Rayanova, who, under the legal essence of the state, singles out the supremacy of the ruler's will or the supremacy of the law adopted by the representative people government (Rayanov, 2005). Of course, it is worth emphasizing that it was not a rule of law state, but the state in general. However, if we try to extrapolate this view to the nature of the rule of law, then it can be assumed that the rule of law distinguishes the rule of law from the "unlawful" or "pre-legal" state. Indeed, the rule of law may also be the legal will of the monarch, which will be mandatory, however, this will not mean its combination with the interests of society and the will of the people.

Even more questions are raised by the statement from M.M. Brinchuk, according to which "in a state of law, power is bound by law when law is above power" (Brinchuk, 2005: 07). This thesis raises questions about the sources of law development and the degree of authority participation in this process. It seems that it would be more appropriate to clarify that it is the law that should prevail over the authorities, because otherwise you may encounter a number of problems in private law relations, where the subjects of law can, in fact, create various legal rules within the framework provided by legislation. These conceptual provisions can also be seen in the works of the famous English lawyer Albert Dicey, who, speaking of "Rule of law", indicated that no one was above the law (Dicey, 1959).

Secondly, the question arises of the relationship between the concepts of "rule of law" and the terminology of "rule of law". Do these categorical concepts always have to be understood in the same way? For example, a

number of scholars uses these expressions as subsidiary by their content to each other. So, N.I. Matuzov and A.V. Malko highlight "the rule of law and its dominance in public life" as the way to limit political power (Matuzov and Malko, 2004).

In a way, such an interpretation allows us to say that scholars have tried to separate the law as the highest source of law among other legal acts and its dominant position for participants in legal relations. The conclusion suggests itself that here the main difference will be the understanding of the rule of law as a de jure principle, while the rule of law is considered from a de facto point of view, that is, in this case, this principle reflects the real picture of the life of society and the state. Separately, it is worth mentioning the "liberal" theory of the rule of law by Trevor Allan, which points to the "internal morality" (Allan, 2001) of law as the reflection of the rule of law.

The view by N.M. Marchenko on the problem of correlation of the following categories is also of interest: "supremacy" and "domination". So, in his textbook, he singles out "the rule of law" as one of the most important principles. At the same time, the author emphasizes that the law is considered in the literal sense - "as an act emanating from the highest public authority and having the highest legal force" (Marchenko, 2011). At the same time, speaking of the rule of law, Marchenko emphasizes that this terminological construction should really be implemented, that is, a "real rule of law" should exist in the country, as if emphasizing the thesis of the previous paragraph on the need to distinguish between these categories in terms of highlighting principles in statics and dynamics.

Given the complexity and polarity of the presented points of view, it is worth noting that E.A. Laktunina proposes to use the unity of law and right as the principle of the rule of law (Laktunina, 2005). Speaking about the rule of law, it should be noted that all its components should work as a single mechanism, the same applies to its principles. Therefore, implying the dominance or supremacy of something, we are already embarking on the slippery path of juxtaposing phenomena to each other. At the same time, it should be remembered that the law in a state of law should be legal in nature, but law should reflect the rule of law in society. In this part of the analysis, it is acceptable to pay attention to the fact that the first, most prominent hypotheses:

> About the nature and content of laws, about their objective principles, about their correspondence to divine principles, justice, humanity, power, etc. began to develop even in ancient Greek political and legal thought at the beginning of the 1st millennium BC (Gilmullin, 2020: 09).

In other words, the unity of law and right should imply the unity of the statics and dynamics of the rule of law, when the norms created by a

specially authorized state body find their proper concretization in the acts of the executive and judicial authorities, in the rule-making activities of legal entities.

Conclusions

We can conclude that:

- The categories of "rule of law" are understood by various authors very differently and subjectively. There is no consolidation in the definition of this concept. In addition to the mentioned above, it can be noted that in some works there is a confusion and substitution of this principle by others that are similar in essence, but still differ in content.
- Often, the above principles contradict each other: they express either the statics or the dynamics of the rule of law, thereby requiring additional doctrinal legal awareness and elaboration.
- It should be noted that in modern socio-political conditions it would be better to use the unity of law and right as the principle of the rule of law. This principle expresses the statics and dynamics of the rule of law, their clear relationship and implementation in the mechanism of a state ruled by law.
- All categories considered in the framework of this analysis, in terms of content and practical significance, represent: 1) achievement, the result of philosophical and legal thought at a certain historical stage of development; 2) the indicator of human culture and civilization state; 3) the basis for further rational development of democratic, legal and social states and their institutions; 4) mechanisms that ensure the conservation of human nature and its worthy existence.
- As some authors note: "international law of the XXI-st century is a human right" (Gilmullin *et al.,* 2019). In our opinion, it is precisely the principle of the unity of law and right that can strengthen this trend in modern international law and provide effective and rational protection and implementation of the rights and freedoms of a man, societies and states.

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Legal basis for the interaction between local with state authorities

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Abstract

The objective of the article is to analyze the legal basis for interaction between local and state authorities within the framework of the current constitution of the Republic of Iraq. At the methodological level, documentary observation was used. In recent years, after the transition to a new political regime in Iraq in 2003, many issues relating to local administrations and their interaction with state bodies have been identified and enshrined in the Constitution of the Republic of Iraq in 2005. Some of the most serious problems are the lack of a clear organization of relations between government bodies and local governments, the efficiency problems of the various authorities, as well as the lack of flexible solutions in legislation and the Constitution. The need to solve these problems is often manifested at all levels. At the same time, we find no real decisions that do not cause popular discontent in all Iraqi provinces, especially in Basra province. It is concluded that relations between regional and national authorities are mediated by the presence of bureaucracy, financial and administrative corruption administrative and political conflicts between political parties.

Keywords: local administration in Iraq; administrative decentralization; state power; Iraqi political reality; federal law.

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Base legal para la interacción entre autoridades locales y estatales

Resumen

El objetivo del artículo es analizar la base legal para la interacción entre autoridades locales y estatales en el marco de lo que estipula la constitución vigente de la república de Irak. A nivel metodológico se hizo uso de la observación documental. En los últimos años, después de la transición a un nuevo régimen político en Irak en 2003, se han identificado y consagrado en la Constitución de la República de Irak de 2005 muchas cuestiones relativas a las administraciones locales y su interacción con los órganos estatales. Algunos de los problemas más graves son: la falta de una clara organización de las relaciones entre los órganos de gobierno y los gobiernos locales, los problemas de eficiencia de las diversas autoridades, así como la falta de soluciones flexibles en la legislación y en la Constitución. La necesidad de resolver estos problemas se manifiesta muchas veces en todos los niveles. Al mismo tiempo, no encontramos decisiones reales que no causen descontento popular en todas las provincias iraquíes, especialmente en la provincia de Basora. Se concluye que, la relaciones entre las autoridades regionales y nacionales esta mediada por la presencia de burocracia, corrupción financiera y administrativa y conflictos políticos entre partidos políticos.

Palabras clave: administración local en Irak; descentralización administrativa; poder estatal; realidad política iraquí; ley federal.

Introduction

The issue of the distribution of competencies between local authorities and the state was brought up in the Provincial Coordination Committee, which held its meeting in 2010 with the aim of transferring some powers to the provinces. This is one of the main issues of state policy regarding the development of local self-government in Iraq; it was included in the first amendment to the law about the provinces. The recommendations of the Steering Committee included the need to provide local governments with opportunities and initiatives to create the conditions necessary for the sustainable development of the provinces.

This is done by coordinating work with federal authorities in all areas of service in order to guarantee the rights and freedoms of the local population, as well as improve their living standards (Al-Lamy, 2018). The

development of local self-government should lead to the creation of an effective and influential system of relations between the population, local authorities, and other state bodies.

The new regime established in Iraq after 2003 guarantees that powers and resources will be fairly distributed between all levels of government; clear and precise foundations and mechanisms of relations will be established between branches of government and the principles of the state will be precisely defined. The responsibility of each level of government in Iraq, whether local or federal, is to equitably distribute the powers and resources needed to develop society and ensure the provision of services to the entire population.

1. Methods

The methodological basis of the study consists of general scientific dialectical methods of cognition, scientific methods of analysis and scientific forecasting, synthesis and deduction, system methods, as well as special methods for studying legal phenomena: historical-legal, comparative-legal, structural-functional, etc.

2. Results and Discussion

In general, it should be noted that the problem of identifying and distributing powers and their constitutional structure is one of the most important problems limiting the effectiveness of local authorities. As a result, there is a lack of clarity on the local government's strategy for managing local affairs, especially in light of the ambiguity of the administrative decentralization system in Iraq and its connection with all the crises that it faced in exercising its internal jurisdiction.

As a result, the confusion that arises in the activities of officials in an attempt to understand the responsibilities and authorities assigned to them ultimately leads to a dispersal of efforts and the failure of the development process, which became the subject of controversy and political debate and contributed to the emergence of two scenarios. First scenario tends to exist of a centralized power when executive powers are delegated to the state in the interests of its representative at the provincial level. The second scenario protects political actors at the municipal and provincial levels and tends to give real power to local elected councils (Nasruddin, 2009). In this regard, the issue of limiting the powers granted to local authorities and the need to eliminate uncertainties regarding them is raised again.

As concerns empowerment of local authorities, the law on provinces and municipalities contains ambiguity, commonality and inaccurate language. This led to a duplication of powers of local and federal authorities without restriction of interventions (universal freedom): with the assumption that they are doing everything, they are really not able to do anything in a clear and precise form in all their roles together with the federal authorities (Leinen, 2020; Li-Ann, 2004).

If the principle of local independence is practiced as self-government in accordance with own laws, then the independence of local provincial and municipal authorities does not extend to the legislative function, i.e. legislation relating to them, and is primarily aimed at organizing a local community. Independence is limited to executive functions at the local level and is referred to as partial independence or relative freedom; the latter should be carried out within the framework of legal norms specified in the Constitution or in state laws (Homel and Fuller, 2015)

Thus, the principle of local independence was defined, on the one hand, as the right to choose or show initiative, and on the other, to give preference to the rights of local authorities, seeking even to oppose state authorities.

Independence here is one of the foundations of administrative decentralization, which at the same time aims to give some freedom to local authorities in the process of carrying out their own activities (Khani Khaschekchi, 2010). Therefore, we believe that local authorities are independent if they have the power to do so; otherwise they are not free or independent.

The issue of independence of local communities is addressed in legal documents. Here the state grants legal status, autonomy, and independence them and even their constituents, as well as those who manage them. Communities exist regardless of changing or replacing local councils. Local authorities always have freedom of initiative and action; in this regard, the central government is not able to replace them, with the exception of cases provided by law (Nasruddin, 2009).

This is confirmed by Professor Nasruddin in his analysis of Art. 44 of the law on provinces. He admits that the legislator has established a common framework for interference in the affairs of municipalities and provinces, while providing them with freedom of activity and legal capacity. This indicates that the legislator has not established a criterion of exclusive jurisdiction in order to indicate the independence of local authorities (Leinen, 2020). Accordingly, a number of legal provisions confirm the independence of these bodies in managing the development of local areas and this is evidenced by the powers vested in them by law.

Based on the foregoing, it makes sense to say that the state is able to choose between what it yields in favour of the local authorities, and what it retains.

Compared with the constitutional framework for the issue of local community independence, the legal framework has identified and detailed the manifestations of the independence of local community bodies in terms of their functions and decision-making ability, starting with the law on municipalities. The Law on Municipalities and Provinces contains the general principle of freedom of local authorities, which embodies the meaning of freedom and independence.

The municipal charters state that municipal authorities make appropriate decisions within their competence without prior notice to state authorities, without government intervention in order to change the decisions or amend them. Supervision permitted by law should not be carried out in a way that is not consistent with the concept of decentralization, but should be within the framework of the provisions of the above Charters (Art. 34 of the Federal Law No. 165 of on Municipal Management, 1964).

It is obvious to us that at that time, Iraqi lawmakers were fully convinced of the need to provide municipalities with decision-making independence and freedom, which they would consider appropriate at the regional level, by including an appropriate article in which legal control was allowed to ensure compliance with the concept and elements of decentralization. The Law about Provinces also provides for a decentralized government in provinces with all the powers necessary to carry out their tasks and to be a decentralized unit, like a municipality. Thus, the local council takes decisions and measures that it considers appropriate and a government representative intervenes only if decisions are required to comply with the law.

In addition to the aforementioned Charter, the legal basis for the independence or freedom of local authorities was enshrined in municipal law of 1964 (Art. 43. Law No. (165) and the Law about Provinces of 1969 (Art. 86 of the Federal Law No. 159, 1969). In our opinion, this independence is expressed through the creation of an elected deliberative council (Municipal People's Assembly and the State Council of the Public) and the implementation of the duties assigned to them by law. In the Law about Provinces No. 21 of 2008, the term "independence" is used to refer to both municipalities and provinces.

Local communities enjoy legal independence that distinguishes them from central administration and recognizes their special interests in their territories, which is a manifestation of their freedom. In addition, Iraqi lawmakers link the independence of local authorities with their ability to solve local problems, stating: "The local council should ensure the creation of appropriate conditions for the development of local initiatives aimed at encouraging citizens to participate in solving their own problems and improving their housing conditions" (Schamel Khadi, 2014: 61). Iraqi lawmakers have expanded the powers and responsibilities of elected local councils through their right to make decisions regarding local issues.

In stating the foregoing, it should be noted that if the basis for the creation of local bodies is the law issued by the parliament in accordance with the territorial organization of the country, then the laws governing these areas are the basis for their independence and freedom in exercising their powers in all areas. Thus, we believe that local authorities have complete freedom of intervention and the timing of the intervention in accordance with their capabilities and potential.

For Iraq, the model of interaction between federal and local authorities has some features of the "Asian model" (the "Asian model" is characterized by centralism of the executive branch, in which the president puts his governors at the head of local administrations called upon to conduct presidential policies on the ground). The partnership model is practically unsuitable here. In our opinion, the most suitable model capable of harmonizing relations between central and local authorities is the aforementioned model, which is based on the concept of interdependence. According to this conception, the central authorities of the republic could build their relations with local authorities, leading the differentiation of these relations to dependence on the specific field of activity, and providing full independence to the municipal authorities within their own authority and, of course, within the framework of the law, while establishing effective control over the implementation of their activities in the field of delegated authority.

The issue of the transfer of authority is one of the issues raised in connection with the emergence of many legal and political problems. The reason is the establishment of a democratic political regime after 2003 as a result of the actions of the coalition Provisional Government formed after the occupation of Iraq by an international coalition led by the United States of America. The problem is the distribution of responsibilities based on ideological, national, ethnic, and religious affiliations.

On April 27, 2003, an Interim Governing Council consisting of 20 members was formed. Subsequently, the 2004 Law on Transitional Government was passed; it introduced a democratic republican federal parliamentary system based on political pluralism. The goal is to incorporate the relevant principles into the 2005 Iraqi Permanent Constitution and facilitate the distribution of powers between the federal government and the Kurdistan government, as well as local administrations existing in provinces outside the autonomy (Khaider Adam, 2006).

However, it is noteworthy that the process of delegation of authority is complex. The reason is the duplication of these powers between the federal authorities (legislative - executive - judicial) and local authorities in relation to joint and exclusive powers. This takes place both in the Constitution and in existing laws or in laws to be adopted. An example is the bill on the Main Directorate for autonomies and provinces that are not part of

autonomies, prepared by the federal government for transfer to the Council of Representatives of Iraq with the goal of finalizing legislation regarding the organization of relations and the distribution of powers between the centre and the parties.

The plurality of decision centres and partially overlapping powers due to the lack of clarity within the boundaries of the power itself have made the nature of the approach and the method used in political decision-making mechanisms complex and confusing in addition to the plurality of powers and disagreement on the ultimate limits of exceptional authority granted to the federal government. Partial coincidence of some of them is expressed in the joint powers of the centre and local administrations in accordance with the Constitution. In the event of a conflict between the powers of local authorities and the federal government, priority shall be given to the latter. And in the event of contradictions and conflicts between federal law and the laws of local administrations, if they do not fall under the exclusive powers of the federal authorities (Khaider Adam, 2006).

Nevertheless, the issue of transferring powers to local administrations remained controversial and had many interpretations from all political parties, which reflect in some cases a lack of understanding as to the limits of exercising powers, and in others, a complete failure to comply with constitutional and legal texts on this topic. The distribution of powers means a lack of power among those who manage at the expense of other institutional structures available in the state, using a decentralization system in the management of state institutions with the aim of interaction between local authorities and federal authorities in the process of implementing public policy. Dr. Abdul Kader Khamid Rashid emphasizes that the fragmentation of power and the distribution of power according to the principle of decentralization is an essential element of healthy societies open to democracy. It is a mechanism by which freedom is achieved and maintained, which requires a civilized national identity with the creation of a strong government that guarantees the maintenance of order. In parallel, there is a separation of powers on the basis of the existence of a socio-political institutional agreement that distributes power among all political parties in accordance with the principles of legal sovereignty.

3. Summary

The distribution of powers should be based on the following principles (Khaider Adam, 2006):

1. Determination of the terms of reference for the central government and local authorities by exclusion; determination for local

administrations in the provinces of the competencies carried out within the powers of local officials.

2. The exercise of the powers of the federal government will facilitate the activities of local administrations within the constitutional and legislative framework with the aim of applying a distinctive new approach in a decentralized administration.
3. In the event of a conflict of opinion regarding powers between the federal government and local administrations, firstly, it is necessary to resolve the conflict regarding powers, so that other issues that do not cause a conflict of powers remain the prerogative of local administrations in the provinces. Art. 110 of the Constitution states that "powers not provided for by federal authorities belong to autonomies and provinces that are not part of autonomies, or joint powers of the federal government and autonomies are determined, where priority is given to the laws of autonomies and provinces that are not part of autonomies, in a case of disagreement between them."

This is another legal problem, which consists in expanding the powers of local administrations to the detriment of the central federal authorities. It is especially important to consider that the priority of local authorities with this form and such a mechanism weakens the authority of the centre. As a result of this, on the one hand, the centre does not have the ability to manage the necessary and urgent development projects in the country, and on the other hand, there are contradictions and other legal and constitutional problems in the process of following the instructions issued by local administrations in implementing infrastructure projects in their provinces; as we see, the instructions overlap centre management (federal government) practices (Mohammed Salakh, 2009; Al-Harajih, 2014).

Conclusion

In the light of such overlappings and the lack of understanding the boundaries of the development and implementation of state policy between federal and local authorities in accordance with their legal powers approved by each of the parties, we are witnessing an increase in the number of failures and a decrease in the degree of completion of planned projects. The reason is the presence of bureaucracy, financial and administrative corruption, political conflicts between the parties and other issues that impede the universal satisfaction of the growing needs of citizens.

The key to effective interaction between local authorities and public authorities is a specific and accurate definition of the legal nature of both representative and executive-administrative bodies of local self-

government. Therefore, it is necessary to develop these issues in detail in future legislative acts. In addition, it is necessary to limit the state legislatively concerning the exercise of its power functions by public authority of another kind: the power of society and of local communities. The public nature of the authority of local governments does not exclude, but implies the possibility of exercising by local governments the certain state powers delegated exclusively by law according to Article 115 of the Constitution of the Republic of Iraq.

In practice, it is often difficult to draw a clear line between self-government (issues of local importance) and public administration (separate state powers). The Constitution of the Republic of Iraq does not provide clear criteria for the separation of powers between local self-government and state power; therefore, this gap should be filled at the legislative level.

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The philosophy of private deterrence in the penal code

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Abstract

The aim of article was to discuss the philosophy of private deterrence under Iraq's penal code. The methodology adopted was the inductive approach, which helps to extrapolate legal texts with this study and the jurisprudence of legal jurists. The Legislator applies to the threat with punishment the harm and pain that will be inflicted on them if the crime is eaten by law, what is known as public deterrence speech. For its part, the special deterrent will be responsible for reforming the meaning and morality of the offender, following various means provided by the legislature and desinging a method of education of the deprived of liberty, allowing them the voluntary work determined by the conditions of each penance conditions or even by the subsequent formal and informal reintegration mechanisms of ex-convictions. It is concluded that these methods and others can contribute significantly to the achievement of the deterrence objectives, which is to reform and evaluate the offender's conduct according to criminal gravity on a case-by-case basis.

Keywords: philosophy private deterrence; general deterrence; penal code; Iraqi legislation; preventive measures of crime.

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La filosofía de la disuasión privada en el código penal de Irak

Resumen

El objetivo de articulo fue discutir la filosofía de la disuasión privada en el marco del código penal de Irak. La metodología adoptada fue el enfoque inductivo, que ayuda a extrapolar los textos legales relacionados con este estudio y las opiniones jurisprudenciales de juristas de derecho. El Legislador busca imponer y comunicar un castigo a la conducta delictiva, lo que se conoce como el discurso disuasivo privado y también pretende informar a las personas amenazando con castigar el daño y dolor que se les infligirá si cometieron el delito penalizado por la ley, lo que se conoce como discurso de disuasión pública. Por su parte, el disuasivo especial se ocupa de reformar el comportamiento y la moral del delincuente, siguiendo varios medios proporcionados por el legislador e ideando un método de educación de los privados de libertad, permitiéndoles el trabajo voluntario determinado por las condiciones de cada institución penitenciaria o incluso por los posteriores mecanismos de reinserción formal e informal de los exconvictos. Se concluye que, estos métodos y otros pueden contribuir significativamente al logro de los objetivos de disuasión, que es reformar y evaluar la conducta del delincuente según la gravedad delictiva inherente a la profundidad de cada caso.

Palabras clave: filosofía disuasión privada; disuasión general; código penal; legislación iraquí; medidas preventivas del delito.

Introduction

The importance of this research lies in explaining the role of private deterrence, which is one of the objectives of the punishment in reforming and correcting the behavior of the perpetrators, as private deterrence cannot be the goals that were set for it unless there are a number of methods to be followed in reforming the perpetrators, the most important of which is the commitment of the reform institution to teach and refine the perpetrators. And health care and other things that may lead to the convicts feeling regret and regret for the crime or crimes they have committed.

The research problem arises in the statement defining the concept of private deterrence, as this concept is still vague and different doctrinal, as the research problem emerges in defining the philosophical basis for private deterrence and the extent to which this deterrence is affected by the newly introduced penalties such as electronic surveillance and the system

of pledging honor which are not stipulated in some legislations, including Iraqi legislation.

1. Methods

The methodology that we will adopt is the inductive approach, which helps us in extrapolating the legal texts related to this study and the jurisprudential opinions of jurists of law related to this topic.

2. Results

One of the most important manifestations of private deterrence that the relevant authorities must implement is the inclusion of the convict in his educational courses, which is the obligation to teach and cultivate, as well as to pay attention to the convict's health care.

Education of the convict and refining it: private deterrence achieves the educational and educational function. Education as well as education are among the most important means that contribute to acquiring social values and raising the intellectual and moral level of the prison. Education also plays an important role in reducing the percentage of crime in society and eliminating illiteracy, which is one of the contributing factors. On the appearance of criminality and its spread in society, it inspires confidence in the psychology of the prisoner through the knowledge he acquires from education (Mekki, 2010).

Most of the penal institutions in the prison administration work to provide teachers and professional trainers who are able to provide the detainees with all the knowledge, as they frame educational facilities with all appropriate means and equipment, and most of the penal institutions prepare scientific plans to develop the educational and educational capabilities of the convicted inmates (Al-Taher, 2009).

Also, giving lectures and lessons on prisons will be according to the educational level of inmates, and according to programs usually prepared through the Ministry of Justice in each country, in addition to distributing books, newspapers, and magazines. These books and newspapers contribute to the entertainment and entertainment of prisoners, and enter in the field of education and education, obtaining Religious and moral information, in order to develop good and virtue in the same inmate, which affects the inmate's beliefs, behavior and behavior, and then transform the perpetrator into an ordinary person and integrated into society (Strachan, 2018).

The Iraqi legislator states that (First: every inmate and applicant) has the right to education and further education and to all stages during the period of his sentence.

Second: The Iraqi Reform and Juvenile Reform departments must secure the need for inmates and applicants to education and continue studying by opening public or vocational schools in both departments or ensuring continued study outside of it within the scope of the requirements of internal security and the capabilities of these two departments.

Third: The Ministry of Education, in coordination with the Ministry of Justice, meets the objective requirements for implementing the programs of the Iraqi Reform and Juvenile Reform departments to educate and qualify inmates and applicants to open public and vocational schools in all their phases within the correctional departments in these two departments.

We believe that all correctional institutions should pay attention to the education of the convicts, for education, whether education related to scholastic, religious or moral, plays a very big role in reforming these prisoners, and then turning them into good individuals and removing criminal risk from the reservoirs of themselves, and this is what private deterrence seeks to achieve.

Health care for the convict: Health care is defined as a humanitarian action that restores the convict's confidence in himself and in society through the means of this care, which is to prevent diseases before they happen and to treat them after they happen. The convict and his rehabilitation instead of retaliation and terrorizing society through him, until the treatment became a right for the convict and a duty of the administration to do (Al-Qahwaji, 1985).

It contributes to refining the behavior of the prisoner, so that she is used to good health rules such as physical hygiene, cleaning clothes, taking care of appearance and self-esteem, which creates a different feeling for him than he was before entering prison, and makes him look at his past as inappropriate and tends to change his behavior for the better, as well as health care role Important in the rehabilitation process through the physical and psychological treatment it provides to the convict, and its protection from various diseases that may be transmitted outside the penal institution, which means the importance of care for the whole community, not only the convict, in addition to that health care has a major role in evaluating the convict.

Through the feeling it instills in the convict that he is a healthy person and it is not appropriate for him to commit crimes or return to him, in addition to the importance of this care in erasing the negative effects that the convicted person suffers from and suffers from as a result of the deprivation of liberty measures such as arrest, seizure, investigation, trial

and what may result As a result of this negative thinking as a result of his new position among the walls of the institution.

The Iraqi legislator states that First: The Ministry of Health should cooperate with the Iraqi Reform and Juvenile Reform departments to do the following (Khidr AL-Jourani and Nooran, 2007):

A. Providing health, preventive and curative services to the inmate, the depositor, and the arrested

B. Establishing a hospital, health centers, or medical clinic in the central prisons, according to the absorptive capacity, to supervise the physical, mental and psychological health of inmates and provide health, preventive and curative services to them, provided that an appropriate number of doctors and health professionals are assigned to work.

C . Allocating a special ward for the inmate, the depositor, and the arrested in public hospitals if his health condition requires it (Lynn, 2001).

3. Discussion

We believe that attention to health care plays a major role in achieving the function and goals of private deterrence. Attention to health care for the convicted person leads to the elimination of diseases that may be the cause of the crime, and health care leads to attention to personal hygiene which enhances the confidence of the convict himself.

Allowing the convict to do voluntary work The voluntary action can be counted by the convicts as a clear expression of a new awareness of the reality of the matter or the situation in which the inmate found himself, and this is very important in itself, as this new awareness of the reality of the matter or the true position of the convict is considered the beginning Or a strong indication of a correct understanding and awareness on the part of the convict for the crime or delinquency he committed for the reason for his presence in the penal institutions, a realization of the community's right to react to criminal and deviant actions, but more than that, a realization of the truth of the relationship between the convict and the community, which is thus an implicit acceptance of the interaction Between the correctional institution and society on the one hand, and the convict on the other (Ahsan Mubarak, 2000).

The reform work guarantees the rehabilitation of the convict in many ways, including that it provides him with the opportunity to train for a

specific craft in a period of time that helps him to master it, enabling him to rely on it after his release, and what he returns from it as a result of the financial reward, in addition to that he is prevented On the one condemned to break down, and the physical and psychological imbalance and turmoil that follows, in addition to the fact that he instills in himself the truth about his love of work and his usefulness in a decent life, and what leads him to raise his morale and his ability to produce.

As a result of the importance of voluntary work in correctional institutions, the legislator stipulated this type of work, as it stipulates that ((the Iraqi reform and juvenile reform departments guarantee each inmate and a 15-year-old applicant who has completed the age of fifteen years of age the right to work within the limits of his ability and qualifications within the scope of the rules Technical classification for the purpose of qualifying and training him professionally and preparing the reasons for living for him after the expiration of his sentence and helping him to integrate into society (Jones, 2000).

It also states that (it is prohibited to employ inmates and depositors with forced labor in the correctional sections) It also states that the work is part of the constituents of the correctional and rehabilitation process and not a penalty in itself and on the committees formed in the Iraqi Correctional and Juvenile Correction departments taking into account the desire of the inmate and the depositor to choose It is compatible with his capabilities and qualifications (Dobkin, 2005).

It is clear from the foregoing that working within the correctional institution is voluntary and not coercive, and as long as the work is voluntary, this indicates the desire of the convict to get rid of the criminal sediments inherent in himself, and his willingness to integrate into society and reform and cultivate himself, and then the voluntary work inside the correctional institution achieves Targets of private deterrence.

There is no doubt that private deterrence is affected by the type of punishment, as a result of the development and the emergence of new penalties stipulated in some penal laws, has led to the influence of deterrence for this punishment.

Electronic Monitoring Electronic surveillance is known as (obligating the convicted or a remand in custody to reside in his home or residence during specific hours so that the person subject to the surveillance is monitored electronically) (Saous and Sadani, 2017).

Electronic monitoring achieves all the goals of thinking, reform and benefits related to the punishment, and it represents an appropriate answer to reduce the scientific and humanitarian problems that hinder the application of traditional penalties in the closed environment, as this penalty relies on alleviating the crisis of prison overcrowding and overcrowding,

reducing its enormous expenses, and preventing effects The negativity of the prison, by avoiding the mixing of the convict with the middle of the corrupt prison, and avoiding the negative psychological effects of the closed prison life on the other hand.

Conclusions

We note that the electronic monitoring penalty is compatible with the function of private deterrence, as the goals that the legislator aspires to achieve in private deterrence are achieved in light of the electronic monitoring penalty, and we call on the Iraqi legislator to take this punishment due to the great benefits and benefits that this punishment achieves.

The Barol Commitment System This system is known as the release of the convict after spending a certain period in prison, provided that it is placed under supervision and subject to special restrictions and directives. This system requires advance preparation for release and the inmate is subject to the penal institution, and this preparation is an important element in the program that The inmate shall be placed in the penal institution, as well as in the classification process, the type of work that he will do, the special training that is required to be obtained, and the psychological preparation of who will be released, where psychologists and social researchers have an important role in this field (Saous and Sadani, 2017).

Conditional release means conditional release is the permissibility of releasing a convict with a sentence that deprives of liberty, if he spent the greater part of this punishment in prison and proved that he deserves to be exempted from the implementation of the rest of it, after having benefited from the implementation of the greater part of it, and because of that he gave up Committing the crime, so he kept his life and good behavior) (Khidr Al-Jourani, 2007).

And the Iraqi legislator did well when he allowed the courts to issue a ruling for the conditional release of the convicted person according to the legal frameworks and limits set for them, as the conditional release system fulfills the special deterrent function as well as the general deterrent function.

The purpose of the punishment is not only repugnance and deterrence of the offender, but also aims to rehabilitate and fix the offender through the punishment imposed on him or through subsequent care. Simply enjoining and executing the corporal punishment does not lead alone to eliminating criminal risk.

Aftercare is defined as an educational, social, economic and civilizational process aimed at the vocational, social and economic rehabilitation of the released prisoners so that they can live and practice a new life in which the previous environmental, social and economic conditions that pushed them to commit the criminal act) are overridden (Sufouh Al-Akhras, 1997).

The Iraqi legislator defined the aftercare as ((it is the care of the depositor or the inmate after the end of his rule to ensure his integration into society and not return to delinquency, and is considered a complementary measure to qualify the penal institution and the practical way to guide, guide and assist the released person to meet his needs and help him to settle in his life, integration and adaptation With his community, upon the return of the convict to the external community that he was absent from as a result of the time spent in prison, the humanitarian and social care of the released persons has great importance in the success and continuity of social rehabilitation, and the achievement of the goals of modern punitive policy, in order to ensure the protection of society from the risks of the return of the criminal To crime again) (Sufouh Al-Akhras, 1997).

Jurisprudence differed in determining what is meant by private deterrence, as there is security in the determination of what is meant by deterrence, although most doctrinal definitions revolve around that deterrence is the eradication of criminal risk from the same convict and his reform, rehabilitation and rehabilitation.

The philosophical basis for private deterrence is disputed between two schools, the positivist school whose policy was to protect society from the dangerous character of the offender, by reforming and correcting it, and the school of social defense which holds that fighting crime is one of the most important duties of society.

Private deterrence has multiple goals, including what is on the social level, as reforming the perpetrator leads to reassuring society that the perpetrator did not commit the same crime that he committed, but on the personal level, it is reform, refinement and rehabilitation of the perpetrator himself.

One of the most important manifestations of private deterrence when carrying out the punishment is through the education and refinement of the convict, as well as through caring for his health care, as well as through the participation of the convict in voluntary work.

Deterrence is affected by the type of sanctions, and the sanctions developed are more important and achieve the goals of private deterrence more like the electronic monitoring of the convicts and the system of pledging honorable parole.

Aftercare for convicts plays a major role in reforming convicts through the functions it performs in reforming, refining and rehabilitating perpetrators.

We suggest that the Iraqi legislator introduce some of the newly introduced penalties, such as the voluntary work system inside the prison or electronic monitoring, given that these penalties bring great benefits to the reform and refinement of the convicts.

We call on the Iraqi legislator to pay attention to the convicts by teaching and polishing him inside the penal institution (prison - imprisonment) and paying attention to his health care, as well as allowing him to work inside the penal institution according to fair and just conditions.

We call on the Iraqi legislator to replace some of the penalties stipulated in the Iraqi Penal Code No. 111 of 1969, as amended, especially penalties of imprisonment for a short period, and replace them with other penalties. We call on the Iraqi legislator to pay more attention to the issue of aftercare for the convicts, by providing job opportunities and giving them material assistance that helps them To integrate in a faster way in society. We recommend the Iraqi legislator to deal firmly and severely, by denying those convicted of some serious crimes, especially terrorist crimes, all the rights and privileges that are granted to the convicts while serving their sentence within the penal institution.

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Taxonomy of compulsory and incentive legal consequences (legal measures) of committing illegal acts

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Abstract

The article is prepared for the purpose of publishing the results of scientific research obtained in the process of applying the taxonomic methodology for systematization of measures of legal influence. The methodology used the approaches of philosophical and legal theorization, a dog and systemic functional. One way of conclusion is proposed for the first time to use the taxonomies of legal measures. The study highlighted three aspects of legal measures: relational, predicate and functional. The relational manifestation of taxonomy allowed to identify the substrate of the external form of legal influence, which is the measure. It has been established that the form and method of legal influence is the dominant element of each legal measure. The predicative dimension of taxonomy allowed to form a taxonomic system of information in which the following taxonomic categories and taxa are distinguished: type - social events; subtype - legal measures; class - public and private legal measures; gender - separation of legal measures according to their sectoral affiliation; subgenre: the allocation of incentives and coercive measures; supervision - legal measures in their various forms and other measures that have no signs of legal liability.

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Taxonomía de las consecuencias legales obligatorias e incentivadoras (medidas legales) de cometer actos ilegales

Resumen

El artículo está elaborado con el propósito de publicar los resultados de la investigación científica obtenidos en el proceso de aplicación de la metodología taxonómica de sistematización de medidas de influencia jurídica. En lo metodología se utilizaron los enfoques de la teorización filosófica y jurídica, análisis dogmático y funcional sistémico. A modo de conclusión se propone por primera vez utilizar las taxonomías de medidas legales. El estudio destacó tres aspectos de las medidas legales: relacional, predicado y funcional. La manifestación relacional de la taxonomía permitió identificar el sustrato de la forma externa de influencia jurídica, que es la medida. Se ha establecido que es la forma y método de influencia jurídica el elemento dominante de cada medida legal. La dimensión predicativa de la taxonomía permitió formar un sistema taxonómico de información en el que se distinguen las siguientes categorías taxonómicas y taxones: tipo - eventos sociales; subtipo - medidas legales; clase - medidas legales públicas y privadas; género - separación de medidas legales de acuerdo con su afiliación sectorial; subgénero: la asignación de incentivos y medidas coercitivas; supervisión - medidas legales de responsabilidad legal en sus diversas formas y otras medidas que no tienen signos de responsabilidad legal.

Palabras clave: taxonomía; sustrato de la medida legal; taxón categorías taxonómicas (rangos); clasificación de medidas legales; estudios jurídicos alternativos.

Introduction

Law, playing the role of a universal regulator of public relations, is not least focused on the exercise of normative influence in the case of delicts, which has two interconnected forms. On the one hand, on the internal side, legal influence is associated with the formation of an appropriate

level of legal consciousness, legal culture, which form the person's internal guidelines for proper behavior, and on the external side, influence on the person is carried out through the use of special legal tools.

Modern law is characterized by a wide range of methods of exercising the necessary legal influence on a person with tort behavior, as well as the number of legally defined regulators of public relations that use such techniques. The increase in the number of measures that are applied in law is due to the general tendency to form a significant number of new branches of law, which are determined primarily by the specific characteristics of social relations to be regulated, that is, the subject of legal regulation and, secondly, by the simultaneous process of splitting up the so-called "classical" branches of law, as a result of which the new legal formations "tend" to the use of their own, specific methods.

Thus, a significant number of branches of law, new intersectoral and complex legal formations have introduced into modern legal regulation a significant number of not sufficiently studied new measures, which, in the conditions of further specialization of legal theory and practice, have not become the subject of general legal research and unification, which negatively affects modern legal doctrine, normative certainty and the practice of applying legal regulations. These trends require modern legal science to conduct a rigorous and detailed revision of all legal measures, to carry out their necessary classification and systematization, taking into account social conditionality, the admissibility of their application and to determine the functional effectiveness in solving their tasks. We consider the use of the taxionomie of legal measures to be the most acceptable way to achieve the set and other secondary goals.

The publication was prepared with the aim of highlighting the results of the scientific search for new foundations for the implementation of classification and systematizing measures of legal influence on persons who committed acts with signs of tort, for which a taxionomic approach is used with the isolation of the substrate of legal influence, which has certain essential properties (taxionomic attributes) of a general and universal nature.

1. Theoretical framework

The theoretical basis of the study was a new conceptual approach to the general and universal nature of influence applied on a legal basis, which takes on certain features in various areas of law, depending on the subject and method of legal regulation by which these branches of law are distinguished.

It should be noted that recently attempts have been made to define a system of legal measures, and only within certain branches of law (Humin, 2013; Dembitska, 2018; Ponomarenko, 2020; Puhach, 2018; Tymchenko, 2012; Yaremko, 2014), however, most research in this area is not based on the definition of an activity as a substrate of an external form of legal influence, which is universal, does not take into account the obvious systemic elements and the general social orientation of the functions carried out in the process of applying legal measures.

The application of taxionomic systematization allows at the general social level: to obtain an overall picture of legal measures of influence, ensuring: first, to obtain a complete and exhaustive list of measures that are used by the State as responses to social challenges in the form of tort behavior and other legal grounds for applying legal measures of deviation; secondly, to form a general idea of the hierarchical nature of legal measures on the principles of distinguishing their essential properties; thirdly, to create the ground for identifying systemic links between taxa of different taxionomic ranks (categories); fourthly, clearly delineate the scope of possible legal measures depending on the taxionomic rank (category): type, class, type and type of legal measures; fifth, to ensure the formation of harmonized sectoral legislation taking into account the peculiarities of the ranks of taxa and their content; sixth, to correct errors made as a result of inconsistent rulemaking and the determination of prospects for further law-making activities, taking into account the social order and the functions of legal measures; seventh, to predict the prospects for the further use of polytype taxa with the possibility of expanding or narrowing their functional potential, including in the search for an adequate response from the state to various social challenges.

The results of the study at the general theoretical level allow: firstly, the formation of the concept of a legal measure; secondly, to conduct an enforcement audit with a clear distinction between legal responsibility and other legal measures that do not have the characteristics of liability; thirdly, to identify among all the features and properties of measures of influence that form taxa of a typical nature and those that are atypical; fourthly, among all essential properties, to distinguish those having an objective (conditionally objective) and having a subjective (conditionally subjective) character; fifth, to determine the discrete nature of the substrate content of legal influence. At the sectoral and institutional level, the study will ensure the development of terminology consistent for all branches of legal knowledge related to the exercise of influence on a person in connection with his unlawful behavior.

2. Methodology

The formation of a new conceptual model of legal measures in their system requires an expansion of the methodological basis of legal research, which corresponds to modern approaches to the implementation of effective scientific search. In today's conditions, when choosing the methodological basis for conducting scientific research, humanitarian methodology has gained a significant spread, but positivism (scientific and natural) direction has not yet exhausted its potential.

The choice of the direction of scientific research predetermined the search for appropriate scientific tools capable to solve the problems posed in the process of scientific analysis. Among all possible methods of scientific knowledge, preference was given to taxonomy, which is knowledge of a system of concepts in their systematization. Taxonomy, being a theory of the classification of complex structures, has become widespread in various spheres of human life: in biology in the process of classification and systematization of living beings and organisms, in physics in connection with the fixation of the existence of a large number of fundamental particles, in chemistry in connection with the necessity to order chemical elements, in education in the search for optimal forms of assimilation of scientific material, and so on.

In the choosing a methodology, we proceed from the fact that taxonomy in a broad sense is not limited exclusively to the definition, description and nomenclature of the researched objects, but also includes a system of knowledge regarding the methodological foundations of the implemented classification and systematization. Such an understanding of taxonomy makes it possible to ensure its effective use in theoretical and applied jurisprudence, since one of the important elements of the latter should be recognized as a set of legal measures of influence on human behaviour. legal measure, in turn, is characterized by internal and external architectonics. Taxonomy in relation to the internal structure of a legal measure allows to highlight the essential features and properties inherent in each legal measure. The use of taxonomy in the process of studying the external architectonics of legal measure ensures the formation of a system of legal measure, regardless of the branch of law or legal institution to which such measures are related.

The application of taxionomie in the process of implementing the systematization of legal measures makes it possible to solve the set scientific tasks and achieve certain goals by applying a wide range of general and special methods of scientific knowledge, among which the following should be mentioned separately. The method of philosophical and legal theorization provides for the definition of stages of categorical understanding of the nature of the exercise of legal influence.

3. Results and discussion

Modernity poses new global challenges to humankind, which, in addition to the traditional ones, require a solution. Basically, the answers to emerging and existing permanent challenges are found in the legal sphere, since the right itself is distinguished among all regulators of public relations by general obligation. Law today is a multifunctional design, the components of which, among many other tasks, provide for the use of a special type of toolkit - legal measures, the number of which is constantly growing with geometric progress. Thus, the present requires the search for innovative approaches to modulating a system of legal measures, since traditional ways of systematization, which are used in the context of deepening existing intersectoral dissociations, that sometimes they acquire signs of antagonistic contradictions, do not allow for the effective classification and systematization of the totality of existing legal measures with the possibility of predicting the inclusion of new tools to ensure the proper behavior of a person through the application of external forms of legal influence.

The scientific feasibility of using taxionomy is related to the need to study the multidimensional legal realities that are legal measures to be applied to torturers, with the identification of the essential properties of such measures and subsequent consideration in the process of their systematization. It is taxionomie that creates the prerequisites for the scientifically sound systematization of all various sectoral and institutional groups of legal measures that are the legal consequence of the commission of a socially dangerous act in various forms of its manifestation.

Taxionomie, acting as a theory of classification of complex structures and therefore becoming widespread in biology for the systematization of organisms and living things, in physics - in the process of ordering elementary fractions, in chemistry - in the systematization of chemical elements, in education - in the process of forming professional competence, etc., is also used in theoretical (Sherwin, 2009) and butt (Tuliakov, 2011; Melnichuk, 2016), since one of the important elements of the latter is the set of legal measures to influence the behavior of a person, each of which and the set as a whole are characterized by internal and external architectonics.

The sphere of application of the taxionomic approach is traditionally considered to be natural space, consisting either of natural objects or artificial realities that reproduce natural processes and laws (Shatalkyn, 2012). Based on the fact that legal measures should be attributed to natural space on the second basis, which will be proved later in the process of studying the essential properties of legal measures, we conclude that the object of systematization is such legal realities that have not random, but logical characteristics, which not only allows, but also significantly increases

the significance of the proposed approach of implementing the taxionomy of legal measures.

Legal measures, as a separate socio-legal entity, are characterized by many aspects, attention to which is determined by the goal of scientific search. In the context of our scientific analysis, three aspects of the subject matter should be emphasized. Firstly, legal measures in a relational meaning, which is associated with the definition of the "first element," the substrate of social and legal reality, which is at the heart of systematization. The relational image of the entity requires the focus of scientific search on the definition of taxionomic attributes that recognize the essential properties of the substrate, their position as the basis of the systematization carried out and the solution of the main problem, which consists in the isolation of the paths and results of changes passing through the substrate before forming the entity with its inherent systemic connections. Secondly, the essence in the predicative dimension is expressed through a system of typical, generic, species features that form the basis for the construction of a formalized model consisting of taxionomic ranks (categories) for which legal measures are distributed on the basis of their common substrate properties and individual characteristics that indicate their homogeneity, which thirdly, the functional manifestation of the essence reflects the dynamic aspect of legal measures, which reproduces the instrumental suitability of measures for solving their tasks and reflects their effectiveness in achieving the common goal and special goals of individual taxa.

As already noted, the relational essence of legal measures is associated with their substrate, which is "measure." This term, despite a fairly long doctrinal and normative application, which is not limited exclusively to certain branches of law in which tort relations are considered basic, is perceived as an intuitive category and therefore does not require a strict legal definition.

Emphasizing the need to use the previously mentioned approach (Kozachenko, 2011) before the definition of the action as a substrate of all forms of implementation of social and right-wing influence, it should be noted that it is advisable to mean an element of social and legal regulation of tort and related relations, which meaningfully combines a system of methods and ways of implementation of forced and incentive impact, used to obtain a positive socially significant result.

Thus, any activity that represents the external expression of the social and legal impact carried out has the following features. Firstly, the measure, being applied in the legal sphere, acts as a regulator of legally significant behavior that has signs of tort, or behavior directly related to torts, for example, provided for by the law of deviation, post-delict behavior. It should be noted separately that the law sometimes covers the application of the category of restraint and the means of securing the obligations assigned

to the person, which cannot be considered sufficiently reasoned, since in this case it is a method of ensuring that the regulatory requirements for the proper conduct of the person are met. Secondly, each legal measure represents a set of ways and methods of legal influence. Two distinct but naturally related ways of exercising legal influence - encouragement and coercion - are traditionally considered to be legally relevant (Robinson, 1997).

The first of these modes of exposure generally depends on the will of the person under legal influence, and the second indifferent to the desire of the person to be subject to such influence. Encouragement and coercion form two possible patterns of treatment of the person who is exposed: voluntary and coercive behaviour. Given the fact that the paradigm of modern social and legal regulation is based on the principles of anthropodicy (Kozachenko, 2009), which presents a person, his interests to the level of the core factor of social being in various forms of its existence, including a legally significant dimension, should be emphasized the priority of encouragement over coercion.

Thus, the measure of legal influence should contain either exclusively encouragement to a certain type of conduct or encouragement and coercion, the latter being applied only if the subject under legal influence does not fulfil the legitimate requirements voluntarily. In turn, the method of legal influence reflects the characteristics of the measure, which indicate its peculiarity, specificity, difference from other measures. Ways and methods of legal influence are the dominant of any measure, and the methods determine the method by which the influence will be carried out in the process of application of the measure, and the methods reflect the nature and content of such influence. Thirdly, legal measures are geared towards making a positive impact as a response to the commission of delicts and other related deviations.

Along with the features, each legal measure has properties that are significant (in ontological meaning) and play the role of taxionomic attributes for the reasoned systematization of legal measures in particular and taxionomie in general. All characteristics inherent in a legal action that are essential for achieving the goal of taxionomic classification and systematization can be conditionally divided into those of a generally objective and generally subjective nature. The classification of certain properties as objective or subjective is carried out taking into account the view of the right as a system of norms, ideas and relationships that ensure the purpose of social activity, forming certain stereotypes of behavior that receive social approval on the basis of recognition of their compliance with human expectations.

One of the objective characteristics of a legal measure, which reflects the orientation of the effect of its application, should be recognized as

the purpose of the legal effect. We believe that, given the dominance of the rule of law, social justice should be recognized in order to exercise legal influence in its external form. It is well known that social justice is a fundamental element of social relations, which derives from the equal and just opportunities of each individual to realize his social potential. In general, the category of justice, unlike other guidelines of consciousness, provides not a simple assessment of a particular social phenomenon (good or evil, true or untrue), but a ratio of several (two or more) characteristics between which it is necessary to establish ethical correspondence.

Thus, the correspondence between a decent act and the reward that such an act deserves, between the immoral behavior of a person and various forms of social condemnation and the internal experiences of a person, between behavior that violates corporate requirements, and the corresponding measures of influence of corporate entities and the like is considered equitable in social significance. Thus, fairness reflects the idea of the right, proper order of things in social relations, which corresponds to the ideas about the appointment of a person, his natural and inalienable rights and duties, the social validity of the interests of the holder of rights and duties (Miller, 1999; Sen, 2009).

At one time, one of the apologists for the widespread application of social justice as a paradigm not only of the legal, but also of the general social existence of man, Aristotle (Aristotle, 2000) proposed to characterize justice as a certain reimbursable, equalizing and distributive state, which is formed as a result of the implementation of various forms of influence on personality. This was a prerequisite for highlighting three components of social justice. Reimbursable social justice is characteristic of a situation in which retaliation for a violation is fully consistent with the nature of the violation committed by the person. It should be emphasized that the entire history of mankind, in its legal aspect, is connected with the search for criteria for compensatory justice, one of the ancient examples of which is the talion.

Distributive or distributive fairness determines the conditions for the distribution of social values claimed by the person or the legal consequences applied in connection with the unlawful behavior of the person, in accordance with the social role played by the subjects of the relationship. In turn, equalizing, or retributive, justice depends on the virtues, victories or other socially significant qualities of each person. A striking example of the implementation of all components of social justice is the imposition by the court of punishment for a crime committed by a person (Robinson *et al.*, 2010). In particular, in the process of choosing a type and measure of punishment, the court forms the basis of retaliation for a criminal act, distributive justice is manifested in the individualization of punishment depending on the role played by each offender in the process

of committing a socially dangerous act (organizer, perpetrator, instigator, etc.), and retributive justice is manifested in an individual assessment of the signs characterizing the identity of the offender (presence of a preliminary criminal record, commission of an act intoxicated, etc.).

In the legal field, these general signs of social justice take on unique characteristics and are manifested, in particular, in accordance with the relationship between rights and obligations, between labour and remuneration, between acts and giving, etc. And under the dominance of the rule of law, social justice in tort relations is multidimensional and, in particular, manifests itself in accordance with the following: socially dangerous act and coercive legal measures that apply to the perpetrator; damage caused by losses and restorative and compensatory measures; positive post-delict behaviour and rehabilitation and incentive measures. At the same time, the basic provision for determining various manifestations of social justice in the process of applying legal measures is a focus on the search for coherence between the interests of a person, society and the state (Kozachenko and Musychenko, 2015). Accordingly, the application of legal measures should be accompanied either by the restoration of the state of social justice, which was violated by a committed act with signs of tort, achieved by the application of mainly coercive legal measures, or by the formation of a state of social justice by the application of incentive legal measures based on the results of a fair assessment of the person's post-delict behavior.

The properties of legal measures with an objective nature include the grounds for their purpose. All the grounds on which legal measures can be imposed can be divided into two groups: general and special. The first group includes the commission of an act for which one of the main types of legal measures can be assigned. The main legal measures should include those that are designated only as stand-alone and under no circumstances can they join in addition to other legal measures. In turn, special grounds for the designation of legal measures include those acts for which only additional legal measures are prescribed by adding them to the main legal measures of influence and therefore cannot be applied independently.

The general grounds for the application of legal measures include, first, the commission of a legal tort, which means misconduct containing signs of a guilty, unlawful and socially harmful act committed by a sensitive person and a legal consequence for which the law provides for the application of legal responsibility; secondly, an objectively wrongful act (quasi-identity), which contains all or several signs of a legal tort for lack of signs of a person's sensitivity (commission of an act by an insane person, a person who has not reached the age of legal responsibility, but is provided for the possibility of applying juvenile legal measures, etc.).

Special grounds for the application of legal measures include any special but necessarily statutory preconditions for the imposition of additional legal measures, for example, abuse of law as a basis for the application of special medical measures to persons who abuse alcohol or narcotic substances, positive post-delict behavior in the form of voluntary compensation for damage caused, as a basis for exempting a person from further legal liability, and the like. In turn, special grounds for the designation of legal measures can be classified depending on whether they are grounds for the application of coercive legal measures and which are of the nature of other deviations, and those that are grounds for the application of incentive legal measures. It should be noted separately that special grounds can be provided by law and in the form of a certain, legally defined condition - pregnancy, mental disorder, and even a certain event. Thus, for example, the expiration of the statute of limitations for bringing a person to legal liability is the basis for exempting a person from such liability for a legal offence committed.

The characteristics of legal measures with a subjective nature are expressed in the circle of persons against whom such measures are applied. It should immediately be emphasized that the scope of legal measures is much wider than those who are recognized as the subject of the offence and to whom legal liability can apply. With this in mind, all subjects of legal measures may be classified into general - subjects of legal delicts to which legal liability measures may apply, and special ones, which in turn are divided into two groups: persons who do not have all the characteristics inherent in a fully sensitive person - sanity, reaching the age of responsibility, etc., and persons who, in accordance with the requirements of the law, must have additional to the general characteristics, properties or characteristics - persons who are obliged to compensate for damage caused by the subject of the tort, stateless persons for whom extradition is possible, etc.

A separate subjective characteristic of legal measures should be recognized as its procedural component, which ensures the choice of legal measure among those whose list is determined by law taking into account the specificity of the act itself and the person who committed it. The procedural aspect of subjective properties of legal measures finds the reflection in a procedural discretion (procedural diskretion) as which it is necessary to understand intellectual and strong-willed activity of the authorized subject appointing a legal measure, being guided by provisions of the material and procedural legislation, and consists in the reasonable and impartial choice of socially fair decision regarding application of legal measures.

Current trends in legal doctrine that relate to the solution of right-wing issues in the process of legal regulation, Indicate that the application of legal measures should be carried out in order to ensure the necessary and sufficient impact, the nature and size of which is determined on the basis of the internal conviction of those persons, which are entitled to an

appropriate procedural right as a result of the impartial, objective and fair determination of all the circumstances of both the act and the person against whom the legal measure is applied.

Thus, the taxionomie, in its relational meaning, is the study of the legal measure on its essential properties, in order to determine the substrate, the signs of which are constant and therefore serve as the only criterion for assigning various forms of legal effect to legal measures.

If the relational aspect of taxionomy is based on the certainty of the taxionomy object through its essential properties, then the predicate requires classification - the distribution of objects into certain groups, taking into account the significant and additional properties of the object and the systematization that is associated with bringing objects into the system in accordance with the connections that exist between them. The result of applying taxionomy in its predicate meaning is an information taxionomic system, which can be presented in the following form.

The vertex of an information taxionomic system should be recognized as a taxionomic category - a type that reflects the maximum level of generalization that has a corresponding description. In general, the type acts as a kind of model, a standard that determines the nature of the information taxionomic system as a whole, its basic structuring. A peculiar archetype of the entire system is the event as an external manifestation of the social impact carried out, but the subtype should be recognized as its legal form, which, next to other social forms, such as moral and ethical, customary, religious and the like, determine the content of the doctrine of really general.

The next level of taxionomic hierarchy is the class of legal measures, which is characterized by an additional property that can provide an objective distribution of measures to taxa that simultaneously meet the requirements of a certain subtype. We believe that all activities of the legal subtype can be divided into two classes, which are characterized by the presence or absence of etatist features and therefore this class of public legal activities (the etatist component in such activities is dominant) and private legal measures (measures of legal influence of this class are in the sphere of interests of entities that are not vested with public powers). Given the certain conditional division of legal measures into classes, which is of the same nature as the division of law into public and private, the allocation of this taxionomic category plays an important role in the formation of a hierarchical system of legal measures, depending on the role played by the State in the person of its organs and officials during the exercise of legal influence.

Next in the direction of reducing generalization is the taxionomic category of the genus, which covers the multiplicity endowed with certain additional

properties. The taxon of the kind is more consistent with systematization, which is traditional for modern general theoretical jurisprudence and consists in the allocation of individual branches of law. Along the way, it should be emphasized that the properties that ensure the formation of branches of law should be recognized as the subject (a special group of social relations that are subject to the regulatory influence of law) and the method (ways of implementing legal regulation by combining mandatory, encouraging, ascribed, advisory and other paradigms). Given the fact that legal measures have a combination of modes of influence (coercion and encouragement), all taxon measures of the kind have a complex structure (polystructure), which reflects industry affiliation and the mode of influence dominant in a particular activity.

The basic taxon should be recognized as a type that also has a polystructure, which is caused by the many signs of legal measures to be taken into account in order to create a hierarchical model convenient for use. The taxon of a type structurally consists of a review, a type and a subspecies of legal measures. The heading covers measures that are divided into legal liability measures and other measures. Legal responsibility should be recognized as a type of social responsibility that has legal certainty (certainty in law) and is endowed with a state-power character and manifests itself in the restriction of the rights and freedoms of the subject, which the person did not experience if he behaved lawfully and did not commit an offense. At the same time, legal liability and its implementation are carried out in accordance with the procedure established by law, with compliance with all the requirements provided for by regulatory regulations. The process of implementing this type of responsibility is connected with the issuance by the state body of an act of application of a rule of law (law enforcement act), according to which responsibility is carried out, that is, realized. The special procedural form (procedure) of the exercise of legal responsibility is a guarantee of objective consideration of the committed and assessment of both the act and the person who committed it.

The species combines activities that are distinguished by a unique means of legal influence, which distinguishes one legal event from another within the taxionomy of the genus. For example, if examples of criminal proceedings were to be continued, conviction, punishment and criminal record should be recognized as criminal measures if they were provided for by national criminal law. Other types of criminal law measures include medical, juvenile, restrictive, legal persons, etc., provided that they are provided for in criminal law.

Polytype (multi-view) measures form subspecies of legal measures. For example, punishment, as a type of public legal measure of criminal liability, is inherent in such separate subspecies as fine, deprivation of liberty, confiscation and the like. In turn, activities in relation to legal entities, as

a public law class of activities that do not have signs of criminal liability, include such subspecies as confiscation, liquidation and the like. Monotype (single-type) legal measures, on the example of criminal legal measures, are such measures as special confiscation, compulsory treatment of persons suffering from drug addiction, etc., the variation of the methods of their influence is not characterized.

Thus, taxionomie in predicative meaning is a way of knowing the external forms of legal influence, which allows you to form an information taxionomic system built on a hierarchical basis, where each taxon is determined by the existing connections with those that are both in front of it and those that follow it.

In turn, the functional manifestation of the essence of legal influence justifies the existence of the functional sphere of taxionomy. In general, the application of the etymological approach convinces that the term "function" comes from the Latin "functio" - activity, duty, work, purpose (Modern Philosophical Dictionary, 1998). From the philosophical point of view, which was formed in connection with the application of this term:

> Preceding jurisprudence, the function is the internal and external relations of a certain system, which are a stabilizing factor that ensures the relative stability of both the system itself and the relations with other systems. Thus, a function in philosophical meaning is the external manifestations of the internal properties of any object or phenomenon in a certain system of relations. The active application of the term "function" in the theory of law ensured the formation of a legal concept, which is mainly interpreted as the main direction, subject and content of legal influence that determines the instrumental suitability of law (Kozachenko, 2017: 25).

To define the functional scope of the taxionomy of legal measures as a special form of external legal influence on persons who have committed a tort or other forms of deviant conduct prescribed by law, the following should be taken into account. Firstly, the chosen approach to the classification and systematization of legal measures focuses on the need to determine the goals of their application, which should correspond to the general goal of their normative purpose - restoring the violated state of social justice or forming a state of social justice. So, for example, as the purposes of application of criminal measures it is necessary to recognize an execution, correction, prevention, re-education, delivery of health care and treatment of persons, a restitution and compensation, rehabilitation, encouragement, etc., each of which is "an ideal image of the expected result in the settled public relations" (Kozachenko, 2011: 282).

Secondly, the content of activities in the process of carrying out the functions of legal measures, being derived from the appointment of such activities, should be historically and culturally conditioned. Not only the need for regulatory influence on social relations, but also the forms and content of influence themselves are determined by the features of social development, generally recognized social values, and the conditions of social development (Kozachenko, 2017). Thirdly, the functions of legal measures derive from the general functions of law, presenting the defining properties of the latter and simultaneously interpreting them, providing them with the suitability to achieve the goals set for activities uniting within a certain taxon. The generalizing nature of the functions of law ensures that one function of law forms the basis of several functions of legal measures.

The punitive and preventive functions of criminal legal measures are set by the protection function of law, specifying the latter taking into account the characteristics of the subject, the goals and the nature of the criminal legal impact. In turn, the restitution, compensation, rehabilitation and incentive functions of criminal legal measures are determined by the regulatory dynamic function of law. Fourthly, the functions of legal measures are interconnected, create a certain legal regime for the legal regulation of public relations that arose as a result of the commission of a delict. Fifth, the functions of the legal measures of one taxon must not only correspond to the functions of the taxon that precedes, but also themselves are simultaneously a template for the functions of the following taxa. Sixth, certain types of legal measures have a polytype structure that ensures the multi-vector functioning of legal measures of a particular type (a special level of functioning).

Taking this into account, it can be concluded that taxionomie is functionally focused on the study of the functions of legal measures, which should be understood as the main areas of their legal influence on public relations, that arise in the course of the person committing delicts and other types of deviant behavior, which encroach on the system of social values, formed on the basis of the indisputable nature of recognition of natural human rights and freedoms and the peculiarities of the civilizational level of development of national culture, in order to restore or create a state of social justice, thereby creating a special legal regime against negative manifestations and ensuring the existence of the rule of law.

Conclusions

As a result of the research, the outstanding relational manifestation of the classification and systematization carried out, which is based on the recognition of the “measures” as a substrate, the first element of the

entire set of legal measures. Each legal measure is an external element of the social and legal regulation of tort and related deviant relations, which meaningfully combines a system of methods and ways of implementing coercive and encouraging influence, used to obtain a positive socially significant result. It is determined that the ways and methods of legal influence are the dominant component of each legal measures, while encouragement and coercion in their specific combination determine the method by which influence will be exercised during the application of the measures, and the methods reflect the nature, content of such impact.

The identified taxionomic attributes of both objective (purpose, grounds) and subjective (subject of application, procedural discretion) character ensured the solution of the problems of relational assignment of the proposed taxionomy of legal measures. The predicate dimension of taxionomy is associated with the formation of an information taxionomic system with the isolation of the following taxionomic categories and their corresponding taxa, which combine measures characterized by a certain degree of commonality: type - social measures; subtype - legal measures; class - public legal and private legal measures; genus - separation of legal measures in accordance with their sectoral affiliation; subgenus - the allocation of incentive and coercive measures; superview - legal measures of legal liability in various forms and other measures that do not have signs of legal liability; type - monotype and polytype legal measures defined by law; subspecies - structural elements of polytype legal measures. It was concluded that the functional aspect is derived from the general (strategic) purpose of legal measures and the specific purpose of individual legal measures.

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Foreign policy factor in State-Church relations in the Soviet Union during World War II and early post-war

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Abstract

The objective of the research was to study Russian State and Orthodox church relations in the context of world war II and the early post-war years. The line of this article is due to the important role of the Russian Orthodox Church in the history, modern political and cultural life of Russia. In this sense, the period of State-Church relations in the USSR during world war II, known in Russia as a great patriotic war, is of great scientific interest because it was the time when the government was forced to make adjustments to its religion policy. Methodologically based on a wide range of documentary sources, the authors of the article have identified the place and role of the Russian Orthodox Church in the foreign policy of the USSR during the approach. In this sense, it is felt that the role of the Russian Orthodox Church in building relations with the allies of the anti-Hitler coalition and its place in the expansion of the Soviet political system in Eastern Europe was of paramount importance as a foreign policy factor.

Keywords: Soviet state; Russian Orthodox Church; World War II; believers and clergy; Eastern Europe in the post-war period.

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Factor de política exterior en las relaciones Estado-Iglesia en la Unión Soviética durante la segunda guerra mundial y en los primeros años de posguerra

Resumen

El objetivo de la investigación consistió en el estudio de las relaciones Estado e iglesia ortodoxa rusa en el contexto de la segunda guerra mundial y los primeros años de postguerra. La relevancia de este artículo se debe al importante papel de la Iglesia Ortodoxa Rusa en la historia, la vida política y cultural moderna de Rusia. En este sentido, el período de las relaciones Estado-Iglesia en la URSS durante la segunda guerra mundial, conocida en rusia como gran guerra patriótica, es de gran interés científico porque fue el momento en que el gobierno soviético se vio obligado a realizar ciertos ajustes en su política en materia de religión. En lo metodológico sobre la base de una amplia gama de fuentes documentales, los autores del artículo han identificado el lugar y el papel de la Iglesia Ortodoxa Rusa en la política exterior de la URSS durante en el periodo abordado. En este sentido, se concluye que el rol desempeñado por la Iglesia Ortodoxa Rusa en la construcción de relaciones con los aliados de la coalición anti-Hitler y su lugar en la expansión del sistema político soviético en Europa del Este fue de suma importancia como factor de política exterior.

Palabras clave: Estado soviético; Iglesia ortodoxa rusa; Segunda Guerra Mundial; creyentes y clero; Europa del Este en la postguerra.

Introduction

The scientific problem presented in the paper has long been in the focus of attention of domestic and foreign researchers. In the Soviet period, the history of state-confessional relations could be interpreted only from the perspective of criticism of religion. A similar approach to the coverage of this problem was demonstrated by Soviet historians; however, this does not reduce the scientific merit of their works (Akhmerov, 1962; Akhunzyanov, 1977; Baltanov, 1974; Gordienko and Kurochkin, 1980; Kalaganov, 1981). For example, they provide a wealth of factual material; a rigorous analysis concerning the aspects of how atheist propaganda was built is given.

The perestroika years and the post-Soviet period were characterized by the liberation of Russian humanitarian science from the ideological dogmas of the Soviet era, the emergence of historians' access to previously closed archival documents, and the use of new approaches in interpreting past

events. All these aspects were characteristic for the analysis of the history and the scientific problem under consideration (Braslavsky, 1995; Odintsov, 1994; Odintsov, 1995; Pospelovsky, 1995; Pospelovsky, 2000; Shkarovsky, 2000; Yakunin, 2002; Mukhin *et al.*, 2018; Fazliev, 2016).

Foreign historiography has developed its own specific traditions and approaches to the study of state-church relations in the Soviet state. They were largely due to the uniqueness of political, ideological and sociocultural conditions, which, of course, was reflected in the interpretation of historical sources, the assessment of events and processes (Ramet, 1993; Anderson, 1994; Pipes, 1994; Peris, 1998; Husband, 2000). Despite the considerable attention of researchers to the history of state-church relations during the Great Patriotic War, some of its aspects are still poorly understood at present. These, of course, include the foreign policy circumstances of state-church relations in this period.

By the beginning of World War II, the religious associations of the USSR were on the verge of complete destruction as a result of the massive ideological work of atheist propaganda, repressions against believers and the clergy, as well as after three all-Union anti-religious campaigns.

The situation radically changed in 1941 with the outbreak of World War II. Representatives of all faiths operating on the territory of the USSR made patriotic appeals to their followers. On the very first day of the war, a call for consolidation against the external enemy was made by Metropolitan Sergius, who actually headed the Russian Orthodox Church for 17 years. In his pastoral epistle, which was sent to all parishes, there were the following words: "Our Orthodox Church has always shared the fate of the people. ... Our ancestors did not lose heart also in worse situations, because they remembered not about personal dangers and benefits, but about their sacred duty to the Motherland..." (National Archives of the Republic of Tatarstan, 2015: p. 18). From June 1941 to August 1944, 30 appeals of the Metropolitan (from September 1943 - the Patriarch of Moscow and All Russia) Sergius to the clergy and believers with a call for unity in the struggle for the homeland were published (Yunusova, 1999).

The patriotic activity of believers and the clergy was expressed in a variety of forms ranging from direct participation in hostilities at the front and ending with the raising of material resources in the rear for the Red Army fund. For example, in one of his appeals on October 14, 1941, Metropolitan Sergius urged believers to "donate to our valiant defenders", and in December 1942, on his own initiative, fundraising began to form a tank column named after Dmitry Donskoy. For example, by March 1944, in the Tatar Autonomous Soviet Socialist Republic 1272.4 thousand roubles had been collected by religious associations of the cities of Kazan and Menzelinsk in the country's defence fund; in addition, about 4 pounds of gold were donated to the state and gifts were collected for soldiers and

commanders of the Red Army, 476 items in total (National Archives of the Republic of Tatarstan, 2015).

The fact that religious organizations took a patriotic position and expressed their readiness to fully support and assist the Soviet government in its struggle against an external aggressor was a logical continuation of the religious organizations' policy of "peaceful coexistence" with a state power being hostile towards them. According to A.B. Yunusova: "...as it was before the war, both the church and believers often actively supported all kinds of initiatives and campaigns of Soviets... and did not oppose themselves to the country and authorities" (Yunusova, 1999: p. 35) A new phenomenon in relations between the state and the church was the response of the state authorities expressed in a significant liberalization of religious policy.

The reason for these steps was the situation not only within the country, the demand in the consolidating and compensatory functions of religion in the conditions of war, but also the international situation of that period.

1. Methods

The methodological basis of the paper was the civilizational approach, which allowed us to consider the object of study in a multi-aspect format influenced by political, ideological and sociocultural factors.

In the course of work with the paper, the authors adhered to the principles of historicism and objectivity. The first of them obliged to consider and analyse events taking into account the political-ideological and moral-ethical foundations of the era under study. The second factor obliged to dissociate ourselves from various extra-scientific factors: personal likes and dislikes in assessing the historical facts and processes under consideration.

2. Results and Discussion

The Soviet Union, which was at war alone with fascist Germany, faced an important task: the opening of a second front by its allies. Under these conditions, the democratization of certain aspects of the Soviet society life could favourably affect the course of negotiations with the Allies. The fact is that the leaders of the Allied countries were subjected to considerable pressure from various public organizations of these states in order to open the second front by them as soon as possible. In Great Britain, this was the Joint Committee for Assistance to the USSR headed by the rector of Canterbury Cathedral, H. Johnson. In turn, the Church of England, of

which the aforementioned person was a representative, persistently sought Stalin's permission to visit the Soviet Union.

In order to make the "necessary" impression on the delegation, the Soviet government needed to review some of the toughest and most odious moments in its religious policy. In addition, according to D.V. Pospelovsky, "Churchill and Roosevelt made it clear to him (Stalin) that information on religious freedom in the USSR could adjust the public opinion of their countries in favour of the Soviet Union" (Pospelovsky, 2000: p. 53). Therefore, it was no coincidence that the Soviet state authorities officially recognized the merits of religious organizations and believers on the eve of the high-level talks in Tehran.

Indeed, after Stalin's meeting on September 4, 1943 with the leaders of the Russian Orthodox Church, during which decisions were made that marked a new stage in state-confessional relations, then two weeks later, a delegation of the Anglican Church of England headed by the Archbishop of York S. Garbett visited the USSR.

Chairman of the Council for Russian Orthodox Church, NKVD (People's Commissariat for Internal Affairs) Colonel G.G. Karpov compiled a detailed report in the name of Stalin on this visit (Power and the church in Eastern Europe, 2009). During it, the delegation twice (September 21 and 23) visited the Epiphany Cathedral church.

At the same time, Archbishop Garbet was impressed by the large number of believers present. Later, he noted, "I have never seen such a large gathering of worshipers. Throughout the service of September 21, a crowd of people stood on their feet. They said that there were about ten thousand of them ..." (Garbett, 1943: p. 8). However, Karpov in his memo to Stalin indicated a more modest figure: about 4 thousand people on September 21 and about 6 thousand on September 23 (Power and the church in Eastern Europe, 2009). The Archbishop of York was interested in the following questions, among others, during meetings with the heads of the Russian Orthodox Church (Power and the church in Eastern Europe, 2009):

- The number of churches in dioceses and, in particular, in Moscow;
- How are clergy staff trained?
- Why are there monasteries in Ukraine, but not in other places?
- Why in cemeteries are there stars on some graves, and crosses on others?
- Will the temples destroyed by the Germans be restored?
- If a believing soldier is killed, is it possible to install a cross as his grave?

Despite the fact that many of the questions asked should put the Soviet clergy in an uncomfortable position caused, on the one hand, by the realization of the real situation of the church in the USSR, and on the other hand, by the need to "play along" with the state authorities in exchange for their relative loyalty, the atmosphere of the meetings was generally very welcoming and benevolent on both sides. It was decided to establish an exchange of information about church life between the Russian Orthodox and Anglican churches, and during the last meeting with the patriarch, the Archbishop of York said: "Upon arrival in England, I will be besieged by correspondents; they will ask if there is freedom of worship in Russia", and I will answer that "definitely yes" ... (Power and the church in Eastern Europe, 2009: p. 15). Thus, on the part of the Soviet state, the goals of the visit were fulfilled: representatives of the Church of England were convinced of the loyalty of the Soviet regime to believers and the clergy.

Another important aspect of the foreign policy factor in state-church relations in the USSR was the position of religion in the countries of Eastern Europe. It is no coincidence that at a meeting between Stalin and NKVD Colonel G.G. Karpov on September 4, 1943 (the previous meeting of the head of the Soviet state with the hierarchs of the Russian Orthodox Church), among others, the colonel of state security was asked the following questions: what kind of relations does the Russian Orthodox Church have with foreign countries and what does Karpov know about the leadership of the Orthodox churches in Bulgaria, Yugoslavia, and Romania? (Power and the church in Eastern Europe, 2009)

Such interest in that period was determined by two main reasons. First, the authorities recognized the consolidating role of the church in the anti-fascist movement in the occupied territories. In this regard, the authorities strongly supported the practice of appeals by hierarchs of the Russian Orthodox Church to their foreign followers. For example, in the spring of 1943, after the approval by the Central Committee of the All-Union Communist Party of Bolsheviks of the appeal by Metropolitan Sergius "To all Christians in Yugoslavia, Czechoslovakia, Hellas and other countries and peoples groaning beneath the Nazi occupiers" was printed and sent across the front line (Mukhin *et al*., 2018). Metropolitan Nikolai repeatedly wrote anti-fascist messages to the peoples of Eastern Europe also (Pospelovsky, 2000).

Secondly, after a radical change in the Great Patriotic War, it became clear that the countries of this region would soon enter the sphere of influence of the Soviet Union. The specificity of their socio-economic condition was that all of them, with the exception of Czechoslovakia, remained agrarian or agrarian-industrial countries, where, along with the weak sprouts of capitalism, feudal orders dominated. The last expressed, among other things, in the significant influence of the Catholic Church. In addition, one

should take into account the confessional peculiarity of the western regions of the USSR, which became part of it after the Soviet-German agreements of 1939. The Greek Catholic (Uniate) church was the spiritual basis of the nationalist movement in Western Ukraine and its positions were strong here.

The Russian Orthodox Church, as well as other religious organizations operating in the Soviet state, was forced to declare their loyalty to state power, and the Vatican declared its rejection of the "godless Bolshevik regime" immediately after the October Revolution. That's what in May 1945 the chairman of the Council for Religious Cults under the Council of People's Commissars of the USSR I.V. Polyansky wrote about this in a directive letter to his local representatives: "The papal throne systematically organized attacks from the Vatican Palace in various forms against the USSR... The Vatican uses all possible means to maintain its authority and take an active part in the development of the post-war organization of the world and its security" (Power and the church in Eastern Europe, 2009).

In this situation, the assistance of the Russian Orthodox Church was very helpful. In exchange for the normalization of state-church relations within the country, it was to convince its followers in those regions of the Soviet regime's loyalty to religion, and in the future it become one of the channels to educate their population according to Soviet moral and ethical values.

The Soviet leadership considered the most effective way in the fight against the influence of the Catholic and Uniate churches was to strengthen the position of the Russian Orthodox Church in the regions where the above religions are spread. First of all, this was supposed to be done by providing it with certain opportunities in missionary activity. In this regard, Chairman of the Council for Russian Orthodox Church Affairs under the Council of People's Commissars of the USSR G.G. Karpov in his memorandum for I.V. Stalin dated March 15, 1945 proposed to organize an Orthodox diocese in the city of Lvov.

He also proposed to provide the clergy of the diocese with the right to carry out missionary work; to transfer one of the Uniate's churches to the disposal of the Orthodox diocese in Lvov as a cathedral (Power and the church in Eastern Europe, 2009). Also, the Soviet government initiated the work of the Moscow Patriarchate on entering into its jurisdiction of Orthodox parishes located abroad. In many cases, the diplomatic activity of the church had a positive response among them. This was explained, first of all, by their hopes to receive financial and political support from the Moscow Patriarchate in confrontation with other faiths, primarily with the Roman Catholic and Uniate ones. The results of cooperation between the authorities and the church in this matter turned out to be very significant. So, according to historian M. Shkarovsky: "Only in 1945 trips of its (i.e.,

Russian Orthodox Church) delegations to 15 countries were organized. As a result, three new metropolitans, 17 bishops and 285 parishes entered into the jurisdiction of the Russian Church" (Shkarovsky, 2000: p. 29; Mukhin *et al.*, 2018).

Against the background of such results, Soviet diplomacy seriously considered the church as a tool for spreading its influence in the post-war world. In this regard, in 1948 it was planned to convene the Ecumenical Council with the aim of conferring the Moscow Patriarchate the Ecumenical title, ensuring its leadership status not only in the Orthodox, but in the whole Christian world. However, these global plans were not destined to come true. Firstly, in 1948, the anti-Soviet archbishop of New York Athenagoras was elected the Patriarch of Constantinople; he called for the cooperation of Christians and Muslims to fight communism. Secondly, even the Vatican's very ambiguous position towards the Nazi regime during the Second World War was not able to seriously shake its position. The Roman Catholic Church continued to play a significant role not only in the spiritual, but also in political life. So, in the spring of 1947 the Communists lost their places in the governments of Italy and France, apparently, not without participation of the Roman Catholic Church.

In 1948, the foreign policy activity of the Moscow Patriarchate fell sharply, because part of the problems for the solution of which the state's policy towards the church was relaxed, was resolved. So, in 1946 there was a reunion of the Uniates of the western regions of the USSR with the Russian Orthodox Church; besides, pro-Soviet regimes in Eastern Europe strengthened their power. The task of turning Moscow into the centre of the Christian world due to the previously mentioned reasons turned out to be impossible.

Conclusions

Thus, despite the generally anti-religious nature of the Soviet political and ideological system, the Russian Orthodox Church became an important tool of the foreign policy of the USSR during the years of World War II.

In the late 1940s, the period of relative normalization of state-church relations was curtailed. In this regard, the foreign policy of the Russian Orthodox Church was mainly limited to participation in the movement on the struggle for peace until the end of the 1980s. Partly, due to the loss of interest of the state authorities in the foreign policy of the church, the policy of the Soviet state regarding religious associations within the country was tightened again, which resulted in the termination of registration of actual religious associations, administrative pressure and increased atheistic propaganda.

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Conflicts associated with migratory processes: a political perspective

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Abstract

The objective of the research was to discuss the conflictive nature of the migratory processes that occur in the world today. The need to adapt and solve daily problems inevitably requires the State to implement international, state and regional standards for the implementation of the rights and opportunities of migrants both in the territory of the donor country and in the territory of the recipient country. On the other hand, we see an increase in the phobia of migrants and the characteristic racism of countries where labor migration flows are increasing. In methodological terms, use was made of hermeneutics close to political ethnography. It is concluded that, for a long time, the criticism of racism has developed as a criticism of colonialism, Nazism, including anti-Semitism, and in modern times as a political criticism of migration-phobia and nationalism, in which the Racist speech and practices have found and do find obvious and complete expression. Migrant phobia is a concept that latently generates motives of political, ideological, racial, national, religious hatred, xenophobia, or hostility towards an ethnic or social group within the framework of social practices.

Keywords: migratory processes; migratory phobia; educational migration; conflict of migratory processes; COVID-19.

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Conflictos asociados a los procesos migratorios: una mirada politológica

Resumen

El objetivo de la investigación fue discutir el carácter conflictivo de los procesos migratorios que se dan en el mundo de hoy. La necesidad de adaptarse y resolver los problemas cotidianos requiere inevitablemente que el Estado implemente estándares internacionales, estatales y regionales para la implementación de los derechos y oportunidades de los migrantes tanto en el territorio del país donante como en el territorio del país receptor. Por otro lado, vemos un aumento de la fobia a los migrantes y el racismo característico de los países donde los flujos migratorios laborales están aumentando. En lo metodológico se hizo uso de la hermenéutica próxima a la etnografía política. Se concluye que, durante mucho tiempo, la crítica al racismo se ha desarrollado como una crítica al colonialismo, al nazismo, incluido el antisemitismo, y en los tiempos modernos como una crítica política a la migranto-fobia y el nacionalismo, en los que el discurso y las prácticas racistas han encontrado y encuentran una expresión obvia y completa. La fobia al migrante es un concepto que genera de forma latente motivos de odio político, ideológico, racial, nacional, religioso, xenofobia u hostilidad hacia un grupo étnico o social en el marco de las prácticas sociales.

Palabras clave: procesos migratorios; fobia migratoria; migración educativa; conflicto de procesos migratorios; COVID-19.

Introduction

The phenomenon of migration itself has a high level of conflict for most donor and recipient countries, since it requires resources for both adaptation and economic development processes, creating new jobs, and determining social guarantees for migrants and their families. In theoretical studies, migration processes are classified according to a specific type of migrant activity. Thus, it is customary to distinguish labor migration, educational migration, medical, tourist and other types.

All these types of migration processes are regulated at the global, interstate, regional, and national (state-level) levels. The mechanisms regulating these processes are dual in nature at the level of emerging contradictions between countries of emigration and countries of immigration (Global Commission on International Migration, 2006).

Through cooperation agreements, programs for the admission of students, postgraduates, doctoral students, young professionals, labor migrants, and readmission of illegal migrants, the mechanism for interstate regulation of migration flows is working.

The mechanism of the national level of regulation of migration policy is the solution of issues that re-enter the territory of the state and previously entered illegally.

At all the above levels one can observe the consequences of migration processes expressed in:

- Geographic expansion of the boundaries of migration.
- Previously "sedentary population groups" - women and children in recent decades have been actively included in the migration flows of educational, tourist and labor migration.
- There are new forms of migration that are of a business nature (business migration), religious (religious pilgrimage) and tourist nature.
- Flows of criminal groups and the sale of less protected segments of the population into slavery are major problems in migration policy.
- Negative consequences of "replacement" migration is increasing.
- "Migrant diasporas" are increasing in the host countries and their influence on the host country's economy is increasing (Riazantsev and Bozhenko, 2010).

Cultural practices in the country of certain social groups of the transit population, namely migrants, can cause the local population to feel hatred, hostility, fear, envy, where these negative feelings are based on the inability to overcome cultural differences, and hence the avoidance of a full-fledged dialogue. Cultural and spiritual antagonism can be speculatively deduced from the fact that alien groups are to blame for the socio-economic misery of the autochthonous population.

A closer look at these types of migration will help to understand the extent of their conflict for both the host and donor countries.

1. Methods

The interpenetration of the phenomena of migrantophobia and ethnophobia lies on the surface: both migrants and representatives of other ethnic groups are "different", the relations of the local population with

both are projected through the prism of relations "their" - "others" (Ivanov, 2017).

Factors of growth of ethno-and migrant-phobias are quite complex processes, and they cannot be explained unambiguously. Like all phobias, they are derived from fears of loss of "wealth" "resources" "influence" and "loss of one's own identity" (Ivanov, 2017).

Consider migration - educational. Educational migration includes not only education, professional development, but also various types of internships, additional education, and courses. The contingent of educational migration are students of secondary educational institutions, as well as categories receiving professional and postgraduate education – postgraduates, doctoral students, trainees, professionals who improve their skills in various structures and companies.

According to the classification, educational migration is divided into relocation and scientific and educational migration (students and trainees in order to obtain new or specific competencies that are not available in their country) (Vyhovanets, 2007). Educational migration affects internal processes at the level of the country for the migrant (change of cities within the country) or external processes represented by international migration.

International educational migration includes:

1. educational immigration for secondary and first higher education, as well as various vacation programs.
2. immigration for the purpose of obtaining the second higher and subsequent levels of education, academic degrees, and scientific internships.
3. immigration for professional development (language courses, seminars, trainings, retraining programs, business education, etc.).

According to the forms of implementation, it is represented by full-time, part-time and the most popular form of distance learning in recent years.

If the full-time training of migrants gives the host country an effect in at least four areas of society – social, political, demographic, economic and political, then the other types of temporary effect occurs or it is not yet possible to assess it.

In the case of migration within the country, nothing actually changes for the student, except for the need to learn new behaviors inherent in the population of a particular city, while for foreign students there are drastic changes, to adapt to which sometimes you need outside support and assistance.

Distance education is more specific, since the time spent in the country of study is reduced, temporary, which greatly facilitates adaptation and makes it possible to master and then translate the norms and values of the city and country of study upon returning home.

The distance form of providing educational services, which has been actively developing in recent decades, is becoming more and more widespread and is being integrated into the system of international relations as an integral part of building international relations.

One of the positive consequences of educational migration is, provided that the student remains in the country or city of education to work, the entry into the labor market of a certified specialist who meets the requirements of this country or city for a set of formed competencies. At the same time, this can also be considered as a negative component due to poor knowledge of the recipient country's language, poor adaptation and, consequently, a set of insufficient competencies for integration into the economy. But, by and large, the problem will be ambitions and claims for employment with a good salary.

Hence, the second type of migration – labor-acquires a new character of relations, since it reflects the processes of adaptation to the sphere of work among those who entered the territory of the recipient country illegally, those who enter with high qualifications and those who, having learned and adapted in the country, find employment. In all these cases, the nature of the employment relationship will differ.

The main goal of labor migration is to find better living conditions in developed countries. On the part of the host States-solving demographic problems and attracting additional workers. This type of migration has both positive and negative consequences. The positive ones include cheaper production of goods and services, therefore, increased competitiveness, thereby increasing demand for domestic goods, with official employment – the payment of taxes to the Treasury of the recipient country, but at the same time the lack of participation in social programs.

The negative consequences are the growth of unemployment among the local skilled population due to the cheapening of their labor, the "leakage" of Finance from the country in the form of money transfers to donor countries. But the key is the social component of the relations that migrants enter with the local population – an increase in the share of conflicts with the local population at the domestic level, rivalry between ethnic groups against the background of religious and cultural traditions.

According to the form of labor migration, it is also divided into "full-time" and "virtual".

The digital revolution has made it possible to expand the scope of labor migration to virtual space and remote forms of work among highly qualified workers. Highly qualified specialists do not need to move geographically, they basically create a "knowledge economy" that obeys the "code rule" (Aneesh, 2008). a business space is Formed based on virtual migration. It is a test for the economies of recipient countries on the quality of migrant workers. By and large, this is a test for "brain drain" (Aneesh, 2006).

Most often, virtual labor migration is associated with professionals in the field of information technology, but no one excludes cases of remote work abroad. The need for highly qualified specialists will grow due to increasing globalization and the places of low-skilled workers will be occupied by robotic systems that can be controlled remotely (Heaven, 2017).

The next major direction of development of migration processes is tourist migration. It is a process of cultural globalization. The positive consequences of this type of migration processes are the establishment and expansion of international contacts, the reduction of spatial distance, and the study of the "lifestyle" of the visiting population. All this contributes to the strengthening of cooperation between countries, starting from the everyday levels of communication. In the future, tourist migration can become the basis for labor and educational migration.

So, aggressive migration from Asia and Africa, the global economic crisis, and the failure of the multiculturalism process in Western Europe create new opportunities for activating migrant phobia, as well as right-wing radical actions and power actions.

2. Results and Discussion

The globalization of immigration processes inevitably leads to the fact that there is a question not only of adapting migration flows to the economy, politics, society and other areas of social structure, but also of internal and external conflicts in the migration processes themselves.

- Today, migration as a global phenomenon can have negative consequences (bearing a conflict-causing nature), such as:
- Expanding the geographical boundaries of migration.
- Involvement of previously " sedentary segments of the population».
- Negative impact of "replacement" migration, which inevitably leads to conflicts of interest.
- "Diasporization" of economic relations.

If we return to the international, state and regional levels of consideration of the conflict nature of migration processes, it becomes clear that the negative consequences of migration are expressed in conflicts of interest at the economic and political levels, inter-ethnic conflicts, conflicts of adaptation, and conflicts of a domestic nature.

The insistence on exaggerating the criminal tendencies of ethnic minority migrants can easily be explained by the peculiarities of the human psyche. This psychological mechanism is called "illusory correlation".

It has been demonstrated that people, first of all, create stereotypes under the impression of rare phenomena and attach much more weight to them than they deserve.

Second, the group is assigned the most positive moral qualities that distinguish it from other groups.

Third, due to these features, negative stereotypes about the qualities of "outsiders" are transferred from their individual representatives to the entire groups to which they belong (Hamilton and Gifford, 1976).

Thus, this mechanism functions depending on the initial, positive or negative, emotional mood that affects the distortion of the real picture in one direction or another (Stroessner *et al*., 1992).

Within the framework of virtual labor migration, conflicts are mostly legal in nature, since they are mainly related to the following issues:

- registration of employment contracts for "virtual migrants" to "remote" jobs.
- protection of their rights in case of disputes between the employee and the employer.
- the amount of remuneration.
- being treated as "outsiders" in matters of privileges from an organization or country.
- lack of social guarantees in the field of social policy of the recipient country if you want to physically immigrate.
- the need to periodically earn your "trust bonus" in a "remote" workplace and constantly maintain it in a larger volume than in full-time work.

Educational migration is less conflict-prone due to the fact that the age group of students in schools and universities in other countries is quite plastic in its attitudes and values, and the receipt of education by postgraduates and doctoral students a priori sets quite wide boundaries of the worldview for the acceptance of the culture and values of the recipient country's population.

Conclusions

The migration policy pursued by the majority of countries is the result of internal political processes that take place at the level of both a single state and the totality of all States in the world.

Anti-immigrant positions are based on the following arguments:

1. uncontrolled influx of migrants leads to a complication of the social situation, can destabilize the labor and housing market, and contributes to an increase in the burden on social infrastructure.
2. migration worsens the sanitary and epidemiological situation.
3. migration contributes to the criminalization of the situation and the growth of crime.
4. non-ethnic migrants can take dominant positions in socio-economic life; the role of factors of inter-ethnic tension and conflict, such as ethnic infavoritism and clientism, increases sharply.

The ongoing changes introduced to the way of States by migration processes usually have ambivalent consequences.

Acute socio-political problems within countries sometimes cause protest and a sense of injustice and resentment among citizens who relate to their group. This dissatisfaction on the part of society is projected onto the immigrants. Recorded data are primarily directed at ethnic migrants, regardless of their citizenship, whether they are temporary labor migrants (migrant workers), whether they are resettled for permanent residence within Russia (migrants) or from abroad (immigrants).

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Political, Military and Technical Cooperation of the Republic of Uzbekistan in the Framework of the Shanghai Cooperation Organization

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Abstract

The article is devoted to the analysis of the main vectors of technical-military cooperation of the Republic of Uzbekistan within the framework of the Shanghai Cooperation Organization (SCO) in the Central Asia region. The SCO is widely believed to have been part of the Asian version of the North Atlantic Bloc and represents an organization with many areas of activity, where the technical-military cooperation of member countries plays an important role. The main objectives of the organization are to promote peace and stability in one more context, book the development of terrorism, separatism, extremism and drug trafficking, economic cooperation and energy partnership, cooperation and scientific. In made or use of the method anzé of systemic. It is concluded that cooperation in the technical-military field will provide the opportunity for the race to have a greater influence on global political and economic situations, without being abstracted solely from the tasks of the SCO, such as the mutual union of forces of major international organizations. The organization referred to will be in the resolution of various problems, both regionally and globally, to the extent that the talós objectives are consolidated and achieved.

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Cooperación política, militar y técnica de la República de Uzbekistán en el marco de la Organización de Cooperación de Shanghái

Resumen

El artículo está dedicado al análisis de los principales vectores de cooperación técnico-militar de la República de Uzbekistán en el marco de la Organización de Cooperación de Shanghai (OCS) en la región de Asia Central. Se cree ampliamente que la OCS se formó como parte de la versión asiática del Bloque del Atlántico Norte y representa una organización con muchas áreas de actividad, donde la cooperación técnico-militar de los países miembros juega un papel importante. Los principales objetivos de la organización son promover la paz y la estabilidad en un contexto más amplio, contrarrestar el desarrollo del terrorismo, el separatismo, el extremismo y el narcotráfico, la cooperación económica y la asociación energética, la cooperación científica y cultural. En hizo uso del método analítico e histórico sistémico. Se concluye que, la cooperación en el ámbito técnico-militar brindará la oportunidad de ejercer una mayor influencia en las situaciones políticas y económicas mundiales, sin abstraerse únicamente de las tareas de la OCS, como la unión mutua de fuerzas de las principales organizaciones internacionales. La organización referida será en la resolución de diversos problemas, tanto a nivel regional como mundial, en la medida que se consolide y logre los objetivos planteados.

Palabras clave: Relaciones internacionales; República de Uzbekistán; Organización de Cooperación de Shanghái; cooperación entre estados; alianza atlántica.

Introduction

The foundations for political and military-technical cooperation of the SCO member states were l aid at the first summits of the organization and had some extension in time. The SCO Secretariat and the Regional Counter-Terrorism Structure (RCTS) were established in Beijing based on the Moscow Summit (28-29 May 2003). The leaders of the participating countries discussed the issues of countering terrorism and extremism:

> The thirty treaties that were signed during this period included the creation of SCO bodies - the Council of Heads of State, the Council of Ministers and the Council of Foreign Ministers. Since 1 January 2004, the SCO has operated as a full-fledged international organization with its own working mechanism, staff and budget (Shanghai Cooperation Organization. New priorities of development, 2015: 56).

The SCO activities consisted mainly of antiterrorist acts, as well as regional movements aimed at preventing separatism and extremism in Central Asia. Some prominent political figures say it is the first international organization to combat terrorism, a new challenge for the military and politicians. The Shanghai Convention on Combating Terrorism, Separatism and Extremism, originally signed by participants in the SCO Founding Summit in Shanghai (2001), introduced for the first time the international concept of separatism and extremism as a criminal act of persecution.

"Aims and purposes include:

- To strengthen cooperation, trust, friendship and good neighborliness among Member States.
- Equality of all Member States, the search for common points of view based on mutual understanding and respect for the views of each of them.
- To promote a broader, new democratic, just, rational political and economic framework.
- To promote greater cooperation in promoting peace, security, and stability in the region.
- Promoting human rights and freedoms in the international obligations of Member States and their national legislation.
- Cooperation in the peaceful settlement and prevention of international conflicts.
- Phased implementation of joint actions in areas of common interest.
- The SCO is not directed against other states and international organizations" (Kurpayanidi and Urmonov, 2016).

1.Methods

The methodological basis of research is analysis and synthesis as a general scientific methods of cognition, and historical-systemic and comparative-historical, historical-typological methods of scientific cognition.

Application of comparative-historical method allowed revealing the significance of the integration process in different periods of history, to compare the integration association of the SCO with other acting in the international arena.

The historical-typological method used in the work made it possible to reveal the general course of events. This method has contributed to the identification of causal links between the main political and social problems of the Central Asian region and the need to create security organizations in the region.

In research, the historical and system method was applied. Systemic character of social-historical development means that all events, situations and processes of this development are caused and have a cause-and-effect relation, and are connected among themselves functionally. This approach is applicable to the study of historical processes on the example of the growing popularity of the SCO in the realities of globalization.

2. Results and Discussion

The SCO charter establishes a historical link between people. Moreover, the SCO member states have expressed their willingness to promote peace, security and stability in the region, to promote political pluralism and economic globalization. This document ensures SCO cooperation in the field of regional security. SCO combats terrorism and extremism based on legal norms regulating relations in this field, as well as a number of international legal instruments.

International legal documents include: "Convention on Combating Terrorism, Separatism and Extremism" (Shanghai, 15.06.2001)" (The declaration on the Establishment of the Shanghai Cooperation Organization, 2001), which entered into force between the SCO member states, multilateral and bilateral agreements:

1. Agreement on combating terrorism, political and religious extremism, transnational organized crime and other threats to security between Kazakhstan, Tajikistan and Uzbekistan (Tashkent, 21.04.2000) (Al-Qahtani, 2006).
2. "Agreement between the Government of the Republic of Uzbekistan and the Government of the Republic of Tajikistan on cooperation in combating terrorism, political, religious and other extremism, illicit trade in narcotic drugs and psychotropic substances (Khujand, 26.05.1999)" (The agreement between the government of the republic of uzbekistan and the government of the republic of Tajikistan, 2020).

3. "Cooperation between China and the Republic of Uzbekistan in combating terrorism, separatism and extremism (Tashkent, 04.09.2003)" (The agreement between the government of the republic of uzbekistan and the government of people's republic of china on cooperation in fight against terrorism, separatism and extremism, 2020).

The SCO member States are focusing on resolving internal conflicts, combating extremism and drug addiction, as well as on establishing a regional anti-terrorist structure.

The policy of the PRC in Central Asia is conditioned by its economic interests, espe-cially the desire to ensure energy security and use of the transit potential of the region. At the same time, it is aimed at maintaining stability and security in the Xinjiang Uygur Autonomous Region. All this caused not only the intensification of ties with the region, but also involvement in the "New Great Game" in Central Asia, where the influence and in-terests of Russia, the United States and the People's Republic of China collide (Sulimanov and Beloglazov, 2018).

Uzbekistan is the foundation of the organization, and the economy and geoscience of the state are in line with the quality of the project. Uzbekistan has become an important instrument in SCO trade, economic, cultural and humanitarian relations, strengthening regional interests, terrorism, extremism and countering aggression.

During the 2004 summit, a Convention on the Elimination of All Forms of Discrimination and Punishment for Drugs and Psychotropic Substances" was signed with a view to SCO and WTO cooperation. Pakistan, India, Iran and Mongolia, the SCO member states are united by a common goal to combat drug trafficking (Shanglin, 2006).

However, Uzbekistan's participation in the SCO has several peculiarities. As the analysis of the Uzbek side's activities within the SCO shows, Tashkent seeks to effectively use the form of SCO to promote its national interests in the international arena, but clearly defends the strategic principle - equal distance from all "centers of power".

The administration of the President of Uzbekistan I. Karimov has learned to use the format of the Shanghai Cooperation Organization and the CIS to send timely information to its partners. For example, at the summit of Shanghai Cooperation Organization in Dushanbe, I. Karimov learned to use the format of Shanghai Cooperation Organization and CIS to send information to their partners in time. Karimov talked about the most severe "Ukrainian events", thus gaining necessary points before Russia. "In the following period, Karimov also used the CIS platform to condemn the actions of the Ukrainian authorities. As a result, these statements of the Uzbek leadership were not in vain, which led to the warming up of the

Uzbek-Russian relations, which were previously overshadowed by the plans of Tashkent to acquire weapons from NATO countries" (Frolenkov, 2008).

On the one hand, the Shanghai Cooperation Organization as a mechanism for economic cooperation does not seem particularly attractive to Tashkent. Uzbekistan has always relied and continues to rely fully on bilateral format to address important issues. In addition, the Uzbek side has blocked unwanted projects and initiatives in the economic sphere. Thus, last year Uzbekistan, using the right of its chairman, sharply rejected the proposal of the Chinese side to establish a free trade zone within the SCO. "Uzbekistan is not ready to consider a proposal to establish a free trade zone within the Shanghai Cooperation Organization" (Uzbekistan is not ready to consider the proposal to create a SCO FTA, 2020).

Since Uzbekistan's last withdrawal from the CSTO, Tashkent has always demonstrated and consistently focused its attention on establishing relations with bilateral partners. For instance, in addressing important issues for SCO member nations, the Uzbek side adopted bilateral format.

Since Uzbekistan's last withdrawal from CSTO, Tashkent has always demonstrated and consistently focused on the systematic establishment of relations in bilateral format. Thus, in decisions on important issues for SCO member nations, the Uzbek leadership has remained loyal to its general line of bilateral cooperation.

3. Summary

Over the past years, the presidency of the Republic of Uzbekistan in SCO 2015-2016 was marked by a complex of progressive initiatives and actions to strengthen the meaning and status of this organization in the international arena.

First, the Republic of Uzbekistan has initiated a set of measures to increase the efficiency of SCO activities, improve the decision-making apparatus that exclusively meets the goals, objectives and basic principles of the organization. In this regard, special significance is attached to the establishment of a multipolar dialogue and ties between SCO and other status international organizations.

The organization's networking with the UN is a prime example of this. Back during Uzbekistan's, second presidency of SCO, namely in December 2009. The UN General Assembly adopted the "Resolution on Cooperation between the UN and SCO". A useful fusion of positive experience of these two international organizations has contributed to obtaining qualitatively new opportunities in maintaining and preserving international and regional security.

Secondly, it was at the suggestion of the Republic of Uzbekistan that the "Joint Declaration on Cooperation between the SCO and UN Secretariats" was signed during the visit of UN Secretary General Ban Ki-moon to Uzbekistan in April 2010. Thus, at the ceremony dedicated to the signing of this weighty legal act, "UN Secretary General commended the Republic of Uzbekistan in the framework of its presidency of the Shanghai Cooperation Organization. He noted the fact that this guide was extremely important for maintaining peace and security, as well as for addressing pressing regional issues within the framework of international cooperation as a whole" (Uzbekistan 's initiatives and their role in strengthening the Shanghai Cooperation Organization, 2010).

The above-mentioned Declaration was the foundation, potential for increasing the ways of cooperation in such strategic areas as prevention and elimination of conflicts, fight against terrorism, non-proliferation of weapons of mass destruction, maintenance of stable economic development, search for ways to solve environmental pollution problems and others.

Conclusions

According to foreign experts in the field of political science, cooperation in the military-technical field will provide an opportunity to exert a stronger influence on global political and economic situations, without abstracting solely from the tasks of SCO, as the mutual union of forces of leading international organizations. It will have a more effective and widespread affected the resolution of various problems, both regionally and globally.

A number of UN agencies already cooperate with the SCO, within the framework of the Economic and Social Commission for Asia and the Pacific (ESCAP), as well as the UN Office on Drugs and Crime and others. Based on the above, it can be concluded that today it is obvious that the SCO and the UN are now quite progressive in establishing ties. The implementation of ways to maintain the security and continuous development of the region is carried out through the prism of the SCO's specialized institutions as the Regional Anti-Terrorist Structure.

Speaking about Uzbekistan's active participation in SCO, it is worth noting the NATO summit in Bucharest in April 2008, where the first "President of Uzbekistan I. Karimov put forward an initiative to settle the situation in Afghanistan by non-military means. The head of Uzbekistan proposed to create a new international apparatus on the UN base to eliminate this problem - the "6+3" contact group. The President also stressed the need to respect the depth of historical roots, traditional values of multinational people of Afghanistan" (President of uzbekistan i. karimov spoke at the

nato summit in Bucharest, 2020). The head of Uzbekistan suggested that this group would include countries bordering Afghanistan, Iran, China, Pakistan, Tajikistan, Turkmenistan and Uzbekistan, and given the current international situation, Russia, the US and NATO. "This group, following Karimov's idea, would have become a powerful platform for discussing and discussing ways and means of resolving this protracted situation, facilitating assistance and support from the international community for the rehabilitation of Afghanistan's economy and eliminating drug production, extremism and terrorism.

The above mentioned initiatives of the first President of the Republic of Uzbekistan were discussed for the second time during the Plenary Session of the Summit of the UN General Assembly "Millennium Development Goals" on September 20, 2010" (Millennium development goals. the united nations in the russian federation, 2020). The most important issue in the foreign policy of the Central Asian states, more precisely Uzbekistan, was to ensure regional security and stability, fight against terrorism and any manifestations thereof that could threaten the people. It is to this end that the Central Asian states cooperate closely with the United Nations, the Organization for Security and Cooperation in Europe and a number of interstate and non-governmental organizations (Abdimuminov, 2011).

It is noteworthy that the geographical States in the region are extremely interested in a balanced and balanced solution to the long-standing Afghan problem. The Declaration of the 5th SCO Heads of State Summit, held in Astana, states that SCO members have the ability and responsibility to protect the security of the Central Asian region, and calls on Western countries to leave Central Asia. This is the most visible signal given to the heads of state at the highest level (People 's Daily Online, 2020).

For many centuries, friendship, good neighborliness, trade relations, community of religious customs - all this is undoubtedly a solid basis for maintaining a peaceful environment and strengthening regional security. As it is the peace that reigns in the house of a neighbor, it is also the peace in your house. Friendly ties instruct nations to resort to all possible ways to find fragile peace in Afghanistan. The Central Asian peoples have deeply felt the tragedy of the Afghan people, sympathize with and understand their pain, and are therefore ready to build peace in the region.

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Participación, democracia y gobernabilidad

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Training and implementation of the environmental, economic, and legal development policy of the regions: main practice-oriented approaches

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Abstract

The article explores the possibilities of practice-oriented approaches in public administration, in the field of training and implementation of the ecological development policy of the regions, between areas, modern social and economic conditions instead. The methodological basis of the study consists of general scientific methods of cognition and social processes (analysis, synthesis, generalization, classification) and sociological methods for obtaining empirical data. The forms of optimization of public administration in the field of training and implementation of the ecological development policy of the regions are concluded, manifested in the practice-oriented approaches select in the following directions: from the framework outside responsibility and legal in the field of environmental protection; strengthening the role of economic mechanisms and environmental management tools in the regions; modernization of the public and state administration system in the field of environmental protection, and; Dissemination of an instrument of cross-

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sectoral social collaboration in the field of training and implementation of ecological development policy.

Key words: environmental management; public administration in Ukraine; cluster approach; management of environmental projects; regional development.

Formación e implementación de la política de desarrollo ambiental, económico y legal de las regiones: principales enfoques orientados a la práctica

Resumen

El artículo estudia las posibilidades de los enfoques orientados a la práctica en la administración pública, en el campo de la formación e implementación de la política de desarrollo ecológico de las regiones, entre las cuales destacan, las condiciones sociales y económicas modernas de Ucrania. La base metodológica del estudio se compone de métodos científicos generales de cognición de fenómenos y procesos sociales (análisis, síntesis, generalización, clasificación) y métodos sociológicos para la obtención de datos empíricos (estudio sociológico experto). Se concluye que las formas de optimización de la administración pública en el campo de la formación e implementación de la política de desarrollo ecológico de las regiones, se manifiestan en los enfoques orientados a la práctica seleccionados en las siguientes direcciones: mejora del marco regulatorio y legal en el campo de la protección ambiental; fortalecimiento del rol de los mecanismos económicos y herramientas de gestión ambiental en las regiones; modernización del sistema de administración pública y estatal en el campo de la protección ambiental, y; Difusión de un instrumento de colaboración social intersectorial en el campo de la formación e implementación de la política de desarrollo ecológico.

Palabras clave: gestión ambiental; administración pública en Ucrania; enfoque cluster; gestión de proyectos ambientales; desarrollo regional.

Introduction

Sustainable (balanced) development of the regions presupposes the development of all its components, in particular the ecological one. In a

broad sense, the greening of state and regional development is a natural process of further improving economic relations and the achieved level of development of productive forces, based on an environmentally oriented innovation policy of the state and regions to ensure the environmental safety of the state and its territories. The ecological development of the region is carried out through the mechanisms of public administration, which ensures the effective functioning of the entire system of public and local authorities and provides for the wide involvement of various stakeholders in the development and implementation of state policy (Pollitt and Bouckaert, 2004) is implemented through the formation and implementation both the strategy of state (national) policy and regional environmental policy.

1. Materials and methods

It is unconditional that an important component of the state environmental policy is the regional environmental policy of the country, which will contribute to the solution of regional environmental problems, on which the social and economic stability of the country as a whole largely depends.

The regional environmental policy of the country is one of the indispensable conditions for maintaining security, ensuring social and economic and geopolitical stability, and implementing the regional development model. As noted by M. Andriienko and V. Shako, the regional environmental policy of the country is an organic component of the national environmental policy, and in the context of decentralization of management, environmental protection management, rational use of natural resources and the safety of life of people at the regional level are of particular relevance, carried out with the help of mechanisms, aimed at stimulating the development of the regions, relying mainly on regulatory environmental national and international legislation, standards and norms (Andriienko and Shako, 2017).

So, the ecological system of the region is basic for ensuring the sustainable development of other systems - economic and social, so the regional level requires the creation of a fundamentally new system of territorial management in the field of environmental protection (Koval and Mikhno, 2019). This gives rise to the objective need for regional differentiation of management decisions and practical actions aimed at stabilizing and improving the environmental situation, and therefore the need for the formation and implementation of regional environmental policy is actualized. And the main approaches to the formation of the policy of environmental development of the regions and the regional environmental policy itself are cluster, program-target, project-oriented and management-oriented approaches in the practice of state and public administration.

Thus, the purpose of the article is to highlight modern and effective and practice-oriented approaches and their potential in managing the ecological development of the regions. Achievement of this goal presupposes the solution of the following tasks: 1) identification and analysis of the main practice-oriented approaches in managing the ecological development of the regions; 2) identification of potential opportunities for the implementation of mechanisms and tools of the selected approaches in environmental protection management at the regional level (based on the results of empirical research); 3) highlighting the trends and ways of public administration in the field of environmental development of the regions.

The methodological basis of the study is made up of general scientific methods of cognition of social phenomena and processes (analysis, synthesis, generalization, classification) and sociological methods for obtaining empirical data (expert sociological survey). The empirical basis of the study is the results of an expert survey of environmental management entities – the representatives of regional government bodies, public organizations, business structures, scientific ecological community of Zaporizhzhia region (January, 2020: 200).

The practical significance of the results of theoretical and empirical analysis lies in determining the most effective practice-oriented approaches in managing the ecological development of the regions to create conditions for the formation and implementation of regional environmental policy in the form of specific targeted environmental programs, environmental projects, organizational management structure and the creation and development of environmental clusters in the spatial limits of the region.

The main markers for identifying civic identity were such linguistic constructs that reveal the presence of: aggressive rhetoric against representatives of another identification group; rhetoric of classifying a subject as a member of a particular youth group (online or offline); the rhetoric of describing their objective socio-political reality; rhetoric of assessing the negativism and hopelessness of the future of modern youth; political protest rhetoric; rhetoric of social and political activism.

2. Results and discussion: Practice-Oriented approaches in the management of ecological development of the regions

Among the many approaches in state and public administration, we have identified program-target, cluster, project-oriented and management-oriented approaches, which, in our opinion, are most effective in the formation and implementation of the policy of ecological development of the regions in modern social and economic conditions. Therefore, let us consider their potential in environmental management at the regional level.

The program-targeted approach is a way of forming a system of planned solutions to significant national and regional problems, the essence of which is to determine the main goals of social, economic and environmental development, to develop interrelated measures to achieve them within the specified time frame with balanced resource provision. The use of the program-targeted approach allows for a comprehensive solution of environmental protection problems in the territory of a particular region, including: 1) alignment the goals and objectives of the environmental program with the goals and objectives of other long-term target programs of the region; 2) taking into account the scale, complexity and diversity of problems of ecological development of the region; 3) combination of administrative and control and economic management tools in the field of environmental protection; 4) consistent integration of environmental goals into the process of sustainable (balanced) development of the region; 5) coordination of setting and achieving balanced current and long-term environmental goals; 6) formation of favorable conditions for "green" investments in the economic space of the region (Pakulina *et al.*, 2019; Yankovyi *et al.*, 2020).

Thus, the implementation of the program-targeted approach in managing the environmental development of the region provides for the development regional environmental programs that may be part of the general strategic program for the social and economic development of the region.

So, at the regional level, it is the program-targeted approach in the formation of environmental policy that is most acceptable in the modern conditions of social and economic development in Ukraine and the reform of the public administration system through the processes of decentralization and regionalization of the powers of government bodies in various spheres, in particular in the field of environmental protection. An urgent issue in this sense today is the definition of the spatial boundaries of the region to improve the efficiency of management in the implementation of regional environmental policy, which is currently being carried out on the basis of the administrative-territorial division of the regions – areas.

The system of budgetary financing of programs for the social and ecological and economic development of the regions and the assessment of the results of the implementation of the developed environmental programs for the development of territories are built on this principle. Among the promising approaches to the formation of the spatial boundaries of the implementation of regional environmental policy, the cluster approach stands out, the application of which is defined as a global trend in the implementation of sustainable (balanced) development goals at all levels - international, national, regional, local.

The approach to the formation of a model of environmental policy of the regions based on the creation of environmental clusters has not yet become widespread in Ukraine, but it should be noted that its essence lies primarily in the unification and integration of efforts of state authorities, economic entities, scientific centers and the public in achieving goals sustainable development of the region. In this sense, the cluster is a set of related industries serving medium and small businesses, scientific and educational institutions that form human and innovative potential, sufficient human resources, the synergistic effect of interaction of which is in high indicators of the social and economic and environmental development of the region. The most effective level of development of territories can arise in integrated ecological and economic systems - environmentally oriented clusters, by which Dehtiarova, understands: "Economic complexes in which individual economic entities are linked into single cycles in such a way that the processes of economic activity are mutually processes of reproduction of ecosystem components"(2010: 123).

To a large extent, the creation and development of regional clusters will be facilitated by its institutionalization at the level of state and public administration in the region, what turns out to be in the formation of the system of institutional features of the social and ecological and economic cluster. Thus, Tomareva-Patlakhova (2017) notes that the institutional component of the regional cluster model is becoming an integral system of sustainable development, which should provide for the improvement of legal regulation and organizational and economic support for the optimization of the social, economic and environmental components of the region at the level of application of the program-targeted method of reform economy of the region (Tomareva-Patlakhova, 2017; Tamosiuniene *et al.*, 2019).

Thus, the creation of an environmental cluster presupposes: firstly, the definition of spatial boundaries, production potential, service infrastructure and human potential; secondly, the involvement of the main actors of the ecological cluster - government entities, local administrations, economic entities, public, research and educational centers and institutions; thirdly, the creation of an organizational and management system of the cluster and the definition of its functional tasks; fourthly, the formation and implementation of the environmental policy of the cluster; fifthly, the allocation and implementation of tools for managing the social and economic and environmental development of the cluster; sixthly, the development of a system of criteria for assessing the effectiveness and efficiency of the functioning of the cluster in the context of sustainable (balanced) development (social, economic and environmental components).

Thus, the use of the cluster approach in the formation of the policy of ecological development of the region presupposes: firstly, the selection

and creation of an ecological and economic cluster and the definition of its spatial boundaries; secondly, institutionalizing the development of environmental innovation policy in the region; thirdly, the creation and strengthening of relationships between various subjects of the cluster: state, economic, social and public.

The project-oriented approach in the formation and implementation of the regional environmental development policy provides for the use of project management tools, benchmarking in the field of environmental protection and environmental marketing in the context of sustainable (balanced) development of territories. Today, it is relevant to use project management technologies in the process of implementing the strategic program for the environmental development of the region and clusters, in particular Kozachenko (2018) interprets project management as: "A field of activity in the process of which the project's goals are determined and achieved while balancing between the volume of works, resources, quality and risks".

And project management in the public sphere is a process of institutionalizing, into a programmed-target format, the methods of intervention of authorities or local governments in social reality in order to solve a public problem. At the same time, under conditions of limited time and resources, unique products or services are created that have not been developed before and differ from existing analogues (Chemerys, 2012). Thus, project administration or project management in the field of environmental development of a region can be defined as a process of institutionalization in the program-target format of methods of intervention of authorities or local governments in the field of formation and implementation of regional environmental policy to achieve the goals of sustainable (balanced) development of the region and the state in general (Popova *et al., 2020*).

In the context of the ecological development of the regions, project management as a direction of management in the field of implementation of regional environmental policy will contribute to: 1) institutionalization of the program-targeted management of regional environmental policy; 2) formation of a unified regional information according the problems of environmental safety of the region and organizations (institutions, enterprises, associations, etc.) that have the resources (material and financial, technical, scientific and intellectual, human) to identify and solve the environmental problems of the region; 3) coordination and integration of efforts and resources of all sectors of society (state, private-commercial, public) to achieve the goals of sustainable (balanced) development of the region.

In the context of a management-oriented approach to the formation and implementation of the regional environmental development policy, the practice of environmental management has become widespread. The

most complete interpretation of environmental management is given in the international standard ISO 14000:

> The environmental management system is a part of the general management system, which includes the organizational structure, planning of activities, distribution of responsibility, practical work, as well as procedures, processes and resources for development, implementation, assessment achieved results of implementation and improvement of environmental policy, goals and objectives (International Standard, 2004).

The environmental management system is a part of the overall management system, which includes the organizational structure, planning of activities, distribution of responsibilities, practical work, as well as procedures, processes and resources for the development, implementation, assessment of the achieved results of implementation and improvement of environmental policy, goals and objectives.

The basis of environmental management as an environmental-centered management system are environmental standards: international (ISO 14000) and national, state level (state standards and specifications (State Standard of Ukraine), and the main tools are environmental audit, environmental monitoring, environmental regulation, environmental certification and labeling. In the formation and implementation of the environmental development policy of the region, the management-oriented approach will contribute to: 1) the creation of an organizational management structure based on the principles of economic regulation; 2) strengthening the corporate environmental responsibility of economic entities in the region; 3) development of a "green" regional economy.

3. Analysis of the possibilities of practice-oriented approaches to the formation and implementation of the policy of ecological development of the regions

To determine the management potential of the selected practice-oriented approaches in the management of the ecological development of the regions, the sociological method of an expert survey was applied among the subjects of public administration in the field of environmental protection of Zaporizhzhia region (January 2020, n = 200). Survey sampling - 200 experts, among them: 50 - government officials (representatives of government bodies in the field of environmental protection), 50 - public activists in the field of environmental protection, 50 - representatives of large business in the region, 50 - environmental scientists.

Figure 1 shows the results of an expert survey to identify the most effective mechanisms and tools for the formation and implementation of the regional environmental development policy. To this end, the experts were asked to identify five answer options (mechanisms and tools), which, in their opinion, have significant managerial, resource and realistic potential in the formation and implementation of the regional environmental development policy.

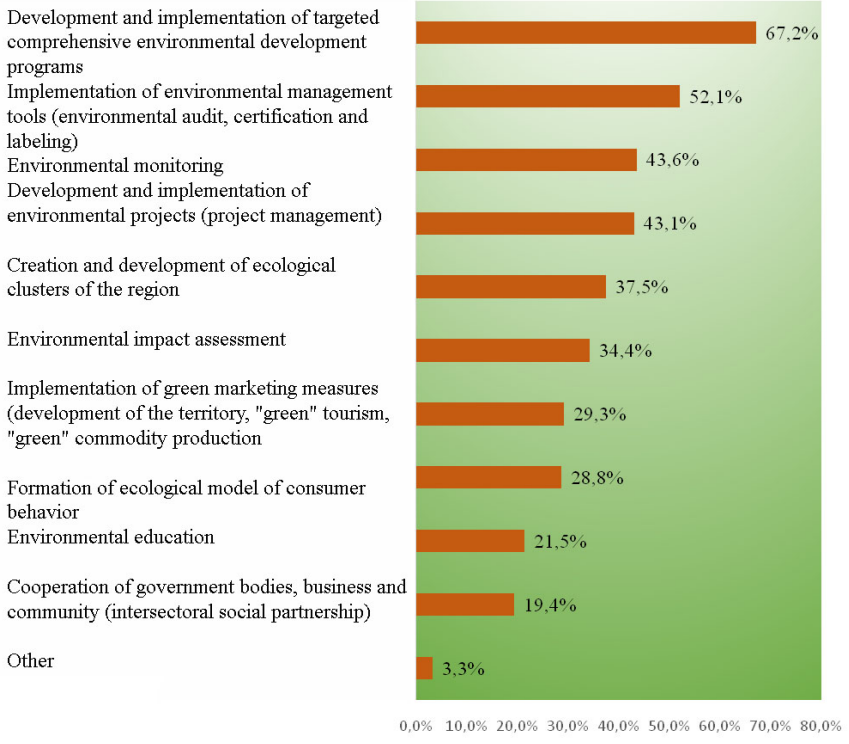

Fig. 1. Assessment of the potential of mechanisms and tools for the formation and implementation of the regional environmental development policy (up to five answer options could be chosen) (Own elaboration).

The proposed mechanisms and tools correspond to the main practice-oriented approaches in managing the ecological development of the region: in the context of the program-targeted approach - the development and

implementation of targeted integrated programs; cluster approach – the creation and development of environmental clusters in the region; project-oriented approach – the development and implementation of environmental projects, "green" marketing, social partnership; management-oriented approach – the application of environmental management tools.

According to the results obtained, traditional approaches to environmental management in the region have the highest indicator, namely, the development and implementation of targeted comprehensive programs for the social and ecological and economic development of the region. Environmental management tools have received a significant percentage of the potential opportunities. Of great importance is the implementation of environmental projects to enhance cooperation between regional authorities in the field of environmental protection, business structures (especially large polluting enterprises) and environmental public organizations.

Using the tools of statistical analysis of SPSS 14.0 of the frequency distribution of the obtained results, the average values (from 1 to 5 points) were determined to assess the potential of cluster, program-target, project-oriented and management-oriented approaches in the formation and implementation of environmental development policy in general. throughout the sample and depending on the professional status of the experts (Fig. 2).

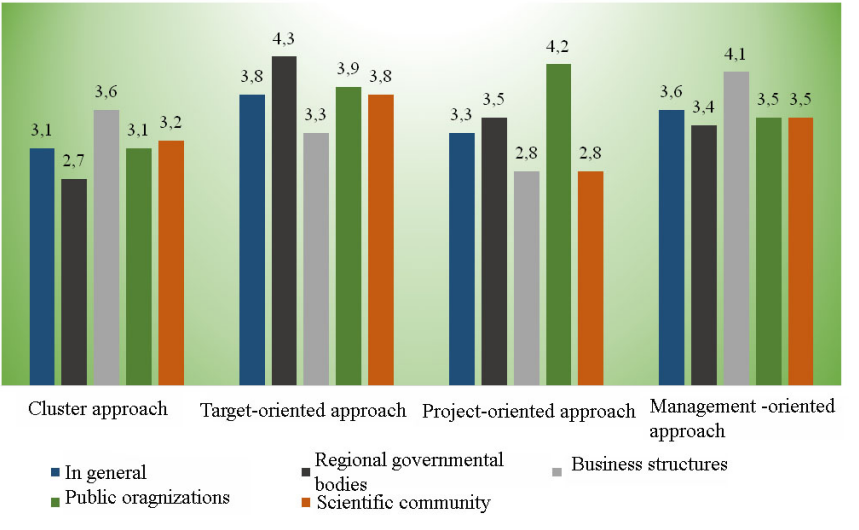

Fig. 2. Assessment of the potential of practice-oriented approaches in managing the environmental development of the region (Own elaboration).

4. Directions of public administration optimization in the field of ecological development of the regions

Based on the results of theoretical and empirical analysis, it is possible to determine the main directions for improving the management system in the field of environmental development at the regional level. In this direction, the modern scientists and researchers work quite fruitfully. For example, G.Shumska names the following as the priority tasks of regional authorities in the implementation of the regional environmental development policy (Shumska, 2017): the identification of regional environmental problems; the designation of potential sources of financing for the ecological sphere of the region; the creation of an environmental infrastructure that will help to attract business structures, in particular cluster ones, to solve environmental problems; the control over financing and implementation of environmentally oriented regional investment programs and projects; the development of new organizational and economic mechanisms for environmental management both at the regional level and at the level of a specific enterprise.

O.Kolienov proposed the following directions for improving the mechanism for the formation and implementation of regional environmental policy (Kolienov, 2017): the development of public-private partnerships and environmental responsibility of business and society; the development of a system of economic incentives in the field of environmental protection; the formation of a unified regional system of environmental monitoring; the urgent reform of the public administration system in the field of environmental protection towards the transition to integrated state-public administration; strengthening control and responsibility on the part of the state and the public; the adaptation of state environmental policy to European standards and the best world practices; the gradual transition from prescriptive public administration to democratic state and public administration in the environmental sphere.

Fig. 3 presents the results of an expert survey on the factors of increasing the efficiency of public administration in the field of environmental development of the regions.

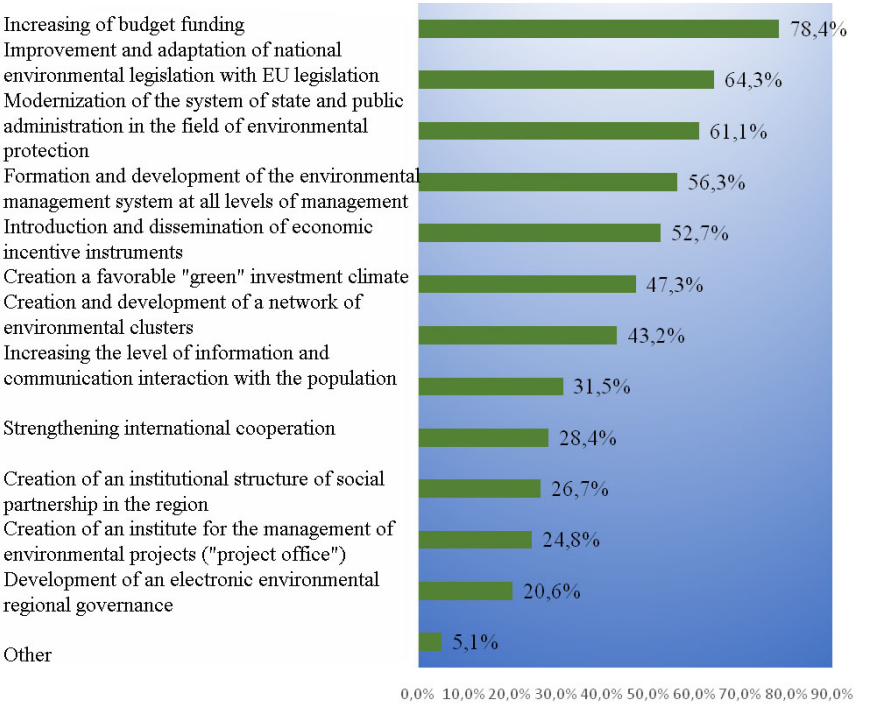

Fig. 3. Factors of increasing the efficiency of public administration in the field of environmental development of the region (up to five answer options could be chosen) (Own elaboration).

Thus, it is possible to determine the ways to optimize public administration in the field of formation and implementation of the policy of ecological development of the regions according to the selected practice-oriented approaches:

- on the cluster approach:

1) the development of a regulatory framework for the creation and functioning of environmental clusters.
2) the information support for promoting clustering of regional development of Ukraine among economic entities, regional and local government bodies and environmental public organizations.
3) strengthening economic incentives for the development of environmental clusters:

on the program-target approach:

1) the inclusion and strengthening of the ecological block of programs and strategies for social and economic and sustainable (balanced) development of regions with a specific plan of action and measures and the definition of expected results and deadlines.

2) strengthening the functional powers of regional and local authorities in the field of environmental protection.

3) the involvement of all sectors of society (state and regional authorities, business structures, public organizations, scientific and educational institutions, community in general) in the development and implementation of comprehensive targeted programs for the ecological development of the region based on the principles of intersectoral social partnership.

on the project-oriented approach:

1) the introduction of project management tools into the environmental management system (project cycle management, project management of organizational development of state bodies and organizations, project office management).

2) the dissemination of benchmarking technology in the development of projects in the field of environmental protection.

3) the inclusion of tools and mechanisms of environmental marketing and marketing of sustainable (balanced) development of territories into the system of project-oriented management; 4) the development and implementation of investment projects for the development of a "green" economy.

On the management-oriented approach:

1) the introduction and strengthening at the regional level of environmental management tools (environmental audit, environmental monitoring, strategic environmental assessment, environmental certification, environmental labeling).

2) the legislative consolidation and regulation of economic mechanisms and tools for the implementation of regional environmental policy.

3) the introduction and dissemination of electronic environmental management tools.

Conclusions

Based on the results of theoretical and empirical analysis, we made the following conclusions.

1. The formation and implementation of environmental development policy can be carried out both in the context of traditional and well-established practice-oriented management approaches (target-oriented and project-oriented) and modern approaches based on the principles of sustainable development (cluster and management-oriented), and their complex application will contribute to the development of the region in social, economic and environmental aspects.
2. The most managerial and resource potential, according to the results of the expert survey, is possessed by target-oriented (as traditional, customary) and management-oriented approaches in managing the ecological development of the region.
3. Among the leading directions of optimization of public administration in the area of environmental development of the region, the following are identified: 1) the improvement of environmental legislation and regulatory policy in the area of allocation of budgetary financing for environmental protection in the regions; 2) the creating conditions for the development of regional environmental clusters and the introduction of a regional environmental management system; 3) the spread of state-private-public partnership in the management of the ecological development of the region.

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Informática Jurídica

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Implementation of the Function of Maximizing the Security Level in the Administration of Justice in the Digital Economy

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Abstract

The research analyses the implementation of the role of maximizing the level of security in the administration of justice in the context of the digital economy. Methodologically, the documentary observation research technique and, to process sources, sociological-dialectical analysis were used. Digitization as a transformational factor of many branches of social relations implies dependence on the implementation of a series of interdependent legal facts with digital technologies so that the action has a legal and concrete result. The digital level as a new platform for the implementation of a number of public functions posing new challenges for the public administration system and also determines the status of new functions that can provide a "digital future" with a positive development dynamic. Conclusion mode everything indicates that, these new functions can be austable in order to maximize security in the implementation of public functions in response to new threats. Particularly sensitive is the area of justice administration, which is also actively introducing many digital tools into the case-resolution process.

Keywords: public administration functions; uridic security; idigital information; digital means of trust; right to judicial protection.

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Implementación de la función de maximización del nivel de seguridad en la administración de justicia en el contexto de la economía digital

Resumen

La investigación analiza la implementación de la función de maximización del nivel de seguridad en la administración de justicia en el contexto de la economía digital. En lo metodológico se hizo uso de la técnica de investigacion de observacion documental y, para procesar las fuentes, del análisis sociológico-dialéctico. La digitalización como factor de transformación de muchas ramas de las relaciones sociales implica la dependencia de la implementación de una serie de hechos jurídicos interdependientes con las tecnologías digitales para que la acción emprendida tenga un resultado legal definido y concreto. El plano digital como nueva plataforma para la implementación de una serie de funciones públicas plantea nuevos desafíos para el sistema de administración pública y además determina el surgimiento de nuevas funciones que pueden brindar un "futuro digital" con una dinámica de desarrollo positiva. A modo de conclusión todo indica que, estas nuevas funciones pueden atribuirse al proposito de maximizar la seguridad en la implementación de funciones públicas como respuesta a nuevas amenazas. Particularmente sensible es el área de la administración de justicia, que también está introduciendo activamente muchas herramientas digitales nuevas en el proceso de consideración y resolución de casos.

Palabras clave: funciones de la administración pública; seguridad juridica; información digital; medio digital de confianza; derecho a la protección judicial.

Introduction

The administration of justice in the new digital realities necessitates the confidentiality of transmitted information and the protection of communication channels, which are becoming a key "digital" link that provides access to justice in a digital economy.

Currently, access to justice can be implemented (including in electronic form) through a symbiosis of platforms that provide a technological algorithm, having legal consequences related to the possibility of initiating a case and its further development in court. The implementation of this opportunity is associated with the general digitalization level and we understand that digital data is becoming a key factor in the development of

all sectors of public relations as the basis for the transformation of public administration.

As defined in clause 11 of the "Strategy for the Information Society Development in the Russian Federation for 2017–2030" (Decree of the President of the Russian Federation, 2017), the information and communication technologies have become part of modern management systems in all sectors of the economy, in the fields of public administration, national defense, state security and law enforcement. The key tasks are as follows:

- Application by the government bodies of new technologies to improve the quality of public administration.
- Creation of management systems based on information and communication technologies in all fields of public life.
- Use of e-government infrastructure for the provision of public, as well as commercial and non-commercial services demanded by citizens.

1. Methods

The methodological basis of the study was formed by the general provisions of the procedural sciences: constitutional law, civil procedural law, administrative procedural law, and criminal procedural law. In the study, the following methods of scientific knowledge were used: interdisciplinary, dialectical, sociological method.

2. Results and Discussion

By consolidating the transformation of the public administration model associated with the use of new information and communication technologies, we become dependent on the technological factor and faced with new tasks, which also transform the functions of public administration. Revealing the functions of public administration, the domestic legal doctrine includes the following: 1) collection and processing of social information; 2) forecasting (that is, scientific prediction of changes in the development of any phenomena or processes based on objective data and scientific achievements); 3) planning (that is, determination of areas, goals of management activities and ways, means of achieving these goals); 4) organization (that is, formation of a management system, streamlining

of managerial relations between the subject and the object, determination of rights and obligations, personnel selection and placement, etc.); 5) regulation or management (that is, establishing a regime of activities to achieve management goals and objectives, regulating the behavior of managed objects, giving directives, etc.); 6) coordination and interaction carried out to achieve common management goals; 7) control and accounting, consisting in establishing whether or not the actual state of the control object corresponds to a given one (Mironov, 2012). The same approach can be found in foreign doctrine (Borodin, 2014).

However, the new "urgent realities" and the digitalization of all sectors of public relations become a prerequisite for the formation of new tasks of public administration, not only on the scale of our state, but it is also becoming a new global trend. As M. Kemal Öktem notes, automation of government-population interaction, the interaction based on nanosecond time intervals, implies innovation in itself. The introduction of innovations using e-government also implies the existence of such a function as protection of confidentiality, information security and electronic transactions, access to online materials, hardware and software, as well as effective technical support (Kemal, 2010). All this testifies to the emergence of new "digital" governmental functions at the present stage of state development, which include maximizing the security level of working with digital data and providing access to it.

The introduction of information and communication technologies in the activities of law enforcement agencies as one of the manifestations of digital transformation of the public administration system requires special control in ensuring the preservation of digital data and the uninterrupted operation of systems that can guarantee data security when exercising the constitutional right to judicial protection. The introduction of digital technology in the administration of justice is primarily intended to simplify access to justice.

As Urszula Nowicka notes in the context of considering the use of electronic communications in the functioning of government bodies, the electronic applications and the electronic deliveries serve to facilitate, streamline and speed up communication procedures between a citizen and government bodies, as well as to reduce their number. Nevertheless, many provisions remain underdeveloped (Urszula Nowicka Electroniccommunication in the functioning of public administration, 2019). In our opinion, the number of such problems should include the implementation of the security level maximization in the administration of justice in the digital economy.

The security level maximization in the administration of justice has always been present as a function, since the state monopoly on resolving conflict situations requires a special approach to resolving disputes at any time requiring prompt external intervention. According to H.H.A Cooper,

justice should be administered in a safe environment, as the judiciary and its personal security appear to be at the top of the defense problem. The author emphasizes the need for appropriate specialized training in security issues at all levels (Cooper, 2006). Given the digitalization level, this function should now extend to the virtual plane, which requires close attention within the framework of e-justice at all stages of the case.

The current Russian procedural legislation establishes the possibility of initiating proceedings in court and further influence on the development of procedural relations within the framework of court proceedings on the basis of written appeals drawn up in electronic form by creating an electronic document or an electronic image of a document (P. 1 of Art. 3 of the Civil Procedure Code of the Russian Federation) (Civil Procedure Code of the Russian Federation 1992, 2002); P. 2 of Art. 45 of the Administrative Procedure Code of the Russian Federation (Administrative Procedure Code of the Russian Federation, 2015); P. 1 of Art. 1 of the Criminal Procedure Code of the Russian Federation (Criminal Procedure Code of the Russian Federation dated December 18, 2001).

This procedural opportunity, which involves maximizing the security function in the digital plane, allows talking about digital environment of trust in the procedural relations (Valeev and Nuriev, 2019; Nuriev and Khodzhiev, 2015; Nuriev, 2018). The indicated algorithm is achieved due to the symbiosis of two technological platforms designed to ensure safety in the administration of justice on a digital plane and to disseminate the strict procedural form guaranteed by law for the procedural relations implemented in digital form, and thereby ensuring the implementation of the constitutional right to judicial protection regardless of the data transfer method in relations where one of the mandatory parties is the court:

- "Justice" (electronic court filing system).
- Unified Identification and Authentication System.

In accordance with clause 2.1 of the Order of the Judicial Department at the Supreme Court of the Russian Federation (Order of the Judicial Department under the Supreme Court of the Russian Federation No. 52, 2014), "Justice" is the state automated system of the Russian Federation, which is a geographically distributed automated information system designed to form a single information space of federal courts of general jurisdiction, judicial bodies, as well as bodies of the judicial department system. The Internet portal is located at: https://sudrf.ru/.

The automation objects of "Justice" include (clause 2.3.): SCRF - supreme courts of the republics, regional courts, courts of federal cities, courts of the autonomous regions and autonomous okrugs; DMC - district (naval) military courts; DC - district (city) courts; GMC- garrison military courts; CJ - Council of Judges of the Russian Federation; HQCJ - Higher

Qualification Collegium of Judges of the Russian Federation; HEC - Higher Examination Commission for Admission of the Qualification Exam to the Position of Judge; Judicial Department - Judicial Department under the Supreme Court of the Russian Federation; RBJD - regional bodies of the Judicial Department (branches (offices) of the Judicial Department in the constituent entities of the Russian Federation); FSBI IAC (Federal State Budgetary Institution "Information and Analytical Support Center") of the Judicial Department, its branches.

This automated system, which covers (in addition to the above) information and technical support for the administration of justice in the system of arbitration courts and peace justices, is designed to ensure the security of digital data in the procedural field. As part of the backbone equipment, "Justice" complex of automation tools also includes: server and active network equipment, equipment of the subsystems "Information Security", "Video Conferencing", "Communication and Data Transfer", "Judicial Clerical Work and Statistics", "Collective Information Display Use", including: servers, firewalls, audio recording and audio-video recording complexes of court hearings, witness concealment complexes, information kiosks, video conferencing facilities, switches and routers. At the same time, the general software used is a combination of proprietary software tools creating a software environment that ensures the functioning and information security of "Justice".

Accordingly, the participants in the controversial procedural relationship and the court considering the case creates a digital environment of trust that allows developing procedural relations on a digital plane due to "Justice" platform, designed to maximize the security function in the administration of justice. As expressly stated in the Order of the Judicial Department at the Supreme Court of the Russian Federation No. 251 dated 27.12.2016 (Order of the Judicial Department at the Supreme Court of the Russian Federation No. 251, 2016), the personal account that the parties to the trial use as a tool affecting the development of procedural relations in the digital space is an information resource posted on the court's official website of the "Justice" state automated system (www.sudrf.ru) in the information and telecommunication network "Internet", intended for the implementation of the right to submit documents in electronic form to the court by the trial participants.

"Justice" platform can be accessed by users due to the Unified Identification and Authentication System (UIAS). In accordance with Art. 2 of the Federal Law No. 149 (Federal Law No. 149-FZ "On Information, Information Technologies and Information Protection", 2006), UIAS is a federal state information system, which is operated under the procedure specified by the Government of the Russian Federation and which ensures, in cases stipulated by the legislation of the Russian Federation, authorized access to information contained in the information systems.

In accordance with the Resolution of the Government of the Russian Federation (Resolution of the Government of the Russian Federation No. 977, 2011), the federal state information system called "unified identification and authentication system in the infrastructure, providing information and technological interaction of information systems used to provide state and municipal services in electronic form" (hereinafter - the Unified Identification and Authentication System) should provide authorized access to the information interaction participants in a single identification and authentication system (hereinafter - the information interaction participants) to the information contained in the state information systems, municipal information systems and other information systems (Valeev *et al., 2018; Zuev et al., 2017).*

Conclusions

The introduction of information and communication technologies in the activities of law enforcement agencies as one of the manifestations of digital transformation of the public administration system requires special control in ensuring the preservation of digital data and the uninterrupted operation of systems that can guarantee data security when exercising the constitutional right to judicial protection. Maximizing the security function in the digital plane allows talking about a digital environment of trust in the procedural relations.

The indicated algorithm is achieved due to the symbiosis of two technological platforms ("Justice"; UIAS) designed to ensure safety in the administration of justice on a digital plane and to disseminate the strict procedural form guaranteed by law for the procedural relations implemented in digital form, and thereby ensuring the implementation of the constitutional right to judicial protection regardless of the data transfer method in relations where one of the mandatory parties is the court.

In relation to the administration of justice, the authorized secure access that provides information and technological interaction of information systems used in the administration of justice is carried out through the interaction of "Justice" and UIAS systems, since UIAS provides access to a personal account necessary for working on "Justice" platform using a verified individual account of UIAS. Accordingly, the interaction of these technological platforms makes it possible to maximize the security function in the administration of justice in a digital economy.

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Digital Objects: The Legal Peculiarities, the Role and Prospects of Use

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Abstract

Digital assets are increasingly used in civil invoicing, which requires the development and unification of legal standards in the field of the creation and use of digital assets. The main objective of this study is to define digital assets as a legal category and precisely characteristics for the digital objects of other civil objects according to identifications. Methods of analysis of legal standards, collection and study of individual facts, statistical methods, scientific abstraction methods and methods of representation of the archives were used. The study that digital objects are an independent legal category, which is an intangible digital asset that can only be created with the help of modern technologies, my that ownership of digital objects arises from the moment of verification with a verification with a code and the realization of a digital input. in a special transaction log. For the right of inheritance of digital objects, it is necessary to implement a verification of holder verification and identification of digital objects during their creation and disposal.

Keywords: digital objects; smart contract; blockchain technology; digital resources; Digital.

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Objetos digitales: peculiaridades legales y las perspectivas de uso

Resumen

Los activos digitales se utilizan cada vez más en la facturación civil, lo que requiere el desarrollo y unificación de normas legales en el campo de la creación y uso de activos digitales. El objetivo principal de este estudio es definir los activos digitales como una categoría legal y también precisar sus características para distinguir los objetos digitales de otros objetos civiles según las características identificadas. Se utilizaron los métodos de análisis de las normas legales, recopilación y estudio de hechos individuales, métodos de estadística, métodos de abstracción científica y métodos predictivos. El estudio concluyó que los objetos digitales son una categoría legal independiente, que es un activo digital intangible que solo se puede crear con la ayuda de tecnologías modernas, mientras que la propiedad de los objetos digitales surge desde el momento de la verificación con un código y la realización de una entrada digital. en un registro especial de transacciones. Para ejercer el derecho de herencia de los objetos digitales, es necesario poner en práctica un procedimiento obligatorio de verificación del titular e identificación de los objetos digitales durante su creación y enajenación.

Palabras clave: digital objects; smart contract; blockchain technology; digital resources; digital environment.

Introduction

The development of modern telecommunication systems entailed the creation of qualitatively new objects of civil and commercial turnover, which are digital objects, the existence of which became possible in the cyber-physical space thanks to the Internet (Clinton *et al.,* 2010). The main feature that distinguishes digital objects from civil law objects is their intangible form, while they exist in the digital environment, and there is no need to materialize them. It is more customary to use in civil circulation property objects, such as movable and immovable things, while some questions from experts were raised by the introduction of objects into the legal field, the materialization of which is conditional, for example, electricity or gas. The introduction of telecommunication technologies made it possible to digitize familiar material objects, such as works of science and art or money and securities; the legislative regulation of these objects was carried out by analogy with the material objects of civil law (Mckinnon, 2011). Legal regulation of digital objects is undergoing a stage of formation; at this stage

the creation of legislative norms and rules that can regulate the circulation of fundamentally new objects of law becomes relevant.

It is advisable to single out digital assets in a separate independent category, since this will allow participants in civil legal relations to dispose of digital assets: to acquire and alienate, as well as inherit them. It should be borne in mind that the turnover of digital objects occurs without the participation of intermediaries in the person of banks and other legal entities.

The legal regulation of the circulation of digital objects has many shortcomings, since the rapid development of telecommunication systems constantly contributes to the creation of new digital objects, which include not only cryptocurrency, tokens, smart contracts, but also the creation of artificial intelligence.

One of the important problems that need to be addressed is the identification of the main features of digital objects, which will allow them to be differentiated from other objects of civil circulation. It is relevant to develop a classification of digital objects, to determine their role and significance, to highlight the legal features of digital objects, since those legislative norms that regulate the sphere of material objects since the times of the Roman Empire have not been applicable to the sphere of regulation of digital assets.

The main purpose of this study is to define digital assets as a legal category and differentiate digital objects from other civilian objects according to the identified features.

Many scholars have researched the topic of digital assets. Claire Sullivan (2018) analysed digital identity changing from an emerging legal concept to a new reality; Corbet *et al* (2019) dedicated their work to the study of cryptocurrency as a financial asset; Agustí Cerrillo-i-Martínez (2018) examined the features of digital asset inheritance; Thomas Neubig and Sacha Wunsch-Vincent (2018) investigated the cross-border tax regime for digital assets; Tobias Blanke (2014) wrote about digital assets and their legal status; Laura McKinnon (2011) dedicated her work to the planning of the digital asset succession. Many other experts were engaged in the development of this topic, but these studies did not offer definitions of a "digital object" and did not provide signs by which it would be possible to distinguish digital objects from material objects and from digitalized objects. Classifications of digital objects were not presented; also there have not been offered methods of recovering a "technically lost" digital asset. The researchers also did not define the basic rules, thanks to which it is possible to guarantee the rights of heirs to digital objects in the absence of wills.

1. Methods

The object of the research is the legal status of digital assets. The research used the following methods: collection and study of singularities; analysis of legal norms; methods of statistics and scientific abstraction; methods of recognising lawful relations.

System analysis made it possible to truly reflect the legal characteristics and capabilities of digital assets as a legal category in civil law. Using a comparative analysis, the following types of digital assets have been identified: cryptocurrencies, shares, bonds, shares in the authorized capital of corporations; tokens; objects of intellectual property, photos, smart contracts, personal data, and bonus points.

The method of concreteness made it possible to take into account all the conditions for the use of digital assets in civil relations.

Deduction and induction made it possible to consider the object of research from various angles and to reveal the various properties of digital assets and their use in modern realities.

Thanks to the pluralistic approach to the knowledge of the legal status of digital asset, the most optimal system of knowledge was created, which reflects objective data about the importance and possibility of using «digital asset» as evidence in court.

At the stage of collection and study of individual facts, methods of interpretation of law were used, with the help of which the legal nature and main characteristics of digital asset were clarified.

The prognostic method made it possible to make scientifically based forecasts on the application of certain requirements to digital asset and to develop recommendations for law enforcement practice. We also used logical-semantic analysis in conjunction with the above methods, which allowed us to consider in detail the features of digital asset.

2. Results and Discussion

The definition of “digital object” is controversial among experts (Ruan, 2019); the formation of this definition is based on the selection of the main features of these objects, which should include the following:

- Binary form of existence.
- Potential cost.

The turnover of digital objects has many advantages over transactions with material objects (Blanke, 2014). Let us highlight the main features of the use of modern technologies, with the help of which the circulation of digital objects became possible: 1) when using the Internet network, agreements are concluded via e-mail and are certified by digital signatures, which significantly reduces the time for concluding a transaction; 2) online transactions are often anonymous; this fact can cause problems in practice when identifying the parties to the agreement; 3) there is no state control over the disposal of digital objects; intermediaries do not participate in online transactions using digital objects.

The main technology that allows us to realize all the benefits of digital assets was developed in 2008 and is called a distributed ledger or blockchain (Khanboubi *et al.,* 2019). The essence of the distributed ledger technology is to create a chain of transaction blocks that have a certain sequence and are bonded to each other; the emergence and use of this technology has led to the emergence of a completely new category of civil law, i.e. digital objects. In a distributed ledger, blocks of transactions are sequentially bonded, which excludes hacker attacks, in addition, all transactions must be confirmed by each participant (Van Dijck, 2019).

A distributed ledger of digital transactions or blockchain technology is a unified system of conducted transactions, which are created and constantly updated within specified algorithms. Updates are displayed at all parties to transactions; they are identical and have a high degree of protection against any external influences.

Distributed ledger technologies have provided ample opportunities for use in various fields. Due to the high degree of protection, they are used in the creation of any registers and electronic databases; this concerns the registration of real estate, patenting of intellectual property; information is also increasingly stored using blockchain technology in the registration of acts of civil status. This is not a complete list of distributed ledger technologies; this technology is at the testing stage in many areas.

Highlighting the characteristic features of the distributed ledger technology, it should be noted that all the details of conducted and ongoing transactions are displayed for each participant; therefore each created block is repeatedly duplicated, which significantly increases the reliability of transactions. These operations can be compared with an electronic document flow, in which all documentation is signed with an enhanced qualified digital signature that cannot be forged (De Pamphilis, 2019).

As noted earlier, the creation of blockchain technology has contributed to the creation of a new legal category: digital objects and digital assets.

The distributed ledger technology contains data on the creation and movement of information; by the example of creating a cryptocurrency,

one can observe the movement of created bitcoins, litcoins or any other digital currency. When conducting transactions using distributed ledger technologies, the participation of any intermediaries is excluded; this fact is important, since it was of decisive importance when circulating cryptocurrency. A high degree of technological protection of transactions in the chain of operations carried out attracts potential participants; it serves as an iron-clad guarantee of the protection of transactions and the legal regulation of these transactions is minimal. It can be noted that it is of a technical and not civil nature.

Characterizing the essence of blockchain technology as an object of civil rights, it is possible to determine the mechanism for securing rights to digital assets:

1) A transaction is a digital encoding that contains information about the created digital object.

2) The digital coding characterizing the created digital object exists only on technical media and it cannot exist outside of them.

3) The coding of transactions is formed automatically without the participation of intermediaries according to a predetermined mathematical algorithm; any created digital object cannot exist outside of technology and this fact confirms the high degree of protection of transactions and the impossibility of falsifying them.

Assets are usually understood as the totality of property and monetary means belonging to individuals and legal entities (an enterprise, a firm, a company); they should include real estate in the form of buildings, structures, land plots, as well as stocks, bonds, shares, shares in funds, any valuable papers and all intellectual rights to the trade name, mark, and other signs (Neubig and Wunsch-Vincent, 2018). Digital assets in the broadest sense are information with value expressed in digital format, which can be alienated and valued in monetary terms.

The main characteristic feature of digital assets is the possibility of their existence exclusively in digital form; these objects do not need to materialize; they exist in the form of a digital code that contains all information about the created digital object, which from the moment of its creation is an independent object of law, has a value, and participates in civil circulation. Experts emphasize that digital objects, which are encoded information, have not been sufficiently researched for civil law; in practice, questions may arise about the rights of creators of digital assets and the protection of these rights by legislators (Corbet et al., 2019).

For several years, the created digital objects were considered as a digital algorithm, as encrypted information, and only very recently they began to refer to transactions in the distributed ledger as newly created objects of

law. The position of experts has changed due to the fact that newly created digital assets are increasingly becoming independent objects of agreements and transactions. They are alienable; they can be sold, donated, inherited. So, a cryptocurrency, which is a virtual currency, can become a means of calculation, become part of an inheritance, be invested in stocks, bonds, futures; digital works can be profitable for owners and inherited by potential heirs; digital objects are any electronic registries that also create certain rights and obligations for their owners.

Therefore, it is justified to talk about the emergence in the civil circulation of a new object of law, i.e. a digital object, which needs a comprehensive study in order to create a categorical apparatus and develop a mechanism for legal regulation of legal relations in the field of circulation of digital objects.

Researchers drew attention to this problem and, in particular, they proposed definitions of digital financial assets, by which it is proposed to understand digital property created using cryptography. However, it should be noted that this definition applies only to financial assets expressed in digital format, and the definition of digital objects needs further legal detail (Vijayakumar, 2020).

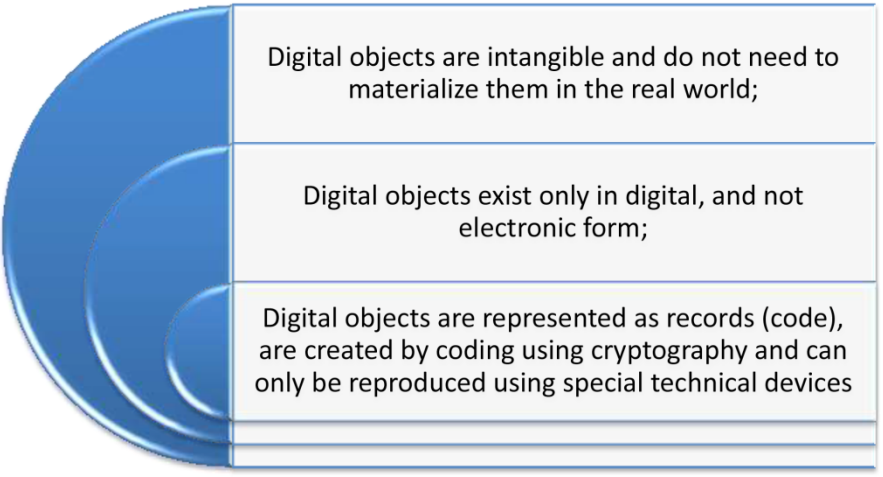
3. Summary

In order to determine the legal status of digital objects, it is necessary to highlight their main characteristic features:

1. Creation, ownership and alienation of digital assets are possible only in the digital environment, which is provided by the Internet. Copies of conducted transactions are duplicated for each participant in the transaction, which ensures high protection of the transactions (Kutay, 2014).

The table below presents the peculiarities and characteristic features of digital objects (Table 1. Characteristic features of digital objects):

Table 1. Characteristic features of digital objects



Own elaboration based on the nature of the subject.

Transactions with digital objects are possible in any country, state, city, and region; transactions can be carried out regardless of the specific place of residence of the counterparty making the transaction and therefore all transactions with digital objects are based on the principles of extraterritoriality. However, each specific state has its own legal regime that regulates the civil circulation of digital objects; therefore, the norms of civil law in this area need unification and the development of an extraterritorial legal mechanism for interaction between participants in transactions if the counterparties are located in different countries, or on different continents (Hallahan, 2004). The regulatory function of conducting transactions with digital objects is technological in nature and is least subject to legal regulation.

2. Transactions in the blockchain system are carried out without the participation of intermediaries and third parties, therefore only the person making the transaction can determine the legal fate of digital assets: only its will is required for this. Some experts note that it is possible to speak of providers as a third party to transactions in a distributed ledger (Sullivan, 2018). It is difficult to agree with this position, since the persons confirming the validity of completed transactions, or validators, work only with financial assets in the stock markets, and digital objects are represented by a wider range of products. Nevertheless, the functions of validators should be entrusted to government bodies, which should develop fiscal rules in this area in order to obtain taxes and establish control over this type of activity (Corbet *et al.,* 2020).

Decentralized management of transactions using distributed ledger technologies, on the contrary, is out of the control of the state and banks. For example, the Ethereum project was created, which is a completely decentralized platform that operates on the basis of an algorithm, is controlled by type of smart contracts and allows automatic transactions for any possible operations (Cerrillo-I-Martínez, 2018).

3. Transactions with digital objects are confidential, only the transaction participant can disclose information about the details and conditions of the transaction to third parties. New transactions are reflected on all computers of the participants in the legal relationship; in cases where new counterparties perform transactions, they receive information in the form of digital prints about all completed transactions. It is impossible to identify the participants who made transactions in the distributed ledger (Poletykin and Promyslov, 2013).

It should be noted that the parties involved in the transaction receive information about the digital asset, that is, the object of the transaction, but not about the participants who made the transactions; the owners of the assets remain anonymous.

Compliance with the confidentiality of transactions is ensured by opening a special account in which the owner's digital assets are displayed; account data are also called digital wallets. Accounts and wallets are tied to specific IP addresses of certain computers (Jerome Orji, 2019), but IP addresses can be used by several persons and therefore they are not can serve as identifiers. In order to ensure continuity and guarantee the rights of heirs, any digital object must be identified and its owner must be determined, if necessary. Therefore, in practice, the owner must undergo mandatory identification procedures upon the formation or alienation of a digital object, a mandatory verification and identification procedure should be provided, for example, in order to open a personal digital account or wallet, which will receive digital assets.

Owners of digital assets should be aware that if they lose passwords and logins to a digital account or wallet, they lose their digital funds. In such cases, government agencies cannot control digital assets; we can say that they drop out of civil circulation. It is not possible to recover lost passwords: this task is unsolvable even from a technical point of view.

4. It is necessary to single out smart contracts, which are performed using distributed ledger technologies, in a separate category of digital objects of law. Smart contracts allow us to control the execution of all the terms of concluded contracts, for example, a residential lease agreement: if it is concluded under a smart contract, it can only be executed if the transaction is paid on time; the tenant will receive the keys from premises as soon as digital funds are transferred to the lessor's account (Kirillova *et al.,* 2019).

In this case, an analogy can be drawn with the acquisition of a debtor's enterprise, or a property complex intended for entrepreneurial activity (in fact, the debtor's business), including all related obligations.

5. Digital assets are a separate legal category and differ from uncertified securities, which can be presented in electronic form. In civil law, uncertified securities and non-cash funds are recognized as things.

6. The development of technologies has made it possible to introduce a completely new category into civilian circulation, namely, digital objects that exist in cyber-physical space, while they can be used by interested parties, as well as ordinary material objects or intellectual property objects. Today, digital assets are used by people to invest, and smart contracts are used to control the execution of agreements. Thus, digital objects are firmly embedded in our daily life and dictate the rules by which it is possible to own, use and alienate them.

7. The problematic issue of the digital object circulation is the guarantee of the legal rights of the participants in transactions, since the regulatory function of the authorities in these legal relations plays a conditional role. All the efforts of experts and legislators at this stage of the development of digital legal relations are aimed at the possibility of identifying participants in transactions, which will allow the use of fiscal policy and control the terms of execution of transactions (Banta, 2017).

The use of distributed ledger technologies, which contributed to the creation of digital objects, and also involvement of those technologies in civil circulation require a reassessment of the triad consisting of ownership, use and disposal rights, which applies to material objects of law and intellectual property. For example, when selling a real estate object using blockchain technology, a structure can be created in which ownership of real estate will be transferred to another owner who will pay for the purchase with digital assets, but the status of the new owner will not be displayed in the state register of real estate.

The issue of password recovery from digital wallets and electronic digital accounts in case of their loss by owners requires a solution. If we assume that passwords can be deposited with third parties, then the entire blockchain technology becomes vulnerable, and risks of misappropriation of digital assets may arise (Brainard, 2018). At the legislative level, it is possible to propose the regulation of the password recovery procedure by analogy with the recovery of rights for lost securities using a call-out procedure, but for this it is necessary to duplicate all passwords, archive and store them on servers, which also creates the risk of fraudulent activities in order to acquire confidential information.

Conclusions

Digital objects are an independent legal category, which is an intangible digital asset that can be created only with the help of modern technologies, while the ownership of digital objects arises from the moment of verification with a code and making a digital entry in a special register of transactions. To exercise the right of inheritance of digital objects, it is necessary to introduce into practice a mandatory procedure for verifying the owner and identifying digital objects during their creation and alienation.

The study highlights the main features of digital objects:

1. Transactions with digital assets are only possible using telecommunication technologies.
2. Transactions in the distributed ledger are carried out without third parties and any intermediaries.
3. The transaction with digital assets is confidential.
4. There are no legal guarantees in terms of continuity, inheritance of digital objects, due to the lack of identification of the owner.

A digital object is an information resource in the sense that digital value information has such basic properties of an information resource as:

a) Information is structured according to certain parameters and categories;

b) Information is recorded on a digital carrier;

c) Information can be stored, transmitted, exchanged, and used.

In order to regulate the civil turnover of digital objects, it is advisable to introduce the category of digital objects into the legal field, which will allow to develop a legal mechanism for making transactions with new categories of objects that can be alienated, that is, donated, inherited, sold; any transactions can be made with digital objects and therefore, the development of fiscal mechanisms for regulating legal relations in the sphere of digital assets turnover seems to be the most urgent. States need to develop principles for taxing digital assets, non-discriminatory access to them, and principles for international trade in digital assets.

Further research on the topic should consider the possibility of using digital assets in contract law, the status of digital assets as absolute evidence in court, as well as the legislative regulation of the legal status of digital assets at the international level.

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Distance and Online Learning Solutions in the Context of Modern Legal Educational Policy

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Abstract

The objective of this article is the best strategies and models of distance and online education to universities in the context of modern legal education policy, tempting its effectiveness. The methodological framework of this research is based on the comparative anective of distance and online education best practices offered by some universities around the world. A full study of the technical, pedagogical and managements issus of distance education has also been provided. Based on an empirical approach, testing, evaluation and control of usability, accessibility, file and security of some techniques, and related resources have been carried out. An experimental study has also been conducted with the aim of obtaining, comparing and using certain relevant data on the attitudes, priorities and learning outcomes of law students in a traditional versus distance learning environment. The main result of the study is the design of a model of mass, open and lively distance learning and teaching that enhances the quality of university education in general and the training of law students in particular.

Keywords: law students; legal education policy; distance learning and online; COVID-19 pandemic; learning solutions.

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Soluciones de aprendizaje a distancia y en línea en el contexto de la política educativa jurídica moderna

Resumen

El objetivo de este artículo es analizar las mejores estrategias y modelos de educación a distancia y en línea aplicables a las universidades rusas en el contexto de la política educativa legal moderna, considerando su efectividad. El marco metodológico de esta investigación se basa en el análisis comparativo de las mejores prácticas de educación a distancia y en línea que ofrecen algunas universidades del mundo. También se ha proporcionado un estudio completo de las cuestiones técnicas, pedagógicas y de gestión de la educación a distancia. Con base en un enfoque empírico, se han realizado pruebas, evaluación y control de usabilidad, accesibilidad, disponibilidad y seguridad de algunas técnicas, herramientas y recursos relacionados. También se ha realizado un estudio experimental con el objetivo de obtener, comparar y emplear ciertos datos relevantes sobre las actitudes, prioridades y resultados del aprendizaje de los estudiantes de derecho en un entorno de aprendizaje tradicional versus a distancia. El principal resultado del estudio es el diseño de un modelo de enseñanza y aprendizaje a distancia masivo, abierto y vivencial que potencia la calidad de la educación universitaria en general y de la formación de los estudiantes de derecho en particular.

Palabras clave: estudiantes de derecho; política educativa legal; aprendizaje a distancia y en línea; pandemia COVID-19; soluciones de aprendizaje.

Introduction

Both national legislation on education and the state policy on education depend on many external and internal socio-economic factors and with time tend to undergo tremendous changes. These alterations correlate with various global and internal processes and trends that influence at large the state and society, labor markets and educational institutions. These shifts further contextually impose high burden of requirements on the system of education (Shkatulla, 2007). The information revolution, which began in the last decades of the 20th century, contributed to the development of the so-called information society, in which the significant part of activities of people began to largely depend on their awareness and ability to effectively receive, extract, process, apply and exchange information using tech-mediated communication means (Crawford, 1983).

The rapid growth in telecommunications, availability of the broadband Internet, ubiquitous access to quick and user-friendly gadgets and electronics spawned a public request to completely reform higher education in Russia so as to improve its quality and meet the requirements and needs of the new digitizing world with its innovative global economy, competitive markets and multicultural diversity (Ainoutdinova *et al.,* 2017).

The provisions of the Federal Educational Standards and the Federal Law "On education" No. 273 legitimized distance and e-learning methods and technologies, which expanded the capacity of universities to create and implement their educational programs of different level of complexity with various majors both independently and via digital networks. The project "Modern Digital Educational Environment of the Russian Federation", which is being successfully implemented in our country now involves creation of conditions for improving the quality of education and bringing educational programs of universities into line with the needs of the digital economy. The new cohort of university law students known as Generation Z also cause their teachers to entirely alter their concepts and methods of teaching and instructing (Ainoutdinova *et al.,* 2017).

The recent spread of the COVID-19 turned to be a strong stress test for education systems throughout the globe though, with an increasing number of countries closing their institutions of learning as a response to the pandemic. In order to keep the doors of learning open there were large-scale efforts on the part of the governments, authorities, educational institutions and all participants of educational process to utilize technology in support of remote modes of teaching and learning. Appropriate organization of distance and online education were the key answers to most of the emerging challenges. No wonder, that education has changed dramatically, with the distinctive rise of e-learning, whereby teaching was undertaken remotely on digital platforms like Microsoft Teams, Zoom, etc (International the news, 2020). In these unprecedented times, many international organizations along with policymakers, university administrators and teachers assisted students with a variety of open educational resources and tools (Li and Lalani, 2020).

Although even before COVID-19 there was already a high increase in the interest of some Russian educators and teachers in various electronic forms of teaching and learning, we can assume that COVID-19, oddly enough, gave impetus to the popularization and practical use of distance and online education in Russia. Thus, to ensure the succession and continuity of educational policy and training activities of future lawyers, a wide arsenal of modern teaching/ learning materials and Internet resources was used at Kazan University. In particular, during the period of quarantine or "self-isolation" law students continued their full-fledged training, but in a remote format. This happened both in synchronous mode (through online training

with a mandatory Internet connection on the Teams and Zoom platforms), and through asynchronous network interaction via LMS Moodle, blogs, chats, forums, electronic resources hosted on external educational sites, etc. This made it possible to implement online learning into the educational process and make it an integral part.

At the same time, many contradictions of psychological, pedagogical, methodological and technological nature were revealed that require deep analysis and study. With this sudden and forced transition to remote mode of learning, most educators and teachers are wondering whether distance and online learning will continue to persist in post-pandemic conditions, and how such a shift would affect the educational market, educational services and educational opportunities at large (Li and Lalani, 2020). In order to answer the questions we have to analyze the existing experience and practice, identify possible obstacles and find solutions for the effective implementation of distance and online learning into the curricula for training future lawyers after the COVID-19 pandemic. This approach supports the demand of the Russian society for the training of highly qualified legal personnel for the digital economy, and also meets the expectations and evolving learning styles of modern students related to "digital generation Z" (Villa and Dorsey, 2017).

1. Methods

The methodological framework of this research work rests on a set of social, pedagogical, integrative, competence and comparative approaches covering all aspects of both teachers' and students' academic activities enhanced by the needs and challenges of the digital era (Shkatulla, 2007; Ainoutdinova *et al.,* 2017). A comprehensive analysis of technical, pedagogical, and managerial issues of distance education as an efficient online form of study at university has been provided (Ainoutdinova et al., 2019). The need to study the best international practices of distance and online learning has been caused by the aim to analyze and identify the applicable modes and models capable to serve as a source of innovation and reform of university education in Russia including law students` training.

Our study has been supported by deep analysis and synthesis of the best scientific findings on the topic presented by the prominent Western and Asian scholars (K. Aoki, D. Keegan, F.B. King, L.C. Ragan, N. Sampson, M. Warschauer, etc.) (Aoki, 2010; Keegan, 1996; King *et al.,* 2001; Ragan, 2012; Sampson, 2003; Warschauer, 2007).

Based on the empirical approach testing, evaluation and control of usability, accessibility, availability and safety of some digital distance and

online learning technologies, methods, techniques, tools and resources have also been performed. An experimental study has also been conducted to obtain and compare certain relevant data concerning the learning outcomes of university students in a traditional versus online (distance) learning environment.

The process involved more than 300 law students who were temporarily placed into separate learning environments, i.e. conventional or traditional (face-to-face) and online (at a distance). We took into account the latest US national research statistics and findings on Generation Z published by the Center for Generational Kinetics based in Austin (Texas, USA) (Villa and Dorsey, 2017). First, we analyzed the general and most defining characteristics of the Gen Z students; and then their preferred learning styles and modes. In the end, we examined with due diligence the applicable teaching and learning methods and techniques, which will simultaneously address academic and social skills of Gen Z law students as well as support their "digital" learning expectations and needs.

We also interviewed law teachers working at Kazan University in order to identify their attitudes and readiness to online teaching. The total number of teachers surveyed was more than 30, aged from 25 to 60 years. The survey was conducted by distributing individual questionnaires issued to each participant. The event was held after the teachers` working hours, all of them having been previously instructed on the rules and goals of the survey. Participation in the study was voluntary and confidential. This survey does not pretend to show any in-deep scientific data; rather, it was an attempt to collect primary information to confirm our hypotheses that the higher the teacher's ICT-competency and ICT-literacy are, the better and more effective online training will be as well as the final students` learning outcomes.

The data-driven analysis of the survey results showed that participants (32 law teachers) could be divided into three groups as follows: (1) those who fully support integration of online learning into educational settings and possess positive attitudes toward ICT (42%); (2) those who oppose online forms of teaching and show negative attitudes toward ICT (34%); (3) those who generally possess positive attitudes towards ICT, use computers and the Internet in everyday life but feel scared when it comes to ICT integration into educational process due to various reasons (24%). The results also showed that at least four factors – confidence, ICT knowledge (including ICT-competency and literacy), gender and age – should be taken into account when measuring teachers' attitudes toward digital technologies and when grading their readiness to online practices (Kale and Goh, 2014).

2. Results and Discussion

The main result of the study is the design and implementation of the model of an efficient and effective student-centered digital learning environment of university that involves distance or online education programs and enhances the quality of education in general and professional (experiential) training of future lawyers in particular.

In our vision, university environment should be a multilingual educational space based on inclusion of the native language and one or more foreign languages being taught to students (English, German, French, or Spanish). Such space shall functions in the interconnection and complementarities of all its components that are traditionally integrated into educational process of university (Brown & Lippincott, 2003). The learning environment should also be organized in accordance with the changing learning needs and styles of the "Gen Z" students, their preferences, and capabilities (Villa and Dorsey, 2017).

The learning environment should thus be organized with a due ICT-based or digital support where educational tools and resources might function as adaptive, familiar, and comfortable instrumental facilitators and drivers of the learning process. The digital environment of university, supported by direct quick access to computers and the broadband Internet, should include the well-structured university's website, educational portal for electronic and distance learning offering inter alia access to massive open online courses (MOOCs), information-sharing crowdsourcing communities, networking virtual platforms, digital libraries, etc (Jansen and Van Der Merwe, 2015).

Classrooms and lecture rooms should be equipped with all sorts of digital devices and multimedia equipment, adapted for work with external, remote, and internal free easily accessible digital educational resources (Brown and Lippincott, 2003). Moreover, universities shall not fear to integrate their institutions with the communities in which they exist and operate. Culture of sharing ideas for enhancements in educational context is receiving the increasing support today. The reason is obvious: distance education initiatives give universities better chances to hear from students, faculties and community members about their current advances and drawbacks (Stepanenko *et al.,* 2019). Distance education ideas help universities remain competitive, build their reputation, enroll more students that are new, etc. Besides, being receptive to ideas and change makes universities much more attractive to prospective students.

To clarify the conceptual apparatus and eliminate the evident lack of a precise vocabulary in the field, we analyzed various viewpoints and came to conclusion that meaning of the terms "distance learning", "distance

education", "e-learning", "online learning", etc. is almost the same and may in some cases be used interchangeably. Given that, all terms imply learning outside the classroom and out of direct contact with teachers or instructors, which requires greater self-discipline and self-sustainability from students, these approaches still have a slight difference.

In short, this difference can be represented as follows. If the concepts of "distance learning" and "distance education" are often associated with education by correspondence and actually indicate only a distance between students and teachers, then both traditional and specific digital or online methods, means and tools based on computers or the Internet (e.g., telecommunication technologies) can equally be used in the learning process (Jansen and Van Der Merwe, 2015). The concepts "online learning" and "e-learning" mean that the process of study of a particular discipline or topic also takes place outside the classroom (at a distance), but only using the Internet connection.

In other words, "online learning" or "e-learning" is the process of acquiring knowledge and skills in the "here and now" mode of study, but with the help of computers or other gadgets connected to the Internet, through which interaction and exchange of information shall take place (Keegan, 1996). Distance education may thus be defined as a mode of teaching and learning characterized by separation of teacher and learner in time and/ or place for most part of training, digitally enhanced delivery of learning content and gradual knowledge acquisition with a possibility of two-way interaction (learner-teacher and learner-learner) as a basis of meaningful communication for better learning outcomes (King et al., 2001).

The data driven analysis proved that most of the students showed better learning outcomes in the digital learning environment strengthened by various distance learning initiatives (58% against 42%). Students can benefit greatly from distance or online education in different ways. Based on research provided by Chris Evans and Jing Ping Fan (Evans and Fan, 2002), we admit that there are at least 3 major advantages of distance and online learning, namely, learner-determined location for learning – whereby students are able to choose their own place of study; learner-determined time of learning – students are able to organize their own individual learning schedule, rather than having to study on a specific day at a specific time; and finally, learner-determined pace of study – students are able to set their own individual pace of study without being held up by slower students or vice-versa (Evans and Fan, 2002).

Moreover, distance education sends an important and very deep social message: it affords educational opportunities to individuals unable to attend conventional classroom settings no matter what the reason is. Not only those students with disabilities will benefit from distance education but also those who are shy, inhibited or reserved. In a conventional classroom

environment, the latter rarely ask questions or voice their opinions. However, communication methods of the digital environment (e.g., student chat-rooms, forums, etc.) can provide these students with increased confidence and wider opportunities to be heard (Brown and Lippincott, 2003).

A well-organized digitally supported distance education may not only offer a variety of forms and modes in knowledge acquisition for many people. It may also give chance to perform improvement to students, enhance their social inclusion, form their active citizenship position, help proceed in their personal development, and raise competitiveness and employability (Shkatulla, 2007).

The results of the students` survey provided by the authors in the course of their empirical research confirmed that the majority of the "Gen Z" students clearly realize the need for higher education as a start-up for their future successful career (72%), favor participation of teachers and instructors in their training (68%), and admit that the delivery of university programs and courses should be organized, managed and controlled (78%). Some students believe that a true professionalism is achievable at university if only the future specialist participates in additional educational programs or courses (54%), purposefully take part in independent distance training courses on different open platforms as MOOCs or other open educational resources (66%). Some students consider it necessary to bring changes into the curriculum towards increasing of hours for experiential modes of training (56%), while others believe that only part-time work in professional environment may apply the acquired knowledge and skills for practice (43%).

Only a small number of the respondents who have provided information for the survey do not see the need to expand education and training process to "continuity", including further regular upgrading or lifelong learning (13%) either due to their young age or due to low motivation. The study was conducted on the grounds of Kazan University in the period from February to May, 2020. The study involved students of 2nd-4th courses of the Law Faculty. The average age of students-interviewees varied from 19 to 22 years.

3. Summary

The analysis of the literature on the topic proved our hypothesis that most of the trends of the 21st century teaching and learning involve various digitally supported methods, technologies, modes, forms, tools and resources. The most common trends may be presented as follows: (1) e-Learning, Web-based learning (WBL), mLearning (mobile learning), distance learning, distributed learning and other forms of online education (Warschauer, 2007); (2) Employment of real world applications – allowing

students to apply theories to realty and see them in action (Maloy, 2016); (3) Gamification – with nearly half of the teachers admitting that they have at times incorporated online games into their classroom educational setting (Villa and Dorsey, 2017); (4) Employment of Open Source Textbooks, Massive Open Online Courses (MOOCs), crowdsourcing platforms based on networking, cooperation and collaboration, etc (Ainoutdinova *et al.,* 2017); (5) Blended learning with its "flipped class" method, in which students first learn about a new subject at home, especially online, and then have discussions on it in the class face-to-face atmosphere – regarded as the foremost trend in education for current university students (Warschauer, 2007), etc.

It is clear that this COVID-19 pandemic has utterly disrupted all myths about education system and its gloomy perspectives. On the contrary, it has a great potential. For example, many believed that the unplanned and rapid move to online learning – with no training, insufficient bandwidth, and little preparation – will result in a poor user experience, deficiencies in peer-to-peer networking or problems in teacher-to-student interaction. For those who did have access to the right technology, there was evidence that learning online could be more effective in a number of ways (Li and Lalani, 2020). Besides, clever integration of technology demonstrated higher engagement and increased motivation towards education, making some students truly "fall in love" with learning (Li and Lalani, 2020).

Conclusions

It is evident that the range of competencies of lawyers formed at university should be expanded today so as to enable them to live and work successfully in a multicultural professional environment and to effectively transform legal practice into the tasks of the evolving digital economy. The rapid development of robotics, artificial intelligence, virtual and augmented reality, etc. entails the emergence of new areas and branches of law. Widespread adoption of technology in legal practice changes the work style of lawyers, expands their access to information, and accelerates data processing, which ultimately improves ergonomics and results of their work.

This may require, depending on the topic, goals and objectives of the work, turn to technological solutions of the LegalTech service system, specially designed for professional lawyers. The system includes a variety of services, platforms, programs, products and tools created to automate the professional actions of lawyers, which, of course, is intended to facilitate, simplify and optimize many routine processes of their activities. Students most often turn to reference legal systems such as Consultant Plus and

Garant, electronic codes, judicial practice selection services for a particular case, etc. The content of most applications is normally generated with the help of artificial intelligence and contains highly accurate and reliable data. Training students to work with LegalTech services at the stage of their study at university is highly important, since these skills are extremely popular on the legal services market.

Narrower specializations within the legal profession may require, for example, training in working with Big Data, using foreign reference legal systems such as Casebook, CaseText, Jurispect, LexisNexis, Westlaw or conducting legal expertise of documents in artificial intelligence services such as eBrevia, LawGeex, Legal Robot, etc.

All these complicated tasks need special legal knowledge and ICT-enhanced skills sufficient for mastering the innovative digital tools and programs. Thus, it becomes obvious that in order to meet the needs of the digital economy there shall be a review of a lawyer training methodology at university. New challenges of a digital era encourage the academic community to seek for new and relevant forms of teaching and learning, which in its turn allows intensifying and optimizing the activities. Close connection of knowledge, science and economics actualizes the request for lawyers of a "new digital formation" being relevant to the modern socio-economic context.

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Criminal Liability of Medical Profecionals Negligience: Comparative Analysis

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Olga Taran **

Abstract

The purpose of this article is to study the criminal liability of medical professionals in cases of suspension, in accordance with jurisprudence in Ukraine, the European Union and the United States of America (USA). He made the comparative method. According to the investigation, the number of criminal proceedings in Ukraine by the authority and misconduct of medical doctors is about 2% per population, my figure that rises to 30% in Europe and is the stable yes in the US and is 28%. 32%. The main objective of the article is often area identify specializations in the medical office occurs with the mayor based on Ukrainian jurisprudence (data from Ukraine's only state judicial decision register from 2016 to 2019). In addition, the study analyses the impact of the main influences on the ability of medical professionals for their professional functions. From counting the results show that surgeons, gynecologists, paramedics, and anesthesiologists are the most prone to deviation and medical error. Key proposed criteria have been proposed as medical errors differ from medical writing.

Keywords: compensation; medical error; professional negligence; criminal liability; rule of law.

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Responsabilidad Penal de los Profesionales Médicos Negligencia: Análisis Comparativo

Resumen

El propósito de este artículo es estudiar la responsabilidad penal de los profesionales médicos en casos de negligencia, con arreglo en la jurisprudencia de Ucrania, la Unión Europea y los Estados Unidos de América («EE.UU.»). Se hizo del método comparativo. Según la investigación, el número de procesos penales en Ucrania por negligencia y mala conducta de los profesionales médicos es de aproximadamente el 2% por población, mientras que esta cifra sube al 30% en Europa y se mantiene estable en los EE. UU., y se sitúa entre el 28%. al 32%. El objetivo principal del artículo es identificar áreas de especializaciones donde la negligencia médica ocurre con mayor frecuencia en base a la jurisprudencia de Ucrania (los datos del único registro estatal de decisiones judiciales de Ucrania de 2016 a 2019). Además, el estudio también analiza el impacto de las principales influencias sobre la capacidad de los profesionales médicos para desempeñar sus funciones profesionales. DE concluye que los resultados muestran que los cirujanos, ginecólogos, paramédicos y anestesiólogos son los más propensos a la negligencia profesional y al error médico. Se han propuesto criterios clave según los cuales el error médico se diferencia de la negligencia médica profesional.

Palabras clave: indemnización; error médico; negligencia profesional; responsabilidad penal; norma jurídica.

Introduction

The Law 2168 - VIII “On State Financial Guarantees of Public Health Care” in Ukraine came into force in 2018. Starting in January 2018, the Ministry of Health has begun to introduce the reform in the Ukrainian health system. As such, the National Health Service of Ukraine was created on 30 March 2018, which is the central executive body that implements the basic principle of the reform – “money follows the patient”. Therefore, the first step was taken to introduce health coverage, which should put an end to the existing prejudice old medical system, according to which, 49% of medical expenses are paid out of patient’s pocket (National Health Service of Ukraine, 2018). Despite the fact that the health coverage has not become universal, network of private clinics is actively developing in Ukraine. Such expansion of health care facilities should help to improve the quality and level of health care in the country.

The factor of financial compensation for the health care providers should not be overlooked either. According to the research, a doctor's visit in a private clinic costs anywhere from $6 USD to 12$ USD per hour, while the minimum wage of a doctor in a public hospital is $240 USD per month. Another not less important factor is the hours of operations. The 80% of public hospitals accept patients only the first part of the day, between 8:00 am and 1:00 pm, when the private clinics offer their services from 2:00 pm to 7:00 pm. In addition, on average a doctor in a public clinic attends from 10 to 12 patients per day with one lunch break, a doctor can allocate on average 15 minutes per patient (including data entry and patient complaint description). The absence of regulated policies and the lack of efficient operating system in clinics and hospitals makes it extremely difficult to provide high-standard medical care. Due to those conditions, the probability of medical professionals making errors in diagnosis or treatment increase tremendously.

That's why the aim is to identify the core specializations for which cases of malpractice by a healthcare professional are most frequently raised, based on the jurisprudence of Ukraine, some countries of European Union, and the US. By investigating the correlation between medical liability, medical error, and the observance of rights and freedoms of a person and a citizen in the field of providing high quality medical care.

1. Methodological Framework of the Research

Having taken the data from the Unified State Register of Judgments of Ukraine from 2016 to 2019 and separated the cases that were brought against medical professionals, we analyzed what type of claims were resolved, and which were justified by the court. We have grouped the received data according to specialty of medical professionals. Based on the information received, we have been able to identify in which areas of medical practice negligence occurs most often and which criminal or civil penalties have been imposed by the Ukrainian courts of law for such crimes.

By comparing this data with data from various sources from the European Court of Human Rights and the US, we have identified groups of medical professionals who were prosecuted for negligence/misconduct most often.

A dialectical method of cognition has been applied in the process of investigating these issues. The historical method of research has allowed us to consider the stages of formation of views on such a phenomenon as misconduct by medical or pharmaceutical professionals and a medical error. The method of analysis of sociological data was used to investigate

problems existing in society from the point of view of medical law in general and criminal law in particular. The comparative method was used to study the norms of foreign legislation on selected topics.

2. Review of the Literature

According to the data of the Unified State Register of Judgments of Ukraine: in 2015, eight criminal and/or civil charges were made against medical practitioners, one of which was acquittal; in 2016, six charges were reported (four of which were made under Part 2 of Article 140 of the Criminal Code of Ukraine) and three of them were acquittals (one of which under Part 2 of Article 140 of the Criminal Code of Ukraine); in 2017, six convictions were made one of which was acquittal; in 2018, seven charges were issued, two of which resulted in acquittals; in 2019, seven convictions were made against medical professionals, two of those were justifiable (Figure 1) (The only state register of court decisions, 2016-2019).

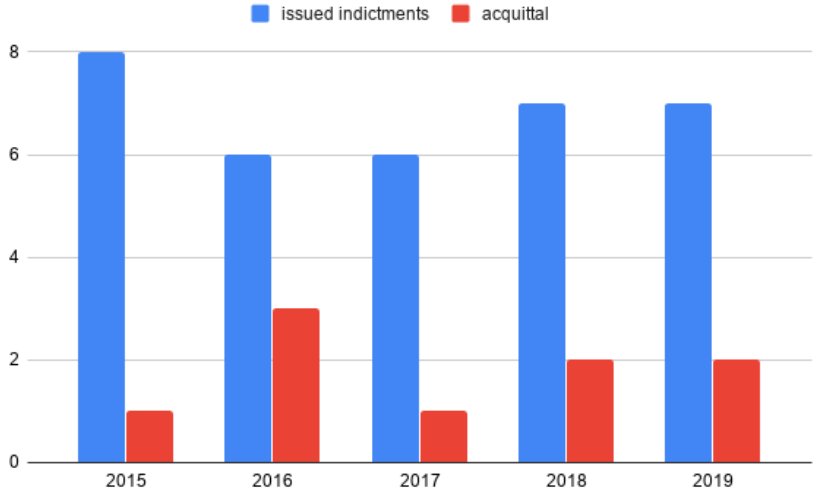

Figure 1. Statistics of indictments for medical error in Ukraine according to the Unified State Register of Judgments from 2016 to 2019.

It should be noted that these factors were not considered to mitigate the criminal responsibility of a health care professional for their misconduct.

The situation is quite different in the countries of European Union where healthcare coverage has become universal, but a lot of people are still concerned about the quantity of medical errors and negligence/misconduct of medical professionals. Due to the expending case law against negligence/misconduct of medical professionals, the cost of healthcare coverage in many European countries is increasing rapidly (Faure and Koziol, 2001).

However, health care system is facing a serios issue in the nearest future which involves the lack of highly trained medical professionals in a public sector due to the limited budget. Which in fact will resolve in slimmer chances for a general public to receive a high-quality healthcare. The evolution in criminalizing the liability of medical professionals for their misconduct and case-law expansion of understanding medical errors may cause the reduction of health care facilities which will lead to a high mortality rate. As a deficit in health care facilities will forth people to pay from their pockets and go to private clinics/hospitals or they will be due for a long wait at public health care facilities, due to the lack of staffing.

The author would like to draw your attention to quite interesting practice that has been currently used by the US government. While the US protects the patients' rights it does not neglect the rights of medical professionals. This is evidenced by so-called "Apology Law", which is widely used in more than 30 states so far, helping the two parties to reach an agreement faster and resolve the dispute through mediation. However, as noted by Benjamin J. McMichael, R. Lawrence Van Horn & W. Kip Viscusi, from 2004 till 2011, the claims against 4% of physicians have been lodged annually for misconduct in both jurisdictions. A fewer lawsuit has been made in states where there is no Apology Law practice. Therefore, it is arguable that the so-called Apology Law is sufficiently legislated to protect medical professionals from widespread jurisprudence of increasing standards of care quality (McMichael *et al.*, 2019).

According to our analysis the implemented criminal liability of medical professionals is in a desperate need for improvement. Medical practitioners are humans first and there is always a room for an error. The high standards of medical practice, which are now widely commented on by judicial practices not only in Ukraine but also in the world only aggravate the fear of being indicted to criminal responsibility, which can lead to a shortage of healthcare professionals. Therefore, it is necessary to develop a new or alternative healthcare system.

3. Results

Analyzed data from the Unified State Register of Judgments from 2016 to 2019, we came to the conclusion that obstetric gynecologists were most often indicted (12 cases out of 40 were initiated against obstetrician gynecologists, 4 from which were justified sentences with imprisonment up to three years and two sentences with disabling of medical activity for a term of up to five years). According to Part 1 of Article 140 of the Criminal Code of Ukraine (failure or misconduct of medical or pharmaceutical professionals in the result of negligent or dishonest treatment if it caused the grave consequences for a patient) and under Part 2 of Article 140 of the Criminal Code of Ukraine (the same act if it caused grave consequences to a minor) (Criminal Code of Ukraine, 2001) the defendant was most severely punished in 2016.

The court imposed a sentence to three years 'imprisonment and two years' of medical license suspension. Surgeons follow (eight cases out of 40 have been initiated against surgeons, two of which were exculpatory sentences and six were indictments; the most common punishment is deprivation of right to hold posts and disabling of medical activity for up to five years). While, in Ukraine in general: obstetricians-gynecologists - 33%; surgeons - 20%; anesthesiologists - 12%; ambulance workers - 7.5%; paramedics - 5%; medical assistants - 5%, other specialties - 17,5% (in total, one criminal case conducted in different specialties, except the above) of the total number of cases on which the convictions and acquittals were made between 2016 and 2019 and one case with information on which is confidential (Figure 2).

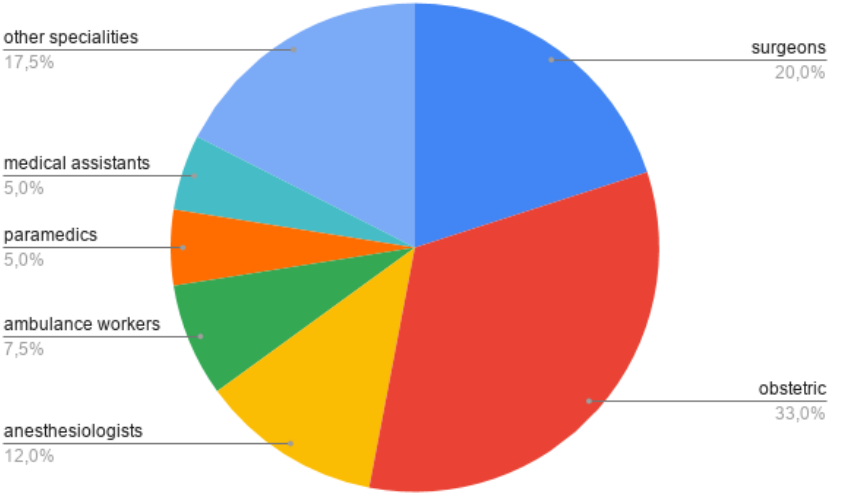

Figure 2. Distribution of convicts for medical error in Ukraine by their medical specialty according to the Unified State Register of Judgments from 2016 to 2019.

Based on a study conducted by Marco Bonetti, Pasquale Cirillo, Paola Musile Tanzi, Elisabetta Trinchero in 15 regions of Italy from 2001 to 2012, the most frequently raised are claims of medical errors and medical professionals' negligence of such specialties as: surgery - 20, 86%; orthopedics - 11.08%; ambulance workers - 10.88%; general medicine - 10.11%; gynecology - 6,72%; anesthesia - 1.87%; other specializations - 12,58%; not classified - 14.32% and information on which is not available - 11.58% of the total number of 38125 cases were initiated against medical professionals, which generally tells us that on average 3466 cases are initiated annually (Bonetti *et al.*, 2016). Based on a study conducted by Burçin Gürbeden and Erdem Özkara in Turkey, it is possible to identify the most frequently prosecuted medical professions: 19.9% of emergency workers; obstetrics and gynecology - 16%; anesthesiology - 9,4%; surgery - 8.3%; pediatrics - 4.4% of the total number of 105 cases initiated in from 2010 to 2014 (Gürbeden and Özkara, 2018).

Become familiar with the scholarly literature of David M. Studdert, Marie M. Bismark, Mishelle M. Mello, etc. in the US, concerning the practice of prosecuting medical professionals during 2005 and 2014, made it possible to distinguish the specialties for which the most often criminal charges were made: therapy - 15%; gynecology - 13%; surgery - 12%; family

medicine - 11%; orthopedics - 7%; radiology - 6%; ambulance workers - 5%; anesthesiology - 4%; other specializations - 27%, the total number of 54054 cases of professional negligence (Studdert *et al.*, 2016).

The analysis showed that infringement proceedings are being initiated (in all the countries under consideration), regarding the professional's failure to perform his/her professional duties, including: surgery, gynecology, emergency, anesthesia (Figure 3).

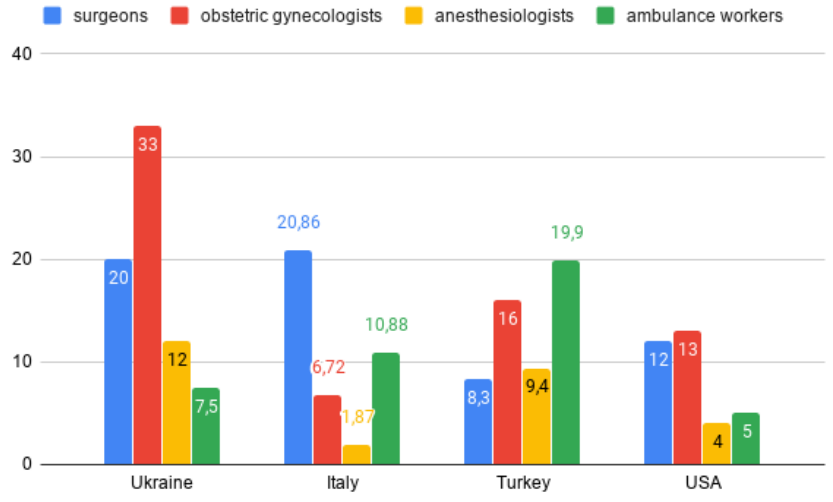

Figure 3. Distribution of sentences among surgeons, gynecologists, anesthesiologists and ambulance workers in Ukraine, Italy, Turkey, and USA.

In nowadays world, quite often medical professionals are guided by the fear of being criminally accountable for their practice by takin extra precautions while diagnosing patients, sometimes which result in unnecessary and extremely broad diagnosis. Which in fact does not reduce patients' claims. Medical practitioners in areas of specializations where negligence takes place most frequently are the areas that possess high level of stress. Those are surgeons, gynecologists, paramedics, and anesthesiologists. After all, those specializations require enormous among of focus, self-control, and outstanding decision-making skills under extremely difficult circumstances. Therefore, those medical practitioners

appear at particularly high risk, as evidenced by the high rate of burnout and the alarming consequences in both their personal lives and professional behavior.

By taking all those factors into consideration it is truly clear that at times it is extremely difficult for medical professionals to make sound judgments. That is why it is important to understand when a healthcare professional becoming a suspect or convicted felon the nature of their work and the emotional distress caused by it should not be overlooked. According to the scientific literature professions that are in a high risk of mental and emotional burnout are as follow (officials, operators of technical systems, etc.), forensic scientists (in particular, L.P. Brych, M.S. Greenberg, V.A. Navrotsky, R.I. Mikheyev, N.A. Orlovskaya, T. Yu. Tarasevich, and others) emit a special (professional) conviction, which determines the person's state of a particular profession, capable of adequate behavior during emotional and mental distress. P.S. Dagel, in support of this view, pointed out that the realization of the idea of special condemnation would make the concept of a special subject in relation to "technical" crimes more meaningful if the psychophysical qualities of a person were taken into account (Dahel, 1978).

In this way, emotional and mental distress affect the ability to make sound judgment and to manage professional performance of duties for medical or pharmaceutical practitioners. Emotional and mental distress is a condition of a human body in mental overstrain due to hard work (Teslitskiy, 2004). Which is of two types: mental stress (a state of mobilization that is within the optimal level of alertness) and mental tension (a negative emotional reaction that occurs in an unusual, new or threatening situation), which cause emotional-sensory or emotional-intellectual violation (Blok, 1980). A significant role in emergence, development and course of mental tension is manifested in adverse factors, as well as in difficult conditions of life. The onset of a disease can be turbulent, sometimes gradual, unnoticeable to others (chronic insomnia, significant weakening of the body, etc.).

However, even in this case, processes of perception of outside world are disturbed, thinking disorders are observed. Psychiatrists say that the prolonged effect of mental tension can cause a variety of psychogenic diseases in people - neuroses, psychoses or psychopathies, which are generally characterized by excessive excitability, irritability, visual hallucinations, as well as psychopathic conditions, which develop in the course of consciousness, temporary disorders of mental activity (Chupryna, 2014; Kuznetsov and Cherniavskyi, 1993).

According to I.M. Fil, in cases where medical professional negligence caused by emotional and mental distress of practitioners while maintaining the ability to realize their actions (inaction) and criminal liability should be resolved within careless guilt (criminal overconfidence or criminal negligence) or case. However, in cases where a medical or pharmaceutical

professional is unable to realize their actions (inactivity) or to manage them due to a temporary disorder of mental activity, there is not a special conviction, but a lack of conviction in its traditional sense (Fil, 2018).

The term "medical professional's defect" encompasses all adverse actions committed by a variety of healthcare professionals (such as technical staff) regardless of the fault form. That is why the complexity of proving the presence of a criminal offense in the field of medical activity in connection with so-called "dynamics of clinical picture", the possibility of concealment or lack of facts fixation that are of legal importance for determining the guilt of a specialist, the complexity of assessing the reaction of human body under certain conditions (Rotkov and Chuprova, 2018).

It may result in inaccurate diagnosis, poor treatment of a patient, organization of medical care, which could lead to an unfavorable result of medical intervention (Kulchynska and Uspenska, 2013). Therefore, we believe it is important to identify the key criteria that will separate a medical error from medical professionals' negligence. However, at times it is extremely difficult to differentiate those two. First, it is necessary to evaluate the doctor's actions to determine their "integrity", which requires involvement of a special expert commission (for example, in Israel such a committee includes psychologists, lawyers, doctors and representatives of public and religious organizations). Secondly, doctors may be indicted both on a general basis and for offenses related to professional activity of medical professionals, as well as, as an official, when a doctor is entrusted with the performance of organizational, administrative and administrative functions in a medical facility (Pastushenko, 2009).

Investigation of criminal offenses in the provision of health care (medical service) is associated with a number of complex problems - the peculiarity of the subject of proof, the lack of proper knowledge of the specific nature of such categories of pre-trial investigation bodies, which in turn affects the analysis and evaluation of the collected information (Danchenko and Hereljuk, 2020; Danchenko and Taran, 2020). Thus, in each of our investigated cases, on average, 10% of those cases are information about missing or restricted access. And this in turn does not give us a chance to assess fully the harm caused to a person by medical professionals and deliberately separating him/her from the harm caused by medical professionals during performing their professional duties, which led to misinterpretation of symptoms and, as a result, a medical error. Medical malpractice likewise needs to transition to a new model that is consistent with the modern era of patient-centered care (Stamm *et al.*, 2015).

All this proves the great need for development of a single standard of medical practice that would best meet the patient's needs and protect the medical professionals' interests, since the desire for reinsurance also leads to high cost of healthcare coverage, if the pressure on medical professionals was not so great from the legal perspective.

Conclusion

In our comparative analysis of the criminal liability of medical professionals based on their negligence, we were able to identify four areas of specializations where medical negligence takes place most frequently. Those are surgeons, gynecologists, paramedics, and anesthesiologists. We have concluded that these specializations are most often performing their duties under extremely stressful conditions and therefore, we consider it necessary to develop a special mechanism for bringing to justice medical practitioners in such specializations, taking into account the extremely challenging nature of their work and the emotional and mental distress caused by it. Based on the analysis of all the cases concerning in given categories of medical professions, it would be appropriate to create an algorithm that would allow to calculate when and under what circumstances medical practitioners in those four areas of practice are most prone to the professional negligence and medical error. In our opinion this algorithm will help to reduce the psychological (emotional and mental) pressure on medical professionals, reduce claims, and improve the operation of healthcare facilities.

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Internet Media During the COVID-19 Crisis

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Abstract

This article defines the main characteristics of the media during quarantine, analyzes the peculiarity of online media during the crisis caused by the coronavirus pandemic OVID-19 and highlights changes in the content of media platforms during the spread of the coronavirus pandemic, considering changes in user interests and new media projects offered especially during this pandemic. General scientific research methods (analysis, synthesis) and special research methods of online media characteristics (content analysis) have been used. Based on the results of the survey, the most popular online platforms were identified during quarantine restrictions, the most vulnerable areas of online media were identified during the crisis, and details of the presentation of material on OVID-19 were analyzed by various means. It is concluded that social quarantine restrictions have led to an increase in activity among users of online media, now focusing on the content of the information and the constant monitoring of the situation of the pandemic, as well as ways to defend against it.

Keywords: online media; online platforms; online publications; social networks; COVID-19 context.

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Medios de internet durante la crisis del COVID-19

Resumen

Este artículo define las principales características de los medios durante la cuarentena, analiza la peculiaridad de los medios online durante la crisis provocada por la pandemia de coronavirus COVID-19 y destaca los cambios en el contenido de las plataformas de medios durante la propagación de la pandemia de coronavirus, considerando cambios de los intereses del usuario y proyectos de nuevos medios ofrecidos especialmente durante esta pandemia. Se han utilizado métodos de investigación científica general (análisis, síntesis) y métodos de investigación especiales de las características de los medios en línea (análisis de contenido). Sobre la base de los resultados de la encuesta, se identificaron las plataformas en línea más populares durante las restricciones de cuarentena, se determinaron las áreas más vulnerables de los medios en línea durante la crisis y se analizaron los detalles de la presentación de material sobre COVID-19 por varios medios. Se concluye que las restricciones de cuarentena social han provocado un aumento de la actividad entre los usuarios de los medios en línea, centrándose ahora en el contenido de la información y en el seguimiento constante de la situación de la pandemia, así como las formas de defenderse de ella.

Palabras clave: medios online; plataformas online; publicaciones online; redes sociales; contexto COVID-19.

Introduction

According to recent surveys, the impact of online media on audiences has grown significantly, outpacing the credibility and popularity of television, and leaving printed media and radio behind. The Ukrainian Institute of the Future has published a study by O. Ishchenko, which states that the analysis of the media market based on three main indicators - trust, popularity and advertising - puts the Internet in a leading position, leaving printed media and radio far behind and becoming the only competitor with television (Ischenko, 2018). Such popularity of online media in modern conditions determines the relevance of the given study.

Given the rapid development of online media and the emergence of new online platforms, many issues remain outside the scope of scientific interests. The spread of coronavirus pandemic in Ukraine and around the world has become an unexpected and significant factor influencing the work of online media, which is still poorly understood. Therefore, we believe that the purpose of our research is to determine the features of operation of

online media in Ukraine during the crisis caused by Covid-19, and to define the impact of quarantine restrictions on the operation of online media. These purposes involve solving the following tasks:

- to analyze changes in the interests of online media users during quarantine restrictions;
- to identify how the content of online media has been changing during the quarantine;
- to analyze the transformations in operation of online platforms and the emergence of new online projects during the crisis;
- to identify the reasons for popularity of online media and social networks during the quarantine caused by the pandemic.

The scientific novelty of the study is that:

- the research highlights the specifics of operation of online media during the crisis of Covid-19, in particular, analyzes the negative impact of quarantine conditions on the operation of the media.

1. Theoretical Framework

Significant interest in studying online media can be observed with many domestic and foreign scholars, including I. Komashchenko, S. Kvit, S. Mashkova, I. Revunova, J. Gol and many others.

Some researchers, in particular S. Mashkova, when classifying online publications, use the term "online mass medium" (Mashkova, 2006), and L. Gorodenko considers it most accurately to use the terms "network media" or "electronic media" and "electronic mass medium" (Gorodenko, 2011). The justification for using of the term "online media" provided by the British scholar Jim Gol in his work "Online Journalism", where he emphasizes the ability of online media to present information in real or compressed time, is good and interesting (Gol, 2005). However, there still is not any single "general" definition of this term (Revunova, 2013). Many Ukrainian researchers (I. Artamonova, L. Gorodenko, V. Ivanov, B. Potiatynyk, V. Rizun, M. Chabanenko, I. Shkliar) and Western (J. Gol, E. King, R. Craig, R. Reddik, E. Scott) and Russian (O. Vartanova, J. Zasurskyi, O. Kalmykov, V. Kikhtan, L. Kokhanova, K. Lazutkina, S. Mashkov, E. Prokhorov, I. Fomichev) have been studying the problems of online media, however, there still is no single approach to the terminology and features of media operating online.

Issues of development of various economic spheres during a pandemic are also fundamental for research. It is noted that the normal development of the market without the intervention of the state is at least illusory. The responses that the affected states give to current pandemics must also include social programs aimed at overcoming extreme poverty (Arbeláez-Campillo and Rojas-Bahamón, 2020). Some studies focus on the geopolitical impact of pandemics for the economies and strategic interests of nations that suffer its consequences with the loss of human lives and the allocation of huge resources for Health systems. Economically, pandemics alter the normal functioning markets and erode trust among financial agents (Arbeláez-Campillo *et al.*, 2019).

2. Methods

The methods used for this study include, first of all, general scientific methods of analysis and synthesis, which allowed to clarify the advantages and disadvantages of online publications in the pandemic era, to outline the consequences and results for individual business industry processes related to COVID-19.

Descriptive methods are used, in particular the typology method, which is focused on finding stable features and properties of the studied objects. This method allowed to determine the characteristics of online publications and features of publications during the pandemic. The method of typological analysis made it possible to analyze and compare different Internet publications, consider the studied media in terms of how they correspond to the current information situation, outline general trends in editorial policy, rhetoric of materials, ways of presenting important information.

Since the study involved the search, selection, reading and juxtaposition of documentary sources of various Internet publications, the method of analysis of documentary information, including traditional analysis, was used. At the analysis by traditional methods it is possible to allocate the external and internal analysis. External analysis made it possible to draw conclusions about the historical circumstances in which the documents were created (Internet-Media materials), their true motives, allows you to check the reliability and authenticity of the documents. Thus, external analysis considers the document as an element in the system of social relations, and with its help it is possible to understand how important this element is and what role it played.

Internal analysis is an analysis of the content of the document itself. It helps to study the relationship between different elements of the text, the

modality of the document, the attitude of its author to the topic, and so on. The last stage of the method of analysis of documentary information is the interpretation of the text, which in the process of any traditional analysis allows to penetrate into the essence of the document and identify deep intentions and motives of the communicator, the expected effect of the message, features of the historical moment.

The method of text research is involved, namely content analysis as a method of collecting data on the studied phenomenon or process, which are contained in documents (media materials). For automated information retrieval, resource monitoring was performed, which is based on content analysis and is called content monitoring. The use of this type of content analysis is caused by the need to systematically track trends and processes in a constantly updated information environment.

The article uses Case study – a method of qualitative research in the social sciences, which is to study a single social object (situation, event) in order to understand a wider class of similar cases (class of events). In the context of this article, it is a study of the activities of Internet Media during the COVID-19 crisis in order to provide a generalized explanation of the phenomenon of global changes in various spheres of life.

Various methods of information retrieval and analysis have been used to study the effectiveness of online media. In particular, the operationalization of the studied concepts (online media, electronic media, network media).

3. Results and Discussion

Paying attention to the main characteristics of online media, it should be noted that in terms of user perception of information, the information space of online media is audiovisual, while printed media is only a visual source, and radio is only an audio source of information. This winning feature allows not only to reach a wider range of users, but also to provide a much larger amount of information and open new opportunities, operate and influence on the audience in many ways. In addition, the information space in online media in terms of meaning and content can be of informational, entertaining, socio-political and cultural nature. It should be noted that it is one of the criteria for classifying online media, which is not comprehensive enough. Focusing on the classification of online media, most researchers cannot reach an agreement. However, a large group of scholars tend to divide online media into three major functional groups: Internet versions of other types of media (TV sites, radio, periodicals), online media and mixed media (Kotsarev, 2006).

The study has analyzed five popular online media resource in Ukraine, including "Ukrainska Pravda", "Dzerkalo Tyzhnia", "Ukrinform", "Kyiv Post", "Liga", and used research data from the National Union of Journalists on the situation with advertising in online media (NSJU.org, 2020), the results of surveys conducted by the research company "Gradus Research" on the popularity of social networks and messengers among users (Sostav.ua, 2020), a review of the Google Digital Workshop platform on free online courses during the quarantine (Google Digital Workshop, 2020), monitoring data of the public association "the Institute of Mass Information" on coverage of the coronavirus topic in online media (Imi.org.ua, 2020), articles by ZNAJ.UA on the study of emotionally colored news about the coronavirus (Znaj.ua, 2020).

As the analysis showed, the new harsh realities faced by the world in general and the entire information space in particular, and which have been dictated by the pandemic of the coronavirus Covid-19 forced almost all media to change topics, work style, and some media even suspend their activities. The negative impact of quarantine conditions for Ukrainian media had the most painful effect on advertising. Outdoor advertising has become a complete outsider, due to the closure of shopping malls, retail space and the abolition of any mass events. Most analytis (including Artem Prokopenko (expert at UMG), Mila Krutchenko (director of strategy at Razom Communication), Ksenia Mykhailenko (strategic director of Optimum Media) predict a further decline in advertising due to difficult economic conditions (Dankova, 2020).

Most online publications report a significant reduction (30-40%) of native advertising or complete cancellation of advertising contracts in April-May 2020 (NSJU.org, 2020). Savhil Musaieva, editor-in-chief of the online publication Ukrainska Pravda, notes that despite the increasement in exposure, the income even from Google advertising has significantly decreased (Goncharenko, 2020). According to a survey conducted in early April 2020 by the National Union of Journalists of Ukraine, 82% of editors see a sharp loss of advertisers due to quarantine (NSJU.org, 2020).

The analysis showed a rapid reduction in advertising contracts from travel agencies, airlines, concert venues, event agencies, etc., which in turn was transformed into the promotion of advertising for online stores, delivery services, online schools, and the service sector as a whole. At the same time, we see many social advertisings, a surge in the activity of social videos aimed at combating the pandemic, as well as the support of physicians, military personnel, service workers. In part, such advertising is not only informative, such as "actions in case of ill health", "security measures during quarantine", "behavior while being in public places", but also aimed at interaction.

Thus, most Ukrainian TV channels have launched a social advertisement "thank doctors and everyone who works during quarantine", which not only contains a recording of applause of famous stars and showmen, but also calls for a flash mob from every citizen - to record videos of applause and send it to social networks and channels. These short videos with gratitude from famous people and ordinary citizens are posted on various Internet platforms, including YouTube and Facebook, on pages of leading Ukrainian channels (Ukrinform, 2020).

The conditions of quarantine restrictions allowed online media to take a leading position in the information, communication, and entertainment areas. According to sociological research conducted by the research company Gradus Research at the request of the advertising agency Brand Media, 78% of respondents preferred Internet resources and social networks (Sostav. ua, 2020). Such high rates for choosing online media are caused by several reasons, including the following:

- Speed. Prompt presentation of information, monitoring of the situation in the country and in the world, which has been changing day by day or even within several hours.
- Remoteness in work, reorganization of work of online media allowed to rapidly involve in the process with minimum expenses on a resource (it touches both workers, and technicians).
- Communication with experts for obtaining their comments the various issues through Skype, Facebook, different messengers, etc.). This allowed to keep the remote format and at the same time get qualified information.
- Interactivity. Involvement of audience into discussions, possibility to respond to stated topics, share news and more.
- Preservation of key security issue today - personal and family.

The rapid growth in popularity of social networks and messengers during the quarantine period has been evidenced by the data from a research conducted by Gradus Research. Facebook, YouTube and Instagram are the undisputed leaders among the audience, and among 78% of respondents who preferred online resources and social networks, 46% said that for them social networks have become the main and only channel of information during quarantine. Given such high performance, the editors were challenged to respond quickly and concisely to the demands of society, while not losing focus and diversity in the subject.

Moreover, during the conditions of isolation, the lack of communication with relatives and friends became especially noticeable, which has increased the number of active messenger users. Messengers such as Viber, Telegram, WhatsApp and Skype are the leaders. These messengers are popular due to

their ease of use, possibility to send smiles, emojis, photos and videos, and availability of video calls function (Sostav.ua, 2020).

Under the conditions of quarantine restrictions of self-isolation, online platforms for self-education, online trainings and video conferencing have become relevant. Many online platforms offer free training or significant discounts on courses in foreign languages, media security, photography, IT, etc. For example, free online and offline courses on the Google Digital Workshop platform are available in 64 countries. The key accent is made on digital marketing and courses that would help in work. The platform offers lessons to train important professional skills. Among them - social skills such as communication, motivation, etc. (Google Digital Workshop, 2020). In addition, another important step in the cultural life of society was the opening of online platforms where you can view theater performances or visit exhibitions in museums and art galleries. This allows users to maintain your cultural habits and needs in conditions of self-isolation, to stay in the rhythm of their usual life, to spend time usefully.

Given the rapid popularity of video conferencing, developers have revised algorithms for using many applications to simplify or extend the capabilities of software. After all, if until recently only large business companies, training centers and media organizations practiced conferences via the Internet, today's realities of life have forced the use of this format of communication in almost all areas. In particular, video conferencing has become an important aspect of judicial and education systems. Some TV channels translated socio-political shows into a video conference format when it was not possible to invite guests to the studio. Online media offer interviews with celebrities, politicians, athletes and public figures in the form of a video conference or live video broadcast.

It is worth noting that videoconferencing has also become an integral part of the work of educational institutions, for meetings, online seminars and presentation of the work of pupils and students. The large-scale project "School Online", launched through forced distance learning, helped students learn basic subjects and showed how effective modern media are in the educational process (Osvita.ua, 2020). Some Ukrainian media, in particular leading TV channels, filled part of their airtime with online lessons. This is one of the largest media space projects together with the Ministry of Education and Science of Ukraine. The lessons were broadcasted both on TV channels (each class had its own channel) and on YouTube, in order to attract a larger number of viewers (Mon.gov.ua, 2020).

Difficult working conditions have forced most online media to change the topic vector of their work or to pause some projects due to the impossibility of their implementation during quarantine conditions. According to Olha Rudenko, Deputy Editor-in-Chief of the Kyiv Post online platform: "People are mostly interested in news about the coronavirus, what concerns their

lives and safety" (The Lede, 2020), and that is why the topic of pandemic, quarantine and disease control take the major part of the whole information flow. At the same time, online media try to keep the thematic channel in which they have been worked, covering the news about the coronavirus from different angles. For example, the Ukrinform news agency maintains a thematic news section covering the latest developments in politics, culture, tourism, economics, and sports, drawing attention to non-pandemic events in the world and in Ukraine, as well as not showing the statistics on infected and deceased persons on the main page. News about the quarantine and the situation with the coronavirus is highlighted in a separate color, and in text of the information about the number of infected is immediately supported by the number of those who have recovered (Ukrinform, 2020).

According to the monitoring of the public association "Institute of Mass Information", more than 58% of the total number of materials of national online media were devoted to the topic of coronavirus and fighting against the pandemic. Most materials on Covid-19 were recorded on the Ukrinform website (87% of the total amount of information), and the least were found at "Dzerkalo Tyzhnia" (33%) and Liga (27.5%) websites (Imi.org.ua, 2020). At the same time, the materials of the websites were quite constructive, containing advices from experts and links to the Ministry of Health or the WHO.

Most websites, according to the research, started the news with positive statistics or interesting facts, leaving negative data for the second half of the text (Imi.org.ua, 2020). The articles on the websites are mostly emotionally neutral, mainly providing the statistics, as well as the comments of doctors, government officials or experts. Thus, "Dzerkalo tyzhnia" in the news about the coronavirus often refers to the video press briefings of the Minister of Health and the comments of scientists from world universities on the situation with the coronavirus (Zn.ua, 2020).

According to the research conducted by the Institute of Mass Media, many online media used negative language, invented headlines that raised anxiety, and created fake news about panic and coronavirus mortality thus trying to increase website traffic. The website of Ukrainian publication "Ukrainska Pravda" gave statistics on the number of infected, dead and recovered persons on the main page, amending the figures daily and showing the dynamics in graphs. All news about quarantine were provided very briefly and informative. In turn, the Ukrainian publication "Dzerkalo tyzhnia" highlighted "Coronavirus in the World" and "Quarantine in Ukraine" as separate headings, using the numbers of new infections and the names of politicians who predict the situation with the coronavirus in the headlines.

The material is presented with restraint, but often the conclusions of articles have disappointing predictions, such as: "doctors are preparing

for a new wave of the epidemic" or "the Ministry fears an outbreak of the epidemic with the onset of cold ..." etc. (Zn.ua, 2020). The leader in the ranking of news with a negative emotional color was the website ZNAJ.UA, where 40% of information was excessively colored with negative emotions, and 60% contained evaluative judgments (Imi.org.ua, 2020).

The words "panic", "apocalypse", "death", "corpse", "scary shots", etc. were most often used in the materials. Similar words and phrases were contained in the headlines and immediately negatively adjusted the users. In response, the Institute of Mass Media, the online platform Media Detector, Pylyp Orlyk Institute for Democracy, the National Media Association and some other organizations have launched a website for journalists explaining the features of their work during coronavirus pandemic – "Anti-Covid. A guide for media people". This online platform provides advice on writing articles, collecting information and using photo-video materials when working on the topic of Covid-19, created to reduce the tension in the information space and publish reliable materials about the coronavirus (Corona.imi.org.ua, 2020).

Conclusions

Summarizing the information on operation of online media during the crisis caused by the coronavirus Covid-19, we can note significant changes in the content of the majority of media, their working conditions, forecasting their further work, creation of new platforms and projects. It is necessary to note that quarantine restrictions have led to a surge of activity among online media users, focusing on information content and constant monitoring of the pandemic situation, as well as ways to defend against it.

In order to maintain their own safety and the safety of their friends and relatives, communication via the Internet and social networks has become much more popular; the interest in educational programs and entertainment content increased, messengers and video conferencing became more widely used. New realities are forcing us to use online platforms more effectively for self-education, in the field of justice, cultural and socially oriented areas. Having analyzed the data on the coverage of the topic of coronavirus on the Internet, we concluded that there is a significant reduction in emotional tension among users if to compare with the beginning of quarantine. At the same time, there is an active use of negative wordings to create additional panic and increase website traffic. This topic is noted to be extremely relevant and needs further deep studying.

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Restriction of the Rights of Russian Senators as a Political Responsibility

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Abstract

This article explores the features of the implementation of individual parliamentary rights by members of the Federation Council, the upper house of the Russian legislative assembly. The relevance of the study is since in recent years there has been a transformation in informal practices of political influence on parliamentarians. In this sense, the object of the study was the analysis of individual legal norms, the regulations of the Federation Council and the practice of holding parliamentary hearings. The authors focused on the negative consequences expressing the responsibility of senators, considering the ambiguous statutory regulation of such measures in modern Russian politics. During the development of the scope of activities carried out by the upper house of the Federal Assembly, the reasons by which its members could lose their powers were significantly expanded. By way of conclusion, it was noted that, despite the rarity of the application of such sanctions, the authors recorded a systematization of forms and measures of responsibility used for political purposes. Such tendencies create artificial barriers to the implementation of certain senatorial powers and acquire a political character.

Keywords: Political responsibility; parliamentarism; council of the Russian federation; Federal Assembly; senator status.

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La restricción de los derechos de los senadores rusos como responsabilidad política

Resumen

Este artículo explora las características de la implementación de los derechos parlamentarios individuales por parte de los miembros del Consejo de la Federación, la cámara alta de la asamblea legislativa rusa. La relevancia del estudio se debe a que en los últimos años se ha producido una transformación de las prácticas informales de influencia política sobre los parlamentarios. En este sentido, el objeto del estudio fue el análisis de las normas legales individuales, el reglamento del Consejo de la Federación y la práctica de realizar audiencias parlamentarias. Los autores se centraron en las consecuencias negativas que expresan la responsabilidad de los senadores, teniendo en cuenta la ambigua regulación estatutaria de tales medidas en la política rusa moderna. Durante el desarrollo del alcance de las actividades realizadas por la cámara alta de la Asamblea Federal, se ampliaron significativamente los motivos en virtud de los cuales sus miembros podrían perder sus poderes. A modo de conclusión se notó que, a pesar de la rareza de la aplicación de tales sanciones, los autores registraron una sistematización de formas y medidas de responsabilidad utilizadas con fines políticos. Tales tendencias crean barreras artificiales para la implementación de ciertos poderes senatoriales y adquieren un carácter político.

Palabras clave: responsabilidad Política; parlamentarismo; consejo de la federación rusa; Asamblea Federal; condición de senador.

Introduction

As a rule, the responsibility of the senators of the Federation Council is legal. It is defined in the Constitution of the Russian Federation and is specified in special legislation. Therefore, parliamentarians of the upper house of the Federal Assembly have immunity. Federal Law of 1994 No. 3-FZ (Federal Law of No. 3-FZ, 1994) requires the use of a special procedure if a senator is brought to administrative or criminal responsibility. In addition, senators are endowed with indemnity, exempting them from responsibility for statements and opinions. However, this indemnity does not apply to libel, public insults, and other violations committed by parliamentarians. In any of these cases, a senator is deprived of parliamentary immunity.

In some cases, those sanctions that are prescribed to members of the Federation Council in Russian law are exclusively political in nature. Thus, the basis for the application of these measures is not only a violation of legal, but also political norms.

1. Methods

The methodological basis of the study conducted is represented by a system-functional approach to the analysis of organizational issues devoted to the implementation of the rights of Russian senators. As a result, it became possible to establish several directions in understanding political responsibility, which manifests itself in the limitation of senatorial powers.

The formal legal approach to the essence of political responsibility prevailed for several decades (Knysh, 2017). However, to date, the responsibility of senators takes on a broader meaning. In particular, it can be expressed in a wide variety of negative consequences imposed on the conditionally "guilty" parliamentarian (Novikova, 2017; Krysanov, 2014).

In case of violation of political norms by a senator, special relations arise; they are aimed at bringing him to the responsibility complicated by the power component (Tsutiev and Tlyabichev, 2016). Therefore, in modern science, criteria that distinguish political responsibility from other methods of negative impact on parliamentarians are formed (Musienko, 2007; Sherov, 2013).

In accordance with the first approach, political responsibility should be understood as the constitutionally established measures of influence in relation to the subjects of power (Brady, 1999). Hence, the identification of the constitutional legal responsibility of senators with their political responsibility is developed among researchers. Therefore, the imposition on parliamentarians of sanctions regulated by constitutional law is considered a political responsibility.

According to the second approach, political responsibility is a combination of administrative and disciplinary measures imposed on a subject of power (Peacock, 2004). Their application is permissible only at the official state level and is open in nature. Because of this, if the senator is deprived of his/her powers or if they are significantly limited, he or her is punished for unlawful behaviour. In particular, the prohibition of a senator to speak during a parliamentary meeting is, according to individual authors, a case of political responsibility (Berlyavsky and Taraban, 2012).

If we follow the third approach, then political responsibility is a comprehensive institution that combines various measures of negative

impact on the senator in order to achieve certain behaviour from him/her (May, 1989; Dunn, 1992).

In this form, it is permissible for the senator to apply the legal sanctions, including disciplinary and financial ones, with a combination of illegal instruments (Tsakatika, 2004) (for example, refusal to provide information, ignoring the senatorial request, refusal in personal appointment of the senator by officials, etc.).

2. Results and Discussion

Political and legal literature is dominated by the notion that bringing a government representative to any type of responsibility can affect his/her political activity (Schiff, 2017). In addition, such an impact can significantly hamper a senatorial career. Thus, both the deprivation of senatorial powers and the restriction on senatorial rights express the essence of political responsibility. This is confirmed by examples from Russian political practice.

Today, ignoring senatorial requests, refusals to provide information or speaking at sites owned by the media are common. Significantly less often, senators lose their parliamentary mandates, except of their own free will.

A similar practice (the non-recognition of the authority of parliamentary representatives) is a long-standing Russian tradition. For example, in 2016 there was a confrontation between the new composition of the Legislative Assembly of the Nizhny Novgorod Region and the regional Government. The subject of political debate was the election of the Chairman of the Nizhny Novgorod Regional Parliament. Not only Plenipotentiary of the President of Russia in the Volga Federal District M. Babich had to intervene into this conflict, but also several senators representing the Nizhny Novgorod Region in the Federation Council. As a result, individual executive bodies of the federal and regional levels began to ignore the requests of senators involved in the conflict. The rights to appeal and to receipt members of the Federation Council by regional officials were also limited. Against the background of these and some other factors, the candidate who was supported by the governor of the region became the chairman of the Nizhny Novgorod regional parliament.

The current Russian legislation provides only two negative measures:

1) Depriving a senator of the opportunity to speak at a meeting held in the Federation Council.

2) Early termination of senatorial powers.

Despite the regulation of these sanctions by legal norms, individual conditions for their use remain at the discretion of senior officials of the Federation Council.

So, Art. 9 of Federal Law 1994 No. 3-FZ makes a reference to the Regulations of the Upper House of the Federal Assembly (Resolution of the Federation Council of the Federal Assembly of the Russian Federation No. 33-SF, 2002) to establish responsibility for violation of ethical standards by senators. In most cases, a member of the Federation Council is deprived of the right to speak. Such a measure is imposed in two versions: without warning and with the prior approval of other senators. However, the prevailing cases are unilateral decisions of the chairman to implement such a sanction.

A ban on public speaking is imposed if:

- There is no prior permission for a public speech at a meeting from the side of the chairman (clause 2, article 53 of the Federation Council Regulations).
- When using rude and insulting expressions, causing damage to the honour and dignity of citizens and officials.
- In calls for illegal actions.
- When trying to use knowingly false information.
- With unsubstantiated accusations.
- When inciting national and social discord (paragraph 3 of article 53).

For example, in 2018, the speaker of the Federation Council Valentina Matvienko interrupted the speech of Senator Lyudmila Narusova in connection with her opinion on the scandal involving the Minister of Culture Vladimir Medinsky. Despite the information received from several sources regarding plagiarism in the thesis of the Minister, the Chairperson regarded the speech of Narusova as an unsubstantiated accusation. Moreover, Art. 53 of the Federation Council Regulations does not disclose what exactly should be understood by this category.

Similarly, the phrase "abuse of the right to participate in the discussion" was not disclosed at the legal level. A senator is deprived of speech for this reason, but the procedure for imposing such a sanction is more democratic. In particular, the issue of abuse should be put to the vote of members of the Federation Council, thereby only they have the right to prohibit a particular senator from speaking at this meeting.

At the same time, examples from parliamentary practice demonstrate the preservation of the chairman's prerogative to detect abuse. So, on October 9, 2019 Valentina Matvienko interrupted the speech of Senator

N.I. Ryzhkov in connection with his criticism of the implementation of presidential decrees and the situation with forest fires in the country.

In accordance with the Regulations, a member of the Federation Council is not limited in touching upon various issues related to the agenda in one way or another. However, in fact, there is developed another (not legal, but political) norm, according to which it is impossible to ask questions to the executive branch within the framework of the so-called "Government hour". According to V. Matvienko, for the implementation of these intentions it is necessary to use other venues in order not to turn the meetings of the Federation Council into "self-PR" (Matvienko interrupted Narusova's speech due to statements about Medinsky, 2020).

In some cases, sanctions not mentioned in the current Russian legislation are observed. All of them are associated with the restriction of certain powers of senators.

For example, members of the Federation Council have the right to send their own requests to various bodies and organizations. However, there were cases when administrations of global media and social networks (Twitter, Apple, Google) ignored such appeals by Russian senators. At the same time, Art. 14 of the Federal Law dated 1994 No. 3-FZ designates only bodies and officials of the Russian authorities obliged to respond to relevant senatorial requests.

At the same time, the consequences of failure to comply with such a requirement on the part of the Government of the Russian Federation, the General Prosecutor's Office, and the Investigative Committee are not legally determined, since responsibility arises only for specific officials, and not for authorities.

3. Summary

While remaining the upper house of the Russian parliament, the Federation Council has formed a set of rules in the internal work regulations, for the violation of which there may be political sanctions. A smaller volume of such norms is legal requirements. Informal practices remain more efficient that make it possible to influence a particular senator for political purposes.

Unlike deputies of the State Duma of Russia, senators do not represent the interests of political parties. This reduces the number of guarantees for their parliamentary activities, providing the opportunity to punish members of the Federation Council only to two subjects:

1) The management apparatus of the Federation Council.
2) The political elite of Russian regions, whose interests are represented by a senator in the upper house of parliament.

It seems that the political norms mediating parliamentary activity should be static. Their action is accompanied by a streamlined mechanism for applying measures aimed at maintaining the political order within the walls of the Federation Council. However, far from all of these regulations have been maintained for at least a decade in Russia. Depending on the position taken by the federal executive branch, the actual regulations for the work of senators are changing. If in a period they can actively criticize the bills proposed by the Government of Russia, in modern times such criticism is fraught with personal political consequences for members of the Federation Council.

Conclusions

The political responsibility of the members of the Federation Council can be selective in nature and often involves a breach of not only legal, but also political norms. As a rule, it is fragmented and applies only to individual senators who demonstrate opposition rhetoric to the executive branch of the Russian Federation power. Current legislation is called upon to eliminate such practice, in which it is necessary to disclose the definitions used and the grounds for imposing certain sanctions, as well as to limit the discretion of persons authorized to influence members of the Federation Council.

Sanctions expressing the political responsibility of Russian senators have not only a formal (legal), but also an informal (political) character. The first may include legal requirements formulated in laws in an unjustifiably broad sense. This allows changing the interpretation of some of the grounds for bringing members of the Federation Council to legal responsibility.

Informal measures of political influence on senators are not defined in the norms of laws but are practiced by individual actors of modern Russian politics. As a result of this, such measures may have a “shadow” character. The latter is expressed in the influence on the will of a member of the Federation Council to maintain a political course or deter criticism of the ruling party. As a result, today the restriction of the rights of senators takes the form of political responsibility contrary to the legitimate methods of political struggle at the federal level.

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Electronic technologies during local elections: new challenges

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Abstract

The COVID-19 pandemic poses new challenges, as no one can propresa will burst a new wave of morbidity. It is therefore worth thinking about the implementation of the electronic voting procedure. In view of this, it is important to explore the role of electronic technology in local elections, share it with the experience of several countries, as well as as analyse new opportunities for the transformation of the electoral process. The aim of the work is to study the role of electronic technologies during local elections. The subject of research is electronic technologies during local elections and social relationships that arise, change and end during the use of electronic processes during local elections. The research methodology combined a set of philosophical, general, and special approaches to scientific knowledge. A study of electronic technologies in local elections has shown that electronic technologies play an important role in electoral processes. It is concluded that, under modern conditions, it is important for Ukraine to support the electoral process with the latest electronic technologies, because these technologies, if used correctly, ensuring election democracy and greater the efficiency of democracy institutions represents.

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Tecnologías electrónicas durante las elecciones locales: nuevos desafíos

Resumen

La pandemia COVID-19 plantea nuevos desafíos, ya que nadie puede predecir cuándo estallará una nueva ola de morbilidad. Por tanto, vale la pena pensar en la implementación del procedimiento de votación electrónica. Ante esto, es importante explorar el papel de la tecnología electrónica en las elecciones locales, compararlo con la experiencia de varios países, así como analizar nuevas oportunidades para la transformación del proceso electoral. El objetivo del trabajo es estudiar el papel de las tecnologías electrónicas durante las elecciones locales. El tema de la investigación son las tecnologías electrónicas durante las elecciones locales y las relaciones sociales que surgen, cambian y terminan durante el uso de procesos electrónicos durante las elecciones locales. La metodología de investigación combinó un conjunto de enfoques filosóficos, científicos generales y especiales de cara al conocimiento científico. Un estudio de las tecnologías electrónicas en las elecciones locales ha demostrado que las tecnologías electrónicas juegan un papel importante en los procesos electorales. Se concluye que, en las condiciones modernas, es importante que Ucrania apoye el proceso electoral con las últimas tecnologías electrónicas, porque estas tecnologías, si se utilizan correctamente, garantizan la democracia de las elecciones y aumentar la eficiencia de las instituciones de la democracia representativa.

Palabras clave: proceso electoral local; tecnologías de la comunicación e información; voto electrónico; democracia digital; órganos de autogobierno local.

Introduction

In a modern democratic society, elections are a way of forming public authorities and local self-government bodies. The people are the sole source of power, which can elect bodies and officials (Kolodin, Kolodina, and Kaminskyi, 2019). Legal consciousness, as an organic part of the spiritual reality, acquires an independent spiritual and cultural status

among the foundations of social and legal life (Kharytonov, Kharytonova, O., Kharytonova, T., Kolodin, Tolmachevska, 2019). It is often easier for the state to settle some relations by means of coercion than to understand the real interests of the subjects of the respective relations and to delegate to them the right to settle certain relations (Tkalych, Safonchyk, Tolmachevska, 2020). That is why the clearance of election procedures, the provisiov of the election in force majeure (as quarantine and COVID-19) is of prime importance.

Elections in Ukraine are a complex process that encompasses the election campaign and the set of stages and election procedures provided by law following the calendar plan, which should ensure the legality and legitimacy of the election results.

In modern conditions of development of public relations, quite a bit of attention is paid to research and innovative possibilities of the electoral process, namely the introduction of electronic technologies in local elections.

The scope of applications of electronic technologies in various spheres of public life, including politics, is expanding every day.

The first attempts to introduce information technology were made in the Electoral Code of Ukraine (2019) (hereinafter – the Electoral Code). Article 18 of the Electoral Code regulates the use of innovative technologies in the election process. Thus, the Central Election Commission may decide to implement innovative technologies, hardware and software during the organization and conduct of elections in the form of an experiment or pilot project concerning:

1. voting at the polling station with the help of hardware and software (machine voting);
2. counting of votes with the help of technical means for electronic counting of votes;
3. drawing up protocols on the counting of votes, results and results of voting using the information-analytical system.

The above-mentioned experiments or pilot projects shall be conducted at individual polling stations designated by the Central Election Commission at the same time as elections are held at these polling stations in compliance with all requirements and procedures for the respective elections and voting.

At the same time, the Central Election Commission is tasked with ensuring the implementation and protection of the voting rights of Ukrainian citizens who vote at polling stations where experiments or pilot projects are conducted, without narrowing their scope. Conducting experiments or

pilot projects should not give voters the false impression that the election procedures of the relevant elections have been replaced by the procedures of the relevant experiment or pilot project.

The Central Election Commission is obliged to inform voters who vote at polling stations where experiments or pilot projects are conducted that the participation of voters in an experiment or pilot project does not create legal consequences for establishing the results of voting or election results, does not create grounds and does not may be used to appeal against decisions, actions or omissions of the subjects of the election process.

The Central Election Commission, district and territorial election commissions (by the decision of the Central Election Commission, if technically possible) provide interaction with parties (party organizations), candidates for the application of innovative technologies. In case of submission to the election commissions of the documents provided by this Code through electronic services, such documents must meet the requirements of the laws of Ukraine "On electronic trust services" (2017). Documents may be submitted to the election commission in the form of an electronic document, taking into account the peculiarities of the Electoral Code.

That is, at the legislative level, the first attempts have already been made to introduce electronic technologies during local elections. In view of this, it is important to analyze the peculiarities of the application of such provisions in practice. In addition, the introduction of information technology in the domestic election process should take into account the best legal experience of leading countries.

Thus, it is important to study electronic technologies during local elections, to analyze the provisions of the legislation governing their application, and to investigate the theoretical developments on the research issue.

1. Methodology

The main ideological, legal and methodological principle used by the authors of the article is the principle of democracy. The principle of democracy lies in the fact that law should be based on common goods, and laws must express the will and interests of the overwhelming majority of society. Democracy involves participation population in the formation of this will, consolidating it in the process of lawmaking, maximum consideration of public opinion at all stages of this process, implementation of law-making powers and activities of the population through their representatives in state and local government bodies, democratic development procedures,

discussion, adoption and promulgation of law-making decisions. Strict adherence to the principle of democracy is of particular importance today, when the whole world is suffering from the Covid-19 pandemic.

Thus, the principle of democracy in law is fundamental to the study of phenomena that are the subject of this article. Applied methods of cognition of these objects were the following methods: dialectical, historical, generalization, structural-functional, comparative, and formal-logical.

Firstly, dialectical, and historical methods were used in studying the development of electronic technologies in the electoral process, as well as in different countries of the world. Than, formal-logical and system-structural methods are used in formulating proposals and changes to current legislation on the consolidation of electronic technologies during local elections. These methods also helped to identify shortcomings in the legal regulation of the electoral process, to identify conflicts, inconsistencies, gaps.

Moreover, the systematic approach helped, on the one hand, to elucidate the general signs of the impact of electronic technologies on the course and outcome of the election process, and on the other – to reveal the specifics of the use of electronic technologies in local elections. Besides, the use of methods of generalization, analysis, and synthesis made it possible to improve the content of the concepts of "electronic voting" and "electronic participation"; readiness of citizens to switch to digital voting. What is more, structural, and functional analysis was used in the study of the application of electronic technology by various actors in the electoral process at all stages. This method helped to identify the difficulties faced by various actors in the electoral process.

Finally, the comparative method has become an important tool for revealing the impact of electronic technologies on the democratization of the electoral process. Also, this method helped to compare the experiences of different countries, to identify the strengths and weaknesses of electronic voting.

In addition, during the study, the regulations and programs of the Government were analyzed, which set out the provisions on the electoral process, as well as the provisions on the use of electronic technology in the electoral process.

2. Recent research

Electronic technology during the local elections was studied by such scholars as Andreeva (2015), Bereza (2020), Gotun (2008), Denisyuk

(2012), Kuravaev (2020), Malinovska (2016), Mykhalchuk (2016), Kolodin, Kolodina, and Kaminskyi (2019), Onipko (2020), Petrovets (2019), Sidenko (2012), Tarasenko (2020), and Shevereva (2016) as well as Kharytonov, Kharytonova, O., Kharytonova, T., Kolodin, andTolmachevska (2019).

Thus, Bereza (2020) analyzed modern voting technologies and drew attention to the possibilities of their implementation.

Further, he subjects of Gotun's (2008) research was the use of new information technologies in the election process. Denisyuk (2012) was also interested in this issue. Thus, Denisyuk, in his research, analyzed communicative Internet technologies in the modern election process.

In his works, Onipko (2020) sought ways to improve the technology of the election process. The subject of Sidenko's (2012) research is the introduction of electronic voting, including the analysis of the prospects for the introduction of such voting. Kuravaev (2020) analyzed the necessary preconditions and opportunities for holding elections online.

Moreover, Mykhalchuk (2016) analyzed in detail the electronic tools of public control of the election process. Also, Petrovets (2019) analyzed whether Ukraine is ready for online elections.

In addition, Tarasenko (2020) analyzed various assessments of experts on the peculiarities of the preparation and conduct of local elections in 2020. Thus, the researcher stressed the importance of the introduction of electronic technologies during the elections, as it meets modern challenges and conditions. What is more, Shevereva (2016) conducted a comprehensive analysis of the use of the Internet during the election process.

Finally, Andreeva (2015) conducted a detailed analysis of e-government in the United States, including attention to the peculiarities of the use of electronic technology in solving cases of national importance. Besides, Malinovska (2016) analyzed the foreign experience of citizens' suffrage abroad and the possibility of its application in Ukraine. As well as analyzed the experience of using electronic technologies during the elections in Estonia.

It should be mentioned that the publications on various Internet resources on the introduction of electronic voting (Idea Internacional, 2011) were studied, as well as foreign experience in implementing e-government (Website of the Central Election Commission of Ukraine, 2020). Information on the general information support of local elections from the website of the Central Election Commission and statistics of the Internet audience of Ukraine were also analyzed (Internet audience of Ukraine, 2020).

From the above analysis of the literature, we can conclude that electronic technologies during the elections are actively studied among Ukrainian

and foreign scholars, but there is no comprehensive study of electronic technologies during local elections. This circumstance necessitates the study of electronic technologies during local elections.

3. Results

International experience of e-electoral process

Currently, a number of scientists are exploring the prospects for the introduction of blockchain technologies in the electoral process. In general, a blockchain is a distributed database that stores information about each operation performed on the system. The data is stored in the form of a chain of blocks with records of transactions. They cannot be forged, as each new record confirms in existing chains. At the same time, attention should be paid to:

- The potential risks and disadvantages of using the electronic voting mechanism: vulnerability of computer systems (viruses, hacker attacks, etc.).
- Distrust of a large part of the population to the technology of electronic voting.
- The possibility of manipulation and outside interference in the results of the expression of will.
- Lack of opportunity to obtain evidence of an offense in case of suspicion of falsification and, accordingly, to effectively challenge the offense.
- The significant cost of technology at the implementation stage; unavailability of the Internet for a large part of the population.
- Lack or low level of computer literacy of certain categories of citizens, and;
- Increasing the “digital divide” of society.

It is worth analyzing foreign experience in the use of electronic technologies in voting.

Different countries use electronic technologies differently. For example, e-voting in national elections was first used by Estonia. It is also used in Iraq, the Netherlands, New Zealand, Singapore, France. In test mode, it was used in the UK, USA, and Switzerland. This method of voting is currently not common for technical reasons, in particular, due to the need to use

special technologies to identify the voter, as well as due to doubts about the possibility of maintaining the secrecy of the ballot (Chukut, 2008).

Estonia has been using the most technically successful type of Internet voting since 2005. Citizens of this country can vote remotely from any computer with a chip ID or a virtual digital ID Mobiil-ID, as well as software that can be easy to download from the state site.

Estonia's experience has shown everyone that e-voting is a democratic way of expressing the will of the people, according to experts from the Council of Europe and the OSCE. The Estonian authorities are implementing measures to increase public confidence in e-elections by providing informational support to the campaign, improving the computer literacy of citizens, and enabling voters to check for themselves whether their vote has been properly processed through a separate application.

For example, in France, online voting is used for citizens who are abroad and so that such people do not have to go to the polls to vote. An interesting experience in the development of the electronic election system in the United States, where a variety of experiments were carried out – from the use of sensor machines for voting or scanning electronic means to the use of special optical systems.

National pecularities of the implementation of e-voting

As elections are a special form of political democracy, local elections will be held in Ukraine on October 25, 2020. This stimulates the political activity of the population. However, today there are categories of the population who find it difficult or impossible to come to the polling station, who are outside the state, in self-isolation, and so on. Therefore, to optimize the interaction of citizens and government, the electoral process can be a democracy and, in particular, e-government, and e-voting.

At the same time, on the eve of the next presidential and parliamentary elections in our country, the discussion on the possibility of introducing electronic voting in the expression of the will of citizens has justly and expectedly intensified.

In general, the concept of "electronic voting" can be reduced to its interpretation as a fixation of the will of voters using electronic technology, which covers both the voting process itself and the process of automatic vote counting using electronic devices and special software.

Regarding the legislative justification for the participation of citizens in the elections of Ukraine, in accordance with Article 38 of the Constitution

of Ukraine (1996), citizens of Ukraine have the right to freely elect and be elected to state authorities and local governments.

The Electoral Code No 396-IX of December 19, 2019, provides for the use of electronic and Internet technologies by several provisions. Thus, in accordance with Art. 50 of the Electoral Code, news agencies, the media in the case of dissemination of the results of public opinion polls related to the election, are required to indicate the full name of the organization that conducted the poll, the pollsters, as well as other information. The provisions of this part apply to cases of dissemination of the results of public opinion polls related to elections on the Internet by mass media and news agencies. The Transitional Provisions also state that the Register Administrator ensures the interaction of voters with the Register by introducing electronic services on the Internet, and also states that applications of individuals may be submitted via the Internet and the specified requirements for such applications. With regard to electronic technologies, the provisions of the Code show that in order to organize and ensure the democracy of elections, Registers and other means have been introduced that summarize information about candidates and voters.

Also the Concept of e-government development in Ukraine. The implementation of the Concept was not aimed at:

- increasing the efficiency of public authorities and local governments and achieving a qualitatively new level of government based on the principles of efficiency, effectiveness, transparency, openness, accessibility, trust, and accountability;
- to improve the quality of public services to individuals and legal entities in accordance with European requirements, and;
- to minimize corruption risks in the exercise of power.

In addition, Ukraine has taken significant steps to introduce an electronic election process. In this context, we can highlight:

1. Introduction of biometric foreign passports of citizens of Ukraine, as well as domestic passports in the form of ID-cards, which in the future can be used to identify the voter during electronic voting;
2. Introduction of an electronic digital signature, which may also be required when introducing voting (On approval of the Concept for the development of e-democracy in Ukraine and the action plan for its implementation: Order 797-r, 2017);
3. Introduction of a service that allows you to check your presence in the voter lists online – through a special service on the website of the State Register of Voters;

4. Transition of the Central Election Commission (hereinafter – the CEC) to procurement through the electronic system PROZORRO and gradual electronification of the CEC. In addition, the CEC has a single information and analytical system "Elections", which covers all stages of the election process (On approval of the Concept of e-government development in Ukraine: Order 649-r, 2017).

With the adoption of the Law of Ukraine "On electronic trust services" (2017) introduced new electronic services for citizens, which simplify the exchange of electronic documents between citizens.

Unfortunately, no separate provisions are regulating the use of electronic technologies in the election process in Ukraine. This indicates that in Ukraine there is no proper regulation of the use of electronic and Internet technologies in the electoral process, which necessitates the analysis of theoretical positions of scientists on the research issue.

As for Internet access, in large cities, it is 74%, in towns with a population of fewer than 100 thousand inhabitants – from 53% to 70%, and villages – from 53% to 58%. It is also worth noting the total number of voters in some regions (Fig. 1) (Internet audience of Ukraine, 2020).

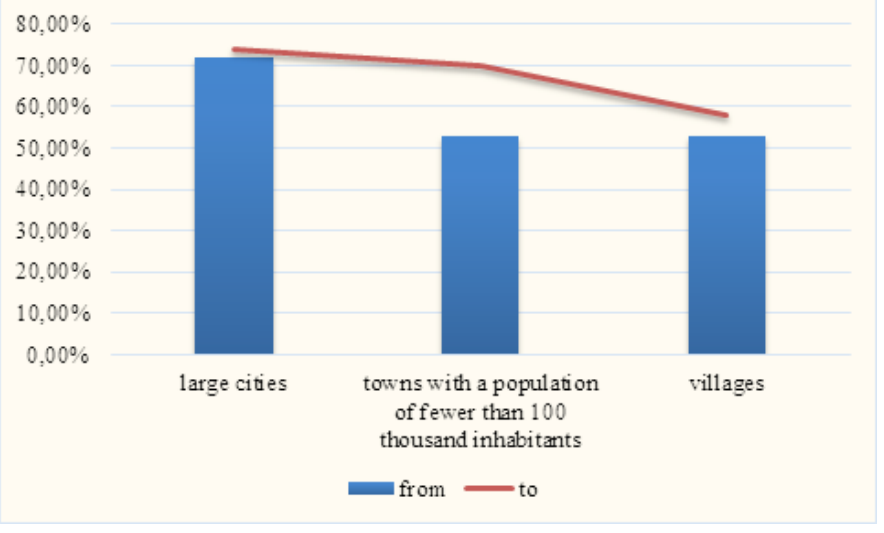

Figure 1. Internet access data provided by Internet Association of Ukraine (2020).

Given the analysis of Ukrainian and foreign legislation for the introduction of electronic technologies, and the introduction of electronic voting in the electoral process of Ukraine during local elections, there is a need to develop an algorithm for introducing such innovations. Thus, all automated e-voting systems should be independently tested and certified by international observers and information technology experts, and the Central Election Commission and district commissions should train and instruct polling station staff on the use of e-election systems. Also, it is necessary to conduct a state campaign to inform citizens about the peculiarities of the use of electronic voting through social advertising and the production of educational materials.

4. Discussion

As a result of the study, the possibilities for the introduction of electronic technologies in the electoral process during local elections are clarified, including the advantages of the introduction of electronic voting in Ukraine.

Thus, it is possible to identify such strengths and weaknesses of the introduction of Internet voting during local elections (Table 1). Own elaboration.

Election problems, compared to paper voting	Internet voting
Faster counting and tabulation	Strong
More accurate results	Weak
Management of complex electoral systems	Strong
Better presentation of complex ballots	Mixed
Greater convenience for voters	Strong
Increased participation and turnout	Strong
Meeting the needs of a mobile society	Strong
Cost savings	Mixed
Prevention of fraud at the polling station	Mixed
Greater availability	Mixed
Multilingual support	Strong
Avoiding spoilage of ballots	Strong
Flexibility concerning changes, control of deadlines	Strong

Prevention of family voting	Strong
Lack of transparency	Weak
Only experts can fully understand voting technology	Weak
Voting secrecy	Weak
Risk of manipulation by outsiders persons	Weak
Risk of insider manipulation	Weak
Implementation costs and service	Strong
Infrastructure / requirements for environment	Mixed
Lack of standards for e-voting	Weak
Significant recount	Weak
Dependence on the supplier	Weak
Increasing IT security requirements	Weak

Table 1. The strengths and weaknesses of the introduction of Internet voting during local elections.

Thus, the current legislation of Ukraine does not yet provide for electronic voting, but the foreign experience of democracies in electronic elections should be the basis for the development and adoption of legislation aimed at the development of electronic elections and the electoral process.

The study showed that the electoral process in Ukraine needs significant changes and modernization. The use of electronic technologies in the electoral process helps to ensure the democracy of the electoral process and increase the efficiency of the functioning of the institutions of representative democracy and to establish a dialogue between the government and society.

Conclusions

Thus, electronic technologies play an important role in the institution of suffrage. The experience of individual countries confirms that the use of Internet technologies is an effective tool for democracy, but each of the technologies has both advantages and disadvantages. Among the advantages of using the latest technologies in the electoral process during local elections

are ensuring the availability and simplicity of voting and public or other control, saving public funds, preventing violations, using standard computer equipment, enabling citizens to vote outside their polling stations, etc. The disadvantages of the introduction of electronic technologies are insufficient guarantees for the protection of citizens' information and the tendency to technical errors. But despite the shortcomings, the use of electronic and Internet technologies is necessary to modernize the institution of elections, increase trust between states and citizens, and ensure speed of the process and simplification of the election procedure.

Regarding further research, it is important to analyze the possibilities of introducing electronic voting as a pilot project in some regions of Ukraine, to pay attention to the possibilities for electronic document management by territorial and district commissions and opportunities for electronic scanning during the registration at polling stations.

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Derechos Humanos

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Social and legal guarantees of the rights of convicts according to the legislation of the Russian Federation

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Abstract

The objective of the article is to examine the social and legal guarantees of the rights of convicts under the legislation of the Russian Federation. The socio-documentary method was used. The square of the subject lies in the development of a system of social protection of the population in prison institutions. After all, convicts, like other people, need social protection and social security from the state. Upon entering the prisons, they experience adaptation and have no idea of the existence of certain legal and legal social guarantees. Supporting a segment of the population as convicted requires social and legal guarantees, thus improving the conditions of their service in places of deprivation of liberty. Places of deprivation of liberty are counted, because social work aimed at supporting these categories of population, such as the elderly and mothers, adheres to places of deprivation of liberty, because social work is oriented precisely to these categories of population, where necessary, as well as to protect motherhood, fatherhood and children and , inmates, have much to contribute in these areas and social segments if they meet.

Keywords: social protection; social security of the condemned; social and legal guarantees; places of deprivation of liberty; prison system.

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Garantías sociales y legales de los derechos de los condenados según la legislación de la Federación de Rusia

Resumen

El objetivo del artículo es examinar las garantías sociales y legales de los derechos de los condenados según la legislación de la Federación de Rusia. Se empleó el método sociológico y documental. La relevancia del tema radica en el desarrollo de un sistema de protección social de la población en las instituciones penitenciarias. Después de todo, los convictos, al igual que otras personas, necesitan recibir protección social y seguridad social del estado. Al ingresar a las instituciones penitenciarias, experimentan dificultades de adaptación y no tienen ni idea de la existencia de ciertas garantías sociales y legales. Apoyar a un segmento de la población como condenado requiere garantías sociales y legales adicionales, mejorando así las condiciones de su servicio en los lugares de privación de libertad. Se concluye que, los sujetos objetivo de la obra social, como los discapacitados, los ancianos y las madres, acceden a los lugares de privación de libertad, porque la obra social está orientada precisamente a apoyar a estas categorías de población, cuando sea necesario, así como a proteger la maternidad, la paternidad y la infancia y, los reclusos, tienen mucho que aportar en estas áreas y segmentos sociales si se crean las condiciones para ello.

Palabras clave: protección social; seguridad social de los condenados; garantías sociales y legales; lugares de privación de libertad; sistema penitenciario.

Introduction

The areas of social work in the penitentiary sphere include pensions, provision of benefits, social services, gratuitous and preferential provision of drugs for convicts, assistance in household and work placement, as well as the creation of social institutions, such as medical units in colonies and orphanages (Vladimirova and Iutiaeva, 2018). The main statutory rights of convicts include the right to health protection and personal safety and the right to social security and insurance (The decree of he RF government of No. 727, 2001.).

Persons sentenced to places of deprivation of liberty have some social and legal guarantees, which are specified in the Criminal Executive Code of the Russian Federation (CEC RF) (Khamitova and Gimadieva, 2019). This law contains the rules of social orientation in relation to convicted

and released convicts. According to Article 7 of the Constitution of the Russian Federation, the Russian Federation is a social state, with the policy aimed at creating conditions that ensure a dignified life and free human development. This means that the state protects labor and health of people, establishes a guaranteed minimum wage, provides a state support for family, motherhood, fatherhood and childhood, disabled people and elderly citizens, develops a system of social services, and establishes state pensions, benefits and other guarantees of social protection (The Constitution Of The Russian Federation As Amended As Of, 2018). And convicts are no exception. They are also entitled to receive pension benefits, regardless of the fact that they are in detention.

1. Methods

The research is based on the method of analysis of the current Russian legislation and law enforcement practice and existing European (world) standards for the purpose of legal unification (Gutteridge, 1974). Methods of legal modeling and forecasting make it possible to determine the need for amendments to the existing Russian regulations, as well as the need to adjust judicial practice (Dale, 1977). Through the use of modeling and forecasting methods, the consequences of such changes and adjustments can be established with a sufficient degree of reliability, as well as it is revealed how, ultimately, Russian law enforcement practice will be close to the existing European (world) standards (Arslanov and Khabirov, 2017).

The legal sociological method provides for the assessment of social problems from a legal position, from the position of the legislator and law enforcement officer (Mathias and Daith, 2012). The method of interpretation complements the comparative legal analysis in the study, making it possible to understand and compare Russian and European (world) legal standards (Davies, 2016). The use of various methods made it possible to formulate the main theoretical conclusions and make their own proposals on the investigated sphere of social relations (Criminal executive code of the Russian federation, 2019).

2. Results and Discussion

Thus, the CEC RF enshrines the principles of compulsory state social insurance and pension provision for those sentenced to imprisonment. The most important thing is that convicts sentenced to imprisonment, involved in labor, are subject to compulsory state social insurance, and convicted

women are also provided with maternity benefits in the manner established by the Government of the Russian Federation. Convicts have the right to state pensions in old age, in case of disability, loss of a breadwinner and in other cases stipulated by the legislation of the Russian Federation (The decree of he RF government of No. 727, 2001). State pensions in old age are paid to convicted men who have reach 65 years of age and women who have reached 60 years of age. The pension is credited to the personal account of the convict, however, deductions are made from it to reimburse the expenses for its maintenance. In addition, the law establishes the right to compensation for damage to the convict in case of his/her loss of ability to work while in prison. Moreover, this right is exercised immediately, as soon as incapacity for work occurs.

According to Article 103 of the Criminal Code of the Russian Federation, every convict is obliged to work in places and jobs determined by the administration of correctional institutions. At the same time, according to the internal regulations of correctional institutions, it is prohibited to use the labor of convicts as drivers of operational vehicles, salesmen, accountants, cashiers, in departments for the execution of sentences and other units of ministries and departments of the penal system, in headquarters and premises where penitentiary personnel is accommodated and weapons and service documentation is stored, for work related to duplicating, radiotelegraph, telephone, telefax equipment, as well as to accounting, storing and issuing medicines, explosives and toxic substances. Convicts also usually do not work with sophisticated and expensive equipment. Convicted men and women who have reached retirement age and convicts with disabilities may work voluntarily (Criminal executive code of the russian federation No. 1-FZ. 2019).

The working conditions are legally established: working hours of those sentenced to imprisonment, labor protection rules, safety measures and industrial sanitation. Working convicts have the right to annual paid leave: 18 working days for those serving sentences in educational colonies and 12 working days for those serving sentences in other correctional institutions. The aforementioned leave is granted either with or without travel outside the penitentiary facility (Criminal executive code of the russian federation No. 1-FZ. 2019). Convicts have the right to remuneration, the amount of which cannot be lower than the established minimum wage if the monthly norm of working time is fulfilled and in proportion to the time worked by the convicted person or depending on the work done during part-time or part-time working week.

The provision of benefits and compensations to convicts is enshrined in the Government Decree of October 15, 2001 No. 727 «On the procedure for providing benefits for compulsory state social insurance to persons sentenced to imprisonment who are involved in paid work», according to

which convicts have the following types of compulsory social insurance benefits:

1. For temporary disability (except for industrial accidents and occupational diseases).
2. For pregnancy and maternity.
3. A one-time benefit to women registered at a hospital in the early stages of pregnancy (up to 12 weeks).
4. A one-time benefit for the birth of a child (except for cases when the children of convicts are fully supported by the state).
5. Monthly childcare benefit (in case of serving a sentence in penal colonies) (The decree of he RF government of No. 727, 2001).

All of the above benefits are paid to convicts at the expense of insurance contributions for compulsory social insurance in case of temporary disability and in connection with maternity to the Social Insurance Fund of the Russian Federation by organizations in which convicts work. Convicts have the right to the benefits specified in paragraphs 1-3 if, before they were released from work, they performed their labor duties in accordance with the established work schedule. Temporary disability benefit is issued in case of a disease associated with disability (The decree of he RF government of No. 727, 2001). The size of the temporary disability benefit ranges from 60 to 100 percent of the average wage of a convict. However, there are some exceptions, which are also indicated in this Regulation. For example, temporary disability benefits are not assigned:

1. for the period of discharge of the convict from job with full or partial retention of wages or without payment pursuant to the applicable laws of the Russian Federation, except for the cases of disability due to illness or injury during the period of annual paid leave;
2. for the period of suspension from job pursuant to the applicable laws of the Russian Federation, provided no wages were accrued for this period;
3. for the period of inactivity, except for the cases of temporary disability that occurred before the period of inactivity and continues during the period of inactivity;

Grounds for refusal to pay temporary disability benefit to the convict may be:

1. occurrence of the temporary disability as a result of the determined by court willful damnification by the convict of his/her health or attempted suicide;

2. occurrence of the temporary disability as a result of the willful crime committed by the convict (The decree of he RF government of No. 727, 2001).

In addition to benefits and pensions, the legislation also stipulates the material and household support of convicts. They are provided with individual sleeping places and bedding. They are provided with seasonal clothing, taking into account gender and climatic conditions, and with personal hygiene products. The minimum food standards and material and living conditions for convicts are established by the Government of the Russian Federation. At the same time, at the expense of enterprises that attract convicts to work, they can be provided with additional food in excess of the norm established by the Government. Inmates excused from work because of illness or because they are pregnant or breastfeeding are fed free of charge during this period. Food, clothing, basic amenities and personal hygiene items are provided free of charge to convicts in young offender institutions and convicts with category I or category II disability.

According to the CEC, those sentenced to imprisonment have the right to vocational education and training. Convicts who do not have a profession are provided with compulsory primary vocational education or vocational training in the penitentiary institutions. The convict will be able then to work in the penitentiary institution and after his/her release. Prisoners have the right to receive long visits for close relatives, lasting 3 days, and short-term visits for relatives and other persons, lasting 4 hours, as well as to receive parcels or book posts.

Their number is determined depending on the institution the convict stays in. For example, convicts in minimum-security penitentiary institutions are granted six short-term visits and four long-term visits during the year and 6 parcels and 6 book posts, provided that the convict has not violated the internal order. However, convicted women or convicted men who have a child under the age of 14 and who are the only parent may be provided with additional long-term visits with the child on weekends and holidays, with living outside the correctional institution, but within the municipality where the correctional institution is located. if it is provided for by the conditions of serving imprisonment in a correctional institution Upon serving a certain part of the term, on legal grounds, convicts are entitled to parole. The time required for compulsory serving is determined depending on the severity of the crime committed (Order of the ministry of justice of russia of december 16 No. 295 “On approval of the Internal Regulations of Correctional Institutions, 2016).

The administration of penitentiary institutions must facilitate the work and living arrangements of the released convicts. 2 months before the expiration of the term of arrest or 6 months before the expiration of the term of imprisonment, the administration of the institution executing the

sentence notifies the local government and the federal employment service at the place of residence chosen by the convict about his/her forthcoming release, the availability of housing, available specialties and his/her ability to work. At the same time, disabled convicts and convicts who have reached retirement age can apply to the administration with a request to send them to homes for the elderly and disabled.

Convicts released from forced labor or imprisonment for a certain period are provided with free travel to their place of residence, they are provided with food or money for the duration of the trip. In the absence of clothing necessary for the season or funds for its purchase, convicts released from prison are provided with clothing at the expense of the federal budget. Convicted persons in need of nursing care for health reasons, convicted pregnant women and women with young children, as well as convicted juveniles who are not able to independently, without assistance, get to their place of residence, the administration of the institution executing the punishment informs in advance about their release of relatives or other persons.

3. Summary

A systematic analysis of the current legislation allows us to conclude that all convicts, without any discrimination, have social and legal guarantees for health care, benefits, allowances, pensions and other types of social protection while in the penitentiary institutions. Moreover, convicts in the penitentiary facilities are entitled to short and long term visits with relatives and, most importantly, to parole. At the same time, the administration of the institution executing the punishment contributes to the further employment and living arrangements of the released prisoners. After all, all released convicts have the right to a labor and household arrangement and to receive other types of social assistance in accordance with the legislation of the Russian Federation and regulatory legal acts.

Conclusions

However, despite all the aforementioned possibilities, there are a number of social needs, the introduction of which into legislation will best guarantee the listed above rights. In particular, proposals are being made to amend Article 89 of the Criminal Executive Code of the Russian Federation, dedicated to motherhood and childhood, on granting a woman who gave birth at the time of imprisonment in a correctional facility an additional

long visit for up to 6 days in order to have the opportunity to meet with his/her family (Afletonova and Khamitova, 2018). A similar rule should be provided for male prisoners, who should have the right to a full meeting with their wife and newborn child who are at large.

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Derecho Público y Participación Social

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Environmental crime: dialectical and criminological vision

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Abstract

Traditionally, environmental crimes have been difficult to penalize both in Russia and abroad. Russian environmental legislation is not codified, it is a complex conglomerate of a wide variety of legal acts that are condemned to take into account the classification of environmental crimes and their delimitation of related crimes. Accordingly, the article examines the status, causes and some measures to prevent environmental crimes. The general methodological basis of the research was formed by the basic provisions of the dialectical method of the study of the phenomenon of legal in its text-context relationship. All the evidence can be concluded that the reasons for the production of environmental crimes include the ineffectiveness of the activities of law enforcement agencies, economic determinants and reasons in the field of legal awareness. In addition, the analysis of the statistical table of environmental crimes recorded a clear disproportion between the real situation in the field of ecology and the fight against such crimes. At the same time, the most significant factor that distorts the real image of environmental crimes is there and recursion latency in the concrete.

Keywords: Environmental crimes; legal dialectic; statistics on environmental crimes; causes of environmental crimes; prevention of environmental crimes in Russia.

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Crimen ambiental: visión dialéctica y criminológica

Resumen

Tradicionalmente, los delitos ambientales han sido difíciles de penalizar tanto en Rusia como en el extranjero. La legislación ambiental rusa no está codificada, es un conglomerado complejo de una gran variedad de actos legales regulatorios que deben tenerse en cuenta durante la calificación de delitos ambientales y su delimitación de los delitos relacionados. En consecuencia, el artículo examina el estado, las causas y algunas medidas para prevenir los delitos ambientales. La base metodológica general de la investigación se formó por las disposiciones básicas del método dialéctico del estudio del fenómeno jurídico en su relación texto y contexto. Toda la evidencia permite concluir que, las razones de la producción de delitos ambientales incluyen la ineficacia de las actividades de los organismos encargados de hacer cumplir la ley, los determinantes económicos y las razones en el campo de la conciencia jurídica. Además, el análisis del cuadro estadístico de los delitos ambientales registrados indica una clara desproporción entre la situación real en el campo de la ecología y la lucha contra esos delitos. Al mismo tiempo, el factor más significativo que distorsiona la imagen real de los delitos ambientales es su latencia y recursividad en la realidad concreta.

Palabras clave: Delitos ambientales; dialéctica jurídica; estadísticas sobre delitos ambientales; causas de los delitos ambientales; prevención de delitos ambientales en Rusia.

Introduction

Traditionally environmental crimes are difficult to enforce both in Russia and abroad (White, 2008; Borrillo, 2016; Görgényi, 2018; Paraschiv, 2018; Orellana, 2005). The situation in our country is complicated by the fact that legal regulation in the field of ecology is carried out on a multilevel basis: both federal legislation and the legislation of the constituent entities of the Russian Federation take place. Besides, environmental legislation is not codified, it is a complex conglomerate of a large array of normative legal acts that must be taken into account during environmental crime qualification, and their delimitation from related offenses.

Traditionally criminal law theorists consider this group of crimes as a single one, which is due to the object of criminal law protection - the natural environment and its components, and accordingly the existing structure of the RF Criminal Code (Bratashova, 2011; Kopylov, 2004; Kudryavtsev, 2012;

Pleshakov, 1993; Stolyarov, 2001). At the same time, the most widespread in domestic criminal law is the understanding of environmental crimes as an integral part of encroachments on public safety, which pushes scientists to determine the object of such socially dangerous acts as environmental safety (Brinchuk, 2001; Zhavoronkova and Shpakovsky, 2012; Petrova, 2005; Krasnova, 2014).

The analysis of Russian legislation allows us to conclude that the term "environmental safety" is used haphazardly (Explanatory note to the draft decree by the President of the Russian Federation "On approval of environmental safety strategy for the Russian Federation during the period up to 2025", 2019) despite the special Federal Law No. 7-FL (2002) "On Environmental Protection", which introduced the concept of environmental safety as a state of protection of natural environment and vital interests of a person from the possible negative impact of economic and other activities, emergency situations of natural and man-made nature, and their consequences (Federal Law No. 7-FL "On Environmental Protection", 2002). All crimes combined in chap. 26 of the RF Criminal Code, taking into account their features, violate some side (aspect, element) of environmental safety, harm the safety of the environment as a whole or its individual components (surface or underground waters, sources of drinking water supply; atmospheric air; marine environment; land; subsoil; aquatic biological resources; wild animals and birds; forest plantations).

Currently, the national security in the Russian Federation is carried out through strategic planning (Federal Law No. 172-FL "On Strategic Planning in the Russian Federation", 2014). The ecological safety of the Russian Federation is considered as an integral part of national security, and the state of the environment on the territory of the state, where the majority of the country population, production facilities and the most productive agricultural lands (accounting for about 15% of the country territory) are concentrated, is assessed as unfavorable (The decree of the RF President No. 176 "On the Strategy of Environmental Safety of the Russian Federation during the Period up to 2025", 2017).

1. Materials and methods

The general methodological basis of the study was formed by the basic provisions of the dialectical method of phenomenon study. Besides, a set of methods for social and legal reality cognition was used, which make it possible to study comprehensively the main directions and features of theory and practice, qualitative changes occurring in the development of the studied phenomena: general scientific (comparison, analysis, synthesis, induction, deduction), as well as particular scientific methods (formal-logical, system-structural).

The empirical basis of the study was the following: published judicial practice in the form of clarifications of the RF Supreme Court Plenum; the statistical data of Rosstat (2016-2018), and the Supreme Court of the Russian Federation (2007-2018); analytical and informational materials of the RF Ministry of Internal Affairs; published data of sociological and criminological studies concerning the problems of environmental crimes.

2. Results and discussion

The state of the environment and its components as a source of threats to environmental safety (State report "On the state and protection of the RF environment in 2018", 2019). Despite the measures taken to reduce the levels of environmental impact by chemical, physical, biological and other factors, to prevent natural and man-made emergencies, including the emergencies at hazardous production facilities, to adapt economic sectors to unfavorable climate changes, the threats to environmental safety remain.

The state of atmospheric air in cities is still one of the main threats. In 2018, the content of pollutants remained at a high level. The level of air pollution was characterized as high and very high in 46 cities with the total population of 13.4 million people. The total volume of pollutant emissions into the atmospheric air in 2018 almost does not change as compared to 2010; Since 2014, there has been a continuous increase of pollutant emissions into the atmosphere (+ 3.5%), and since 2012 there has been the redistribution of emissions: the volume of emissions from stationary sources has decreased by 13.1%, and the volume of emissions from mobile sources has increased by 18,9 %.

The volume of water resources in the Russian Federation as a whole amounted to 4,622.6 km^3 (2018); most of it (95%) is formed within the country. The water content of the rivers exceeded the norm by 8.8%; as compared to 2017, it decreased by 1.3%. The changes in the water reserves of the largest lakes in the Russian Federation were characterized by multidirectional trends: the increase of the lake Baikal and Khanka reserves and a relatively insignificant decrease of Ladoga and Onega lake reserves. Extremely high pollution and high pollution of surface fresh waters were registered in 2743 cases for 35 main pollutants. The largest number of cases (about 78%) was noted in the basins of the Volga, Ob and Amur rivers. Since 2009, the indicator dynamics concerning the number of such cases has shown the tendency to some decrease. In 2018, 17 accidents were registered at surface freshwater facilities in the Russian Federation. The pollution of transboundary watercourses was estimated at the level of the previous periods.

During the period of 2009–2018 almost all water basins of the Russian Federation demonstrated some decrease or stabilization of water intake volume from natural sources. The volume of wastewater discharges into surface natural water bodies of the Russian Federation in 2018 amounted to 40,059.02 million m3, which is 18.6% lower than the level of 2010. The cities of the Russian Federation also demonstrated a general trend towards the volume of polluted wastewater discharge decrease into surface water bodies (2011–2018).

The problem of land degradation, soil and vegetation cover as the result of water and wind erosion, waterlogging, salinization and alkalinization, and desertification remains difficult. More than a third of the agricultural land area is affected by this, and the total area of eroded, deflated and deflation-hazardous agricultural land in the Russian Federation makes over 50%, and the share of eroded and deflated soils continues to increase. The areas of soils that are saline, polluted and littered with industrial and household waste are growing. For the period of 2014–2018 the number of constituent entities of the Russian Federation with contaminated territories, and the types of pesticides, the content of which exceeds the standard were decreased.

The area of dead forest plantations on the lands of the forest fund amounted to 186.3 thousand hectares in 2018. The main reasons for the destruction of forest stands in 2018 were forest fires (73 thousand hectares, or 39.16%), insect damage (72.2 thousand hectares, or 38.76%), weather conditions and soil and climatic factors (16.1 thousand hectares, or 8.7%), forest diseases (23.9 thousand hectares, or 12.81%).

Detailed statistical indicators of the environment state are shown in Table 1.

TABLE 1. Key indicators characterizing the impact of economic activities on the environment and natural resources in the Russian Federation (2016–2018)

	2016	2017	2018
Emissions of air pollutants - total, million tons	31,6	32,1	32,3
including: from stationary sources	17,3	17,5	17,1
from mobile sources	14,3	14,6	15,2
Capture and neutralization of pollutants from stationary sources, million tons	49,2	50,7	46,7

	2016	2017	2018
Water intake from natural water sources for use, billion m^3	61,3	59,7	59,7
Water losses during transportation, billion m^3	6,8	7,0	7,0
Recycling and consistent use of water, billion m^3	137,9	138,7	144,2
Share of the population provided with poor-quality drinking water from the total population, %	5,8	5,2	4,8
Discharge of contaminated wastewater, billion m^3	14,7	13,6	13,1
Production and consumption waste generation, million tons	5441	6221	7266
including dangerous[6)]	98	108	98
Utilization and neutralization of production and consumption waste, million tons	3244	3265	3818
Reforestation, thousand ha	840	962	940

Source: (http: //old.gks.ru)

2.1. Causes of environmental crime

The crime factors in the field of ecology are in the focus of research by domestic criminologists, but most scientists only point to such determinants as weak state control over natural resource protection, defective environmental legislation, public apathy towards lawbreakers and a high level of latency (Vypkhanova, 2006; Zhevlakov, 2002; Savichenko, 2004).

All this is manifested in the untimely sending by the regulatory authorities of the materials on the identified environmental crimes to law enforcement agencies; low level of these materials; irregular inspections of business entities based on the results of previously issued instruction execution, etc (Ditsevich, 2008). Other objective factors also include the presence of obstacles that impede the implementation of public monitoring of sentences, decisions and judicial acts in cases of environmental legal relations; the quality of the methods used for statistical observations of environmental crimes that does not meet real needs, the lack of alternative, scientifically grounded and tested methods among them (Tatyanina *et al.,* 2019).

The presence of these factors is indisputable, but not enough. It is not enough to see among the causes of environmental crimes only the ineffectiveness of law enforcement agency work. Economic determinants and the process of the country urbanization can be singled out as the fundamental causes of environmental crime. The first is that ensuring environmental safety is associated with huge costs for the implementation of all rules and regulations in the field of environmental protection. Compliance with all the requirements of regulatory enactments multiplies costs, making economic activities unprofitable. Therefore, many business entities neglect environmental safety and violate the law, guided by considerations of profitability of production and increased profits.

From the point of view of an economic entity, the threat of an environmental catastrophe cannot be put higher than the fact that an enterprise, while functioning effectively, provides people with jobs, makes a profit, and pays taxes to the budget. For example, the deputies of the State Duma of the Russian Federation from the Primorsky and Khabarovsk Territories have developed a bill proposing to prohibit the transshipment of coal in the open way within settlements, which caused a violent reaction from other parliamentarians and economists, indicating that the industry generates considerable income (Dust storm, 2017). The state itself is also interested in the enterprise, in spite of numerous violations of the law, in its work continuation, and the managers are ready to pay regularly the fines imposed by various regulatory authorities.

Other economic circumstances that determine the state of environmental crime include low living standards, unemployment, non-payment of wages, which leads to the spread of poaching, the cases of unauthorized seizure of land for personal needs, illegal felling of trees and bushes. These facts make up the largest share of environmental crimes, thereby distorting the very essence of this group of crimes, reflecting only its “grassroots” level.

Another inalienable factor that determines environmental crimes is the underdevelopment of environmental legal awareness, and sometimes its absence. Environmental awareness is a kind of legal awareness, and its emergence is conditioned by the growing threat of the global environmental crisis and the need to preserve human civilization.

2.2. The statistical picture of environmental crime (Statistical data of the Ministry of Internal Affairs of Russia)

This brief overview of environmental crime determinants needs to be compared with the available statistics. The analysis of such information allows us to conclude that until 2013, 99% of environmental criminal cases

are initiated under 4 articles: the Art. 256 "Illegal extraction (catch) of aquatic biological resources", the Art. 258 "Illegal hunting", the art. 260 "Illegal felling of forest plantations", the art. 261 "Destruction or damage of forest plantations". The rest of the crimes account for less than 1% of the initiated criminal cases (see Table 2; Fig. 1.2).

TABLE 2. The number of registered environmental crimes in the Russian Federation (2007-2018)

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
art. 246	29	11	6	5	4	7	5	24	14	19	32	23
art. 247	84	42	40	21	25	51	23	31	36	44	124	70
art. 248	0	0	0	0	0	0	0	0	0	0	0	0
art. 249	3	6	11	2	2	20	1	4	0	5	9	9
art. 250	32	28	19	19	17	15	13	17	29	28	40	39
art. 251	20	7	9	4	2	4	5	2	6	7	13	13
art. 252	13	11	10	12	5	5	2	7	3	3	5	4
art. 253	26	17	24	19	17	12	9	10	2	13	8	8
art. 254	27	27	24	24	33	63	74	73	85	64	202	182
art. 255	8	2	2	0	0	3	0	6	4	8	2	4
art. 256	18025	15841	17407	13644	8963	8172	7343	6566	6276	5469	5713	5976
art. 257	6	9	6	3	4	3	6	6	9	3	5	9
art. 258	1292	1186	1560	1540	1517	1613	1640	1615	1928	1906	1936	1931
art. 258[1]	0	0	0	0	0	0	74	924	1152	1210	1104	1120
art. 259	0	0	0	1	0	2	0	1	0	0	0	0
art. 260	19128	23802	24932	20826	16077	15795	14640	14834	14192	14233	14422	13763
art. 261	2487	3824	2461	2925	2393	1753	861	1381	1063	598	690	642
art. 262	62	70	96	110	92	65	47	65	58	78	74	106
Total	41242	44883	46607	39155	29151	27583	24743	25566	24857	23688	24379	23899

Source: https://en.mvd.ru/. Statistical data of the Ministry of Internal Statistical data of the Ministry of Internal.

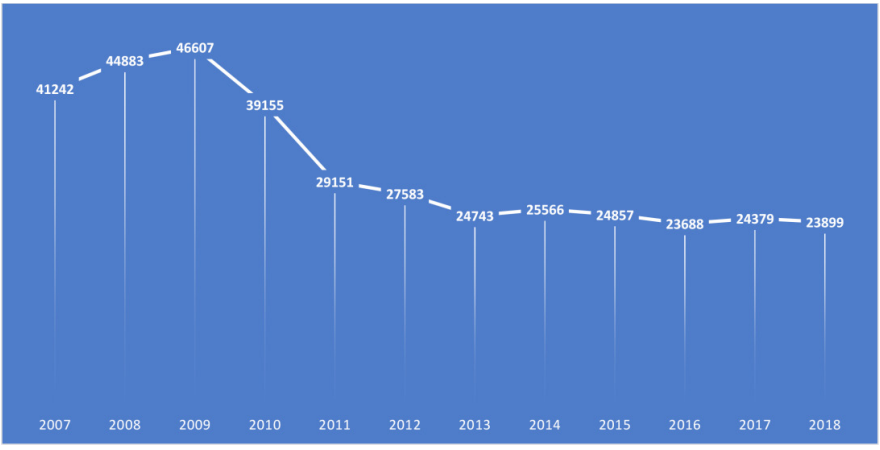

FIGURE 1. Dynamics of registered environmental crimes in the Russian Federation (2007-2018)

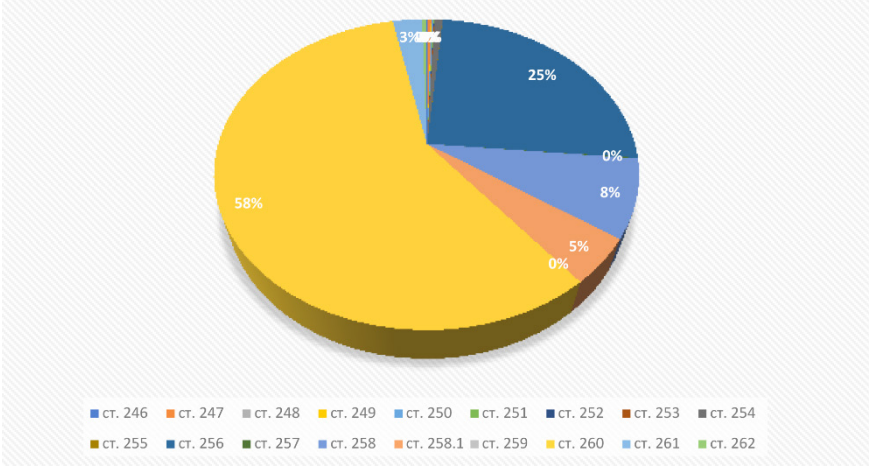

FIGURE 2. The proportion of certain environmental crimes in the Russian Federation (2018)

The presented picture of registered environmental crimes testifies to a clear disproportion between the real state of affairs in the field of ecology and counteraction to such crimes. As was noted earlier, the main threats are air and water pollution; high degree of pollution and low water quality of a significant part of water bodies, degradation of ecosystems of small

rivers, technogenic pollution of groundwater in the areas where large industrial enterprises are located; production and consumption waste generation increase with a low level of their utilization; increased land and soil degradation, reduction of plant species; reduction of the animal world species diversity and the number of rare species of animals, etc. The number of cases initiated on such facts is minimal in the country.

One of the reasons for this disproportion, along with the previously indicated determinants of crime, may be the difficulty in qualifying and proving the crimes in question. In particular, environmental crimes are expressed in non-compliance with the requirements established by environmental legislation. When they initiate a criminal case, a problem often arises concerning establishing a causal relationship between an act and the resulting consequences. The difficulty is in the fact that a significant amount of time may pass between the act and the consequences that have occurred, or the actions taken to hide the crime traces. You also need to remember that a causal relationship in a criminal case will be absent if the resulting consequences to nature or humans occur as the result of natural or other factor impact. Thus, it is necessary to find out whether these consequences were caused by natural factors.

The factor that distorts the real picture of environmental crime is its latency, which affects the idea of such crime actual state, its structure and dynamics, the magnitude and nature of the damage caused. Almost all Russian scientists noted this fact (Dvoretsky, 2013; Dzikonskaya, 2011; Akutaev, 1997). The following can be distinguished as its reasons:

- Ignorance of citizens about the violation of their environmental constitutional rights, causing environmental harm.
- Conviction of citizens in the imperfection of the current criminal and environmental legislation, as well as disbelief in law enforcement agencies (in the possibility, mechanisms of disclosure, investigation of environmental crimes, protection of their rights as the victims of environmental crimes).
- Unwillingness to contact law enforcement agencies and burden oneself with the need to participate in a complex procedure related to an environmental crime investigation.
- Imperfection of the procedure for a criminal case initiation.
- Problems of application of norms regulating the liability for environmental crimes.
- Lack of a support system (technical, informational, personnel) for the disclosure and investigation of environmental crimes.
- The influence of corruption-generating factors, etc.

Conclusions

The socio-legal and criminological conditionality of responsibility for environmental crimes is expressed in the presence of a number of problems, both interstate and domestic, that do not allow to guarantee effective counteraction to these negative manifestations. The solution of these problems is possible only through the implementation of a set of economic, legislative, organizational-political, social, educational and international measures:

- Elimination of contradictions between natural resource and environmental protection norms of the RF legislation (ALSO by developing a concept of environmental legislation development).
- Consolidation of the need to present an environmental justification for the activities of economic entities as one of the prerequisites for holding tenders, and auctions for the right to implement and (or) select projects.
- Harmonization of domestic legislation in the field of environmental protection and international law in this area within the framework of the RF obligations under international treaties.
- Development and activation of judicial mechanisms for resolving contradictions between the interests of the population, business entities and the state in the field of environmental protection.
- Improvement of calculation methods and compensation practice for damage as the result of environmental offenses and (or) implementation of environmentally hazardous activities.
- Provision of mechanism application for the termination of illegal economic and other activities.

An objective assessment of a crime situation is a necessary condition for countering environmental crime. The specificity of countering environmental crime lies in the need for a clear and constant provision of active and coordinated actions of all environmental, control and law enforcement agencies. As they indicated, the registered facts of environmental crime distort the very essence of this group of crimes, reflecting its “grassroots” level. The reasons for the production of an environmental crime include the ineffectiveness of law enforcement agency activities, economic determinants and the reasons in the field of legal consciousness. The analysis of the statistical picture of registered environmental crimes indicates a clear disproportion between the real state of affairs in the field of ecology and counteraction to such crimes, while the most significant factor distorting the real picture of environmental crime is its latency.

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The investigator as an independent subject of criminal prosecution in cases of terrorist crimes

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Abstract

This article aims to study the theory and practice of criminal prosecution of terrorist crimes in the Russian Federation. Most of the scientific work is mainly devoted to the study of criminal law and the criminological aspects of the fight against such criminal activities. It is therefore of particular importance to identify the problems of legal regulation of the investigator's activities in order to prosecute criminal offences and develop proposals for their optimal resolution. Cognitionic methods include: an anthropological, synthesis, statistics, partner, particular, systemic structural, legal modeling. In the Russian federation the prosecutor has judicial supervision in the criminal proceedings. Everything concludes that Federal Law of the Russian Federation No. 87-87-05.06.2007 redistributed control of the criminal proceedings by the investigator of the corporation a series of substantive rights of the chief prosecutor of the investigating body. In this sense, the optimal proportion of departmental control and tax supervision of the investigator, such as the establishment of a reasonable balance of these powers of control and supervision, increases the effectiveness of criminal prosecution of terrorism offences.

Key words: criminal prosecution; terrorism crimes; criminal prosecution in Russia; independent subject of criminal prosecution; effectiveness of criminal proceedings.

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El investigador como sujeto independiente de enjuiciamiento penal en casos de crímenes terroristas

Resumen

Este artículo tiene como objetivo estudiar la teoría y la práctica del enjuiciamiento penal de delitos terroristas en la Federación de Rusia. La mayor parte del trabajo científico se dedica principalmente al estudio del derecho penal y los aspectos criminológicos de la lucha contra este tipo de actividades delictivas. Por ello, es de especial relevancia identificar los problemas de regulación legal de las actividades del investigador con el fin de asegurar la efectiva persecución penal de los delitos terroristas y desarrollar propuestas para su óptima solución. Los métodos de cognición utilizados incluyen: análisis, síntesis, estadística, sociológico particular, estructural sistémico, modelado jurídico. En la federación rusa el fiscal ejerce la supervisión procesal en el proceso penal. Todo permite concluir que Ley Federal de la Federación de Rusia No. 87-ФЗ, de fecha 05.06.2007, redistribuyó el control del proceso penal por parte del investigador porque transfirió una serie de derechos sustantivos del fiscal al jefe del órgano de investigación. En este sentido, la proporción óptima de control departamental y supervisión fiscal del investigador, así como el establecimiento de un equilibrio razonable de estos poderes de control y supervisión, aumentará la eficacia del procesamiento penal de los delitos de terrorismo.

Palabras clave: proceso penal; crímenes de terrorismos; persecución penal en Rusia; sujeto independiente de enjuiciamiento penal; eficacia del proceso penal.

Introduction

Terrorist crimes are a fairly common, as evidenced by statistics obtained from official sources. Thus, in 2015, the internal affairs bodies registered 1,538 crimes of a terrorist nature, in 2016 - 2,227 crimes, in 2017 - 1,871 crimes, in 2018 - 1,679 crimes, and in 2019 - 1,806 crimes (Official web-site of the ministry of internal affairs of the russian federation, 2014).

There is a slight increase in crime detection against the background of an increase in the number of recorded terrorist crimes: in 2015 detection was 37%, in 2016 - 33%, in 2017 - 45%, in 2018 - 44.6%, and in 2019 - 44.9%. For comparison, the detection rate was 87.0% in 2007 (Official web-site of the ministry of internal affairs of the russian federation, 2014; Epikhin, 2016).

Lack of effective scientific developments on the detection and investigation of such crimes (Vassalatiy, 2010) (this position is shared by those surveyed by us: 35.40% of prosecutors, 39.32% of investigators, 39.82% of judges), insufficient professional training of the law enforcement officers (the respondents showed solidarity with this position: 65.84% of prosecutors, 43.59% of investigators, 52.21% of judges) (Gataullin, 2015) are the main reasons for the negative statistics, for which not all criminal cases of terrorist crimes end in a trial.

The theorists take the side of practitioners on this issue and indicate the need to improve the level of legal culture of investigators, propose to review and tighten qualification requirements for the investigator candidates, note the importance of strengthening and optimizing personal responsibility, reviewing the criteria for evaluating investigative activities in their writings (Ogorodov, 2017). The discussion is raised by the problem of excluding terrorism cases from the jury's jurisdiction in Russian law (Yurevich Epihin *et al., 2019).*

1.Methods

The methods of cognition used include: analysis, synthesis, statistical, particular sociological, systemic structural, legal modeling and other methods.

2.Results

1. A decrease in the detection of terrorist crimes indicates a lack of professionalism and competence of investigators conducting investigative actions. In this regard, it is necessary to modify the conditions for their instruction and advanced training, as well as the requirements for staffing the investigative bodies with highly qualified employees.
2. By the adoption of the Federal Laws No. 87-ФЗ dated June 5, 2007 and No. 404-ФЗ dated December 28, 2010, the investigator's independence did not increase, the detection of crimes decreased, while the trend of growing violations of the law during investigative actions continued to grow.
3. Given the limited powers of the supervising prosecutor in pre-trial proceedings, it is difficult to count on increasing the effectiveness of criminal prosecution.

4. It is proposed to return to the supervising prosecutor the procedural powers to guide the investigation, assigning the organization of investigative actions to the head of the investigative body.

3. Discussion

The requirements for professionalism and competence are indisputably the most important components that allow ensuring effective implementation of criminal prosecution by the investigator. At the same time, determination of greater independence in its procedural status is not less significant.

Investigations of the problems of the investigator's procedural independence in criminal proceedings provoke heated debates among processors. To this day, they continue to remain in the spotlight. Thus, S.N. Khoryakov believes that the investigator's activities are not possible without procedural independence (Khoryakov, 2006). N.I. Kulagin considers the status of the investigator's independence as an important component for the full protection of the interests of crime victims (Kulagin, 1995). According to A.R. Vartanov, the procedural independence of the investigator is necessary to achieve the goal of criminal proceedings (Vartanov, 2012).

Of course, each of these positions deserves attention. Providing the investigator with procedural independence is not in doubt, but the legislator's attempt to isolate the investigator from the permanent custody of the supervising prosecutor by adopting the Federal Law No. 87-ФЗ dated June 5, 2007 was not entirely successful (Malysheva, 2009).

Based on the changes made to the Criminal Procedure Code of the Russian Federation (Balakshin, 2011), the investigator's independence was more infringed, because the investigator's right to direct the investigation was substantially limited by the need to coordinate many of his decisions with the head of the investigative body. At present, a paradoxical situation has developed: on the one hand, the legislator's efforts have limited the procedural powers of the supervising prosecutor, on the other hand, the problem of the procedural independence of the investigator has not been resolved (Bykov, 2008).

The reforms initiated on the basis of the Law No. 87-ФЗ were aimed at increasing the effectiveness of the preliminary investigation, improving the disclosure, while strictly complying with the legislation requirements. However, the expected increase in the level of crime detection was not achieved. Thus, the detection of terrorist crimes has a downward tendency since 2007. If their disclosure amounted to 87.0% in 2007, then it decreased

to 85.7% in 2008, 81.0% - in 2009, 70.5% - in 2010, 68.8% - in 2011, 75.0% - in 2012, 69.0% - in 2013, etc., then it was 44.9% in 2019.

Violations of the law during the investigative actions have not decreased. They tend to increase. Thus, the Prosecutor General's Office of Russia sent 215,246 claims to eliminate violations in 2015, while the number of such claims increased to 316,820 in 2019 (Official web-site of the general prosecutor's office of the russian federation, 2018).

Consequently, with the enactment of the Law No. 87-ФЗ, the investigator's independence did not increase, on the one hand, but the deprivation of the supervising prosecutor of the procedural powers and the transfer of these powers to the head of the investigative body led to a decrease in the detection of crimes and a significant increase in violations of the law during the investigative actions, on the other hand.

As a result of the reform, independence was not acquired by the investigators, but by their heads. The investigator became virtually dependent on the head of the investigative body, endowed with the procedural, administrative and disciplinary powers by the legislator.

The Russian legislator, seeking to further increase the status of the head of the investigative body by the Law No. 404-ФЗ, gave him new additional powers, in particular, the right to cancel the decision not only of the investigator, but also of the head of even another investigative body, which is not directly subordinate to it, nor in the procedural, neither in the administrative relations.

We think that it is possible to grant the investigator the status of independence, provided that his head is deprived of broad powers to coordinate current investigator's decisions, while retaining his authority to organize an investigation of crimes. The investigator's independence does not mean the absence of control and supervision over his activities. Participation in the pre-trial proceedings by the prosecutor and the court is a reliable guarantee of ensuring the supervisory and control functions necessary, first of all, for observing the individual's rights in the criminal proceedings.

The procedural activities of such high-level participants in the criminal proceedings as investigator and prosecutor should be aimed at establishing the truth, with strict observance of the legislation requirements. It seems important to note the independent direction of the investigator's procedural activity - ensuring the participants' safety in the pre-trial criminal proceedings (Epikhin *et al,* 2016). And he should take timely and sufficient measures aimed at the safe participation in certain investigative and other actions. Measures of criminal procedural security are set in Part 3 of Art. 11 of the Criminal Procedure Code of the Russian Federation (interrogation under a pseudonym; control and recording of negotiations; identification

outside visual control; closed court session and interrogation in court without disclosing true data).

In our opinion, particular attention should be given to improving the tactics of investigative actions involving the use of criminal procedural security measures.

In addition, the investigator's arsenal has a set of measures established in the Federal Law No. 119-3 dated April 20, 2004 "On State Protection of Victims, Witnesses and other Participants in the Criminal Proceedings" (Fletcher, 2006). When ensuring the safety of proceedings, it is very relevant to carry out constructive interaction of the investigator with the authorities engaged in the operational-search activities, including units charged with the implementation of such state protection measures as relocation to a new place of residence, work or study; replacement of documents, etc.

In recent decades, terrorism has acquired a transnational character and various, including criminal, forms of expression. In this regard, in order to successfully investigate terrorist crimes, the investigator's activities, in our opinion, should be carried out at a new procedural level. In particular, the definition of the legal mechanism for the creation and procedural activities of joint international investigative and investigative-operational groups is of particular importance. From the standpoint of the activity tactics of such groups, it is important to develop a certain procedure for the participation of investigators, operational officers and representatives of other law enforcement agencies in their composition.

Almost significant should be considered a study of the peculiarities of legislative regulation of criminalistical support for investigation of terrorist crimes as part of an international investigation group.

4. Summary

As a result of the study, we can make the following conclusions:

1. The continued growth tendency of terrorist crimes (from 1,127 in 2014 to 1,679 in 2018) indicates that there are problems ensuring adoption of preventive measures by the law enforcement agencies to prevent or minimize the commission of terrorist crimes.
2. Based on the analysis of downward tendency in the detection of terrorist crimes (from 51% in 2014 to 44.6% in 2108), it follows that there are problems in the procedural activities of the investigating authorities, including insufficient professional training of the law enforcement officers.

3. The legislator's aspirations to free the investigator from the procedural custody of the supervising prosecutor and to give the investigator independence status by adopting the Federal Law No. 87-ФЗ dated June 5, 2007 did not lead to the expected result. Procedural independence is necessary for the investigator to achieve the ultimate goal of criminal proceedings, to establish the truth on the basis of legality, validity and justice.

The research results of this article can be applied to continue research on the development of theoretical provisions in order to further develop the criminal procedure science.

The practical significance of the results is expressed in the possibility of using them in the criminal prosecution of terrorist crimes.

The social significance of the results is to protect the rights of citizens participating in the criminal proceedings in cases of terrorist crimes, including consideration and resolution of claims against illegal actions of the investigator.

The value of the results is due to the presence of identified problematic aspects of a theoretical and practical nature aimed at improving the effectiveness of criminal prosecution of terrorist crimes carried out by the investigator. Based on the study, we obtained new knowledge and recommendations aimed at improving the quality of investigative actions, and the findings can be useful to minimize the commission of terrorist crimes and increase their detection.

Conclusions

Thus, legal regulation of the investigator's procedural independence as an active participant in the criminal prosecution of terrorist crimes should be aimed at establishing the optimal balance of prosecutorial supervision and departmental control by the head of the investigative body for the criminal case.

An integral element of the criminal prosecution in this category of criminal cases should be the maintenance of an adequate security level for its participants.

Increase in the effectiveness of the criminal prosecution of the crimes under consideration is largely achieved through the constant interaction of the investigator with the operational officers, specialists, experts as part of the investigative-operational groups.

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Some Questions of Parole in the Criminal Law of the Russian Federation

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Abstract

The article examined fundamental issues of parole in the criminal law of the Russian Federation and, at the same time, aspects of the negative deloscope impact on the identity of the inso, from various points of view on the "social elevators" programme. All these social problems cause a low level of voluntary softening of the damage caused to the victim. During the analysis, we found that the legislature did not formulate well the model that it behaves encouraging to compensate for the damage caused, as set out in the standard text. An indication of the possibility of using incentives in the event of damages the possibility of an ambiguous interpretation of the standard text, leading to difficulties in law enforcement. In the conclusions, we express our position on the need for legal regulation other than this issue. Particular attention was paid to the victim's role in determining the amount of damage. The input of the article focused on discussing various approaches to this issue and establishing the need to clarify the criminal legal status of the victim at the level of the plenary session of the Supreme Court of the Russian Federation.

Keywords: repair of the damage caused; parole; criminal law of the Russian ferdecaon punishment; role model; victim.

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Algunas cuestiones de libertad condicional en el derecho penal de la Federación de Rusia

Resumen

El artículo estudió algunas cuestiones fundamentales de libertad condicional en el derecho penal de la Federación de Rusia y, al mismo tiempo, discute los aspectos del impacto negativo del encarcelamiento en la identidad del reo, desde varios puntos de vista sobre el programa de "ascensores sociales". Todos estos problemas sociales provocan un bajo nivel de suavización voluntaria del daño causado a la víctima. Durante el análisis, encontramos que el legislador no formuló bien el modelo de comportamiento alentado para resarcir el daño causado, como se establece en el texto estándar. Una indicación de la posibilidad de utilizar incentivos en caso de indemnización incompleta por daños crea la posibilidad de una interpretación ambigua del texto estándar, lo que conduce a dificultades en la aplicación de la ley. En las conclusiones, manifestamos nuestra posición sobre la necesidad de una regulación legal diferente de este tema. Se prestó especial atención al papel de la víctima en la determinación del monto de los daños. El aporte del artículo radicó en la discusión de varios enfoques sobre esta cuestión y en establecer la necesidad de aclarar la situación jurídica penal de la víctima a nivel del Pleno del Tribunal Supremo de la Federación de Rusia.

Palabras clave: reparación del daño causado; libertad condicional; derecho penal de la ferdecaon rusa castigo; modelo de conducta; víctima.

Introduction

The Criminal Code of the Russian Federation is based on the Constitution of the Russian Federation and generally recognized principles and norms of international law (Part 2 of Article 1 of the Criminal Code of the Russian Federation) (The Criminal Code of the Russian Federation No. 63-ФЗ dated 13.06, 1996). According to Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ETS No. 005 dated November 3, 1950, ratified by the Russian Federation, the states should provide everyone with the rights and freedoms, payment of compensation under their jurisdiction (Article 8) (European Convention for the Protection of Human Rights and Fundamental Freedoms ETS No. 005, 2001).

The Recommendations of the Committee of Ministers of the Council of Europe "On the Victim's Status within the Framework of Criminal Law and Process" No. R (85) dated June 28, 1985 indicate in the reasoning that the main function of criminal justice should mean satisfaction of requests and protection of the victim's interests. The document recommends the governments of the member states "to improve the procedure for submitting to court all information about injuries and damage suffered by victims, including any compensation or restitution by the offender or any sincere action in this regard". The offender should be exempted from criminal liability only after compensation to the victim (Recommendations of the Committee of Ministers of the Council of Europe "On the Victim's Status within the Framework of Criminal Law and Process" No. R (85), 1998).

The Vienna Declaration on Crime and Justice: Answers to the Challenges of the 21st Century (adopted by the UN General Assembly on 04.12.2000) emphasizes the need to promote an environment conducive to mediation and restorative justice among the judiciary and social authorities, as well as local communities (clause 47.d) (Collection of the United Nations Standards and Norms in Crime Prevention and Criminal Justice, 2016).

The Directive of the European Parliament and the Council of the European Union No. 2012/29/EC dated October 25, 2012 "On the Establishment of Minimum Standards for the Rights, Support and Protection of Crime Victims, as well as Replacement of the EU Council Framework Decision No. 2001/220/ПВД" defines that EU members should take measures to encourage offenders to provide victims with appropriate compensation (Official Journal of the European Union NL 315, 2012).

According to foreign researchers, violent victimization has a significant detrimental effect on safety perception by the crime victim and society as a whole, and its recovery requires a minimum of 18 months (Janssen *et al., 2020). It seems that an essential element of such recovery is the compensation for damage caused by the crime.*

The above provisions of the international instruments recommend for the member states of the international treaties and agreements to take measures to stimulate convicts to voluntarily compensate for damage or otherwise reimburse for criminal harm. These references are reflected in a number of articles of the General and Special Parts of the Criminal Code of the Russian Federation (Articles 61.75, 76, 76.1, 76.2, 79, 80, etc.) (The Criminal Code of the Russian Federation No. 63-ФЗ dated 13.06, 1996). All of these norms are encouraging and have significant stimulating potential by their legal nature. However, some of them can be applied to persons already convicted of a crime and serving a sentence, which is important, because the Russian Federation takes 10th place in the world in the number of prisoners per 100 thousand population according to official figures (Web-site russian newspaper, 2016).

Some aspects of parole were considered in the works of A.A. Piontkovsky (1900), F.R. Sundurov (2016), I.A. Tarkhanov (2001), (Sundurov and Talan, 2015), A.I. Rarog (2004).

The article is devoted to some issues of applying parole, in particular related to the compensation for harm caused by crime, which is one of the elements of applying the criminal law incentive norm.

1.Methods

The methodological basis of this study includes combination of general scientific and special scientific methods of cognition: dialectical, dogmatic, semantic, formal-logical, analysis and synthesis methods.

2.Results and discussion

In the broad sense, exemption from punishment is the final refusal of the court to use criminal punishment based on criminal law, which is a criminal liability individualization means. In this sense, exemption from punishment is traditionally divided into: 1) exemption from punishment, its non-application (exemption from punishment in the narrow sense); 2) exemption from serving a sentence imposed by court (Sundurov, 2016).

Parole is an element of the domestic theory of punishment and foreign doctrine about prisoners or former prisoners, their prison experience, which is sometimes referred to as criminology of convicts (Earle, 2018).

In the theory of criminal law, it is considered that the general basis for exemption from punishment is the inappropriateness or impossibility of the appointment and execution of punishment due to the complete loss or significant reduction of the public danger of guilty person, deterioration of his/her health and other legal grounds (Rarog, 2004). Sometimes, as a basis for exemption from punishment, the re-socialization of guilty person, formation of his/her respectful attitude to society, as well as generally binding norms are applied (Esakov, 2017).

According to Part 1 of Article 79 of the Criminal Code of the Russian Federation, a person serving a sentence in a disciplinary military unit, subjected to forced labor or imprisonment is subject to parole, if the court finds that he/she does not need to complete the sentence prescribed by the court for his/her correction, as well as compensated for harm (in whole or in part) caused by crime, in the amount determined by a court decision. At

the same time, a person may be fully or partially exempted from serving an additional type of punishment (The Criminal Code of the Russian Federation No. 63-ФЗ, 1996). Article 175 of the Penal Code of the Russian Federation establishes that a convicted person to whom a parole can be applied, as well as his/her lawyer, has the right to apply to the court with a particular request. The administration of the penitentiary institution sends the specified appeal to the court along with the convict's description (The Penal Code of the Russian Federation No. 1-FZ, 1997).

Foreign criminal and criminal executive legislation stipulated the right of the authorized officials to refuse parole, if a convict violates a number of rules. Thus, the list of prohibited acts contains 46 offenses, which are divided into three hierarchical groups, in the USA. For example, the first group includes such misconduct as an attack. The second group prohibits tattooing, and the third one - tobacco smoking. An offense severity depends on the period for which the possibility of parole is delayed. According to the act of the first group, the term is up to two years, the second group - up to three years, the third group - up to two months (Steiner and Cain, 2019).

It is generally accepted in the science of criminal law that England is considered the birthplace of parole. "Parole grew out of an Australian exile on English soil" A.A. Piontkovsky writes about the origins of parole. The history of parole in Russia began with the publication of the Charter on Deportees (1857) (as amended in 1890 and 1909) that regulated serving sentences by exiled settlers and convicts who were sent to Siberia and Sakhalin (Piontkovsky, 1900).

As of August 1, 2019, the institutions of the penal system of the Russian Federation contained 540,657 prisoners with various types of sentences (including detention in a disciplinary military unit). Within 12 months of 2018, about 47 thousand convicts (7.8%) were released on parole. In relation to 6 thousand convicts (1%), it was decided to replace deprivation of liberty with a milder type of punishment (Brief Description of the Penitentiary System, 2019). The above statistics indicate a fairly high level of applying parole. Meanwhile, according to the data of the Supreme Court of the Republic of Tatarstan, there has been a downward tendency in the number of received, considered applications of convicts on parole and the level of their satisfaction both in the whole of the Russian Federation and in the Republic of Tatarstan since 2012. If 51.4% of the parole requests were granted in 2012, then there was only 45.9% in 2013, 41% - in 2014, and about 40% - in 2015 and 2016. According to the Supreme Court of the Republic of Bashkortostan, the percentage of satisfied parole applications was 50% in 2013, and 48% - in 2014. 35% and 27% were satisfied for the punishment replace with a milder one, respectively (Supreme court of the republic of Tatarstan, 2019).

In the legal literature it is considered that the parole is based on the

court's conclusion that the convict does not need to serve full sentence for his.her correction (Tarkhanov, 2001). Consequently, parole does not require full correction of the convicted person and is allowed when the correction process is incomplete.

In the foreign doctrine, the need for the parole institution is justified by the fact that isolation and other legal restrictions related to deprivation of liberty adversely affect the convict's worldview, both during the sentence and after release. The studies made by scientists have shown that imprisonment reorient the convict, weakening traditional social values in his/her mind, but strengthening others that arise in the criminal subculture (Rengifo and DeWitt, 2019).

It is worth noting that it was planned to supplement the reward system for convicts with other incentives for active resocialization, including improvement of procedure concerning replacement of the unserved part of a sentence with a milder type of punishment, as well as update of parole mechanism in the "Justice" Development Concept for the Penal System of the Russian Federation until 2020 No. 1772-p dated October 14, 2010 (Development Concept for the Penal System of the Russian Federation until 2020. Order of the Government of the Russian Federation No. 1772, 2010).

The quintessence of these ideas was the program of the so-called "social elevators", which make it possible to distinguish between convicts according to the correction degree. Achievement of the highest "level" according to the document text by the person serving a sentence increases the possibility of exemption from punishment.

An analysis of the application of this program conducted by a number of researchers at the same time shows mixed results. Thus, A.A. Ashyn positively assesses the effectiveness of this measure, indicating that the presence of clear evaluation criteria prompted 76.8% of subjects to take the path of correction (Ashyn et al., 2014). Other scientists were skeptical of the progressive system of serving sentences and indicated that this approach did not bring anything new to the criminal-executive practice of the correctional institutions of the Republic of Tatarstan, and the "social elevator" program missed the expectations in general (Usmanov, 2014).

According to scientists, a significant element in parole is post-criminal behavior, which involves significant positive changes in the convicted person's personality, namely compensation for harm (in whole or in part) (Sundurov and Talan, 2015). In other criminal law incentive norms (except for Article 80 of the Criminal Code of the Russian Federation), the amount of compensation is not indicated by the legislator.

Currently, the criminal law does not contain any clarifications on the issue of establishing a minimum amount of compensation sufficient for parole. Clause 7 of the Decision of the Plenum of the Supreme Court of

the Russian Federation No. 8 dated April 21, 2009 "On Judicial Practice of Parole, Replacement of Unserved Part of the Sentence with a Milder Type of Punishment" establishes that "if it is established at the court session that the convicted person took measures to compensation for harm caused by crime (pecuniary and non-pecuniary damage), but the harm was compensated only in a small amount due to objective reasons, the court does not have the right to refuse parole or to replace the unserved part of the sentence with a milder type of punishment only on this ground" (Resolution of the Plenum of the Supreme Court of the Russian Federation No. 8, 2009).

This allowed E.N. Karabanova, K.V. Tsepelev conclude that "compensation for damage to a small extent (without objective reasons) is not a basis for applying parole in accordance with Articles 79 and 80 of the Criminal Code of the Russian Federation" (Karabanova and Tsepelev, 2016). Neither the law, nor the decision of the Plenum of the Supreme Court of the Russian Federation clarifies what is meant by objective reasons. It seems that one can consider the convict's incapacity or the lack of jobs in the institution in which he/she is serving a sentence as such.

Statistical data, as well as the results of individual studies, revealed that more than 60% of the total number of convicts were able-bodied people without a specific occupation in 2018. According to the report of the Federal Penitentiary Service of the Russian Federation on the labor adaptation of convicts for the fourth quarter of 2018, about 36% of people serving sentences were employed in correctional institutions. As of December 30, 2018, the institutions of the Federal Penitentiary Service of the Russian Federation contained 133 thousand convicts with executive documents totaling more than 117 billion roubles, of which only 53 million roubles were reimbursed (less than 4% of the total amount), including 43 million roubles from salary (less than 3% of the total amount). The average monthly income of people serving sentences in prisons in the Russian Federation is only 3,845 roubles (Brief Description of the Penitentiary System, 2019). Thus, the main source of satisfaction of the claims for compensation for criminal damage is the salaries of convicted persons.

The statistical data provided allow stating the following: even if there are jobs in the institution where the able-bodied person is serving a sentence with an income level of 4 thousand roubles, almost totally withheld for the maintenance of the convicted person, payment of his/her alimony, then not everyone can compensate for the damage caused by crime. Although this task is feasible, it can take a long period of time that goes beyond the time of service a sentence.

However, this does not indicate that the convict can compensate for the remainder of damage after parole. The decision of the Plenum of the Supreme Court of the Russian Federation No. 8 dated April 21, 2009, recommends the courts, when applying parole to a convicted person,

to consider the possibility of lawfully entrusting the convict with the performance of duties stipulated by clause 5 of Article 73 of the Criminal Code of the Russian Federation (Resolution of the Plenum of the Supreme Court of the Russian Federation No. 8, 2009). The list of obligations listed in clause 5 of Article 73 of the Criminal Code is open, but the legislator did not explicitly indicate the obligation to compensate for damage in it.

Similar mechanisms exist in foreign criminal law. American criminologist A. Kimchi writes that parole in the USA includes a number of rehabilitation and financial conditions, which are sometimes discriminatory in her opinion. Thus, one group of parolees is only required to abstain from the commission of new crimes and periodic contacts with probation authorities. And another category of persons is imposed with a wide range of requirements, including those related to financial obligations to the victim. Parole commissions often resort to restitution and community service. According to the author, a large number of conditions for early release from punishment impose an almost impossible and not always justified burden on the guilty. This situation leads to the fact that offenders prefer a short term of imprisonment when choosing a milder alternative to punishment in the form of parole (Kimchi, 2019).

It seems that such an ambiguous choice may be due to difficulties faced by parolees in finding a job. According to foreign studies, a criminal record significantly reduces not only the prospects of successful employment, but also rental, basic and additional education, financial independence, which are necessary for a full-fledged life and adaptation of a convicted person after release (Evans, 2019).

In foreign science, it is generally accepted that convicts do not always have professional ethics, skills, and education for successful employment after their release. These factors are necessary for the successful parole reintegration into society. According to the convicts, it is the lack of jobs that is the main cause of repeated offense. Employment is recognized by researchers as the starting point for the integration of those released on parole into society, since salaries are often the only income source, which gives them the opportunity to support their families, pay fines and taxes, or compensate for the damage caused by crime (Weisburd et al., 2017).

The issues of admissibility of exemption from punishment of a person who partially compensated for criminal harm is resolved ambiguously both in literature and in law enforcement practice. In our opinion, the legislator's uncertainty in the field of the necessary amount of compensation may become a factor that impedes the adequate perception by the convicts of the specific nature of the appeal to socially desirable behavior. This leads to a situation where an erroneous idea is formed that it is possible to receive parole by paying compensation for the damage only in some insignificant part.

As noted by A.I. Drozdov, the practice of recognizing partial compensation for damage in the amount of more than 50% has actually developed in a number of regions of the Russian Federation (for example, in the Sverdlovsk region) (Drozdov and Orlov, 2018).

However, according to various judicial decisions, not everything is so simple. For example, the convict V. disagreed in his appeal with the court decision on the refusal of parole, indicating that the court did not take into account the fact that he voluntarily paid the claim in the amount of 700 roubles. The court of first instance, refusing to satisfy V.'s parole appeal, in support of the decision made, referred to the fact that there were claims against the convicted person, of which only a small part was partially paid (The Appeal Decision of the Tambov Regional Court in the case No. 22-1247, 2017).

When making this decision, the court did not take into account the victim's objections regarding the insufficient amount of compensation. Is it correct? The question is not simple. On the one hand, the victim's opinion is subjective and may not always reflect the real degree of correction of the convicted person, but it is not also correct to take into account his opinion in a situation where the damage is partially compensated.

The provisions of Articles 175 of the Penal Code of the Russian Federation (The Penal Code of the Russian Federation No. 1-FZ, 1997), 42 and 399 of the Criminal Procedure Code of the Russian Federation (The Penal Code of the Russian Federation No. 174-ФЗ, 2001), clause 14 of the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 8 dated April 21, 2009 (Resolution of the Plenum of the Supreme Court of the Russian Federation No. 8, 2009) regulate the need to provide information on partial or full compensation for damage, the notification procedure and the possibility of the victim's participation in consideration of the convict's request for exemption from criminal punishment. However, the victim's opinion is not decisive according to the law.

This is indicated by the legal position of the Constitutional Court of the Russian Federation, set out in its decision No. 110-О-П dated February 20, 2007. It is noted that "when resolving the issues arising with execution of final sentence, including parole of a convicted person, the court, being under obligation to ensure the rights of proceedings participants to substantiate their positions in the case, is not bound by their opinion" (Criminal Code of the Russian Federation: decision of the Constitutional Court of the Russian Federation No. 110-О-П, 2007).

The Decree of the Constitutional Court of the Russian Federation No. 5-П dated March 18, 2014 states that "the constitutional and legal, as well as procedural status of a victim in a criminal case, presupposes his/her right to bring his/her position to the court on the issue of parole under such

criminal case, which, without prejudging the decision on the merits, will allow taking into account, within the framework of the judicial procedure, the constitutionally justified interests of the victim related to ensuring his/her personal safety, protecting his/her family and those close to threats from the guilty person, or obtaining real compensation for the harm caused by this crime" (clause 3.2.) (Resolution of the Constitutional Court of the Russian Federation No. 5-П, 2014).

According to S.A. Sinenko, the victim does not play an active role in the matter of satisfying motions on applying incentives to the convict, and his/her position does not have legal significance in resolving these issues by the court (Sinenko, 2014).

In our opinion, the issue of providing incentive measures in the form of parole of a convicted person, who partially compensated for the damage caused, should be resolved with an active participation of the victim. His opinion is subjective, but should nevertheless matter, if the damage caused is not compensated or partially compensated for objective reasons.

3. Summary

In our opinion, O.A. Vladimirova rightly indicates that: "as the crime consequences cannot be completely mitigated, the law cannot indicate how much harm needs to be compensated for" (Vladimirova, 2015: 228). It seems that not any type of criminal harm can be partially compensated. It is impossible to apologize in part, to provide any assistance to the victim in part, since moral or physical harm is objectively not measurable and not divisible. However, non-pecuniary damage can be compensated not only by apologizing, but also by compensation. The amount of compensation is determined in monetary terms and, accordingly, can be divided into parts. Thus, not only compensation for damage, but also compensation for non-pecuniary damage, which the legislator does not specify in Article 79, may be partial. And this fact indicates the inconsistency of the encouraged behavior model set forth in this norm.

Conclusions

1. Criminal consequences are a general concept that includes physical, property, moral, reputational, environmental harm. Not all of these criminal consequences can be objectively measured. They cannot be valued and, accordingly, cannot be partially compensated. In

this regard, it seems appropriate to exclude the phrase "partially or completely" from the text of Part 1 of Article 79 and Part 1 of Article 80 of the Criminal Code of the Russian Federation.

2. If the consequences of a crime are expressed in pecuniary or non-pecuniary damage and are partially compensated by convict, the victim's opinion is essential in deciding on the application of incentive measure. Only he/she can unequivocally affirm the completeness and adequacy of compensation. This provision requires appropriate clarification at the level of the decision of the Plenum of the Supreme Court of the Russian Federation. Such concretization can contribute to a more active manifestation of positive post-criminal behavior of the convicted person in the form of compensation for damage or smoothing criminal harm in another way.

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Tendencies for the Development of Marriage Conflict Legal Regulation with the Participation of Foreigners and Persons without Citizenship in the Post-Soviet Space

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Abstract

The article describes trends in the development of legal regulation linked to collisions that regulate marriage matters under the laws of post-Soviet countries. At the methodological level it is a comparative research of documentary basis. It is noted that, despite the general historical development of legal institutions and ongoing harmonization, the regulation of the principles of marriage collision has its own peculiarities in the countries of the former Soviet Union. This trend is explained by the specific and heterogeneous regulation of marriage and family relations in the legislation of different countries. But in the context of integration processes, the displacement of people from one country to another, marriage and family relationships also tend to develop. The article provides comparative analysis of the vast material, especially regulatory legal acts of post-Soviet countries, which regulate marriage and family relations in order to identify common and special characteristics. They revealed trends in the regulation of marriage conflicts in post-Soviet countries, as well as the regulation of marriage disputes in a consular office or diplomatic mission.

Keywords: forms of marriage; material conditions of marriage; conflict regulation; post-Soviet space; legal trends.

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Tendencias para el desarrollo de la regulación legal de los conflictos matrimoniales con la participación de extranjeros y personas sin ciudadanía en el espacio postsoviético

Resumen

El artículo describe las tendencias de desarrollo de la regulación legal vinculada a colisiones que regulan los asuntos matrimoniales bajo las leyes de los países postsoviéticos. A nivel metodológico se trata de una investigación comparada de base documental. Se observa que, a pesar del desarrollo histórico general de las instituciones legales y la armonización en curso, la regulación de los principios de colisión del matrimonio tiene sus propias particularidades en los países de la ex Unión Soviética. Esta tendencia se explica por la regulación específica y heterogénea del matrimonio y las relaciones familiares en la legislación de diferentes países. Pero, sin embargo, en el contexto de los procesos de integración, el desplazamiento de personas de un país a otro, el matrimonio y las relaciones familiares también tienden a desarrollarse. El artículo proporciona el análisis comparativo del vasto material, especialmente los actos legales regulatorios de los países postsoviéticos, que regulan el matrimonio y las relaciones familiares con el fin de identificar características comunes y especiales. Revelaron las tendencias de la regulación de los conflictos matrimoniales en los países postsoviéticos, así como la regulación de los conflictos matrimoniales en una oficina consular o misión diplomática.

Palabras clave: formas de matrimonio; condiciones materiales del matrimonio; regulación de conflictos; espacio postsoviético; tendencias legales.

Introduction

The uniqueness of the historical path, the specificity of religious and cultural landmarks, and traditions is reflected in the legal regulation of family relations. Marriage relations as a part of family relations are strongly influenced by society, therefore, are taken into account by state institutions during legal regulation mechanism establishment. State interests, combined with the delicacy of marriage relations, are reflected in the legal regulation of relations with the participation of foreigners and stateless persons. The significance of such regulation is dictated by the following postulate: “marriage is an inevitable part of existence, the choice not to marry almost does not exist” (Sen et al., 2011: 215).

The legal regulation of marriage relations with the participation of foreigners and stateless persons has its own specifics in the countries of the former Soviet Union, despite the existing harmonization processes.

So, there are two trends in the issues of marriage conflict regulation within the post-Soviet space:

a) providing the opportunity for conflict regulation of marriage relations by the persons entering marriage via legal consequence determination.

b) increased state intervention in the marriage conflict regulation.

When a marriage is concluded with the participation of foreigners or stateless persons, conflicts arise related to the form and order and material conditions of marriage.

A marriage must be performed in a certain form, so that it will have legal consequences. So, the most common conflict binding that has effect in all legal systems is lex loci celebrationis - the law of the place of marriage. This collision principle has been enshrined in the laws of the post-Soviet states.

1. Methods

The article uses both general scientific methods of scientific knowledge and private scientific methods. Among them are the following ones: analysis, synthesis, comparison, formal legal and technical legal.

2. Results and Discussion

Thus, the form and procedure of marriage on the territory of the Russian Federation are determined by the Russian Federation legislation (the Article 156 of the RF FC).

As for the marriage conflict regulation in the post-Soviet countries, two legislation development trends can be seen: a) in favor of recognizing the territorial principle as the main conflict of reference in marriage material term regulation; b) in favor of the personal law of a foreigner (in this case, lex patriae) as determining one in the matters of marriage material conditions.

Based on the general historical development of family relation legal regulation, many post-Soviet countries joined the Minsk and Chisinau Conventions of the CIS “On Legal Assistance and Legal Relations in Civil, Family and Criminal Matters” issued in 1993 and 2001. These international

treaties contain conflicting principles that are used to regulate the issues of marriage between the citizens of participating countries.

In accordance with the Art. 26 of Minsk Convention and the Art. 29 of the Chisinau Convention, the conditions for marriage are determined for each of the future spouses by the legislation of the country of which he/she is a citizen, and as for stateless persons - by the legislation of the country that is their permanent place of residence. Besides, with regard to marriage obstacles, the legislation of the state must be observed on the territory of which the marriage is concluded.

The territorial approach that existed earlier during the Soviet period to regulate the material conditions of marriage was criticized by Panteleeva (1986) and Lundstedt and Sinander (2020) who expressed proposals on mitigating the territorial principle in marriage issues and on the transition to material and legal condition regulation by the personal law of the couple for foreigners who marry in the USSR (Matveev, 1972; Lundstedt and Sinander, 2020; Panteleeva, 1986).

Nowadays, this position has been reflected in the Family Code of the Russian Federation, which subordinated in the article 156 the conditions for marriage in the country to the personal law of a foreigner, more precisely, the law of citizenship (lex patriae), in compliance with the provisions of the article 14 with respect to the circumstances that impede marriage, confirmed the constitutional equality of the genders, and for stateless persons - to the law of residence (lex domicilii). Identical, so-called more simplified variations of the marriage conflict regulation laws are found in the legislation of international private law in a number of foreign countries. Thus, under Swiss law, the foreigners who do not have a residence in this country can enter into a marriage if such a marriage is recognized in their state of residence or their state of citizenship (Dessemontet and Ansay, 2004; Briggs, 1999).

In accordance with the part 3 of the article 156 of the RF FC, the legislation of the Russian Federation is applied to the terms of marriage, that is, the right to choose a foreign law is not provided for a person who has the citizenship of the Russian Federation along with the citizenship of foreign states.

As for foreigners with several foreign citizenships, it would be more correct to subordinate the conditions for marriage to the principle of closest connection. Since no matter what citizenship, a person has chosen, if it is clearly visible that he has a closer relationship with another law, it is more expedient to subordinate the conditions of marriage to this particular rule of law. Moreover, the concept of “closest connection” or “usual place of residence” within the considered aspect is equally defined in the countries of both general and Romano-German law, and therefore its application

is "universally welcomed" (Clarkson and Hill, 2006). This is one of the prerequisites for a marriage recognition abroad (in the country with which it is most closely associated).

At the same time, "family law does not take into account certain features of the marriage and family law of other countries" (Mengliev, 2001).

In turn, marriage prohibitions provided for by the "personal law" of foreigners are not taken into account when they enter into marriage in Russia. This applies to such restrictions on the ability to marry, which are established by the domestic law of foreigners on racial, religious and similar grounds.

According to Private International Law of 2005, the legislator of Ukraine adheres to the same principles of conflict regulation by subordinating the marriage form and procedure between a citizen of Ukraine and a foreigner or a stateless person or the marriage between foreigners or stateless persons on the territory of the country to the laws of Ukraine (the art. 56).

And the material conditions of marriage, that is, the right to marry a person is determined by the laws of the state of which he/she is a citizen. But at the same time, the compliance with the legislation of Ukraine is required in order to exclude grounds for declaring a marriage invalid in the future (the Article 55).

An example of the territorial regulation of the material conditions of marriage is the legislation of the Republic of Kazakhstan.

Thus, the Code of the Republic of Kazakhstan "On Marriage (Matrimony)" of 2011 regulates the issues of marriage of Kazakh citizens with foreigners or stateless persons, providing the latter with a national treatment (the Article 228). At the same time, when they apply for marriage, a foreigner grants permission to marry a foreigner from the competent authority of the state of which he is a citizen, if such permission is required in accordance with the legislation of a foreign state. If there is no such permission, the registration authority, upon the application receipt, must explain to the person entering into marriage that his/her marriage may be declared invalid in the country of which the person with whom he/she enters into marriage is a citizen.

If, despite such explanations, the applicants insist on state registration of marriage, this marriage is registered. At the same time, marriage registration, which can be recognized in one state but cannot be recognized in another, may give rise to a "lame relationship". The issue of a marriage, in case of warning the parties about the possible non-recognition of the legal consequences in another state, is made dependent on the will of the persons entering into marriage. This indicates an increasing dispositiveness of marriage conflict regulation.

The Code of the Republic of Belarus "On Marriage and the Family" also adheres to the territorial principle in the matters of marriage form and procedure, providing for the possibility of marriage between the citizens of the Republic of Belarus and foreign citizens and stateless persons, as well as between foreign citizens or stateless persons by the authorities registering the acts of civil status according to the requirements of the Republic of Belarus legislation (the Articles 229 -229/1). At the same time, the permanent residence of at least one of the persons entering into marriage in the Republic of Belarus is indicated as a requirement for providing foreigners with a national regime in the matters of marriage. In turn, Belarusian legislation temporarily deprives people of the marriage possibility in Belarus via registration authorities.

Different conflict regulation of marriage with the participation of foreigners and stateless persons is observed in the family legislation of the Republic of Tajikistan. The territorial principle of conflict regulation is established in relation to formal conditions and the procedure for marriage (the Article 167 of the RT FC).

The material conditions of marriage are determined by the family legislation of the Republic of Tajikistan for each person entering into marriage, according to the laws of the state of which the person is a citizen at the time of marriage, in compliance with the provisions of the Family Code of the Republic of Tajikistan, which regulates the conditions of marriage for foreigners and the absence of circumstances preventing marriage.

The inclusion of short stories in the Family Code of Tajikistan, in the form of special material conditions of marriage for foreigners, is controversial. The need for legislative consolidation of two more conditions for the citizens of a foreign state - the residence in Tajikistan for at least 1 year and the mandatory conclusion of a marriage contract is certainly caused by the best intentions. But this measure is unlikely to solve the problem of infringement of woman rights who marry a foreign citizen. Besides, a foreigner who wishes to marry our citizen can conclude it in a neighboring state and there will be no reason to invalidate such a marriage.

By virtue of the application of a classic conflict of ties in marriage, complicated by the participation of foreigners, a marriage is valid in those cases when it is valid under the laws of the state in which it is entered into, it will be recognized in Tajikistan. Another point of attention is the strength of this condition when marrying a foreigner - a citizen of the Commonwealth of Independent States, in the framework of which international treaties on legal assistance and legal relations are in force. It turns out that the provisions of Tajikistan family law that are contrary to international agreements will not be taken into account due to the priority of international norms. All these circumstances indicate the incompleteness of these provisions (Sha, 2020).

You should also pay attention to the content of a marriage contract, which may include provisions that are disadvantageous for a married Tajik woman. For example, a prenuptial agreement may contain the provisions on the joint ownership of spouses, in which the spouse's share may be scanty, which may infringe on the rights of a housewife. The legal regime of spouses' property may be more beneficial to her. The civil registry office does not have the authority to examine the content of a prenuptial agreement, but can only verify its existence. The introduction of such a measure of responsibility as declaring a marriage void upon the marriage with a foreign citizen without the fact of a year of residence in the republic and the conclusion of a marriage contract will only give rise to the law circumvention and will not achieve the necessary preventive effect. If the thing is about marrying people who want to live in Tajikistan, then there is a possibility of a marriage in the republic and the compliance with these conditions.

Another possibility of a marriage involving foreigners and stateless persons are consular marriages.

The regulatory legal acts of Belarus, Ukraine, Kazakhstan, regulating family relations with the participation of foreigners, contain the rules on the possibility of marriage at consular posts or diplomatic missions, providing the so-called consular marriages.

The problem of "consular" marriages was touched upon in the writings of many civilists (Lehmann, 2020; Briggs, 1999; Stewart, 2009). However, there are enough problems in this area. As Hannum and Lillich, (1980) noted correctly, "each state claims that not only the law of this state be applied to all private individuals in its territory, but also that this right is also applied to the citizens of this state and outside its territory" (Hannum and Lillich, 1980). Registration of marriage in the relevant state or church institutions refers to local forms. However, there are situations when marriage is registered at the diplomatic or consular offices of the countries that sent an ambassador or a consul. This is a case of extraterritorial forms of marriage. In this case, the marriage is concluded on the territory of one state, but at a diplomatic mission or a consular office of another state.

The family legislation of the Russian Federation provides for a marriage on the conditions of reciprocity in consular posts and diplomatic missions of the Russian Federation, if both persons entering into marriage have Russian citizenship and live abroad.

The Code of the Republic of Belarus "On Marriage and Family" (1999) allows for the possibility of marriage not only between foreigners who have the citizenship of the country, which sent an ambassador or a consul, but also a marriage between a citizen of that country and a stateless person on condition of reciprocity.

The Law of Ukraine "On Private International Law" allows for the possibility of marriage between foreigners at a consular post or a diplomatic mission of the corresponding state in Ukraine according to the legislation of a foreign state (Part 2 of the Article 57). At the same time, the law does not stipulate the requirements for the presence of citizenship of both foreigners of the foreign state that sent an ambassador or a consul.

This circumstance testifies to the possibility of subsequent recognition of consular marriages committed in the territory of the consular state of residence between citizens of a third state from a legal point of view. Such a situation cannot be the basis for recognizing a marriage subsequently "lame" in one of the countries.

In turn, the Code of the Republic of Kazakhstan "On Marriage (Matrimony)" provides for the recognition of marriages concluded in diplomatic missions and consular offices of foreign states located in the country, if this marriage does not contradict the legislation of the Republic of Kazakhstan (Part 2 of the Article 229). It turns out that the legislation of the Republic of Kazakhstan considers the absence of a contradiction with the legislation of the country as the basis for the recognition of consular marriages.

In turn, there is the possibility of marriages between citizens of the Russian Federation living outside the country in diplomatic missions or consular posts.

As well as the possibility of marriage at a consular post or a diplomatic mission of Ukraine depends on the residence, at least one of the persons entering into the marriage outside Ukraine.

The Code of Kazakhstan "On Marriage (Matrimony)" allows for the possibility of marriage at one of the consular posts or diplomatic missions abroad not only between the citizens of the Republic of Kazakhstan, but also mixed marriages when one of the parties is a foreigner or a stateless person. In this situation, the possibility of lame marriages is not ruled out, since one of the persons entering into a marriage may be a foreigner holding the citizenship of the state where the consular post or the diplomatic mission is located.

3. Summary

Thus, the study of marriage conflict regulation trends involving foreign persons and stateless persons in the post-Soviet space plays an important role in their legal regulation both at the legislative level and in the framework of regional agreements. Moreover, marriage and family relations are

increasingly integrated and go beyond the legal regulation of individual countries more intensively. On this issue Heila Sha (Saheira Haliel) notes that transnational marriages are mostly associated with migration, that is, as the author believes mixed marriages are the result of migration and trade relations. Brettell (2017) also emphasizes that migration is a major factor of cross-border marriage development (Brettell, 2017).

Conflict regulation of a marriage at a consular post or a diplomatic mission develops in two directions: a) regulation of legal norms so that they do not allow the possibility of "lame marriages"; b) ignoring the legal consequences of a marriage, providing freedom of marriage not only to their citizens, but also to foreigners (stateless persons), when they enter into a marriage with the citizens of the country.

Conclusions

Thus, two approaches have been formed for the regulation of consular marriages in the post-Soviet space: a) the approach aimed at prevention the occurrence of "lame marriages". In this case, states grant the right to marry at a diplomatic mission or a consular post only to their citizens, while not allowing the possibility of "mixed marriages" or allow them to be concluded if there is reciprocity; b) the approach that does not take into account the rule of law of the country in which the diplomatic mission or the consular post is located for mixed consular marriages, that is, providing the opportunity to marry not only between citizens of the country, but also between the citizens of the country and foreign citizens or between the citizens of the country and the persons without citizenship.

Based on the foregoing, we can conclude that two trends are observed with the conflict regulation of marriage in the country of the post-Soviet space: a) the possibility of marriage relation conflict regulation by the persons entering into marriage via legal consequence determination; b) increased state intervention in the conflict regulation of marriage.

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Features of Qualification and Prevention of Smuggling of Narcotic Drugs, Psychotropic Substances: their Precursors or Analogues

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Abstract

The article is dedicated to the consideration of factors influencing the state of the situation in Russia in the field of detection and repression of the smuggling of narcotic drugs, psychotropic substances, their precursors, and analogues. In the methodological field it is an analytical research based on documentary, close to legal hermeneutics. Specifically, thearticle analyses Russian legislation, offers options to solve problems in the field of smuggling narcotic drugs, psychotropic substances, their precursors, and analogues. The authors consider the real problems of countering the drug threat, which is currently a serious obstacle to the development of the state. By way of concluding the nature and magnitude of the negative consequences, illicit trafficking in narcotic drugs, psychotropic substances, their precursors, and analogues can be classified as direct threats to national security. Today, the issues of countering the illegal circulation of narcotic drugs, using modern information technologies, improving mechanisms to convert goods obtained from illicit drug trafficking into state revenue are relevant.

Keywords: drug trafficking; narcotics; classification of the crime; crime prevention; legal hermeneutics.

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Características de calificación y prevención del contrabando de estupefacientes, sustancias psicotrópicas: sus precursores o análogos

Resumen

El artículo está dedicado a la consideración de los factores que influyen en el estado de la situación en Rusia en el campo de la detección y represión del contrabando de estupefacientes, sustancias psicotrópicas, sus precursores y análogos. En lo metodológico se trata de una investigación analítica de base documental, próxima a la hermenéutica jurídica. Concretamente, el artículo analiza la legislación rusa, ofrece opciones para resolver problemas en el campo del contrabando de estupefacientes, sustancias psicotrópicas, sus precursores y análogos. Los autores consideran los problemas reales de contrarrestar la amenaza de las drogas, que actualmente es un serio obstáculo para el desarrollo del estado. A modo de conclusión por la naturaleza y la magnitud de las consecuencias negativas, el tráfico ilícito de estupefacientes, sustancias psicotrópicas, sus precursores y análogos se puede clasificar como amenazas directas a la seguridad nacional. Hoy son relevantes los temas de contrarrestar la circulación ilegal de estupefacientes, utilizando modernas tecnologías de la información, mejorando los mecanismos para convertir los bienes obtenidos del tráfico ilícito de drogas en ingresos estatales.

Palabras clave: narcotráfico; estupefacientes; calificación del delito; prevención del delito; hermenéutica jurídica.

Introduction

In Art. 43 of the National Security Strategy of the Russian Federation, among the main threats to public security, the activity of criminal organizations and groups, including transnational ones, associated with the illicit trafficking of narcotic drugs and psychotropic substances is named (National Security Strategy Of The Russian Federation: Approved. 2016. By Decree of The President Of The Russian Federation Of December 31. 2015).

One of the activities of such associations, as you know, is the smuggling of these funds and substances, their illegal movement from the territory of one state to another, which is a component of the international drug business (Melnikova, 2019).

Problems associated with drug trafficking in Russia and in the world are becoming more and more urgent and come to the fore in ensuring national

security. The spread of narcotic drugs creates a real threat to the health of the population, the economic potential of the country, negatively affects the demographic situation, contributes to the decline of cultural and moral values in society (Fetkulov *et al.*, 2018).

The greatest danger of illicit drug supply to the territory of the Russian Federation comes from organized criminal communities with significant financial potential and corrupt connections. Often, the funds received as a result of the sale of narcotic drugs are used to finance terrorism, extremism and other types of criminal activity (Razumov *et al.*, 2019).

Customs restrictions in various countries were introduced as trade relations developed. This process was uneven and uneven, but everywhere it began with the establishment of customs bans, which were accompanied by the development of smuggling (Dubailo, 2019).

1. Methods

Used informational and analytical materials on the fight against drug smuggling carried out by customs authorities. The legal acts on the fight against drugs and on countering the financing of trade in illicit psychotropic and other narcotic substances are considered.

2. Results and Discussion

One of the short stories of the current Criminal Code of the Russian Federation is Art. 229.1, which provides for liability for the smuggling of narcotic drugs, psychotropic substances, narcotic plants, tools, and equipment used to obtain drugs.

The object of this crime is the state of health of the population, i.e. the state of health of an unlimited number of persons who live in a specific territory (in a region, city, country), bound by the rules, and also by the conditions of a joint hostel. In the case of illegal movement of drugs by crossing the Customs Border or the State Border, auxiliary (additional) objects are social relations that ensure the organization of customs identification of drugs imported into the territory of the Russian Federation. The optional objects of crime can be public relations, which ensure the protection of the life and The subject of a crime can be considered narcotic drugs, psychotropic substances that are under special control and used for the manufacture of drugs.

The signs of the objective side are set out in the criminal law on smuggling and are presented in the form of the nature of the action, the place and method of movement. This process is expressed in the movement of objects of contraband by crossing the customs border, the place is the customs border. All methods of illegal drug trafficking are identical to those previously indicated, there are no differences in this list.

The objective side of this crime is the illegal movement across the customs border of the Union of narcotic drugs, psychotropic substances, their precursors or analogues, plants containing narcotic drugs, psychotropic substances or their precursors, or their parts containing narcotic drugs, psychotropic substances or their precursors, instruments or equipment under special control and used for the manufacture of narcotic drugs or psychotropic substances.

The subjective side of drug smuggling is characterized by guilt in the form of direct intent. The subject of the crime is a common one (a sane individual who has reached the age of 16). The qualifying signs of drug smuggling are provided for by Part 2 of Art. 229.1 of the Criminal Code of the Russian Federation, namely: a) by a group of persons by prior agreement; b) by an official using his official position; c) in relation to narcotic drugs, psychotropic substances or their analogues, narcotic plants or their parts in a significant amount health of persons exercising customs or border control.

Particularly qualifying signs are provided for in parts 3 and 4 of this criminal law norm and establish responsibility for committing drug smuggling on a large scale, as well as for committing a crime on an especially large scale by an organized group using violence against a person exercising customs or border control.

The subject of the crime is narcotic drugs, psychotropic substances, their precursors or analogs, narcotic plants or their separate parts, tools or equipment under special control used for the manufacture of drugs. Illegal movement of drugs through the Customs or State border of the Russian Federation can be carried out by: - illegal import or export of drugs through the border of Russia; - false declaration or non-declaration of such substances; - providing inaccurate information about the transported products (with fraudulent use of documents or means of customs identification); - concealment of the transported goods or giving it a different look (using hiding places and various methods that complicate the detection of drugs by law enforcement agencies), etc. (Matkevich, 2020).

Illegal actions preceding or following the smuggling of drugs or their precursors (storage, processing, shipment, sale) entail additional qualifications in accordance with the relevant norms of the Special Part of the Criminal Code of the Russian Federation.

The reasons and conditions for the smuggling of narcotic drugs (psychotropic substances) include:

1. excess profits and excess profits received by criminal groups (communities) as a result of the sale of drugs. In terms of profitability, such a business is comparable to illegal operations with oil, gas, timber, precious stones and metals, and weapons.
2. geopolitical and geographic determinants point to the location of Russia in the center of the Eurasian continent, which, combined with the transparency of its borders, creates an incentive to import (smuggle through its territory) drugs from neighboring states (Kyrgyzstan, Tajikistan, Azerbaijan) and far abroad (Afghanistan, Colombia, Holland, China, India and others).
3. imperfection of customs legislation and its law enforcement procedures can also be one of the factors causing the smuggling of narcotic drugs and psychotropic substances; a large number of sources of customs law, frequent changes and additions to Russian legislation, insufficient efficiency of administrative regulations (decision-making procedures by officials vested with powers in the field of customs regulation).
4. There are cases of corruption of employees of customs, border and other law enforcement agencies who are materially interested in the illegal transport of items and substances across the border of the Russian Federation. Such employees can contribute to the creation of fictitious customs terminals, forgery of customs documents, destruction of material evidence, unjustified termination of an administrative or criminal investigation.
5. Insufficient interaction of Russian customs (border) authorities with foreign law enforcement agencies on the problem of preventing smuggling and other offenses. As a rule, the interaction of such bodies is not of a systemic nature and is not based on mutual interest, despite the presence of a sufficiently developed regulatory framework for such cooperation (Cherevko and Loginov, 2017).
6. Crimes under Art. 229.1 of the Criminal Code of the Russian Federation, are committed not only by citizens of the Russian Federation, but also by foreign citizens and stateless persons. A number of ethnic criminal gangs specialize in the illegal supply of narcotic, psychotropic, potent substances to the territory of Russia.

Every third crime related to the illegal supply of drugs to Russia is committed by foreigners (Tagantsev, 1902).

Let us illustrate the judicial practice on this crime. By the verdict of the district court of the Saratov region of May 6, 2016, a citizen of the Russian

Federation, Ch.V.V., was found guilty of being as a passenger in a VAZ car and hiding a narcotic drug - cannabis (marijuana) in the left sleeve of an Olympic jacket wearing it with a total weight of 13.6 grams, illegally moved this drug through the State border of the Russian Federation with the member states of the customs Union within the framework of the EurAsEC, for which he was convicted under paragraph "c" part 2 of Art. 229.1.

From the analysis of materials from judicial practice, it is possible to single out cases when drug smuggling is recognized as insignificant. Thus, the Presidium of the Moscow City Court, considering criminal case No. 44 / u-33/11 in the order of supervisory proceedings, established that on February 11, 2010 at 10:05 a.m., citizen B., having arrived by plane from Delhi to Moscow, was detained at the customs post as there was a dark brown substance in her backpack that looked like a drug. The examination established that this substance is a narcotic drug (hashish) with a total weight of 0.06 grams. A criminal case was opened on this fact, and the perpetrator was convicted of drug smuggling. The higher court overturned the initial decisions and terminated the criminal case due to its insignificance.

According to the Presidium of the Moscow City Court, the actions of gr. B. do not have signs of significant danger, and the materials of the criminal case do not have sufficient data indicating that the actions of gr. B. caused harm to an individual, society or the state (Lavrinov, 2018).

Over the past year, the customs authorities, during the customs control of persons, vehicles and cargo, operational and search activities carried out both independently and in cooperation with Russian and foreign law enforcement agencies, have withdrawn from illegal circulation over 153 kg of narcotic drugs, psychotropic and potent substances ... 556 criminal cases were initiated on the facts of smuggling of narcotic and potent substances and their precursors, including 303 cases under article 229.1 of the Criminal Code of the Russian Federation.

In the course of customs control of persons, vehicles and cargo, operational-search activities carried out both independently and in cooperation with Russian and foreign law enforcement agencies, more than 2.4 tons of narcotic drugs, potent substances, and psychotropic substances were withdrawn from illegal circulation and their precursors, on the facts of the smuggling of narcotic drugs, potent substances and their precursors, 447 criminal cases were initiated based on the materials of the operational divisions of the customs, including 234 cases under Article 229.1.

3. Summary

To the measures of prevention, detection, and suppression of crimes under Art. 229.1 of the Criminal Code of the Russian Federation, include:

creation of an effective system for protecting the territory of the Russian Federation from illegal import of narcotic, psychotropic, potent substances from near and far abroad.

- Improving measures for the effectiveness of border control, increasing the technical equipment of customs and border authorities.
- Liquidation of clandestine drug laboratories (infrastructure for illegal production, transportation, sale of drugs) in Russia.
- Identification of signs and suppression of the activities of transnational criminal organizations specializing in drug trafficking.
- Timely detection and recognition of new types of psychoactive substances (PAS) with their subsequent classification as narcotic or psychotropic drugs.

development and strengthening of international cooperation, implementation of coordinated interstate preventive, investigative, operational-search measures aimed at blocking the channels of illegal drug supply (Gracheva and Chuchaev, 2019).

Conclusions

Drug smuggling is a real disaster for the country, both economically and socially, causing harm, first of all, to the health and well-being of the country's citizens. The legislator, by his actions, is actively fighting this type of smuggling. As a rule, these are amendments to the Criminal Code of the Russian Federation. Difficulties also arise in the qualification of this type of crime.

As can be seen from the criminal-legal characteristics of smuggling in general, we can say that this type of crime is multifaceted and difficult to detect by customs officers. In the timely and successful detection of contraband lies the guarantee of national and economic security and the guarantor of the inevitability of punishment is fixed.

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The problems of organization and legal responsibility (civil and administrative) in the field of telecommunications in Iraq

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Abstract

The objective of the investigation is to analyze problems of organization and legal responsibility (civil and administrative) in the field of telecommunications in Iraq. The methodological basis of research consists of dialectical approaches, as well as special methods of studying legal, comparative-legal, structural-functional phenomena. Mobile phone use has spread widely among consumers. The mobile phone revolution has transformed lifestyles and livelihood resources with their envelopes to creating new business activities and changing the way people communicate. It is concluded that the use of a mobile phone has many effects, which can be social, physical, sanitary, environmental, or legal. For the latter, we note in Iraq that there is no legal regulation of communications that adheres to the provisions of consignment service providers in their relationship with subscribers. In this way, some communications authorities took on the task of creating the legal, political and administrative conditions by issuing policies that identify, in many cases, the conditions to which the mobile service provider includes in the service contract.

Keywords: Iraqi constitution; legal regulation; telecommunications authorities; communications law; consumer protection.

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Los problemas de organización y responsabilidad legal (civil y administrativa) en el campo de las telecomunicaciones en Irak

Resumen

El objetivo de la investigación es analizar algunos problemas de organización y responsabilidad legal (civil y administrativa) en el campo de las telecomunicaciones en Irak. La base metodológica de la investigación está constituida por los enfoques dialécticos, así como por métodos especiales de estudio de fenómenos jurídicos, comparativo-jurídico, estructural-funcional. El uso del teléfono móvil se ha extendido ampliamente entre los consumidores. La revolución de la telefonía móvil ha transformado los estilos de vida y los recursos de subsistencia con sus contribuciones a la creación de nuevas actividades comerciales y va cambiando la forma en que las personas se comunican. Se concluye que, el uso de un teléfono móvil tiene muchos efectos, que pueden ser sociales, físicos, sanitarios, medioambientales o legales. Para esto último, observamos en Irak que no existe una regulación legal de las comunicaciones que se adhiera a las disposiciones de los proveedores de servicios telefónicos en su relación con los suscriptores. De esta manera, algunas autoridades de comunicaciones adoptaron la tarea de crear las condiciones jurídicas, políticas y administrativas emitiendo directivas que identifican, en muchos casos, las condiciones arbitrarias que el proveedor de servicios de telefonía móvil incluye en el contrato de servicio.

Palabras clave: constitución iraquí; regulación legal; autoridades de telecomunicaciones; ley de comunicaciones; defensa del consumidor.

Introduction

Article (40) of the Constitution of the Republic of Iraq for the year 2005 stipulates that "(freedom of communication and postal, telegraphic, telephone, electronic and other correspondence is guaranteed and it is not permissible to monitor and eavesdrop on them or reveal them except for legal and security necessity and by judicial decision). As for the Iraqi Wireless Communications Law No. 159 of 1980, it did not lay down the legislative basis for legal liability arising from the installation of mobile phone towers, nor did it set the controls for the import of such devices that are supposed to be subject to quality control to know the extent of their seriousness as a dangerous commodity according to the Standardization and Quality Control Law For the year 1979. Instructions No. 1 of 2007

concerning the prevention of nonionizing radiation issued by the main and secondary constellations of mobile phones in Iraq. These instructions were issued according to Article 24 of the Iraqi Environmental Protection and Improvement Law No. 3 of 1997, and Article 1 / First of them stipulated the definition of non-ionizing radiation emitted by the main and secondary constellations of mobile phones as electromagnetic radiation located on low frequencies starting from 10 megahertz and above, such as radiation Launched from major broadcasting stations and antennas for mobile phones.

1. Methods

The methodological basis of the research is constituted by the general scientific dialectic methods of cognition, and deduction, systemic methods, as well as special methods of studying legal phenomena, comparative-legal, structural-functional, etc.

2. Results and Discussion

The purpose of issuing these instructions is to protect living organisms and other elements of the environment from non-ionizing radiation and their biological effects according to Article 2 of these instructions. Article 4 dealt with that the companies that own the systems covered by the provisions of these instructions are required to provide devices for measuring the exposure values for the general public in accordance with the applicable Environmental Protection and Improvement Law.

They are also required to transfer to official approvals from the competent authority to practice the activity according to the forms attached to these instructions and to provide a report on the environmental impact according to Article 18 of the Iraqi Environmental Improvement Law of 1997. In addition, penalties and precautionary measures may be imposed on the legal person, including companies, factories and establishments, as companies and institutions have been granted, as the law has given the General Director of the Environment or whoever represents him a warning of any facility or laboratory with polluting effects of the environment to remove the influencing factor within ten days from the date of notification and in the event of failure Responding to the warning, the general manager can temporarily suspend work or shut down the company causing the damage for a period of no more than a month, and a recommendation can be made to the Environmental Protection Council to issue a permanent closure order (Fisher, 2009).

Here, the organized and racing position in the Iraqi legislation to regulate liability arising from the damages caused by mobile devices is noted. And when the mobile phone comapanies violate the legal procedures, they are subject to penalties in the form of a fine and confiscation, and the company's cessation of its activity and its dissolution (Al-Din Ali, 2016).

However, after 2003, a number of legislations appeared to confront mobile phone crimes and regulate their work such as the Law on the Protection of Iraqi Products, the Money Laundering Law 2004 and the Law for the Protection and Improvement of the Environment 2012, as well as the regulations and instructions issued related to radiation protection emitted from the towers of the communication companies represented in instructions No. 1 of 2007 canceling the instructions of the Ministry of Environment For the year 2010.

The development taking place in various fields of human life and modern technology that have occurred to him, helped him a lot and provided him with many of the benefits and facilities that he needs in most of his life, but this development that occurred in the technology field has negative side effects despite his great benefit. Waste is industries and radiation. Those that arise from establishments with industrial activity adversely affect the neighborhood environment and make people's lives vulnerable to imminent danger.

These radiations are among the most important sources of a third of the environment, as they are very dangerous and widespread in the earth, and their danger has increased after the discovery of nuclear and atomic energy and uranium enrichment, in addition to the large number of nuclear tests, and all of this would affect the person (the neighbor) and his life (Shi and Warwick, 2018).

Through this, we understand that these emissions from industrial and military wastes pose a great danger to human life and are considered uncommon, because of their impact on the injury of many dangerous diseases, and this justifies those who have been harmed by them to seek compensation and remove those harms if It was possible and the Qatar Radiation Protection Law No. 31 of 2002 was issued.

The Iraqi Environmental Protection Law has paid attention to radiation pollution of the air, and this interest appears clear in the texts and paragraphs, as Article (32) of the same law indicated the obligation of the person responsible for environmental damage to compensation and its removal and return the case to what it was before the damage occurred, and also gave the article (33) The Minister has the right to close installations that result in environmental damage that leads to unfamiliar neighborhood harms for a period of thirty days, which can be extended until the violation caused by those facilities.

The administrative license is defined as the permission issued by the competent authorities to practice a specific work or activity or the opening of a factory or the like, which may not be practiced without this permission (Liu and Tronchetti, 2019), and it is thus considered one of the means of intervention of the state in the individual actions or activities that could result from it. Damage to the other mobile phone towers (Al-Mousawi, 2011; Glenn and White, 2007), especially those that would lead to harm to people or the threat of danger to obtaining an administrative license in order to conduct work or industrial or commercial activity , as well as owners of buildings and before proceeding to construct them they obtain a license Building, which would give the administration a prior opportunity to monitor work and see if the building conforms to the conditions in the general rules (Liu and Tronchetti, 2019) .

It is worth noting that the nature of the administrative license in general is of an attribute in kind, meaning that it relates to the licensed place and not to the owner of the store, as the issue of consideration here is the licensed activity and the conditions of its practice and conditions and the consequences thereof, and it follows from the kind attribute of the administrative license that it is possible Assignment from the licensee to another person through assignment.

The Iraqi legislator did not address the issue of paying the responsibility of the owner (the neighbor causing damage) through administrative licensing, nor did the 1986 draft of the Iraqi civil law deal with this issue, and the explanations of the civil law did not explicitly indicate the extent to which the person responsible for the harmful act can pay the administrative license, but They cited some statements that have the meaning of inadmissibility of payment with an administrative license A part of the commentator (Akamangwa, 2017).

dealt with the issue of paying the administrative license, but from the affected neighbor (the plaintiff), as it went to the conclusion that the administrative license granted to the owner of the factory or industrial facility that resulted in harm to the neighbor does not prevent the affected neighbor in the request to remove those obscene harms inflicted on him and another side (Hider, 1971). Dealt with this issue by the neighbor causing the damage, as he said that the administrative license does not prevent the owner from assuming responsibility for the harms caused to the neighbor.

We conclude from the statements of some Iraqi civil law commentators that it is not permissible for the owner (the one who caused the damage) to pay his responsibility by saying that he obtained an administrative license to practice his activity that resulted in harm to others. The Iraqi legislator did not address the issue of precedence in possession or exploitation, except that it is understood through the text of Article (1051/3) of the Iraqi Civil Law that precedence in ownership or exploitation would protect the owner

from assuming his responsibility for the subsequent harms of his neighbor, as this article stipulated that (If one is acting in his possession lawfully, then another comes and creates a constructive and harmful part of his side, then he must pay the harm himself).

The error as a general rule is a basic element in the legal responsibility for the damage of mobile phones, and in the case of its absence there is neither responsibility nor compensation for the damage that afflicted the victim, and the error in civil liability as one of its pillars is stipulated in all civil regulations with different expressions on it (Al-Mousawi, 2011), and the person causing the damage is obligated Compensation for the aggrieved person during his life, and this obligation is transferred to his heirs after his death, as they are obligated to pay the amount of compensation from his estate before dividing them to them (Dong, and Zhu, 2019), so the rule is that "(there is no legacy except after paying the debts)" (Mark, 1988), that is, the debtor's legacy is transferred as soon as he dies The right of my eyes to the deceased debtors creditors authorizes them to track and collect their debts from them under the hands of any heir or whoever has the last disposed to them as long as the debt exists without this heir if the creditor makes the lawsuit claim to pay the debt expiry for him, and the heirs are not in solidarity in Pay off the debt except.

It is not enough to arrange solidarity responsibility for an error, but there must be one harm that results from these errors. Intentional harm is meant to be the damage caused by each of the multiple officials is the same damage that resulted from the action of each of them (Al-Thanoon and Al-Darar, 1991), in the case of multiple owners of the signs in the sense that the damage is of the same nature represented by a specific physical injury, or damage to a specific thing, from Where if every mistake causes harm to a person in a specific area, he does not ask in solidarity with another person whose mistake caused a different damage (Al-Din Ali, 2016).

Conclusions

To summarize the above, we can conclude that defining civil, administrative, and criminal liability in the field of protecting and using mobile phones is one of the main problems in the Iraqi legal system, and that detection and investigation of crimes in the field of computer information and high technology remains one of the most difficult tasks of criminal investigation and Preliminary investigation. This is linked to a number of problems, including the lack of adequate monitoring of the investigation into judicial practice.

In the field of cybercrime, the lack of experience of local specialists in this field, and finally, the general lack of scientific basis and methodological recommendations regarding tactics and methodology that have been tested in the practice of investigating crimes in the field of computer information and high technologies.

And due to the lack of legislative treatment regarding determining the responsibility arising from the import of mobile devices and their severity, we suggest that the Iraqi legislator legislates the Communications and Media Law, and it stipulates that the information and the Communications Authority are obligated to take upon themselves the imposition of restrictions on the import of mobile devices for all telecommunications companies and take them It shoulders. We also suggest that the Iraqi legislator stipulates in the Iraqi Consumer Protection Law No. 1 of 2010 the right of mobile phone consumers to form associations or institutions so that mobile phone subscribers can gather in one place according to the geographical area to confront service providers. In the event of health damage or radiation affecting them due to the damage of imported devices that lead to damage in the consumer category.

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Constituent elements of prohibited vertical agreements in the competition law of Iran and the European Union

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Abstract

The objective of the investigation is to analyze the constituent elements of vertical agreements prohibited by Iran's competition law, in accordance with Chapter IX of the Law on the Implementation of General Policies and in accordance with Article 44 of the Constitution and, as set out in European Union competition law, Article 101 of the Treaty on the Functioning of the European Union. By vertical agreements it can be said that one of the types of agreements is wanted in the competition law. Any reference between natural or legal persons in the longitudinal direction (whether top to bottom or bottom up) that is not close to the consumer's interest is agreed. These agreements may include free clauses that are not compatible with the objectives of competition law. Methodologically, this is a documentary research close to comparative and legal hermeneutics. It is concluded that, to prohibit vertical agreements, they need to have the anti-competitive object or effect and also have a tangible impact on the closure of competition on the market.

Keywords: Competition law; prohibited vertical agreements; anti-competitive effect; elements of agreement; tangible impact.

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Elementos constitutivos de acuerdos verticales prohibidos en la ley de competencia de Irán y la Unión Europea

Resumen

El objetivo de la investigación consiste en analizar los elementos constitutivos de los acuerdos verticales prohibidos por la ley de competencia de Irán, de conformidad con el Capítulo IX de la Ley sobre la implementación de políticas generales y de conformidad, con el Artículo 44 de la Constitución y, con lo que se establece en la ley de competencia de la Unión Europea, Artículo 101 de la Tratado de Funcionamiento de la Unión Europea. Por acuerdos verticales se quiere significar a uno de los tipos de acuerdos en la ley de competencia. Se hace referencia a cualquier acuerdo entre personas naturales o jurídicas en la dirección longitudinal (ya sea de arriba hacia abajo o de abajo hacia arriba) que no esté cerca del interés del consumidor. Estos acuerdos pueden incluir cláusulas restrictivas y no compatibles con los objetivos de la ley de competencia (objetivos económicos y no económicos). En lo metodológico se trata de una investigación documental próxima al método comparativo y a la hermenéutica jurídica. Se concluye que, para prohibir los acuerdos verticales, es necesario que estos tengan el objeto o efecto anticompetitivo y generen además un impacto tangible en el cierre de la competencia en el mercado.

Palabras clave: Derecho de la competencia; acuerdos verticales prohibidos; efecto anticompetitivo; elementos del acuerdo; impacto tangible.

Introduction

In many markets, manufacturers and creators of products do not, for economic reasons, directly supply the product themselves, but do it through wholesale distributors or retailers. This creates various types of contracts between these firms, which are recognized in the competition law as “vertical agreements.” On vertical agreements, on the other hand, horizontal agreements between the parties to the agreement are not mutually agreed, and one of the parties to the agreement is in the process of reaching the consumer in a position closer to them. In other words, in vertical agreements, two or more business entities agree to trade partners at different levels (upstream or downstream control) (Abbott, 2008; Eur-Lex, 1991;1972).

Vertical agreements cover a very large volume of global trade; vertical agreements such as contracts for the sale or re-sale of goods, contracts for the transfer of technical or technological know-how or bonds, may contain restrictive clauses. And are incompatible with the objectives of competition law. From here, the discussion of vertical agreements is forbidden, for example, an agreement on the condition for the determination and fixing of resale prices, the conditions for the division of the market and the restrictions on distribution (exclusive distribution and selectivity) And customer allocation, exclusive deals and price discriminations (Abbott, 2008; Dovies, 2003).

After identifying the elements of vertical agreements, regardless of the many examples of such agreements, it is necessary to consider the elements and conditions on which vertical agreement is based, a vertical agreement that is prohibited and disruptive to competition. This is becoming increasingly important because some kinds of agreements, such as agreements to establish maximum resale prices, are prohibited only if they are prohibited. In this regard, the article attempts to examine elements of the prohibition of vertical agreements on competition rights between Iran and the European Union in order to allow vertical agreements in the competition rights of Iran and the European Union regardless of their form and subject, whether they are prohibited or Their permission is judged (Gerber, 1998; Ghamami *et al*., 2010).

The constraints on vertical agreements and other types of agreements are divided into two broad categories of constraints and so-called suspect limitations. The first category, which has a purely anti-competitive character and conflicts with the objectives of competition law, is considered to be purely constraints and intrinsically forbidden agreements. In fact, their risks and risks are high and they are viewed negatively; the latter depends on the economic conditions of the society and the nature and conditions of each agreement, legitimacy and competitiveness, or approaching the strict limits, as the case may be. These types of vertical agreements are merely considered to be suspects, and in this category a rule called rationality is raised (Gholami and Rezapour, 2016).

1. Concept and types of vertical agreements are prohibited

In this context, we will ban the concept and the types of vertical agreements. In this regard, first, we will examine the forbidden vertical agreements, and briefly illustrate the examples, and then we will study the constituent elements of the forbidden vertical agreements.

- **The concept of vertical agreements is prohibited:**

In this context, we will examine the concept of banned vertical agreements in Iranian law and EU law.

- **The rights of Iran**

Article 44 of the Law on the Implementation of General Policies, and Article 44 of the Constitution, adopted on 25/06/2008 of the Expediency Council on prohibited agreements on competition law: "Any collusion by agreement, agreement or agreement (whether written, electronic, oral, or practical) between individuals who pursue one or more of the following ..."

According to the aforementioned article, the essence of the prohibited agreements in Iran's competition law is the question of collusion that this collusion may appear in various forms, such as contract, agreement or understanding. (The purpose of the contract in the aforementioned article is the concept referred to in Article 183 of the Civil Code regarding the contract: "A contract means one or more persons commit and agree to one or more other persons."

Since each contract involves a subscription element (agreement), but any agreement and agreement are not necessarily agreed (such as moral and honorary agreements). In the context of the development of the concept of prohibited agreements, any agreement shall be inclusive if other conditions are met. Matter known. Also, the term "understanding" has been used in this article, which seems to be the subject of a coherent and collaborative process between several individuals, and the insertion of this issue both in terms of the difficulty of proving the existence of an agreement and in view of the fact that collusion may exist for the common behavior It looks like positive.

The Iranian legislator has nowhere provided a distinction between horizontal and vertical agreements, but it can be stated in principle that in Iran's law there is no collusion (including consensus or agreement) between several persons who are not in close proximity to the consumer. A vertical agreement is considered that some of these agreements are permitted, while others are prohibited under certain conditions. In other words, if there is a vertical relationship between the parties to the agreement (such as the relationship between the manufacturer and the seller), the agreement between them is called vertical agreement.

In the last word for verifying the verb vertical agreement, it is necessary to agree primarily on a number of parties (which, of course, the legislator, in article 44, also considers the agreement to be an agreement), and secondly, the parties to the contract establish a vertical relationship in the vicinity of the consumer.

Be It should be noted that there is a controversy over whether the legislator in the article cites all the undesirable effects of anti-competitive

collusions, that is to say, the cases mentioned above are either expressive or allegorical. It seems that, in view of the objectives of competition law, which ultimately leads to justice, balancing and increasing efficiency in various economic, social and other spheres, it should be noted that the abovementioned cases are not extinct, and any work contrary to these objectives is prohibited. Indeed, the uniqueness of the effects of anti-competitive practices on a number of specific issues would be inadequate to the rules of competition law. The common paradigm in this article is that they are all in control of the market conditions and the various stages of production and distribution. Whenever such collusions completely or to a large extent lead to a loss of market equilibrium and a price control system, and as a result of the degeneration of the market incentive system, the relevant agreements should be considered as prohibited and anti-competitive agreements.

2. The rights of the European Union

The agreement in the EU law implies coordination of the parties' intentions, so in this sense, in the EU law, the relationship of agreement to the contract, the public and, in particular, the absolute agreement with the general nature of the contract, in such a manner that each contract implies a kind of agreement, but Any agreement does not necessarily mean a contract. Therefore, in the concept of agreement, the agreement is not mandatory, but in terms of EU law, moral agreements are also agreed upon, but an agreement that is not considered a contract due to a lack of legal and binding legality.

Therefore, it can be claimed that the agreement includes all contracts, agreements, treaties, existing procedures between the parties and the memorandums. In this sense, the agreement should indicate the conformity of the parties' personal intentions with which the coordination has been made by the parties. Establishing a co-ordination between the parties' intentions can be implicit or explicit, but it is conditional on the free will to co-exist in the coordination of the truce.

If an agreement is reached in circumstances where it cannot be due to the free will of the parties (such as when the agreement is made by the general order), the agreement does not in fact exist in the true sense of the word (Rashvand, 2011; Nasehi, 2015); the following are the result of the following: first, the coordination of the will of the parties must be in accordance with the will of the parties to reach the determined ends, and the mere co-ordination between the will of two persons is not colluding. Second, it is necessary that unilateral will, unless explicitly or implicitly accepted by the other party, be deemed unconnected and, in this regard,

is not subject to any restrictions or safeguards for specific anti-competitive agreements. In this regard, attention is also given to Article 101 of the Treaty of the European Union. The article stipulates: "All agreements between undertakings, decisions by associations on undertakings and concerted practices which may affect trade between Member States ..."

Third, it is necessary for the truth of the title of "agreement" to be achieved by the common knowledge and intention of the parties. Therefore, a harmony in which the mutual knowledge and intention of the parties is not met is not conceptually covered by the term "agreement". In the same vein, Article 101 of the European Union Treaty lists the term "collective actions" and enshrines them independently as safeguards for certain anti-competitive rules, since the fundamentals of collective action and non-compliance There is a common science and intent.

After clarifying the concept of an agreement, it can generally be said that vertical agreement in the competition law refers to all agreements that occur between several non-trading companies. It should be noted that in this section, in terms of the precise definition of "vertical agreement", we tried to distinguish between the concept of an agreement with unilateral decisions as well as a common procedure, but in view of the fact that in EU law, the prohibition of agreement, unilateral decisions and procedures If the other conditions are identical, one can state that the vertical agreement in its own meaning includes all forms of collusion, that is, an agreement and common procedure between several persons with a non-latitude relationship.

Therefore, a series of agreements that bring the product of either intermediary or final product from the stage of production to consumers, vertical agreement In other words, the main criterion in these types of agreements is the non-reciprocity of the parties to the contract in the vicinity of the consumer, whose value is in relation to the horizontal agreements, which in such agreements, contrary to the horizontal agreements, one of the parties to the positioning agreement is closer to Consumer (Ghaffarifarsani, 2014).

Article 81 of the EU Treaty stipulates that "any agreement, decision or activity whose object, purpose or effect is to prevent, restrict or distort competition in the common market is contrary to the common market and prohibited "As it is clear in the treaty, the subject matter of the ban, agreements and anti-competitive measures is not subject to the existence of a kind of contract. Concerning the examples and the types of such agreements (according to paragraph 81 of the treaty), the scholars have the idea of the allegory of these cases, and according to judicial practice, these aspects are not of an enduring nature.

3. All vertical agreements are prohibited

In this section, we will briefly mention the types and examples of vertical agreements, and we will explain each one.

- **Determine the minimum resale price:**

The most basic exemption of vertical bans is to determine the minimum open selling price. This type is an agreement between the manufacturer or supplier and the distributor that the price of the product will not be lowered to a certain degree in resale. Today, price fixing agreements (minimum and maximum limits) can be subject to a ban. In fact, both Iran and the European Union have a tendency to disregard such vertical agreements, and such agreements cannot be considered dogmatic, anti-competitive.

4. Exclusive deals

An exclusive deal is an agreement whereby the buyer is required to purchase all or part of his or her own needs from a vendor, or the supplier undertakes to sell all or part of its products and services to the deal. In assessing these agreements, issues such as the dominant position or major market power, the existence of anti-competitive effects or defenses and justifiable causes are considered. In many countries, including European countries, justifiable reasons exist for exclusive deals. The most commonly accepted reason for this is to reduce costs and increase economic growth. In Iran's law, article 45 of the law on the reform of the fourth program has stipulated in the same field, the transaction is anti-competitive and prohibited on the condition that the opposing party refuses to deal with the competitor.

- **Restrictions on distribution**

In many cases, manufacturers distribute their products through sales agents, and this creates a sort of vertical agreement. In such agreements and contracts, there may be restrictions on the other party; for example, the manufacturer requires the distributor to deal with a particular person or distribute the product in a specific and special constraint. Restrictive distribution agreements include a variety of options, including the creation of regional constraints or consumer-related restrictions, selective distribution agreements.

- **Discrimination in price**

The most obvious form of anti-competitive behavior in pricing is to determine the different prices for the same products for consumers. Therefore, price discrimination means selling products of the same or similar prices at different prices without any justification. In many legal systems, price discrimination is considered to be anti-competitive in nature and merely considered to be sufficient to prohibit it. From the point of view of social justice, this issue can be examined and any kind of discrimination at the price is a kind of disruption to consumers' rights and is contrary to the principle of justice.

5. Elements forming vertical agreements are prohibited

The constituent parts of the banned vertical agreement can be expressed in terms of three elements of agreement or decision or action, the existence of two or more independent business entities, and the vertical relationship between the parties to the agreement (business activists). We will study these elements in this section.

- **The existence of an agreement or decision or action is coordinated**

In Article 101 of the EU Treaty, there are three categories of agreement, decision and practice that are identical in terms of a ruling. Although, as has been said, vertical agreements are literally merely an element of agreement, but in terms of terminology and agreement, unions' decisions - it should be noted that, as will be discussed in more detail later, in EU law deliberately decisions Unions are not subject to unilateral decisions, but banned under bilateral or multilateral decisions - and include coordinated action.

- **Agreement**

As stated earlier, the agreement can be defined in accordance with the joint intention of several individuals to conduct a particular conduct. It should be noted that, as stated in Iranian and EU law, explicitly prohibited agreements (Article 44 Law on the amendment of general principles of Article 44 of the Constitution and Article 101 of the EU Constitution). In this sense, the essence of the agreement is the existence of common intention or purpose. (Which is the subject of an agreement on joint actions). To reach an agreement, it is necessary to involve the will of several individuals. (Which is the subject of an agreement on unilateral decisions) has, in this sense, a conceptual understanding of the contract (Article 44 Law on the amendment of general principles of Article 44 of the Constitution) and all binding agreements, moral or honorable, tacit, explicit, Total and by

third parties, because it is obvious that the place of the ban is the effect of agreements, not their form. - Agreed agreements are agreements in which a set of contracts is made for a certain period.

The European Court of Justice has made it clear in the context of such agreements that such an agreement has the effect that the court is entitled to treat a set of agreements as a single agreement, and that, if the parties intend to conduct a given market conduct, Convict not all aspects of the agreement - (Vakili and Hossein, 2010). In other words, it is not necessary for an agreement to be obtained from the consensus of the parties, but it may be due to a third party among business activists regarding the conduct of the conduct A specific agreement may be made; Also, agreement may be reached by the employee Even if they do not have the authority to conclude such agreements take place (Rodger and Macculloch, 2009).

- **The decision**

The decision is a one-way operation issued by trade and trade associations, a group of guilds or business entities (Rashvand, 2011), and according to Article 101 of the Treaty on the Functioning of the European Union, if other conditions are met. Can be considered as antitrust and prohibited decisions.

These decisions have roughly identical rulings. As discussed in the agreement, what is the place of the ban is the effect of decisions, not their form; therefore, the decision by a legal person or non-legal person, as well as the shape of the decisions made, is not important in EU law. In the same vein, the European Court of Justice, the German Insurers' Association's decision regarding its members to raise a certain percentage of premiums, is covered by Article 101 (Shokouhi, 2002).

The nature of the decisions should differentiate between members who accept such decisions and those who do not accept such decisions. Undoubtedly, such decisions, regardless of the acceptance or non-acceptance of some members, will be subject to Article 101; however, it should be noted that if these decisions are made by the members, the decision of the union will be withdrawn from the decision form in the form of an agreement; of this The guarantee of specific actions related to anti-competitive agreements to the parties to the agreement will be imposed on the accepting members. Thus, the guarantee of violations of the rules of competition law in this case, both for the unions and for the attention of these firms (Rodger and Macculloch, 2009).

Also, when unrepresented business activists will explicitly or implicitly accept the nature of Union decisions, an agreement will be made, and then the guarantee of performance related to anti-competitive agreements will These non-member members will also be imposed. On the contrary, it seems that those members who have accepted the nature of the above

decisions cannot be considered as agreements, thus, it seems to be against the activists who They cast a negative vote on the decisions and later accept it, impose a guarantee of performance Particularly, the parties to the anti-competitive agreements should be disregarded. - In any case, it should be noted that the decision of the Union, regardless of the acceptance or non-acceptance of some members, will be subject to Article 101 of the Treaty on the Functioning of the European Union.

An important issue with regard to union decisions is that, although these decisions, in particular where the union has a legal personality independent of its members, is essentially one-sided action - the unilateral action of the voluntarily and individually acting decisions of the business community An independent and one-way form is taken. In the EU law, Article 102 of the Treaty on the Functioning of the European Union, refers to the unilateral decisions of commercial activists - but in EU law, in the context of specific restrictions, prohibits unilateral decisions on one side and, on the other hand, to prevent The members of the activists' escape from the guarantee of the performance of competition law in the form of the legal personality of the union, union decisions are independently and in the form of two-way or multilateral decisions to members in the event of other conditions being banned.

It should be noted that the condition for the prohibition of unilateral acts of commercial activists in EU law is the dominant position of commercial activist and the commercial use of this dominant position by the employer. Article 102 of the Treaty on the Functioning of the European Union stipulates:

> Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.

Concerning the decisions of the unions in Iran's competition law, it should be noted that the law on the implementation of general policies of Article 44 of the Constitution does not discuss independently the decisions of the unions, and in Article 44 of that law only the collusion has been effected through an agreement, agreement and agreement and like the Treaty on the Functioning of the European Union, there is no independent discussion of union decisions. Nevertheless, in the competition law of Iran, unilateral decisions were made that these decisions were more restrictive than the rights of the European Union and could also be attributed to natural and legal persons. Therefore, if the union does not have a legal personality, only if the members of such decisions, whether from members or non-members, appear to be in the form of a contract, agreement or agreement on the condition of collusion subject to the prohibition of Article 44, and if the union The legal personality, in addition to the guarantee of the implementation of this law, shall be subject to the guarantee of performance

of competition law against the union itself in the form of unilateral, anti-competitive decisions under Article 45 of the Criminal Code of the United Nations.

- **Harmonious action**

Article 101 of the Treaty on the Functioning of the European Union prohibits coordinated action in the presence of other conditions.

In the beginning, collective action was used to get rid of the particular difficulties of the existence of an agreement among business activists (Ghaffarifarsani, 2014). But the collective action and the coherent action gradually became independent of the concept of an agreement. It was argued, therefore, that the reason for the distinction between the concerted practice and the agreement in Article 101 of the Treaty on the Functioning of the European Union was that there was a form of cooperation between the business community without the need for an agreement in the true sense of the word, Disruptive competition is avoided (Imperial Chemical Industry Commission, 1972).

In other words, the purpose of including prohibitions on coordinated actions, in the presence of other conditions, is the inclusion of competition rules in relation to those business entities, although there is no agreement between them, but how they behave because of their market behavior through behavior Directly or indirectly with other companies, is participatory (Jones and Sufrin, 2004).

Concerning the coordinated action, it should be noted that this concept has been accepted in the Iranian law under the title of the understanding, and Article 44 of the Law on the Implementation of General Principles of Article 44 of the Constitution: "any collusion by agreement, agreement or agreement (whether written, Electronic, verbal or practical) between individuals who have one or more of the following effects, so that the result is to disrupt the competition".

It has paid attention to this. In other words, in Iran's law, if there is a practical understanding between business activists who are consistent with the operation Between them, it is proved that, in the presence of other conditions, it will be subject to the guarantee of certain performances of the competition law. However, in Iran's law, it is necessary to be aware of another and deliberate behavior in the presence and absence of a justified reason for this harmonious behavior in terms of the truth of the title of understanding and the existence of a consistent and consistent behavior for the truth of the title "practical".

- **There are two or more independent business entities**

In the Treaty on the Functioning of the European Union, the term "Undertaking" has been used where the treaty has not been defined, but

the judicial procedure in interpreting this term is the existence or absence of a legal personality, the person or legal personality, the personality of the public right or its privacy, and that Its basic purpose is profit-making, or no, has no effect on the truth of this concept on economic activity (Italy V. Sacchi case, 1974, 2CMRL).

Thus, economic activity can be regarded as any independent existence that appears in the market, in this sense, the economic activist will have a relative and material meaning. - Relative to the active concept of business means that the business actor may be subject to competition law through part of his activities, while his other behaviors are beyond the scope of competition law. (Vakili and Hossein, 2010), and the material nature of the active economic concept means that, regardless of the active economic character (the legal personality of having or not having a person or a legal person, being or not being a state) Some of his activities in the area of the same activities are subject to competition law (Rashvand, 2011; Sadeghi, 2007).

Basically, vertical agreements (meaning, including self-agreement, understanding, union decisions, and concerted action) mean that there are two or more independent business entities. The condition for the independence of business activists to exclude agreements between business activists and their business activists is to include vertical agreements. For example, if a parent company concludes an agreement with its subsidiary, this agreement cannot be understood as an agreement in the true sense of the word because the nature of the agreement is not between two independent business entities, but in the unilateral decision of the parent company to the subsidiary.

Another distinction is the recognition of the active business autonomy in terms of attribution of responsibility, so that in the wind, each active company in the economic complex is responsible for the behavior of other activists in the collection (Vakili and Hossein, 2010). Therefore, whenever a subsidiary commits antitrust action - such as vertical agreements - it is the parent company that will be liable, regardless of location outside the scope of the law relating to that specific prohibition.

- **Vertical agreement between the parties**

The two conditions that have been mentioned so far, that is, the condition of the existence of an agreement, decision or action, and the condition of the existence of two or more independent business entities, is necessary to realize the concept of an agreement in the sense of itself. But in order to agree to a vertical agreement, it is necessary to have another condition, which is the verticality of the agreement between the parties. As discussed earlier, the verticality of the parties' agreement implies that the distance between the parties to the agreement to the consumer needs to be different,

otherwise the agreement will be horizontal. Therefore, it is not necessary that the agreement is necessarily made between the manufacturer and the seller, in order to reach the vertical agreement, but the agreement between the manufacturer of the main product with the intermediate product manufacturer is also considered as a vertical agreement because of the distance between the consumer and the absence of the parties to the agreement. .

- **Having an issue or anticompetitive effect and a tangible impact**

Article 101 of the Treaty on the Functioning of the European Union stipulates: "Agreements between business activists, decisions of trade unions and collective actions that may affect trade between member states and those whose object or effect is to prevent, restrict or distort competition in the domestic market ..."

Therefore, based on the foregoing, one of the provisions of the prohibition of vertical agreements is that these agreements have either anti-competitive or counter-competitive effects in the market. In this paragraph, we will examine these two issues.

- **Having an anti-competitive subject**

Having an anti-competitive theme means that the agreement itself has an anti-competitive effect in such a way that the parties intend to compete in the market. The intention of the parties in the matter of an agreement or as a direct intention (in such a way that the parties have deliberately intended to limit competition during an agreement) or indirectly (that is, the provisions of the agreement of the parties in such a manner that, although the parties deliberately intended to restrict competition But the terms of the agreement are such that they knew or should have known that the agreement would impede competition in the market) is conceivable (Jones and Sufrin, 2004).

Therefore, when an agreement is in such a way that the parties intend to conclude such an agreement, restrict the market behavior or trade policy of one or more parties or damage to third parties, whether competitors, suppliers or buyers, the vertical agreement, the anti-competitive agreement to Considering the issue is anti-competitive. It should be noted that in the case of coordinated action, because of the co-ordination of action in terms of anti-competitive effects, and the former agreement did not exist, in Iran's law such a situation was called practical agreement (Article 44 of the Law on the amendment of general principles of Article 44 of the Constitution) Speaking about anticompetitive matter, harmonious action is a matter of solving this issue every year.

- **Having an anti-competitive effect**

An agreement may not conflict with competition in the market, but the implementation of the agreement would have anti-competitive effects, including immediate effects, potential effects and total effects - in such a way that there may be no anti-competitive effect agreement, but a set of agreements would have such an effect In this case, the vertical agreement is considered to be prohibited (Ritter and Braun, 2005).

In the analysis of the anti-competitive effects of vertical agreement, it is necessary that the market conditions and economic contexts governing it be carefully considered, since these agreements are not in conflict with competition and do not compete merely in terms of the effect, and the anti-competitive effect in The market is only possible with the precise knowledge of the market and the economic context that governs it.

The point that is very important in this regard is that, in order to achieve the prohibition or not to ban the vertical agreement, the agreement is primarily anti-competitive, and if the subject of the agreement is not anti-competitive, then it is time to examine the effects of the agreement arrives . In other words, whenever the terms and conditions of an agreement can be understood by the parties to limit competition in the market, there is no need to examine the effects of the agreement (Jones and Sufrin, 2004).

Another point that needs to be addressed is that the anti-competitive effects of vertical agreements can include all types of vertical agreements, including agreement, decision and action coordinated. In other words, coordinated action can only be considered as prohibited if it has anti-competitive effects, so if an agreement is reached that has an anti-competitive object, it will be implemented in such a way that competition cannot be restricted in practice. It is anti-competitive. The subject matter of the agreement is prohibited but coordinated action will only be prohibited if it is implemented in a manner that effectively disrupts the competition on the market.

- **Have a tangible impact**

It was said that it would be necessary to prohibit a vertical agreement or be subject to an anti-competitive agreement, or that the agreement would have an anti-competitive effect on the market. Regarding the anti-competitive effect of the market, given that this effect should be established on the market, it is clear that agreements that have no appreciable competitive antagonism on the market due to lack of anti-competitive effects are not forbidden, but for vertical agreements subject The anti-competitive nature of the European Union's judicial system is that it does not fundamentally prohibit agreements that do not have a tangible effect on the market (AG Case C234 / 89, 5CMLR 210).

(De Minimus Rule) This issue has made it increasingly difficult to ignore agreements of negligible importance; - there is no need to have a tangible effect on competition in the Treaty on the Functioning of the European Union, and this is a matter of judicial innovation. According to which an anti-competitive deal would be prohibited when it had a tangible impact on competition in the market. (The European Court of Justice has announced in its famous ballot: "If an agreement does not materially affect the market position of the relevant persons in the market, it is not subject to the prohibition of Article 85 (now 101)" (Rashvand, 2011).

Hence, less important agreements that do not have a tangible effect on competition in the market will not be subject to a ban. As for the tangible impact on the market, the European Commission has provided ideas over the years that, according to these views, if the market share of the parties does not exceed 10% of the market share, does not have a tangible effect on competition, as well The competition in the market is limited by the effect of the total agreement between the supplier and the producer. This percentage will decrease from 10% to 5% (Vakili and Hossein, 2010).

In the Iranian law regarding the tangible effect of the competition, Article 44 of the Law on the implementation of general policies of Article 44 of the Constitution provides: "Any collusion may be prohibited between persons who are pursuing one or more of the following in a contract, agreement or agreement (whether written, electronic, oral, or practical) in a manner that would interfere with competition."

Therefore, according to the explicit clause of the article, vertical agreements will only be subject to a prohibition, which will result in distortion of competition in the market; therefore, agreements that do not have a significant effect on competition in the market will not be subject to prohibition.

Conclusions

Vertical bans on Iran's competition law, in accordance with Article 44 of the General Implementation Policies of Article 44 of the Constitution, refers to any collusion between several persons not closely related to the consumer, and in the EU competition law and Article 101 of the Treaty of Functioning The EU consists of all agreements that exist between several non-overlapping firms.

The constituent elements of the forbidden vertical agreements may be agreed upon in three elements of agreement or decision or action, the existence of two or more independent business entities, and the vertical relationship between the parties. An agreement can be defined by the

co-ordination of the joint intention of a person to conduct a particular behavior. The point about the elements that make up vertical agreements is that agreement in this sense is due to the importance of the effects of the agreement and not their form in the contractual semantic competition law, and includes binding moral agreements.

The unilateral action decision is issued by trade and trade unions, a group of guilds or business enterprises. In the EU competition law, Article 101 of the Treaty on the Functioning of the European Union, unilateral decisions have been taken into account as a constructive element of vertical agreements, while this issue has not been identified in Iranian competition law.

Coordinated action means the practical understanding between business activists that, despite their coordinated action, is also considered in the competition law of Iran and the European Union, and aims to consider a form of cooperation between business activists without an agreement in the true sense The word is a vertical agreement so that competition in the market can be more easily guaranteed.

To realize the vertical agreement, it is also necessary that the agreement be made between two or more independent business entities. It is also necessary that the parties agree on the agreement vertically, meaning that the distance between the parties to the agreement with the consumer is different.

In order to ensure that the vertical agreement concluded is prohibited in competition law, regardless of its numerous instances in the rights of Iran and the European Union, it is necessary that the agreement has an issue or anticompetitive effect, and this will disproportionately interfere with the competition.

Having an anti-competitive object to ban an agreement means that the agreement itself has an anti-competitive effect in such a way that the parties intend to compete in the market. Also, in the case of anticompetitive effect, it should be noted that if an agreement is not anti-competitive in terms of subject matter, the implementation of the agreement would lead to anti-competitive effects, both potentially and overall, in such a case, the agreement is prohibited.

Lastly, it should be noted that the prohibition of vertical agreements requires that the agreement has a tangible effect on the foreclosure of competition in the market because, in accordance with the rule of non-respect of agreements of minor importance, the anti-competitive agreement is not prohibited in the event of no appreciable effect on the market. This issue Article 101 of the Treaty on the Functioning of the European Union and Article 44 of the Law on the Implementation of General Principles of Article 44 of the Constitution are considered.

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State regulation efficiency of food companies of Russia in sanction period

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Abstract

The article is dedicated to the new political course of the Russian Federation, aimed at overcoming the economic blockade of the countries of Europe, as well as the United States. Effective management of food enterprises should take into account the new economic conditions for the functioning of the food economic subsector. In view of the crisis associated with the spread of coronavirus, falling oil prices, the ruble situation, the development of an economic course to adapt the Russian food industry becomes paramount. Therefore, the purpose of this article is a set of government measures to regulate the dairy food complex of the Russian Federation, both federally and regionally for the period 2008-2018. An analysis of the dynamics of milk industry indicators showed that the level of self-sufficiency for the period 2008-2018 was below the standard: 0.90. The study correlated the economics "import" and "self-sufficiency". Based on the data, it is concluded that the Russian Federation needs global innovation in the food industry mainly to the effective management of the agricultural dairy subsector.

Keywords: management of food companies; sanctions in Russia; dairy industry; dependence on imports; policy of modernization of the dairy industry.

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Eficiencia de la regulación estatal de las compañías alimentarias de Rusia en el período de sanciones

Resumen

El artículo está dedicado al nuevo curso político de la Federación de Rusia, destinado a superar el bloqueo económico de los países de Europa, así como de los Estados Unidos. La gestión eficaz de las empresas alimentarias debería llevarse a cabo teniendo en cuenta las nuevas condiciones económicas para el funcionamiento del subsector económico alimentario. En vista de la crisis económica asociada con la propagación del coronavirus, la caída de los precios del petróleo, la situación inestable del rublo, el desarrollo de un curso económico para adaptar la industria alimentaria rusa se vuelve primordial. Por lo tanto, el propósito de este artículo es analizar un conjunto de medidas gubernamentales para regular el complejo de alimentos lácteos de la Federación Rusa, tanto a nivel federal como regional para el período 2008-2018. Un análisis de la dinámica de los indicadores de la industria láctea mostró que el nivel de autosuficiencia para el período 2008-2018 estaba por debajo del estándar: 0,90. El estudio correlacionó los indicadores económicos «importación» y «autosuficiencia». Con base en los datos obtenidos, se concluye que la Federación de Rusia necesita innovación global en la industria alimentaria principalmente debido a la gestión efectiva del subsector lácteo de la agricultura.

Palabras claves: gestión de empresas alimentarias; período de sanciones en Rusia; industria láctea; dependencia de importaciones; política de modernización de la industria láctea.

Introduction

The aim of the research was to analyze a set of state measures to regulate the food dairy subcomplex of the Russian Federation both at the federal and regional levels for the period 2008-2018. The scientific hypothesis is based on the assumption that there is an inverse correlation between the indicators “import” and “self-sufficiency” in the sphere of consumption of products of the dairy agricultural subcomplex.

The modern food industry is forced to function in an unstable economy. On the one hand, there is a revolution in technology, and on the other, a dramatically changing political situation. Greatly influenced by all factors there are rapidly occurring changes. L. V. Ermolina notes that the introduction of innovative food management methods requires the

continuous search for new, more effective management tools that ensure the successful adaptation of the enterprise to changing market conditions, as well as its ability to withstand competition, including international (Ermolina, 2015). A. S. Baleevskikh expresses the opinion that, under the influence of external changes, the improvement of management systems of Russian food companies turns into the problem of introducing a completely different management system that can be changed (Baleevskikh , 2016).

E. I. Afandeeva states that the basis of innovative management is the ability to adapt changes in external environment, the flexibility of management apparatus (Afandeeva , 2016). Innovative management should take into account the new economic conditions in which food companies are located. N. A. Kudrova emphasizes the fact that, after ten years of constant economic recovery and improving the well-being of the population, Russia faced serious economic and political problems of the global crisis, which made it necessary to revise import substitution strategies and strengthen coordination of state and regional policies for stable economic development of the country (Kudrova, 2015).

The modern confrontation with the United States, its allied countries and the reciprocal food embargo have led the development opportunities for our country's agri-food complex under conditions of accelerated import substitution. According to comments of U. G. Gusmanov, R. U. Gusmanov, E.V. Stovba, import substitution is becoming a difficult scientific direction, but also one of the main trends in development of Russian economy, which will strengthen, stimulate and develop our own production of products (Gusmanov *et al.*, 2016).

President of the Russian Fedeation V. V. Putin in his speech in May 2014 emphasized: "Russia will pursue an active policy of import substitution" in accordance with WTO standards and obligations to partners in Eurasian Economic Union. The President also noted: "I consider it necessary to quickly analyze the possibilities of competitive import substitution in industry and agriculture..." (Roscongress Foundation, in https://roscongress.org/events/pmef-2014/sessions/, 2014). In his message V. V. Putin has set the task of fully providing the country with basic domestic food supplies over the next 4–5 years.

The economic crisis of 2019–2020, associated with coronavirus, exacerbated the unstable economy of the Russian Federation. Against the background of reduction in cooperation with China, the EU extended its sanctions policy towards Russia until the end of January 2020 (Interfax, https://www.interfax.ru/russia/666875, 2020). Military and investment cooperation between the US and the EU with Russia has suspended, export and import of weapons and defense industry products have limited. Russian state-owned banks and oil industry are also subject to sanctions. Russia's answer in this situation is food embargo introduction. Achieving real

economic growth the creation of new industries requires. The importance and significance of developing and implementing an import substitution policy amid the ongoing geopolitical crisis and economic sanctions of the leading world powers.

1. Literature review

The literature devoted to the problem of effective management of food enterprises of the Russian Federation in the context of import substitution in the period 2008–2018 is represented by the works of I. F. Sukhanova, M. Yu. Lyavina, R. Grabovsky, N. N Pronina, D.I. Oganezova, O. V. Usenkova, S. Mukherjee, M. M. Galeev, E. M. Radosteva, E. V. Bartova, G. N. Ivanova, Yu. V. Vertakova, V. A. Plotnikov, T. Yu. Annonchenko, T. E. Kutyaeva, N. M. Shpak, E. A. Stepanov (Sukhanova *et al*., 2014; Grabovski 1994; Pronina *et al*., 2015; Mukerji 2012; Galeev *et al.,* 2015; Ivanova 2011; Vertakova et al, 2014; Annonchenko *et al*., 2015; Kutyaeva 2014; Shpak 2015; Stepanov 2015; Kiseleva *et al.,* 2019; Pinkovestkaia *et al.,* 2019a; Pinkovestkaia *et al.,* 2020).

In general, there are two scientific approaches to the issue of implementing the import substitution policy of food industry within the Russian Federation: 1. the special economic strategy for the development of food industry; 2. the national strategy for innovation of food economic sub-sector and defense security.

A number of scientists, such as I. F. Sukhanova, M. Yu. Lyavina, R. Grabowski, N.N. Pronina, D. I. Oganezova, O. V. Usenkova, S. Mukherjee are adjacent to the scientific direction, within the framework of which the state policy on the development of the food industry is carried out (Sukhanova et al, 2014; Grabovski 1994; Pronina et al, 2015; Mukerji 2012). I. F. Sukhanova, M. Yu. Lyavina believe that the economic policy of strengthening food economic sub-sector is revealed through government measures aimed at supporting domestic agricultural producers, as well as food enterprises (Sukhanova *et. al.,* 2014). R. Grabowski, N. N. Pronina, D. I. Oganezova, O.V. Usenkova express the opinion that import substitution of food products is a long-term state strategy for rationalizing and optimizing imports of agricultural products and a mechanism to stimulate competitiveness in domestic market (Grabowski 1994; Pronina et al, 2015). S. Mukherjee suggests that the state strategy for import substitution of food industry should focus on the problem of training qualified personnel, strengthening the country's intellectual and economic power (Mukerji 2012).

The second scientific approach related to the development of national strategy, including the innovation of food economic sub-sector and strengthening of defense security of the Russian Federation is shared by M. M. Galeev, E. M. Radosteva, E. V. Bartova, G. N. Ivanova, Yu. V. Vertakova, V. A. Plotnikov, T. Yu. Annonchenko, A. I. Novitskaya, T. E. Kutyaeva, N. M. Shpak, E. A. Stepanov (Galeev et al, 2015; Ivanova 2011; Vertakova et al, 2014; Annonchenko et al, 2015; Kutyaeva 2014; Shpak 2015; Stepanov 2015).

Researchers M. M. Galeev, E. M. Radosteva, E. V. Bartova, G. N. Ivanova, adhering to the strategy of national development of food economic sub-sector and defense security of Russia, nevertheless, note that the import of food sub-complex for the period 2008–2018 has been increased (Galeev, 2015; Ivanova , 2011). A number of scientists Yu. V. Vertakova, V. A. Plotnikov, T. Yu. Annonchenko, A. I. Novitskaya, T. E. Kutyaeva are inclined towards the political course of national economic and defense security, which is based on measures aimed at restructuring the economic development model and updating food technology. In particular, N. M. Shpak and E. A. Stepanov express the view that technical modernization may become a decisive factor in production of the dairy sub-sector, as a result of which there will be an increase in export of dairy products and a decrease in export of dairy products from Brazil and the Republic of Belarus (Shpak 2015; Stepanov 2015).

2. Materials and methods

The aim of the research was to analyze a set of state measures to regulate the food dairy subcomplex of the Russian Federation both at the federal and regional levels for the period 2008-2018. The scientific hypothesis is based on the assumption that there is an inverse correlation between the indicators “import” and “self-sufficiency” in the sphere of consumption of products of the dairy agricultural subcomplex. To achieve the aforementioned goal, the following methods of economic research were used: monographic method, abstract logical method, analysis and synthesis method, method for comparing economic indicators, economic-static method (method of economic correlation analysis).

The following formula calculates the value of Russia’s self-sufficiency in a particular type of product (%):

100%,

where the numerator is domestic production in the national economy (P) without export (E); in the denominator is the total receipt of products, both domestic and imported (I).

Import substitution value for the period t is equal to:

$\Delta t = \alpha t - \alpha 0$.

The value of import dependence is calculated by the formula:

$\gamma = 100\%$.

3. Results

In recent years, meat (15–16% of total food imports), fruits (14.8%), vegetables (6.7%), as well as milk (10%) and alcohol (8%) products have occupied a leading position in sustainable structure of food imports (Federal Customs Service in: http://customs.ru/, 2020).

In the food sector, threshold (minimum allowable) values of the share of domestic products in domestic market have been introduced, which ensure food security for milk production industry - 90%. (Food Security Doctrine of the Russian Federation. Approved by presidential decree № 120, April 30, 2010, 2020).

Let us analyze the indicators of import dependence and import substitution of the country for 10 years. Table 1 presents the resources and use of milk and milk products.

Year	I. RESOURCES			
	Stocks at the beginning of the year, thousand tons	Production (gross harvest in clean weight), thousand tons	Import, thousand tons	Total resources, thousand tons
2008	1693	30826	7115	39634
2009	1777	31097	7293	40167
2010	1870	31988	7134	40992
2011	1926	32363	7315	41604
2012	2097	32570	7005	41672
2013	1857	31847	8159	41863
2014	1866	31646	7938	41450
2015	1995	31756	8516	42267
2016	2032	30529	9445	42006
2017	1982	30791	9155	41928

2018	2120	30781	7011	39912
II. USE				
	Consum-ption using the production, thousand tons	Loss, thousand tons	Export, thousand tons	Stocks at the end of the reporting period, thousand tons
2008	4097	493	33250	1777
2009	4067	532	33687	1860
2010	4168	582	34295	1926
2011	4308	612	34566	2097
2012	4372	520	34900	1857
2013	4271	460	35237	1866
2014	3622	614	35189	1995
2015	3919	645	35642	2032
2016	3742	628	35633	1971
2017	3482	629	35661	2120
2018	3079	602	34348	1861
III. INDICATORS				
	Selfsufficiency	Import substitution	Import dependence	
2008	0,8096		0,1904	
2009	0,8069	-0,03	0,1931	
2010	0,8146	0,005	0,1854	
2011	0,8119	0,002	0,1881	
2012	0,8217	0,012	0,1783	
2013	0,7936	-0,016	0,2064	
2014	0,7956	-0,014	0,2044	
2015	0,7849	-0,025	0,2151	
2016	0,7603	-0,049	0,2397	
2017	0,7663	-0,043	0,2337	
2018	0,8128	0,003	0,1872	

Table 1. Resources and use of milk and dairy products from 2008 to 2018. Own elaboration.

All indicators of self-sufficiency are less than the threshold indicator of 0.90. So the requirements of the doctrine of food security are not fulfilled. Therefore, the milk processing industry can be attributed to the import-dependent food industry.

We will conduct additional studies of the indicator of self-sufficiency in order to identify the relationship between the data presented in Table 2. For this, we will be using the statistical control methods, namely, the scatter chart proposed by A. Cohen, T. Tiplica, A. Kobi, J. Henn, K. Meindl (Cohen et al, 2016; Henn et al, Meindl, 2015). Correlation study indicators "production" and "import" are presented in Figure 1.

The diagram allows us to put forward a hypothesis that there is an inverse correlation dependence between the "import" and "production" indicators; we will test this hypothesis using the median method. To do this, we will draw the horizontal and vertical medians and determine the number of points in each quarter.

$n(+) = n1 + n3 = 2 + 3 = 5,$

$n(-) = n2 + n4 = 2 + 2 = 4,$

$n' = n(+) + n(-) = 5 + 4 = 9.$

Since one point is on the media, $n' = 9$ is not equal to $n = 11$.

We set the risk coefficient $\alpha = 0.05$ and determine the code value using statistical Table 2.

n ‘		8	9	10	11	12	13	14	15	16	17	18
α	0,01	0	0	0	0	1	1	1	2	2	2	3
	0,05	0	1	1	1	2	2	2	3	3	4	4

Table 2. The dependence of the code values of risk factor and number of points that didn't fall on the median. Own elaboration.

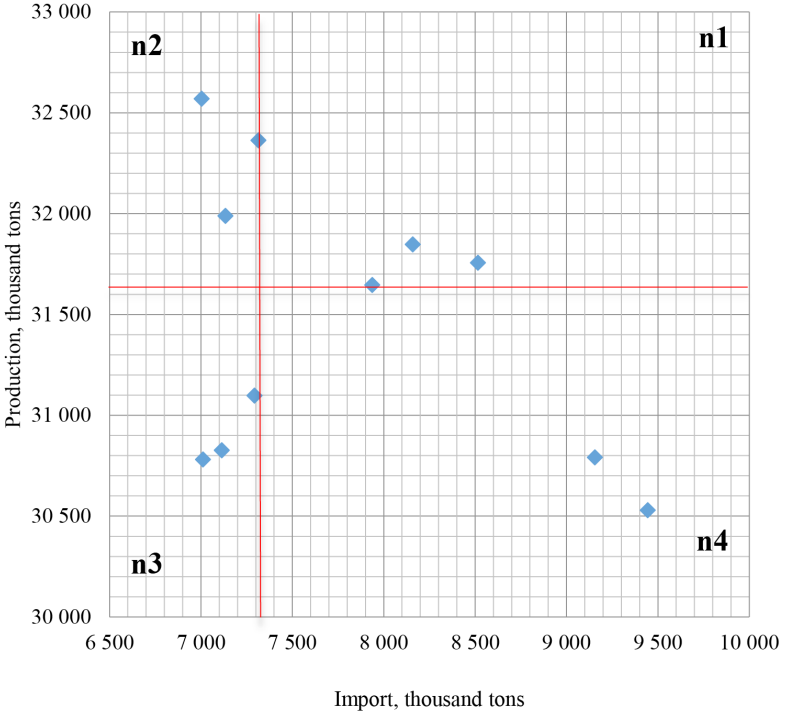

Figure 1. The scatter plot, reflecting the dependence of the production and import of dairy products. Own elaboration

The scatter plot in Figure 1 showed that the inverse correlation does not occur with a risk factor of 0.05. The median method quantitatively confirms or refutes the relationship between a pair of presented indicators. To confirm the dependence, it is necessary that the inequality holds: the smaller of the numbers n (+) and n (-) is less than the code value or equal. In this case, the smallest of the numbers n (+) and n (-) is n (-) = 4, and it is larger than the code value = 1.

4. Discussion

From the point of view of economic theory, import substitution is the reduction or termination of foreign deliveries of goods through the growth of domestic production. However, this is not complete, far from

comprehensive definition of import substitution as economic category. In the views of I. F. Sukhanova, M. Yu. Lyavina, import substitution is a special type of state economic strategy and industrial policy aimed at protecting domestic producers and providing the country's population with all necessary consumer goods, food and agricultural raw materials by replacing imported goods with national production (Sukhanova *et al.*, 2014).

The economic development of Russia is influenced by negative factors, among which one can single out a high probability of stagnation, a drop in oil prices, and the devaluation of ruble. Today, the solution of the problems of advanced import substitution is becoming one of the main tasks of federal and regional development policies.

R. Grabowski notes that import substitution is a scientifically based long-term government strategy to rationalize and optimize the import of goods and services by supporting domestic producers and indirectly regulating imports with protectionist instruments (Grabowski, 1994) . The import substitution policy is based on creating an enabling environment for the growth of national industry. According to N. N. Pronina, D. I. Oganezova, O. V. Usenkova, the policy of import substitution involves the creation of artificial incentives for the development of certain sectors of domestic industry in order to increase their competitiveness in domestic market (Pronina et al, 2015). Activities to reduce the import intensity is important and relevant for modern Russia.

S. Mukherjee emphasizes that import of products is mostly associated with the lack of sufficient raw materials and necessary stocks, as well as the lack of training of qualified personnel, especially through the development of particular economic stage (Mukherjee, 2012). Issues of import substitution become especially relevant during periods of economic crisis (perestroika, various recessions, sanctions). At the same time, import of goods and services plays a positive role, allowing to accelerate intellectual and economic growth, overcoming economic lag, creating tactical and strategic reserves and stocks, mitigating delays in development of individual industries, enterprises and regions, establishing productive and useful relationships with other companies and countries.

Following economic growth of Russia over past 10 years, one can notice a strong growth in product imports. Gross domestic product increased 3.5 times from 21.6 trillion rubles in 2008 to 76.4 trillion rubles in 2018. At the same time, imports are growing 2.6 times from 4.9 trillion rubles in 2008 to 12.8 trillion rubles in 2018. Import dependence is gradually decreasing, but still makes up a high 16.8% of gross domestic product. Researchers M. M. Galeev, E. M. Radosteva, E. V. Bartova, and G. N. Ivanova state that, in terms of agricultural and food sectors of economy, agricultural machinery, and modern technologies, the import of goods remains significant (Galeev et al, 2015; Ivanova, 2011).

For many types of innovative products and components, Russia will not be able to completely avoid import dependence in the context of globalization. It is necessary to ensure for key sectors of the economy the self-sufficiency and independence of their functioning from the external environment within the framework of implementation the national strategy of economic and defense security. Therefore, in the opinion of Yu. V. Vertakova and V. A. Plotnikov, the policy of restructuring the model of economic development due to the transition to importsubstituting production and advanced technologies in strategically important sectors is especially important for Russia today (Vertanova et al, 2014). The dairy industry is one of those industries.

T. Yu. Annonchenko, A. I. Novitskaya indicate that as a result of solving the problems of modernizing production and increasing capacity for the period 2020, an increase in production of whole milk products is planned - up to 13.5 million tons, butter - up to 280 thousand tons (Annonchenko et al, 2015). According to the International Dairy Federation (IDF), in 2011, 749 million tons of milk were produced in the world, including 621 million tons of cow's milk. The largest milk producers are the EU countries (152 million tons), the USA (89 million tons), India (57 million tons), China (37 million tons), Brazil (33 million tons), Russia (32 million tons). T. E. Kutyaeva notes that the countries of European Union, the USA, India, China, Brazil, Russia provide 2/3 of total world milk production (Kutyaeva, 2014).

Russia is considered one of the world's leading importers of butter and cheese. In order to overcome stagnation in the sub-industry and reduce dependence on imports of dairy products, it is necessary to create conditions that ensure a stable and long-term increase in domestic production of raw milk. According to N. M. Shpak, the main factor in increasing milk production is technical modernization (Shpak, 2015). E. A. Stepanov considers it is necessary to emphasize that Russia compensates for the shortage of dairy products consumption mainly by imports from Brazil and the Republic of Belarus (Stepanov , 2015).

Conclusions

The performed calculations allow us to draw several conclusions. According to the median method, in order to confirm the relationship between a pair of presented indicators, it is necessary that the inequality holds: the smaller of the numbers n (+) and n (-) the code value is less or equal. In this case, the smaller numbers n (+) and n (-), the larger the code value, which means that the inverse correlation does not occur with a risk coefficient of 0.05. This means that this conclusion is true with a probability of 95%.

The issue of import substitution in food industry is highlighted by actively changing foreign policy and statements of the country's top officials. The threshold (minimum acceptable) indicator of milk at the level of 90% in domestic market, ensuring food security, was established by the Food Security Doctrine of the Russian Federation (ConsultantPlus, in http://www.consultant.ru/document/cons_doc_LAW_96953/, 2020). The self-sufficiency indicator for 2018 is 0.8128, which is less than the threshold indicator of 0.90. This suggests that the level of self-sufficiency does not meet the requirements of food security doctrine regarding the country's needs for milk and dairy products due to its own production. We emphasize that in 2012 the industry has reached its maximum performance – 0.8217, which is more than 10%. The self-sufficiency indicator in Russia was below the standard (0.90) from 2008 to 2018.

A study of indicators "production" and "import" showed that there is no correlation between them, that is, an increase or decrease in own production does not affect the amount of imported dairy products. The number of imported products does not depend on the volume of domestic production, but has influenced by other external factors. Milk market situation in the Russian Federation and dairy products as a whole does not allow predicting a decrease in import dependence. Dependence from imports is consistently high and fluctuates around 0.20 over the past 10 years. The self-sufficiency of country's population with milk and dairy products needs additional reforms.

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Mediation in criminal proceedings: legal regulation in Ukraine and foreign experience of application

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Abstract

The purpose of the article is to study those conceived of the use of the mediation institution in the criminal proceedings of European countries to implement positive experience in Ukrainian law. The theme of the study is the institution of mediation in criminal proceedings. The following scientific methods were used in the research: dialectical, formal and logical, and legal, system and functional, comparative and legal, legal and other modeled methods. We study the concetorities of the regulation and legal of mediation in criminal proceedings in Ukraine, as well as the practice of its implementation, which is more than modest with other European states. Therefore, we draw on the experience of countries such as Germany, Poland, and the United Kingdom. It is concluded that, given the successful functioning of the mediation institution in most countries, we propose to emulate this positive practice and a separate law "On Mediation" in Ukraine. It is established that the main right for the legislative registration of mediation in Ukraine is the lack of information on the existence of such a way of resolving a criminal case.

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Keywords: mediation in criminal proceedings; restorative justice; legislative regulation; european mediation experience; comparative law.

Mediación en procesos penales: regulación legal en Ucrania y experiencia de aplicación extranjera

Resumen

El propósito del artículo es estudiar las peculiaridades del uso de la institución de mediación en los procesos penales de los países europeos para implementar esta experiencia positiva en la legislación de Ucrania. El tema del estudio es la institución de la mediación en los procesos penales. En la investigación se utilizaron los siguientes métodos científicos: método dialéctico, formal y lógico, histórico y legal, sistema y funcional, comparativo y legal, modelado legal y otros métodos. Se estudian las peculiaridades de la regulación normativa y legal de la mediación en los procesos penales en Ucrania, así como la práctica de su aplicación (que es más que modesta en comparación con otros Estados europeos). Por lo tanto, recurrimos a la experiencia de países como Alemania, Polonia y el Reino Unido. Se concluye que, dado el funcionamiento exitoso de la institución de la mediación en la mayoría de los países, proponemos emular esta práctica positiva y aprobar una ley separada «Sobre Mediación» en Ucrania. Se establece que el principal obstáculo para el registro legislativo de la mediación en Ucrania es la falta de información sobre la existencia de tal forma de resolver un caso penal.

Palabras clave: mediación en el proceso penal; justicia restaurativa; regulación legislativa; experiencia europea de mediación; derecho comparado.

Introduction

The institution of mediation has become widely used in the settlement of conflicts (disputes) in the world and European practice, which provides an opportunity to choose pre-trial and extrajudicial methods for resolving conflicts (disputes) while maintaining the ability to go to court.

Thus, on 21 May 2008, the European Union adopted Directive 2008/52 / EC (the European Parliament and the Council of the European Union 2008), which is aimed to facilitate access to alternative dispute resolution

and to promote peaceful settlement of disputes by encouraging the use of mediation and ensuring a balanced relationship between mediation and the judiciary proceedings.

Par. 8 of the Preamble to Directive 2008/52 / EC states that the provisions of this Directive will apply only to mediation in international disputes, but nothing should prevent Member States from applying these provisions in internal mediation processes as well.

Ukraine is also a signatory to the United Nations Convention on International Settlement Agreements Resulting from Mediation (United Nations Commission on International Trade Law 2019). In order to ratify and implement this Convention, Ukraine needs to adopt a special law that will define the main provisions, in particular, on the scope of mediation, the procedure for its implementation and the status of mediators.

Besides, Art. 124 of the Constitution of Ukraine (Law of Ukraine 1996) stipulates that the law may determine the mandatory pre-trial procedure for dispute resolution.

Currently, the legislation of Ukraine does not regulate the mediation procedure, but the practice of resolving conflicts (disputes) through mediation is gradually increasing. Thus, the purpose of the article is to study the peculiarities of the use of the institution of mediation in criminal proceedings of the European countries in order to implement the positive experience in the legislation of Ukraine and to adopt a separate law "On Mediation".

1. Materials and methods

The methodological basis for the study is the system of general and specific scientific methods and approaches that provide an objective analysis of the subject. Taking into account the specifics of the topic, purpose and objectives of the study, the following methods were used:

Dialectical method was applied to clarify and supplement the existing theoretical views on the problem with new arguments.

Formal and logical method allowed to clarify the content of key concepts and definitions used in the article, and to formulate the authors' approaches to these issues.

Historical and legal method was helpful in the study of the concept, essence and content of restorative justice, the conceptual foundations of restorative justice and the genesis of the institution of mediation in the criminal procedure legislation of Ukraine.

System and functional method, as well as comparative and legal method were used in the study of conceptual foundations of the institution of mediation in the criminal law of foreign countries. Legal modeling method was applied in determining the ways of introducing the institution of mediation in the criminal procedure of Ukraine.

2. Theoretical bases of the investigation

The theoretical basis for the study is the works of foreign and Ukrainian scientists, who studied the issue under consideration. For example, the concept of mediation was provided by Kohan (2014). Vinogradova (2003) claims that the main advantage of mediation in criminal proceedings is providing the opportunity both for a victim and an offender to participate in resolving the conflict and discussing the conditions for remedying.

Zhmud (2008) investigated the process of implementation of the institution of mediation in criminal proceedings in Ukraine, while the number of other researchers studied the efficiency of mediation procedure in other countries. Thus, Zemlianska (2008) examined the effectiveness of this form of restorative justice in Poland; Trenczek (2001) paid attention to the legislation regulating the application of mediation procedures in Germany; Gailly (2003), Golovko (2003) considered the types of mediation procedure in the UK.

A number of international, European and domestic legal acts, regulating the issue under consideration, such as: Recommendation No. R (99) 19 of the Committee of Ministers to member States concerning mediation in penal matters; Framework Decision on the standing of victims in criminal proceedings; Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters; Criminal Codes and Codes of Criminal Procedure of Ukraine, Germany, Poland, etc. are the basis for the research as well.

3. Results and Discussions

For the beginning it is necessary to note that the position on the importance of adopting a separate law “On Mediation” is supported by a significant number of researchers. Firstly, this institution has proven its effectiveness in solving criminal cases in many countries around the world. Secondly, it is necessary to bring the legislation of our country in line with European standards in connection with the integration of Ukraine into the European Community. A number of recommendations and decisions of the

Council of Europe are addressed on the issue of conciliation procedures, in particular: Recommendation № R (99) 19 "On Mediation in Criminal Matters" (Committee of Ministers of the Council of Europe 1999), which considers the use of mediation in criminal matters as a flexible, comprehensive, problem-solving, participatory option complementary or alternative to traditional criminal proceedings; Recommendation Rec (2003)20 of the Committee of Ministers to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice (Committee of Ministers of the Council of Europe 2003); Council Framework Decision on the standing of victims in criminal proceedings (Committee of Ministers of the Council of Europe 2001), etc.

The institution of mediation emerged in criminal cases in the late 20th century in contrast to the traditional judicial system of conflict resolution and was associated with the change of the main parties to the criminal procedure. In particular, the State and the offender were replaced by the victim and the offender. The purpose of mediation was to provide new parties with the opportunity to find a way to resolve the conflict on mutually beneficial terms. They were given an active role in the criminal procedure, as they became active participants in the mediation process, and any decision required their mutual consent.

The victim was given an opportunity to get an apology and explanation from the offender, to discuss acceptable conditions for atonement. The offender was given the opportunity to meet with the victim, to empathize with his (her) status of victim of crime, to explain his (her) behavior, to apologize, to participate in resolving the conflict and discussing the conditions for remedying (Vinogradova 2003).

The term "mediation" comes from the Latin word "reciiare", which means "to be a mediator". Thus, mediation is a specific form of regulation of disputes, conflicts, coordination of interests.

According to the Recommendations № R (99) mediation means any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the crime through the help of an impartial third party (mediator).

Based on the Council Framework Decision on the standing of victims in criminal proceedings "mediation in criminal cases" shall be understood as the search, prior to or during criminal proceedings, for a negotiated solution between the victim and the author of the offence, mediated by a competent person.

Mediation, from a scientific perspective, is a type of alternative dispute resolution, a method of resolving disputes involving a mediator, who helps the parties to the conflict to establish communication and to analyze the conflict situation so that they can choose the solution that would satisfy the

interests and the needs of all parties to the conflict. Unlike formal judicial or arbitral proceedings, the parties reach an agreement by themselves during mediation process – mediator does not make decisions for them (Kohan 2014).

The main principles of mediation in criminal proceedings are the following:

- mediation should take place only when all parties have voluntarily agreed on this. The parties can also withdraw their consent at any stage of the mediation;
- any discussions during the meeting are confidential and may not be used in the future, unless the parties agree;
- mediation in criminal cases should be an available mean;
- mediation in criminal cases should be admissible at any stage of proceedings;
- mediation is independent and autonomous within the criminal justice system.

The possibility of using mediation in resolving criminal cases in Ukraine is provided in Art. 46 of the Criminal Code (Law of Ukraine 2001), according to which person who has committed a minor criminal offense or medium grave reckless offense (except corruption offenses) for the first time shall be exempt from criminal liability if he/she reconciled with the victim and compensated the losses or repaired the damage inflicted. In addition, Chapter 35 of the Code of Criminal Procedure of Ukraine (Law of Ukraine 2012) is devoted to criminal proceedings on the basis of agreements, which, in particular, describes the procedure for concluding a conciliation agreement between the victim and suspect or accused in detail, namely: the process of initiating and concluding such an agreement; consequences of concluding and approving the agreement, general procedure of court proceedings on the basis of the agreement, consequences of non-fulfillment of the agreement.

Besides, there are a number of other legal acts in Ukraine concerning the application of mediation procedure in criminal proceedings. In particular, paragraph 21 of the Resolution of the Plenum of the Supreme Court of Ukraine "On the Practice of Applying Legislation on Juvenile Crimes by Courts of Ukraine" (Plenum of the Supreme Court of Ukraine 2004) recommends courts to support the activities of those public organizations that aim to achieve reconciliation between the juvenile, who committed the crime, and the victim: to provide relevant information to such organizations, to inform defendants of the existence of such organizations and to provide the former with the opportunity to contact these organizations to resolve the conflict and achieve reconciliation.

The letter of then Prosecutor General of Ukraine O. Medvedko (2008) drew attention of regional prosecutors to the need to provide victims and defendants with the information about their right to reconciliation on their own or through mediators and the possible consequences of such reconciliation.

Despite the absence of a separate law on mediation, Ukraine can still boast of its own experience in the application of mediation procedure, which confirms the high efficiency of the use of this institution in resolving conflicts. Thus, since 2003, experiments have been actively conducted in courts (in particular, in the cities of Kyiv, Kharkiv, Ivano-Frankivsk, the Autonomous Republic of Crimea and others). There are also a number of Regional Mediation Groups in Ukraine, which have merged into the Association of Mediation Groups of Ukraine and the Ukrainian Center for Understanding, which is actively involved in the implementation of reconciliation programs for victims and offenders and educational activities in this area. Ukrainian Center for Understanding conducted an interim evaluation of the implementation of restorative justice programs in 10 regions of Ukraine for the period of September 2006 to February 2007. 41 restorative justice programs were conducted during the reporting period, including 39 mediation procedures in criminal cases (Zhmud 2008, p. 13).

However, this practice of using this institution in Ukraine is more than modest compared to other European (and not only) countries.

For example, mediation is the main form of restorative justice in Poland. This State is one of the first countries in Eastern Europe, in which restorative justice was introduced (in the mid-1990s). In 1995, the Patronage Penitentiary Association, in particular its Mediation Implementation Group, initiated a three-year pilot project on mediation between victims and offenders for juvenile offenders. After evaluating the results of the project, this organization along with the Ministry of Justice, developed proposals for the institutionalization of the mediation system in Polish criminal justice. In fact, in 2000, the Implementation Group was transformed into an independent non-governmental association – the Polish Mediation Center (PCM). Mediation was formally introduced into the Polish criminal system in 1997. Mediation was conducted only at the stage of preparatory court proceedings during the first years. Just 18 cases were referred to mediation in 1998, but in 2000 there were already 722 138 of such cases (Zemlianska 2008, pp. 85–87).

In 2000, the PMC initiated amendments to the Polish criminal procedure legislation, which resulted in the amendment to the Art. 23a entitled “Mediation Procedure” of the Code of Criminal Procedure of Poland (Law of the Republic of Poland 1997). This article enshrines that the Court or legal Secretary Court, and in preparatory proceedings the public prosecutor or other body conducting the proceedings may, at the initiative

of or with the consent of the accused and the victim take the matter to the institution or persons empowered to carry out mediation between the victim and the accused, and their teaching, informing about the purposes and the principles of mediation. The participation of the defendant and the victim in the mediation proceedings is voluntary. The consent to participate in mediation proceedings is accepted by the body that refers the case to mediation, or by the mediator after explaining to the defendant and the victim the purposes and rules of mediation proceedings. The defendant (accused) and the victim are also explained the right to refuse mediation until the end of the mediation proceedings.

The rule that limits the duration of the mediation procedure to one month is extremely effective. This allows to prevent abuse and delay of mediation proceedings, as well as to ensure its timeliness. It should be noted that this term is not taken into account during the pre-trial investigation.

In order to concretize the above article and to implement it effectively the Order "On the procedure for mediation in criminal cases" was issued on June 13, 2003 (Czarnecka-Dzialuk 2005, p. 142). While the Code of Criminal Procedure of Poland enshrines general procedure for the mediation procedure, the Order establishes the peculiarities of its implementation, in particular: the conditions to be met by institutions and persons entitled to conduct a mediation procedure; the procedure for the appointment and removal of institutions and persons endowed with the right to conduct a mediation procedure; the scope and conditions of providing case materials to institutions and persons entitled to conduct a mediation procedure; method and procedure for conducting mediation.

Unlike in most countries, mediation in Germany is mainly used in criminal rather than in civil proceedings. This procedure is used, in particular, in the framework of the 'Täter-Opfer-Ausgleich' programs, which is translated as 'Offender-Victim-Balancing' or 'victim-offender mediation' (VOM); it means both conflict settlement and reconciliation. TOA-programs are quite similar to Victim-Offender Mediation Programming (VOMP) in Australia or the United States in their approach and procedure. There are currently about 400 programs operating in Germany nowadays, mostly community based and / or state financed; about 2/3 operate within the juvenile justice context and 1/3 of the programs work also with adult offenders. Both get most of their cases referred through the prosecutor's office. However, several programs accept self-initiated cases directly from victims or offenders (Trenczek 2001, pp. 2 – 3).

As for the legislative consolidation of the application of mediation procedures, it was envisaged in the Law on Juvenile Justice of 1953. In 1990, the legislator strengthened the influence of mediation by amending the above law and since then judges of juvenile courts and prosecutors have been given the right to formally refer cases to mediation and to dismiss

criminal cases in case of successful completion of mediation (The European Forum for Victim-Offender Mediation and Restorative Justice 2000, p. 257). Mediation has been defined in the Law on Juvenile Justice as a judicial measure since 1991.

The procedure for mediation between an adult offender and a victim is established by Articles 153 and 153a of the Criminal Procedure Code of Germany (Law of the Federal Republic of Germany 2012). According to the provisions of these articles, in order to be able to use mediation, an offense committed by an adult must be of minor offence or medium gravity (cases in which the penalty may be a fine or imprisonment from 1 month to 5 years). In cases of committing a crime of minor gravity, the prosecutor has the right to dismiss the case independently if the offender has compensated the victim or reached reconciliation as a result of mediation. In cases of a more serious crime, the court may dismiss the criminal case at the request of the prosecutor, if both damages and reconciliation have been reached during mediation.

Article 46a of the Criminal Code of Germany (Law of the Federal Republic of Germany 1998) regulates sentencing and provides for two possibilities for mediation. Thus, if the offender 1) in an effort to achieve reconciliation with the victim, has made full restitution or the major part thereof for his offense, or has earnestly tried to make restitution; or 2) in a case in which making restitution for the harm caused required substantial personal services or personal sacrifice on his part, has made full compensation or the major part thereof to the victim, the court may mitigate the sentence pursuant to section 49 (1) or, unless the sentence to be imposed on the offender is imprisonment of more than one year or a fine of more than three hundred and sixty daily units, may order a discharge.

The Mediation Act was adopted in 2012 in order to facilitate out-of-court dispute resolution procedures in Germany (the Mediation Act of 21 July 2012). The Act does not clearly define its scope, so it can be applied in various areas of law, including criminal law.

The Act consists of 9 paragraphs and provides definitions of "mediation" and "mediator", as well as establishes general principles of the mediation procedure, such as: the task of the mediator, the obligation to disclose information, the circumstances under which the mediator cannot participate in procedures, the rule of confidentiality, the obligation to ensure training and retraining as a mediator, etc.

In terms of statistics, the total number of cases referred to mediation (for adults and juvenile offenders) increased from 2,100 in 1989 to 9,100 in 1995. About 20,000 cases are currently referred to mediation per year.

A similar process can be observed with regard to VOM programs. Most institutions supporting victim-offender mediation deal with fewer than 50 cases a year. The biggest program is the Waage in Hannover which handles about 440 cases a year, involving about 500 offenders and even more victims. Until 1995, the roughly 400 VOM programs that were registered at the national VOM service bureau dealt with a total of about 9,000 cases a year (Trenczek 2001, p. 5).

The institution of mediation in criminal proceedings in the UK began to be actively used in the 80's of the last century. Until recently, there was no special legislation on restorative justice in the UK (as in many other European countries). The situation changed with the adoption of the Youth Justice and Criminal Evidence Act (enacted in 1999). The Youth Justice and Criminal Evidence Act introduces a mandatory sentence, the Referral Order, for young offenders appearing in court for the first time who have not committed an offence likely to result in custody. The young person is referred to a Youth Offender Panel which will work out the content of the order. This YOP can include: the offender, his immediate family or carers, other supporters of the offender, the victim(s) and their suppporters and three members of the community. The purpose of this meeting is to facilitate a frank discussion about what occurred, how people have been affected, and what needs to occur to make amends, and to prevent any further offending. All this sounds more like Family Group Conferencing, and it has been described by the government as the first introduction of restorative justice into the Court itself (Gailly 2003).

Two types of mediation in the UK can be distinguished depending on the stage of criminal proceedings: police mediation and judicial mediation. The essence of police mediation is that before deciding to prosecute, the police may refer the case to the mediation service, which usually consists of the members of the probation service, representatives of relevant public organizations, and sometimes of the police officers. The Mediation Service organizes and conducts a conciliation procedure, which means a meeting of the mediator with the parties to the conflict to find a compromise. A joint meeting is not obligatory and can take place subject to a preliminary agreement on compensation to the victim, which lies in the payment of a sum of money, written or oral apologies, public works, etc.

In the case of successful mediation, namely the conclusion of an agreement between the parties, the police refrain from criminal prosecution, limiting themselves to the simple warning in formal or informal form. If the person does not comply with the terms of the agreement, then the victim may be provided with legal assistance to file claims in civil proceedings.

The specific conditions for the use of police mediation have their nuances in different counties. In particular, in Northamptonshire, where mediation is handled by a special bureau for adults (adult reparation bureau),

mediation depends on the assessment of five criteria (Golovko 2003, p. 72): 1) the nature and gravity of the criminal act; the presence of public interest in the case; 2) the presence of a sufficient evidence to convict a person if the case will be considered in court; 3) recognition of all the circumstances of the case by the person, including his (her) guilt; 4) the needs of the victim.

Judicial mediation (the experience of Coventry, Leeds) is applicable to all categories of criminal cases. It is closely connected with the English procedural feature, namely the possibility for the court to postpone the pronouncement of the final verdict. That is, there is usually a fairly long period of time (within two months) between the consideration of the issue of guilt and the issue of punishment, the purpose of which is to collect information about the personality of the perpetrator, as well as the solution of some other procedural tasks. The competent non-governmental organization tries to act as a mediator between the victim and the convict during this period, convincing the latter of the need to voluntarily compensate for the damage caused by the crime. In the case of successful mediation, signing and execution of the relevant agreement, the judge almost always takes into account a similar circumstance in determining the extent and amount of punishment (Golovko 2003, p. 73).

Public organizations are actively involved in the mediation procedure. Thus, there is no specially authorized body for mediation in the UK. The main organization that provides mediation services is the national organization Mediation UK, which conducts training, accreditation for mediators, coordination, and management of mediation activities. Mediators are divided into professionals who work on a permanent basis and volunteers who conduct mediation free of charge in their free time. Restorative Justice Consortium is in the second place. The Thames Valley project, which was launched in 1998 and dealt at first with juvenile delinquency and later with all categories of offenders, also deserves attention. The training of mediators lies in basic training in reconciliation programs conducted by independent trainers or police officers (Nestor 2014, p. 147)

It should be noted that the use of mediation is carried out for the purpose of: meeting the needs of the victim; providing compensation to the victim; reintegration of offenders into their communities; prevention and / or reduction of the risk of further crime; reducing the possibility of future conflicts between victims and perpetrators; meeting the needs of perpetrators; involvement of the family; involvement of the community; ensuring a fair response to the crime (Shapland et al. 2004).

The introduction of mediation in the UK criminal process is well accepted by scholars, as the State's efforts are aimed at making the main function of criminal justice compensatory rather than punitive.

Conclusion

Thus, mediation is a technique for the resolution of conflicts, which proved its considerable efficiency (Sufiyarova & Mansurov 2018, p. 206). It has a new approach to crime, punishment, victim, offender, and seeks to repair damaged relationships between victim, offender and society. In this approach, all parties involved in a criminal act come together to discuss the consequences of crime and interact with each other to deal with the consequences of a crime (Ghasemi et al, 2018).

The introduction of the institution of mediation in the criminal procedure legislation of Ukraine took place in 2012 with the adoption of the new Code of Criminal Procedure of Ukraine, which provides for the possibility of concluding a conciliation agreement between victim and suspected or accused. However, today there are a number of unresolved issues of organizational and procedural nature of the application of mediation procedure in the criminal procedural law of Ukraine, as this institution is used mainly in civil proceedings. That is why some scholars stress on the impossibility of using civil law models for the analysis of modern criminal procedural phenomena (Karnozova 2013, p. 176). The opponents of mediation in criminal proceedings often consider mediation process as a kind of forgiveness, impunity for the perpetrator by the State. The supporters of this institution state that such an approach is largely based on a misunderstanding of the very essence of the institution of mediation (Markovicheva 2009).

At the same time, the experience of many European countries demonstrates that mediation is an effective tool for resolving criminal cases and one of the methods of relieving the judiciary. The institution of mediation has been operating successfully for over 25 years in most countries, including Austria, Belgium, Great Britain, Norway, Germany, Finland, Poland, the United States, Australia, New Zealand, etc. Using the experience of foreign States, in which mediation procedure has been applied for a long time, is of great theoretical and practical importance for our country. It is clear that not all provisions that are effectively implemented in the practice of applying the institution of mediation in foreign countries can be taken into account and used in Ukraine. After all, economic, political, socio-cultural situation of each State contributes strongly to this issue.

The proposals to adopt the law “On Mediation”, to introduce the mediator to the range of parties to criminal procedure, to determine his (her) rights and responsibilities, to develop organizational and logistical measures to ensure the activities of mediators (Tumaniants 2009, p. 140) are more than relevant. The main obstacle to the legalization of mediation in Ukraine, in our opinion, is the lack of information about the possibility of

such a way of resolving a criminal case, because the parties are usually not familiar with the procedure for concluding a conciliation agreement and the consequences of its conclusion and approval.

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Dynamics of the implementation of the protective role in the conduct of crimes: the practice of the Convention for the Protection of Human Rights and Fundamental Freedoms

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Abstract

Criminal law offers the possibility of interfering with human life. To avoid such unjustified interference, society and the state must guarantee that human and civil rights are protected and that the standards established in the Convention for the Protection of Human Rights and Fundamental Freedoms are observed. Therefore, it is important to analyze the dynamics of the implementation of the protective function in the conviction of crimes in the interpretation of the European Court of Human Rights ECHR. In the methodological, he made of dialectics and documentary observation. The work aims to analyze the practice of the European Court of Human Rights, which tracks the dynamics of the protection function in sentencing for crimes. As a result of the study, the dynamics of the protection function in sentencing for criminal offenses were clarified through the practice of the ECHR, the problematic issues of the implementation of the protection function were analyzed in the

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example of Ukraine and foreign countries, and proposals were made, to use the practice of the ECHR as a "living tool" for the protection of human and civil rights and freedoms.

Keywords: human rights protection function; criminal sentences; crimes; jurisprudence of the European Court of Human Rights; legal practice.

Dinámica de la implementación de la función protectora en la condena por delitos: la práctica del convenio para la protección de los derechos humanos y de las libertades fundamentales

Resumen

El derecho penal ofrece la posibilidad de interferir en la vida humana. Para evitar tal injerencia injustificada, la sociedad y el estado deben garantizar que los derechos humanos y civiles estén protegidos y que se observen los estándares establecidos en la Convención para la Protección de los Derechos Humanos y las Libertades Fundamentales. Por tanto, es importante analizar la dinámica de la implementación de la función protectora en la condena por delitos en la interpretación de la Corte Europea de Derechos Humanos TEDH. En lo metodológico se hizo de la dialéctica y de la observación documental. El trabajo tiene como objetivo analizar la práctica de la Corte Europea de Derechos Humanos, que rastrea la dinámica de la función de protección en la condena por delitos. Como resultado del estudio, se aclaró la dinámica de la función de protección en la sentencia por infracciones penales a través de la práctica del TEDH, se analizaron las cuestiones problemáticas de la implementación de la función de protección en el ejemplo de Ucrania y países extranjeros, y se formularon propuestas, para usar la práctica del TEDH como una "herramienta viva" para la protección de los derechos y libertades humanos y civiles.

Palabras claves: función de protección de los derechos humanos; sentencias de orden penal; delitos; jurisprudencia del Tribunal Europeo de Derechos Humanos; práctica jurídica.

Introduction

The Constitution of Ukraine proclaims that a person, his life, health, honor and dignity, inviolability, and security are the highest social values. The Constitution stipulates that the state is responsible for its activities before the person and to guarantee the possibility of enjoying all human and civil rights and freedoms, the state must provide a mechanism for exercising the rights and freedoms guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (hereinafter – Convention).

One of the main tasks of the Criminal Law of Ukraine (2001) is to protect the basic and most important for humans, society, and the state public relations from criminal encroachments. This is an integral function of criminal law, which is enshrined in Part 1 of Art. 1 of the Criminal Code of Ukraine (hereinafter – the CC of Ukraine).

The protective function is provided by establishing the range of socially dangerous acts that are recognized os crimes, as well as criminal penalties and other measures of criminal-legal influence applied to the perpetrators. In the protection of public relations in this way, criminal law also regulates other public relations – those that arise between the state and a person who has committed a socially dangerous act to prosecute such a person.

As provided in the Constitution of Ukraine (1996), there are international mechanisms for the implementation of the security function in Ukraine. One of these is the Convention (1950) and the application of ECtHR judgments in sentencing for criminal offenses. Among the fundamental principles of international law are "the right to a fair trial", "no punishment without law", "the right to appeal in criminal cases", "compensation in case of unlawful conviction", "and the right not to be prosecuted or punished twice". Besides, the Convention stipulates that the criminalization of certain acts is a violation of the standards of the Convention, and prosecution to exercise a protective function is a disproportionate restriction of the rights provided by the Convention.

Given the provisions of the Convention and the case-law of the ECtHR, the importance of the protection function to ensure law and order and human and civil rights and freedoms, it is important to analyze how the case-law of the ECtHR affects the dynamics of the implementation of this function in sentencing for the commission of criminal offenses, the peculiarities of the enforcement of ECtHR decisions by Ukrainian courts and possible prospects in this topic.

Thus, the work aims to analyze the practice of the European Court of Human Rights, which traces the dynamics of the protection function in

sentencing for criminal offenses. The object of the study is social relations, that arise during the implementation of the protection function in sentencing for criminal offenses.

Given the above, firstly, the methodology will be described; then the theoretical basis of the study will be provided; after that, the key research findings will be presented and discussed in the next section. As a result of the study, the conclusion will be drawn.

1. Methodology

In studying the dynamics of the protection function in sentencing for criminal offenses through the practice of the ECtHR used such methods of scientific knowledge as analysis method, comparison method, dialectical method, historical method, the system method, abstraction method, modeling method, induction method, and deduction method.

Thus, the method of analysis allowed us to comprehensively consider the social relations that arise, change, and cease during the implementation of the protective function in the sentencing of criminal offenses. This method facilitated the consideration of the subject of study through foreign experience in regulating the protection of state-guaranteed rights during sentencing, legislation, and case law of Ukraine, as well as the case-law of the European Court of Human Rights.

Moreover, the dialectical method allowed us to consider the development of decisions of the ECtHR on the implementation of the protective function in sentencing for criminal offenses, and to analyze the categories of "crime" and "punishment" in their relationship and development. The method of the comparison made it possible to compare the dynamics of the protection function in the sentencing of criminal offenses in Ukraine and abroad, as well as to investigate how the practice of the ECtHR in Ukraine and the world.

In addition, the historical method allowed to analyze the dynamics of the protection function in sentencing for criminal offenses through the practice of the ECtHR in different periods and under the influence of factors specific to a particular period (changes in legislation, revolution, change of government). A systematic method helps to comprehensively investigate the dynamics of the protection function in sentencing for criminal offenses through the practice of the ECtHR, namely through the study of criminal proceedings, human rights by law enforcement agencies, the use of ECtHR practice in judicial decisions and public control over human rights and freedoms when sentencing for a criminal offense as elements that develop over time and are elements of the system necessary for the implementation of the protective function.

Furthermore, the method of modeling allowed simulating the further dynamics of the implementation of the security function in the sentencing of criminal offenses, taking into account the dynamics of public relations. The method of abstraction made it possible to deviate from the analysis of the dynamics of the protection function in sentencing for criminal offenses in modern conditions and to design the possible development and manifestations of the protection function in the future. Thus, it is noted that depending on the legal regulation and implementation of control mechanisms, changes in the practice of the judiciary, depends on the understanding and dynamics of the protection function.

The method of induction was used in the study of general theoretical provisions on crime and punishment and the protective function of criminal law.

A deduction was used to identify and verify the assertion that the implementation of the protection function in Ukraine depends on the specific conditions that the national legal system can provide.

2. Analysis of Recent Research

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

Firstly, it should be mentioned the Tsiura, Kharchenko, and Sabodash (2020) noted that the ECtHR's legal position played a significant role in extending the interpretation of "property rights". Given the increasing use of judicial precedent (which is the ECtHR's decisions), the Ukrainian legal system cannot ignore the requirements and standards set by the decision of international courts.

Moreover, as Drobush, Olkina, Vodopian, But (2019) stated, one of the tasks of the pro-European integration of any of the states, which now expresses the desire for EU membership, is the task of further building and strengthening the state as a legal and social one.

Further, Vashakidze (2019), in her work, drew attention to the protection of the rights of juvenile offenders while serving their sentences in different countries, drawing attention to the protective function of criminal law. The researcher analyzed the experience of Japan, the USA, Great Britain, Australia, Sweden, France, and other countries to compare the state of protection of the rights of minors in different countries, as well as identified the application of the Convention in these countries.

Moreover, Gotorova (2014) studied the protective function of criminal law, its features, the specifics of the manifestation, and implementation. Thus, in her work, the author considered the implementation of the criminal law of its protective function and formulated approaches to the rules of interaction of criminal law with the rules of other branches of law in the exercise of protective functions.

Drozdov (2017), Slutska (2019) carried out a comprehensive analysis of the case-law of the European Court of Human Rights as a European guideline to ensure the sustainability and unity of judicial practice by the Supreme Court. In addition. Kovalsky (2010) studied the historical conditionality of the protective function of law, its development, and the dynamics of implementation. In his work, I. Kolesnikov (2019) tried to get an answer as to whether Ukrainian judges are ready for amendments to the legislation, including the application of the case-law of the European Court of Human Rights.

Besides, Nafikova (2010) analyzed the protection of human and civil rights in foreign countries. In the article, Nafikova considered the regulations governing the protection of criminal justice and programs conducted in foreign countries to protect the rights of participants in criminal proceedings, including in countries such as the United States, Britain, and Germany.

Khilyuk (2015) analyzed the "crime and punishment" in the Convention for the Protection of Human Rights and Fundamental Freedoms, namely, drew attention to how the provisions of the Convention protect the rights of participants in criminal proceedings during the proof of guilt and sentencing.

Thus, from the analysis of the above literature, we can conclude that scholars insufficiently study the dynamics of the protection function in sentencing for criminal offenses through the practice of the ECtHR, and therefore there is a need for a comprehensive study of this topic.

3. Results

The purpose of Human Rights is twofold, on the one hand, to serve as a legal framework and epistemological for the development of a universal conception of the human dignity that provides men and women in their worlds of life, sufficient and necessary conditions for the development of their capacities that. On the other hand, they represent or should represent, for the democratic nations of the world today, a retaining wall against the possible arbitrary use of the power of the elites (formal and factual) to definitively overcome: the practices, actions or omissions, that condemn

large sectors of society to a life of poverty, exclusion, violence, calamity and all kinds of equity (Arbeláez-Campillo *et al.,* 2018).

Before analyzing the dynamics of the implementation of the security function in sentencing for criminal offenses through the prism of the case-law of the European Court of Human Rights, it is necessary to define the key concept – the security function.

In general, public relations has always needed protection. With the advent of law, it becomes one of the most important means of protecting public relations. Such influence is a protective function. The protective function makes it possible to distinguish the right from other systems of social regulation, as it is carried out by state bodies that make individual government decisions, the implementation of which is guaranteed by state coercion. Thus, the protective function contributes to the development in law as a regulator of social relations of valuable qualities for the individual and society, including stability, detailed and clear regulation, and clear procedures.

It is a direction of legal influence, which is due to social purpose and is aimed at protecting the most important, most important economic and political relations, overcoming phenomena that are foreign to this society.

Protecting these relations, it is important to timely prevent and punish actions that violate the conditions of normal development and are contrary to the interests of society, state, and citizens and thus displace them, and this is the main task of this function.

The protective function is realized through a special way of influencing the behavior of people, which is expressed in the impact on their consciousness by the threat of sanctions, prohibitions, and legal liability informs the public about what social values are protected by law and is an indicator of political and the cultural level of society, the humane principles contained in the law.

The method of protection very often depends on the development of society, its political essence, and therefore the analysis of the dynamics of the protection function, including the imposition of punishment for criminal offenses. International legal instruments come to the aid of national authorities. One of such tools is the case-law of the European Court of Human Rights on the research issue, which reflects how public relations are ensured at the present stage.

According to Art. 1 of the Constitution of Ukraine (1996), Ukraine is a sovereign and independent, democratic, social, legal state. Person, his/her life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value; human rights and freedoms and their guarantees determine the content and direction of the state, which is

responsible to man for his activities; the establishment and protection of human rights and freedoms is the main duty of the state.

According to Art. 9 of the Constitution of Ukraine (1996), the Convention for the Protection of Human Rights and Fundamental Freedoms, ratified by Ukraine is part of national legislation.

According to the rules of Part 4 of Art. 9 of the Criminal Procedure Code of Ukraine (2012) (hereinafter – the CPC of Ukraine) if its provisions contradict the international agreement, the binding nature of which was approved by the Verkhovna Rada of Ukraine, the provisions of the relevant international agreement of Ukraine shall apply in criminal proceedings. Besides, the content of Part 5 of Art. 9 of the CPC of Ukraine, the criminal procedure legislation of Ukraine is applied, taking into account the practice of the ECtHR.

This obligation is also imposed on the court given Art. 17 of the Law of Ukraine "On Enforcement of Judgments and Application of the Case Law of the European Court of Human Rights" (2006), which stipulates that courts use the Convention and the case-law of the European Court of Human Rights as a source of law when considering cases.

Article 19 of the Convention (1950) provides that, to ensure compliance by the States Parties to the Convention, their obligations under the Convention and its Protocols, a European Court of Human Rights shall be established and shall function permanently. The Contracting Parties undertake to comply with the final decisions of the Court in any case to which they are parties.

Thus, in view of the above, it can be concluded that the courts (to ensure the unity of judicial practice, in particular, in terms of its compliance with international standards, administering justice, in addition to national law) should apply the rules of the Convention. As the Convention (1950) has several characteristics, its provisions are general in nature, and human rights are mostly stated in it in an abstract, evaluative form, the correct understanding of its rules is revealed in ECtHR decisions, which contain legal positions on the essence of the provisions of this international legal act, as well as the content and scope of the guaranteed rights (Law of Ukraine, 2006).

The application by courts of the provisions of the Convention and / or specific legal positions of the ECtHR is often abstract and does not always correspond to the circumstances of the criminal case and national law. There are also frequent cases of violation by the courts in criminal cases of the requirements of Articles 3, 5, 6 of the Convention, which leads to violations of citizens' rights and repeated appeals to the ECtHR.

Consider the dynamics of the protection function in sentencing in the practice of the ECtHR in more detail.

In an important judgment in the case of Selmoni v. France (1999), the ECtHR found that Art. 3 of the Convention embodies the fundamental values of democratic societies that are members of the Council of Europe and is considered one of the most important fundamental provisions of the Convention, derogation from which is not allowed and in case of a complaint under this article of the Convention, the ECtHR must carry out a particularly thorough analysis, taking into account all the material submitted by the parties.

Also in cases when a person raises an unfounded complaint that he was subjected to improper treatment by the subjects of power in violation of Art. 3 of the Convention (1950), it is necessary to conduct an effective formal investigation aimed at identifying and punishing those responsible.

Violation of Art. 3 of the Convention in Grigoryev v. Ukraine (2012) in its procedural aspect was found in connection with the ineffectiveness of the investigation into the applicant's complaints of ill-treatment by law enforcement officers and the repeated closure of the case due to shortcomings in the investigation and disregard all available medical documents in the case (Law and Business, 2012). Thus, before violating the procedural requirements of Art. 3 of the Convention resulted in an ineffective investigation of the applicant's complaints, which were substantiated. The case-law of the European Court of Human Rights on the application of Art. 3 of the Convention indicates the following mandatory conditions for compliance with the obligations of the Convention in this part:

1. the imperative obligation to investigate complaints of persons in criminal proceedings about ill-treatment;
2. the obligation to establish all the factual circumstances under which the person was subjected to ill-treatment, with a specific decision based on the results of the relevant complaints.

Ineffective investigation of complaints led to a violation of Art. 3 of the Convention in its substantive aspect.

Violation of the requirements of Art. 3 of the Convention in its procedurais aspect in the case of Klishin v. Ukraine (2012) was recognized by the ECtHR due to the ineffectiveness of the investigation into the applicant's complaints of ill-treatment given that it was characterized by numerous shortcomings recognized by the national authorities.

In the practice of the ECtHR on compliance with the provisions of paragraph 1 of Art. Article 5 of the Convention requires that deprivation of liberty be "lawful", in particular following the "procedure established by law". Therefore, the Convention (1950) refers to the provisions of national law and establishes the obligation to ensure compliance with substantive and procedural law, but it also requires that the purpose of Art.

5 of the Convention (1950), in particular, the protection of persons against arbitrariness. According to the case-law of the ECtHR, national authorities, in particular, courts, must interpret and apply national law under Art. 5 of the Convention. Thus, violation of the requirements of paragraph 1 of Art. 5 of the Convention in the case of Mocallal v. Ukraine (2011) established that the applicant had been detained based on a court decision that had no proper legal basis.

The ECtHR drew attention to the importance of observance of court procedures and protection of the rights of the accused during sentencing in the case of Iglin v. Ukraine (2012). Thus, another criminal case was instituted against the applicant while he was serving his sentence. On an unspecified date, the case against the applicant and several other persons was referred to the Court of Appeal, which acted as a court of the first instance. The applicant was found guilty of the crimes charged and sentenced to life imprisonment, after which the applicant complained that the Supreme Court of Ukraine had unfairly denied his requests for additional time to examine the case file and ensure the presence of counsel at the hearing. The applicant relied on Article 6 of the Convention, which provides for the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, which must establish the merits of any criminais charges against him. In the light of the applicant's and the Government's submissions, the Court notes that the Convention guarantees the accused "adequate time and facilities necessary to prepare his defense" to exercise his protective function, and therefore this guarantee means that the preparation of defense may essentially involve on his part of all "necessary measures". The accused must be able to organize his defense properly and without prejudice to the opportunity to present to the trial court all the necessary arguments of the defense and thus to influence the outcome of the proceedings. The means necessary for anyone accused of committing a criminal offense include the opportunity to review the results of investigations conducted throughout the proceedings. The court listed factors relevant to the establishment of the limits of the obligation of public authorities to ensure the rights of the accused. These include the gravity of the charges against the applicant and the severity of the punishment that may be imposed on the applicant. Therefore, this case confirms that the ECtHR pays considerable attention in determining how and under what conditions the punishment for a criminal offense was imposed, whether all procedural provisions of criminal procedural law were complied with and whether the state was able to protect both the perpetrator and other participants in the process through a security function.

For example, in Ruslan Yakovenko v. Ukraine (2015), the applicant complained that his detention and reference to the provisions of the Convention under which everyone had the right to liberty and security of person. Also, in the present case, the applicant argued that if he had decided

to appeal the sentence, it would have significantly delayed his release from custody. The Court, therefore, notes that the Convention seeks to guarantee not theoretical or illusory rights but rights which are practical and effective and agrees with the applicant's argument that the price for exercising his right to appeal would be his freedom, especially since the duration his detention would be uncertain.

In a separate opinion of the judge of the Ovruch district court of the Zhytomyr region from August 16, 2017, the judge drew the attention of the courts to the fact that when sentencing in each case and for each defendant convicted of a crime, must strictly comply with Art. 65 of the Criminal Code of Ukraine (2001) on the general principles of sentencing, because it is through the latter that the principles of legality, justice, reasonableness, and individualization of punishment are implemented and that when sentencing, in each case courts must comply with criminal law and take into account the severity of the crime, data on the identity of the perpetrator and mitigating and aggravating circumstances (Grishkovets, 2017).

Such punishment should be necessary and sufficient to correct the convict and prevent new crimes. At the same time, courts must take into account the requirements of the Criminal Procedure Code of Ukraine (2012). In a separate opinion, the judge also analyzed the case-law of the ECtHR, where the court emphasized that the main purpose of Article 6 of the Convention in criminal proceedings was to ensure a fair trial by a court that would establish the merits of any criminal charge and noted that the right to a fair trial 1 st. 6 of the Convention, should be interpreted in the context of the preamble to the Convention, which, in particular, proclaims the rule of law as part of the common heritage of the Contracting States.

All the above practice is applied by the courts of Ukraine, as seen from the Generalization of the practice of application by courts of general jurisdiction of first and appellate instances in criminal proceedings Articles 3, 5, 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms 1950 for 2011 – first half of 2012.

Thus, the decisions of the ECtHR trace the dynamics of the implementation of the protective function of criminal law, which is reflected in the creation of prejudices for contracting states to protect law and order at the international level and ensure rights in each Contracting State to the Convention.

To comprehensively study the dynamics of the implementation of the security function in sentencing for criminal offenses in Ukraine, it is important to analyze the implementation of the investigated function in foreign countries.

In modern conditions, there are many legais systems that develop and interact with each other despite national and territorial differences. Issues

of security and protection of human and civil rights in criminal proceedings and areas of activity: legislative – at the theoretical level, the relevant services – in practice.

The most successful experience in the field of protection of human and civil rights and freedoms, society, and the state, to date, have developed in those states that have a long legal tradition and extensive positive experience in this matter. These are primarily countries such as the United States, Great Britain, Australia, Canada, and New Zealand.

In the United States, the protective function of sentencing is implemented at a high level. But the problem was the relatively high level of protection of criminals and low guarantees for victims of crime. As proof of the success of the programs adopted in the United States, there is a witness protection program. Also with the growth of crime and the associated intensification of the movement to protect the rights of victims of crime, US law has equalized the rights of those accused of committing crimes and victims of crime.

The United Kingdom implemented the experience of protection of rights and freedoms through the Charter of Victims of Crime, which defined the mutual rights of victims and law enforcement agencies.

Canada has developed a system that protects every participant in criminal proceedings.

Because imprisonment is one of the most severe types of criminal punishment, in foreign countries in this context, a special protective function. Thus, the international community is following the path of humanization in the execution and serving of sentences for minors, as violations in sentencing continue to occur. At the international level, several documents have been adopted defining how it is necessary to ensure the protection of the rights of minors who have committed illegal acts. These include the 1985 Beijing Rules, which set minimum UN standard rules for the administration of criminal justice against minors; Riyadh guidelines, which set out the UN guidelines for the prevention of juvenile delinquency, as well as rules for the protection of juveniles deprived of their liberty.

The above documents are aimed primarily at the protection and defense of juvenile offenders in sentencing, which is quite justified, as this category of persons is particularly vulnerable and requires increased attention to the protection of their rights and interests.

Besides, in all European countries, a significant role is given to the application of ECtHR practice in sentencing. Thus, States parties to the Convention use the case-law of the ECtHR in sentencing national courts and are guided by the fundamental principles of the Convention on the Rule of Law and Access to Justice in Criminal Matters.

Thus, analyzing the dynamics of the protection function in sentencing for criminal offenses in Ukraine, it is important not only to analyze the general provisions, individual court decisions but also to consider the international experience of law enforcement practice of the ECtHR, as it allows to understand whether law enforcement, lack of proper legislation or perhaps the reason is the human factor.

4. Discussion

As a result of the study, the practice of the ECtHR and the dynamics of the implementation of the protective function in sentencing for criminal offenses in this context were analyzed.

To ensure the implementation of the security function, several conditions should be provided:

1. When establishing criminal liability for encroachment on public relations regulated by the rules of law, the set of legislative provisions must have a level of coherence that will contribute to the formation of a logical rule of law.
2. Criminal law, determining the basis of criminal liability for such violation, should have priority in establishing the basis of criminal liability because only this branch of law establishes the grounds and limits of criminal liability.
3. The provisions of other branches of law should not be mechanically repeated, but be transformed into an element of the system of norms of criminal law, adhering to their principles, rules for formulating the *corpus delicti*, etc.
4. Legislative terminology used by regulatory and criminal law should not differ in content.
5. When formulating legal norms and rules, it is necessary to pay attention to the fact that they should be based on the law and, if necessary, their content can only be specified in bylaws.
6. The provisions of the case-law of the ECtHR must play a key role and be reflected in legal norms.

Conclusions

Thus, the analysis of the dynamics of the implementation of the protective function in sentencing for criminal offenses through a detailed review of the case-law of the European Court of Human Rights showed that several conditions must be met to ensure the rights of participants in criminal proceedings. First of all, it is the existence of both legislative consolidation and the actual implementation of international principles for the protection and enforcement of fundamental human and civil rights and public order. There must also be real mechanisms for appealing against the actions and decisions of the judiciary in the event of an unjust sentence or conviction without proven guilt. To eliminate the problems that arise during the consideration of criminal cases by the courts, it is necessary to improve the practice of investigating complaints of ill-treatment by representatives of the state in the context of the requirements of Art. 3 of the Convention.

These actions will contribute to the positive dynamics of the protection function in sentencing. Nevertheless, in the absence of effective mechanisms, there will be a decline in the implementation of the studied function and an outbreak of arbitrariness and lawlessness.

Regarding further scientific research in the study of the dynamics of the security function in sentencing for criminal offenses, it is important to analyze in detail the factors influencing the state of security, including internal (legislation, government policy, corruption of state authorities) and foreign (international policy, international agreements, sanctions, etc.), and not just the practice of the ECtHR.

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Jurisprudence of the European court of human rights in the choice of precautionary measures in criminal proceedings: legal realities and perspectives

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Abstract

The article deals with the problems of application of the decisions of the European Court of Human Rights (ECHR) in the selection of precautionary measures in criminal cases in accordance with Ukrainian law. Since the procedural legislation of Ukraine is currently not perfect in the framework of the establishment and regulation of the application of precautionary measures, the decisions of the ECHR serve as an indispensable regulator of this issue. The objective of the work is to study the peculiarities of the application of the jurisprudence of the European Court of Human Rights in the selection of precautionary measures in criminal proceedings. The subject of the investigation is the jurisprudence of the ECHR in the context of the choice of precautionary measures in the criminal process. The research methodology included and combined the dialectical method, logical and legal method, analysis, synthesis. By way of conclusion, the study shows that the practice of the ECHR is mandatory to take into account not only the courts but also the investigators and prosecutors, who legally have the right to request the court to apply such precautionary measures.

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Key words: European Court of Human Rights; European jurisprudence; precautionary measures; criminal process; legal reality of Ukraine.

Jurisprudencia del tribunal europeo de derechos humanos en la elección de medidas cautelares en el proceso penal: realidades jurídicas y perspectivas

Resumen

El artículo trata los problemas de aplicación de las decisiones del tribunal de derechos humanos de Europa (TEDH) en la selección de medidas cautelares en casos penales de conformidad con la legislación ucraniana. Dado que la legislación procesal de Ucrania actualmente no es perfecta en el marco del establecimiento y regulación de la aplicación de medidas cautelares, las decisiones del TEDH sirven como un regulador indispensable de esta cuestión. El objetivo del trabajo es estudiar las peculiaridades de la aplicación de la jurisprudencia del Tribunal Europeo de Derechos Humanos en la selección de medidas cautelares en procesos penales. El tema de la investigación es la jurisprudencia del TEDH en el contexto de la elección de medidas cautelares en el proceso penal. La metodología de investigación incluyó y combinó el método dialéctico, método lógico y legal, análisis, síntesis. A modo de conclusión, el estudio demuestra que la práctica del TEDH es obligatoria para tener en cuenta no solo a los tribunales sino también a los investigadores y fiscales, quienes legalmente tienen derecho a solicitar al tribunal la aplicación de tales medidas cautelares.

Palabras clave: Tribunal Europeo de Derechos Humanos; jurisprudencia europea; medidas cautelares; proceso penal; realidad legal de Ucrania.

Introduction

It is clear that the main task of the moment for humanity is to survive and successfully overcome the global crisis caused by the pandemic. However, in the fight against the virus, the ideological and cultural achievements of Western civilization must not be lost (Tkalych, Safonchyk, Tolmachevska, 2020).

One of the defining characteristics of any legal system is the system of sources of law, which in turn is determined by the historical and mental characteristics of a state. Thus, in the Ukrainian legal tradition, there is still no final solution to the issue of referring judicial precedent to the sources of law, but in practice, this issue has received a positive result, primarily due to the authority of the European Court of Human Rights (ECHR).

This is confirmed by paragraph 1 of the Law of Ukraine "On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, First Protocol and Protocols No 2, 4, 7 and 11 to the Convention", according to which, in particular, Ukraine fully recognizes Article 46 Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 on the recognition of the jurisdiction of the European Court of Human Rights in all matters concerning the interpretation and application of the Convention as binding and without the conclusion of a special agreement (On ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the First Protocol and Protocols No 2, 4, 7 and 11 to the Convention, 1997).

Thus, in recognizing the jurisdiction of the ECtHR, Ukraine has made an unspoken commitment to follow the provisions set out in its decision. The use of the case-law of the European Court of Human Rights in the choice of precautionary measures in criminal proceedings is no exception, as in this situation, the protection of human rights is of paramount importance.

In some cases, national courts violate the rules established by the legislator, which in turn leads to illegal and unreasonable decisions on the choice of a measure of restraint for the suspect, accused, which violates his rights.

The case-law of the ECtHR orients our state to reform the entire legislative system, including the institution of precautionary measures, taking into account the principle of proportionality and fairness (Tertyshnyk, 2012).

Thus, the aim of the work is to study the peculiarities of the application of the case law of the European Court of Human Rights in the selection of precautionary measures in criminal proceedings. The object of the research is the case-law of the ECtHR in the context of the choice of precautionary measures in criminal proceedings. The subject of the study is the social relations that arise when choosing precautionary measures in criminal proceedings, taking into account the practice of the ECtHR.

1. Methodology

The authors of this study are supporters of a humanistic, human-centered approach in legal science. Accordingly, the methodology of cognition of the object of this study is formed through the prism of the philosophy of humanism. Humanism is first of all a worldview that proceeds from the fact that man represents the highest, self-sufficient and self-conscious value, considers inhuman everything that contributes to his alienation.

Humanism can be viewed as a moral requirement only when humanity is manifested equally to all members of society. Therefore, he concretizes social justice, relying primarily on the properties inherent in all people, and requires the equality of all people in obtaining opportunities to realize their interests in the system of social relations.

The practical dimension of the philosophy of humanism is manifested, in particular, in the emergence of a human-centered approach in the social practices of people. The primary emphasis on the man himself, on his values for society and the state (and not vice versa), his rights and freedoms, led to the fact that the philosophy of anthropocentrism, in today's world has become more and more attractive to jurists who substantiated the fact that man and his life is a central element in building the rule of law. In general, this is the narrative that is preached in the vast majority of scientific sources in the field of law. We, of course, adhere to it.

Therefore in the methodological arsenal of jurisprudence, there are several detailed special methods of cognition of legal reality: historical and legal, formal legal (dogmatic), comparative-legal, sociological and legal, and the method of legal modeling. Undeservedly forgotten should be recognized the critical legal method of legal knowledge, which is not even mentioned in the overwhelming majority of modern textbooks on the theory of law.

From a philosophical point of view, criticism is a test of scientific judgment for its compliance with the truth. Therefore, to criticize is to question the truth of a particular judgment.

Scientific criticism is one of the most important methods of scientific knowledge, which consists in checking the correspondence of theoretical propositions to the criteria of truth, objectivity, provability, verifiability, etc. The role of criticism in its application to a new knowledge is especially important.

In science, only that knowledge is considered to have the right to exist, which previously passed through the crucible of criticism, having successfully passed this test.

Criticism is an absolutely necessary and immanent condition for the development of science. The need to criticize and be constantly ready for criticism is one of the most important principles of the scientific community.

With regard to this study, not only controversial scientific positions, but also the current legislation, which does not correspond to modern realities in the field of human rights, are subjected to critical analysis.

Taking into account the person-centered approach in law, those legal concepts that do not take into account the social value of a person, his rights and freedoms are subject to critical analysis. In particular, representatives of criminal law science and practitioners sometimes take such positions. Such researchers consider punishment to be the main function of criminal liability. Often human rights in such cases leave legal formalities. At the same time, the educational function is of secondary importance for them. However, the European Court of Human Rights has developed clear recommendations that take into account the legal rights and interests of all participants in the criminal process. It is in this context that we are interested in the practice of the ECtHR in cases of the application of preventive measures to persons suspected of committing crimes.

2. Literature Review

The use of the case-law of the European Court of Human Rights in criminal proceedings in the selection of precautionary measures is covered in the works of such specialists as Gorbachevsky (2013), Simonovich (2011), Tertyshnyk (2012; 2016), Nor, and Shevchuk (2019), Kimlyk, (2017), Olashin, (2015), Pryluka (2019), Rybalko (2015), Taran, and Tsyupryk (2017), and Uvarov (2012).

Thus, Simonovich (2011); Tertyshnyk (2012; 2016); and Taran, and Tsyupryk (2017) are experts in the case-law of the ECtHR. They study the norms, principles, provisions that guide the ECtHR in decision-making. Moreover, they investigate the impact of ECtHR practice on the regulatory framework of European countries.

Besides, the work of Nor, and Shevchuk (2019); Rybalko (2015); Uvarov (2012) became the basis for studying current trends in the choice of precautionary measures in criminal proceedings both in Ukraine and abroad.

Arkusha, Korniienko, and Berendieieva (2019) in their article Criminal activity in Ukraine in the light of current conditions stated that the lack of regulation at the legislative level of relations in different areas of the life, impunity, as well as military instability – all of these promote the

development of criminal activity, the creation of new and improvement of existing mechanisms, methods and criminal schemes. Thus, the precautionary measures is of prime importance in Ukraine.

Corruption for Ukraine is one of the most common types of crime. Thus, it should be determined whether the ECtHR has a solution to this problem. But before turning to the case-law of the ECtHR, let us analyze the doctrinal provisions of this crime, as the very nature of the crime already dictates the precautionary measures that may be appropriately applied. In studying the issue of corruption, the authors of this article relied on the next works of scientists: the article "Infrastructure of bribery in public official activity" by Tsytriak, Kalinina, and Hurina (2020); the article "The specifics of the appointment of forensic examinations in the investigation of corruption-related crimes committed in cyberspace" by Tishchenko, Bielik, and Samoilenko (2019).

Thus, in the legal doctrine there are works that study both the practice of the ECtHR and precautionary measures, but in the meantime, there is almost no work on a comprehensive analysis of the practice of the ECtHR on the choice of precautionary measures. This is what determines the relevance of the study.

3. Results

Respect for human and civil rights is a priority for the criminal justice authorities of each state in the investigation of crimes. International standards for the protection of human rights in criminal proceedings are a set of basic generally accepted and binding norms and principles that establish standardized rules of conduct for participants in criminal proceedings and are set out in international regulations, international agreements, and case-law of the ECtHR (Uvarov, 2012).

This especially applies to the rights and freedoms of such subjects of criminal proceedings as suspects and accused, including the application of measures to ensure criminal proceedings – precautionary measures.

Precautionary measures are measures of criminal procedural coercion of a preventive nature, accompanied by deprivation or restriction of liberties of the suspect, accused, and applied during criminal proceedings by authorized bodies and officials in respect of the suspect, accused to prevent attempts to prevent persons from and the court, to prevent the establishment of the truth, to continue criminal activity; to establish proper procedural conduct, as well as to ensure the implementation of procedural decisions (Gorbachevsky, 2013).

Characteristic features of precautionary measures should be considered:

1. the legal nature of coercion.
2. application in the regulated procedure.
3. attachment to a person (relating to a specific person).
4. the possibility of application only to the suspect and the accused.
5. the presence of a clearly defined basis and purpose of application.
6. focus on monitoring the activities of the suspect, accused
7. practical implementation in the restriction of rights.

Part 1 of Article 176 of the Criminal Procedure Code of Ukraine (2012) (hereinafter – the Criminal Procedure Code) establishes an exhaustive list of precautionary measures, which includes personal obligation, personal bail, bail, house arrest, and detention.

As noted above, precautionary measures in criminal proceedings are directly related to the restriction of human rights and freedoms, so the practice of the ECtHR is of particular importance in their application.

At the same time, since detention is the most severe measure of restraint, and that is accompanied by restriction of the right to liberty, the main body of ECtHR decisions concerns the above-mentioned measure of restraint.

Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention) provides that everyone has the right to liberty and security of person.

First of all, this article is actively used in criminal proceedings. Thus, the right to liberty and security of the person as a European standard of respect for human rights in criminal proceedings is a complex phenomenon, which includes:

- the right to freedom from arbitrary detention and detention; the right to be deprived of liberty only "based on law".
- the right to be immediately notified of the reasons for detention or detention; the right to be legally imprisoned only for a "reasonable period".
- the right to immediate judicial control over detention and detention.
- the right to be released from custody pending trial if there are guarantees of appearing in court; the right to challenge the lawfulness of detention or detention, and.
- the right to compensation for illegal detention or detention (Simonovich, 2011).

In particular, the case-law of the European Court of Human Rights is aimed at compliance with these aspects.

It should be noted that the choice and further application of a precautionary measure directly depend on the purpose and grounds for such an application.

According to Part 2 of Article 177 of the Criminal Procedure Code, the basis for the application of a precautionary measure is the existence of reasonable suspicion of committing a criminal offense, as well as the risks that give sufficient grounds to the investigating judge, the court to believe that the suspect, accused, convicted of this article.

Thus, in the decision in the case of Mironenko and Martenko v. Ukraine (2009), the ECtHR emphasized that the competent court reviewed not only the requirements of procedural law to resolve the issue of establishing a measure of restraint, but also the validity of suspicion as grounds for its application.

The ECtHR's injunctions in Letellier v. France (1991) state that suspicion must be based on facts or information that convince an objective observer of a possible crime by the person suspected (Nor and Shevchuk, 2019). This is duplicated in the decisions Ilgar Mammadov v. Azerbaijan (2014), Erdogdu v. Turkey (2000), Nechiporuk and Yonkalo v. Ukraine (2011).

Considering the complaint in Murray v. The United Kingdom of 28 October 1994, the ECtHR also emphasized that in determining the "degree of suspicion" the basis for choosing a measure of restraint in the form of detention could be a "lower threshold of reasonableness" for a particular category of crime (Kimlyk, 2017).

Part 1 of Article 178 of the Criminal Procedure Code contains a list of circumstances that are taken into account when choosing a measure of restraint. These circumstances also resonate with the case-law of the ECtHR given the following.

It is not uncommon to justify the choice of a measure of restraint is the severity of punishment (paragraph 2 of Part 1 of Article 178 of the Criminal Procedure Code). The ECtHR in Kalashnikov v. Russia (2002) has argued that the gravity of the offense and the severity of the sanction cannot be the sole or overriding justification for the application of coercion in the form of a restriction of the right, as such a person is presumed innocent until proven guilty in court (Pryluka, 2019.).

The ECtHR attaches great importance to the choice of a measure of restraint (paragraph 1, part 1 of Article 178 of the Criminal Procedure Code). In Labita v. Italy (2001), the ECtHR ruled that there was a risk of forgery of evidence and pressure on witnesses as a legal basis for choosing a measure of restraint. At the same time, there are no facts that could prove

the existence of a real threat of the occurrence of this illegal behavior, which in turn makes it impossible to justify the application of a precautionary measure.

The judgment of Fox, Campbell, and Hartley v. The United Kingdom (1990) is also decisive in the circumstances relevant to the choice of measure of restraint, as it refers to the fact that a previous conviction for terrorist acts may increase suspicion of a terrorist offense, but cannot be the only justification for the suspicion. With this decision, the ECtHR emphasized that the reputation of a suspect or accused cannot be a predominant ground for restricting human rights and freedoms (Taran, and Tsyupryk, 2017).

Given the above, it can be concluded that, as a rule, the basis for the application of precautionary measures is a set of certain facts that serve as a basis for "reasonable suspicion".

The ECtHR also emphasizes the purpose of the application of precautionary measures. Thus, in the judgment in the case of Boicenco v. Moldova (2006), the ECtHR stated that the national courts referred to the relevant provision of the legislative act, but the purpose of the precautionary measure was not identified, which in turn raised doubts about the threat of obstruction of proceedings, evasion of justice, new crimes, etc.

According to the author, these decisions have weight not only in the application of the precautionary measure in the form of detention, which was the basis of the complaints submitted to the ECtHR but also concerning other precautionary measures, as they express general requirements and requirements.

According to the legal position of the ECtHR, expressed in the judgments in the cases of Mancini v. Italy (2001), Buzadji v. The Republic of Moldova (2014), Korban v. Ukraine (2019), as well as detention, house arrest constitutes a deprivation of liberty. Thus, the ECtHR strongly recommends the application of the same criteria when assessing the appropriateness of coercion in the form of imprisonment, regardless of the place of application of the preventive measure (Shevchuk, 2020).

According to Part 1 of Article 181 of the Criminal Procedure Code, house arrest is a prohibition on a suspect or accused to leave the home around the clock or during a certain period of the day. This indicates the relationship of house arrest to the concept of housing. At the same time, the case-law of the European Court of Human Rights interprets this concept much more broadly than the Ukrainian legislator. Thus, the position of the ECtHR, enshrined in the decisions in the cases of Herrmann v. Germany (2012), Cola Est and others v. France (2002), Bock v. Germany (2010), emphasizes that, in addition to housing in the usual sense, it may apply and place of work (office space, branch or other building of the enterprise, institution, or organization). Also, more non-traditional facilities are also recognized as

housing: motor homes (Buckley v. The United Kingdom (1996), Chapman v. The United Kingdom (2001)), huts and bungalows, regardless of the legality of their construction under national law (the case of Yordanov et al. v. Bulgaria (2018), Winterstein and others v. France (2013)), a gypsy tent (Buckley v. the United Kingdom (1996)) (Shevchuk, 2020).

Another significant type of coercion is bail as a form of precautionary measure in criminal proceedings. According to the author, the peculiarity of the pledge is the strict observance of the proportions between the committed crime, the guarantee of fulfillment of the duties imposed on the suspect, the accused and the amount of the pledge itself. No less important in this case is taking into account the financial situation of the person in respect of whom the precautionary measure in the form of collateral is chosen.

The latter can be illustrated by the judgment of the European Court of Human Rights in Mangouras v. Spain (2010), according to which the guarantees provided for in Article 5 § 3 of the Convention are intended to ensure the fulfillment of an obligation rather than compensation for losses. Thus, the mortgage amount should be determined taking into account the assets and liabilities of the suspect, accused and his relations with other persons who must ensure his safety. That is, the pledge should be determined by the degree of trust (confidence) at which the prospect of loss of the pledge or action against the guarantors, in the absence of his appearance in court, will be a sufficient deterrent to repel the person against whom bail has been applied, the desire in any way to prevent the establishment of the truth in criminal proceedings (Olashin, 2015).

In the judgment in the case of Yeloyev v. Ukraine (2008), the ECtHR went even further, arguing that the amount of bail should be determined not only by the property status of the person against whom the measure of restraint was taken but also by his social and family status. The ECtHR emphasized that, although the amount of bail should keep the suspect, accused of breaching his obligation in criminal proceedings, it should not lead to the loss of his means of decent living and the accommodation of his family members.

The case-law of the ECtHR also emphasizes the legality of sources of income in the case of bail, recognizing the decisions of national courts that refused to impose an appropriate precautionary measure due to the lack of evidence of the legality of receiving the claimed bail. This is stated, in particular, in the decision A.A. v. Switzerland (2019), stating that the circumstances of the case and the applicant's reputation had led the courts to reject his bail application, as the source of the money to be paid was unknown, and this would not be an adequate guarantee that the applicant would not disappear for fear of losing the pledge (Rybalko, 2015).

Precautionary measures also include personal bail and personal commitment, which are equally important in achieving the purpose of criminal proceedings. At the same time, personal commitment is based on the effect of fear, and personal commitment is based on the effect of shame. Thus, it cannot be considered that these precautionary measures, when applied legally, restrict the rights of the individual, and therefore the need for intervention by the ECtHR, in this case, is reduced to a minimum.

It should be noted that human rights monitoring plays an important role in the application of precautionary measures.

In the judgment of Klass and Others v. The Federal Republic of Germany (1978) of 6 September 1978, the European Court of Human Rights defined the criteria and stages for verifying the lawfulness of the application of surveillance measures by persons carried out by the State. The ECtHR notes that one of the fundamental principles of a democratic society is the rule of law, a direct reference to which is contained in the preamble to the Convention. It follows from the rule of law, in particular, that the interference of the executive with human rights must be subject to effective supervision, which should normally be ensured by the judiciary. At the very least, it should be judicial oversight that best guarantees the independence, impartiality, and due process of legal procedures.

According to the author, the implementation of the above position of the ECtHR also takes place in the application of precautionary measures related to interference with fundamental human rights and freedoms guaranteed by the Convention, as such application must be under effective control, which should normally be provided by the judicial system in the form of judicial control.

Conclusions

Precautionary measures are the most severe measures of procedural coercion, restricting the constitutional rights of citizens, but should not violate the principle of the presumption of innocence. Precautionary measures should be considered an indisputably effective way of forcing a suspect or accused to perform his duties and providing a kind of safeguard for full and impartial criminal proceedings.

At the same time, the procedural legislation of Ukraine is currently not perfect within the framework of establishing and regulating the application of precautionary measures, so the decision of the ECtHR serves as an indispensable regulator of this issue.

The practice of the ECtHR is aimed to humanize the criminal process, in particular within the application of precautionary measures, to introduce generally accepted European standards, as only the correct application of a precautionary measure will proportionally restrict the rights and freedoms of criminal proceedings. At the same time, the ECtHR aims to fulfill two main tasks: to restore the right of the person violated by national courts and to set a precedent that will serve as a basis for decisions by other courts.

Given the peculiarities of the choice of precautionary measures, the author also concludes that the practice of the ECtHR is mandatory to take into account not only the courts but also investigators and prosecutors, who are legally entitled to apply to the court for the application of such precautionary measures.

Thus, the practice of the ECtHR represents the perspective of the development of both European law in general and the national legislation of each signatory state to the Convention in the direction of strict observance of the rights and freedoms of the individual.

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Victimological measures to prevent violent offences for gain committed by children

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Abstract

The aim of the article is to be a victimological description of violent crimes for profit by children in Ukraine. The research methodology was based on the equal combination of the legal method, logical and semantic method, comparative method, documentary, test method, classification method, method, and method of system analysis. Among the most notable results of the study were victims who contribute to the commission of crimes for profit and. Everything allows that, the theory of victimological modeling is a logical result of victim thought in criminology, which aims to be the models of the concluding victim of victims of crime crimes, etc.) in order to develop measures that are advised of the victim. The objectives of preventing lost crimes through the development and implementation of long-term state programmes for prevention. The implementation of these laundry programmes a mechanism for the effective prevention of victims, the effectiveness of the fight against crime and will ensure safety.

Keyword: violent crimes for profit; victimological prevention; victimological follow-up; models of social intervention; citizen security.

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Medidas victimológicas para prevenir delitos violentos con fines lucrativos cometidos por niños

Resumen

El objetivo del artículo es proporcionar una descripción victimológica de los delitos violentos con fines lucrativos cometidos por niños en Ucrania. La metodología de investigación se basó en la combinación en igualdad de condiciones del método jurídico, método lógico y semántico, método comparativo, método documental, método de análisis estadístico, método de clasificación, método normativo y método de análisis de sistemas. Entre los resultados más notables del estudio se identificaron algunos determinantes victimológicos que contribuyen a la comisión de delitos violentos con fines lucrativos y. además, se desarrolló una tipología de víctimas de este tipo de delitos. Todo permite concluir que, la teoría del modelado victimológico es un resultado lógico del desarrollo del pensamiento victimológico en criminología, que tiene como objetivo crear los modelos de victimización de las víctimas de diversos delitos (egoístas, delitos violentos oportunos, etc.) con el fin de desarrollar medidas que les proporcionen asistencia victimológica. Los objetivos de la prevención del delito victimológico pueden lograrse mediante el desarrollo y la ejecución de programas estatales a largo plazo para dicha prevención. La implementación de estos programas creará un mecanismo para la prevención efectiva de víctimas, aumentará la efectividad de la lucha contra el crimen y garantizará la seguridad.

Palabras clave: delitos violentos con fines lucrativos; prevención victimológica; seguimiento victimológico; modelos de intervención social; seguridad ciudadana.

Introduction

The implementation of State policy in the area of child protection has long been the issue of concern not only for legal scholars and law enforcement practitioners, but also for the general public. In order to implement European standards for the protection of children's rights in Ukraine, our State has undertaken a number of international legal obligations to ensure the proper mental and physical development of young people, to protect them from any deviations from legitimate behavior. Thus, the need for full development and self-realization of youth is one of social values, and its social support is one of the main priorities of public policy in accordance with the State Targeted Social Program "Youth of Ukraine" for 2016 – 2020 (Order of the Cabinet of Ministers of Ukraine 2015). According to this Program the following problems need to be urgently

addressed: problems related to the low level of youth employment in the labor market and the attainment of practical skills by young professionals (in 2019 the unemployment rate among young people aged 15 – 24 was 23.1% in Ukraine); weak motivation for young people to follow healthy and safe lifestyle; lack of a constant tendency to reduce the level of crime among young people, violence and systematic work in the area of their prevention.

At the same time, the acceleration of Ukraine's European integration processes requires the introduction not only of modern forms and methods of combating crime into law enforcement practice, but also of the standards of protection of human rights and freedoms recognized by the world community. Real democratic transformations are inseparable from the humanization of social relations, as an individual, his (her) life and health, honor and dignity, inviolability and security are recognized as the highest social value (Dzhuzha 2018). The UN and UNESCO, the UNICEF Children's Fund and other international organizations pay considerable attention to the prevention of negative phenomena in the youth environment. Much effort is being made to find new or adapted to modern living conditions approaches to the prevention of juvenile delinquency. In this case, in our opinion, the experience of other countries is interesting, in particular, the USA and the UK, which have significant achievements in the area of organization of juvenile delinquency prevention. The Anglo-American system of crime prevention occupies a dominant and leading position in Europe, America, and Japan (Vedernykova 2005: 43).

For all the above, the aim of the article is to provide victimological description of violent offenses for gain committed by children in Ukraine. In the same way, readers are presented with the methodology at first, followed by a review of the literature on the research topic, at a third time the results obtained in the research and discussion, and finally the conclusions obtained.

1. Methodology

General scientific and special legal methods were used in the course of the research. The concepts and terms necessary to reveal the topic of the article were defined with the help of logical and semantic method, in particular, "violent offences", "offences for gain", "victimology", etc.

Comparative and legal method was used in comparing different categories of victims of violent offences for gain committed by children.

Documentary method as well as the method of statistical analysis made it possible to assess the main statistical indicators, the state and trends of violent offences for gain committed by children.

The method of classification was used in criminal law and criminological characteristics of violent offences for gain, its determinants and prevention measures against this type of crime.

Logical and normative method was applied in formulating proposals for amendments to current legislation in order to prevent violent offences for gain committed by children.

The method of system analysis helped to reveal the causes and conditions that contribute to the commission of violent offences for gain.

The empirical basis for the study is the data of State statistics service of Ukraine, materials of the Prosecutor General's Office of Ukraine, the Ministry of Internal Affairs of Ukraine.

2. Literature Review

Certain problems of prevention of violent crime for gain committed by children are the topic of research of a number of domestic and foreign scientists. For example, Boiarov and others (2020: 284) determined the features of persons, who may become victims of informal youth of extremist orientation. Larkin and others (2019: 481) identified the features of youth informal groups (associations) to facilitate their identification and to combat extremist activities of the members of such groups. Kushnir (2014: 75) highlighted the issues that need to be clarified in order to highlight the main problems of prevention of violent crimes for gain conducted by children. Levytska (2004: p. 96) identifies two tendencies of children's victimization: 1) children are more likely to be at risk than adults; 2) children deprived of parental care are more likely to be at risk than children under guardianship and protection.

Some aspects of this problem were also considered by Dzhuzha (2013), Frank (1972), Holina (2014), Holovkin (2011), Vedernikova (2005) and others. However, paying tribute to the results of scientific developments of these scientists and taking into account theoretical and practical significance of their researches, special attention needs to be paid to the characteristics of victims of child abuse and the development of victimological measures to prevent such crimes in Ukraine.

3. Results and Discussion

The issue of children's crime, which is due to the increasing aggression and cruelty of their illegal behavior and the increased social danger of its consequences, is a complex criminological problem today. Although this type of crime is not dominant in any society, their level and structure are indicators of the moral health of society, spirituality and attitude to basic human values.

According to the results of the studies, the level of victimization in Ukraine remains quite high, namely more than 340 000 people suffer from registered crimes every year, which is 10 people per 10 000 (General's Prosecutor Office of Ukraine 2019; Department of analytical work and management organization of the Ministry of Internal Affairs of Ukraine 2020: 23 – 25). Tuliakov (2000: 3 – 4) notes in this regard that the level of victimization is on average 2 – 2.5 times higher than the level of registered crime in Ukraine.

It is also interesting that the victims of common offences (theft, robbery, robbery, premeditated murder) are often citizens with average incomes, and sometimes – even the unemployed, who have at their disposal just household goods (Holina & Holovkin 2014: 133). This is largely due to the fact criminals and their victims are from the same social environment and lead a similar lifestyle, as well as have a general idea of material prosperity. Besides, criminals and victims are united by social disadvantage, marginal status, the peripheral place they occupy in the social structure of society (Holovkin 2014).

The need highlight the problems of prevention of violent crimes for gain conducted by children is explained by the fact that there is a need for conceptual definition of the following issues: coordination of law enforcement, educational, informational work with government agencies, institutions and organizations, civil society institutions, employees working with minors of this category; reducing the level of delinquency among female minors, intensifying legal education and their participation in socially significant public activities; ensuring effective justice for juveniles who have committed offenses, taking into account their age, socio-psychological, psychophysical and other features of development; promoting restorative justice; creation of an effective system of rehabilitation of juveniles who have committed offenses, in order to correct and re-socialize them (Kushnir 2014: 75).

The victim and the person committing the crime are interdependent parts of the same phenomenon. The relationship takes place on a mental level involving subconscious of individuals, while being an element of self-regulation of the behavior of the parties. In order to determine the role

of the victim of violent crimes for gain in the criminal manifestation, it is necessary to identify persons who can become victims of this type of crime, to identify typical life situations as a result of which a person becomes a victim, to reveal the influence of physiological human behavior. Prevention cannot go beyond existing traditional approaches without the study of the victim (Ryvman 2002: 43).

While considering the levels, forms and types of prevention, one distinguishes its victimological direction, due to the idea that the possibility of committing a crime depends on many factors that can be identified and then neutralized. The studies conducted by both foreign and domestic scientists in the area of victimological direction of criminology, have convincingly shown that it is impossible to fully understand the reasons and conditions that contributed to the commission of crime without taking into account the role of the victim in the crime. The perpetrator, the victim and the situation are so closely intertwined that they form a single system that can only exist in the presence of all these components. Thus, there was a significant transformation of views on the analysis of the causes of crimes; in particular, it was proved that the commission of a crime is a dynamic process in which the perpetrator and his victim can interact quite intensively, and the role of the victim in commission of a crime can be significant. The results of research show that the victim's behavior is quite often provocative, being a determining factor in committing a criminal offense. For example, negative behavior of victims was observed in 82.5% of cases (including assault, insults, bullying) (Ryvman 2002, p. 241 – 244).

Victimological direction of combating crime is one of the most humane and promising. It does not require serious material costs and, based on the inherent desire of all people to self-defense, has a kind of internal source of development. Every crime is the result of a person's complex interaction with an objective situation. One element of the situation is the victim. Often victims with increased victimization create a criminogenic situation by themselves, as a result of which they become victims of crime.

According to Frank (1972: 56) "Victimology is based on the fact that human behavior can be not only criminal but also reckless, risky, frivolous, sometimes provocative, and therefore dangerous, which increases the possibility of criminal encroachment. In this regard, other characteristics of the person acquire additional importance: age, gender, social status, social roles, profession, willingness to act in a critical situation in a certain way, the environment, the specific situation, the behavior of third parties and so on. The combination of these subjective and objective factors (not necessarily all of them) and their interaction determine the possibility and ability of a person to become a victim of crime.

Victim prevention is a purposeful specialized influence on people, who tend to illegal or immoral behavior, as well as on the factors that determine

the victimhood associated with such behavior. Equally its object is factors and individuals, whose positive behavior, however, is dangerous for them (Dzhuzha 2013: 165).

The practice shows that an important role in the commission of mercenary and violent crimes plays not only reckless and uncritical, but also provocative behavior, which is based on the psychological characteristics of the victim (Holina & Holovkin 2014: 252). The main reason for committing the crimes in question is certain character and features of the psychological characteristics of the victim, which were expressed in careless, immoral, or illegal behavior. At the same time, it is impossible to consider the characteristics of the victim's identity and his (her) behavior separately from objective factors, i.e. such external conditions, which, interacting with the person and the victim's behavior, lead to the commission of a crime. Taking into account objective factors in committing crime plays an important role, because they greatly contribute to the commission of such crimes, in which there is no direct mental contact between the victim and the perpetrator (for example, illegal possession of a vehicle). In this case, the factors contributing to the crime are social conditions, social environment, financial situation of the victim (Dzhuzha 2018: 394).

Based on the results obtained in the course of this study, it can be stated that the main tasks of victimological prevention of violent offences for gain, are: 1) protection of a potential victim – prevention of committing violent offences for gain against him (her); 2) protection of a real victim: cessation of criminal actions against him (her); prevention of committing new offences; assistance in restoring his (her) infringed rights.

The danger of becoming a victim of the negative phenomena of life creates a fairly large group of minors at risk. Young people, according to Frank, have a tendency to become a victim of crime under certain circumstances, in other words they are characterized by an inability to avoid danger where it is possible.

Levytska (2004: 96) identifies two tendencies of children's victimization: 1) children are more likely to be at risk than adults; 2) children deprived of parental care (63%) are more likely to be at risk than children under guardianship and protection (37%); there are more risk factors in urban areas (65%) than in rural ones (35%); destruction or significant changes in the microenvironment of the child (family, school or immediate household environment) push the minor into the risk group (47%).

The victim's lifestyle has a significant impact on the victimization process. A minor may consciously or unconsciously create objective and subjective conditions for criminalization, promote the commission of a crime against himself (herself) by his style and way of life.

Misconduct of the victim is of particular victimological significance, given the high victim potential included therein. Such behavior is often a provocation and a source of conflict. Its forms are different: from physical and mental violence applied to the offender or his (her) relatives to insulting the person and manifestation of lack of respect for public order, which was not directly related to the individual, who then committed the act. Provocation on the part of the victim plays a major role in the crime of violence. Provocation is the most important motivating factor in the etiology of fights and beatings. The behavior of victims in case of committing crimes of violence, according to Khristenko, is also mostly provocative; for example, an offender and a victim drink alcohol together, after which the victim loses the ability to navigate the situation, especially to resist (15%); the perpetrator knows that the victim is unable to resist (12%); after a chance acquaintance, a victim gladly agrees to go for a walk with an offender and they go to a secluded place, which is perceived by the potential criminal as an incentive to commit violent offences for gain (12%); after a casual acquaintance, the victim provokes encroachment with his own sexually colored behavior (15%) (Khrystenko 2004: 402).

According to official data, the vast majority of crimes committed by minors are theft, robbery, extortion, and hooliganism. Thus, the victims of criminal abuse on the part of adolescents are individuals, legal entities, the State, other social communities, as well as society as a whole. However, most of these actors are, undoubtedly, individuals. The study of victimhood showed the following: 3.8% of respondents said that they became victims of robberies and assaults committed by minors; 2.2% suffered from extortion (Kulyk 2013: 137). Every second robbery of personal property and every third robbery in order to seize personal property occur on the streets, squares, parks, squares in the evening and at night. Robberies and burglary attacks on taxi drivers and drivers, as well as on citizens by breaking into their homes are also widespread.

The nature of the damage caused to victims depends on the manner, in which the crime was committed. Street robberies are most often committed without violence, but there are exceptions. Sometimes juvenile delinquents unexpectedly knock individuals off their feet and beat them with hands (22.4%), with feet (25.3%), strike with a knife (28.2%), with axes (3.3%), with sticks, chains and other objects (17.9%), shoot (2.9%). Juvenile delinquents threaten to use violence without using weapons in 19.3% of cases; in 13.4% of cases they demonstrate weapons (Khodymchuk 2005: 12). The victims of robberies are men (53.5%); women (46.5%); adults (83.1%); minors (6.9%); persons of working age (83.4%), pensioners (6.6%). The victims are the representatives of all social groups: heads of enterprises (0.8%); foreigners (0.6%); drivers (0.5%); entrepreneurs (3.1%); police officers (0.5%); servicemen (0.1%); employees of private security services (0.4%); persons who do not work or study (3.5%) (State statistics service of Ukraine, 2020).

The victims of assaults are: men (62.5%); women (37.5%); minors (2.2%); persons of working age (84.4%); pensioners (5.6%). Among the representatives of social groups are: employees of private commercial structures (2.9%); visitors (2.2%); foreigners (1.3%); transport drivers (0.9%); heads of enterprises (0.7%); police officers (0.6%); employees of private security services (0.1%); persons who do not work or study (5.6%) (Holovkin 2011).

The problem of intoxication of victims at the time of the crime is also of great importance. It is known that people, who are intoxicated, are much more vulnerable because of their inability to resist. Thus, according to criminological research, 7.0% of people, who were attacked, were intoxicated. Just 21.8% of those victims, who contributed to the assault, were sober and the other 72.8% were intoxicated.

The victims of violent offences for gain related to home burglary, according to the materials of criminal proceedings, are: women (79.1)%; minors aged 14 –18 (16.7%); persons aged 24 – 32 (20.4%); persons aged 32 – 40 years (16.7%); persons aged 40 – 48 (14.8%); persons aged 48 – 56 (9.2%). The social status of victims of burglaries and robberies is as follows: pupils (7.4%); students (9.3%); servicemen (16.7%); workers (14.8%); housewives (20.4%); pensioners (5.5%); representatives of other social groups (25.9%) (Kushnir 2014: 74; Nazarenko 2013: 240 – 241).

Thus, crimes committed by minors are rarely related to the social status of the victim or the interpersonal relationship between the victim and the perpetrator. This is due to the situational nature of children's crime. However, juvenile delinquency, in many cases, is facilitated by certain personal characteristics of victims, including alcohol abuse, low living standards and leisure culture. The studies show that victims who displayed such traits as irritability, aggression, rudeness, cruelty, and selfishness were more likely to be abused by female minors than the victims who did not display such traits.

One of the effective measures to prevent violent crime on the part of children is victimological monitoring – specially organized systematic monitoring of the state of victimization of society and social groups, the level of victimization, victimological prevention to assess them, increase the effectiveness of socio-legal control over crime and Crime Victimology Forecasting.

The content of planning a system of victimological monitoring is to create a functional model or to plan the entire technological process for obtaining victimological information on violent offences for gain (Safronova 2008: 73). Lack of attention to the development of any stage will inevitably lead to a sharp decrease in the reliability (value) of all information received, since all stages of obtaining victimological information are closely linked.

Based on the analysis of law enforcement practice, it should be emphasized that the quality of the national system of victimological monitoring should include the following stages, in particular:

1) setting targets for victimological monitoring of the criminological situation and requirements for victimological information. To define the requirements for victimological information requires detailing of the tasks. Formulation of a clear idea of victimological indicators and determinants of crime and the methods of criminological assessment also play an important role. The requirements for victimological information including its form and the time limit for its filing to the population, especially the most victimized social groups are determined on the basis of clearly formulated tasks, as well as taking into account previously obtained victimological indicators on the criminological situation. At the first stage, the main methods of processing victimological indicators should be chosen (abstraction, generalization, formalization, analysis and synthesis, induction and deduction, historical and logical, structural and functional analysis, etc.), because they largely depend on the frequency and timing of victimological observations, as well as requirements for the completeness of the obtained victimological data;

2) creating a structure of victimological monitoring and determining the principles of its implementation. This is the main and most difficult stage, during which the main subjects of victimological monitoring, both central and regional ones, are determined taking into account the set tasks and the experience of functioning of the victimological monitoring system; the question of expediency and scales of use of the system of victimological monitoring of a criminological situation is solved;

3) constructing the network of victimological monitoring using victimological service. This stage involves the implementation of the principles of victimological monitoring taking into account the specifics of regional aspects of the criminological situation on the basis of the proposed structure of victimological monitoring. The ratio of criminological and victimological observations is detailed, the territory of the most intensive victimological monitoring is determined, the periodicity of such observations of the criminological situation is noted. Specific victimological programs of regional monitoring, which regulate the list of victimological indicators, frequency,

and terms of monitoring, are compiled.

4) Development of a system for obtaining victimological data and providing information to law enforcement officers and the public.

The features of the hierarchical structure of obtaining and collecting victimological information are determined at this stage; development of victimological data banks is planned; the conditions for providing victimological information services are identified; control of accuracy and reliability of the obtained victimological indicators at all stages of victimological monitoring.

5) evaluation of the received victimological information and decision-making on the development and implementation of victimological prevention measures. At the final stage, a detailed victimological description of the criminological situation is provided, which is submitted to the media in the form of reports, reviews, which set out the state of crime in the country (region) for a certain period of time. Once the victimological monitoring system has been established and is operational, it is necessary to verify that the obtained victimological information meets the initial requirements of the criminological situation, or whether it is possible to effectively implement victimological crime prevention measures on its basis. To do this, it is necessary to establish cooperation between law enforcement agencies and public organizations that provide assistance to victims of crime.

If the obtained victimological information does not exceed the established requirements set by state or regional programs, the victimological monitoring system can be left unchanged. If these requirements are not met, as well as when new tasks appear, the victimological monitoring system needs to be revised.

However, if victimology forecasting indicate that victimhood will increase in future, it seems necessary to organize its maintenance at the initial level of development of victimological processes (Varchuk 2012).

In this regard, it is necessary to create "situational victimological centers" on the basis of the National Police of Ukraine. The task of such centers is to generalize the collected victimological information and to conduct its analysis, to determine the measures for victimology forecasting and to create possible victimological models of crime development and prevention of the latter. Their main function is dynamic modeling, which will allow predicting the possible victimological consequences of different options for the development of certain types of crimes and crime in general. Victimology analysis and forecast, which can be provided by the situational victimological centers, will help law enforcement agencies to fully manage the complex criminological situation, create conditions for future victimology crime prevention at higher level.

Thus, the measures for victimological prevention of violent crimes for gain are aimed at protecting potential and actual victims. Today, the

adoption of criminological program for preventing violent crimes for gain, in which the priorities of the National Police based on the practice of Western European countries in each area would be enshrined, is relevant. The methodology for identifying potential victims and persons prone to committing violent crimes for gain is also worth developing.

Conclusions

The children's embarking on the path of violent crimes for gain (serious crime) is gradual, in the process of de-socialization and formation of mercenary motive of violent manifestation – the dominant moral and psychological feature that determines violent orientation of a person to achieve selfish goals. The latter concentrates the deformations of the value and normative sphere of consciousness, negative psychological personality traits and biopsychological features. The content of the selfish orientation of the violent manifestation is a socially dangerous attitude to property and inviolability, the psychophysical status of the subject of property. This attitude is facilitated by biological and social deformations of consciousness and will of the person. It was established that the criminal activity of minors was related to the criminal behavior of the victims. Violent crimes for gain, in most cases, were preceded by immoral actions of the victim (joint use of alcohol or drugs, reckless behavior of the victim regarding his property or choice of acquaintances, bragging).

Therefore, preventive action against potential victims, i.e. neutralization of victimological determinants of crime, should play a leading role in victimological crime prevention. The theory of victimological modeling is a natural result of the development of victimological thought in criminology, which aims to create the models of victimhood of victims of various crimes (selfish, violent crimes, etc.) in order to develop measures to provide them with timely victimological assistance. The goals of victimological crime prevention can be achieved by developing and implementing long-term State programs for such prevention. Modeling and implementation of these programs will create a mechanism for effective victim prevention, increase the effectiveness of the fight against crime and ensure the safety of individual citizens and society as a whole.

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Influencia de la innovación en la competitividad de las medianas empresas del Ecuador

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Resumen

Este estudio tuvo como objetivo analizar la influencia de la innovación en la competitividad de las medianas empresas del Ecuador. Los autores consideran a la innovación como la acción de generar ideas a través de la gestión del conocimiento mediante el aprovechamiento de la tecnología, con la finalidad de incidir en la competitividad de las empresas mediante la generación de valor agregado en la oferta de productos y servicios. La metodología del presente artículo se desarrolló como un diseño no experimental de tipo transversal, exploratorio y fundamentalmente bibliográfico para referenciar diferentes textos y contextos empresariales. En esencia, se trató de un trabajo de revisión teórica próximo a la hermenéutica. Entra las conclusiones más representativas se destaca que, la innovación como proceso integral que busca desarrollar al máximo las capacidades productivas de una empresa determinada tiene variadas implicaciones económicas y de competitividad, porque, por un lado, aumenta la cantidad y calidad de los bienes y servicios que se producen al mismo tiempo reduce los costos; por el otro, incide en el abanico de opciones que los pymes otorgan a sus clientes para satisfacer sus necesidades y deseos con ofertas de calidad en un contexto de creciente competencia nacional y global.

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Palabras clave: innovación y competitividad; medianas empresas en Ecuador; pymes; política de estimula a la innovación; gerencia del conocimiento.

Influence of innovation on the competitiveness of Ecuador's medium-sized enterprises

Abstract

This study had as an analysis of the influence of innovation on the competitiveness of medium-sized enterprises in Ecuador. The authors to innovation as the action of generating ideas through the management of knowledge of the use of technology, in order to influence the competitiveness of companies through the generation of added value in the offer of products and services. The methodology of the present article was developed as a non-experimental design of a transversal, exploratory and fundamentally bibliographic type to reference different texts and business contexts. In essence, it was a review work close to hermeneutics. The most reserve conclusions include that innovation as a comprehensive process that, seeking to make the most of the productive capacities of a given company, has implications and competitiveness, on the one hand, increases the quantity and quality of the services and goods that occur at the same time reducing costs; on the other hand, it affects the range that SMEs give their customers for their needs and desires with quality offers in a context of increasing national and global competence.

Keywords: innovation and competitiveness; medium-sized enterprises in Ecuador; SMEs; innovation-boosting policy; knowledge management.

Introducción

La competitividad empresarial es el resultado de la interacción de factores internos y externos de las empresas (Otero y Taddei, 2018) conlleva a que las empresas se mantengan a la vanguardia del mercado; beneficia a las organizaciones en el sentido de incrementar ingresos económicos, además de que brinda una la oportunidad de cambiar o mejorar el estándar de vida las personas a través de la innovación (Ibarra *et al.,* 2017).

En las empresas, los factores exógenos pueden afectar el crecimiento de los niveles de competitividad, sin embargo el sostenimiento de la

empresa depende mucho de su administración (Mora *et al*., 2015) y ante un mercado cambiante la planificación estratégica es una herramienta que beneficia en el sentido de que la identificación oportunidades propenda a la implementación de cambios en las organizaciones a fin de cumplir objetivos mediante estrategias ejecutadas que propendan a la sostenibilidad de las unidades económicas (García *et al.,* 2017).

El mundo globalizado implica un gran desafío para todo tipo de empresas, porque existe un mercado cada vez más agresivo en cuanto a la competencia, en donde las entidades de menor tamaño se enfrentan retos de mayor incidencia, es por ello que para lograr mantenerse activas y competitivas es importante la adopción de factores como la implementación de la innovación, para generar procesos de automatización que estimulen la productividad, además de efectuar asignación presupuestaria para la inversión tecnológica, fortalecimiento de las competencias del capital humano y el adecuado uso de los recursos financieros (Molina y Sánchez, 2016).

Es importante acotar, además, que la inversión en tecnología reduce costes de producción y favorece a la calidad de los productos conjuntamente de que genera ventaja competitiva (Ospina *et al*., 2014). Por lo demás, aun cuando la literatura refiera los beneficios que otorga la adopción tecnológica, no todas las empresas logran automatizar procesos, este panorama se reflejan en las pequeñas empresas, entes que desde sus inicios parten de procesos frágiles de constitución y tienen recursos muy limitados para invertir en el desarrollo de sus capacidades productivas.

A nivel de Latinoamérica, la estructura empresarial en su mayor parte se constituye por las pequeñas y medianas empresas (pymes), realidad de la que también es parte Ecuador, país en donde las empresas denotan inadecuadas formas gestión empresarial, lo cual salta a la vista al evaluar la estructura organizacional pues es muy frecuente que la administración se lleve sin el establecimiento de organigramas y, en algunos casos, sean carentes de la aplicación de un manual de funciones (Tobar, 2015). Sin embargo, a pesar de sus debilidades intrínsecas, algunas empresas de la provincia del Guayas buscan mantener su competitividad a través de calidad de los servicios y productos que generan, así como mediante las negociaciones en mercados aliados, pero, "su talón de Aquiles" se visualiza en los costos elevados (Carvache *et al*., 2018).

Frente a estas circunstancias, como se menciona en líneas anteriores es necesario que las pymes desarrollen planes estratégicos, para que exploten en mayor grado la oferta de su producción mediante la diversificación e innovación para incrementar su nivel de competitividad dentro del mercado globalizado, pero el sentido de tener presencia como país competitivo implica un trabajo asociativo entre sectores empresariales, entidades del gobierno nacional así como la población en general para que sumen

esfuerzos a fin de impulsar el desarrollo empresarial y económico de la nación (Cadena *et al*., 2018). Mucho más cuando el desarrollo de las fuerzas productivas de las pequeñas y medianas empresas es un objetivo político que beneficia a la sociedad en su conjunto.

A nivel interno la competitividad no solo depende de los directivos de la empresa, sino que también implica a todo el recurso humano que labora dentro de la empresa, pero también obedece a las relaciones que se mantengan con agentes externos, tales: clientes y autoridades (Gutiérrez y Almanza, 2016). Es por ello, que cada entidad debe de mantener intacta la filosofía que la competencia es el motor empresarial que brinda a toda compañía la oportunidad de trabajar desde una perspectiva destacable en un mercado flexible, lo que propicia a la innovación como un fenómeno concomitante (Barrios *et al*., 2019).

El alcanzar adecuados estándares de competitividad, demanda de prácticas que favorezcan la introducción de mejoras continuas en todas las dimensiones de la realidad empresarial, que van desde la gerencia y administración, hasta la forma como los empleados se relacionan en la faena productiva (Gil , 2017) porque en el mercado cada ente compite para tener presencia en el entorno y sacar el mayor provecho con el menor costo (Horta *et al*., 2015), por lo cual, reluce la pregunta de investigación: ¿Qué relación conecta a la innovación y la competitividad en las empresas ecuatorianas? Interrogante que se plantea con la finalidad de determinar la influencia de la innovación frente a la competitividad en las medianas empresas, en un país que en el 2016 las empresas de este tamaño abarcaron el 76,59% (INEC, 2016).

1. Materiales y Métodos

En el contexto del tema tratado en el presente artículo se han revisado bases referenciales sobre la innovación como factor que estimula la competitividad. Esta investigación se desarrolló desde un diseño no experimental de tipo transversal, exploratorio y fundamentalmente bibliográfico para referenciar diferentes textos y contextos. Conviene destacar que el criterio para seleccionar las fuentes documentales, en la modalidad de artículos científico o monografías sobre el tema, estuvo estrechamente relacionada a las variables e indicadores que surgen del objetivo de investigación, tal como se muestra en la siguiente tabla:

Tabla No. 1.

Resumen de los indicadores considerados por cada variable.

Variables	Indicadores
Innovación	Gestión del Conocimiento
	Factor interno
	Factor externo
	Calidad
	Tecnología
	Procesos
	Recursos
	Clientes
	Rentabilidad
Competitividad	Participación empresarial
	Mercado local
	Factores productivos
	Recursos
	Valor agregado
	Innovación
	Estructura productiva
	Oferta innovadora

Fuente: Elaboración propia. Datos alcanzados en el estudio.

Tal como señala Arias (2006), el diseño documental de investigación se sustenta en un conjunto de operaciones contentivas al: análisis, interpretación, contrastación y crítica de fuentes documentales de diversa naturaleza, con la finalidad de aportar nuevos o renovados saberes sobre la síntesis y organización que surge de una aproximación teórica, lo que hasta cierto punto posiciona nuestra investigación en los dominios de la hermenéutica, que sitúa a los textos en sus contextos de enunciación con condición de posibilidad para desarrollar un tema o problema de estudio.

2. Influencia de la innovación en la competitividad de las medianas empresas del Ecuador

La competitividad, es el resultado de la combinación de varios factores que involucra la capacidad del gerente en el sentido de administrar los recursos de una empresa (Rubio y Buitrago, 2019). Además, implica la capacidad de crear nuevos productos a menor costo y en menor tiempo (Vázquez *et al*., 2014), es por ello por lo que se: "Requiere un equipo directivo dinámico, actualizado, abierto al cambio organizativo y tecnológico, y consciente de la necesidad de considerar a los miembros de la organización como un recurso de primer orden al que hay que cuidar" (Leyva *et al*., 2018: 17).

Toda la evidencia empírica y teórica demuestra que una empresa crea ventaja competitiva cuando se inserta en un proceso sostenidito de productividad y dota de niveles sufrientes de calidad a los bienes y servicios que produce y reproduce, por ende, su evaluación se efectúa bajo estrictos estándares (López, 2016) y se mide en función de aspectos económicos, humanos y físicos (García *el at.,* 2017). Es por ello, que las organizaciones empresariales, en todos sus niveles y modalidades de existencia, deben de prestar especial atención al mejoramiento de las actividades del quehacer empresarial, lo cual se alcanza mediante objetivos estratégicos bien definidos, esto es, definidos al calor de las aspiraciones y necesidades de sus clientes.

Bajo esta concepción proactiva, reluce el hecho que en su interior las empresas tienen la apremiante tarea de armar las condiciones idóneas de actuación en el rango de su direccionamiento empresarial, teniendo –sobre todo– muy en claro que la competitividad no sólo hace referencia al producto, sino también, involucra a distintos procesos objetivos y subjetivos, que empiezan desde el interior de las organizaciones.

En este sentido, es importante tener presente la relevancia de la inteligencia empresarial, misma que se materializa a través de la gestión del conocimiento, porque conlleva al fortalecimiento de las habilidades del talento humano a través de la capacitación de la fuerza de trabajo, de tal manera que permita que este recurso intangible propicie al aprovechamiento de la innovación tecnológica como fuente de estimulación hacia la ventaja competitiva y de productividad (Didriksson, 2015; Fuentes *et al*., 2016)

Lo anterior, deja entrever que el conocimiento representa un activo importante en las empresas, que, fusionado con la implementación de las tecnologías de información y comunicación en sus procesos productivos, canaliza a la innovación y se torna en tanto elemento de la inteligencia empresarial como eslabón de la competencia y es catalogada como parte de la gestión del conocimiento.

Por su parte, el término de calidad también está relacionado con la competitividad, pues en torno a este giran el conjunto de acciones, planes, decisiones estratégicas en las empresas. Hoy en día la apremiante globalización permite que las negociones traspasen fronteras, empero las dinámicas de las transacciones se efectúan bajo diferentes estándares siendo uno de ellos las normas *International Organization for Standardization* (ISO) con la finalidad de estandarizar procesos que verifiquen que el producto está cumpliendo con las necesidades de los clientes, los cuales son cada vez más exigentes y el estatuto de certificación de cierta forma permite a las empresas competir abiertamente (Botello, 2016).

Ahora bien, en el nivel externo de las empresas factores exógenos inciden de manera directa en las organizaciones y, por ende, propician a influenciar en lo referido a la competencia, pues aspectos como las normas jurídicas, situación económica del país, condiciones del mercado (Mora-Riapira *et al*., 2015; Durán, *et al*.,2018) se muestran como externalidad para las organizaciones empresariales las cuales pueden resultar de cierto modo no tan favorables.

Además, el hecho de competir en el mercado implica conocer a quienes se encuentran en el mismo rol de actuación, precisamente en este punto la tecnología juega a favor, pues por medio de las redes sociales las empresas pueden obtener información sustanciosa que refiera sobre los movimientos de sus competidores (Cepeda y Velásquez, 2017) y, con aquel insumo de datos, plantear estrategias de actuación. En este sentido, es menester señalar que siempre las organizaciones deben de aplicar su respectivo diagnostico situacional porque les reconoce fortalezas mediante la captación de oportunidades que derivan en resultados positivos en distintos roles de actuación, en donde las finanzas se pueden mostrar con ventaja frente a otras empresas lo cual se vea reflejado mediante las utilidades generadas tornando aquello una ventaja competitiva (Tarapuez *et al*., 2019).

Conclusiones y recomendaciones

Las fuentes revisadas demuestran claramente que, la innovación como fenómeno integral que busca desarrollar al máximo las capacidades productivas de una empresa determinada tiene variadas implicaciones económicas y de competitividad, ya que, por un lado, aumenta la cantidad y calidad de los bienes y servicios que se producen y, al mismo tiempo, reduce los costos al hacer más eficiente y eficaz el proceso productivo. Por el otro, la innovación incrementa el abanico de opciones que las pymes otorgan a sus clientes para satisfacer sus necesidades y deseos con ofertas de calidad en un contexto de creciente competencia, nacional y global.

Por todo que lo que representa para la economía empresarial y para las finanzas públicas, en particular, la innovación es también un asunto político de primer orden, de hecho, en Ecuador según datos aportados por la Secretaria de Educación Superior, Ciencia, Tecnología e Innovación SENESCYT (2019), el gobierno ecuatoriano promueve el llamado acuerdo 2030 como un espacio de concertación entre el sector industrial, la academia y las distintas instancias de gobierno con alguna competencia en la materia para construir un país más competitivo. Además, la política de innovación ecuatoriana está en completa sintonía con los propósitos de Nacionales Unidades ya que el acuerdo:

> (…) está articulado con los Objetivos de Desarrollo Sostenible que impulsa la Organización de Naciones Unidas, se concretará con base en tres acuerdos: una estrategia de innovación abierta que vincule a los actores del sistema de innovación, ciencia y tecnología; la construcción de un fondo permanente de investigación, desarrollo tecnológico e innovación; y, el compromiso de avanzar en la transformación digital (SENESCYT, 2019: s/p.).

La anterior cita pone en evidencia que la innovación se constituye en un fenómeno multidimensional que no debe reducirse a sus implicaciones empresariales, sino que demanda por parte de los investigadores acuciosos, de la estructuración de un modelo teórico y metodológico amplio que apueste además por el di**á**logo interdisciplinario para dar cuenta de la innovación en sus facetas: técnico-científica, económica-empresarial y como política de estado que busca introducir mejoras continuas en la pymes y la sociedad en su conjunto al calor, de los desafíos que imponen los mercados.

Efectivamente, los cambios introducidos en el orden internacional por la pandemia de COVID-19 pueden desembocar incluso en la introducción de nuevo modelos económicos y políticos inciertos tal como señalan (Arbelaez-Campillo *et al.,* 2019; Villasmil, 2020), ante esta situación una de las estrategias empresariales más adecuadas es la innovación como condición de posibilidad para no perecer ante las transformaciones estructurales de los mercados nacionales e internacionales. Y es que la competitividad de las empresas demanda que se apliquen mejoraras continuas en todas las dimensiones del proceso productivo, en un contexto en el cual, las pymes que no están a la vanguardia de las demandas del mercado y no logran potenciar sus capacidades ven reducidas sus oportunidades de negocios o incluso se van a la quiebre.

En conocimiento de estas y otras realidades que viene a determinar el funcionamiento de las pequeñas y medianas empresas en Ecuador, se efectúan las recomendaciones siguientes:

- Potenciar los vínculos que se dan en el triángulo innovación, estructura empresarial y políticas públicas para el logro del desarrollo sostenible.

- Hacer de la innovación una cultura empresarial que se oponga a las gerencias estáticas y tradiciones que, temen impulsar mejoras sustanciales en los procesos productivos.
- Fomentar el desarrollo de investigaciones en clave interdisciplinaria desde un concepto holístico de innovación que busca expandir su alcance y significado a todas las actividades humanas.

En este orden de ideas, no debe suponerse tampoco que la innovación es simplemente una moda o una tendencia teórica que no responde a las necesidades del negocio, nada resultado mas ilusorio, toda vez que la innovación es simplemente la capacidad intrínseca de toda empresa para descifrar en cada momento las demandas del mercado y evolucionar en función de sus grandes tendencias.

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Information technology in the litigation due to the pandemic COVID-19

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Abstract

Changes in IT information technologies in the judiciary have become particularly evident in the context of the pandemic in an urgent need to file documents electronically, hold online court hearings, and the need to respond and efforts to ensure justice are imposed. In view of this, it is important to analyze the location and importance of information technologies in the judiciary in the face of the COVID-19 pandemic, in order to pay attention to the shortcomings and prospects of their implementation. As a result, the work aims to study the location and importance of information technology in the judiciary in the context of COVID-19. The research methods used are the dialectical, statistical method, method give method, method of a legal analysis document, articles and monographs, generalization method, comparison method, synthesis method, modeling method. By way of conclusion, the scope and significance of information technologies in the judiciary in a pandemic such as this one is highlighted, although their widespread use leads to problems in the courts that require other investigations for effective resolution.

Keywords: COVID-19; electronic court; information's technology; digital justice; legal informatics.

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Tecnologías de la información en el litigio en el contexto de la pandemia COVID-19

Resumen

Los cambios en las tecnologías de la información TI en el poder judicial se han vuelto particularmente evidentes en el contexto de la pandemia cuando existe una necesidad urgente de presentar documentos electrónicamente, realizar audiencias judiciales en línea y se impone la necesidad de responder rápidamente y coordinar esfuerzos para garantizar el acceso a la justicia. Ante esto, es importante analizar el lugar y la importancia de las tecnologías de la información en el Poder Judicial ante la pandemia de COVID-19, para prestar atención a las deficiencias y perspectivas de su implementación. En consecuencia, el trabajo tiene como objetivo estudiar el lugar y la importancia de la tecnología de la información en el poder judicial en el contexto del COVID-19. Los métodos de investigación empleados fueron el método dialéctico, método estadístico, método analítico, método de análisis de documentos legales, artículos y monografías, método de generalización, método de comparación, método de síntesis, método de modelado. A modo de conclusión se destaca el alcance y significación de las tecnologías de la información en el poder judicial en una pandemia como la presente, aunque su uso generalizado acarrea cuestiones problemáticas en los tribunales que requieren de otras investigaciones para su resolución efectiva.

Palabras clave: COVID-19; tribunal electrónico; tecnologías de la información; justicia digital; informática jurídica.

Introduction

In today's context of the spread of coronavirus disease, the use of information technology in the courts is an urgent need. Thus, the information support of courts contributes to the observance of the main principles of justice – publicity and openness, which is very important in terms of restricting participation in court hearings, the inability to submit documents in person, etc.

Thus, the Law of Ukraine "On Protection of the Population from Infectious Diseases" (2000) (with the amendments (2020) regulates the effect of the quarantine and the possibility of establishing temporary restrictions on the rights of individuals and legal entities. Resolution of the Cabinet of Ministers of Ukraine No 211 of March 11, 2020 "On prevention of the spread of coronavirus Covid-19 on the territory of Ukraine" (with further changes) establishes quarantine on the territory of Ukraine (Venice

Commission - Observatory on emergency situations, 2020; Hrevtsova, 2020).

On March 16, the Chairman of the Council of Judges of Ukraine (2020) addressed the courts with a recommendation to establish a special regime of courts. The High Council of Justice also provided recommendations to the courts on the administration of justice on March 26, 2020, and recommended: continuous administration of urgent cases, which are determined by procedural codes and courts (judges); if possible, to hold court hearings in real-time via the Internet; restrict access to court hearings of persons who are not participants in the proceedings; go to the processing of electronic correspondence. That is, in a pandemic, information technology must be used in the courts.

Requirements for the use of information technology in the courts of Ukraine meet international standards. Article 9 of the Constitution of Ukraine (1996) stipulates that the Convention for the Protection of Human Rights and Fundamental Freedoms, ratified by Ukraine, is part of national legislation. The Convention (1950) derogates from certain rights, but only to the extent required by the provision, and provided that such measures do not conflict with its other obligations under international law. Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms also guarantees the right to a fair trial. Therefore, to fulfill its obligations under international law, Ukraine must ensure the right to a fair trial, and without the use of electronic technology, this is impossible.

Besides, Ukraine's accession to the European Union is impossible without the introduction of international standards for the exchange of legal information in electronic form via the Internet. Given the above, there is a topic about the role and place of information technology in the judiciary during a pandemic is quite relevant and requires detailed analysis.

1. Analysis of recent research

The regulation of artificial intelligence is of interest to many Ukrainian and foreign researchers, but there is no comprehensive study of international legal regulation of intellectual property rights created by artificial intelligence.

To study the place of information technology in justice in a pandemic, the works of the following authors were analyzed: Babyak (2016), Vaivala (2016), Grygorenko (2020), Yeltsov (2020), Zaporozhchenko (2020), Petrenko (2018), Moroz (2020), Fisun and Kostrikova (2020), Turkina (2011). Thus, Babyak (2016) in their article they analyzed the state and problems of information and analytical support of the administrative courts

of Ukraine. The author drew attention to the fact that in the administrative courts at present the processes of informatization of both internal processes between courts are insufficiently established, and access to "e-justice" for participants in the process is not provided.

Further, Vaivala (2016) also devoted his research to communications and information technology of communications between the court and participants in the trial, between the court and other government agencies. Thus, the author analyzed in detail how to speed up the process of establishing a dialogue between the participants in the process and the court, as well as between the judiciary and government agencies to timely consider cases. The author's article was especially useful for the study of information technology in the judiciary in a pandemic.

What is more, Grygorenko (2020) analyzed the functioning of the subsystem "Electronic Court" and the court in video conferencing and addressed the problematic aspects of its functioning in a pandemic. In his work, Yeltsov (2020) revealed the essence of information support of courts. Moreover, Zaporozhchenko (2020) conducted a detailed analysis of the proceedings during quarantine and analyzed the case law on procedural issues. In addition, Moroz (2020) identified information support in the courts of Ukraine as the object of research of his work. The author analyzed in detail the state of information support in courts of different jurisdictions and put forward proposals to improve such support.

Besides, Petrenko (2018) analyzed the role of information technology in the judiciary, while earlier Turkina (2011) also analyzed the importance of the use of information technology in the judiciary.

Finally, Fisun and Kostrikova (2020) analyzed the quarantine proceedings and technologies that were introduced in the pandemic, as well as compared Ukrainian information technologies in justice with foreign ones. In addition, articles of lawyers on Internet resources, forums, websites of the High Council of Justice and other resources were analyzed, which allowed to conduct a comprehensive comprehensive study.

Thus, the analysis of the above literature shows that the study of information technology in the judiciary is of considerable interest among scientists. However, in a pandemic, no comprehensive study on this issue has been conducted. Therefore, there is an urgent need to study the place and role of information technology in justice in a pandemic.

2. Methodology

During the study of the role of information technology in the judiciary in a pandemic, such methods as the dialectical method, statistical method, analytical method, method of analysis of legal documents, articles and monographs, generalization method, comparison method, synthesis method, and modeling method were used.

The dialectical method allowed to analyze how the legislation regulating the use of information technologies in normal conditions and how it has changed in quarantine conditions is developing. The statistical method allowed to analyze statistical data, compare them and compare the increase and decrease in the use of information technology in courts, and also allowed to analyze the reports of the State Judicial Administration of Ukraine (2018) and pay attention to mathematical indicators of information and technical support of courts, the state of the introduction of video communication in court premises, etc.

The analytical method made it possible to consider in detail the regulations of both international and Ukrainian and highlight their main provisions governing the introduction of e-court in Ukraine. The method of analysis of legal documents, articles, and monographs was used in the study of legislation and scientific works of scientists on the research topic. With the help of this method, it was possible to comprehensively study the work of many researchers and highlight the main features of the introduction of information technology in the courts of different countries.

Furthermore, the generalization method has made it possible to combine the general provisions on information technology and the digital transformation of government and the e-court through various international legal instruments. The method of comparison allowed us to compare the role of information technology in Ukraine and abroad, which is also allowed to conduct a comprehensive study.

In addition, the method of synthesis was used to study certain regulations governing the use of information technology in the courts in order to further generalize the provisions of such regulations.

The use of the modeling method allowed to model how the relations in the field of information technologies and their use in court will be further developed and transformed and how Ukrainian and international legislation needs to be reformed so that it meets the requirements of time and social development.

3. Presentation of key research findings

In modern conditions, any institutional transformation of the judiciary must take into account their information dimension as a special object of public administration and a factor that directly affects this process. The functional value of the information and legal activity of the judicial system is expressed in the expansion of the boundaries of access to justice, which actualizes the political and legal participation of the judiciary in the information space of Ukraine. The information openness of the institutions of the judiciary has a clear instrumental value in ensuring the political and legal integrity of justice in the information interaction of the state and civil society.

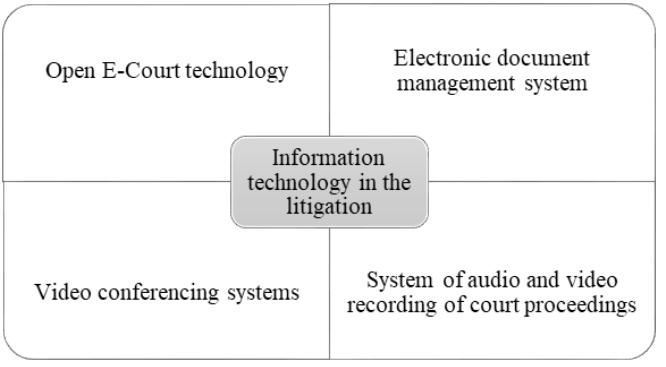

Figure 1: The groups of nformation technology in the litigation (Own creation).

The basic criteria for assessing the information openness of justice should include:

- The qualitative level of realization of the right of citizens to information about the judicial activity.
- The degree of public confidence in the judiciary and the level of authority of the judiciary in society.
- The level of ensuring the right of citizens to information about the judicial activity, and;
- The degree of satisfaction of the interests of the judicial community in the information sphere (Council of European Judges, 2011).

Before considering the place and role of information technology in pandemic litigation, it should be studied how they are used in the courts.

Information technology in the litigation can be divided into several groups:

- Electronic document management system.
- System of audio and video recording of court proceedings.
- Video conferencing systems.
- Open E-Court technology (Figure 1).

An electronic court was launched in Ukraine during the quarantine. The Law of Ukraine "On the Judiciary and the Status of Judges" (2016) entrusts the implementation of e-justice to the State Judicial Administration of Ukraine.

However, in emergency conditions for the introduction of quarantine, remote justice in the conditions of national quarantine is not limited exclusively to the activities of the Electronic Court. The problem of participation in court hearings is solved by providing the possibility of holding a court hearing by videoconference (High Council of Justice, 2020). Thus, concerning participation in the hearing by videoconference, then during the quarantine, amendments to the procedural codes came into force, which provide for the possibility for the duration of the quarantine to participate in the hearing by videoconference outside the court using their technical means. This means that lawyers and representatives of the parties and other participants in the widowhood process will be able to participate in the meeting from their computer or telephone (Legal Bulletin of Ukraine, 2017). The use of quarantine videoconferencing is timely and necessary in quarantine and the use of such information technology in the courts should continue.

At the same time, several problems in the use of information technology do not depend on quarantine.

Thus, some audio recording and recording systems currently used in Ukrainian courts do not provide multi-channel recording, as required by international law. Records made by such systems are not protected from editing, editing and rewriting with modified content, i.e. there is a possibility of their partial or complete falsification without the possibility of verifying legitimacy.

Open Court technology is used to a rather limited extent in Ukraine. In general, the Open Court technology was created to ensure public control over the fairness of justice, a system of audio and video broadcast of the trial in real time via the Internet, which allows increasing the responsibility

of judges. Directly implements the principle of publicity and openness of the trial. This technology provides the ability to view the trial online via the Internet. Used in the courts of the United States, the Russian Federation. Providing such an opportunity in Ukraine would greatly help to make the trial public.

It would not be superfluous to introduce an electronic document management system in the courts, which would allow the participants in the process to be acquainted with the case materials and submit electronic evidence without unnecessary bureaucracy.

Nevertheless, in general, the organization of information support of courts should take into account specific features, properties, forms, legal aspects of information, be able to ensure the functioning of the judicial system in terms of reform, and create conditions for improving the efficiency of the judiciary. First of all, it is necessary to take into account that the information used in court proceedings has several features: large amounts of information; repeatability of cycles of receiving and processing information in a certain sequence; a variety of information by access mode, etc. For the effective use of information technology in the judiciary, it is necessary to take into account the peculiarities of the administration of justice and the properties of information.

If we analyze the statistics on the use of information technology in the courts, it is currently as follows (Table 1, Table 2, Table 3: Figure 2; Figure 3).

Types of courts	**Number of court hearings held by videoconference via Internet**			
	2018		**2019**	
	Number	**Dynamics, times**	**Number**	**Dynamics, times**
Courts of appeal	17081	1,1	28710	1,7
Local commercial courts	12196	1,4	15559	1,3
Commercial courts of appeal	3528	1,2	4811	1,4
District administrative courts	7546	1,8	10859	1,4
Administrative courts of appeal	3655	1,5	4224	1,2
Local courts	87730	0,9	103665	1,2
Total	131736	1,2	167828	1,3

Table 1: The use of information technology in the courts in 2018 and 2019. Own elaboration.

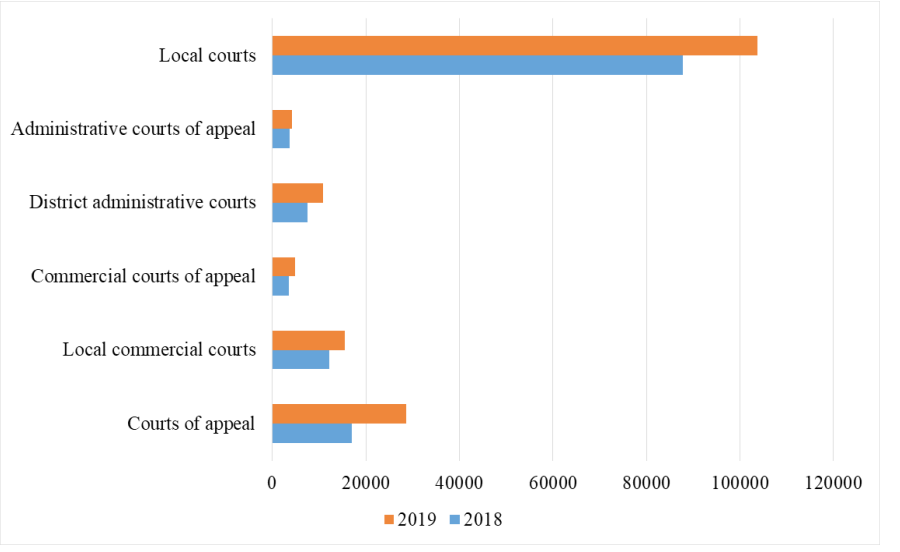

Figure 2: Number of court hearings held by videoconference via Internet in 2918, 2019. Own elaboration.

The State Judicial Administration of Ukraine (2020a, 2020b) in its reports of 2019 noted that it continued to take organizational measures to provide judges of Ukraine with means of information and support of electronic documents of justice.

Types of courts	Informatization tools, thousand UAH		Informatization services, thousand UAH	
	2018	2019	2018	2019
Local courts	135063,8	165642,7	55 444,4	53551,6
District administrative courts	21509,6	27363,4	11993,7	16460,3
Local commercial courts	15757,3	20398,4	6054,3	10335,3
Courts of appeal	35301,0	21408,8	25540,2	20076,8
Administrative courts of appeal	12962,4	7705,4	6947,5	7971,5
Commercial courts of appeal	5683,5	4495,0	2680,8	3764,3
Total	226277,6	247013,7	108660,9	112159,7

Table 2: Costs of providing courts with information facilities in 2018 and 2019. Own elaboration.

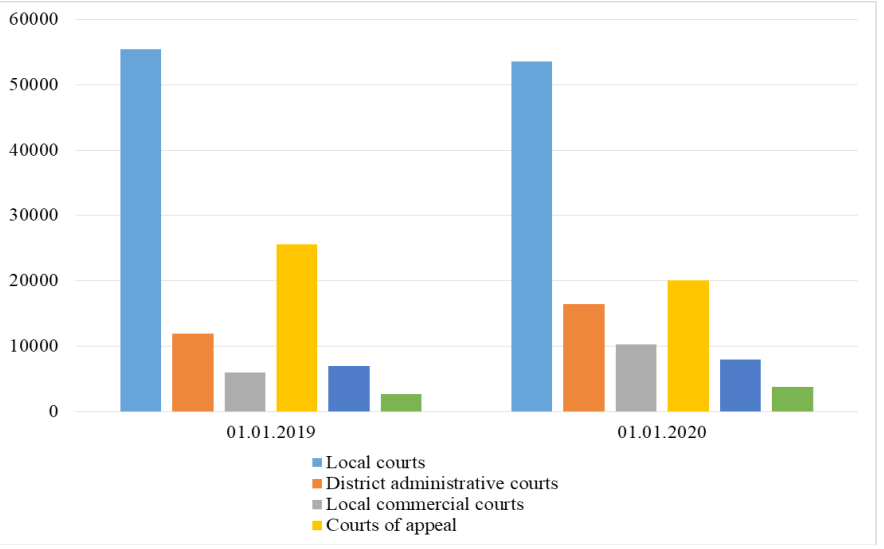

Figure 3: Costs of providing courts with information facilities in 2019 and 2020. Own elaboration.

Types of courts	Total		
	2018	2019	Dynamics, %
Local courts	190508,2	219194,2	15
District administrative courts	35503,3	43823,7	23
Local commercial courts	21811,6	30733,7	41
Courts of appeal	60841,2	41485,6	-31
Administrative courts of appeal	19909,9	15676,9	-21
Commercial courts of appeal	8364,3	8259,3	-1
Total	336938,5	359173,4	7

Table 3: The Dynamics costs of providing courts with information facilities in 2018 and 2019. Own elaboration.

Statistical data confirm that every year information technologies are used more and more in the courts of Ukraine (Table 1). This is manifested both in the increase in the allocation of funds for this area (Table 2, Table 3) and the increase in the use of electronic justice and information technology in justice.

Now, let's pay attention to how information technologies are used in courts in different countries of the world.

For example, in the United Kingdom, the Grand Court of England has begun testing the possibility of holding all meetings by video conference using the WT MeetMe application, a video conference called Skype for Business.

In the Republic of Lithuania, there is a service with which you can submit procedural documents online. In Australia, it is also planned to conduct court proceedings by videoconference using Skype, etc.

In the United States, there is an electronic court system with free access, through which it is possible to obtain information about the court document, read the register of applications, study the progress of the case and the history of decisions, as well as view the calendar of scheduled hearings (The introduction of it-technologies in the judiciary is one of the ways of transparent court activity, 2017).

Thus, both in Ukraine and in the world, despite many problematic issues, information technology is playing an increasingly important role in the judiciary. Quarantine has become a so-called test for the judiciary, which has made it possible to understand how adaptive Ukrainian courts are and capable of change in difficult times.

Conclusions

- Under quarantine conditions, all countries have begun to take active steps to meet the information support of courts, but only the full implementation of these steps will significantly increase the transparency of courts, reduce litigation, increase accountability of judges and court staff, and will allow organizing at the appropriate level the process of acquainting the parties with the case materials, etc.
- The following notes were drawn during the study.
    1. The use of information technology improves access to justice and increases its efficiency and transparency of mechanisms for its implementation.
    2. There is a need for further unification of computer technology to automate litigation.
    3. Whether quarantined or not, information technology in courts should serve as a tool or means of improving the administration of justice, facilitating users' access to courts and strengthening the guarantees established by the Convention – access to justice, impartiality, judicial independence, fairness and

reasonable time for the consideration of the case.

4. The introduction of Internet technologies in the judiciary should not harm the authority of the judicial system.
5. It is important to ensure that in case of failure of the "e-court" there will be alternative solutions (backup e-mail address, etc.)
6. Not all people have access to information technology (retirees, low-income people, etc.), so traditional means of accessing information should remain.
7. It should not be forgotten that in the case of online litigation or the development of online platforms for autonomous court decisions, it is necessary to take into account the interests of the parties and ensure compliance with their procedural rights (to present evidence, call witnesses, etc.).
8. It is necessary to conduct legal education work to disseminate information about the possibilities of electronic justice because often people do not use electronic services just because they do not know about their availability and functionality.
9. It is important to establish the protection of databases and information contained in the electronic mode at different levels of security. This can be achieved by using various remote servers and restrictions on the access of court staff and enshrining such restrictions at the legislative level.
10. The introduction of information technology helps and will further save citizens and the state budget by reducing the cost of paper, postage, etc.
11. It is necessary to ensure a dialogue between technology developers and those responsible for litigation. Regardless of which body is responsible for the management of information technology, it is important to ensure the participation of judges in the decision-making process regarding the use of such technology.

- Thus, the introduction of information technology in the judiciary is a necessity and requirement of today and it is one of the ways to ensure transparent court activities and guarantee access to justice because these technologies help bring the court closer to the citizen. In particular, the need to use information technology in the judiciary has become more acute during quarantine restrictions, when people are in real danger of not being able to physically submit documents and participate in court proceedings, as several restrictions on the administration of justice have been imposed.

- Moreover, even taking into account the many positive steps taken by Ukraine to introduce information technology in the courts, the research topic requires further research. Thus, it is necessary to dwell on the analysis of the possibility of using and implementing online platforms for online litigation and to develop methods of informatization and the right to educate citizens about the possibilities of applying to the court electronically.

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Virtual Mediation in the Field of Intellectual Property

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Abstract

The work aims to analyze the theoretical aspects of the use of information technologies in the mediation process, as well as the aspects of its implementation. The purpose of the investigation is online mediation as a form of resolution of intellectual property disputes. In addition, the topic of study is the social relationships that arise when using information technologies and mediation to resolve civil conflicts in the field of intellectual property. The research methods used in this case are the dialectical method, the generalization method, the comparison method, the analysis method, the synthesis method, the method in administration and the deduction method, the modeling method, and the abstraction method. As a result of the study, conclusions are drawn on the state of online mediation in the real world, the benefits and potential problems of introducing virtual mediation for disputed parties, the need for support for special applications, along with the need for the introduction of online mediation at the state level to a state policy.

Keywords: chatbots; information technologies; intellectual property; online mediation; legal informatics.

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Mediación virtual en el ámbito de la propiedad intelectual

Resumen

El trabajo tiene como objetivo analizar los aspectos teóricos del uso de las tecnologías de la información en el proceso de mediación, así como estudiar los aspectos problemáticos de su implementación. El objeto de la investigación es la mediación online como forma de resolver disputas de propiedad intelectual. Además, el tema de estudio son las relaciones sociales que surgen al utilizar las tecnologías de la información y la mediación como vía para resolver conflictos civiles en el campo de la propiedad intelectual. Los métodos de investigación empleados en este caso fueron el método dialéctico, el método de generalización, el método de comparación, el método de análisis, el método de síntesis, el método de inducción y el método de deducción, el método de modelado y el método de abstracción. Como resultado del estudio, se obtuvo conclusiones sobre el estado de la mediación en línea en el mundo actual, los beneficios y posibles problemas de la introducción de la mediación virtual para las partes en disputa, la necesidad de soporte de aplicaciones especiales, junto a la necesidad de la introducción de la mediación en línea a nivel estatal como una política de estado.

Palabras clave: chatbots; tecnologías de la información; propiedad intelectual; mediación online; informática jurídica.

Introduction

The 2020 pandemic (COVID-19) has significantly changed our lives. The coronavirus has become a trigger for the transition of processes to the virtual world. Meditation has become part of the global informatization process, which began at the end of 1990 and intensified at times into a pandemic. The new task is the adaptation of private law to the realities of today, namely — expanding the scope of private law, reforming civil law to take into account the emergence of new social relations, development of private law instruments to regulate relations, etc. (Tkalych *et al.,* 2019).

At this time, several notions are used for mediation, which has transferred into the virtual world, and other names are online mediation, virtual mediation, and IT mediation. In this article, all three notions will be used interchangeably. Thus, virtual mediation is an alternative non-judicial method of dispute resolution with a high level of efficiency, which reaches 90% worldwide. COVID-19 has brought the peaceful settlement of

disputes through mediation to the Internet. The virus forced mediators to provide their services online (IQ Decision, 2020). To ensure the efficiency of conflict resolution, the speed of internet communication in different conditions plays an important role. Ensuring the speed of the internet communication without personal participation is possible with the help of online technologies and chatbots. Given this issue, online mediation to resolve conflicts.

The mediation procedure due to its economy and efficiency, the ability to preserve the confidentiality of the conflict, the protection of the reputation of the parties, the ability to preserve the relationship between the parties for the future is becoming more common. those with the greatest mediation are civil and commercial disputes: family disputes, disputes related to the implementation of contracts, corporate conflicts, and so on. With the development of relations in the field of information technology, intellectual property (hereinafter – IP) and the emergence of new IT-objects, the issues of their effective regulation and protection become relevant.

The specificity of the intellectual property institution and the peculiarity of intellectual property objects is their immateriality, and therefore the use of virtual mediation in such disputes is quite effective, as it allows the mediator to choose solutions without limiting the list of ways to protect the infringed right. Development of information technologies and new opportunities for dispute resolution through mediation online, through chatbots, Zoom, etc. allows to quickly resolve this type of dispute.

Thus, it is important to analyze the theoretical and problematic aspects of online mediation (IT-mediation, virtual mediation) as a way to resolve civil disputes in the field of IP, pay attention to the peculiarities of its application and analyze international experience on this issue to theoretically distinguish the positive and negative aspects of the use of mediation and the development of proposals to improve the use of mediation institutions.

Therefore, the importance of the article lies in analyzing the theoretical and problematic aspects of online mediation (computer mediation, virtual mediation) as a way to resolve civil disputes in the field of IP, pay attention to the peculiarities of its application and analyze the international experience in this regard. subject to theoretically distinguish the positive and negative aspects of the use of mediation and the development of proposals to improve the use of mediation institutions.

1. The material and method

1.1. Methodology

To study the theoretical and problematic questions of online mediation (IT-mediation) used research methods such as: the dialectical method, the generalization method, the comparison method, the analysis method, the synthesis method, the induction method and the deduction method, the modeling method, and the abstraction method.

Firstly, the generalization method allowed to combine the general theoretical aspects of the use of online mediation and the problematic aspects that the parties face during this process. Besides, the dialectical method is used to analyze the institution of mediation in its relationship and mutual development, as well as to investigate how this institution developed in resolving civil disputes in the field of IP. Furthermore, the method of comparison made it possible to compare mediation in resolving disputes in the IP field in Ukraine and abroad, highlight the features and draw attention to the positive experience of foreign countries in using online mediation in resolving IP disputes for use in Ukraine.

What is more, the method of analysis became a key method that allowed to distinguish general theoretical aspects and problematic issues of online mediation. This allowed to conduct a comprehensive study and achieve the goal of the article. Using the method of induction, conclusions were drawn on the problematic issues of the use of information technology in mediation in resolving disputes in various areas of law and clarified with the help of general problems of the problem of using online mediation in resolving disputes in the field of IP.

Also, the method of analogy allowed to analyze alternative dispute resolution and the place of online mediation, as well as the use of online mediation in different areas of law, to understand the difficulties that arise in the same conditions when resolving disputes using a mediator. Thus, an analogy was made regarding the use of online mediation in resolving labor disputes, commercial disputes, and IP disputes. Nevertheless, the modeling method helps to simulate disputes that would be appropriate in Ukraine to resolve through online mediation and to draw conclusions about what is necessary for the successful implementation of the mediation procedure.

Using the method of abstraction, online mediation was studied as an opportunity for alternative dispute resolution without considering the Ukrainian conditions of its operation. This method allowed to divert attention from the Ukrainian conditions and allowed to reveal general inconsistencies that arise during the resolution of civil disputes in the field

of IP. The methods were used both individually and together. The methods were complementary, which made it possible to study virtual mediation in the field of intellectual property from different angles.

1.2. Analysis of the Research and Findings

Mediation as a way of resolving civil disputes in the field of IP has been studied by many scholars. However, research on the aspects and problems of online mediation (IT-mediation) has not been conducted so far.

To study the selected topic, the works of the following scientists were analyzed: Kataeva (2013), Kodynets (2018), Rozhentsova (2019), Trotsyuk (2016).

Kataeva (2013) analyzed the national features of the online mediation procedure, taking into account foreign experience. This allowed the author to highlight the prospects for the development of mediation and focus on its strengths. This work helped to identify common features of mediation in Ukraine and to understand what problems the legislator, mediator, and participants in the process will face during the introduction of information technology in the mediation procedure.

Moreover, A. Kodynets (2018) analyzed the protection of intellectual property rights in the context of judicial reform. The author explores in his article the features of protection of intellectual property rights in view of the formation in Ukraine of a specialized judicial institution for consideration and resolution of disputes in this area – the High Court of IP; the problems and contradictions of the current legislation of Ukraine regulating the relations of intellectual activity are analyzed, the conclusions on the improvement of the national system of the legal protection of intellectual property are formulated. Thus, the scholar concluded that in Ukraine the necessary legal framework has been formed to ensure the implementation and guarantee of observance of the rights to creative activity, but the complexity of disputes in the field of IP, their duration, lack of common judicial approaches to resolving this category of disputes – these factors negatively affect the level of the legal protection of intellectual property. The author's work also made it possible to conclude the imperfect dispute settlement procedure in Ukraine and the need to use more expeditious methods of conflict resolution.

Rozhentsova (2019) analyzed the trends of social marketing in 2019 from chatbots to Shopping Tags, which made it possible to understand how important it is to use information technology in processes such as mediation and the need for online mediation in modern conditions.

Trotsyuk (2016) studied mediation as an alternative way of resolving disputes in the field of intellectual property is analyzed. Thus, the article explores the general principles of mediation as an alternative way to resolve disputes over intellectual property in Ukraine, identifies the goals, concepts, features and types of mediation, as well as analyzes the current state of legal regulation of mediation in Ukraine and mediation procedures in national legislation – United Nations (EU) members and the possibility of introducing information technology into the mediation procedure.

Also for writing this article, the Code of Ethics of the NAMU Mediator (2017) and the Code of Ethics of the Mediator of the Ukrainian Mediation Center (2004) and International Standards in the Field of Justice (2010), and decisions in the field of mediation (Roshen VS Kyiv Bakery and Confectionery Plant) (Liga net, 2019) and various sites where online mediator services are provided and statistical information posted on the website newjustice.org.ua.

Moreover, a deep analysis of the foreign experience was conducted by Volkova *et al.,* (2019) in their article "General characteristics of the claim in the countries of the anglo-saxon and continental law". The authors analyzed the legal acts on civil procedure of the USA, Germany, the United Kingdom, the Netherlands, Sweden, France, and the Netherlands.

As can be seen from the analysis of the studied literature on the research topic, mediation as a way to resolve civil disputes in the field of IP is of interest to many domestic scholars, but research on online mediation (IT-mediation) is almost non-existent. This indicates the need for a comprehensive study of theoretical aspects and problematic issues of using online mediation as a way to resolve civil disputes in the field of IP.

2. Results and discussion

Before considering virtual mediation as a way of resolving civil disputes in the field of IP online, it is important to define the concept of "mediation" and the objects of IP that may be disputed.

The term "mediation" comes from the Greek term "medos", which means neutral, independent of the party and from the Latin terms "mediatio" - mediation, and "mediare" - to be a mediator in a dispute. In modern literature, the term mediation is defined as a procedure, method, form, process, means of resolving a conflict. For alternative dispute resolution, the term is a generalized term used to describe a set of approaches and methods aimed at resolving disputes in a non-conflict manner, ranging from negotiations between the two parties, multilateral negotiations, mediation, consensus building and arbitration. In most European countries, the rules

of mediation are enshrined in a separate law (IMI MEDIATION. EU-EEA, 2019).

Mediation can be used, in particular, in the field of intellectual property. Regarding the objects of IP rights, they include literary and artistic works, computer programs, data compilations (databases), performances, phonograms, videograms, transfers (programs) of broadcasting organizations, scientific discoveries, inventions, utility models, industrial samples, arrangement of semiconductor products, innovation proposals, plant varieties, animal breeds, commercial (brand) names, trademarks (marks for goods and services), geographical indications, trade secrets (Civil Code of Ukraine, 2003).

Mediation disputes can be used to resolve IP disputes, both contractual and non-contractual:

- Disputes arising between the subjects of IP rights and users in connection with the non-performance or improper performance of agreements on the disposal of IP rights.
- Disputes arising regarding the granting of permission by the right holder to third parties to use IP (also compulsorily by court decision), and;
- disputes arising in connection with the use of the IP without the consent of the right holder.

In such disputes, mediation makes it possible to stop the offense by resolving the conflict quickly (which cannot be done in court). Objects of IP rights need a quick response to violations to stop illegal alienation (copying, distribution, reproduction, plagiarism, etc.), because time in such cases is not in favor of the subject of IP rights, whose rights have been violated.

A clear example of an alternative dispute resolution in the field of intellectual property is the settlement of a dispute between ROSHEN and Kyiv Bakery and Confectionery Plant on the right of the previous user to the image for packaging goods of the 30th class of the ICCP (cakes) - cake "Kyiv" (Liga net, 2019).

Although the procedure is not legally established, mediation in the field of IP includes:

- Signing an agreement on conducting mediation.
- A statement of the claims of the parties and possible ways of resolving the dispute.
- Search for the cause of the dispute.
- Elaboration of methods of reaching consensus, and;

- signing by the parties of the agreement on the results of mediation (Fig. 1).

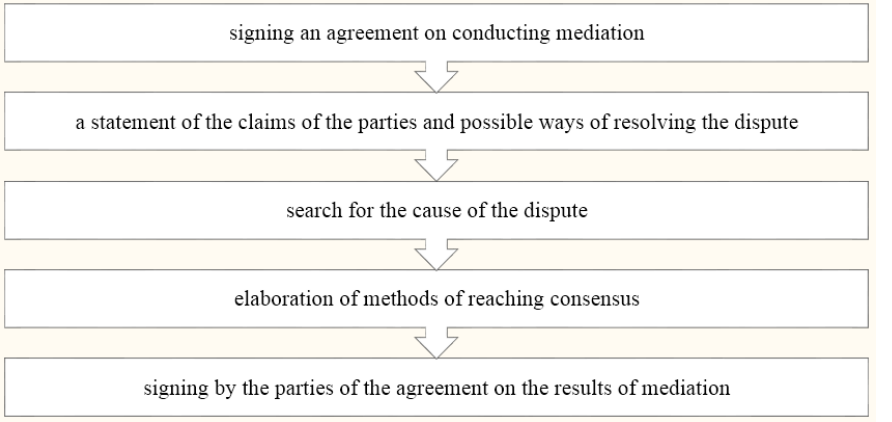

Fig. 1. The procedure of mediation in the field of IP. (own authorship)

Regarding online mediation in dispute resolution, the following should be noted.

Online mediator services are a safe way to resolve conflicts. Online mediator services are a reliable response to today's threats. Under the quarantine due to the COVID-19 pandemic, people's problems have not disappeared. Therefore, it is definitely necessary to solve problems and conflicts, and it should be done as quickly as possible, then there is a chance to save the most valuable thing – health and time. Online mediation helps.

The term online dispute resolution is not a separate way of resolving disputes but is associated with the transition of classic methods of dispute resolution (negotiation, mediation, arbitration, etc.) to the online space (LEGAL SUPPORT, 2020).

The development of online mediation in foreign countries is associated primarily with the promotion of e-commerce and, consequently, an increase in the number of disputes in this area, which could not be effectively resolved through classical litigation, because the parties to such disputes were usually at a considerable distance and the disputes were insignificant in order to spend money and time on litigation. In such circumstances, online mediation was an inexpensive, convenient, and affordable alternative to the courts.

This has spurred the emergence of online platforms such as the online dispute resolution platform on eBay and the Internet Corporation for

Assigned Names and Numbers, which offer mechanisms for resolving online disputes arising from cross-border transactions.

To successfully use online mediation based on textual communication technologies, a mediator must have four groups of skills in areas such as written competence, message management, relationship management, and content management.

Country	Number of civil mediations	Number of resolved mediations	Success rate, %	Number of civil cases in court	Balanced ratio index, %
Albania	790	n/d	-	15944	4,95
Armenia	6	5	83,30	n/d	-
Bosnia and Herzegovina	1931	1877	97,20	158046	1,22
Croatia	531	n/d	-	165741	0,32
Denmark	718	312	43,50	41717	1,72
Finland	1870	1209	64,70	10677	17,51
Georgia	24	11	45,80	34309	0,07
Greece	150	120	80,00	241418	0,06
Hungary	919	500	54,40	180382	0,51
Italy	183977	21397	42,20	1585740	11,60
Latvia	135	108	80,00	45127	0,30
Republic of Moldova	149	93	62,40	74562	0,20

Table 1. Success in Dealing with Civil Cases Through Mediation, data provided by https://newjustice.org.ua/ (2019).

A virtual mediation is a process by which parties can resolve business disputes online without the need for a personal presence. Meetings are conducted via video or teleconferencing, and any form of filing is facilitated through an encrypted cloud platform accessible over the Internet. On this day, virtual mediation takes place via Zoom. The Zoom (an American platform providing remote conferencing services) is not a solely legal platform and was designed to facilitate access to hearings. Thus, several confidentiality issues arise (IQ Decision, 2020).

There are some problematic issues in the use of online mediation in legal disputes. Firstly, the question arises of verifying the authenticity of the parties and the powers of the representatives of legal entities so that agreements concluded as a result of mediation can have legal force. There is also a problem with access to technology, which is that to use online mediation, a person must have sufficient skills to work with and access the relevant software, which is not always possible. But one of the biggest challenges for online mediation is ensuring privacy.

The first developments of online dispute resolution platforms are already appearing in Ukraine, but such mediation does not prevent the resolution of disputes in the field of IP. Nevertheless, we are sure that shortly this category of disputes will be resolved online.

Analysis of the practice of regulation and application of online mediation in the field of IP in foreign countries suggests that the effective functioning of mediation is possible in the presence of legislation that regulates mediation, rights, and obligations of litigants and mediators, requirements for mediators, responsibilities mediation participants, etc.

Statistics on resolving conflicts in the civilian sphere through mediation will clearly show the size of the potential market for online mediation (Table 1).

After analyzing the indicators of countries in terms of the number of civil mediations, the number of resolved mediations, and the number of civil cases submitted to the court, the following was done. Dividing the number of mediation cases by the number of incoming cases, we obtain the “Balanced Ratio Index” (Fig. 4) between mediation and litigation. This indicator was used to assess the effectiveness of a successful mediation model in a given jurisdiction.

Further, with the help of diagrams it is possible to present the results and compare and evaluate the number of civil mediations, resolved mediations, as well as incoming cases (Fig. 2), as well as the level of the success rate in resolving disputes (Fig. 4) in the civil sphere through mediation.

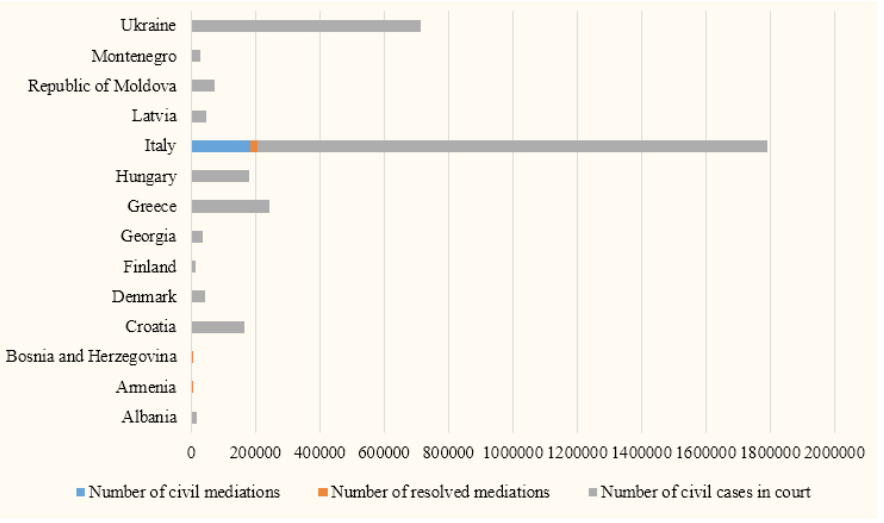

Fig. 2 The number of civil mediations, resolved mediations, as well as incoming cases, data provided by https://newjustice.org.ua/ (2019). (prepared by the authors)

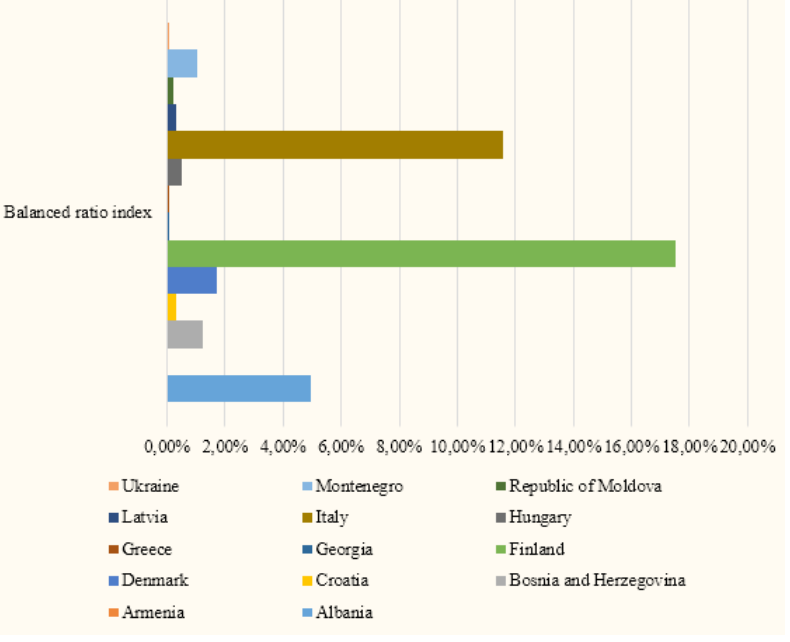

Fig. 3 Balanced Ratio Index (%),data provided by https://newjustice.org.ua/ (2019). (prepared by the authors)

Thus, mediation as a type of alternative protection of IP in Ukraine begins its development and for further development, it is necessary to have a willingness to compromise on the part of participants and the good faith of such participants.

In the European Union, mediation is seen as the voluntary expression of the will of the parties to involve an independent party to resolve the dispute independently, during which the mediator maintains his or her impartiality and confidentiality of information. When considering the relationship between litigation and mediation, there are three types of mediation:

- Private – completely independent of the trial and is applied without further litigation.
- Accompanying the trial – initiated by the court itself, but without further judicial involvement in the resolution of the conflict, and;
- judicial mediation – is conducted during the trial and includes advice and assistance of legal advisers and lawyers but excludes the participation of a judge with legal powers.

In the field of IP, mediation can be used to:

- Resolve disputes over the protection of IP rights.
- Transfer of IP rights.
- Establishment of ownership of the invention (object of IP rights);
- copyright for the invention, etc.

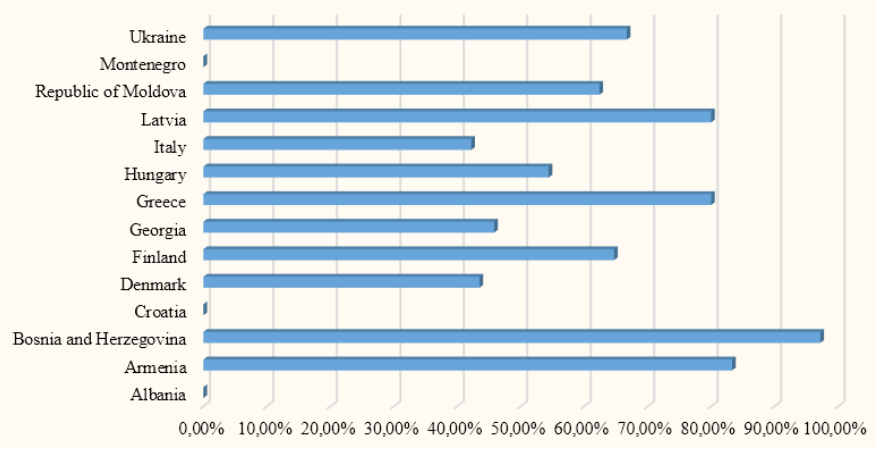

Fig. 4 The success rate in resolving disputes (%),data provided by https://newjustice.org.ua/ (2019). (prepared by the authors).

Mediation is often preferred by large companies and enterprises, as this method of resolving disputes is beneficial to their reputation, as mediation is a private procedure that provides efficient, flexible, and cost-effective dispute resolution, which allows them to maintain commercial relations.

To comprehensively study mediation as a way of resolving IP disputes, it is important to analyze its application in foreign countries.

Mediation is an effective way to resolve disputes between the subjects of the process of clarifying the issue of illegal use of the IP that is actively used in leading countries, including the United States, Great Britain, and Australia.

The experience of the United States and the United Kingdom confirms the effectiveness of mediation in resolving disputes concerning the protection of IP rights. The United States has the Mediation Act of 2001, the National Dispute Resolution Centre (2020), and the American Arbitration Association (2020), and there are many mediation agencies. Private mediators are usually former lawyers and judges or lawyers who combine their work with that of a mediator. In the United States, in addition to a voluntary agreement, the parties are required to resolve disputes through mediation by law, court decision, or administrative authority. As for the mediation process itself in the United States, the parties are housed in separate rooms, and this allows the mediator to speak openly with each party in turn as they try to find a solution. The process begins with a preparatory (introductory) meeting, in which both parties can participate independently or with their lawyer. This stage is an extremely important part of the process, during which the parties have the opportunity to hear and assess the position of the other party before the mediation begins.

Many scholars, both from the adversaries and from the supporters of Western civilization, pay attention to the problems with which it faced at the present stage of its development (Kharytonov *et al.*, 2019). Thus, the peculiarity of mediation in the field of IP in the UK is that the courts actively encourage the parties to resolve disputes through mediation. For example, if a party refuses to mediate in court, it is obliged to pay court costs, as set out in the Rules of Civil Procedure adopted as a result of the 1998 civil justice reform.

Most IP disputes in Australia are heard in the Federal Court. The Australian Federal Court Act 1976 and the Federal Court Rules (2011) provide for the possibility of resolving disputes in the field of IP through mediation.

Regarding the legal consolidation of mediation, it should be noted that in Norway a special law on the mediation procedure was adopted in 1991, in Sweden in 2002, in the Russian Federation in 2010, and in the Republic of Belarus, the law came into force only on January 24, 2014. Even the World

IP Organization has noted the positive results of the mediation procedure in IP disputes. Within this organization, the Center for Arbitration and Mediation (2020) was established, which deals with dispute resolution through the use of alternative dispute resolution (in particular, mediation).

Thus, as a result of the analysis of theoretical aspects and problematic issues of online mediation as a way of resolving civil disputes in the field of IP, it is concluded that disputes over IP are quite complex and cover not only material but also moral aspects. An effective way to resolve disputes arising in this area is mediation. Online mediation also ensures that disputes are resolved quickly, without the obligatory personal involvement of the parties. This out-of-court way of resolving conflicts allows the parties not only to avoid financial losses but also to save their time.

As a result of researching the theoretical aspects and problematic issues of online mediation as a way of resolving disputes in the field of IP, we can conclude that the number of disputes in the field of IP increases every year and many of the controversial issues could be resolved quickly at the stage of identifying the conflict as such with the help of information technology. Thus, online mediation as an alternative type of dispute resolution can serve as an effective mechanism for regulating this category of disputes.

The coronavirus pandemic (COVID-19) has forced the transition to virtual simple and online mediation – this is something that should be used today not only at the level of private entities but also at the state level.

Conclusions

As a result of the study, the following conclusion were made.

1. Ukraine is far behind developed countries in the sphere of mediation, and especially virtual mediation. The initial steps regarding the enshrinement of the institute of mediation in Ukraine at the legislative level are connected with the adoption of the draft Law of Ukraine “On Mediation” as a basis. The adoption of this project as a law will lead to the formation in Ukraine of a European balanced system for resolving conflicts (disputes).

The effectiveness of the judicial system in Ukraine, in particular, depends on the functioning at the level of the law on alternative litigation. But the next important step should be the revision of this Law to consolidate the possibility of online mediation and provide a procedure for such settlement, services on which such settlement is possible, etc.

2. On the positive aspects of using online mediation:

- The possibility of maintaining normal relations in the future.
- Maintaining confidentiality (in the case of using a special app for online mediation).
- Making a decision.
- Save time and effort, compared to litigation.
- The ability of the parties to the dispute to influence the outcome.
- Privacy, as only the conflicting parties and their representatives, can be present during the mediation process.
- Balance of interests – the interests of both parties are recognized as equal in importance.
- Voluntary decisions.
- Mutual benefit and interest of the parties in the implementation of the decision as a guarantee of implementation of the decision.
- An agreement reached by the parties through online mediation has the same force as any other agreement between the parties, and;
- ability to resolve the conflict without personal contact (especially important in quarantine).

3. The problematic issues of using online mediation:

- Lack of proper support for the development of judicial and out-of-court online mediation.
- Long-term implementation of the Specialized Court of Intellectual Property (in Ukraine).
- Low level of legal regulation of the online mediation.
- The problem of ensuring confidentiality through the introduction of online platforms.
- The lack of legal awareness of the population about online mediation procedure, and;
- the lack of proper technical support for all participants in the process.

4. Virtual mediation, the procedure of which is enshrined at the state level, is what the realities of today need. For example, the existing

Zoom platform does not cover all the requirements for an effective mediation process. Therefore, there is a need to create a specialized platform for the mediation procedure.

Regarding further research in the research topic, it is important to study the implementation of the Law of Ukraine "On Mediation" (with the chapter considering online mediation), to analyze the application of the above law in practice, as well as to explore the practice of online mediation as a way to resolve civil disputes in the field of IP cases.

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Innovation IT-Payment Technologies as a Know-how and an Object of Intellectual Property Rights

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Abstract

The modern society necessitates the introduction of new IT-solutions to meet its needs. With the spread of know-how, the need for its detailed analysis with the further determination of the direction of development. The purpose is to carry out an analysis of the introduction and functioning of know-how, as well as to determine the vectors of its use, taking into account the needs of participants in legal relations arising in this area. The subject of research – information technologies (know-how) as objects of intellectual property rights in their use. The methodological basis consists of the method of analysis, the method of synthesis, the dialectical method, the comparative-legal method, the system method, and the logical-legal method. The result of this work is to identify the importance of the information technologies in everyday life of modern society and the level of popularity of their use, outlining possible vectors of development in the economics in the direction of digitalization and justification of the need to improve the provisions of current legislation within the considered topic, expressing the idea of the direction of innovative information policy in the direction of active use of blockchain and maximum compliance with the protection of personal data of customers.

Keywords: information technology; modernization of payment technologies; *Know-how*; blockchain; legal computing.

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Tecnologías de pago del Know-how y objeto de los derechos de propiedad intelectual

Resumen

El objetivo de la investigación fue realizar un análisis de la introducción y funcionamiento del know-how, así como determinar los vectores de su uso, teniendo en cuenta las necesidades de los participantes en las relaciones jurídicas que surgen en este ámbito. El tema de la investigación - las tecnologías de la información (know-how) como objetos de derechos de propiedad intelectual en su uso. La base metodológica estuvo conformada por el método de análisis, el método de síntesis, el método dialéctico, el método comparativo-legal, el método del sistema y el método lógico-legal. Como conclusión destaca la importancia de las tecnologías de la información en la vida cotidiana de la sociedad moderna con énfasis especial en su nivel de popularidad de su uso, delineando posibles vectores de desarrollo en la economía en la dirección de la digitalización y justificación de la necesidad de mejorar las disposiciones de la legislación vigente dentro del tema considerado. También resalta la idea de la dirección de la política de información innovadora en la dirección del uso activo de blockchain por su máximo cumplimiento de la protección de datos personales de los clientes y usuarios.

Palabras clave: tecnología de la información; modernización de las tecnologías de pago; *Know-how*; blockchain; informática jurídica.

Introduction

It is known that law, as a system of mandatory rules of conduct introduced or sanc-tioned by the state, is the most effective regulator of public relations. No other social norms, such as traditions, customs, norms of morality, etc., are able to regulate and ensure the protection of various social relations as the rules of law do (Tkalych *et al.*, 2020). Only taking into account the interests of as many members of the human community as possible while adhering to clear rules and principles of coexistence can lead to the development of a full-fledged society and state (Shyshka and Tkalych, 2020).

In the context of globalization, modern society is developing rapidly. Today's challenges are related to the increase of human needs, which in turn determines the desire to ensure their dynamic and high-quality satisfaction. Therefore, there is an urgent need to modernize, including the banking sector.

The specificity of the modification of the economic sector is manifested primarily by its unique features and characteristics, which are not defined exclusively by legal issues but go beyond them, being at the intersection of different branches of law and the whole spectrum of social life in its broad interpretation (Aristova and Chernadchuk, 2012).

The modernization of the economic sector is primarily related to information technologies, which are essentially objects of intellectual property rights and are designed to improve it by adapting to the growth rate and the nature of demand from users of such a system. Thus, the introduction and further application of information technologies in the, for example, banking sector aims to expand the range of users (customers), maintain the competitiveness of the bank, attract foreign investment, and increase the reputation of the banking sector of Ukraine abroad.

It is worth noting that among all the objects of intellectual property rights, know-how has the closest relation to innovative information technologies, as it is usually the official "design" of most innovative developments. The role and importance of know-how (in the age of rapid scientific and technological progress) is constantly growing every year, absorbing more and more important areas of public life. Further, the popularity of know-how in this sector is justified by the possibility of combining a set of different types of knowledge, which are the basis of know-how. Thus, know-how can combine information on commercial processes, management methods, technological assets, databases, etc. Thus, trying to reach a new level of economic relations, institutions are actively implementing information know-how in the main aspects of their activities.

The purpose of the work is to carry out an analysis of the introduction and functioning of know-how, as well as to determine the vectors of its use, taking into account the needs of participants in legal relations arising in this area. The object of the study is the relationship that develops within the innovation activities, in particular, the introduction of know-how. The subject of research – information technologies (know-how) as objects of intellectual property rights in their use.

1. The material and method

1.1. Methodology

The methodological basis of the work were the methods of analysis and synthesis, the dialectical method, the method of generalization, the formal-legal method, the system method, historical-legal method and the logical-legal method.

Thus, using the methods of analysis and synthesis explored the general principles of regulating the introduction and use of information technologies in the banking sector, by studying the political course of the state, existing legislation, and the general state of the banking market.

What is more, with the help of the analysis, it became possible to characterize innovative information technologies (know-how) and processes associated with their application, highlight the main objectives of their introduction, signs of know-how in the banking sector, and differences with other objects of intellectual property rights. The synthesis served as a basis for combining original ideas, principles, and developments to identify the most promising way to improve the implementation of innovations in the banking sector.

Moreover, the dialectical method was used to establish the true purpose of modern innovation IT-processes taking place in the banking sector by resolving contradictions in the outdated postulates of the existing banking system, as well as the main characteristics of innovative information technology as an object of intellectual property law, which interacts with other elements of the legal system, develops, changes in accordance with the general trends of society and the legal sphere.

The system method revealed the general properties, connections, and patterns that arise when using innovative information technologies in the banking sector. As well as help to identify the problems faced by banks in the implementation of know-how and the dependence of the banking sector on changes in society and legal changes.

Furthermore, the comparative legal method helped to trace the development of the legal basis for regulating the market of banking products and services for the introduction of innovations IT, while the historical-legal method reveals drawn changes in the understanding and perception of know-how both within the general application of this concept and in regulations. The formal-legal method has become indispensable in interpreting the content of basic concepts, their basic characteristics, as well as the interpretation of legal norms governing banking in general and the introduction of innovative information technologies in particular.

The generalization method made it possible to identify the main problems and vectors of development of know-how in the activities of banks, as well as helped to conclude the study. The logical-legal method is reflected in the formulation of proposals for further improvement of the innovation information policy of banks.

1.2. Analysis of Recent Research and Findings

As for the theoretical basis of the study, the following should be mention. The works of many specialists in various fields are devoted to the study of issues related to innovative information technologies in general and their use in the spheres of public life.

In particular, Begova (2009) paid attention to the interpretation of the concept of "know-how" in terms of the main objects of intellectual property rights. She determined that the know-how was part of a trade secret. Besides, Dmitrenko (2016) studied national legislation, case law, and legal doctrine to define the essence of the concept of "know-how" in Ukraine.

Kolosov (2017) devoted his scientific works to the study of the legal regime of know-how in terms of intellectual property rights and forecasting the future prospects of its use. He concluded that currently there is no single common definition of the concept of "secret of production (know-how)", and different countries have different meanings in this concept.

Kuntsevich (2005) considered know-how through the prism of its characteristics as an object of intellectual property rights. In his work, the scientist paid considerable attention to property rights to know-how, which resulted in the separation and division of the objects of these property rights into appropriate media on know-how and directly know-how as a tangible product.

In the general perception of the theoretical and legal features of protection and defense of know-how in comparison with trade secrets in the economic sphere made adjustments with his works Matveev (2015), who compared common and distinctive features of know-how and trade secrets, highlighted the characteristics of each of these atypical objects of intellectual property rights and proposed the basic principles of protection of know-how in Ukraine. They made a lot of effort to perceive know-how as a full-fledged and indispensable object of intellectual property rights in business. In particular, the know-how was classified according to the criterion of the nature of the institutions that use it, and the ratio of the transfer of innovative technologies and their commercialization was analysed. The problem of legal regulation of the IT-transaction was studied by Davydova, Orzikh, Samoylenko, Andronov, and Pysarenko (2019).

In turn, Svishchova, Cherepanova, and Loktionova (2017) also insisted on the position of active use of know-how in the daily activities of the business sphere. The above-mentioned scientists focused their attention on an atypical object of intellectual property – know-how, in connection with which they focused on its importance in doing business and the peculiarities of methods of its protection.

Moreover, the popularity of the study and general issues of modernization of the banking sector is not inferior.

Thus, Shmigelska (2014) studied the essence, content, and prospects of banking IT. She noted that in many post-Soviet countries, the population is not prepared to accept banks as financial advisors on the use of IT in the banking sector (mobile banking, Internet banking, scoring, etc.). This hinders the development of banks, limits their ability to increase competitiveness in global financial markets.

Moreover, Dominova (2016) analyzed the genesis and specifics of forms of electronic banking, without which it is now difficult to imagine everyday life. According to her work, Internet banking and mobile banking have become the most popular and widespread in developed countries. These forms allow customers from anywhere in the world, at a convenient time for the client, to monitor the status of accounts and carry out a wide range of banking operations. At present, the attitude to the legal nature of know-how differs on a theoretical level. In particular, the term "know-how" is similar to the concept of "trade secret". The know-how is a broader concept that covers both trade secrets and trade secrets. A trade secret is a way to protect know-how.

Thus, Begova (2019) distinguishes between the concept of know-how and trade secret in content – the nature of information, because she believes that the concept of the trade secret is much broader in scope and includes not only the results of intellectual creativity, but may contain information informative and even cognitive character. Instead, Nosik (2007) sees the difference in know-how in the criteria contained in EU legislation.

Zveruk and Tkachenko (2018) have made a significant contribution to understanding the importance of digitalization (modern technologies) for the introduction and formation of an innovative model of banking business development. The example of their research clearly illustrates the innovative model of doing business in the banking sector using digital and innovative IT, including electronic banking, mobile applications, services, atypical payment technologies, and blockchain.

Pidvysotsky (2014) in his research emphasized the interaction of banking institutions with their customers by applying modern information technologies and capabilities in such interaction. In particular, a practical analysis of how banks communicate with customers was carried out, as a result of which modern innovative channels of information exchange were identified (among which the Internet plays a key role).

Nevertheless, at the same time, the issue of the use of know-how in the banking sector cannot be considered completely exhausted, as many aspects of this multifaceted phenomenon still remain incompletely studied and studied, and these issues are raised in these articles.

2. Results and discussion

The banking sector plays an important role in organizing the economic space of each state and the international community as a whole, as it provides the economy with the necessary financial resources, ensuring the free movement of capital and lending to the economy, promoting business activities and more. That is why the banking sector must develop along with the current pace of modernization of the needs of society, where IT plays an important role.

Innovations – newly created (applied) and (or) improved competitive technologies (information technologies), products or services, as well as organizational and technical solutions of production, administrative, commercial or other nature, which significantly improve the structure and quality of production and (or) social sphere (Law of Ukraine, 2002).

It is worth noting that know-how is usually associated with solving a problem through the use of modern information technology because they are designed to meet the urgent needs of modern society – saving time and effort.

Banking innovations IT are the result of the bank's activities aimed at creating new products and technologies, as well as innovative methods of managing a banking institution to obtain additional income and competitive advantages (Law of Ukraine, 2002).

The growth in the percentage of informatization of banking services in the most developed countries of the world can be seen in the Fig. 1.

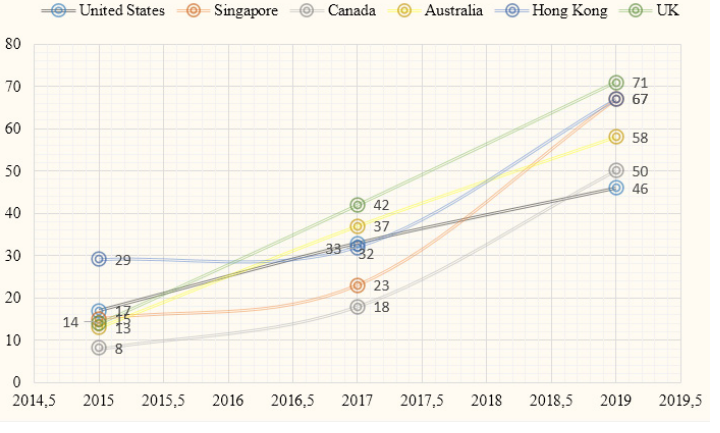

Fig. 1 The percentage of implementation of information technology in the banking sector (%), data provided by Global FinTech Adoption Index (2020).

Information technology in the banking sector are characterized by the following features (Fig. 2):

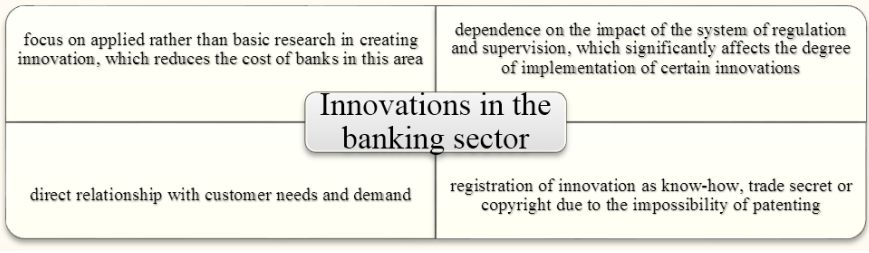

Fig. 2 The main features of the innovations in the banking sector (Own creation).

Innovations IT, in their essential parameters, are correlated with the objects of intellectual property rights, including know-how.

In the conventional sense, know-how is perceived as an innovation that has special value due to its unknown to others (Kolosov, 2017).

According to the authors, it is successful know-how definition, according to which the term "know-how" is information obtained through experience and testing, which is not well known or readily available on the date of the technology transfer agreement; is essential (important and useful for the production or provision of services); is defined (described enough to be able to verify its compliance with the criteria of obscurity and materiality) (Law of Ukraine, 2006).

Know-how in the field of IT is an object of intellectual property law, which does not have clearly defined legislation. The peculiarities of know-how distinguish it from other objects, making it unconventional, and not allowing it to be assigned to one or another group of objects. At the same time, know-how in the field of IT as an object of intellectual property rights is characterized by novelty, commercial value, inaccessibility to other entities without the consent of the author.

In addition, for the possibility of use, and especially for the protection and defense of know-how require material embodiment, i.e. must meet the criterion of identity. Thus, the know-how should be recorded in a certain way: a method is described or recorded that will further allow verifying compliance with the criteria of secrecy, materiality, and usefulness (Romashko and Verba, 2013).

As mentioned above, know-how must be in some way "formalized" in the object of property rights. Such an object may be a material medium of information about know-how (document, disk, etc.) and (or) a natural sample of any product, which is rare and is considered quite undesirable, and copies (circulation) of the original media; material products made according to specific know-how (Kuntsevich, 2005). Thus, the external form of know-how can be similar to both copyright and patent law.

Know-how in the field of IT cannot be considered various "trade secrets" relating to the cost of goods or services, plateau – or creditworthiness of enterprises, current accounting data, the terms of specific trade agreements, the content of advertising before its publication, etc. (Matveev, 2015).

In practice, know-how is closely linked to such an object of industrial property rights as trade secrets. According to the authors, this is because, first of all, know-how is previously unknown information, expressed in various forms, to increase commercial potential. At the same time, the current legislation of Ukraine does not provide for the provision of a patent, certificate or other official documents for such information to the creator, in particular, there are no special rules of law that would regulate the relations of persons related to protection thus, such protection occurs according to the general rules established for the protection of intellectual property rights. Thus, to simplify the legalization of know-how, its protection, and further protection as an object of intellectual property rights, its creators resort to identification with trade secrets.

Many scientists (section – III. B. Analysis of Recent Research and Findings), the authors believe that the trade secret is a much broader concept than know-how, so they cannot be identified. At the same time, the protection of know-how as a component of trade secrets does not contradict the general dialectical principles and the current legislation of Ukraine, which allows us to conclude that the author of know-how can determine whether this information is a trade secret or will be called "know-how".

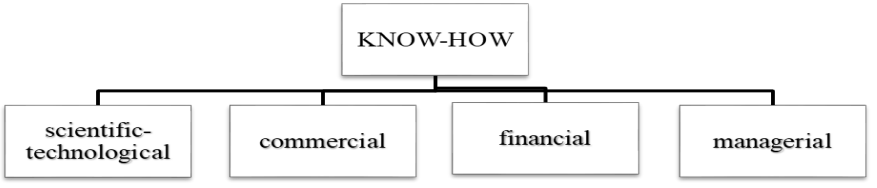

Fig. 3 The classification Main features of the innovations in the banking sector (Own creation).

Know-how can be classified according to its main purpose into (Fig. 3):

1. Scientific-technological know-how is closest to the patentable result of activity and is a technological solution to a certain actual existing problem;
2. Commercial know-how concerns the sale of products or services;
3. Financial – will allow using the available funds;
4. Managerial know-how is usually manifested in the development and application of productive and effective management structures and methods, simple, clear, and reliable structural links both vertically and horizontally, in a clear division of responsibilities, functions, and powers, in functional interaction of structural units and enterprises cooperating with each other (Matviychuk *et al.*, 2015).

In the future, the symbiosis of new and currently known and used technologies of banking services will be based on methodological and structural-technological transformation of the bank's head, front and back offices, which is based on a clear division of powers and functions. That is why managerial know-how deserves special attention among banking innovations.

In the banking sector, scientific-technological know-how is not used often enough, while other types of it productively support the activities of banks.

Thus, the know-how of the banking segment is manifested in the creation of a banking product or service in a new market sector and a new banking product or service in the traditional market, the use of previously unknown methods and ways of managing funds through information technology, the transformation of financial intermediation services aims to reduce the number of transactions and increase the efficiency of asset and financial liability management.

In practice, know-how in the field of IT, as previously unknown knowledge, is often modified into a new banking product or service that is gradually introduced to the market (fig. 4).

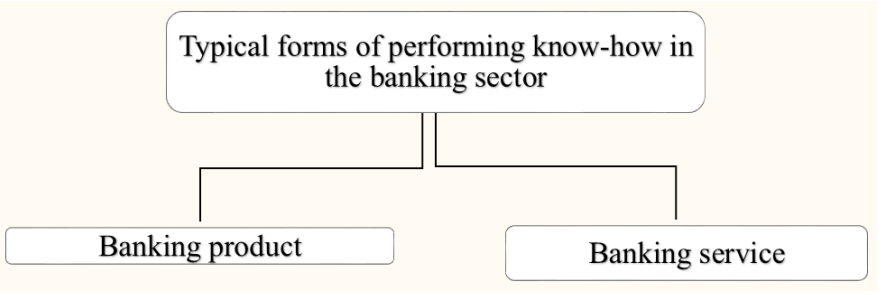

Fig. 4 The forms of know-how in the banking sector (Own creation).

Another thing should be mention that the effective innovation IT is possible only if the optimal organization of the innovation process. The scheme of implementation of the banking innovation process can be depicted as follows (Fig. 5).

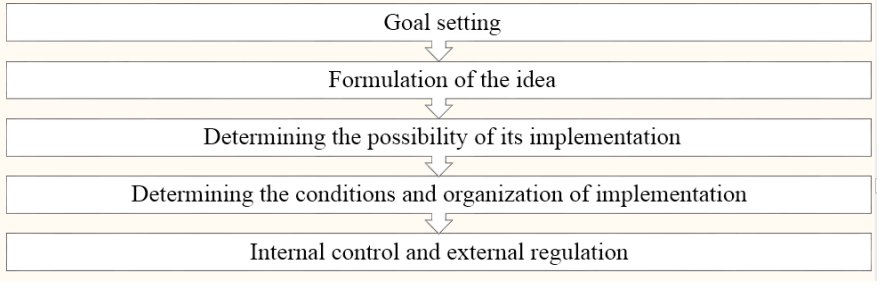

Fig. 5 The implementation of the banking innovation process (Own creation).

Following this algorytm (Fig. 4), in 2014, PrivatBank at the Finovate Spring 2014 Banking Innovation Forum in San Jose, California, presented its development to the world community – the world's first contactless Android ATM, which in its functionality allows the use of a smartphone keyboard or Google Glass for receiving cash. This innovation received the status of the winner of the forum by voting, and its creative presentation – the Best of Show award (Zolotareva, 2016).

This confirms that IT plays an important role in the established reputation of each bank and the banking system as a whole.

Active use of IT is typical for most developed countries. The idea of the American company Socure to implement the Perceive project in the banking sector is interesting, which will provide an opportunity to use photos on social networks Facebook, Twitter, and LinkedIn to identify the client for his authorization in the mobile banking application. This will allow you to abandon complex passwords and significantly speed up the login and confirmation of further actions in it. Thus, the photo taken on a smartphone by the program "Perceive" will be compared with the image of a person on social networks, which will avoid doubts about the user's identity of the bank's customer.

No less unique is the IT proposed by Union National Bank (UNB), one of the leaders in the UAE financial services market, to reduce the possibility of fraud. This IT relates to the method of verifying the signature in a check with an electronic sample stored in the database and consists of a fully automatic verification of the signature by the system, which minimizes the possibility of error (Kiselyov, 2019).

Without information technology, it would not be possible to implement, in particular, mobile banking; Internet banking; "Zone 24"; electronic balance; POS-terminals, which are the most successful results of the introduction of innovations in banking.

The example of mobile banking clearly illustrates the dependence of the introduction of IT on the development of other spheres of society. Thus, the use and distribution of smartphones has created the possibility of mobile banking as such, as it is based on the idea of replacing a plastic card as a method of payment. Users of mobile banking can easily pay for goods and / or services using mobile phones with the appropriate aids.

At the same time, mobile banking exists thanks to such modern technologies as NFC, QR-codes, and GPS. For example, NFC short-range wireless high-frequency technology allows you to download payment details to your smartphone and pay for goods by swiping your phone over a POS terminal. That is, the client is identified using NFC-chips, which are built into the phone.

Besides, e-banking is an indispensable assistant in the automatic payment of utility bills, interest payments on loans, purchase of any goods or services online, and so on.

In light of recent developments in the spread of acute respiratory disease COVID-19 caused by the coronavirus SARS-CoV-2, the above banking innovations not only serve to comfort the user but also protect him from infection by minimizing the possibility of user contact with other persons or objects to meet his daily needs.

Thus, the introduction of IT in the banking sector is one of the main tasks of translating all possible banking services into digital format.

Experts predict that digital banking services will be the main way to interact with the bank. However, some factors negatively affect the state of innovative development of electronic banking in Ukraine:

1. lack of a clear position of the legislator, which would be expressed in regulations on the regulation of legal relations between banks and their customers in the process of using electronic banking.
2. Low level of customer confidence in Internet technological innovations and low level of awareness of certain groups of the population about the possibility and procedure for their use.
3. Limited internet access.

The other significant reason for suspending the development of innovatively modified forms of e-banking is financial and political instability in Ukraine, which results in unfavorable conditions for the banking sector and sometimes leads to the liquidation of banking institutions and the withdrawal of foreign banks from the domestic financial services market. In this situation, the small number of banks, that actively implement innovations and invest in favor of their development, carries great risks and remains in the minority in our country (Dominova, 2016).

At the same time, according to the authors, the functioning of the "bank without branches" – Monobank in Ukraine today should be considered indicative within the application of know-how. The fact is that the Monobank system is almost entirely built on information technologies, ranging from completely remote service by the bank and ending with banking products offered to customers. Adherence to such implementations is vividly illustrated by the Fig. 6, which allows us to understand the volume and speed of user connection to Monobank since the beginning of its beta testing in October 2017.

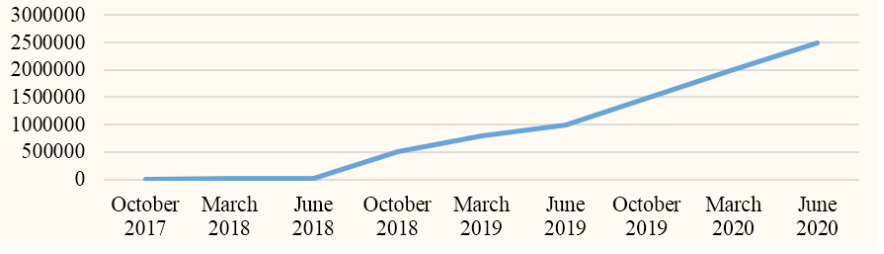

Fig. 6. Number of Monobank users 2017-2020, data provided by Monobank (2020).

The introduction of information technologies in banking directly depends on the innovation policy pursued by the respective bank. This policy forms the technological component of innovative development of the banking system, which is primarily manifested in the management process, based on the constant search and implementation of previously unknown ways and areas of realization of the potential of the economic object according to the chosen mission and motivation in changing environmental conditions (Global FinTech Adoption Index, 2020).

The era of information technology has allowed expanding the variations of know-how, in particular with the use of blockchain technology, which can become a platform for effective management in all vectors of bank core management (core banking system) and in working with consumers. Blockchain is positioned as a database designed to store information and verify transactions. The uniqueness of this technology is the inability to make changes to already performed processes, which in turn protects against the risks of deleting information about a transaction, ensuring the transparency of each operation.

The active use of blockchain will give impetus to the transition to today's advanced digital technology called "Big data", i.e. the collection, accumulation, processing, and use of large arrays of information (Tkachenko and Zveruk, 2018). With the help of Big Data and deep machine learning algorithms, banks supplement standard risk algorithms with new procedures that can significantly improve the predictive power of the models used (Sadchikov, 2018). Thanks to analytical tools, banks start dealing with arrears even before the borrower breaks the payment schedule. The system examines various parameters, such as the rate at which the credit card limit is drawn, the frequency, and the volume of payments. This is how banks identify those who are about to miss a payment.

At the same time, according to the author, in the further formation of innovation policy, banks should focus on the introduction of know-how aimed at creating and maintaining the maximum level of protection of personal data of customers. Banking information technologies also serves to establish effective communication channels, increase the level of digital, economic, and financial awareness of the population, reduce the costs of the banking institution to create and strengthen the image and reputation, expand and optimize the array of banking products and services. For customers, the above information technologies facilitate access to the information they need, provide an opportunity to economically use their own time and money for bank services (Pidvysotsky, 2014).

Thus, in today's conditions, the guarantee of stable and promising operation of the banking sector is the development and implementation of innovative strategies aimed at achieving maximum consumer value for participants in banking relations, which will create and maintain a competitive advantage in the long run (Ostash, 2015).

Conclusions

1. The use of know-how in the field of IT is currently enhanced by the lack of proper legal regulation of this object of intellectual property rights, in particular, on how to protect it. Thus, know-how is often protected as a trade secret or object of copyright, but at this stage of dissemination of know-how, these methods of protection are not able to fully cover the full range of characteristics of the latter, and therefore should consider the prospect of definition and final consolidation of know-how as an independent object of intellectual property rights, which will have its own individually defined methods of protection in case of infringement of copyright.
2. Innovative information technologies play an important role in the banking sector. Thus, banking know-how aims to:
    - Implementation of "multi-channel activities" in the interaction of generally accepted and newly created technological tools.
    - Development of virtual network banking and financial implementations: bank account management, cash settlements, electronic signature, the conclusion of agreements, financial organizations (exchanges, banks).
    - The combined use of new information and communication technologies for electronic and mixed (traditional and new) marketing.
    - Creation and introduction of new banking products (services) based on new technologies.
3. Banking information technologies is also designed to maintain the country's image at the global level, increase confidence in the banking sector, and establish the most convenient interaction with its customers. This requires the introduction of active innovation policy in banks, as well as support within their implementation by the state.
4. With this in mind, know-how should be the "lion's share" of the assets of any commercial organization, including the banking sector, which plans to operate on the platform of a high-tech economy.

The vector of further research within this subject concerns, first of all, the support of innovation policy both by the banking institutions themselves and by the state; active use of modern digital technologies, in particular blockchain technologies, as a platform for creating know-how; increasing the level of "openness" of users for the introduction of banking innovations;

improving the legal regulation of personal data protection in the banking sector through know-how.

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Foreign experience in professional development of private detectives

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Abstract

The objective of the article is to analyze international experience in the professional development of private detectives, in order to implement some positive aspects in Ukrainian law. The methodological basis of the research was articulated in a set of general and special scientific methods of scientific knowledge, a saber: historical comparative method and legal method, dialectic, induction method, comparative and legal method, formal and legal method. Based on the analysis of international experience, the education problems of private detectives, as well as those that recycling and advanced training features, whose study is necessary for the full development of the institution of the activity of private detectives in Ukraine, reveals the revelation of modern services for the training of private detectives in Ukraine. In the conclusions, the authors pay special attention to specialists in the activity of private detectives in several countries, where private detectives have a wide range of opportunities and their activity is actually compared to the activity of law enforcement. Finally, the requirements are proposed for candidates for the position of private detective, as well as for the program of their training.

Keywords: private detective; private detective training program; comparative studies; problems of detective practice; Ukraine.

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Experiencia internacional en la formación de detectives privados

Resumen

El objetivo del artículo es analizar la experiencia internacional en el desarrollo profesional de detectives privados, con el fin de implementar algunos aspectos positivos en la legislación de Ucrania. La base metodológica de la investigación se articuló en un conjunto de métodos científicos generales y especiales de conocimiento científico, a saber: método comparativo histórico y legal, método dialéctico, método de inducción, método comparativo y legal, método formal y legal (dogmático). Sobre la base del análisis de la experiencia internacional, los problemas de educación de los detectives privados, así como las características de su reciclaje y formación avanzada, cuyo estudio es necesario para el pleno desarrollo de la institución de la actividad de detectives privados en Ucrania, se revela la esencia de los enfoques modernos para la formación de detectives privados en Ucrania. En las conclusiones los autores prestan especial atención a las peculiaridades de la actividad de los detectives privados en varios países, donde los detectives privados tienen una amplia gama de oportunidades y su actividad se compara en realidad a la actividad de las fuerzas del orden. Finalmente, se proponen los requisitos para los candidatos al cargo de detective privado, así como para el programa de su formación.

Palabras clave: detective privado; programa de formación de detectives privados; estudios comparativos; problemas de la práctica de detectives; Ucrania.

Introduction

In developed democracies (Germany, France, Great Britain, USA, etc.), the system of training of private detectives has been formed since the 50s of the 20th century. This system includes educational programs for training specialists in the following specialties: “Security management” (educational levels: bachelor, master), “Private Detective” (qualification level: bachelor), “Bodyguard’ (working profession), “Security guard” (working profession).

There was a tendency to introduce a number of specializations in the working profession “Security guard” (security guard for tours, security guard for educational institutions, security guard for police stations, security guard for convoying property on railway transport, air transport, security guard for megamarkets, etc.) in the European countries at the beginning of the 21st century; so there are 5 such specializations in Germany there are 5,

and 17 – in Israel. Training programmes and system of training or advanced training are developed under each specialization. Involvement of law enforcement professionals in the development of security and protection training systems for the private security sector and their certification is the indispensable condition for European countries and the United States (Kobeletskyi, 2013).

Since private detective activity is not a hobby but a professional activity, it is common practice in modern countries to create special educational institutions for training and retraining of private detectives. As a rule, part-time and external studies are not allowed. (Musienko, 1996) notes that there are 14 private search colleges, which prepare specialists with a bachelor's degree and 5 colleges, which prepare specialists with a master's degree in private search in the USA. Obviously, such a systematic approach to ensuring national security is relevant for the current situation in Ukraine. Trainings in the specialty of "Security management" are carried out in many European countries and the United States. Security management professionals are engaged in different posts from private detective to security manager in these countries. The training of specialists in European countries in the field of national security has, first of all, a practical orientation.

Taking into account that private detective activity in Ukraine is at the stage of formation nowadays, the world experience should be taken as a basis. So, let us consider the experience of some countries in the training, preparation and retraining of private detectives.

The aim of our study is to provide the analysis of the procedure of training, retraining and advanced training of private detectives in some foreign countries in order to study positive experience and further implement it into Ukrainian legislation in this area.

1. Materials and Methods

The methodological basis of scientific research is a set of general scientific and special methods of scientific knowledge, specific to legal science.

Dialectical method is a general and universal method of forming legal concepts. It provides necessary and important stages of ascent from the abstract to the concrete, and from the concrete to the abstract. The application of the method of ascent from the abstract to the concrete is especially relevant when developing legal scientific theories and concepts. This method was important and necessary for examining the institution of professional development of private detectives as a holistic legal phenomenon and formulating key concepts related to this institution, to clarify the structure and features of the latter.

The main problem to be solved with the help of historical and legal comparative method is to obtain new knowledge through comparisons of historical and legal sources. As one can see, this requires three components: 1) comparison (in some cases also an analogy), which is a standard general logical operation; 2) comparisons should be characterized by their retrospectiveness, i.e. be historical; 3) the legal matters should be compared. Only the combination of these three conditions is the content of the main problem of the theory of historical and legal comparative method and makes appropriate demands on the basic approaches and principles of its implementation. Historical and legal comperative method helped to study the genesis of the normative model of professional development of private detectives under the laws of different countries.

The method of induction is a method of cognition based on a formal and logical mental conclusion, which makes it possible to obtain a general conclusion based on the analysis of individual facts. It helped to analyze the problems related to the institution of preparation of private detectives in Ukraine based on the conducted reseach as well as to to draw some general conclusions.

In a general sense, comparative and legal method is a method of studying the legal phenomens of different States by comparing the same legal norms, institutions, principles, etc. and the practice of their application. Comparative and legal method was helpful in comparing the procedure for the preparation of private detectives in different countries, as well as the requirements for the candidates for the office of private detectives.

Formal and legal (or dogmatic) method involves the study of legal facts and legal texts, their interpretation in a logical sequence using special legal terms and constructions. By applying this method, we could examine the context of the legal acts, which regulate the issue of professional development of private detectives in some countries of the world.

2. Literature review

The features of private detective activities in separate countries were investigated by many foreign and domestic scientists. For example, Matiukhina's monograph "British Police: Current Trends in Development and Management" (2001) is devoted to current problems of the British police, as well as the main trends and approaches that determine its structure and development. Her second monograph "The US private security sector: the ways of development and realities of today" (2013) deals with the formation of non-governmental detective and security activities in the United States, and also includes some views of the author on the general trends in law enforcement in the modern world.

Sachavo (2006) conducts in his scientific work "Administrative and legal framework of private security agencies and their interaction with the police of Ukraine" comparative and legal analysis of the development of private security activities in foreign countries (France, USA, Japan, Germany, etc.) and highlights their role in crime prevention.

Kyslyi and others (2020) investigated the features of professional development of private detectives in Ukraine based on the examination of the laws and draft laws, which were adopted at different historical stages in order to regulate the relations in this area.

Thus, the aim of our study is to provide the analysis of the procedure of professional development of private detectives in some foreign countries in order to study positive experience and further implement it into Ukrainian legislation in this area.

3. Results and Discussion

Local law of some States provides for certain additional requirements for those who have the right to be engaged in private detective activities. For example, to obtain a license of detective in California, one must have at least 6,000 hours of practical experience in investigations (i.e., 750 working days); but if one have obtained a degree in Law, it is sufficient to have 2,000 hours of relevant work. Besides, this State requires two exams: on knowledge of US law and English language exam (Bezzub, 2017).

Under the UK Police Reform Act (Act of the Parliament of the United Kingdom, 2002), detectives can be persons with at least two years of experience as a police officer, receive special training and pass exams. Criminal Investigation Departments (CID) are created at territorial police agencies and are engaged in investigation of serious crimes (murders, rapes, crimes connected with drug trafficking, organized crime, etc.). Special departments, which are specialized in the investigation of certain categories of serious crimes, can be formed as part of detective services departments.

The procedure for admission to the British police service is radically different from such procedure in Ukraine. The system of British police education can be rather called police training than police education, because practical training, internship, and practice play a significant role in the education. Matyukhina (2001) notes that all recruits undergo a 15-week training course in training centers (for the Metropolitan Police – 18 weeks) after admission to the service, where they acquire skills of police practice. The graduates of these courses must undergo a two-year probationary period in one of the police units in uniform under the supervision of an appointed mentor, after which they are awarded the title of constable.

It was not until 2001 that a law was passed that introduced compulsory licensing of private detective activities and, consequently, registration of private detectives. With the adoption of this law, a special body – the *British Safety Industry Federation* – was created to carry out licensing and inspection of private detective activities. Belonging to a professional association, such as the British Detectives Association (ABS) or membership in such association, ensures that a person has sufficient experience in this area. You can become a member of the ABS by providing recommendations from government agencies (police, criminal or international investigation) and subject to availability of legal education (Official web-site of the Association of British Investigators, 2020).

In order to become a detective in Germany, a person does not need legal education or experience in law enforcement, because there are appropriate centers for the training of detectives in the country. For example, there is a Center for Detective Business Training, where future detectives are trained in criminology, law, economics, etc. Individuals receive training in such institutions (thtough direct or distance learning) in the area of criminology, law, economics, etc. Such training of future detectives usually takes place on weekends and lasts from one to two years. In Germany, private detective organizations and public law enforcement agencies work closely together in conducting special operations, sharing operational forces, tools, and exchanging information in training (Bezzub, 2017).

French law also has its own characteristics that distinguish it from English and German one: in France, private detectives are clearly separated from lawyers, attorneys, police officers and any other professions that are essentially close to the detective profession. French lawmakers subdivide private detective activity into search and security ones.

Training of private detectives was not mandatory in France until March 18, 2003, but it became mandatory after adopting relevant amendments to the legislation. The Pantheon University in Paris has been offering a two-year detective training program with a State diploma since 2006. Detectives in France do not have the right to carry firearms.

To become a detective in France, the candidate must be 21 years old, be a citizen of France or another EU Member State, take a compulsory course at an educational institution determined by the French Ministry of the Internal Affairs (currently it is the Panthéon-Assas University Paris II), has not worked in the police, intelligence agencies, domestic security agencies or military formations for the last five years did not work; has no criminal record for committing a criminal offense; has no administrative or other disciplinary sanctions or be under investigation (Bezzub, 2017).

There are clear legal boundaries for the existence and operation of private security organizations In Finland. Opening of private search offices

requires the permission of the relevant authorities. If the activity of a private security company is carried out on the territory of one province (region), such permission is issued by the governor, if simultaneously in several provinces – by the government. The legislation of Finland also defines general and mandatory requirements for employees of private security organizations: the presence of police or legal education, experience in local law enforcement agencies, high moral qualities and reliability (Kalenyak, 2007).

Private detective activity in Spain is separated from private security activity. Private detective cannot be engaged in activities performed by private security agencies, and vice versa.

The diplomas conferring the right to perform private detective activities are issued by universities and other educational institutions, which are determined by the Spanish Ministry of the Internal Affairs. Such educational institutions are: the University of Security and Science in Valencia, the Institute of Criminology in Barcelona, the Institute of Criminology in Madrid, the Institute of Criminology in Alicante, the College of San Pablo, the Salamanca University of Security Training (*La Asociación Profesional de Detectives Privados de España, 2010*).

Under the relevant law of the Republic of Slovenia, a license may be issued to an applicant who: is a citizen of the Republic of Slovenia or a Member State of the European Union, the European Economic Area or the Swiss Confederation; acquired a qualification after completing the first level of a professional training program or a similar qualification abroad, which is recognized in accordance with current national legislation governing this area of education; passed the exam in the specialty of detective; passed a special test; has not worked as a police officer or intelligence agency official for the past two years (Volynska, 2016).

The relevant educational activities in the Russian Federation are regulated at the legislative level. The Law of the Russian Federation "On Private Detective and Security Activities in the Russian Federation" stipulates that professional training for private detectives is performed in organizations engaged in educational activities under basic vocational training programs and additional professional programs except for part-time and external forms. The Ministry of Internal Affairs of the Russian Federation developed standard programs for professional training of private detectives (Order of the Federal service of the troops of the National Guard of the Russian Federation, 2019).

The Law of the Republic of Moldova "On Private Detective and Security Activities" (Law of the Republic of Moldova, 2003) of July 4, 2003 provides that only citizens of the Republic of Moldova, who have legal education or received special training in this area can be engaged in private detective

activity. Admission to private detective activity of persons under 21 is prohibited; held liable for systematic violation of public order, drug use or convicted of an intentional crime; not certified in the prescribed manner for detective work; prosecuted. There are no requirements for the length of service, as well as many other well-founded requirements, which are in a similar law of the Russian Federation. Therefore, in this regard, the relevant provisions of Russian law should be considered more specific, complete and thoughtful (Yurko, 2017).

The practice of regularly informing private detectives about new trends and methods of combating crime has been introduced in Austria. Private security and detective agencies participate in the permanent meeting on crime prevention of the Ministry of Internal Affairs of the UK and have a permanent mission to it. The police provide assistance in the regular training, retraining, and advanced training of private detectives in Germany, Sweden, Greece and Turkey (Pidyukov, 2016).

The study allows us to obtain some results and generalizations:

1. Qualifications for education and special training, etc. are set for private detectives.
2. There are separate programs for the training of private detectives in educational institutions. In some cases, such training is conducted by special schools or centers (Bugaychuk, 2016).

Therefore, analyzed the experience of different countries in training of private detectives, it is necessary to consider the proposals for training, retraining and advanced training of private detectives in Ukraine.

Private detective courses in Ukraine are offered by the Training Group "SWORD". The training period is 7 days. General information about Private Detective Courses are based on cooperation with organizations specializing in training in the field of non-state security; the trainers are the experts of Training Group "SWORD" and specialists of organizations specializing in training in the area of non-state security. Preparation of groups "A", "B" and "C" on the full program of training or retraining are united in the general group; the certificate of the Training Group "SWORD" or the organization specializing in training in the area of non-state security is issued after attending the program. The program of training of private detectives provides studying of a wide range of theoretical issues and practical exercises, namely: in-depth legal training; technical training; psychological training; marketing in the field of private detective activity; economic training; practical classes on solving tasks in the provision of services in the area of private search.

In addition to various agencies and non-governmental organizations, the training and education of private detectives is also offered by private educational institutions.

For example, the university "KROK" offers training to obtain educational and qualification level "specialist". The term of study is 2 years. Those who successfully complete the training will receive a State diploma. During the training one is given the opportunity to simultaneously work as a private detective, assistant private detective in private detective companies.

The Interregional Academy of Personnel Management offers a list of basic disciplines such as: "Criminal law aspects of private detective activity", "Forensic law enforcement", "Private Detective Activity and Detective Agencies" during the first (bachelor's) level of higher education. The main task of the course is to highlight the links between forensics and the activities of private detectives and the legal theoretical basis of forensics, which is the basis for systematic study of crime and its manifestations. Taking into account the general part of criminological science (the doctrine of crime and its patterns, criminogenic determinants, the identity of the perpetrator and the prevention of criminal activity), the fight against the most common categories of crimes in business for higher education institutions.

The program of the course "Private Detective Activity and Detective Agencies" is prepared taking into account the typical programs for higher education institutions. It provides coverage of the main provisions of science on the judiciary and the activities of private detectives and integrated approaches to the organization of the fight against crime, as well as direct connection with the activities of private detectives. Special attention is paid to the discussion of issues of practical implementation of prevention policy in Ukraine.

Zaporizhzhia National Technical University approved an educational program "Security activities" for students in the field of training "Physical culture and sports one of the disciplines". Comparing the courses, it is clear that training, preparation and retraining in private universities provides more effective acquisition of relevant skills, but the courses offered of private schools are not sufficient enough for the work of private detective.

Special training of private detectives is carried out by state and non-state educational institutions according to the programs agreed with the Ministry of Internal Affairs of Ukraine, the Ministry of Health, and the Ministry of Finance of Ukraine.

That is why training programs for future private detectives should provide in-depth study of relevant legal disciplines and special courses, especially in Constitutional Law, Criminal and Administrative Law and Procedure, Criminology, special equipment, operational and investigative activities, tactical, medical, special weapon and physical trainings.

Such programs should be developed only by scientific and pedagogical staff with a sufficient professional level in the outlined areas on the basis of the experience of higher law schools with specific training conditions, the

most powerful among which is the system of higher education institutions of the Ministry of Internal Affairs of Ukraine.

The introduction of the discipline of choice "Legal support and organization of private detective work" for students of the Faculty of Law at Dnepropetrovsk State University of Internal Affairs is also worth attention.

The discipline «Legal support and organization of private detective work» is a special selective course in the professional training system for students in the area of «Law Enforcement» at the Dnipropetrovsk State University of Internal Affairs. The course is based on separate sections of such disciplines as "Constitutional Law", "Judicial and Law Enforcement Agencies", "Investigative and Search Activities", "Criminal Law", "Criminal Procedure", "Forensics", "Administrative Law", "Special equipment in law enforcement ", etc.

This also applies to other special training courses and disciplines (special tactical training, use of special equipment and special technique, etc.). The legislation provides for the mandatory participation of the Minister of Internal Affairs of Ukraine and the National Police of Ukraine along with the Ministry of Education and Science of Ukraine in the development of training programs (special training, retraining and advanced training) for private detectives.

The above, in our opinion, convincingly testifies to the expediency of training private detectives in the system of universities of the Ministry of Internal Affairs of Ukraine with specific training conditions. The exemplary model of this system has always been and remains the National Academy of Internal Affairs, which has sufficient scientific and pedagogical potential, a strong educational base, the latest teaching methods, including special disciplines, as well as many years of experience in training (retraining and advanced training) for the Ministry of Internal affairs and the National Police of Ukraine, law enforcement agencies of foreign countries, the penitentiary service, as well as the National Mediation and Reconciliation Service, the State Anti-Corruption Service of Ukraine, UN peacekeeping missions and other government agencies.

Special training for private detectives is a kind of professional specialization for persons who already have higher legal education, but do not have three years of practical experience in the pre-trial investigation or operational units.

That is, the legislator aims to compensate for the gaps in the professional level of the candidate for private detectives, to form the skills inherent in former law enforcement officers by providing special training (specialization).

So, given the above, we consider the entire preparatory process of private detectives to be divided into three types:

1. basic training – obtaining basic skills (driving a car, apprehending criminals, etc.).
2. Specialized training – additional training in various areas of law enforcement (criminal investigation, work with minors, negotiation, etc.).
3. Staff training – series of trainings for private detectives who are responsible for the work of other employees (Pavlenko *et al.*, 2017).

Therefore, the purpose of training, retraining and advanced training is to bring theoretical knowledge as close as possible to practical activities, to articulate future vision of modern crime, to form the ability to operate quantitative and qualitative characteristics of crime, to organize and conduct activities for crime detection and crime prevention, as well as to ensure close cooperation with law enforcement agencies based on the use of general scientific methods of studying certain types of criminal behavior, the identity of the offender, general and individual forecasting, etc.

Conclusion

Analyzed the views of different authors, international experience and taking into account our own opinion, we consider that it is appropriate to establish an age limit for private detectives (at least 25 years), the relevant level of professional experience (at least 3 years in law enforcement agencies of Ukraine after obtaining higher legal education) and corresponding life experience.

Professional development of of private detectives should be carried out in the system of higher educational institutions with specific conditions of study, as training in a private educational institution is clearly insufficient. Training programs for future private detectives should provide in-depth study of relevant legal disciplines and special courses; in doing so, such programs should be provided only by scientific and pedagogical staff with a sufficient professional level in the corresponding areas.

Special training for private detectives is a kind of professional specialization for persons who already have higher legal education, but do not have three years of practical experience in the pre-trial investigation or operational units.

Ultimately, it should be noted that professional private detectives will always be in demand by society. Therefore, international experience will be helpful in forming a civilized market of detective services in Ukraine.

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Description of the legal basis for the protection of labor rights of migrants

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Abstract

The objective of the article under analysis is the legal framework for the protection of migrants' labour rights, identifying a specific range of category-related regulations and their main provisions. The theme of the study is the analysis of the legal basis for the protection of migrants' labour rights. The research methodology includes and agreed on the following general and special and legal methods: dialectical, logical, systematic, and legal, normative and canine, comparative and legal and legal method. The results of the study are identified by key regulations, including documents of international importance and the Ukrainian legal system, whose rules are dedicated to the regulation of social relations arising in the labour field of migrants. In terms of its practical implications, based on scientists' analyses, the focus is on the meaning of the term "migrant". An alternative definition is proposed. Finally, attention is paid to the declaratory nature of international law in the field of the protection of the labour rights of migrants and is part of the importance of acts of national law in regulating this matter.

Keywords: legal basis for migration; migrants' labour rights; protection of labour rights; concept of migrant; comparative right.

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Descripción de la base legal para la protección de los derechos laborales de los migrantes

Resumen

El objetivo del artículo es analizar el marco legal para la protección de los derechos laborales de los migrantes, identificando un rango específico de normativas relacionadas con esta categoría y considerando sus principales disposiciones. El tema del estudio es el análisis de la base legal para la protección de los derechos laborales de los migrantes. La metodología de investigación incluye y convino los siguientes métodos generales y especiales y legales: dialéctico, lógico, sistemático y legal, normativo y dogmático, comparativo y legal y método de modelización jurídica. Los resultados del estudio logran identifican las normativas clave, que incluyen documentos de importancia internacional y el ordenamiento jurídico ucraniano, cuyas normas están dedicadas a la regulación de las relaciones sociales que surgen en el ámbito laboral de los migrantes. En términos de sus implicaciones prácticas, sobre la base del análisis de las opiniones de los científicos, la atención se centra en el significado del término "migrante". Se propone una definición alternativa. Finalmente, se llama la atención sobre el carácter declarativo del derecho internacional en el ámbito de la protección de los derechos laborales de los migrantes y se enfatiza en la importancia de los actos de la legislación nacional para regular esta materia.

Palabras clave: bases legales de la migración; derechos laborales de los migrantes; protección de los derechos laborales; concepto de migrante; derecho comparado.

Introduction

Modern Ukraine is a democratic, progressive State of the 21st century, which is in a state of active development in all spheres of its internal life, namely: political, economic, legal, etc. The aspirations of the Ukrainian community for freedom and progress are actively supported by the world community, as exemplified by the numerous European integration processes. At the same time, the national legal system is still at the stage of ridding of many soviet norms and institutions, which had been regulating public relations in criminal, administrative, labor and other areas of legal reality for almost a century. The accession of our state to the world and, in particular, the European community requires a change in the format of regulation of many domestic processes and standards of their legal expression and regulations. Thus, cooperation with foreign countries provides opportunities for foreigners, interested in working in Ukraine, to

come to our country. The issue of labor migration has been of interest only to Ukrainians who wanted to work abroad for a long time. Based on the above, the issue of legal regulation, provision, and protection of labor rights of migrants becomes relevant.

So, the purpose of the article is to analyze the legal framework for the protection of labor rights of migrants by defining a specific range of regulations related to this issue and considering their main provisions.

1. Methodology

The research uses general and special methods of scientific knowledge. Logical method was used to reveal the content of such concepts as "labor migrant" and "labor migration". The application of the system and legal method made it possible to analyze the concept, content and legislative consolidation of the legal status of labor migrant.

Normative and dogmatic method was helpful in analyzing international and domestic legal acts ensuring the rights of labor migrants in Ukraine. Comparative and legal method was used to compare the provisions of various legislative acts regulating the issue under consideration. Legal modeling method was applied to formulate the relevant conclusions and propositions.

2. Literature Review

The issues of labor migration, as well as the peculiarities of ensuring the basic rights of migrants, have been studied by a large number of scientists. For example, Blynova *et al.* (2020) claim that a marginal status of labor migrant makes him (her) feel frustration and dissatisfaction with the work. So, they identified three main strategies to help labor migrants to adjust to new environment: integration, assimilation and marginalization.

Avato, Koettl and Sabates-Wheeler (2010) attribute the status of social protection of international migrants to one of four different regimes and characterize the features of each of these regimes.

MacDonald and Cholewinski (2007) examined the situation with the implementation of the Migrant workers convention in Europe in number European States (France, Germany, Italy, Poland, Spain, the United Kingdom and Norway). To achieve this aim as well as to determine the causes that hinder the ratification of this international legal act the authors

interviewed officials of State agencies, representatives of political parties and civil societies.

Ruchkin *et al.* (2019) study the relationship between migration flows and the level of socio-economic development of territories. The authors state that a conflict between residents and migrants is inevitable without a competent migration policy; in particular the governments should into account the interests of labor migrants in order to prevent social conflicts due to ill-conceived migration policy.

Ruhs (2012) examines international documents ensuring the rights of labor migrants and marks their low level of ratification. The author explains such situation by unwillingness of the governments of the States to enhance labor migrants' rights because this requires the allocation of additional resources.

Sakharuk *et al.* (2019) prove that in order to protect the rights of labor migrants the State has to introduce the system of collecting and analyzing the statistical information; to improve the economic well-being of the employees; to conclude bilateral agreements with other countries in the indicated area.

Tolmacheva (2020) investigates the substance of international migration and identifies the factors affecting the trends in economic dynamics as well as changes in migration flows.

Hasenau (1991) and Vittin-Balima (2002) study ILO standards for migrant workers. Hasenau indicates the reasons that triggered the emergence of ILO standards. Vittin-Balima notes that the problem of protection of their rights (these problems are becoming ever more complex and varied nowadays) was addressed as soon as the ILO was founded.

As we see, the researchers examined a wide range of issues related to labor migration, the mechanism of legal regulation of labor rights of migrants, aspects of protection of the rights of citizens of Ukraine in the area of international labor. The aim of our study, however, is to analyze the legal framework for the protection of labor rights of migrants, by defining a specific range of regulations related to this issue and considering their main provisions.

3. Results and Discussion

The term "migrant" is interpreted as a person who voluntarily moves from the territory of the State of his (her) citizenship or who does not have citizenship or from the territory of his (her) permanent residence to the

territory of another State with the intention to settle their temporarily or permanently (Rymarenko, 1998). However, according to the view of many scientists, this term has a slightly different meaning. Thus, (Zhurba, 2008) believes that a migrant is a person who is legally engaged in employment for the purpose of making a profit in the territory of the State of which he is not a national and in which he does not permanently reside. The same view is held by (Horban, 2009) who emphasizes that a migrant is a person who permanently resides in the country of departure and is legally engaged in paid activities in the country of employment.

Thus, a migrant, according to the general definition and scientific interpretations, is a foreigner or stateless person, or, in other words, any subject, who does not have Ukrainian citizenship, but moves to the territory of our State for permanent residence and further employment on legal grounds.

As for the legal basis for the protection of migrants' rights, they are formed by an extensive system of regulations, where numerous international documents come first.

Some regulations of the International Labor Organization (hereinafter – the ILO) are devoted to this issue. For example, the ILO Convention on Migrant Workers No. 97 (International Labour Organization, 1949) stipulates that each ILO Member State, for which the Convention is in force, undertakes to provide to immigrants, who legally arrives in its territory, the conditions are no less favorable than those enjoyed by the citizens of the country concerned without discrimination on grounds of nationality, race, religion or sex, on the following issues:

- Wages, including assistance to large families in the case where this assistance is part of the salary.
- Working hours, overtime work, paid leave, restrictions on homework.
- Age of employment, apprenticeship and vocational training, a special approach to the organization of women and adolescent work.
- Trade union membership and the use of benefits provided by collective agreements.
- Focusing, social security (which means the provisions of the law on the accidents at work, maternity, illness, disability, old age, death, unemployment and family responsibilities, as well as all other cases that, according to national law, are included in the social security systems).
- Taxes, fees, or contributions paid for the employee, etc.

The legal basis for the protection of migrants' rights also includes the ILO Convention No. 143 (International Labour Organization, 1975) concerning migrations in abusive conditions and the promotion of equality of opportunity and treatment of migrant workers and the Recommendation concerning Migrant Workers No. 151 (International Labour Organization, 1975). Both acts emphasize that governments should ensure that enactment of promotional rather than discriminatory legislation is in place to ensure equal opportunities and corresponding attitude in the area of employment, social security, trade union and cultural rights, personal rights and collective freedoms of migrant workers.

The legal framework for the protection of the labor rights of migrants includes also certain United Nations acts. UN General Assembly adopted the Declaration on the Human Rights of Individuals who are not nationals of the country in which they live (UN General Assembly Resolution, 1985). According to this Declaration, foreigners legally residing in the territory of the state enjoy, in accordance with national laws, the following rights:

- Firstly, the right to working conditions that meet safety and hygiene requirements, to a fair wage, equal pay for work of equal value without any distinction; in particular, women should be guaranteed working conditions not worse than those enjoyed by men, with equal pay for equal work.
- Secondly, the right to join trade unions and other organizations or associations of their choice and to participate in their activities. The exercise of this right shall not be subject to any restrictions other than those provided by law and required in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others.
- Thirdly, the right to health care, medical care, social security, social services, education and recreation, provided that they meet the requirements of the relevant rules and do not impose an excessive burden on the resources of the State.

European Social Charter (Council of Europe, 1996) is also an important international legal act in the area of protection of migrant labor rights. Article 18 of this act states that in order to ensure effective exercise of the right to be engaged in profitable activities on the territory of any party to the document, States are obliged: to simplify existing formalities and reduce or abolish State duties and other charges paid by foreign workers or their employers; liberalize the rules governing the work of foreign workers unilaterally or collectively, etc.

Besides, the Charter obliges each party to the document to pursue the following measures and policies to ensure effective implementation of the right to protection and assistance of migrant workers and members of their families:

- To maintain or ensure the functioning of appropriate and free services to assist such workers, in particular in obtaining accurate information within national laws and regulations, and to take all relevant measures to prevent misinformation of this category of people about emigration and immigration.
- To take appropriate measures to facilitate departure, relocation and reception of such workers and members of their families, and to provide appropriate sanitary and medical services and hygiene within the jurisdiction.
- To promote, if necessary, cooperation between public and private social services in the countries of emigration and immigration.
- To provide such workers with the treatment no less favourable than that accorded to their own nationals in respect of the following issues: remuneration and other conditions of employment; trade union membership and benefits of collective agreements; dwelling if such matters are governed by law or regulation or subject to control by the administrative authorities and if such people are lawfully present in the territory of the State.
- To promote, as far as possible, the reunification of the family of a foreign worker who has an authorization to stay in the relevant territory, etc.

Thus, international documents form a significant legal basis of guarantees for the protection of the rights of migrant workers in Ukraine and a number of other States that have included these international acts in their legal systems. At the same time, the legal guarantees defined in such documents are rather limited in legal force. In fact, they will in no way help a foreigner to protect his (her) labor interests if appropriate mechanisms for the use of such international guarantees are not developed in the territory of the State where he (she) works. That is why the second and most important part of the legal framework for the protection of labor rights of migrants are the acts of national legislation of Ukraine.

The first of them is, clearly, the Constitution – the Basic Law of our State, which is the "cornerstone" of the entire system of legal regulation of social relations, in particular in the area of labor. Thus, Article 43 of the Constitution (Law of Ukraine, 1996) states that everyone has the right to work, which includes the opportunity to make a living by work which he (she) freely chooses or freely agrees to.

The State creates conditions for the full realization of the right to work by its citizens, guarantees equal opportunities in choosing a profession and type of employment, implements programs of vocational training, training and retraining in accordance with social needs. Everyone has the right to

adequate, safe and healthy working conditions, to a salary not lower than that prescribed by law. In addition to the above basic norm, the Constitution of Ukraine states that all people are free and equal in their dignity and rights. Human rights and freedoms are inalienable and inviolable. The rights and freedoms of an individual and a citizen enshrined in the Constitution are not exhaustive. Constitutional rights and freedoms are guaranteed and cannot be revoked.

Thus, the Constitution is an important legal basis for the protection of labor rights of migrants. After all, this normative act establishes national standard in the area of human rights, by defining these rights and forming the constitutional principles of their inviolability. That is, according to the Constitution of Ukraine, migrants, along with the citizens of our State, have the same inalienable and inviolable labor rights.

The Labor Code of Ukraine (Law of Ukraine, 1971), which is the main codified normative document in the labor sector, significantly complements the provisions of the Constitution, as well as establishes the content and features of labor in our country. This act regulates labor relations of all workers, promoting productivity, improving the quality of work, improving the efficiency of social production and raising material and cultural standard of living of workers, strengthening labor discipline and the gradual transformation of labor for the benefit of any able-bodied man.

Article 2-1 of the Labor Code states the following: any discrimination in the area of labor is prohibited, including violation of the principle of equality of rights and opportunities, direct or indirect restriction of workers' rights depending on race, color, political, religious and other beliefs, sex, gender identity, sexual orientation, ethnic, social and foreign origin, age, health status, disability, suspicion or presence of HIV / AIDS, marital and property status, family responsibilities, place of residence, trade union membership or another association of citizens, participating in a strike, appealing or intending to go to court or other bodies to protect their rights or providing support to other employees in defending their rights, reporting possible facts of corruption or corruption-related offenses, as well as assisting a person in the submission of such a report, on the basis of language or other grounds, which are not related to the nature of the work or the conditions of its implementation.

Therefore, in accordance with the provisions of the Labor Code, the employment of foreign citizens on the territory of Ukraine is legal, and its restriction is illegal and discriminatory. In this regard, the regulation of labor relations, one of the parties to which is a migrant person, is generally subject to the regulatory influence of general labor law, which at the same time imposes on them appropriate guarantees to protect their legal opportunities in the area of labor.

At the same time, some normative legal acts enshrine some differences in the legal regulation of labor interests of migrants, in particular, in terms of access to the right to work. Thus, in accordance with the Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons" (Law of Ukraine, 2011) foreigners and stateless persons who permanently reside in Ukraine, as well as who have been granted refugee status in Ukraine, have the right to work in enterprises , institutions and organizations or be engaged in other employment on the grounds and in the manner prescribed for the citizens of Ukraine.

According to another legal acts, namely the Law of Ukraine "On Employment" (Law of Ukraine, 2012) employers have the right to employ foreigners and stateless persons in Ukraine on the basis of the authorization issued by the territorial bodies of the central executive body, which implements State policy in the area of employment and labor migration. The work of foreigners and stateless persons may be used in various capacities by one or more employers, subject to obtaining work authorization for foreigners and stateless persons for each position. The work of foreign highly paid professionals can be used without an authorization for part-time positions, if the term of the employment contract for a part-time position does not exceed the term of the authorization for the main place of work.

Conclusion

One of the features of the modern globalized world is the mass movement of significant human flows. It is safe to say that modern society is a society of migrants. However, it should be noted that today population migration is a socio-economic and legal phenomenon, ambiguous in nature and content. Labor migration is of paramount importance of all the forms and types of migration processes, as the development and functioning of the economy is impossible without the involvement of migrant workers. In that regard, the issue of protection of labor migrants' rights was of paramount importance and should be addressed as a matter of urgency.

Nowadays, the legal framework for the protection of labor rights of migrants is represented by a wide range of regulations, both of international legal significance and national legal system. At the same time, it should be noted that international documents, as a rule, contain declarative, abstract norms, which establish guarantees for the provision and protection of labor rights, however, do not have a proper implementation mechanism.

In turn, national law in this area is more specific, as it regulates technical aspects of migrants' access to work in Ukraine; fundamental legal capabilities of this category of employees; technical aspects of their legal

registration at enterprises, institutions and organizations of Ukraine as the subjects of labor activity, etc.

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7. Las citas bibliográficas incluidas en el texto se deben realizar por apellidos del autor y año de la obra, por ejemplo: (Contreras Portillo, 2005). Cuando la cita es textual se coloca entre comillas, y debe aparecer los apellidos del autor, año de la obra y número de página, por ejemplo: (Contreras Portillo, 2005: 56); en caso de varios autores, se colocan los apellidos del primer autor que aparece en el texto a citar y se agrega la expresión et al, por ejemplo: (Contreras Portillo et al, 2005: 24). Si la cita está constituida por varias páginas continuas deben separarse por un guión, por ejemplo: (Contreras Portillo, 2005: 54-55), cuando la cita es de páginas aisladas, no continuas, deben separarse por una coma, por ejemplo: (Contreras Portillo, 2005: 56, 58, 60). Si existen varias citas de un mismo autor publicadas en el mismo año, se distinguen con letras, por ejemplo: (Contreras Portillo, 2005a) y (Contreras Portillo, 2005b). Cuando se trate de citas de jurisprudencias, se coloca el órgano emisor, fecha de la decisión, fuente, año y página, por ejemplo: (Tribunal Supremo de Justicia, Sala Constitucional: 6-11-2001, en Pierre Tapia, 2001: 55). En caso de citas de textos normativos, se coloca el nombre del texto normativo, año y artículo, por ejemplo: (Constitución de la República Bolivariana de Venezuela, 1999: artículo 49). Las citas de internet deben contener los apellidos del autor, página web y año de la publicación, por ejemplo: (Contreras Portillo, en: www.luz.edu.ve, 2008). Las citas textuales de más de 40 palabras serán incluidas en un párrafo aparte, en bloque, y a un solo espacio. Las citas de citas deben ser utilizadas en casos estrictamente necesarios, colocando los apellidos del autor comentado, luego la expresión citado por, los apellidos del autor de la obra, año y página, por ejemplo: (Contreras Portillo, citado por: Chirinos Medina, 2009: 54).
8. Las referencias bibliográficas están constituidas por los textos citados contextual o textualmente en el trabajo, deben aparecer al final del mismo con los datos completos de los autores citados en el contenido, y escribirse a un (1) espacio y (2) dos espacios entre cada una:

- Se debe disponer en orden alfabético, atendiendo al primer apellido del autor citado. Se deben seguir las normas del sistema Harvard, así: apellidos del autor en mayúsculas (coma); nombre (punto); año de publicación (sin paréntesis)(punto); título del libro, o, de ser el caso, del capítulo de libro, artículo de la revista o artículo de periódico seguido de la palabra "En" para luego colocar el nombre del libro, de la revista o del periódico (punto); editorial (punto); lugar de la publicación (punto); en caso de tratarse de un capítulo de libro, artículo de revista o artículo de periódico debe señalarse las páginas que comprenden el artículo, por ejemplo: Pp. 250-275.
- Si se hace referencia a más de un trabajo del mismo autor, pero publicados en años diferentes, se ordenará la lista cronológicamente, es decir, en forma descendente, comenzando por el año de la última de las obras publicadas.
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- En caso de existir varios autores de la misma obra deben colocarse los apellidos y nombres de todos, separados con punto y coma.
- En caso de referencias de jurisprudencias se colocará de la siguiente manera: órgano que emitió la decisión (punto), fecha completa (punto), caso tratado (punto), fuente (punto), lugar (punto), editorial (en caso de tenerla) (punto) y páginas.
- Las referencias de los textos normativos serán de la siguiente manera: órgano emisor (punto), año de publicación (sin paréntesis) (punto), título de la norma (punto), lugar (punto), número del órgano divulgativo (punto) y fecha.
- Las referencias tomadas de Internet deben contener los apellidos y nombre del autor (punto), año de publicación (sin paréntesis) (punto), título de la obra (punto); la palabra "En" seguida de la página web (punto); día, mes y año en que se efectuó la consulta.

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10. Los trabajos serán considerados por el comité editor de la Revista y serán sometidos a una revisión exhaustiva por parte de un comité de árbitros, seleccionado a fin de mantener un elevado nivel académico y científico. La evaluación será realizada de acuerdo a los siguientes criterios: identificación del manuscrito; correspondencia del título con el contenido del manuscrito, así como la correcta sintaxis de los mismos; la importancia del tema estudiado, esto es su pertinencia social, académica científica; originalidad y relevancia de la discusión; medida del impacto de los planteamientos en el trabajo; diseño y metodología; valoración de la arquitectura del artículo conforme a los criterios de presentación, tanto formal como metodológicos; organización interna, claridad y coherencia del discurso que facilite su lectura; calidad del resumen, el cual debe dar cuenta de manera sintética del contenido del mismo; actualidad y relevancia de las fuentes bibliográficas.

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