Національна академія правових наук України
Національний юридичний університет
імені Ярослава Мудрого

ВІСНИК

НАЦІОНАЛЬНОЇ АКАДЕМІЇ
ПРАВОВИХ НАУК УКРАЇНИ

Науковий юридичний журнал

Заснований у 1993 році
Періодичність випуску – 4 номери на рік

Том 28, № 3
2021

Харків
«Право»
2021

УДК 34
DOI: 10.37635/jnalsu.28(3).2021

ISSN 1993-0909
E-ISSN 2663-3116

Рекомендовано до друку вченою радою
Національного юридичного університету імені Ярослава Мудрого
(№ 2 від 17 вересня 2021 р.)

Свідоцтво про державну реєстрацію
Серія КВ № 23993–13833ПР від 11.07.2019 р.

Журнал внесено до Переліку наукових фахових видань України (категорія «А») у галузі юридичних наук
(наказ МОН України № 735 від 29.06.2021 р.)

Видання включено до міжнародних наукометричних баз:
Scopus
Index Copernicus International

Вісник Національної академії правових наук України / ред. кол.: О. Петришин та ін. – Харків: Право, 2021. – Т. 28, № 3. – 321 с.

Засновники:
Національна академія правових наук України
Національний юридичний університет імені Ярослава Мудрого

Видавець:
Національна академія правових наук України

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В. А. Журавель

Адреса редакційної колегії: 61024, Харків, вул. Пушкінська, 70,
Національна академія правових наук України. Тел. (057) 707-79-89

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National Academy of Legal Sciences
of UkraineYaroslav Mudryi National Law University

JOURNAL

OF THE NATIONAL ACADEMY
OF LEGAL SCIENCES OF UKRAINE

Scientific Legal Journal

Founded in 1993
Periodicity – 4 issues per year

Volume 28, Issue 3
2021

Kharkiv
"Pravo"
2021

UDC 34
DOI: 10.37635/jnalsu.28(3).2021

ISSN 1993-0909
E-ISSN 2663-3116

Recommended for publication by the academic
Council Yaroslav Mudryi National Law University
(Protocol No. 2 dated 17 September 2021)

The certificate of state registration
КВ No. 23993-13833ПР date 11.07.2019

Journal included in the List of scientific professional publications (category "A")
in the field of legal sciences
(the order of MES of Ukraine No. 735 dated on 29.06.2021)

Journal included in the international scientometric databases
Scopus
Index Copernicus International

Journal of the National Academy of Legal Sciences of Ukraine / Editorial Board: O. Petryshyn et al. – Kharkiv: Pravo, 2021. – Vol. 28, No. 3. – 321 p.

The founders:
National Academy of Legal Sciences of Ukraine
Yaroslav Mudryi National Law University

Publisher:
National Academy of Legal Sciences of Ukraine

Responsible for the release of
V. Zhuravel

The Editorial Board address: 61024, Kharkiv, 70 Pushkinska Street,
National Academy of Legal Sciences of Ukraine. Ph.: (057) 707-79-89

Official website: visnyk.kh.ua
E-mail: visnyk.naprn@gmail.com

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ДІЄВИЙ КОНТРОЛЬ ЗА ЗАБЕЗПЕЧЕННЯМ ПРАВ І СВОБОД ЛЮДИНИ ЯК ВИМІР ДЕМОКРАТИЧНОГО СУСПІЛЬСТВА: СОЦІАЛЬНИЙ КОНТЕКСТ

Анотація. *У даному науковому дослідженні поставлено завдання вивчення проблеми забезпечення ефективного контролю за реалізацією та дотриманням прав і свобод людини, зокрема, у форматі соціальних прав. Актуальність заявленої тематики обумовлюється доцільністю переосмислення природи та значення соціальних прав людини в контексті сучасних реалій, визнання того факту, що саме від можливості своєчасної реалізації цих прав залежить якість життя кожної особистості, у зв'язку із чим особлива увага має бути присвячена питанням забезпечення ефективного контролю за дотриманням соціальних прав в умовах демократичного правового розвитку. Підставою для проведення наукового дослідження послугували наступні проблеми: забезпечення достатнього життєвого рівня громадянам в умовах сучасних викликів і загроз, правова визначеність як передумова функціонування стабільного правопорядку, відсутність чітких гарантій забезпечення ефективності контролю за дотриманням прав і свобод людини тощо. Метою даного дослідження виступає аналіз ролі та значення природи соціальних прав людини як складової соціальної політики з метою обґрунтування необхідності удосконалення контролю в усіх його формах і проявах щодо ефективності їх дотримання, охорони та забезпечення в умовах сьогодення. Важливими методологічними інструментами в проведенні дослідження стали положення діалектичного підходу, які надали можливість розкрити сутність та призначення соціальних прав людини, а також напрямів удосконалення контролю за їх забезпеченням та захистом. Основними результатами, отриманими в ході наукового дослідження, стали: висвітлення сутності соціальних прав на сучасному етапі; дослідження природи, рівнів прояву та видів контролю за реалізацією та дотриманням прав, свобод і законних інтересів людини. Цінність даної роботи полягає в отриманні практичних рекомендацій з пошуку шляхів удосконалення контролю за забезпеченням та захистом прав і свобод людини в контексті сучасного демократичного розвитку*

Ключові слова: *права людини, соціальні права, державний контроль, громадський контроль, законодавство, правова система*

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EFFECTIVE CONTROL OVER ENSURING HUMAN RIGHTS AND FREEDOMS AS A DIMENSION OF A DEMOCRATIC SOCIETY: SOCIAL CONTEXT

Abstract. *This research aims to study the problem of ensuring effective control over the implementation and observance of human rights and freedoms, in particular, in the format of social rights. The relevance of the stated topic is determined by the expediency of rethinking the nature and significance of social human rights in the context of modern realities, recognising the fact that the quality of life of each individual depends on the possibility of timely implementation of these rights, and therefore special attention should be paid to ensuring effective control over the observance of social rights in the context of democratic legal development. The basis for the research were the following problems: ensuring a sufficient standard of living for citizens in today's challenges and threats, legal certainty as a prerequisite for a stable law and order, lack of clear guarantees to ensure effective control over human rights and freedoms and more. The purpose of this study is to analyse the role and importance of the nature of social human rights as a component of social policy in order to justify the need to improve control in all its forms and manifestations of the effectiveness of their observance, protection and provision in today's conditions. Important methodological tools in the study were the provisions of the dialectical approach, which provided an opportunity to reveal the nature and purpose of social human rights, as well as areas for improving control over their provision and protection. The main results obtained during the research were: coverage of the essence of social rights at the present stage; study of the nature, levels of manifestation and types of control over the implementation and observance of human rights, freedoms and legitimate interests. The value of this work lies in obtaining practical recommendations for finding ways to improve control over the provision and protection of human rights and freedoms in the context of modern democratic development*

Keywords*: human rights, social rights, state control, public control, legislation, legal system*

INTRODUCTION

One of the most difficult tests of today, admittedly, is and remains the problem of ensuring human rights, freedoms and legitimate interests. And this refers to the whole palette of rights in general and the segment of social rights in particular. For more than a year now, the thesis that secondary human rights do not exist has been emphasised (singled out) in scientific circles. All rights are paramount, paramount, with the appropriate degree of need to guarantee and secure them. However, it is clear that today “front rights” are first of all social rights. The greater or, unfortunately, lower quality of life of the average person depends on their provision, possibility of timely realisation. In addition, it should also be borne in mind that the functioning and development of modern states and their legal systems takes place in conditions of strengthening the multilevel relationships between public and private actors aimed at achieving concrete results in a particular area of public life. These relationships lead, among other things, to the strengthening of relevant interstate integration processes, which require proper organisational and legal support in order to prevent various social conflicts or, at least, to minimise their negative consequences. In these circumstances, in particular, in the context of Ukraine's European integration, the solution of various issues related to ensuring high-quality national and international control over the stable progressive development of many important spheres and sectors of public and state Life, which are subject to reform and renewal in connection with such integration, becomes of particular importance.

In this context, we must state that the basis for control at the national (domestic) and international levels should be based on common approaches to understanding control as a general social phenomenon, its essence and functions, as well as regulatory sources within certain temporal-spatial dimensions. It is the theoretical, conceptual perspective of understanding control as a general social phenomenon that makes it possible to systematically explore its basic forms or varieties, in particular, through the prism of their holistic teleological determination, their common value basis, the origins of which must be sought in the socio-normative culture.

In this regard, the problem of ensuring effective control over the observance of social human rights, through which the individual has the opportunity to first realise their skills, abilities, skills in the process of employment in order to ensure a decent standard of living, as well as receive from the state and other identified entities appropriate social services, in particular medical, which it needs to ensure social well-being.

The aim of the article is to analyse the role and significance of the nature of social human rights as a component of social policy in order to justify the need to improve control in all its forms and manifestations of their effectiveness, protection and security in today's conditions. In accordance with the purpose of the study, we consider it necessary to solve the following tasks: to highlight the essence and purpose of social policy in a democratic, legal state; determine the role of the legal system in ensuring the social rights of the individual, in particular, the right to an adequate standard of living; to study the nature of control as a social phenomenon, its levels and varieties (forms of expression); identify problems of ensuring the effectiveness of control over the observance of human rights and freedoms; substantiate the priority areas for improving the mechanism of social human rights in the context of modern realities, as well as control over their proper implementation.

1. MATERIALS AND METHODS

During the study, the key methodological tools were the provisions of the dialectical approach, which provided an opportunity to reveal the nature and purpose of social human rights, as well as areas for improving control over their provision and protection. The dialectical approach provided an opportunity to comprehend the multifaceted nature of social human rights, to predict the consequences of the asymmetric development of their components, as well as to identify factors that contribute to improving the mechanism of control over their provision. Philosophical and ideological basis of knowledge are the key provisions of anthropocentrism as a paradigm of social development. The axiological method directly related to it made it possible to reveal the nature of human rights and freedoms, as well as control over their observance as values of democratic law and order, which affect the quality of life of citizens. With the help of the synergetic method it was possible to establish the influence of social and other factors on the social rights of the individual and the mechanism of control over their observance. The method of systematic analysis was used, in particular, in determining the relationship and interaction of social human rights with the concept of “social policy”, as well as in characterising the types of control as a means of ensuring effective implementation of human rights, freedoms and legitimate interests.

Such foreign legal scholars as: F. Blok, B. Deacon, R. Robertson, D. standing, L. Taylor, M. Freeman and others have devoted their works to various issues of ensuring effective control over ensuring human rights and freedoms, including social rights. A special place is occupied by the works of the American researcher D. Rawls, who developed the principles of social justice, which should be the basis for determining the rights and obligations of the main institutions of society and thanks to which social benefits should be distributed among all subjects on the same principles acceptable to all. Such Ukrainian scientists as S. Bobrovnik, E. Borshchuk, S. Gusarev, N. Dobreva, A. Kopylenko, T. Koretskaya, S. Kosinov, V. Kravchuk, N. Onishchenko, A. Petrishin, Y. Shemshuchenko and other scientists have also devoted their works to the problems of ensuring control over the observance of human rights and freedoms.

2. RESULTS AND DISCUSSION

In modern Ukraine, in the period of formation of legal bases of the state and public life, the problem of efficiency of the legislation which shortcomings are connected first of all with the mechanism of realisation, absence of necessary institutional forms sharply arises. In addition, the legal forms of normative material are insufficiently elaborated (imbalance of rights and obligations, lack of proper sanctions, inconsistencies between the legal system and legislation, etc.). It should be borne in mind that the quality of legislation is determined by the social content, its compliance with public needs and interests. The national legal system is a kind of indicator of sustainable (or close to it) economic, legal, political, social development of each state, and most importantly – the achieved level of protection of human rights, freedoms and legitimate interests. Thus, it is clear that the legal system, as the embodiment of the appropriate level of development of law, must be able to: a) perform certain tasks; b) reproduction of the necessary functions both in the normal course of life and in extreme conditions.

A few words about it in more detail. Today, the social orientation of the legal system as a means of forming and realising the interests of the subjects by fixing certain goals, norms, rules of conduct is growing. Of particular importance is the provision of optimal combination of social and legal principles of society. This task is quite difficult, because legal and social principles are designed to ensure the well-being of the individual,

that is, above all his social rights. In this context, it should be noted that the social policy pursued by the state can not be understood only as the protection of socially vulnerable groups. After all, social policy includes, in particular, a number of measures aimed at ensuring the effectiveness of social effectiveness of economic transformations, ensuring the social component of law enforcement, investment, financial, tax policy of the state, etc. The strategic goal of the state's social policy is to create a favorable social climate and social harmony based on balancing different social interests through mechanisms that meet the basic needs of the population and increase the quality of life of all citizens. Social policy affects the processes of labor reproduction, increasing labor productivity, educational and qualification level of labor resources, the level of scientific and technological development of productive forces, the cultural and spiritual life of society. This is a system of relationships between the basic elements of the social structure of society on the preservation and change of social behaviour of the population in general and its constituent classes, strata, communities. Social policy includes the most important social institutions of education and science, culture and art, social protection and employment, etc. [1].

Thus, we can preliminarily conclude that the essence of the social policy pursued by the state can be broadly defined as the activities of the state to create the most favorable conditions for the comprehensive development of each individual and ensure the well-being of society in various spheres and spheres of public life. In this regard, it is impossible not to notice a certain limitation of purely legal and accompanying organisational measures to influence the relevant social relations in the social sphere. At the same time, such a limited right and related organisational impact, in particular, on such components of the social sphere of public life as employment, health care, housing, transport, education and other provision of daily normal activities of individuals, is primarily about objective nature, the existence of which does not depend on the will and consciousness of citizens, but follows from the necessary existing and permanent relationships between various phenomena of the real world, including at the level of elements of a complex system of social regulation of human behaviour. The legal system of the social, legal state is designed to ensure the stability of civil solidarity established by social policy by proclaiming, implementing and protecting social and legal conditions to stimulate the active part of the population to work productively as a basis for personal well-being; maintaining the optimal ratio between the incomes of the able-bodied part of society and incapable citizens; providing subsidies, relevant benefits, reducing and limiting the scale of impoverishment; curbing unemployment, and as a prospect – ensuring a sufficient standard of living. And this is in the mode, so to speak, of the "regular" course of events. However, today it is also such general social tasks as ensuring national security, eliminating the effects of pandemics, environmental disasters, implementation of social programs that will reflect the position of "everything necessary taken into account", support for rehabilitation measures, etc. [2; 3, p. 17-18].

It is extremely important in these conditions what "cross-section" of social rights should be provided by the legal system today, guaranteed by the state and defended by the judicial authorities: those that will now be built for decades on a residual principle, or, indeed, those that will help in modern Ukrainian realities to live not only with "bread alone", but also to have sufficient conditions for self-realisation of the individual, protection of his honor and dignity. Thus, in today's European countries, the right to an adequate standard of living is one of the most important social rights of the individual. Despite the fact that each person must personally take care of their well-being, it must, however, be created conditions for them to be able to ensure a minimum standard of living. Especially when it comes to the elderly, the disabled. This is the duty of the state, according to which it recognises the right of everyone to a sufficient standard of living for himself and his family [4]. It should be noted that the concept of "sufficient standard of living" is, at least to some extent, evaluative, i.e. each person determines for himself a level that corresponds to his idea of a sufficient standard of living. However, the position formulated by the lawyers of Ancient Rome, according to which "the law can and should be determined" (Digests of Justinian), is relevant to any legal system. The principle of certainty, accuracy, unambiguity of the rule of law is considered a guarantee of a strong rule of law, because provided that each member of society understands his rights and responsibilities, he gets some freedom of action and decisions within the legal space. It is up to the state to define and set minimum standards below which the living standards of citizens cannot fall.

Admittedly, ensuring a sufficient standard of living is a difficult problem even for wealthy countries. The realisation of the right to an adequate standard of living, admittedly, affects the internal resources and capabilities of the state. The right to an adequate standard of living includes, as already mentioned, such opportunities as the right to adequate food, the right to sufficient clothing, housing, and the improvement of living conditions. The right to adequate food is: freedom from the Holodomor; the right to quality food; opportunity to have the means to receive quality food, etc. In the current conditions of the global pandemic

"COVID-19" the right to an adequate standard of living acquires special relevance and importance, in particular, in the conditions of necessary vaccination.

In this context, it should be emphasised that the appropriate level of provision and protection of social human rights is an indicator of the effectiveness of the social management system in general, which is expressed, inter alia, in effective control at its various levels (eg national, international, etc.) and appropriate forms or varieties (for example, state and public control). Therefore, a separate component of ensuring the effective implementation of social rights of the individual should be recognised the exercise of proper control by the relevant actors over the implementation of social policy in the state. General theoretical understanding of the category "control" or the ratio of the terms "Control" and "supervision" regarding their identification or providing criteria for their differences, as well as the allocation of control in an independent branch of government, the grounds for recognition and existence of a control branch of government, etc. – issues covering the necessary format of theoretical understanding and study. The practical section of the plane of control in democratic, legal states covers the functional ability to ensure human rights, freedoms and legitimate interests, and hence the legitimacy of the government that effectively protects these rights (welfare state). It is a state that is able to answer to civil society and the individual for the consequences of its activities [5].

If we turn to modern doctrinal legal sources, we can see that there are no common approaches to understanding the concept of control, including in the context of the relevant state activities. For example, control in the system of state activity can be considered in broad and narrow meanings. In a broad sense, control is a special kind of state activity, which includes a system of political, economic and ideological processes and methods aimed at achieving stable functioning of society and the state, social order, influence on the mass and individual consciousness. In the narrow sense, control is an activity of the state, which consists in verifying the implementation of decisions of higher organisations, compliance with technical, economic, organisational standards for the implementation of tasks, compliance with labor discipline and legal norms [6, p. 102]. As we can see, the above definitions are essentially focused on the concept of "state control", which has a power-binding nature and the subject of which are public authorities. It should be noted that one or another sphere of state activity in the conditions of democratic development can also be the object of appropriate types of public control, as well as international.

In addition, in the legal literature, the nature of control in the system of state activity is also defined through the concept of "functions of the state", as well as one of the forms of legal activity of the state. Thus, some authors distinguish the legislative, executive-administrative, judicial, control-audit and supervisory functions of the state according to the methods of exercising state power [7, p. 87]. At the same time, in our opinion, the control (control-audit) function of the state as a separate main direction of its activity can be discussed only conditionally, because, as previously noted, control to some extent accompanies any socially significant activity, especially that which is associated with the exercise of state power. After all, it is obvious that certain control functions are constantly carried out in the process of implementation by the authorised state bodies, in particular, the legislative, executive and administrative, and even more so the judicial function of the state. In the domestic scientific literature in this context, it is fair to say that control in itself is not a primary activity, but applies to actions that can be carried out independently of control. The control function includes, in particular, "identification and analysis of the actual state of affairs, comparison of this provision with the set goals and objectives, evaluation of controlled activities, taking measures to eliminate the identified shortcomings and prevent them in the future. Such a comprehensive understanding of control is not limited to observing, checking, recording deviations and informing about them" [8, p. 164-165]. It should be recognised that in the activities of specific government agencies, control may be predominant or fundamental, which gives grounds for the separation of the so-called controlling or supervisory bodies in the state apparatus (for example, the Accounting Chamber).

Another is the approach according to which control is considered as a form of legal activity of the relevant entities, including the state. In particular, S. Kosinov considers control as a special legal form of activity, consisting of a set of actions aimed at establishing compliance of actions and decisions of legal entities with certain principles, standards, rules of conduct. In this case, social control as a generic concept, according to the scientist, has a broad meaning and combines the following elements: 1) state control, i.e. internal control exercised by public authorities against each other within the system of public authority; 2) public control exercised by entities not endowed with public authority; 3) international control [9, p. 19-25]. In general, agreeing with this elemental composition of the concept of social control, we believe that state control can not be limited only to its so-called internal hardware variety, as state control is implemented primarily in the process of public administration, i.e. power-organising activities of authorised entities (state bodies), aimed at ensuring the stable functioning and progressive development of certain spheres and branches of public life. After all, public control, the subjects of which are various organisations, public associations and individuals

(for example, journalists), also goes beyond the relevant structures, extending its effect, inter alia, to public administration relations, as this type of control occurs in the process of interaction between civil society and the state.

Thus, control in a broad sense is a democratic institution, because democracy is, among other things, control over the exercise of public power in society. In our opinion, control in terms of historical and legal paradigm is a form of governing society, which consists in: a) the establishment of certain behavioural rules; b) their appropriate consolidation, which will ensure publicity and awareness of them; c) the need to comply with the requirements of society in the context of legitimation of public authorities. In addition, it should be noted that the control activities of various subjects of public relations (state and public) at the present stage of development of Ukraine, is carried out in terms of intensification of the European integration course of our state, a new impetus was given in connection with the signing of the Agreement on the Association between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part (hereinafter referred to as the Association Agreement). The provisions of this Agreement address a large number of issues of cooperation between Ukraine and the EU in many important areas and spheres of public life. Admittedly, their content also includes the issue of implementing control, which should accompany almost every essential aspect of the implementation of the association agreement (for example, control in the field of public finance management, tax control, health control, arms control, preferential treatment control, customs control, etc.).

After a kind of definitive understanding of the category of "control", we want to note that the scope (instrumental dimension) of control can be considered, in particular, as: state control, public control and international control. All three systems of control in a modern democratic, legal and social state are united by common functions, have a common denominator – the protection of human rights, freedoms and legitimate interests. Each individual system of social control is a value-oriented vector of democratic development of modern states, in particular, Ukraine in the context of transforming the declarative constitutional provision "man is the highest social value" into a real, legally protected constitutional principle. Thus, state control in the field of human rights and freedoms in Ukraine today is exercised through the use of powers of state bodies and officials defined in the Constitution and laws of Ukraine. In this context, we can talk, in particular, about presidential control, parliamentary control, control by the Cabinet of Ministers of Ukraine and other executive bodies, judicial control, etc. In this case, each of these concepts is quite voluminous in scope, as it includes a number of functions and powers, the implementation of which directly or indirectly indicates the implementation of the relevant government control activities, which in many cases is not directly defined as such.

Human rights and freedoms, including social, and therefore, at least to some extent, control over the state of their provision and observance, is taken care of essentially by the entire state apparatus, which, exercising the relevant powers, should act only on the basis, within the powers and in the manner prescribed by the Constitution and laws of Ukraine. In this context, we note that the presence of a large number of state authorities, to one degree or another authorised to perform certain control functions aimed at ensuring and protecting constitutional human rights and Freedoms, does not mean and does not presume their effective activity in this direction, even in the conditions of high-quality legal regulation of relevant relations. After all, the effectiveness of control in any important area or sphere of public life depends not only on the specific objective parameters of its establishment and implementation, but also on certain subjective factors that are associated, inter alia, with different states of will and consciousness officials of state bodies authorised to perform these functions, with the level of their moral and legal culture, with their value orientations, etc.

Speaking of state control, it should be borne in mind that the specifics of control relations in the coordinate system "state-person" is, in particular, that they are mostly governed by law. As you know, the value approach to law involves its delimitation of the right ideally, i.e. the level of formal and substantive freedom in legal relations, and the level of law in action, i.e. the effectiveness of law in certain temporal-spatial coordinates. With this in mind, it should be noted that human freedom cannot and should not be excessively restricted by any means of control, including those to which the relevant state bodies are subject. After all, control in democratic legal systems is a blessing, not an oppression. At the same time, it is at the state level that the dichotomy (dualism, duality) of control will always find its most manifestation, which is associated, on the one hand, with the objective need to exercise state-power control over the relevant relations and processes taking place in society, that is, in fact, with the restriction of the freedom and will of individuals, and on the other – with the creation of conditions for the comprehensive development of the individual, expanding the boundaries of his individual freedom, etc. That is why only the legislative or legal detailing of control functions and the redundancy of control institutions, first of all state ones, are unlikely to contribute to the stability of both the general social order in general and the legal one in particular. The latter follows, in particular, from the fact that quantitative control does not contribute to quality of life.

Along with state control, public control plays an extremely important role in the national dimension of every democratic state. First of all, it is control over the redistribution of social space between the state and civil society, coverage of problems that arise between the state and citizens, and most importantly – control over the responsibility of the rule of law to civil society. Thus, to some extent, public control is "control over controllers". Public control is a function of civil society, a way to involve the population in the management of society and the state. It is an important form of democracy, as it provides the population with the opportunity to participate in public administration, in solving state and public affairs, to actively influence the activities of public authorities and local governments [10, p. 74]. Thus, we can trace the appropriate unity between state and public control over the implementation of social tasks, ensuring the effectiveness of social policy, and therefore – the effective protection of social rights and legitimate interests of citizens.

In the domestic scientific literature it is noted that public control is "a tool for public assessment of the degree of performance of public authorities and other controlled objects of their social tasks". In other words, "the characteristic differences between public control and any other type of control are in the subject-object sphere and consist in the fact that, firstly, public control is carried out precisely by the public (organised and unorganised) and, secondly, in the process of public control, the performance of social tasks directly related to the implementation and protection of citizens 'rights and freedoms, satisfaction and coordination of social needs and interests of the population is checked" [11]. Among the main features of public control are usually the following:

1) public control is a means of ensuring the balance of interests of different social groups;
2) the purpose of public control – ensuring and protecting human rights, freedoms and legitimate interests by uniting and coordinating the efforts of civil society institutions;
3) public control is a guarantor of the implementation of not only legal but also other social norms;
4) public control extends to various spheres of activity of subjects of power;
5) public control is massive, as it involves various social groups and segments of the population;
6) participation in the implementation of public control is voluntary [12, p. 91].

At the same time, unlike state control, public control has no legal and authoritative content, as the subjects of its implementation do not have the power to enforce the relevant decisions taken as a result of observations and inspections of certain aspects of government activities. This feature significantly reduces the effectiveness of this type of social control in general. In this regard, natural questions arise: can public control in general be an effective way to ensure and protect human rights and freedoms, a means of counteracting the usurpation of state power and its separation from the interests and needs of citizens? What are the main prerequisites for ensuring the effectiveness of public control?

In our opinion, public control, admittedly, can and should be an effective means of ensuring human rights and freedoms, a way to ensure the rule of law and discipline in public administration. However, it is unlikely that this effectiveness can be ensured only through appropriate legal means, in particular, perfect legal regulation of certain important social relations. In this context, if we turn to the legal regulation of various issues of public control in Ukraine, we can be sure that in general it meets European democratic standards in this area. In particular, there are several laws of Ukraine in force in Ukraine, which enshrine essentially the basic, fundamental provisions of public control, its tasks and means of implementation. These include, first of all, the Laws of Ukraine "On Public Associations" [13], "On citizens' Appeals" [14], "On Information" [15], "On Access to Public Information" [16]. These and some other laws provide an opportunity for citizens and relevant institutions of civil society to use the legal means enshrined in them, through which public control over the activities of public administration.

In addition, Ukraine also has other laws and regulations that define the features of public control in specific areas or spheres of public life, as well as forms and types of public control and procedural aspects of its implementation. Among these regulations it is necessary to allocate first of all the Laws of Ukraine "On Public Procurement" [17], "On Prevention of Corruption" [18], "On the National Police" [19], "On Improvement of Settlements" [20], "On Trade Unions, Their Rights and Guarantees of Activity" [21], "On principles of state regulatory policy in the field of economic activity" [22], etc., as well as the resolution of the Cabinet of Ministers of Ukraine dated 03.11.2010 No. 996 "On ensuring public participation in the formation and implementation of national policy" [23] and the resolution of the Cabinet of Ministers of Ukraine dated 05.11.2008 No. 976 "On approval of the Procedure for facilitating public examination of the activities of executive bodies [24].

It should be noted that the main shortcoming of the legal regulation of public control in Ukraine, which significantly reduces its effectiveness and, in many cases, turns it into a purely declarative phenomenon, is the lack of proper detailing of procedural support for its implementation. For example, paragraph 4 of part 1 of Article 21 of the Law of Ukraine "On Public Associations" [13] enshrines the right of public associations to

participate in the development of draft regulations issued by authorised state bodies and relating to the activities of public associations and important issues of state and public life. But, unfortunately, the specified norm has, rather, declarative character in connection with absence of the normatively defined order or procedure of its realisation. In this case, the law, as a normative regulator, somewhat loses its formally defined quality, which distinguishes it from other important socio-normative systems, in particular, morality.

Thus, it should be agreed that the formation of only a model of public control without detailing the procedural support in most cases is an obstacle to its practical implementation. As a result, the subjects of the relevant public relations have only a general idea of the system of public control in Ukraine. The result is low efficiency of public control, insufficient public initiative in this area and uncertainty of public authorities in the legal relations that arise during such control. Collectively, this situation only exacerbates the existing problem, and "any public activity to control public authorities is often de facto on the shaky border of legality and legitimacy" [25, p. 302]. However, in our opinion, the problem of the effectiveness of public control is not limited to the legal dimension, and therefore, even in terms of ensuring clear and high-quality legal regulation of relevant public relations, public control may not be implemented effectively enough. The fact is that the effective implementation of public control depends not so much on the availability of high-quality legislation in this area, but on the degree of solidarity of citizens of the relevant society, its moral climate, a significant number of structural elements of which are more or less involved in the process of implementing this type of social control.

Public control, regardless of the specific subject of its direct implementation, objectively requires the presence in the relevant society of strong solidarity principles of its functioning, ie the unity of interests, objectives, standards and mutual understanding between its institutions and entities. After all, it is obvious that outside such principles, ie in the conditions of "atomicity" of society, when its individuals as primary subjects realise themselves only as an autonomous, independent, free from society and binding social relations of the individual, it is impossible to talk about achieving declared goals of public control, aimed ultimately at ensuring the achievement of national consensus and social harmony in society. That is why a necessary prerequisite for the practical effectiveness of public control is the presence of strong solidarity between members of society, which should ensure awareness of their own identity through the prism of a particular socio-cultural identity in which they were born, raised, educated and professionally engaged in certain activities. If citizens, as direct subjects of public control, interact with the outside world only through the prism of personal self-identity, i.e. as subjects who are guided in their actions only by their own selfish preferences, recognise personal authority and at the same time reject any other, they will carry out any important activity not to ensure the common good, but only for their own closed comfort [26]. The solution to the problem of formation and development of such a person who would be able to be fully responsible for their actions and activities, associated with the whole system of spiritual and material values of society, with the correct perception and awareness of their hierarchy by its representatives.

Thus, we want to note that the task of civil society, admittedly, is to protect people from excessive state control. Thus, the positions of detailing or consolidating control bodies and strengthening public order, including the legal one, do not always coincide, because the amount of "control" does not mean the quality of life itself. However, control, admittedly, is the benefit of democracy, the institution of a democratic state, which must serve the interests of the average person. In the context of the separation of the third type of control (international control), in our opinion, it should be noted that it is a relatively new tool to ensure the implementation of states' international legal obligations, which began to be widely used after World War II and the Organisation of the United Nations. International control plays a special place in the field of human rights (international human rights protection system, European human rights mechanisms) [27; 28; 29]. In general, control over the provision of human rights, freedoms and legitimate interests in modern democratic realities is an orthodox, classical slice of understanding this phenomenon of social reality in general. After all, the practical slice of the plane of control in democratic legal systems covers the functional capacity for real rather than declarative provision of human rights, freedoms and legitimate interests, which fully ensures the legitimacy of power in the state. Effective enforcement of human rights means effective governance and, consequently, the legitimacy of power.

According to Article 67 of the Treaty on the Functioning of the European Union ("the Treaty"), the Union is an area of freedom, security and justice, in which fundamental rights and different legal systems are respected. Article 68 states that control is a means of operational planning in the area of freedom, security and justice [30, p. 104]. In particular, it should be noted that many articles of this Treaty provide for control in various spheres of human life, in particular, in the field of health care and adequate access to medicine (Articles 114, 168 of the Treaty, etc.). It is axiomatic to recognise that health care is an area that needs the most careful attention from the state and civil society. Thus, Article 3 of the Charter of Fundamental Rights of the European

Union of 7 December 2000 regulates the right to the integrity of the person, which, in addition to information on medical procedures, includes the right to quality vaccinations and pills (quality medicines). One of the interpretations of this consideration may be the right to quality fresh drinking water [31], quality medicines, etc. It is clear that the "second hand" in the medical field is impossible. In view of this, one of the essential directions of such control is control in the field of health care. Thus, the European Union has the competence to take measures to support the control, coordination or complementarity of the actions of the Member States. Areas of such action at European level are the protection and promotion of human health (Article 6 of the Treaty, point "a").

Despite this, today in Ukraine, unfortunately, there are still many cases of selling in pharmacies and kiosks drugs with a short duration, "unsuitable" pills or vaccinations with expired vaccines. In this regard, we consider it necessary to improve the current legislation of Ukraine (Law of Ukraine "On Medicines" [32], "Fundamentals of Legislation of Ukraine on Health Care" [33]) in the context of ensuring the effectiveness of control over the sale of substandard medicines, as well as to introduce effective control from the quality of medicines and procedures to a balanced pricing policy for them. One that deserves close attention in the context of personal health and safety is the use of international experience regarding the Prohibition of experiments in the field of eugenics, that is, artificial transformation of human nature; the Prohibition of trade in organs and parts of the human body for profit; the Prohibition of reproductive cloning of human beings, etc. (Article 3 of the Charter of the European Union on fundamental rights of 7 December 2000).

Thus, an essential component, which, admittedly, plays a priority role in modern state-building processes, is the provision and protection of human rights. However, it seems to us that today we should talk not only and not so much about the potentially granted rights, but about the reality of their use, implementation, compliance, application, and hence – the "realism" of their implementation. Especially important in these conditions is the effectiveness of law: a sense of security for everyone, guarantee of rights and legitimate interests, opposition to arbitrariness in the process of regulating public relations, the undoubted operation of mechanisms for introducing legal order in all spheres of public life, ensuring and ensuring a security system related to social activities, especially those that pose a potential threat to the vital interests of the individual, society and the state. This is by no means a complete list of our expectations of modern law. To a large extent, the success of democratic transformations depends on the extent to which the law in society is supported and respected by different societies and each individual in particular. It is clear that legal issues, legal forecasting, legal development programs, in particular, the directions of formation of modern legal systems always more or less affect the related political, economic and social processes.

There is no doubt that in the domestic legal field, or in the phenomenon that reproduces the essential features of national law, an important role today must be played by effective law and effective legal regulation as necessary conditions for improving state-building processes. The vocation, "mission" of law in general and its "constructive" burden, in particular, today, first of all, is to achieve social stability, and hence – proper social protection in society, without which the functioning of welfare state institutions is impossible. Moreover, the effective implementation and enforcement of constructive law guidelines will certainly determine the role of a democratic European state governed by the rule of law, the role of social arbiter, "organiser of many cases", its ability to relieve social tensions, avoid acute social conflicts [34], etc. Modern jurists have repeatedly turned to the consideration of certain possibilities that seem to "reproduce" the translation of potential proclaimed rights into a real practical plane. It should be noted that it is quite clear that sometimes the implementation of a particular right requires at least one but several opportunities, such as economic, educational, social, gender, etc., existing in the relevant space-time continuum. Moreover, there is an indisputable thesis that there are no secondary or non-first-class or type of human rights, so every unrealised, untimely or not fully realised right, no doubt, is based on the lack, first of all, of the relevant real opportunities.

Given that state, public and international control are special types of social control, their concept, nature and purpose can not be considered in isolation from the latter. In any society and in any organisational entity, there are always diverse social relationships or social relations that must be predictable, not chaotic or unpredictable. That is why there is a need to ensure the creation of an effective mechanism for maintaining social order in general, which implies not only the existence of an appropriate sociormative system, the rules of which determine the standards of actions, behaviour and activities, but also purposeful activities aimed at maintaining harmony and peace in society through the use of a certain system of means and procedures. The basis of social control is a system of social norms prevailing and / or enshrined in society, the content of which includes socially useful and acceptable rules, patterns, standards, principles governing human behaviour and activities. Despite the fact that in modern democratic realities the main and most important role in regulating social relations relies on the law, the content of which goes beyond, in fact, formal state institutions and includes appropriate timeless and universal principles of proper organisation of public life, in under no

circumstances should the importance of other social regulators be diminished, some of which (for example, morality) are able to lay a much stronger foundation in building consensus and solidarity principles for the functioning of society and the state.

In our opinion, the value, role and importance of non-legal social regulators, primarily morality, grows in the implementation of not only state but also public control over certain socially important processes, including those that take place in government institutions. The extreme importance of morality in the exercise of public control is explained, in particular, by the fact that the latter does not have a power-binding character, and therefore, its implementation objectively cannot fall under the same detailed legal regulation that takes place at the public-legal level. In view of this, there is a need to strengthen the influence of other social regulators on the behaviour of social control entities, which through the activities of relevant social institutions (family, school, church, etc.) form a positive value-normative dominant of individual behaviour.

In addition, the norms of morality to the greatest extent ensure the formation of a sense of self-control and discipline in all subjects of social relations. At the same time, the elements of such self-control are primarily the will and conscience of a person, which, on the one hand, help the individual to overcome his internal subconscious desires and needs, the external pressure of life circumstances, control personal emotions and thoughts, make clearly conscious, meaningful decisions and implement them, and on the other-to correlate his behaviour with the moral and legal principles of due and not violate conscious personal beliefs and attitudes. In view of the above, the systematic action of traditional social regulators for the respective society is extremely important not only to ensure the proper quality of public control, but also state control, as the direct or primary subjects of the latter are relevant officials of state bodies whose powers and activities the tasks and functions of specific state bodies and the state in general are activated. The practice of recent years and even decades, in our opinion, has convincingly proved the impossibility of ensuring effective public administration, including control, only through legal means, even those whose content appeals to universal universal values.

CONCLUSIONS

Thus, finally, we note that the purpose of social policy is to ensure the material and spiritual well-being of citizens, achieving stability and security of life in society, the integrity and dynamism of its development. Therefore, it is extremely important to ensure social rights, as noted by leading legal practitioners and representatives of the scientific community, to work out the following areas, namely:

1. Prevention of poverty, changes in the quality of life in the direction of deterioration.
2. Creation of state, first of all legal, guarantees for prevention of natural disasters, epidemics, epizootics, technogenic catastrophes, for immediate liquidation of their consequences, help to the affected population.
3. Creation of education, health care, pension, other social issues accessible to a wide stratum of the population, taking into account the issue of security of citizens, population groups, etc.

In addition, we must keep in mind that conducting a “sound” social policy is impossible today without the following statements: it is important to emphasise that to ensure social human rights in practice it is necessary to doctrinally develop and implement the category of “social responsibility” of the state, business and other civil society institutions. Without proper rights corresponding to the rights, as well as the appropriate level of social responsibility of the relevant institutions, it is impossible to raise the question of proper social rights either in the theoretical sense or in practice. Ensuring the effectiveness of national and international control in the context of European integration implies the need for a set of organisational, legal and other measures aimed primarily at forming a comprehensively developed personality with a high level of spiritual culture in general, not just legal culture and legal awareness. After all, any control activity at the national and international levels is always implemented in specific actions and deeds of entities authorised to do so by law or international treaties. It should be borne in mind that many values of spiritual culture, despite their universal significance for humanity in general, always have a certain socio-cultural context, which affects the specifics of their perception and understanding within a society and state, and therefore, including efficiency control activity, which is manifested in the achievement of socially useful results of its implementation.

The proper quality and effectiveness of national and international control cannot be ensured by legal means alone, including the adoption of “best” or “perfect” laws, as well as relevant international treaties. After all, laws and international treaties, like any other source of law, are not a closed “thing in itself”, but are created, exist and are implemented only in connection with the perception and knowledge of the surrounding diverse reality. In this regard, social control in general includes a holistic system of interconnected and mutually agreed mechanisms for maintaining order and harmony in society through a set of social regulators, the most important, most influential and most universal of which are law and morality. At the same time, the systematic and coordinated action of law and morality, and in some societies and the relevant religious tradition, provide

the most effective influence on the relevant socially significant activities, in particular, on control in the field of public administration. This, in turn, means that in the context of modern democratic realities of building a legal, social state, in which the rule of law prevails, the moral (ethical) factor of ensuring proper quality and effectiveness of control over proper implementation and observance of social and other human rights. This necessitates special attention to the human potential of control activities, highly professional formation of which must contain an element of moral (ethical) education, through which the greatest achievement of the individual's ability to "go beyond himself" and thus, aim at their actions not only personal aspirations and desires, but also the interests of other actors.

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Suggested Citation: Onishchenko, N.M., & Suniehin, S.O. (2021). Effective control over ensuring human rights and freedoms as a dimension of a democratic society: Social context. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(3), 15-26.

Submitted: 03.06.2021
Revised: 31.07.2021
Accepted: 26.08.2021

УДК 341.231.14:341.645](4):343.4(477)
DOI: 10.37635/jnalsu.28(3).2021.27-35

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ПРАВА ЛЮДИНИ І ПОЗИТИВНІ ОБОВ'ЯЗКИ ДЕРЖАВИ

Анотація. *На сьогодні ні на міжнародному рівні, ні на регіональному рівні захисту прав людини чітко не зафіксовано що саме означає позитивний обов'язок держав захищати права людини. Так само і в доктрині немає єдиного погляду щодо цієї концепції. Досить тривалий час права людини розглядались як такі, що породжують так звані негативні зобов'язання держав утримуватися від порушень прав людини. Проте з розвитком міжнародного права прав людини дедалі більшого визнання набуває положення про те, що права людини породжують також позитивні зобов'язання держави вжити активних заходів для забезпечення цих прав. Зазвичай такі зобов'язання випливають з міжнародних договорів про права людини або від тлумачення міжнародних судових органів, які контролюють виконання відповідних міжнародних договорів. Тому надзвичайно важливим для доктрини та практики міжнародного права у сфері захисту прав людини є аналіз позитивних зобов'язань держави, закріплених у міжнародних договорах та практиці міжнародних судових органів. Метою дослідження є аналіз прав людини і позитивних обов'язків держави у контексті діяльності регіональних механізмів захисту прав людини. Серед загальнонаукових методів у роботі були використані метод аналізу та синтезу, метод дедукції, метод індукції, метод прогнозування, метод моделювання, метод аналогії та інші загальнонаукові методи. Ґрунтовне дослідження позитивних зобов'язань держави було б неможливим і без використання спеціальних методів вивчення і пізнання, які включають в себе порівняльно-правовий, історико-правовий, формально-юридичний та структурно-функціональний методи. Зокрема, одним з провідних методів дослідження став порівняльно-правовий метод, за допомогою якого була досліджена практика регіональних механізмів захисту прав людини. У статті надано огляд сучасного тлумачення позитивних зобов'язань держав. Зокрема, дослідження зосереджується на практиці Європейського, Міжамериканського та Африканського судів із прав людини у контексті застосування позитивних зобов'язань держави*

Ключові слова: *доктрина, соціальні права, Європейський суд, правовий механізм, міжнародне право*

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HUMAN RIGHTS AND POSITIVE OBLIGATIONS OF THE STATE

Abstract. *At present, both the international and the regional levels of human rights protection lack an express definition of the positive obligation of states to protect human rights. Similarly, the doctrine lacks a unified opinion regarding this concept. For quite a long time, human rights were considered as such that give rise to so-called negative obligations of states to refrain from human rights violations. However, with the development of international human rights law, it is increasingly recognised that human rights also give rise to positive obligations of the state to take active measures to ensure these rights. Such obligations usually derive from international human rights treaties or from the interpretation of international judicial bodies that monitor the implementation of corresponding international treaties. Therefore, it is crucial for the doctrine and practice of international law in the field of human rights protection to analyse the positive obligations of the state, which are consolidated in international treaties and the practice of international judicial bodies. The purpose of this study is to analyse human rights and positive obligations of the state in the context of regional mechanisms for the protection of human rights. Among the general scientific methods, the study used the analysis and synthesis, as well as deduction, induction, prediction, modeling, analogy and other general scientific methods. A thorough study of the positive obligations of the state would be impossible even without the use of special methods of study and cognition, which include comparative legal, historical and legal, technical, and structural-functional methods. In particular, one of the leading research methods was the comparative legal method, which was used to study the practice of regional mechanisms for the protection of human rights. The study provides an overview of the modern interpretation of positive obligations of states. Specifically, this study focuses on the practice of the European, Inter-American and African Human Rights Courts in the context of applying the state's positive obligations*

Keywords: *doctrine, social rights, European Court of Justice, legal mechanism, international law*

INTRODUCTION

The development of human rights and special mechanisms for their insurance is based on the recognition of an individual as an independent legal entity, as a bearer of international legal rights and obligations. Human rights set limits for the interference of the state supreme power in the life of an individual [1]. Notably, the emergence of positive rights, which in particular include social, economic and cultural rights, is a fairly new phenomenon that appeared and gained its development and spread mainly after the Second World War. At that time, it was widely thought that the greatest threat to a person is caused by the actions of the government and its authorities.

That is why for quite a long time the field of human rights protection was dominated by a liberal philosophy that laid the foundation for civil and political rights. Due to the fact that civil and political rights have appeared first, most states of the world interpreted them mainly as negative obligations, that is, those

according to which the government should refrain from interfering with certain freedoms. However, with the development of international human rights law, states have increasingly realised that for the effective exercise of human rights, the state must adhere to and perform both negative and positive obligations, thereby equating positive and negative obligations. According to G. Hristova [2], the doctrine of positive obligations of the country in the field of human rights was established mainly along with the development of the case law of the European Court of Human Rights, which gained official recognition, international prestige, validity and reliability, as well as regulatory properties. Indeed, the concept of positive obligations of the state in horizontal relations appeared in the case-law of the European Court of Human Rights in the second half of the 1980s and owes its success to the fact that this body constantly promoted it. It also demonstrates that the Convention on Human Rights and Fundamental Freedoms is a living instrument that meets the demands of a changing reality. New sources of threats to the rights and freedoms of the Convention require the Member States to apply new and adequate measures [3].

A. Zavalny also noted that positive obligations are the obligations of the state to take certain actions to avoid violations of rights and freedoms or to enable a person to exercise their rights under the Convention for the Protection of Human Rights and Fundamental Freedoms. This, for example, may include the adoption of legislation that would help ensure the exercise of those rights guaranteed by the Convention [4]. Furthermore, positive obligations require various forms of action on the part of states, ranging from an effective murder investigation to protection of peaceful demonstrators from violent attacks by their opponents. The current significance of these obligations is clearly illustrated by the fact that it is the obligation of states to ensure a fair trial for civil and criminal proceedings that has been the source of the vast majority of complaints to the European Court of Human Rights in recent years. Therefore, it is crucial to study the legal basis and content of the key positive obligations [5].

The problem of responsibility of states for the violation of international obligations in the field of human rights was studied by L. Huseynov [6] at the dissertation level. S. Shevchuk studied the concept of positive obligations of the state in the case law of the European Court of Human Rights [7]. For example, Y. Razmetayeva noted that the positive human rights obligations of the state require national authorities to act, take measures to guarantee and ensure the exercise of human rights, their protection and restoration in case of violation. Positive obligations of the state are aimed not only at creating means for the protection of human rights but also at their effectiveness and successful practical application [8].

1. MATERIALS AND METHODS

The main objectives of this study are to analyse the positive obligations of the state in international human rights law. Such obligations usually derive from international human rights treaties or from the interpretation of international judicial bodies that monitor the implementation of corresponding international treaties. In addition, the study focuses on the positive obligations made by the European, Inter-American and African Human Rights Courts. Notably, the study of human rights and the positive obligations of the state was conducted by performing the following steps. First of all, the study analysed international legal provisions regarding the positive obligations of states that were developed within the framework of the UN and regional international organisations for human rights protection. Next, an analysis of the practice of regional courts dealing with human rights issues was conducted. Based on the analysed material, general conclusions were drawn, and prospects and recommendations regarding the positive human rights were presented.

A wide range of scientific methods was used to achieve the goals set in the study. In particular, the study uses both general scientific and special legal methods of scientific cognition, the specific combination of which is determined by the purpose and objectives of scientific research. Among the general scientific methods, the study used the analysis and synthesis method, as well as deduction, induction, prediction, modelling, analogy, and other general scientific methods. A thorough study of the positive obligations of the state would be impossible even without the use of special methods of study and cognition, which include comparative legal, historical legal, technical, and structural-functional methods.

The methodology of the study is based on the general scientific dialectical method. It was used to analyse the essence of the concept of positive obligations of the state. Analysis and synthesis helped in the study of theoretical approaches to understanding the doctrine of positive obligations of the state. The system and structural analysis were used to clarify the key elements of positive obligations of the state and investigate the regional mechanism for the human rights protection. A number of logical methods, namely deduction and induction, were used in the study of regulations that define the positive obligations of the state. The forecasting was used to finalise the findings of the study. The historical legal method was used to highlight the prerequisites and formulation stages of the doctrine of positive obligations of the state. In particular, one of the leading research methods was the comparative legal approach, which was used to study the practice of regional

mechanisms for the protection of human rights. In particular, the practice of the European, Inter-American and African Human Rights Courts was analysed.

The study was based on research activities of Ukrainian and foreign scientists, materials of research-to-practice conferences, seminars, etc. In addition, regional international legal regulations in the field of human rights protection were analysed, which include: the European Convention on Human Rights and Fundamental Freedoms; the American Convention on Human Rights, as well as the African Charter on Human and Peoples' Rights. Thus, using the above-mentioned methods and materials, the problems of human rights and positive state obligations were comprehensively analysed.

2. RESULTS AND DISCUSSION

At present, both the international and the regional levels of human rights protection lack an express definition of the positive obligation of states to protect human rights. Similarly, the doctrine lacks a unified opinion regarding this concept. It is generally recognised that the state has an obligation to ensure the protection, enforcement, and observance of human rights. In other words, human rights protection rests upon the state. Therewith, the obligations, for the violation of which the state can be held responsible, can be distinguished into positive and negative obligations. Positive obligations require the national authorities to act, that is, to take the necessary measures for the defence of a right or to take reasonable and appropriate measures to protect the rights of the individual. In other words, positive obligations are obligations to ensure respect and protection of human rights. In turn, negative obligations relate to the negative duty, that is, to refrain from actions that would interfere with human rights. Some scholars divide human rights into classical and social rights. Classical rights are those rights, to comply with which the government is obliged to waive any actions that may lead to a violation of this particular right (i.e., a negative obligation).

In the case of social rights, the government is obliged to perform certain actions to ensure the enforcement of the right (i.e., a positive obligation). That is, a positive obligation requires state intervention. Notably, the distinction between civil and political rights of the first generation and economic and social rights of the second generation has led to the emergence of a special term, in part because the wording of the International Covenant on Civil and Political Rights is mainly based on the “everyone has a right” model, while the wording of the International Covenant on Economic, Social and Cultural Rights prefers the “Member States undertake” model. The difference in models reflects different approaches. Admittedly, for human rights to be protected in the second case, states cannot merely exercise non-interference, that is, taking a passive approach to human rights would be insufficient for this [9]. As the UN High Commissioner for Human Rights noted, everyone has rights and obligations in accordance with the provisions of international human rights law. The state has primary responsibility, since it must not only respect human rights and respond to them when they are violated but also protect against violations by third parties and create an environment where all rights are respected [1]. The scope of a state's positive obligations is defined by various international treaties, state constitutions, etc. Thus, the fundamental rights stipulated in each international human rights treaty make provision for positive obligations of states.

Notably, in addition to the United Nations, international organisations such as the Council of Europe, the African Union and the Organisation of American States have developed human rights instruments and established bodies to monitor their insurance by member states. For example, one of the most important tools in the European context is the European Court of Human Rights, which decides on the application of the Convention for the Protection of Human Rights and Fundamental Freedoms by states. The Inter-American Court of Human Rights operates within the Organisation of American States, while the African Court of Human and Peoples' Rights protects and promotes human rights within the African Union. Therefore, this study will analyse the practice of the above-mentioned human rights mechanisms. It should be noted that within the framework of the United Nations, the Universal Declaration of Human Rights was adopted by the UN General Assembly in 1948. It proclaimed a list of the following positive rights: the right to property (Article 17), the right to social security and the exercise of social and economic rights necessary for the dignity of a person and the free development of his personality (Article 22), the right to work (Article 23), and the right to education (Article 26). Article 25 recognises the right to a certain standard of living: “everyone has the right to a standard of living appropriate to the health and well-being of himself and his family, including food, clothing, housing, medical care and necessary social services, as well as the right to security in the event of unemployment, illness, disability, old age or lack of other means of subsistence”.

In addition, a number of positive obligations are also outlined in General commentary No. 3 of the UN Committee on Economic, Social and Cultural Rights, which explains the nature of the obligations of the Member States to the treaty. In particular, Member States wishing to implement in good faith the International Covenant on Economic, Social and Cultural Rights should: 1) take all appropriate measures to implement

economic, social, and cultural rights; 2) make provision for remedies in legislation introducing policies important for the realisation of economic, social, and cultural rights; 3) adopt targeted and effective programmes to protect the most vulnerable groups.

At the regional level, one of the most effective mechanisms for guaranteeing positive human rights consolidated in the Convention for the Protection of Human Rights and Fundamental Freedoms is the European Court of Human Rights, which operates within the Council of Europe. Article 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms obliges Member States to ensure the rights and freedoms defined by the Convention for anyone within their jurisdiction. As noted by the European Court of Human Rights in the case of Assanidze v. Georgia [10], it follows from Article 1 of the Convention that Member States are responsible for any violation of the protected rights and freedoms of anyone within their jurisdiction. In addition, the European Court of human rights notes that the duty to protect human rights is not limited to the obligation "not to obstruct" or "not to interfere", but also includes the obligation to take measures to protect the rights and freedoms consolidated in the Convention for the Protection of Human Rights and Fundamental Freedoms, that is, this precisely refers to the performance of positive obligations by the state. One of the first cases to address the state's positive obligations and to be examined by the European Court of Human Rights was the Belgian Linguistics Case. In particular, the applicants lodged six applications between 1962 and 1964 on their behalf and on behalf of their children, alleging that Belgian language legislation relating to education had violated their rights under the Convention for the Protection of Human Rights, namely Article 8 (family life) in conjunction with Article 14 (prohibition of discrimination) and Article 2 of Protocol 1 (right to education).

To determine whether there is a positive obligation, a fair balance must be struck between the general public interest and the interests of the individual. For example, in 2014, in the case of McDonald v. Great Britain [11], the European Court of Human Rights ruled for the first time that states have a positive obligation to provide assistance to elderly people with disabilities with respect for private and family life. Moreover, it held that social assistance services must respect human dignity, otherwise that right might be violated. In this decision, the European Court of Human Rights found that the UK failed to meet its obligations because it failed to draw up a proper care plan for Ms. McDonald. With regard to the right to life, for example, if a police officer (a state body) kills a person without permission, the state will violate its negative obligations not to act in a way that violates that person's right to life. On the other hand, if the police knew that a police officer was not fit to carry a firearm and nevertheless allowed him or her to do so, or knew that the officer (or any other person) intended to kill the victim but did nothing to stop them, then the state also failed to perform its positive obligations to ensure the victim's right to life [12].

That is, positive obligations concerning the right to life and the prohibition of torture encompass general duties requiring states to introduce adequate legal provisions, mechanisms for implementation, and other relevant structures to protect life and physical or mental integrity; operational duties requiring states to take operational measures to protect persons who have a real and immediate risk to life or physical or mental integrity when the authorities are aware or should be aware of the risk; investigative duties requiring states to investigate credible complaints or suspicions of cases of unauthorised loss of life, torture, inhuman or degrading treatment or punishment, including when they can take responsibility of the state for inaction, which was established, in particular, in the case of Volodina v. Russia [13].

Notably, the Inter-American Court of Human Rights distinguishes three types of positive obligations of the state: 1) to prevent violations of human rights; 2) to respond adequately (appropriately) to violations; 3) to create conditions for the exercise of rights. For example, in the 1988 case of Velasquez-Rodriguez v. Honduras [14] the next interregional court dealing with the protection of human rights is the Inter-American Court of Human Rights. Notably, the classic negativist position that human rights give rise only to negative obligations to refrain from actions that violate human rights was also rejected. On 12 September 1981, Velasquez, a student of the National Autonomous University of Honduras, was detained by civilian-uniformed officers of the National Bureau of Investigation as well as the G2 detachment of the Armed Forces of Honduras, who, without presenting an arrest warrant or other documents in support of their actions, put Velasquez in an unmarked car, drove him away and placed him in a cell of the Division No. 2 of the public security forces located in the capital of Honduras, Tegucigalpa. Velasquez was charged with a political crime and subjected to severe interrogation and torture. Therewith, the Inter-American Court of Human Rights found it proven that between 1981 and 1984, the practice of enforced disappearances existed in Honduras with the full connivance of the authorities, and the Velasquez case is just one example where the government of Honduras has failed to ensure the enforcement and protection of the rights of the victim of this abuse.

Importantly, the Inter-American Court of Human Rights has clarified that a state can violate human rights caused by enforced disappearance, both by activity and inaction. For example, in the latter case, due to

the lack of proper care on the part of the state to prevent a violation [15]. States' obligations under the Inter-American Convention on Human Rights cover the effective investigation and punishment of any violation of the rights guaranteed under the Inter-American Convention on Human Rights. Moreover, if possible, the state should attempt to restore the victim's violated right and pay compensation for the damage caused as a result of the violation of his or her rights. That is, in Velasquez-Rodriguez v. Honduras, the Inter-American Court of Human Rights interprets the American Convention on Human Rights as generating positive obligations that require state action to actively protect against human rights violations. In addition, in this case, the Inter-American Court of Human Rights recognised a wide range of positive obligations, including the obligation to prevent, investigate, punish, and provide redress for human rights violations, etc.

An important case where the African Court of Human and Peoples' Rights established positive obligations was the case of Association Pour le Progrès et la Défense Des Droits Des Femmes Maliennes (APDF) and the Institute for Human Rights and Development in Africa (IHRDA) v. The Republic of Mali [16]. The application was submitted by two Malian Human Rights Organisations – APDF and IHRDA. The applicants alleged that the Civil Code of Mali, adopted in 2011, violated several international human rights treaties ratified by Mali, in particular: the Protocol to the African Charter of Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), the African Charter on the Rights and Welfare of the Child and the Convention on the Elimination of all Forms of Discrimination Against Women. The African Court of Human and Peoples' Rights ruled that the respondent state's Civil Code violated the Maputo Protocol because it sets the minimum age for marriage for men at 18 for men and 16 for women. The Civil Code also allows children over the age of 15 to marry with the consent of their parents. That is, the Civil Code of Mali excluded unprotected girls and teenage girls from early marriage, and also ensured discriminatory protection. The African Court of Human and Peoples' Rights has therefore established a positive obligation to amend legislation in Mali to address the above-mentioned problems. Notably, this was the first decision of the African Court of Human and Peoples' Rights, which concerns the rights of women and the rights of the child in Africa. By this decision, the court imposed strict obligations on states to comply with international human rights standards.

The positive rights imply the obligation of the state to ensure the rights of individuals to education, health, or work by building schools and maintaining a high level of economy. For example, the positive right to education was studied by M. Matskevich [17]; the right to education for refugees was analysed by T. Kortukova [18] et al. The positive right to health through the protection of the right to life has been studied in the case law of the European Court of Human Rights by S. Andreichenko [19]. In this context, the author noted that the positive obligation of the state requires it to create a regulatory framework obliging hospitals, both public and private, to apply appropriate measures to protect the lives of patients [19]. In addition, in the context of the right to private and family life, to ensure a person's right to family life, the state may not only be obliged to refrain from interfering with it, but also positively promote, for example, family reunification or parents' access to their children. O. Yavor [20], L. Yemchuk [21] and others have studied the positive obligations of the state in the context of the right to private and family life in the practice of the European Court of Human Rights. In addition, states should not only refrain from intentionally and unlawfully taking lives, but should also take appropriate measures to protect the lives of anyone within their jurisdiction. G. Hristova studied the positive responsibilities of the state in the context of respect for the right to life [22]. O. Horpyniuk examined the state's commitment to the protection of the right to life and the prohibition of torture [23]. Thus, the subject of positive state obligations is relevant for study, requiring a comprehensive and integrative approach. Human rights are also referred to as "fundamental rights", which emphasises the fundamental importance of these rights. International human rights law has historically focused on the prohibition of abuse by the authorities. States should not arbitrarily torture, detain, or kill, discriminate on the basis of race or gender, etc. These obligations of the state can be called negative [24-26]. Therewith, today human rights must ensure a decent life for people, making respect for human dignity a fundamental principle of human rights. The need for the effective enjoyment of these rights and, consequently, the effective protection of fundamental rights has led to the identification of an increasing detail and scope of positive state obligations [27].

Positive rights usually include social, economic, and cultural rights. For example, these include the right to healthcare, the right to education, the right to social security, the right to an adequate standard of living, etc. In other words, positive rights are the obligation of the state to take action, while negative rights are a call to ban certain actions or non-interference in them. The term "positive rights" is often used for these basic social, economic, and cultural rights, as they require the state to take positive action to promote the well-being of citizens, rather than just abstaining from action [28-30]. Therewith, social, economic, and cultural rights belong to the rights and freedoms of the 21st century. Notably, the responsibility of states for compliance with and implementation of international human rights standards is beyond doubt. In addition, the applicability of international human rights treaties to states that ratify them is not controversial. In this

context, there is also no doubt regarding the general principle that states are responsible for complying with human rights standards [31-33].

The system of the convention for the protection of human rights and fundamental freedoms, the American Convention on Human Rights, and the African Charter on Human and Peoples' Rights impose certain positive obligations on the state. This means that the state must actively protect the human rights of persons living within its jurisdiction. In many respects, the above-mentioned international human rights treaties mainly deal with the establishment of restrictions on state bodies to interfere with human rights. In this context, these international treaties mostly define the negative obligations of state bodies, that is, the obligation to refrain from certain actions. However, they also relate to positive obligations, that is, the obligations of public authorities to take positive steps or measures to protect the rights of individuals stipulated in these international human rights treaties.

CONCLUSIONS

For a long time, the European Court of Human Rights, the Inter-American Court of Human Rights, and the African Court of Human and Peoples' Rights have played key roles in shaping the regional human rights system. The term “positive rights” is often used for basic social, economic, and cultural rights, as they require the state to take positive action to promote the well-being of citizens, rather than just abstaining from action. Therewith, social, economic, and cultural rights belong to the rights and freedoms of the 21st century. The scope of a state's positive obligations is determined by various international treaties in the field of human rights protection. Thus, the fundamental rights stipulated in each international human rights treaty make provision for positive obligations of states.

Therefore, the study provides an overview of the current interpretation of positive obligations of states. In particular, the study focuses on the practice of the European Court of Human Rights in applying the positive obligations stipulated in the Convention for the Protection of Human Rights and Fundamental Freedoms; the practice of the Inter-American Court of Human Rights in relation to the positive obligations consolidated in the American Convention on Human Rights and the practice of the African Court of Human and Peoples' Rights in the enforcement of the positive obligations consolidated in the African Charter on Human and Peoples' Rights. It is also important to note that today, without the doctrine of positive obligations, systems for the protection of regional and universal human rights may be outdated and ineffective.

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Suggested Citation: Kovalchuk, V.B., Zharovska, I.M., Gutiv, B.I., Melnychenko, B.B. & Panchuk, I.O. (2021). Human rights and positive obligations of the state. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(3), 27-35.

Submitted: 11.05.2021
Revised: 09.07.2021
Accepted: 18.08.2021

УДК 342.34
DOI: 10.37635/jnalsu.28(3).2021.36-46

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ВИДИ ПРАВОТВОРЧИХ ПОВНОВАЖЕНЬ УКРАЇНСЬКОГО НАРОДУ

Анотація. *Актуальність зазначеної проблеми вбачається в тому, що в сучасних умовах, знаходження держави у процесі розбудови суверенної і незалежної, демократичної, соціальної, правової держави, процес усвідомлення її народом свого місця та ролі є одним з ключових. Усвідомлення Українським народом своїх прав та обов'язків, в даному випадку правотворчих, сприятиме реальній можливості на участь народу в управлінні державними справами. Також слід зазначити, що не зважаючи на той факт, що проблема повноважень Українського народу, на даному етапі історії нашої держави, є надзвичайно актуальною, проте є не достатньо науково опрацьованою вітчизняними науковцями. Тому враховуючи вищезазначене, дана наукова стаття присвячена розгляду таких видів правотворчих повноважень Українського народу як право: народної ініціативу, а у його межах народної законодавчої ініціативи та народної референдної ініціативи; народного вето; народного опитування у тому числі і стосовно нормативно-правових актів; народної експертизи нормативно-правових актів та проектів нормативно-правових актів. Метою є розгляд теоретичного матеріалу, що стосується стану можливості використання вищезазначених видів правотворчих повноважень Українського народу, а також зарубіжного досвіду їх реалізації. Методологічною основою для написання даної статті стало використання комплексного підходу, що передбачає поєднання низки філософських, загальнонаукових та спеціально-наукових методів. На основі отриманих висновків та узагальнень розробити власні пропозиції та рекомендації стосовно вдосконалення національного законодавства з даної проблеми*

Ключові слова: *правотворчість, ініціатива, опитування, експертиза, Український народ*

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TYPES OF LAW-MAKING POWERS OF THE UKRAINIAN PEOPLE

Abstract. *The relevance of this problem is considered in the fact that in modern conditions of the state's process of developing a sovereign and independent, democratic, social, and legal state, the people's awareness of its place and role is one of vital aspects. The Ukrainian people's awareness of their rights and obligations, in this case law-making ones, will contribute to a real opportunity for the people to take part in the management of state affairs. Despite the fact that the problem of the powers of the Ukrainian people is extremely relevant at this stage of the Ukrainian history, it is understudied by Ukrainian researchers. Therefore, considering the above, this study is investigates such types of law-making powers of the Ukrainian people as the rights to: people's initiative, and within its framework – people's legislative initiative and people's referendum initiative; people's veto; people's survey, including regarding regulations; people's examination of regulations and draft regulations. The purpose of the present study is to consider theoretical material concerning the state of possibility of using the above-mentioned types of law-making powers of the Ukrainian people, as well as foreign practices in their implementation. The methodological framework of this study included an integrated approach, which involves a combination of numerous philosophical, general scientific, and special scientific methods. Based on the obtained conclusions and generalisations, the study aims to develop original proposals and recommendations for improving national legislation on this matter*

Keywords*: law-making, unitiative, survey, examination, Ukrainian people*

INTRODUCTION

Before considering this problem, it would be appropriate to refer to the study by V.V. Mukhin, which refers to the famous Canadian philosopher of legal science B. Melkevik, who claims that "there is a movement towards democratic autonomous legislation, more precisely, towards the implementation of the idea of autonomous law-making of citizens. This refers to the fact that subjects of law should be able to establish themselves realistically and mutually through the process of autonomous law-making as authors and legislators of their norms, their rights and their institutions, both legal and political. The question of legitimacy factually comes down directly to the real ability of subjects of law to consider themselves as authors of rights, confirming and asserting this. Where subjects of law are considered to be partially or completely deprived of the opportunity to be the authors of their rights, we have nothing but obsolete "legal" systems, obviously autocratic or "ideological". Where subjects of law do not have the opportunity to be "authors" of their "rights", as, for example, in religious systems with or without the text given in Revelation, we cannot discuss "rights" seriously, without being mistaken or deceived in this regard" [1, p. 12]. In other words, in democratic countries, we are actually in favour of implementing the idea of autonomous law-making of citizens, and legal systems that do not make provision for this are recognised as obsolete, autocratic, or ideologically biased.

Before directly considering the subject under study, it is advisable to analyse the definition of "law-making", "law formation" and "law-making powers of the Ukrainian people". Thus, "Law-making is the activity of competent state bodies, state-authorised public associations, labour collectives or (in cases stipulated by law) the entire people to establish, change, or cancel legal norms" [2, p. 52]. In addition, it is emphasised that "law-making is understood as an organisationally regulated, special form of activity of the state or directly to the people, as a result of which the needs of social development and the requirements of justice acquire a legal form that manifests itself in a certain source of law (regulation, precedent, customs, etc.)" [3, p. 321]. Furthermore, the Legal Encyclopaedia notes that "law-making is closely linked to legislation. The latter, however, is a narrower concept, since it exclusively concerns the adoption of laws, while law-making covers

the process of adopting both laws and other regulations" [4, p. 51]. "Law formation is a relatively long process of forming legal norms, which begins with the recognition of certain public relations by the state, awareness of the necessity of their legal regulation, formal consolidation and state protection of legal provisions". The process of law formation comprises several stages. The first is "an establishment of certain social relations, which as a result of repetition acquire statutory nature"; the second, which can be called law enforcement, is "state authorisation of public and national (in the historical aspect – primarily judicial) practice, its detailed legislative consolidation"; and the third, where the state "independently creates a wide scope of legal provisions. It is this stage that is called *law-making*" [3, p. 320].

As for the law-making powers of the Ukrainian people directly, it is most important to pay attention to the above-mentioned definitions of law-making, where the people is always specified among other subjects. After all, in democratic societies, the state cannot be a single subject of law-making, since it is the participation of the people, national minorities, indigenous peoples, public associations, labour collectives, and local self-governments in this process that ensures democracy and the development of civil society. Given the above, the authors of this study must admit that those authors who claim that "an inherent feature of modern law-making in Ukraine is the search for such forms that would not only be effective, but also have the highest level of legitimacy both in society and in the eyes of the foreign partners of Ukraine. Evidently, to solve this problem, it is necessary to use the potential of direct law-making of the people" [5, p. 19]. Considering all the above and analysing and synthesising the understanding of the terms "law formation" and "law-making", the fundamental constitutional provisions regarding the law-forming and law-making powers of the Ukrainian people, it is possible to state with full confidence that the law-making powers of the Ukrainian people constitute a set of their primary, fundamental rights and obligations assigned to them in regulations or exist objectively to ensure the ability to initiate, discuss, adopt, introduce changes and amendments, cancel regulations of various legal force and territorial scope of application. The following features of the law-making powers of the Ukrainian people can be distinguished from this definition:

– they are a set of rights and obligations of the Ukrainian people or a certain part of it, i.e., most importantly, collective rights and obligations;

– the law-making powers of the Ukrainian people are primary, fundamental, inaugural, inalienable, meaning that by implementing them, the Ukrainian people determine the main regularities of the law-making powers of all other subjects;

– they are consolidated in regulations or exist objectively;

– they are provided to ensure the ability to initiate, discuss, adopt, introduce changes and amendments, and cancel regulations;

– these regulations may have different legal force. Namely: the Constitution and laws of Ukraine, sub-legislative acts, charters of the territorial community, etc.;

– these regulations may have different territorial scope of application. This means that they can be national, adopted at an all-Ukrainian referendum, by the Ukrainian people and local, adopted at a local referendum, by the territorial community of a village, settlement or city, as part of it.

The scientific basis of this study includes the works of the following researchers: P.M. Rabinovich, T.O. Chernezhenko, N.M. Aleshina, M.V. Marchenko, V.V. Mukhin. However, there are not enough studies on this subject.

1. MATERIALS AND METHODS

Most importantly, "methodology is the study of the rules of thinking upon creating science, conducting scientific research. The methodology of science is mainly understood as the doctrine of the scientific method of cognition or a system of scientific principles which underlie research and justify the choice of means, techniques, and methods of cognition. There is another, narrower view of the methodology of science, when it is considered as the theoretical basis of some special, partial techniques and means of scientific cognition, for example, management methodology, pricing methodology, etc., but in this case it is apt to imply the methodology of knowledge and actions" [6, p. 14]. Thus, a full-fledged investigation of the subject of types of law-making powers of the Ukrainian people requires the use of a comprehensive approach, that is, a set of philosophical, general scientific, special scientific approaches and methods. After all, such an integrated approach will allow for a comprehensively investigation of the concept of law-making, as well as the distinguishment of the concept "law-making powers of the Ukrainian people" based on the data obtained. The use of an integrated approach will allow covering the subject of a study and analyse the types of law-making powers of the Ukrainian people. Considering the above, it is necessary to define the methodological framework of the paper "Types of law-making powers of the Ukrainian people", as a complex one, and which in the most

general form comprises methodological approaches, principles, philosophical, general scientific, and special scientific research methods. Thus, it is important to use an idealistic approach in the investigation of the types of law-making powers of the Ukrainian people, especially upon developing proposals and recommendations for improving legislation.

It should be followed by the principle of anthropocentrism, which, considering the subject under study, reveals that the powers of the Ukrainian people are one of the main criteria for the development of the Ukrainian state, and also that the types of these powers are created by the people as a subject of law, reflect the level of development of legal thinking, culture, and consciousness. This list should also mention the dialectical method. This method helped consider the subject under study, including its origin, development, and use in the past, in interrelation with various spheres of public life and phenomena of legal reality. The system method determined the analysis of various types of law-making powers of the Ukrainian people as an integral system that is developed and implemented according to relatively identical rules and patterns. Furthermore, the use of the system method gave a clear understanding that law-making powers of the Ukrainian people should be organically combined and interact with other legal phenomena, and only in this case they will have the right to exist. The method of analysis and synthesis was used considering the fact that analysis constitutes the dismemberment, decomposition of the object of research into its component parts, while synthesis constitutes the connection of individual sides, parts of the object of research into a single whole, for the process of highlighting the concept "law-making powers of the Ukrainian people". Induction and deduction, as methods of scientific search, were used in the formulation of the introduction, the results of discussion and in the development of conclusions of a study, since induction is a way of contemplation from the particular to the general. It is used to gain general knowledge based on knowledge about the particular. Deduction is a way of reasoning from the general to particular conclusions. For example, based on general knowledge, proposals were developed to improve the current legislation.

The method of forecasting, the essence of which is to obtain knowledge about future trends in the development of certain social phenomena, was used to justify the need to introduce changes to the current regulations. The historical stages of the institution of law-making powers of the Ukrainian people were investigated using the historical legal method. This method allowed identifying historical trends in the establishment and development of these powers, use the positive experience of the past of foreign countries, and improve Ukrainian legislation at the present stage of its development. The comparative legal method was used to process the available Ukrainian data on this problem and compare the texts of constitutions, laws, and other regulations of the world's countries to investigate the success accumulated in legal science and practice, to identify the most effective mechanisms for implementing the experience of other states in Ukrainian legislation.

2. RESULTS AND DISCUSSION

Most importantly, one should pay attention to such law-making powers of the Ukrainian people as the right of people's legislative initiative. Unlike national legislation, the right of people's legislative initiative is stipulated in the constitutions of many countries around the world. In general, it is believed that it was first proclaimed in the "Declaration of human and civil rights" of August 26, 1789, Article 6 of which stipulated that "the law is an expression of the universal will. All citizens have the right to take part personally or through their representatives in its creation. It should be the same for everyone, whether it protects or punishes. All citizens are equal before it and therefore have equal access to all titles, places, and occupations, according to their abilities and without any distinctions, except those conditioned upon their virtues and talents" [7]. Furthermore, Part 1, Article 64 of the Constitution of the Kyrgyz Republic of May 5, 1993 stipulates that the right of legislative initiative belongs to 30 thousand voters and this is indicated by the term "people's initiative", while Part 2, Article 96 specifies that changes and amendments to the current Constitution require the initiative of at least 300 thousand voters [8]. According to Paragraph 4, Article 29 of the Fundamental Law of the Federal Republic of Germany of May 23, 1949, "If in an interconnected limited population and economic space, parts of which are located in several lands and which has at least one million inhabitants, a tenth of the voters who enjoy the right to vote in the Bundestag, will demand by popular initiative the introduction of a single land affiliation in this territory, then the federal law must determine within two years whether the pertinence of this territory to a certain land will be changed in accordance with Paragraph 2 or a popular survey will be conducted in the lands interested" [9, p. 90].

Part 2, Article 41 of the Constitution of the Republic of Austria of the Federal Constitutional Law of November 10, 1920, regulating the procedure for making proposals to the National Council, which together with the Federal Council exercises legislative power, stipulates that every proposal coming from one hundred thousand citizens with the right to vote, or from one sixth of the citizens of the three lands with the right to vote (people's initiative), must be submitted by the Central Election Commission for discussion by the National

Council. A person with the right to vote in the implementation of a people's legislative initiative is someone who, on the day of participation in the people's legislative initiative, is granted the right to vote in the National Council and has the main place of residence on the territory of the community in the Federation. A proposal put forward in the order of a popular initiative should be presented in the form of a draft law [10]. Article 65 of the Constitution of the Republic of Latvia of February 15, 1922, stipulates that draft laws can be submitted to the Saeima: the president of the Republic, the Cabinet of Ministers, various commissions of the Saeima, groups of deputies comprising at least five people, as well as in cases and in accordance with the procedure stipulated by the Constitution, one tenth of voters [11]. Part 2, Article 71 of the Constitution of the Italian Republic of December 22, 1947 establishes that the people exercise legislative initiative by making a proposal on behalf of at least 50 thousand voters, drawn up in the form of an article-by-article draft [12, p. 423].

Parts 1 and 2, Article 71 of the Constitution of the Republic of Macedonia of November 17, 1991 stipulates that every deputy in the Assembly of the Republic of Macedonia, the Government of the Republic of Macedonia or a group of voters numbering at least 10 thousand people has the right of legislative initiative. Every citizen, group of citizens, institution, or association can apply for a legislative initiative to a person with authority. In addition, Article 130 stipulates that "the president of the Republic of Macedonia, the Government, at least 30 representatives or 150 thousand citizens have the right of initiative to amend the Constitution of the Republic of Macedonia" [13, p. 174]. Part 1, Article 141 of the Constitution of the Republic of Moldova of July 29, 1994, which entered into force on August 27, 1994, regulates that the initiative to review the Constitution can come from at least 200 thousand citizens of the Republic of Moldova with the right to vote. Citizens who give rise to the initiative to review the Constitution must represent at least half of the second-level administrative-territorial units, each of which must collect at least 20 thousand signatures in support of this initiative [14]. Part 1, Article 67 of the Constitution of Georgia of August 24, 1995 stipulates that the right of legislative initiative belongs to the president of Georgia, a member of Parliament, a parliamentary faction, a parliamentary committee, the highest representative bodies of Abkhazia and Adjara, at least thirty thousand voters. Furthermore, Part 1, Article 102 states that the right to introduce a draft law on general or partial revision of the Constitution is granted to: a) the president of Georgia; b) more than half of the total number of members of Parliament; c) at least two hundred thousand voters [15].

Analysing the above, it can be concluded that it is necessary to amend the Constitution and laws of Ukraine, making provision for the institution of the right of people's initiative, and within its framework – the right of people's legislative initiative and the right of people's referendum initiative, as well as the possibility of combined use of the above-mentioned two rights. Admittedly, the right of people's referendum initiative is stipulated by Part 2, Article 72 of the Constitution of Ukraine, but it raises a lot of questions. It would be more appropriate to call the right of people's legislative initiative the right of people's law-making initiative, since, within its framework, the adoption, introduction of changes and amendments to the Constitution, laws, sub-legislative acts, and international legal regulations can be initiated. But the most important is the particular settlement in the future Law of Ukraine "On the People's Law-Making Initiative" of the following points: the number of citizens or voters who are the initiators; the requirements put forward to the initiators (right to vote, term of residence, belonging to a certain territorial unit); the subject of the initiative (Constitution, laws, sub-legislative acts, international legal regulations); reservations to the subject of the initiative (do not initiate draft laws on taxes, amnesty, budget, ratification of international treaties); the procedure for submitting a proposal (requirement, justification, draft law); the procedure for implementing the proposal (through Parliament or referendum); legal consequences of the people's law-making initiative.

Investigating the people's initiative, which is implemented by adopting a law or other regulation on the initiative of the people in a referendum or the right of people's Referendum Initiative, it should also be mentioned that Part 2, Article 72 of the Constitution of Ukraine introduced the proclamation of an all-Ukrainian referendum on the people's initiative at the request of at least three million citizens of Ukraine who have the right to vote, provided that signatures on the appointment of a referendum are collected in at least two-thirds of the regions and at least one hundred thousand signatures in each region [16]. This law-making power of the Ukrainian people, which can be not only law-making, is crucial, because it actually combines two of its rights – the right to people's initiative and the right to a referendum. And there is no alternative but to agree with the opinion of O.M. Chernezhenko, according to which "the institutions of direct democracy in Switzerland (referendum and the right of people's initiative) are complementary tools that allow the people and subjects of the Federation (cantons) to most effectively and directly take part in the exercise of public power, as well as in making important decisions for the state and society" [17, p. 5].

Therewith, a lot of questions arise regarding its constitutional consolidation. Firstly, why this refers only to signatures that need to be collected in at least two-thirds of the regions and at least one hundred thousand signatures in each and fails to mention the Autonomous Republic of Crimea, the cities of Kyiv and Sevastopol,

which was particularly relevant at the time of the adoption of the Constitution of Ukraine – June 28, 1996, and even in the modern period of Ukraine's existence. Secondly, the conditions for proclaiming an all-Ukrainian referendum on the people's initiative are as follows: a) the requirement of at least three million citizens of Ukraine; b) they must have the right to vote; c) signatures on the appointment of a referendum must be collected in at least two-thirds of the regions; d) at least one hundred thousand signatures must be collected in each region. But these conditions are frankly difficult to perform, since this procedure is cumbersome, excessively complicated, and financially costly, as a result of which its implementation in practice is possible only if many formal and substantive conditions are met simultaneously. Admittedly, the current low activity of civil society institutions, a low level of legal consciousness and legal culture of Ukrainian citizens are an obstacle to its implementation. Furthermore, it is advisable to submit only those laws that have the most important social and national significance to the All-Ukrainian referendum, which is an additional evidence of the need to introduce the right of people's law-making initiatives in Ukraine, the implementation of which is much easier.

In addition, the conditions for proclaiming an all-Ukrainian referendum on the people's initiative frankly do not meet generally recognised standards, and especially those of European democracy. Thus, Part 1, Article 74 of the Constitution of the Republic of Belarus of March 15, 1994, with changes and amendments adopted at the Republican referendums of November 24, 1996 and October 17, 2004, stipulates that Republican referendums are appointed by the president of the Republic of Belarus on his personal initiative, as well as on the proposal of the House of Representatives and the Council of the Republic, which are adopted at their separate meetings by a majority vote of the constitutionally composition of each of the chambers (in full session), or on the proposal of at least 450 thousand citizens vested with the right to vote, including at least 30 thousands of citizens from each of the regions and the city of Minsk. And Article 75 stipulates that local referendums are appointed by the corresponding local representative bodies on their own initiative or on the proposal of at least ten percent of citizens who are granted the right to vote and live in the corresponding territory [18]. Part 3, Article 73 of the Constitution of the Republic of Macedonia of November 17, 1991, upon regulating the status of the Assembly of the Republic of Macedonia, which is a representative body exercising legislative power, stipulates that the assembly is obliged to declare a referendum if the proposal comes from at least 150 thousand people [19].

Differentiation of requirements for its implementation would contribute to improving the right of the people's referendum initiative in Ukraine. In particular, the number of votes demanding its proclamation should depend on the issues that are initiated for popular voting, that is, the subject of the referendum. After all, it is clear that it is one thing to adopt a new constitution, or a new version of the Constitution, make changes and amendments to it, resolve issues on changing the territory of Ukraine, and quite another to adopt a law, a sublegislative act, approve national development programmes, etc. It is also possible to optimise the subject of an all-Ukrainian referendum by clearly defining the issues that can be initiated by the Ukrainian people and decided by them in a referendum. Therewith, guided by the theory of popular sovereignty, democracy, primacy of the constituent power and powers of the people, it is sensible to supplement Article 72 of the Constitution of Ukraine with Part 3 in the following wording: "An all-Ukrainian referendum on a popular initiative can be proclaimed on any matter that falls under the jurisdiction of Ukraine, with the exception of matters that are directly prohibited by the Constitution and legislation of Ukraine." Therewith, it is critical to find out the differences between a referendum and a people's legislative initiative, which can be seen in the following aspects. Firstly, if any issue, including a draft law, can be put to a referendum, then the implementation of a people's legislative initiative concerns only a particular draft law that is submitted to the legislative body or submitted for consideration by a referendum. Secondly, the entire people (a national referendum) or a certain part of it (a local referendum) take part in a referendum, and for the implementation of a people's legislative initiative, the participation of a clearly defined number of representatives of the people is sufficient.

Very close to the previous point, law-making powers of a part of the Ukrainian people, namely the territorial community of a village, settlement, city, municipal district, is the right to local initiative. After all, Part 1, Article 9 of the Law of Ukraine No. 280/97-BP "On Local Self-Government in Ukraine" of May 21, 1997 establishes that "members of a territorial community have the right to initiate consideration in the council (in the order of local initiative) of any issue referred to the jurisdiction of local self-government" [20]. In other words, this refers to the right to initiate consideration of any issue in the Council, including a regulation. Therewith, Part 2, Article 9 of this Law of Ukraine regulates, although very schematically, the procedure for submitting an initiative to the Council for consideration, Part 3 – the procedure for its consideration, and Part 4 – the procedure for publishing a decision of the Council. Therewith, it is noteworthy that Part 4 refers specifically to the decision of the Council as its regulation, which is also proof that this right is, first of all, of law-making nature. The right to local initiative undoubtedly requires its more detailed regulation by a nation-wide regulation. It is clearly not enough for its full approval and implementation to stipulate only that "the procedure

for submitting a local initiative for consideration by the council is determined by a representative local self-government body or the Charter of a territorial community, considering the requirements of the Law of Ukraine "On the Fundamentals of National Regulatory Policy in the Sphere of Economic Activity" [20]. A single national standard for initiating, collecting signatures, the procedure for submitting, reviewing, appealing, and the legal consequences of a local initiative should be worked out. In any other case, this right will be ineffective – proclaimed, but not implemented.

An example of detailed regulation of the right to local initiative, albeit still at the local level, can be the "Charter of the Territorial Community of the City of Odesa", approved by the decision of the Odesa City Council No. 1240-VI "On Approval of the Charter of the Territorial Community of the City of Odesa" of August 25, 2011, Certificate of State Registration of the Charter of the Territorial Community No. 1 issued by the Odesa City Department of Justice of October 7, 2011, the Article 22 "Local Initiatives" of which regulates in detail as follows: understanding; introduction; subject; subjects of initiation; collection of signatures in support; familiarisation with the essence; deadline for collecting signatures in support; registration of subscription lists; checking the completeness of their filling and reliability; refusal to register a local initiative; correction of detected violations and re-submission of subscription lists; registration of a local initiative; preparation of a draft decision of the city council; consideration of a draft decision submitted in the order of a local initiative; mandatory consideration at an open plenary session of the City Council; publication of the decision of the City Council [21]. In confirmation that the right of the territorial community of a village, settlement, city, municipal district to local initiative and many other rights of this part of the Ukrainian people should be regulated in more detail by the nation-wide regulation, the authors of the present study note that a proposal to adopt the Law of Ukraine "On Territorial Communities" and the unified "Model Charter of Territorial Communities of Ukraine" has been repeatedly introduced in Ukrainian legal sources for approval [22, p. 8].

The Constitution of Ireland of 29 December 1937 makes provision for an entire section called "Passing a Draft Law to the People's Decision", Part 1, Article 27 of which establishes that a majority of members of the Senate and at least two-thirds of the members of the House of Representatives, by a joint petition addressed to the President, may require the president to refuse to sign and promulgate as law any draft law, on the grounds that the draft law contains provisions of such national importance that the will of the people must be heard. And Part 5 of the same article stipulates that in every case where the president decides that a draft law containing a proposal of such national importance that it is necessary to hear the will of the people, he must inform the Prime Minister and the Head of each of the Houses of Parliament in writing, signed and stamped, of the refusal to sign and promulgate such a draft law as a law, unless and until the proposal is approved by the people in a referendum within eighteen months from the date of the presidential decision or by a resolution of the House of Representatives adopted in the same period after the dissolution of a new meeting of the House of Representatives. The right to the people's veto is stipulated in Article 47 of the Constitution of Ireland of December 29, 1937 and for amendments to the Constitution itself [23]. Therewith, a reservation should be made that the people's veto, as a law-making power of the Ukrainian people, which concerns exclusively regulations and is implemented through popular voting, i.e., by holding a referendum, should be distinguished from the right to a referendum on the people's initiative in general, to which any issue can be submitted.

In summary, upon introducing amendments to the Constitution of Ukraine, it is advisable to inherit the provisions of Article 72 of the Constitution of the Republic of Latvia of February 15, 1922; Part 1, Article 75 of the Constitution of the Italian Republic of December 22, 1947; Articles 42 and 88 of the Constitution of the Kingdom of Denmark of June 5, 1953; and Parts 1 and 5, Article 27 and Article 47 of the Constitution of Ireland of December 29, 1937, since they clearly define the subject of suspension of the publication of the law; the grounds for mandatory detention; the period during which suspension may occur; the basis for initiating a mandatory people's veto; the legal consequence of not providing the basis for a mandatory people's veto; the procedure for implementing the institution of a people's veto (mainly through a referendum); the mechanism for the complete or partial repeal of laws or acts that have the force of law; the procedure for voting and determining the results of a people's veto; the basis for which the people's veto does not take place. Another reservation to be made on this matter is, admittedly, that the introduction of the institution of the people's veto in Ukrainian constitutional legislation, especially in practice, will considerably democratise them, providing an opportunity for the Ukrainian people to influence the government, the legal system, the system of national legislation, and will generally strengthen the constitutional legal status of the Ukrainian people. From these positions, a fair opinion is that "One of the ways to strengthen the role of the bearer of sovereignty – the people – in legislative activity is to introduce mechanisms of people's legislative (law-making) initiative and people's veto. People's legislative initiative is a form of direct participation of the people as the bearer of sovereignty and the source of public power in the implementation of the legislative function of the state by

submitting draft laws on their behalf to the parliament and then mandatory consideration by the legislative body as a matter of priority. People's veto is a form of direct participation of the people as the bearer of sovereignty and the source of public power in the implementation of the legislative function of the state by rejecting (or denying) a draft law (law) previously adopted by the parliament" [24, p. 11].

The law-making power of the Ukrainian people is the right of people to poll, including in relation to regulations. Upon considering it, it is sensible to emphasise that Paragraph 5, Article 29 of the Fundamental Law of the Federal Republic of Germany of May 23, 1949, which governs changes in the territory of the Federation, establishes that "the purpose of a people's survey should be aimed at establishing whether or not the change of ownership of the territory to the land proposed by law is approved. The law can submit various proposals for the people's survey, but there should be no more than two of them. If the majority accepts the proposed change of land ownership, then within two years the federal law must establish whether the land ownership changes in accordance with Paragraph 2", and Paragraph 6 of the same Article stipulates that "The majority in a referendum and in the people's survey is recognised as the majority of votes cast, if it covers at least a fourth of the voters eligible to vote in Bundestag elections. The details of holding a referendum, the people's initiative, and the people's survey are governed by federal law; the law may also stipulate that a people's initiative cannot be repeatedly proposed earlier than in five years" [9, p. 90]. This suggests that the above-mentioned paragraphs of Article 29 of the Fundamental Law of the Federal Republic of Germany of May 23, 1949 make provision for the purpose, method, and number of making proposals for the people's survey, its legal consequences, determining the majority of votes in a referendum and in a popular poll, and even the details of holding a referendum, the people's initiative and the people's survey, which, admittedly, deserves to be borrowed in Ukrainian legislation. Furthermore, it is absolutely safe to say that the Fundamental Law of the Federal Republic of Germany of May 23, 1949 distinguishes between a referendum, the people's initiative, and the people's poll. Investigating such a law-making power of the Ukrainian people as the people's survey, it is impossible not to recall that Chapter VI, unfortunately, of the no longer current Law of Ukraine "On All-Ukrainian and Local Referendums" of July 3, 1991 No. 1286-XII, which was called "Advisory survey of citizens of Ukraine", made provision for two types of advisory survey of citizens of Ukraine, namely:

a) an advisory survey of citizens of Ukraine or (a consultative referendum), which was stipulated by Article 46, Part 1 of which noted that to identify the will of citizens when solving important issues of national and local significance, all-Ukrainian and local advisory surveys of citizens of Ukraine (consultative referendums) can be conducted in accordance with the procedure stipulated by the aforementioned law. The results of the advisory survey are reviewed and considered upon decision- making by the corresponding state bodies. Part 2 thereof stipulated that if draft laws, other decisions of the Verkhovna Rada of Ukraine, or decisions of the local council of people's deputies do not correspond to the results of the All-Ukrainian or relevant local advisory survey, then such laws, decisions can only be adopted by a majority of at least two-thirds of the total number of People's Deputies of Ukraine or Deputies of the corresponding local Council of People's Deputies;

b) public opinion survey, which was consolidated in Article 47, established that public opinion surveys are conducted in a different order than stipulated by the Law of Ukraine No. 1286-XII "On All-Ukrainian and Local Referendums" of July 3, 1991, or on issues that, according to the aforementioned Law of Ukraine, cannot be submitted to all-Ukrainian and local referendums, do not have the status of an advisory survey of citizens of Ukraine (consultative referendum) and the legal consequences that follow from this [25].

The analysis of the above suggests that 1) at that time there were two types of advisory survey of citizens of Ukraine: a) advisory survey of citizens of Ukraine (consultative referendum); or b) Public Opinion Survey; 2) the first of them – advisory survey of citizens of Ukraine or (consultative referendum): a) was considered as the will of citizens of Ukraine; b) was conducted to solve important issues of national and local significance; c) was divided into all-Ukrainian and local; d) its results were considered and reviewed by the corresponding state bodies upon making decisions; e) if the draft laws, other decisions of the Verkhovna Rada of Ukraine, or decisions of the local Council of People's Deputies did not correspond to the results of the All-Ukrainian or local advisory survey, then such laws, decisions could only be adopted by a majority of at least two-thirds of the total number of People's Deputies of Ukraine or deputies of the corresponding local Council of People's Deputies and this gives grounds to assert that they had legal force and caused legal consequences. Considering the above, taking care of improving the constitutional legal status of the Ukrainian people, it is necessary to make provision for and restore the right to the people's survey in the Constitution of Ukraine, including in relation to regulations. For example, Part 2, Article 40 of the Constitution of the State of Argentina of May 1, 1853 (as amended in 1860, 1866, 1898, 1957, and 1994) stipulates that the Congress or the President of the State, in accordance with their powers, have the right to declare a consultative popular referendum and in this case voting is not mandatory [26].

The law-making power of the Ukrainian people is the right to national examination of regulations and draft regulations. National examination of regulations and draft regulations is sometimes called public or social. Upon investigating the people's examination of regulations and draft regulations as the law-making powers of the Ukrainian people, it is impossible not to mention the Resolution of the Cabinet of Ministers of Ukraine No. 61 "Issues of Conducting Anti-Discrimination Examination and Public Anti-Discrimination Examination of Draft Regulations" of January 30, 2013, which stipulates that public anti-discrimination examination is performed by public organisations, individuals and legal entities within the framework of public discussion of draft regulations [27]. In addition, Paragraph 3, Part 1, Article 21 of the Law of Ukraine No. 1700-VII "On Prevention of Corruption" of October 14, 2014 stipulates that public associations, their members or authorised representatives, as well as individual citizens, in their activities on combatting corruption have the right to "... conduct, order public anti-corruption examination of regulations and draft regulations, submit proposals to the corresponding authorities based on the results of the expert examination, and receive information from the corresponding authorities on the accounting of submitted proposals" [28]. In this regard, it can be argued that the people's examination of regulations and draft regulations is a requirement of the time, which is conditioned upon the modern level of democracy, the need to organise interaction between the Ukrainian people and public power institutions, establishing their common responsibility for the future development of society and the state. Therefore, this right of the Ukrainian people should undoubtedly find its constitutional consolidation, especially since it is being intensively popularised.

CONCLUSIONS

To summarise the above, the law-making powers of the Ukrainian people constitute a set of their primary, fundamental rights and obligations, which are assigned to them in regulations or exist objectively to ensure the ability to initiate, discuss, adopt, introduce changes and amendments, cancel regulations of various legal force and territorial scale of application. Attributes of law-making powers of the Ukrainian people include:

– a set of rights and obligations of the Ukrainian people or a certain part of it, i.e., most importantly, collective rights and obligations;

– the law-making powers of the Ukrainian people are primary, fundamental, inaugural, inalienable, meaning that by implementing them, the Ukrainian people determine the main regularities of the law-making powers of all other subjects;

– they are consolidated in regulations or exist objectively;

– they are provided to ensure the ability to initiate, discuss, adopt, introduce changes and amendments, and cancel regulations;

– these regulations may have different legal force. Namely: the Constitution and laws of Ukraine, sub-legislative acts, charters of the territorial community, etc.;

– these regulations may have different territorial scope of application.

The types of law-making powers of the Ukrainian people include their rights to: people's initiative (people's law-making and people's referendum initiative); local initiative; people's veto; people's discussion of draft regulations; people's survey on regulations; people's expertise of regulations and draft regulations. Furthermore, it is necessary to amend the Constitution and laws of Ukraine, making provision for the institution of the right of people's initiative, and within its framework – the right of people's legislative initiative and the right of people's referendum initiative, as well as the possibility of combined use of the above-mentioned two rights. Admittedly, the right of people's referendum initiative is stipulated by Part 2, Article 72 of the Constitution of Ukraine, but it raises a lot of questions. It is also necessary to make provision for and restore the right to the people's survey in the Constitution of Ukraine, including in relation to regulations. Ultimately, the law-making powers of the Ukrainian people cannot completely fail to exist, they cannot be symbolic or such that exist only for the legalisation of regulations that have been developed in advance and are beneficial to public authorities. They should be fully consolidated in regulations. In any other case, the authorities will not understand, estrange itself from and conflict with the Ukrainian people.

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Suggested Citation: Kolodiy, A.M., & Kolodiy, O.A. (2021). Types of law-making powers of the Ukrainian people. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(3), 36-46.

Submitted: 10.06.2021
Revised: 18.08.2021
Accepted: 03.09.2021

УДК 340.12
DOI: 10.37635/jnalsu.28(3).2021.47-55

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ІНТЕГРАЛЬНІСТЬ ПРАВОРОЗУМІННЯ ЯК МЕТОДОЛОГІЧНА ПРОБЛЕМА

Анотація. *Актуальність дослідження зумовлена процесами плюралізації світоглядно-філософських і методологічних засад юриспруденції і такими, що відбуваються на тлі цих процесів, спробами теоретичного подолання конкуренції «позитивістських» і «природних» підходів до розуміння права в складі інтегративного праворозуміння. Метою статті є виявлення епістемологічних труднощів побудови інтегральних концепцій праворозуміння, пропонування напрямків їх подолання та обґрунтування варіанту інтегративного розуміння права на засадах поєднання діалектичного й потребового методологічних підходів. Основні методи дослідження. З опертям на діалектичну логіку розкривається сутність інтегративного праворозуміння як спроби здійснити синтез суперечливих підходів до осмислення права, процес інтегрування праворозумінь осмислюється як зняття суперечностей у розвитку правових явищ, а інтегрованість постає як включення окремих моментів такого розвитку до складу динамічної цілісності. На основі потребового підходу обґрунтовано критерій осмислення певних явищ як правових. Значення проведеного дослідження. Доведено, що інтегрування відмінних праворозумінь є завданням, яке може бути здійснене на засадах діалектичної, а не формальної логіки, а також із збереженням відмінностей та суперечностей між об'єднуваними концептуальними елементами. Обґрунтовано, що під час потребозадоволення відбувається інтегрування властивостей певних явищ в процес людського існування, набуття ними статусу життєво необхідних, а відтак і нормативно значущих складових цього процесу. Відтак правовість стає результатом діяльнісно-практичного інтегрування тих явищ, які слугують необхідними складовими життєдіяльності людини у соціумі*

Ключові слова: *інтегральне праворозуміння, діалектика, потребовий підхід, монізм, плюралізм, синтез*

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INTEGRATION OF LEGAL UNDERSTANDING AS A METHODOLOGICAL ISSUE

Abstract. *The relevance of the study is conditioned upon the pluralisation of the ideological, philosophical, and methodological foundations of legal science and attempts to theoretically overcome the competition of "positivist" and "natural" approaches to understanding law as part of an integrative legal understanding taking place against the background of such pluralisation. The purpose of the study is to identify the epistemological difficulties in constructing integral concepts of legal understanding, suggest solutions for them, and justify the option of integrative understanding of law based on a combination of dialectical and need-based methodological approaches. Main research methods. Based on dialectical logic, the essence of integrative legal understanding is covered as an attempt to synthesise contradictory approaches to understanding law, the process of integrating legal understanding is interpreted as removing contradictions in the development of legal phenomena, and integration appears as including individual moments of such development in the dynamic integrity. Based on the need-based approach, the study justifies the criterion for understanding certain phenomena as legal. Importance of the present study. It is proved that the integration of different legal understanding is a task that can be performed based on dialectical rather than formal logic, meanwhile preserving differences and contradictions between the combined conceptual elements. The study proves that during upon satisfying the needs, the properties of certain phenomena are integrated into human existence, acquiring the status of vital, and therefore normatively significant components of such existence. Therefore, the rule of law becomes the result of activity-practical integration of the phenomena serving as necessary components of human life in society*

Keywords: *integral legal understanding, dialectics, need-based approach, monism, pluralism, synthesis*

INTRODUCTION

One of the most popular trends in the Ukrainian philosophy of law and general theoretical legal science is the aspect designated as integrative ("integral", "synthetic") legal understanding. Its emergence is primarily due to the pluralisation of the methodological foundations of theoretical legal science; the desire to update and expand its cognitive tools, overcoming the bipolarity of classical conceptual approaches to understanding law – "positivist" and "natural", methodological limitations and one-sidedness of each of them. At present, one of the intentions that can feed integration trends in legal science is also the desire to take "the correct" path of understanding law. In this context, research-to-practice events devoted to it can be an additional evidence of the relevance of this issue in the post-Soviet space [1; 2]. At the same time, it would probably be unfair to attribute the above-mentioned pragmatic motivation to all participants of these forums, since the problem in question exists regardless of the intentions of their organisers and has a general methodological significance.
Nevertheless, the above demonstrates the urgency of the problem of integrativity in legal understanding for philosophical and theoretical legal science in the post-Soviet space, in particular in Ukraine. In the electronic version of the Encyclopaedia of Modern Ukraine, the concept of integration (Latin integratio – replenishment, restoration) is interpreted as "combining any elements into a single whole, as well as combining and coordinating the actions of various parts of an integral system; the process of rapprochement and interaction of individual structures" [3]. In the philosophy of law, some of the above definitions of integration receive a specific semantic content. Thus, integrative ("synthetic") philosophical and legal concepts first emerged at the end of the 19th century in the works of B.O. Kistiakivskyi, O.S. Yashchenko, P.G. Vinogradov as a "means to

reconcile" [4] the competing areas of understanding law, primarily jusnaturalism and legalistic positivism, and later received further development in the United States (J. Hall, G. J. Berman et al., P. R. Teachout) [5-7].

The authors of the present study have reasons to believe that integrity as an attribute of the concept of legal understanding should describe the state of unity and indissoluble semantic integrity of its structural parts (ideas, concepts, principles, etc.) as components of those concepts whose elements have been integrated. This state should reflect the emergence of a fundamentally new quality and heuristic in the newly formed version of the understanding of law, which was absent from the original concepts. Currently, various aspects of the problem of integrativity in legal understanding attract the attention of representatives of both legal and philosophical sciences [8]. In particular, some integrative opinions of Ukrainian and Russian philosophers of legal science of the late 19th – early 20th centuries (O.A. Prybytkova, V.M. Zhukov, M.P. Alchuk, etc.), modern integrative theories of legal understanding and problems of synthesis of methodological approaches have already been investigated [4; 9-12]. Attempts to create original integrative-oriented concepts of both legal understanding and socionormatics in general were made both in the West (A. Kaufmann, R. Dworkin, R. Alexi) and in the post-Soviet space (G.V. Maltsev, R.A. Romashov, V.M. Shafirov, V.I. Pavlov, etc.). Non-classical ontologies of legal reality developed in Ukraine (S.I. Maksimov) [13] and in Russia (I.L. Chestnov) have an integrative direction [14]. Among the English-language publications of recent years, particular attention has been is drawn to the consideration of the psychological and typological foundations of inclusive theories of law [15], attempts to substantiate "hybrid natural law" [16], the legal theory of ethical positivism [17] and its deontological versions [18].

Proponents of the integrative aspect in understanding law often employ the concept of law as an extremely broad figurative representation covering ontologically diverse phenomena (ideas, norms, social relations), which, however, are somehow connected by the authors of concepts with a particular semantic dominant (usually legalistic), which, obviously, according to integrativists, should be considered law itself. Researchers have also long used sociologically coloured concepts, such as "legal life", "legal reality" (R. Ering, M.A. Gredeskul, E. Anners, O.V. Malko, M.I. Matuzov, etc.), "legal field" (P. Bourdieu), etc., one way or another aimed at expanding the scope of "legal" beyond the state's volitional decisions. The idea of building an integrative legal understanding has gained not only its adherents [19], but also opponents [20], as well as those who are wary of the ideas of "integrativists" [21]. Therewith, the point of criticism is usually directed against individual attempts to implement integrativity; the lack of an integral definition of the concept of law is indicated as the main drawback [20, p. 8]. In this regard, the authors of this study note that the publications of critics of the idea of integrativity, and sometimes even its individual supporters, unfortunately, frequently lack methodological self-reflection, which the issues under study admittedly deserve. The essential ones include a) the problem of being and thinking synthesis of opposites and b) the task to develop a specific "legal object of knowledge", formulated by J. Hall [5]. The exceptional complexity of the latter task is the reason that, as is not unreasonably noted by modern researchers, "in most cases, legal reality is the context of scientific reasoning, and not their subject". [22, p. 8]. Considering the specified state of research on the subject matter, the purpose of the present study is to identify the epistemological difficulties in constructing integral concepts of legal understanding, suggest solutions for them, and justify the option of integrative understanding of law based on a combination of dialectical and need-based methodological approaches.

1. MATERIALS AND METHODS

The solution of these research problems requires relying on several interrelated conceptual approaches, general scientific, and special methods and means of research, which together form the methodology of the present paper. Considering the understanding of the conceptual approach as a worldview axiomatic idea based on extremely general categories, which postulates a general research strategy, selection of facts and interpretation of research results [23, p. 138], basic philosophical and ideological methodological approaches, on which further arguments of the authors of this study are based, they became dialectical and necessary.

Thus, based on the dialectical methodological principle of contradiction [24; 25], the authors solved the problem of covering the essence of integrative legal understanding as an attempt to implement a synthetic combination of contradictory approaches to understanding law as an integral phenomenon. Based on the methodological principle of unity of the logical and the historical, the integration of those phenomena that for certain reasons are considered legal into human need-satisfaction activities is interpreted as removing contradictions in the process of their dialectical development. The need to rely on dialectical methodology is conditioned upon the fact that the task of developing a concept of law that would consistently include competing approaches to its understanding seems almost impossible to solve from a strictly positivist and scientific standpoint. Instead, a more optimistic prospect for such a synthesis arises based on turning to dialectical logic [26]. It is from such positions that the formal logical mutually exclusive answers to the

question of what is law can be considered as the result of reflecting/constructing various aspects of law as a complex and multifaceted phenomenon: the integration of conceptual elements of excellent legal understanding is the creation of their new and organic unity and integrity and should be the result of an act of synthesis. Therewith, this refers to a synthesis where the contradictions remain – and, consequently, to a synthesis performed based on the methodological principle of unity of being and thinking, and not by some formal logical procedure that is the opposite of analysis.

The dialectical approach is logically combined with the need-based approach as a special type of activity-based methodological approach. The special significance of the need-based approach here lies in the fact that through its mediation, the present study implements an anthropocentric interpretation of phenomena that are considered legal. The use of the dialectical basis of development in combination with the methodological principle of consistency allows comprehending integration as the inclusion of certain aspects of legal development in the organic integrity that is formed as a result. Further, both methodological approaches – dialectical and need-based – are based on the use of philosophical and legal methods as procedures for interpreting and applying extremely general categories upon studying those phenomena that are reflected in the term-concept of law, as well as concepts of legal understanding. Most importantly, this refers to methods of convergence from the abstract to the concrete, with the help of which the idea of synthesis as a combination of opposites is defined in the models of integrative legal understanding constructed by individual legal scientists. The method of convergence from the concrete to the abstract, which is reversed relative to the above, serves, in particular, as a means of identifying the operation of dialectical laws in the interaction of alternative areas of legal knowledge. The method of theoretical modelling is used here to represent law as a universe and a multiverse.

The appeal to the system approach and general scientific methods of system analysis was conditioned upon the need to describe the current state of development of the problems of integrative legal understanding. To clarify the semantic meanings of related concepts of integrativity, integrity, and integrability in the context of the problem of legal understanding of legal science, the study employed the industry methods and techniques (means) of etymological analysis. These philosophical and general scientific methods are implemented using various research methods – conditioned upon the chosen conceptual approaches and corresponding cognitive methods of activity operations aimed at establishing and interpreting those phenomena that are part of the subject of this study. Most importantly, such methods (techniques) include general scientific research techniques of abstraction, comparison, and classification.

2. RESULTS AND DISCUSSION

2.1 Epistemology of integrity: monism or pluralism?

As early as in the legal science of the 19th – early 20th century, the main areas in the development of legal ontology and epistemology were clearly identified: monistic and pluralistic, metaphysical and positivist, which still determine the divergence of opinions on the problem of integrity in legal understanding. An illustration of a kind of logical-positivist "purism" can be L. Petrazhytsky's criticism of the use of the term "law" as a general designation of positivist and jusnaturalistic ideas [27, p. 380-381]. Justified by the outstanding legal scientist, the "impossibility" of "positively" combining this law with "due", "proper" law follows, evidently, from the Kant's dualism of what exists and what is due. Therewith, L. Petrazhitsky recognised numerous varieties of positive law ("intuitive", "official", "book", "judicial", etc.) [27, p. 410 et seq.].

Another example of law-recognising pluralism is the position of B. Kistiakivskyi, who defended the multiplicity of manifestations and concepts of law: "since there are sociological, psychological, state-organisational, statutory manifestations of law, therefore, not one, but several concepts of law are scientifically legitimate" [28, p. 179, 191-193]. The realities mentioned by the Ukrainian researcher can be considered both as existentially independent phenomena, and as various manifestations of a certain single essence, a phenomenon of law subject to reflection in its concept. After all, Kistiakivskyi argued the following: "there is no doubt that there should also be such synthetic forms that would combine these concepts into a new type of cognitive unity" [28, p.195]. For his part, A. Yashchenko noted that "it is necessary to abandon artificial, albeit convenient monism from the very beginning and come to terms with pluralism, although more complex and difficult, but more consistent with a diverse reality" [29, p. 58]. At the same time, despite the fact that B. Kistiakivskyi and A. Yavienko put forward the task of combining "causal" and "teleological" interpretations of law, the problem of such a combination in a single concept and creating a certain "synthesis of multi-differences" in the legal understanding remains practically unresolved to this day.

In Soviet legal science, as is known, monistic epistemology and the corresponding approach to the knowledge of law prevailed. Therewith, in general theoretical legal science of the late 1970s – early 1980s,

there was a discussion between supporters of two types of monism, which can be designated as synthesising and distinctively differentiating. The first was represented, in particular, by the positions of V. Nersesyants [30], and the second – by the opinions of S. Alekseev (1983) and P. Rabinovich (1979, 1981). Thus, V. Nersesyants, referring to the well-known expression of Karl Marx: "the concrete is concrete because it is a synthesis of many definitions, and therefore the unity of the diverse", sought to develop a holistic Hegelian approach to understanding the essence and concept of law. According to V. Nersesyanets, theoretical legal science can exclusively refer to different manifestations of the same essence of law and offer different definitions of a single concept of law [30, p.26].

S.S. Alekseev, on the other hand, wrote: "attempts to construct a single multidimensional concept that would cover all the previously described meanings of law are hardly justified. On the contrary, a differentiated approach is needed, wherein in each case of employing the term "law" it is necessary to see the scientific status of the problem and, accordingly, correctly, scientifically accurately use the corresponding terminology and special scientific methodology" [31, p.116]. In contrast, V. Nersesyants was advocating for "…combining analysis with synthesis, complementing differentiation with integration of convergence from distinctive abstract definitions of law (by synthesising them) to its concrete concept" [30, p. 33] (at present, V. Nersesyants' approach is being developed by his students (V.A. Chetvernin et al.). A peculiar example of the development of a dialectical-materialistic approach to building legal understanding was the L.S. Yavich's concept of the multi-stage essence of law. Similarly to V. Nersesyants, the researcher believed that the essence of law as a complex and multi-level phenomenon is somewhat unique and inherent in many-sided manifestations of law [32]. At the same time, L.S. Yavich relied on the principle of contradiction, which served as a cognitive means of transition from one to another, a deeper moment of the essence of law. In this regard, the researcher believed that science can contain at least three different definitions of the concept of law, which reflect the essence of different procedures that unfold in the process of legal genesis [32, p. 45].

At present, the well-known Ukrainian legal theorist M.I. Koziubra is also asking questions about the synthesis of approaches to the knowledge of law, drawing attention to the complementarity of cognitive and value-based ways of mastering legal reality [33, p. 10-11]. It gives a negative answer to the question of the possibility of combining differing ideological and value methodological positions on which the three classical types of legal understanding are based, and to develop a single integrative (multidimensional) understanding of law on this basis: "These positions are so different, even antagonistic, that any attempts to overcome differences between them are doomed" [33, p. 20] (the authors of this study add: doomed provided that this refers to *preserving*the differences in the initial principles of legalism, the sociology of law, and jusnaturalism (i.e., their identity), and, *at the same time*, about *overcoming* these differences in the act of integrating the mentioned types of legal understanding (i.e., accordingly, their non-identity). Therewith, M.I. Koziubra notes as follows: "if we abstract from the ideological attitudes on which the relevant concepts are based, and focus on the forms of existence of law, on which the attention of these concepts is focused, then its understanding as a phenomenon that exists in various manifestations, forms, and guises will undoubtedly be enriched. And in this respect, the synthesis of the achievements of these concepts is not only possible, but also necessary" [33, p. 20].

At first glance, there may be some inconsistency in the position under consideration. Thus, on the one hand, here, yet again, the pluralism of forms and manifestations of the existence of law as a single phenomenon is recognised. The synthesis of achievements in question actually involves not so much their fusion, but rather mutual complementarity. On the other hand, there is an obvious cognitive pessimism in the issue of theoretical and conceptual synthesis of conceptual approaches, since the contradiction between the identity and non-identity of the methodological foundations of legal concepts is insurmountable. However, it appears that this contradiction can be removed in the process of dialectical development of legal thinking. The idea of the unity of law as a polymorphic phenomenon, perhaps should suggest the possibility of synthesising specific conceptual foundations on which classical types of legal understanding are based [34]. And even though M.I. Koziubra leaves the question of the unity or multiplicity of concepts of law open, the thesis of the unity of the phenomenon of law with the multiplicity of its "manifestations, forms, and hypostases" seems to correlate in a certain way with synthesising monism in the legal understanding.

Notably, two different ontologies of legal reality – pluralistic and monistic – correspond to the distinction between two ideas about the universe – as a universe and a multiverse (H. Ortega y Gasset, M. Epstein). The latter idea correlates with the idea of a multiplicity of legal realities, legal worlds, the idea of a multiverse of law – as opposed to the idea of law as a certain formally and logically closed universe. The structure of the universe of legal realities appears as a multiplicity of figurative and conceptual distinctions that are not fundamentally integrated [35, p. 46-48]. And even theough the modern foreign research of the logical-positivist direction justifies the existence of pluralism of various logics is [36; 37], the sacramental question "Is an internally integral, and not a total integrative definition of law possible?" [2, p. 65], the authors of this study

believe they one can only answer that the criteria for the integrity and organicity of the combination of features of law are beyond purely formal logic, and, apparently, beyond cognitive forms of cognition in general. Consequently, the tension between integrative concepts of understanding law and antagonistic "unary" (V.I. Kuznetsov) and discrete-monistic philosophical legal concepts forms two groups of cognitive attitudes. The first of these groups includes attitudes to a broad socio-humanitarian synthesis, bridging the gap between scientific and non-scientific knowledge, law-cognising optimism, universalism, and generally conciliatory intentions. The second category includes rationalistic scepticism, sometimes brought to agnosticism, multiversalist interpretation of socionormatics, distinctivism, relativism, and theoretical positivist purism.

The existing pluralism of integrity appears to be quite inevitable, given the fundamental impossibility (and, ultimately, the absence of the need) of combining "any and all" versions of legal understanding. Instead, it is possible to combine only their individual conceptual elements. Thus, sometimes the conceptual components of legalistic positivism are combined with individual semantic elements of jusnaturalism, which can be evidenced, in particular, by the concepts of "inclusive positivism" or "ethical minimum in law". Next, the authors of this study address another point that concerns understanding the meaning of the concept of integrity. In most cases, the concepts of integrative orientation are based on an understanding that can be called unifying: this refers to combining two or more features of legal nature. A substantial disadvantage of this understanding is that it allows concealing the eclectic and mechanical nature of the combination of these features behind the appearance of a certain "synthesis".

2.2 Integral human-centred legal understanding in the light of the dialectic of need-satisfaction

Therefore, it appears necessary to clarify the meaning of the attribute of integraty, which should be endowed with the legal understanding sought by many legal scientists. The authors of this study believe that such integrity, first of all, is the result not of an abstract logical-theoretical (often arbitrary) combination of some one-order conceptual elements, but, instead, a manifestation of activity-practical transformation, "humanisation" of natural and social reality in the process of human satisfaction of the most important needs of its existence and development. In this regard, it is the need-based approach that allows presenting social and, in particular, institutional and legal practice as the basis for integration, inclusion of certain elements (ideal or material) in such practice, their value and theoretical understanding. Secondly, it appears that the answer to the following key question should be decisive here: which phenomenon is integrated into the composition of another phenomenon, i.e., it becomes an integral component, an element of the latter? [38, p. 84].

The most common methods of constructing an "integral" legal understanding nowadays are two intellectual operations: the first is that from several long-known variants of multi-semantic legal understanding, certain attributes of the phenomenon are removed, wherein each of them is proposed to reflect the term "law", and the second is that several such attributes are sequentially arranged in one sentence (most often separated by commas – as its homogeneous members), and the judgment obtained this way is declared an "integral" legal understanding. The eclecticism (mechanisticness) of such a set of features seems obvious – especially in cases where their selection and even the sequence of presentation are not justified in any way. In such a sentence, the noun certifies that meaningful, system-forming core, on which, as it were, various adjectives are strung, which specialise (diversify) the declared allegedly updated, "fresh" legal understanding. However, the above-mentioned core can usually be identified with one of the long-known classical variants of legal understanding, primarily with legalistic-positivist or with natural.

But the currently proposed integral version of legal understanding (according to such working titles as, for instance, "human-centred", "human-dimensional", "anthroposocial", "anthropological", "humane") is built in a fundamentally different way, developed according to a different content criterion – the human-need one [38, p. 84]. In this regard, the authors of this study recall that according to the long-existing socio-materialistic need-based approach justified by P.M. Rabinovich, the term "law" should reflect certain opportunities to meet the needs of a person in their existence and development in society, predetermined by the achieved level of their development and provided by the responsibilities of other subjects of society. Therefore, the ***legal nature*** (pertinence to the law) of certain phenomena is determined by their ability to serve as conditions or means of satisfying human needs. This property of such phenomena is formed only in the process of social practice of people, that is, their interrelationships, interaction. Consequently, the law is a *social* phenomenon (and not, for instance, biological, chemical, cosmic). It, therefore, arises in the process of human social life, as a result of "meeting" of human needs with external phenomena that are capable of satisfying these needs. In other words, the process of need satisfaction involves the ***integration*** (inclusion, entry) of certain properties of real phenomena (both natural and social) in the existence of human individuals and their groups. And then such properties, having acquired (in accordance with the specified legal understanding) a legal nature, are immersed, embedded in the very existence of a person, which, thanks to this,

is improved and optimised. Therewith, the satisfied need of a certain person disappears (at least temporarily), but the ability to serve the satisfaction of similar needs of other people remains a corresponding phenomenon in the future, and this is considered as the general, i.e., normative, nature of such opportunities. Thus, human rights as its certain opportunities are realised, used by it, becoming a necessary, natural component of human existence. An adequate reflection of such a situation can be the terminological expression "law in a person". This gives grounds to consider the need-based legal understanding to be integral, i.e., it is a person who is recognised as the system-forming core generating the legality of certain phenomena as necessary tools for satisfying one's ontological, existential needs – phenomena that are integrated into the existence, life activity of a person in society. The human-need interpretation of the integrity of legal understanding proposed herein can, admittedly, be the subject of further discussion. However, be that as it may, the humanism and humanocentrism of such a legal understanding appear to be implicit [38, p. 85].

The possibilities of conceptual integration and the viability of the synthesis of various elements and foundations of various concepts of legal understanding directly depend on the performance of several conditions: the distinction of integrity as an organic integrity, on the one hand, and mechanical, eclectic, and semi-random combination of elements – on the other hand; understanding the idea of integrity from the standpoint of dialectical logic, in particular with the reliance on the principle of contradiction as the fundamental law of social development, the principles of identity of being and thinking, unity of logic and historical, theoretical, and practical [39, p. 211-232; 40].

CONCLUSIONS

The prospect of integrating different legal understanding is a task that can be performed based on dialectical, and not formal logic, while preserving the differences and contradictions between the combined conceptual elements, the synthesis of which becomes possible based on the dialectic of the existing and the due both as content and form, essence and phenomenon. At the same time, insurmountable methodological limitations on the path towards building an integral legal understanding are the fundamental inconsistency of umerous methodological approaches, such as, in particular, state-legal monism and legal pluralism, value-normative absolutism and relativism. Scientific-positivist consideration of socionormative phenomena is difficult to combine with syncretism of value-coloured legal representations that seek to cover substantially different quality phenomena: this is how the tension between the ideas of complementarity of contradictory positions, wherein each of them retains its meaning and its scope of application, and such an integrative project, wherein individual combined elements "dissolve" is revealed. Given the possibility of combining only individual conceptual elements in different versions of legal understanding, but not mutually exclusive methodological approaches to understanding law as such, pluralism of integrals in legal exchange is inevitable.

Recognition of the existence of a multiverse of legal realities as their differentiated multiplicity makes possible the coexistence of various concepts of law, each of which, in turn, can be the result of a synthesis of legal features. Although there may be a certain complementarity relationship between such concepts, these concepts nevertheless remain autonomous and non-integrated. The meaning of integrity in legal understanding is most fully and adequately expressed by activities to meet human needs – social practice. The latter can reveal the semantic objectivity of integrity, cover the social and individual significance (utility or harmfulness) of a particular combination of conceptual elements of understanding law to meet the needs of human existence and development. It is in the process of need satisfaction that the humanistic understanding and activity transformation of natural and social phenomena takes place, the integration of their certain properties into human existence, their acquisition of the status of vital, and therefore statutorily significant components of this process. Thus, legality becomes the result not of an a priori or abstract-theoretical, but of activity-practical – meaning-making and meaning-converting – integration of the phenomena serving as integral components of human existence in society.

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Suggested Citation: Rabinovych, P.M., Rabinovych, S.P., & Pankevych, O.Z. (2021). Integration of legal understanding as a methodological issue. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(3), 47-55.

Submitted: 08.05.2021
Revised: 22.07.2021
Accepted: 01.09.2021

УДК 327.2
DOI: 10.37635/jnalsu.28(3).2021.56-63

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ПРОБЛЕМА НАЦІЇ ТА НАЦІОНАЛЬНИХ ЦІННОСТЕЙ В ІДЕОЛОГІЇ МАРКСИЗМУ

Анотація. *Аналіз впливу ідей марксизму на національні цінності казахського народу в Західному та Радянському Союзі був заснований К. Марксом та його ідеологічним партнером Ф. Енгельсом. Хоча ідеї марксизму мали на меті вирішити економічні та соціальні суперечності, що мали місце в західних країнах, вони належали цій точці зору. А комуністична ідеологія, сформована на основі марксизму, обійшла західну культуру і докорінно змінила національні цінності казахської держави в складі Радянського Союзу, культуру мислення. Виявлення основних помилок в ідеях марксизму та наслідків однобічних наукових концепцій мало місце в подальшому розвитку. У цій статті автор аналізує радянську владу на шляху формування комунізму з визначенням однобічних наукових чинників, що мали місце в ідеології марксизму та держави Казахстан, що була частиною Радянського Союзу, та його культурної сутності. Автор доводить, що головною помилкою ідеології марксизму є те, що проблеми національних цінностей залишаються поза процесом суспільства; ідеологи закривали очі на цю проблему і в результаті втратили наявні можливості*

Ключові слова: *марксизм, ідеологія, свобода, нація, національний кодекс, національні цінності*

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THE PROBLEM OF THE NATION AND NATIONAL VALUES IN THE IDEOLOGY OF MARXISM

Abstract. *Analysis of the influence of the ideas of Marxism on the national values of the Kazakh people in the Western and Soviet Union were founded by K. Marx and his ideological partner F. Engels. Although the ideas of Marxism were intended to resolve the economic and social contradictions that occurred in Western countries, they belonged to this view. And the communist ideology, formed on the basis of Marxism, bypassed Western culture and radically changed the national values of the Kazakh state within the Soviet Union, the culture of thinking. Identification of the main mistakes in the ideas of Marxism and the consequences of one-sided scientific concepts took place in further development. In this article the author analyzes the Soviet government on the way of creating a formation of communism with the definition of one-sided scientific factors that took place in the ideology of Marxism and the state of Kazakhstan that was part of Soviet Union and its cultural essence. The author proves that the main mistake in the ideology of Marxism is that the problems of national values remain outside the process of society; ideologists turned a blind eye to this problem and as a result, have lost the existing opportunities*

Keywords: *Marxism, ideology, freedom, nation, national code, national values*

INTRODUCTION

Any society in the process of its historical evolutionary development will naturally demand material and spiritual values. Social relations in society become more complicated, if they do not timely solve the needs for material and spiritual needs, they can lead to various social conflicts. Famous German philosophers K. Marx and his ideological companion F. Engels shared their impressions of these problems of the development of society as other social scientists. K. Marx and F. Engels considered that the strongest capital, goods, money and relations stimulates historically evolutionary development of society. Every conscious person is the fruit of his period and time, it is thought so because the period and time during which K. Marx and F. Engels lived, became the main reason for that. But these two persons not only expressed their thoughts on the development of society, but also made an ideology that encourages the thought of all mankind, their aspirations for the future [1-3].

K. Marx lived in the middle, at that time there was a formation of the capitalist states of Europe. Production plants and capital were owned by Representatives of the bourgeoisie who ruthlessly exploited workers. K. Marx and the ideological companion F. Engels were unable to approach these events seriously when they leave wealthy families. K. Marx, as a journalist, tried to reveal the arbitrariness of the authorities of that time as much as possible. As a result, Karl Marx, became a victim of critical thoughts, was forced to move

from Germany to Paris and then to England. The era of Karl Marx's life, the social space of Europe, the way out of the dead end of the capitalist formation needed the thoughts of philosophers and sociologists. The period when society was divided into two parts, the bourgeoisie possessed endless wealth through the exploit of the labor of the working class, K. Marx understood well the suffering work groups that did not have any resources in their hands, during this period Marxism appeared [4; 5].

The idea of Karl Marx served as the main ideology for the countries within the Soviet Union, etc., when it contributed to the revision of the capitalist formation, which takes place in real forms in the social space of Europe and the solution of problems aggravated in social relations, improving the position of the working class [6]. From this interval you can see how much we understand the viability of the idea of K. Marx and Marxism. As a result, we understand that the Western countries know how from the Marxist idea and are mistaken with their re-election to the Soviet Union for more than half a century. The following methods of cultural studies were used in the course of analyzing the ideas of Marxism, comparing the cultural values taking place in the Western and Soviet Union. Cultural-evolutionary method, structural-functional method, historical comparative method.

1. MATERIALS AND METHODS

In order to dwell on the problem of national and national values in the ideology of Marxism, first of all, briefly analyze the philosophical views of K. Marx from the point of view of cultural studies, his ability to understand economic and social conflicts in society, characteristic of the Western social space. At the same time, some concepts and ideological values in the views of K. Marx are not fully realized in the formation of the communist formation. First of all, the following question arises. Philosophical views of Karl Marx, which surprised the whole world with their sharp thoughts, would they be devoted to solving the economic and social contradictions of any society that took place in the world, or to the solution of economic and social contradictions occurring only in Western countries? If K. Marx admitted that Marxism was intended to resolve economic contradictions that took place only in Western countries, then for some reason it did not take place in Europe, but the culture of thinking, the lifestyle was completely different and the capitalist formation classified by Karl Marx at that time, and the working class in it took place in Russia which had not been formed yet in the countries that later became part of it and in other states outside Europe. This question was surprised not only by the adherents of the idea of Marxism, but also by the author of the ideology of Marxism, K. Marx, if he was alive at the beginning of the 20th century.

Inter-class struggle caused by the economic and social relations that took place in the 19th century in European countries greatly worried K. Marx. He, being a lawyer and journalist, first began to criticize political power. Later K. Marx interested in the works of G.V.F Hegel (1993) who were influencing the German nation with his inspiring thoughts, then he began to criticize their works and developed with his thoughts. He tried to solve the social conflicts occurring in society with the help of materialistic dialectics with his sharp thoughts, relying on idealistic dialectics of G.V.F. Hegel (1993). According to K. Marx the world originates from matter but not from consciousness (according to G.V.F. Hegel, from spirit) including the historical evolutionary development of society, that is, “Consciousness of people doesn’t determine their existence/being, but their social being determines their consciousness”, became the catchword of that time [1]. K. Marx classified it into five formations referring to the historical evolutionary development of society. That is, the first commune, slavery, feudal, capitalist and K. Marx Communist formation. The main mistake in understanding the philosophical view of K. Marx is that all the states at that time in Russia and Central Asia (all states within the Soviet Union, etc.) not all of these stages, that is, not a full-fledged place of the capitalist formation, as I thought K. Marx. In addition, there is a low level of knowledge of individuals who are able to think independently. The main factors include the extremely low education level of the herd of workers, which Marx claims.

2. RESULTS AND DISCUSSION

In general, K. Marx, as an economist, sociologist, philosopher understood very well the social situations in Europe and, accordingly, evoked new ideas. G.V.F. Hegel sought to explain the conflict between economic and social relations in society through his work “master and slave” [2]. And Karl Marx, deeply analyzing this point of view of his teacher G.V.F. Hegel, understood that economics is the main reason for resolving class conflicts that occur in a society that is characteristic of the social space of Europe. And when the master was fulfilling the capitalist bourgeois, he tried to prove that the activity of the slave served the working class. In fact, in the competence of the working herd, apart from their honest work, there was nothing, and the capitalist is a bourgeois openly, without a proper assessment of their work was doomed to the slavery of the master. The position of the teacher K. Marx G.V.F. Hegel recognized some dialectical legality of the transformation of the slave to master and the master to the slave, but turned a blind eye to other values.

In Russia and her family, the Kazakh country did not know the ideas of K. Marx mentioned above. In 1917, an event filled with political content took place in Russia, that is, the Romanov dynasty, which had ruled Russia for 300 years, collapsed. As a result of the revolution, power passed into the hands of the Red Terrors. The tragedy of power in the Russian Empire, when the most common Marxist ideology on the basis of the red terror in the hands, it all came down from the will of weak countries to live, Kazakhstan is one of them, that is, the state. The leader of the Red Terrors took power into the hands of V.I. Lenin. In the first years, he came to a common conclusion with the intelligentsia of the Kazakh people, after whom I.V. Stalin was taken under the power, destroyed the entire intelligentsia of the Kazakh people. Of course, this is another topic.

In the life of V.I. Lenin, developing the ideas of Marx, he also added his own thoughts. One of them is the strategic program NEP (New Economic Policy), based on the economy. V.I. Lenin was more literate person from a prosperous family than his revolutionary companion I.V. Stalin. indeed, The NEP program he proposed, allowed states such as modern Kazakhstan within the Soviet Union to create a separate Kazakh autonomy and develop socio-economic problems based on national cultural values [3]. Unfortunately, the global process, the political and economic course in which the Soviet Union adheres, was not like the representatives of our intelligentsia. V.I. Lenin did not fully support the existence in accordance with the ethno-cultural values of other nationalities [4] V.I. Lenin after his death, K. Marx's ideas with the ideological principle of "Marxism-Leninism" made themselves for about seventy years in regions belonging to the Soviet Union and others. K. Marx did not believe that in the future according to its theory, that is, the latest achievement of the historical evolutionary development of mankind in the formation of the communist formation, Russia will be the first and there will be a revolution in this state. The main reasons: First, the imperfection of social relations in the capitalist formation in Russia, and second, the full-fledged formation of representatives of the working class and their low level of education. Such conditions also existed in Kazakh autonomy at that time, and other factors that laid the foundation for K. Marx, and then V.I. Lenin, which led to the fact that the communist ideology, which developed its though, was not fully implemented in our society.

Any ideology needs sacrifices. The communist ideology founded by K. Marx completely denied both the sacrifice and the culture of citizens' thinking. During the period of colonization of Russia interrupted by spiritual roots, and it led to the creation of communism on the basis of communist ideology, negligence towards it. "Carelessness leads to a parade, a premature death", – says A. Chekhov. If we consider the essence of any person in the unity of three dimensions, that is, body, soul and spirit, then this phenomenon, containing in the unity of all, which has the meaning of life, these are national values. Among the main factors influencing the formation of values, we include: the family of an individual, nationality of origin and the social environment that directly influences the formation of a culture of individual thinking. Unfortunately, all these facts did not have interconnection, balance in the space of the communist formation, which should be formed on the basis of the ideology of communism.

It should not surprise any scientists that the existence of any person is physiologically similar to each other, occurs in radical specific qualities from the point of view of psychological and spiritual, that is, the culture of thinking related to consciousness. According to the evolutionary theory of the English natural scientist Charles Darwin, the flexibility of any creature, depending on the state of the environment, is based on three factors: hereditary variability, the struggle for life and natural sorting. In his philosophical approach, K. Marx, in his philosophical point of view, in the process of proving materialistic dialectics, also relied on the evolutionary theory of Charles Darwin, consisting of these three factors. At one time, the teacher of K. Marx G.V.F. Hegel noted four major centers of civilization in defining the meaning of the concept of world-class freedom, stressing that freedom at the level of absolute truth takes place in the future in Germany [5]. And K. Marx considered world-class freedom to be a phenomenon occurring with the victory of the proletarians of all countries. In fact, if there is a need for freedom, then it must be remembered that cultural values are the criterion of need. Due to the fact that freedom in this sense is a culture of thinking characteristic of every nation, it has a great influence on the formation of culture, and, accordingly, there is a political system for managing the spiritual foundation of any society and social environment (a source of economic capital). Taking into account this process of development of society, of course, it became known that K. Marx's view was intended only for the social space of Western countries from the very beginning. At the same time, those who insanely own his views, continuing the communist ideology, include: leaders and revolutionaries, scientists and peoples who sacrificed a false slogan are responsible.

Party leader Alash formed in the Kazakh autonomy, one of the intellectuals of the Kazakh nationality A. Bukeikhanov, from the very beginning looked doubtfully at Marx's ideas, and for the first time publicly expressed l thought and opposition leaders of the Soviet Union. A. Bukeikhanov and members of the Alash Party proved the imperfection of this system, that some ideas of a socialist society, communist ideology on the way of creating a Kazakh nationality fundamentally contradict national values and culture. Now let's consider them.

The formation of a nation is an unshakable phenomenon that deepens the roots. In the ethnological science of the formation of a nation, there have been various theories, but still not fully determine the existence of a nation. Its main reason lies in the fact that the properties of the national code, which is any individual do not assimilate their confidentiality by the culture of thinking of this nation, but remain secret, not disclosing and hiding to those who showed interest. In order to communicate with the fate of any nation and comprehend them in the culture of thinking, it is necessary to familiarize with the cultural values of this nation and think in their language. In order to carry out such activities, a scientist must not only devote his whole life to the study of a particular nation, but also teach them cultural values, as mentioned above, to speak a language and think in that language. In his era, K. Marx understood this situation very well, therefore his philosophical views, especially on the essay Capital, aroused great interest among Russian thinkers and revolutionaries. According to historical data, K. Marx studied the Russian language in order to understand the culture of thinking of the peoples of Russia, gets acquainted with the works of the Great Russian poet A.S. Pushkin. After studying the Russian language and comprehending it in the culture of the thinking of this nation, his works require further study.

In general, another important situation is in comparing the policy of the Western colonial countries and the Russian Empire in the colonization of the Kazakh people, one can be convinced by the Russian Empire in the impartiality of the national values of local peoples, and sometimes in unfair decisions. However, despite the fact that the main economic goals for making profit are the British and the French, the colonialists of other countries, the main feature of the Russian Empire is a radical change in the systemic structure of local peoples in the development and adaptation of social space under the influence of the geographic environment, as well as to a halt in development and a centuries-old the flourishing of the root of these peoples. As a result, the Russian Empire, during the colonization of the Kazakh people, not only found benefits from a political and economic point of view, but also led to the massive perpetuation and deprivation of the Kazakh nation of spiritual roots. The madman condemns his very existence by spiritually collapsing [6]. In particular, the main reason for the spiritual destruction of the Kazakh nation is, first of all, the elimination of the Khan system, and then the disappearance of the court. This tragedy, which fell on the beginning of the Kazakh nation, caused concern among the scientist Sh. Alikhanov who lived at that time. He shared his opinion in the "record on judicial reform", emphasizing the fundamental disagreement with these violence of the Russian Empire [7]. But there were no results from this. Let us consider the characteristic issues of the disappearance of the management system characteristic of the culture of thinking and the reality of the national Kazakh society.

The Russian Empire intended not only to economically use the natural resources of the colonized Kazakhstani country, but also in the future to take these lands into full ownership. The underground political actions carried out for this purpose began to look for the weakest sides of the decomposition of the Kazakh society, which lived in a nomadic culture. It regulates all the social needs of Kazakhstan society, that is a family, religion, culture, economy, politics, etc., institutions were based on centuries-old traditions. Open opposition to traditions was very unprofitable for the Russian Empire. At the same time, the need of the Kazakh people for customs and traditions stood above the Islamic religion. Realizing the importance of the traditions of the Kazakh society, the Russian Empire found a systemic content of national values that underlie their systematic service. When national values lose their content, traditions that are always held in society on a permanent basis, in need, test new views; negatively affect the development of society until new values are formed.

For the Kazakh society of that period, the elite group responsible for the management system was the main standard of whole cultural values. In the culture of the Kazakh people, they thought: "nobility", "master" holding the reins of government, "judge", "host", "saint" and others who managed to combine traditions and Islam, and the authors of the concepts were the protagonists of national values and the bridge between state and people. At the same time, the main features of these actors from the crowd were some of the representatives of the existentialist philosophy of the 20th century, Sartre's concepts of "responsibility" and "concern" in defining the essence of human freedom [8] was the main categories in their thinking culture. Although political power was in the hands of one of the elites, the "judges", they were always under the control of the judges. And the judges were talented people who took care of people. The political balance in Kazakhstani society was built on such harmony that power did not turn into a personal glove. If we look at the concepts of democracy and freedom in this context, we see that democracy is not a political system imposed by force from the outside, but a set of actions arising from the need and responsibility for values through the culture of thinking of each nation.

From the system of government of the khanate in Kazakhstani society, we can see not only a simple hierarchical relationship that exists in some societies, but also a true picture of the nature of the nation, based on freedom and necessity. The Russian Empire used this living space of the Kazakh society, which is a continuation of the ancient nomadic culture, in the implementation of its ideas. The structure of Kazakh society consisted of several stages based on traditions, that is, from villages collected from zhuzes, clan and close

siblings. Of course, the coexistence of close brothers and siblings is one of the criteria inherent in nomadic culture, understandable to all scholars and researchers, and together with the zhuzes there is no clear answer to attempts to occupy a certain territory so far. During the meeting, the sides discussed issues related to the implementation of the state program "Cultural heritage" for 2004-2006, as well as issues related to the implementation of the state program "Cultural heritage" for 2004-2006. In addition, the role of the generic system is very important in the issue of the national code.

The concept of a national code is one of the important issues that have been frequently moving lately [9]. The main reason for the importance of this concept could be attributed to several factors, first of all, the concept of a nation. There are a lot of forecasts of various sciences about the emergence of a nation, including ethnological science, which deals with this very issue. If we look at the problem of the nation from the point of view of cultural science, then we can give the following definition. A nation-conscious humanity is a space in which a cultural work of Homo sapiens takes place, that is, it has a different level of different cultures. One of the cultural scientists O. Spengler, in his work "The Decline of Europe", noted eight civilizations of the world [10], but it is a pity that the Turkic civilization cannot be found in this work. In general, as a civilization of the Turkic civilization, the scientists of the world have not yet unanimously admitted. This is a very sad situation for all mankind, striving for the knowledge of truth and science. Most scholars classify nomadic culture as one of the most typical cultures and form actions that do not contradict the ethics of science. But ecological consciousness, which today is becoming a global problem, that is, the culture of life in combination with the surrounding nature, the most efficient use of natural resources, was formed, first of all, among these nomadic cultures. In addition, the owners of the nomadic culture, as the first virgin lands, not only tamed wild animals, but also used not only labor forces, but also fully satisfied everyday needs, brought works of a world-class brand from clothes, dishes, art [11].

Mashhur Zhusup, who lived in the twentieth century, said that by observing the behavior of domesticated animals, mankind can correct drawbacks in the soul and learn edification [12]. In this regard, there is a winged expression filled with a philosophical meaning in the Kazakh nation: "the cattle is like the owner, the owner is like the grazing cattle". His philosophical concept contained very important, deep thoughts. Any "thing in itself" that comes into contact with a person, as a result, not only turns into an "thing for us" [13], but also fully adapts to human being itself, the culture of thinking. From social relations, it expands the horizons of the human spiritual world, broadens the horizons of the soul from contact with animals through training hands. In their image, trying to understand the world, various works of art, kuis, dances were born. You can see only one of the most wonderful works dedicated to various inhabitants of the surrounding nature: lame kulan, bee, camel, a swan, etc. from the history of the emergence of all these works of nomadic culture. According to M. Heideger, we see how he received an assessment, and not to adapt being to himself, that is, to penetrate into the surrounding being. In order to penetrate into the life of the inhabitants of the surrounding nature and show their state at that moment, he needs a rich language. Only through the wealth of language can one get into the state of being, depict and understand its facets. Therefore, M. Heidegger's thoughts, it is significant "language-house of being" to say that [14].

Another philosophical meaning of the aforementioned winged word can be seen in social relations occurring in modern society. 20th century was the century of new technologies changing without exaggeration. In a modern post-industrial society, the main task is to master new technologies, that is, everything we do is technology. There is no way for a citizen of a modern society to develop from technology; this is a globalization requirement for all of humanity in the world. According to the forecasts of philosophers, the "Technotronic era" radically changes the culture of thinking of mankind and their attitude to values [15-17]. In his works "The Question of Technology" and "The Turn" M. Heidegger comprehensively analyzed the positive and negative aspects of mastering the "truth" of being through technology [14].

Although the Marxist point of view was convinced that the communist formation could be formed as a result of technology and new technologies, it could not at all link it to national values. As time has shown, the Soviet government, one of the great world powers in politics, ceased to exist. This process shows that the content of the concept of nation is a phenomenon deeply rooted in the definition of science in any field. At the same time, the fall of Soviet power obliged all specialists in the field of social sciences and humanities to pay more attention to the problems of the nation, to their centuries-old values, to show diligence, to show tolerance in making certain decisions. The ideas of K. Marx, who formed Marxism, are still puzzling the philosophers of the world. The works of K. Marx and his ideological companion Friedrich Engels, after about two centuries, do not lose their value and require maximum analysis. Of course, in their works, they were the main reasons not to raise the interests of the nation, that is, the social relations of Western states based on the general economic problems of that time. In the social relations of Western states, there are two opposing classes, that is, between workers and the owners of production and production equipment. The political elite that held power

in the Western states (the first German chancellor at that time Otto von Bissmark), considering the ideas of Karl Marx, managed to prevent the state from radical threats, timely passing thoughts through the grids. And the attitude of the Russian Empire to the ideas of Karl Marx, attempts to turn it into a bell of power led to the ideas of Marxism.

CONCLUSIONS

In general Marxism, there is no reason to completely reject the ideas of Karl Marx. Any thought happens in advance and wear. Our task is to remove rape and develop it in line with the requirements of our time. In recent years after gaining independence, there has been a tendency in our society to radically reject the ideas of Karl Marx. In fact, Karl Marx admitted for the first time that his ideas were devoted to the West. But today, given the process of globalization in the world economic process, as an example of the achievement of developed countries of the Western economy from the economy, the task is to comprehend the works of Karl Marx. It is especially advisable for the CIS countries, rich in natural resources, to study and analyze the ideas of Karl Marx, use rational ideas.

The general economic system in the process of globalization is divided into the whole world, but the main impetus to it is economic cultural capital and natural resources. This approach was recognized by Karl Marx in the era, but the fruit of cultural capital did not interest Karl Marx with the problem of the national brand. And the national brand in the economy is the main problem of modern society. Our country cannot be surprised to recognize countries with advanced economies from science, new technologies, but through the products of the national brand it can recognize other countries besides the economy. In turn, the presence of products and goods of the national brand proves how high the competition and organization of this nation. The ideas of Karl Marx will undoubtedly contribute to the implementation of this activity.

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Suggested Citation: Aralbay, S., Telebaev, G., Bekezhan, O., Sagatova, A., & Abdrahmanova, K. (2021). The problem of the nation and national values in the ideology of Marxism. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(3), 56-63.

Submitted: 24.06.2021
Revised: 09.08.2021
Accepted: 11.09.2021

УДК 340.12
DOI: 10.37635/jnalsu.28(3).2021.64-73

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ПРАВОВІ ПІДСТАВИ ОБМЕЖЕННЯ ДОСТУПУ НА ІНФОРМАЦІЮ: ФІЛОСОФСЬКИЙ АСПЕКТ

Анотація. *Швидке поширення інтернету та комунікаційних технологій порушує питання доступу до інформації, особливо доступу до інформації через інтернет. Кількість інформації в мережі постійно збільшується, і водночас докладається все більше зусиль, щоб певною мірою обмежити доступ користувачів до неї. Чим більше обмежень створюють державні органи у цій сфері, тим більше зусиль докладається, щоб обійти або порушити ці заборони. Вільний доступ до інформації в демократичному суспільстві має стати правилом, а обмеження цього права – винятком. Ці обмеження повинні бути чітко визначені законом і застосовуватися лише у випадках, коли необхідно поважати законні та життєво важливі інтереси, такі як національна безпека та конфіденційність. Основною метою цього дослідження є розгляд правових та соціально-філософських аспектів доступу до інформації. Обмеження доступу до документів як засобів масової інформації практикувалося з давніх часів. Дослідження висвітлює наявні суперечності та відставання у реалізації принципів реалізації права на інформацію в Україні на рівні законів та підзаконних актів. Дослідження класифікує інформацію відповідно до характеру обмежень (здійснення) конституційних прав та свобод у інформаційній сфері. Було виявлено, що законодавство України не систематизує перелік конфіденційної інформації в єдиному регламенті на відміну від російської федерації та надає основні типи конфіденційної особистої інформації. Було встановлено, що обмеження будь -яких свобод та прав людини, у тому числі в інформаційному просторі, можна встановити за допомогою різних регуляторів, домінуючими серед яких є такі рівні реалізації: правовий (законодавчий); моральна самосвідомість суспільства; автономність особи. Описано особливості та сфери дії регуляторів обмеження свобод та прав людини. Для обмеження доступу до інформації використовуються різні методи захисту її від несанкціонованого надходження, які можна розділити на дві групи: офіційну та неформальну*

Ключові слова: *конфіденційна інформація, аспекти доступу, рівні впровадження, характер обмежень*

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LEGAL GROUNDS FOR RESTRICTING ACCESS TO INFORMATION: A PHILOSOPHICAL ASPECT

Abstract. *The rapid spread of the Internet and communication technologies raises the issue of access to information, especially access to information via the Internet. The amount of information on the network is constantly increasing, and at the same time more and more efforts are being made to limit users' access to it to some extent. The more restrictions state bodies create in this area, the more efforts are made to circumvent or violate these prohibitions. Free access to information in a democratic society should be the rule, and restriction of this right – the exception. These restrictions should be clearly defined by law and applied only in cases where legitimate and vital interests, such as national security and privacy, need to be respected. The main purpose of this study is to consider the legal and socio-philosophical aspects of access to information. Restricting access to documents as media has been practiced since ancient times. The study highlights the existing inconsistencies and lags in the implementation of the principles of exercise of the right to information in Ukraine at the level of laws and subordinate legislation. The study classifies information according to the nature of restrictions (exercise) of constitutional rights and freedoms in the information sphere. It was discovered that the legislation of Ukraine does not systematise the list of confidential information in a single regulation in contrast to the Russian Federation and provides the main types of confidential personal information. It was found that restrictions on any freedoms and human rights, including in the information space, can be established with the help of various regulators, the dominant among which are the following levels of implementation: legal (legislative); moral self-consciousness of society; autonomy of the person. Features and spheres of action of regulators of restriction of freedoms and human rights are described. To restrict access to information, various methods are used to protect it from unauthorised receipt, which can be divided into two groups: formal and informal*

Keywords: *confidential information, aspects of access, levels of implementation, nature of restrictions*

INTRODUCTION

Every person has the right to freedom of expression; this right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of their choice. Human rights must not remain declarative. In recent years, Ukraine has been gradually approaching the community of world powers in which democratic values are developing. The report of the American human rights organisation Freedom House on the state of freedom in the world recognises Ukraine as a free country [1]. However, there is no reason to claim that the protection of human rights and freedoms is an integral part of Ukrainian legal culture and legal space. In the context of identifying ways to further improve the system of human rights protection, the object of study is to ensure the right to information. Humankind has vivid examples of the negative consequences of restricting rights in the

information space. In practice, such a concept of restriction of liberty took place in the brutal censorship of all information produced in the post-Soviet countries, which caused social discontent that eventually led to the collapse of states. Legal restrictions on information freedom in the USSR were entirely based on ideological considerations, which did not reflect the real needs of society.

Nowadays, Ukraine should strive to maximise media freedom in both the structural (commercial) and social (freedom of speech) sense. The transition to new technologies and channels of information distribution has radically changed the field of mass communications and the media, while conventional methods of regulating access to information are becoming a thing of the past. In an era of rapid technological change and convergence, archaic methods of state control over the media are becoming increasingly unfair, unjustified and, ultimately, unusable [2]. Despite advances in this area, many issues remain unresolved, including the absence or weakness of national freedom of information legislation and the low level of compliance in many countries. No country in the world can isolate itself from global change, and the future of any state depends on how it uses new communication technologies and responds to globalisation in the fields of economy, politics, and culture. However, insufficient development of philosophical and methodological aspects of the categorical status of access to information, ignoring its complex nature, which requires interdisciplinary research and involves the specification of features of the development of ways to protect it has led to a cognitive situation of uncertainty, both in economics and law.

1. MATERIALS AND METHODS

The phenomenon of human freedom throughout human history has been one of the objects of philosophical research. Freedom in different eras has been studied by thinkers as a special value, including considerable attention always being paid to information freedom. In the context of the subject matter, it is appropriate to note the position of Kant and philosophers of the late 19th – early 20th century. According to I. Kant, freedom in society is conditioned by nature itself to the solution of the greatest problem of the human race – the achievement of a universal legal civil society in which there is freedom – nature demands it. It is to nature that Kant attributes what he calls its "plan" – the development in the conditions of freedom of all natural endowments inherent in humanity. Freedom, according to Kant, is the only primary, innate right inherent in every person by virtue of their belonging to the human race. According to I. Kant, the essence of the natural purpose of freedom is that freedom is not just a good in general, not just a space for self-satisfaction, a merciful life, but a social space of activity, the development of natural endowments for the ascending development of the entire human race [3].

According to Kant, any action is impossible without including the due in its structure. From this principle of ethical completeness, he derives the famous categorical imperative: man lives among people, therefore, due as a measure to limit arbitrariness is required for the action to become real [4]. Thus, freedom, in essence, is a common, natural, integral property of every person in society. However, he has already laid the initial foundations for substantiating the concept of restrictions on human rights. This is the idea of the emergence of natural struggle, competition, finding balances between different interests or "freedoms" of many people and, as a consequence, the need for a certain regulatory environment. Continuation of the development of the research base of restrictions on the exercise of freedoms and human rights belongs to Berdyaev, who singled out "formal freedom", which, in his opinion, is expressed in the formula: I wish something that I want to be so; as well as "material freedom", which is expressed in the resolution: I want something to be. In his opinion, in formal freedom the will has no object of choice and direction; in material freedom such an object exists [5]. Classical philosophers were replaced by researchers who developed concepts of the information society, where information freedom is considered as a necessary mechanism for the development of information civilisation. This approach has a more methodological, general philosophical nature, which equips researchers with the methodology of studying the information society as a whole: D. Bell, M. Castells, M. McLuhan, E. Toffler [6-9].

The development of information technology and computer science has led to the consideration of issues within the knowledge and skills of working with information using information devices and technologies [10]. The study of the phenomenon of information as a scientific and philosophical category is conducted within the information approach [11; 12]. In recent years, scientists have been studying the phenomenon of information and the problems of informatisation of society from different positions: legal, social, philosophical, economic, technical and technological, etc., which are closely interrelated (A.D. Ursula, K.K. Kolina, I.M. Gurevich and others) [13]. With the accumulation of theoretical and empirical material, the development of philosophical and methodological framework, there is a possibility and necessity to develop a new scientific field that studies the features of information freedom as a multifaceted phenomenon of modern information civilisation. At present, this area can be referred to as a legal category and integrates socio-philosophical, cultural, legal, and informational approaches. But in the works of researchers, it is more represented from one position, and there

are virtually no studies that investigate it in a comprehensive dimension, which puts the subject matter to the fore.

The methodological framework of the study included philosophical, social, analytical and legal research methods. General scientific and special methods were also used. The main provisions of the legal framework for regulating the right to information at the international, national level and in some regional areas are studied. The applied methodology allowed to develop the main directions of optimising the application of the principle of restricting the right of access to information and choosing effective regulations for implementation in the national legal system. The methods used allowed to obtain reliable and substantiated conclusions and results. As one of the main methods of analysis, the study used the comparative method, which allowed to compare the domestic practice of implementing this principle in the process of human rights protection with the legal framework for regulating the object of study in the European Union and internationally.

At the theoretical level of analysis, the study investigated the fundamental provisions of the legal framework of regulation and exercise of the right of access to information in the aspect of protection of human rights at the international, foreign, and national levels. The descriptive method allowed to present the results of the study in a logical sequence. Methods, synthesis, analogy, system, classification, and analytical methods were also used during the study. The normative method was used to analyse aspects of issues arising within the framework of legal regulation of human rights in the context of access to information. The evaluation method allowed to conclude on the level of consideration and implementation of the recommendations of international organisations in the national legal system to establish the optimal level of restrictions on access to information.

The method of synthesis allowed to solve the research problems through its application to primary sources on this issue. The application of the analytical method to these primary sources allowed to make recommendations regarding the implementation of the provisions of European and international legislation into the national legal system; identify the main areas of experience in its application in the process of human rights protection and compliance of national systems with the international base and judicial practice. Methods of induction and deduction are used to analyse the content and structure of legislative texts, the characteristics of legal provisions in the context of the subject matter. The historical method was used during the analysis, which allowed to study the process of development of philosophical understanding of information law and its limitations in rule-making and legal doctrine at different stages of development. The genetic method allowed to identify stages in the evolution of the right to access information and the system of human rights protection in this legal field, to establish their sequence in time and to trace how and under the influence of which factors the provisions governing them changed. The structural and functional analysis allowed to consider the features of the structural organisation of modern institutions and organisations that introduce and apply access and restrictions to information and protect human rights and monitor their observance, their interaction with each other and with other institutions whose activities concern these questions in one way or another. To achieve this purpose, a system of methods of cognition of socio-legal phenomena is also used, as the development of a legal mechanism of provisions is a complex issue.

2. RESULTS AND DISCUSSION

An integral part of any information system is information, access to which is provided through the systematic and prompt disclosure of information and through the provision of information upon request. Sources of disclosure of information are official publications; official websites on the Internet; single state web portal of open data; information stands and other ways. From ancient times it was practiced to restrict access to documents as information carriers by individuals, to transmit it by special courier or pigeon mail, etc. Currently, modern telecommunication channels are used to implement this restriction mechanism. However, this approach requires significant capital investment.

Steganography is engaged in the development of means and methods of concealing the fact of message transmission. The first traces of steganographic methods are found in antiquity. Thus, there is a description of two methods of concealing information in the works of the ancient Greek historian Herodotus: writing the message on the shaved head of a slave, then regrowing hair and sending the slave to the recipient, who again shaved the slave's head to read the message. Another ancient way was to apply the message on a wooden board, which was then covered with wax, and thus did not arouse any suspicion. Then the wax was scraped off, and the message became visible. Currently, steganographic methods in combination with cryptographic have found wide application in order to conceal and transmit confidential information. Cryptography develops methods for converting information to protect it from unauthorised access. The right to receive information is an integral part of the broader concept of "Right to freedom of expression", which is reflected in Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms [14]. With regard to the right to

freedom of expression, including the right to information, Part 2 of this Article of the Convention determines the grounds for their restriction. Furthermore, this article contains two conditions for the use of these grounds in practice:

– determination of grounds at the legislative level; therewith, legal regulation of restrictions on the right to information should allow a person to predict in advance under what conditions and within what limits they can obtain a particular piece of information, and any restriction must meet the criteria of accuracy and accessibility;

– being based on the criterion of "necessity in a democratic society", which is developed in sufficient detail and confirmed by European case law.

One of the most commonly used signs of determining the existence of this "necessity" is the proportionality of restricting access to information. The measure of restraint must be proportionate to the means and purpose of the restraint and be conditioned by an urgent public need. In general, the provisions of Ukrainian constitutional law follow the European tradition and guarantee the right of everyone to freely collect, store, use, and disseminate information. The Constitution of Ukraine contains certain restrictions on the granted right [15] (parts 2, 3 of Article 34 of the Constitution of Ukraine). Despite this, there is still some inconsistency and lag in the implementation of these principles of exercise of the right to information at the level of laws and subordinate legislation. This can be clearly analysed on the example of the Law of Ukraine "On Information" [16]. Thus, the issue of establishing regimes of access to information, and in particular the validity of the application of Article 30 of the Law of Ukraine "On Restriction of Access to Information", is very controversial in practice. The problem is that the article does not have clear criteria for reasonably classifying information as restricted. This indicates that a fairly wide discretion is given at the stage of law enforcement, which can lead to a violation of the rights of the subjects of information relations.

Furthermore, the current version of Article 9 significantly expands the grounds for restricting the right of access to information that is inconsistent with the principles of the Convention and does not allow a person to predict the extent of their possible conduct in advance. In particular, part 3 Article 9 of the Law of Ukraine in the presented wording narrows the amount of information to which a citizen has free access. In this approach, the legislator seeks to establish a list of permissible behaviours related to access to information, rather than clear criteria for restricting such access, introducing the principle of "everything which is not explicitly forbidden by law is allowed". By the nature of restrictions (implementation) of constitutional rights and freedoms in the information sphere, there are four main types of information (Fig. 1).

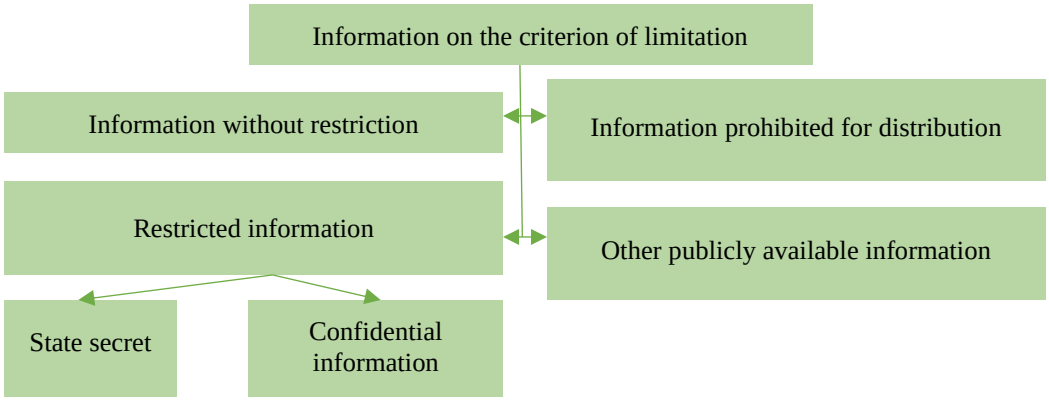

Figure 1. Classification of information by the criterion of limitation

A state secret includes information that is protected by the state and recognised as such at the legislative level, it contains information on intelligence, military, foreign policy, economic, counterintelligence, operational and investigative, etc. activities. A distinctive feature of this information is that its dissemination without restrictions can harm national security. The owner of a state secret is the state itself. Requirements for the protection of this information and control over their observance are regulated by the Law of Ukraine "On State Secrets" [17]. The law establishes a list of information that compares a state secret and a range of information that is not subject to classification. It also stipulates judicial protection of the rights of citizens in connection with unjustified secrecy, and defines bodies of protection of the state secret.

The degree of restriction of access to information constituting a state secret is determined by the degree of secrecy, the criteria of which are established by the State Committee of Ukraine for State Secrets. Confidential information is documented information, the legal regime of which is established by special rules

of current legislation in the field of state, commercial, industrial, and other public activities. The owners of this information are various enterprises, institutions, organisations, and individuals. The main subtype of confidential information is personal information. Therefore, some of this information is subject to restrictions by individuals or legal entities and cannot be subject to governmental authority. They establish the order of its distribution at will in accordance with the law [18]. Notably, the legislation of Ukraine does not systematise the list of confidential information in one regulation (Table 1 [19-25]). This list may be supplemented by at least fifteen pieces of legislation containing basic confidential information about the individual, but it is also not exhaustive and may be supplemented by other pieces of legislation.

Table 1. Basic types of confidential personal information

Information	Legislative act
Information on nationality, education, marital status, religious beliefs, health status, address, date and place of birth	Law of Ukraine No. 2657 [16]
About the registration number	Tax Code of Ukraine [19]
Information about the place of residence	Law No. 1382 [20]
Information on the personal life of citizens, obtained from citizens' appeals	Law No. 393 [21]
Information on the employee's remuneration	Law No. 108 [22]
Information about the deceased	Law No. 1102 [23]
A set of information about individuals who have suffered from violence	Law No. 2229 [24]
Data on the person taken under protection in criminal proceedings	Law No. 3782 [25]

For comparison, in the Russian Federation, this list is provided in the Decree of the President of the Russian Federation "The List of Confidential Information" [26], where seven of its types are identified:

- personal data;
- secrecy of investigation and proceedings;
- official secret – official information of limited dissemination about state bodies or organisations subordinate to them, as well as information obtained from external sources by employees of state bodies during the performance of duties;
- professional secret (medical, lawyer, notarial, and other secrets);
- trade secret – scientific and technical, technological, production, financial and economic or other information, including constituting the secrets of production (know-how), which has actual or potential commercial value due to its unknown to third parties;
- summary of the invention, utility model or industrial design from the official publication of information about them;
- information contained in the personal files of convicts, as well as information on the enforcement of judicial acts [27; 28].

Although personal information has the status of restricted information, it is fully open to the data subject. Only the latter decides on the transfer, processing and use of their personal data, as well as determines the scope of subjects to whom this data may be communicated. Some personal data does not have a protection regime, being well-known (for example, last name, first name, and patronymic). Sources of confidential information about the legal entity are agreements, contracts, letters, reports, analytical materials, statements of accounts, charts, schedules, specifications, and other documents drawn up on the activities of the legal entity. Confidential information about a legal entity is in some sense identical to commercial information, and can also harm a person if used by competitors. Trade secret is a kind of confidential information and includes information of organisational, technical, commercial, industrial, and other nature. At the same time, civil legislation makes provision for exceptions to information that cannot be considered commercial [29; 30]. A special act on trade secrets has not yet been adopted in the country, although the process began in 2008 [31]. Restriction of access to information is carried out in compliance with statutory requirements (Fig. 2).

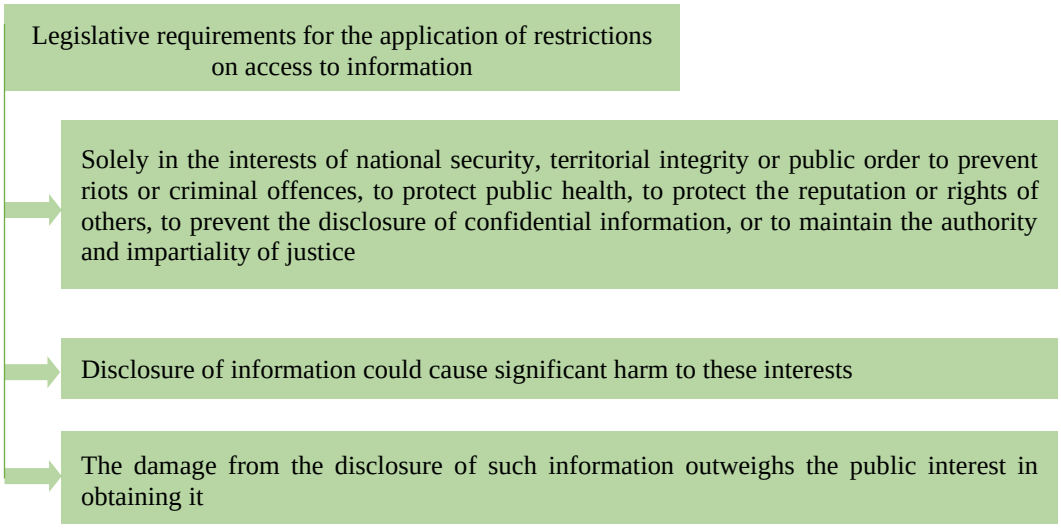

Figure 2. Legislative requirements for the application of restrictions on access to information

Restrictions on any freedoms and human rights, including in the information space, can be set by various regulators, the dominant of which can be determined by the following levels of implementation:

- legal (legislative);
- moral self-consciousness of society;
- autonomy of the person – individual rules of the person including moral consciousness, tastes, world outlook, representations, desires, etc.

That is, each regulator acts on its level: the law – on the state level, moral self-awareness – at the national (or public) level, the autonomy of the person – on the individual level. For each of the regulators, certain features can be identified and each of them is aimed at its own scope (Table 2).

Table 2. Features and scope of regulators of restrictions on freedoms and human rights

Regulator	Manifestation	Example
Autonomy of the person	Internal self-censorship of the individual	A person who is convinced that any information is harmful or of no value to them will not regularly review its content
Moral self-consciousness of society	System of ethical-moral and ideological-aesthetic norms recognised and dominant in society	Negative public condemnation of any information
Law	Generally binding rules established by the state, the implementation of which is ensured by legal coercion	Legislative prohibition or restriction of access to information

The moral consciousness of society considers the issues of tolerance to the perception of the content of information, suggests the reasons for justifying the restriction of access to certain information, in particular, as an example, the relevant law enforcement agencies detect the spread of obscene materials on the Internet, and prevent access to it [32; 33]. Thus, pornographic information "should be banned because it is harmful and violates public prohibitions and certain standards of public conduct that reflect some unwritten arrangements in a society. Society itself has decided that the dissemination of immoral materials that disorient people contributes to the process of moral decentralisation and causes harm. However, foreign authors have a different opinion about the prohibitions on obtaining certain information by the majority of citizens: "You are not allowed to satisfy your tastes, not because their satisfaction is harmful to society, nor even because it is immoral, but simply because we are not ready to endure it". That is, the author hints at the existence of a restriction by the public majority of the access of a minority with different tastes and views to information. Notably, the law differs from the other two regulators in that it is official. Here, too, as a striking example, we can touch on the same information that violates the moral foundations of society [34].

In this regard, the statement of Theodor Schroeder is correct that "printed publications, the main content of which are articles describing in detail the immoral behaviour of individuals, spreading moral degradation in society, are considered as undermining the public situation by detailing and justifying immoral behaviour, which has a tendency to morally bribe young people, contributing to the choice of the wrong way of life and

the commission of immoral acts. Undoubtedly, the legislator has the right to ban such publications without any violation of rights". To restrict access to information, various methods are used to protect it from unauthorised receipt, which can be divided into two groups: formal and informal. Formal means of protection perform protective functions according to a pre-arranged procedure without human intervention and include mechanical, electrical, electromechanical, electronic, and other similar devices and systems that operate independently of information systems, creating various obstacles to destabilising factors (door lock, screens). Hardware – mechanical, electrical, electromechanical, electronic, optical, laser, radar, and similar devices that are embedded in information systems or combined with it specifically to solve information security problems.

Software – software packages, individual programmes or parts thereof used to solve information security problems. Software does not require special equipment, but leads to a decrease in the productivity of information systems, requires the allocation of a certain number of resources for their needs, etc. Specific means of information protection include cryptographic methods. In information systems, cryptographic means of information protection can be used both to protect the processed information in the system components and to protect the information transmitted over communication channels. The conversion of information can be performed by hardware or software, using mechanical devices, manually, etc. Informal remedies, in contrast to formal ones, are regulated by human activities and are divided into legislative, moral, ethical, and organisational. To some extent, they resonate with the levels of implementation of restriction regulators considered above. Legislative means – regulation of rules of use, processing, and transfer of information of limited access by regulations which establish measures of responsibility for violation of rules of access to information. These remedies apply to all subjects of information relations. Organisational means – organisational, technical, and legal measures at the level of the organisation, which regulate the list of persons, equipment, materials, etc., are relevant to information systems, as well as modes of their operation and use. This also includes certification of information systems or their elements, certification of facilities and entities for compliance with security requirements. Moral and ethical means – moral norms or ethical rules that have developed in society or the team, compliance with which helps to protect information and restrict access to it, and their violation is considered non-compliance and leads to loss of prestige and authority.

Despite the expansion and ease of access to information received, in many countries, new legislation and restrictions, including blocking and filtering, are holding back the free flow of information on the Internet. The age of digital technologies marks the advent of a truly democratic culture of participation and interaction, and fulfilment of this opportunity is a major challenge today. With the advent of the new digital age, attempts to restrict the free flow of information on the Internet are doomed to failure [2]. Admittedly, the right to information, the right to disseminate and receive information in the age of global relations must belong to everyone. However, there will be two classes in society: those who have access to the Internet and those who do not. However, the right to information, the right to connect, are undoubtedly one of the fundamental freedoms. According to Article 19 of the Universal Declaration of Human Rights, "Everyone has the right to seek, receive, and disseminate information and ideas by any means and regardless of national borders". Therefore, the application of restrictions should be considered on a case-by-case basis using the "harm test" and the "public interest test", and should be expressly stipulated by legislation.

CONCLUSIONS

In the context of the development of the information society, the question of socio-philosophical aspects of access to information arises among one of the most relevant and unresolved. As the analysis indicates, the allocation of the issue of rights to access information from the general concept of property was not previously understood as a socio-philosophical problem, and was considered only from a cognitive or legal standpoint. From the socio-philosophical standpoint, the components of the real right to information were not considered, which led to several problematic aspects in the regulation of this area. This issue was mostly part of the type of property as a whole, intellectual property or ownership of material goods. Therefore, the applied approach to the development of methodology for analysis and philosophical generalisation of ownership of information and its components for use, receipt, sale, etc. can be considered a precedent.

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Suggested Citation: Omelchuk, O.M., Muzyka, M.P., Stefanchuk, M.O., Storozhuk, I.P., & Valevska, I.A. (2021). Legal grounds for restricting access to information: A philosophical aspect. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(3), 64-73.

Submitted: 22.05.2021
Revised: 18.07.2021
Accepted: 27.08.2021

УДК 340.15:340.11
DOI: 10.37635/jnalsu.28(3).2021.74-84

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ТЕХНІКА УЗАГАЛЬНЕННЯ РЕЗУЛЬТАТІВ ПОРІВНЯЛЬНОГО ІСТОРИКО-ПРАВОВОГО ДОСЛІДЖЕННЯ

Анотація. *Стаття присвячена дослідженню техніки упорядкування інформації, отриманої у ході проведення порівняльного історико-правового аналізу. До основних способів систематизації даних, зокрема, належать класифікація і типологізація. Класифікація проявляється у розподілі об'єктів на певні класи і може містити у своїй основі самі різні критерії. При цьому кожна окрема класифікація має здійснюватися лише на підставі однієї ознаки. Типологізація на відміну від класифікації може проводитися за набором суттєвих ознак й спрямована на пізнання сутності досліджуваних явищ. Будь-яка історико-правова типологізація залежить від обраних критеріїв. Результатом порівняльного історико-правового аналізу може стати отримання цілих масивів інформації, для упорядкування якої доцільно використовувати методи кластерного аналізу. Кластерний аналіз – це сукупність прийомів, що дозволяють класифікувати багатомірні спостереження, а його метою є створення кластерів – груп схожих між собою об'єктів. У статті наводиться й алгоритм дій при застосуванні кластерного аналізу. Усі наведені способи систематизації інформації є основою для подальшої оцінки отриманих даних, головним елементом якої є пояснення. Саме у процесі пояснення розкриваються суттєві сторони й відношення порівнюваних історико-правових об'єктів та встановлюється внутрішній причинний взаємозв'язок між дослідженими державно-правовими явищами. Оцінка результатів порівняльного історико-правового дослідження не закінчується простим поясненням, а може продовжуватися також й у напрямку наукового прогнозування, логічною основою якого є метод моделювання. Процес моделювання на стадії систематизації та оцінки результатів порівняльного історико-правового дослідження проходить у декілька етапів, які також отримують своє висвітлення у статті*

Ключові слова: *техніка узагальнення результатів порівняльного історико-правового дослідження, класифікація, типологізація, методи кластерного аналізу, прогнозування, моделювання*

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TECHNIQUE OF GENERALIZATION OF RESULTS OF COMPARATIVE HISTORICAL AND LEGAL RESEARCH

Abstract. *This study investigates the technique of organising the information obtained during the comparative historical and legal analysis. The main methods of data systematisation include classification and typologization. Classification is manifested in the division of objects into certain classes and can be based on a variety of criteria. Therewith, each individual classification should be performed based only on one feature. In contrast to the classification, typologization can be performed on a set of essential features and is aimed at understanding the essence of the phenomena under study. Any historical and legal typologization depends on the selected criteria. The result of comparative historical and legal analysis can be the production of entire arrays of information, to organise which it is advisable to use methods of cluster analysis. Cluster analysis constitutes a set of techniques that allow classifying multidimensional observations, and its purpose is to create clusters – groups of similar objects. This study also provides an algorithm for using cluster analysis. All the above methods of information systematisation serve as the basis for further evaluation of the data obtained, the main element of which is an explanation. It is in the process of explanation that the essential aspects and relations of the compared historical and legal objects are covered and the internal causal relationship between the studied state and legal phenomena is established. Evaluation of the results of comparative historical and legal research does not end with a simple explanation, but can also continue in scientific forecasting, the logical basis of which is the method of modelling. The process of modelling at the stage of systematisation and evaluation of the results of comparative historical and legal research takes place in several stages, which are also covered in this study*

Keywords: *generalisation of results of comparative historical legal research, classification, typologization, methods of cluster analysis, forecasting, modelling*

INTRODUCTION

Generalisation of the results of comparative historical and legal analysis is the last stage of comparative research; it is at this stage that the scientific terms, concepts and theories are finalised based on the discovered historical and historical and legal facts and the established relations between the compared objects; historical and legal laws are concretised, objective essential communications between the state and legal phenomena and processes are consolidated. Any comparative historical and legal study necessarily contains two components: the empirical basis and abstract-theoretical constructions, which are respectively formed on two levels: empirical and theoretical. The main difference between these levels of knowledge is that the empirical basis of comparative analysis is based on historical and legal factual material, reflecting mainly state legal phenomena and relations between them, and theoretical constructions, based on the data of empirical knowledge, reveal the essential aspects and natural connections of historical and legal reality.

It is characteristic that it is at the last stage of comparative research that the empirical and theoretical levels of scientific cognition acquire their most complete and close interrelation. However, the relationship between the empirical and theoretical levels is so complex and multifaceted that, for example, in historical and legal comparative studies it is often impossible to determine precisely where one begins and another one ends, especially when it comes to systematising and evaluating the results. It should be borne in mind that in the methodology of comparative historical and legal research contains a certain imbalance between its theoretical and instrumental dimensions. The immediate consequence of which is often, on the one hand, the absolute conviction of the comparative historian in his own strength to carry out comparative work in one direction or another, and on the other – his complete confusion when it comes to specific work with historical and legal objects. The reasons for this confusion – in the absence of a reliable tool base for comparative research, which should contain a clear and complete list of those techniques that help in a practical level of comparative analysis.

In the context of what has been said, it is quite clear that the stage of generalisation of the results of the comparison of historical and legal objects is especially difficult. It is at this stage that the researcher has a fairly large amount of data, the organisation of which objectively requires the involvement of additional techniques. Admittedly, a comparative historian, in addition to general methodological knowledge, must have special training. The purpose of this article is to analyse the specifics of the application at the specific problem level of the main methodological tools used in the systematisation and evaluation of the results of comparative historical and legal analysis.

Interestingly, the comparative method is increasingly used in modern research of historical and legal orientation. Thus, we can mention the work of R. Kazak, in which she, developing the author's periodisation of legal protection of nature in Ukraine in the second half of the XX century, relies, inter alia, on a comparative means of scientific knowledge [1]. In his other article, R.A. Kazak uses a comparative approach in the analysis of EU and Ukrainian legislation governing the protection of biodiversity [2]. In this context, it should be noted and the study of D.V. Lukianov, H.P. Ponomarova and A.S. Tahiiev, which examines the historical and comparative aspects of the formation of the Quran and the specific features of its interpretation in different directions of Islam – Sunni and Shiism [3]. Relevant from the standpoint of wide use of the comparative method is the scientific article of D.V. Lukianov, V.M. Steshenko and H.P. Ponomarova, devoted to the study of different understandings of freedom of expression in Islam and the European cultural and legal tradition [4]. The comparative method is used in the scientific work of V.M. Yermolaeva, devoted to the analysis of the opinions of M.S. Hrushevsky on the constituent power of the Ukrainian people in different historical periods [5]. A fairly clear comparative approach can be traced in the study by R.J. Scott, dedicated to the assertion of the concept of equal "public rights" during the Reconstruction in the United States [6]. The research of K. Ramnat is of great scientific and cognitive interest, who uses a comparative method to study the historical and legal aspects of the development of South Asia after World War II [7]. Similar in its problems is the work of P. Saksena, which deals with issues of sovereignty and international law in South Asia at the end of the XIX century. Comparing the understanding of sovereignty in various legal traditions, the author quite convincingly proves that certain state-legal processes are directly related to its corresponding interpretation [8]. At a high scientific level, the comparative method is also used in the scientific article by L. Flannigan, in which she uses a wide range of data summarised in a table, conducts a comparative analysis of the social composition of plaintiffs who applied to English courts in different time periods [9]. In addition to these scientists, a comparative approach in their work also used O. Lutsenko [10], R. Shapoval, Iu. Bytiak, N. Khrystynchenko and Kh. Solntseva [11], Yu. Vystavna, M. Cherkashyna and M.R. van der Valk [12].

However, despite the widespread use of the comparative method in modern historical and historical and legal works, in most cases there is no clear and consistent method of its use, which considerably reduces the possibility of obtaining results with high heuristic potential. In addition, insufficient development of techniques for generalising the results of comparative historical and legal research often does not allow the researcher to reach the appropriate theoretical level of systematisation and evaluation of the data. This entails the objective need to conduct research in this direction with the involvement of developments in related fields. Since modern science has an interdisciplinary nature, the development of scientific methods, including comparative historical and legal, directly depends on the close interaction between different disciplines. Thus, among those authors who have recently paid attention to the above issues, we should mention such as: V.V. Vasilkova and N.I. Legostaeva [13], J.M. Duran [14], K.A. Lopatka [15], J. Nicholls, B. Allaire and P. Holm [16], N.A. Petrunia-Pyliavska [17], P.R. Putsenteilo and Ya.I. Kostetskyi [18] and others.

1. MATERIALS AND METHODS

The methodological basis of this study is the doctrine of the three-member structure of the scientific method, which provides for its mandatory components such as theory, methodology and technique of application. It is quite significant that in both Western and domestic methodology of historical and legal science there are considerable gaps in the field of quality development and design of its basic methods of cognition. Therewith, if in the methodology of Western historical and legal science the emphasis is more on the methodology of scientific work, then the domestic historical and legal science by inertia deals mainly with issues of theory. Although it should be noted some convergence in this direction, which has emerged recently.

If we consider the state of affairs in the field of historical and legal comparative studies, it is necessary to state its almost critical need to provide techniques used in working with historical legal material. The problem can be reformulated differently: all the techniques necessary for the historian-comparativist have long been known to science, but their adaptation to the conditions of comparative historical and legal research is absent. This determines the task of our article: to identify and try to adapt to the needs of the stage of generalisation of the results of comparative historical and legal analysis of the most important ways of organising information data.

The scientific method as a system of regulatory principles of practical or theoretical human activity is never completely arbitrary, because it is determined by the nature of the object under study. However, this does not mean that the methods of one area of knowledge can not penetrate into another area. On the contrary, this process is necessary and is carried out based on the objectively existing commonality between the subjects of study of different sciences, which takes place in reality. The expansion of methods in modern science, including historical and legal, is not a unique phenomenon. Thus, the scope of possible application of any method or technique and the allowable limits of their "expansion" depend on the nature of the studied objects.

All the above applies to historical and legal objects, which are certain state and legal phenomena and processes: the presence of quantitative and qualitative components in their content allows you to successfully attract the means of scientific knowledge from other related (and not quite) sciences. For example, at the stage of systematisation and evaluation of the results of comparative historical and legal analysis, such scientific techniques as typologisation, classification, cluster analysis methods, modeling, etc. can and should be used. However, unfortunately, understanding the possibilities does not mean the ability to use them: in a considerable number of cases during comparative research on historical and legal issues, these tools are either not used at all, or the results of these techniques do not meet their epistemological potential.

In fact, despite the fact that this article is aimed at studying the technique of applying typologisation, classification, modeling, etc.at the last stage of comparative research, this refers to a systematic approach to the comparative study of historical and legal phenomena and processes. And since any historical and legal object that can be compared is multifaceted, there are a number of serious logical and methodological problems of complex research. The essence and formulation of the problem, the establishment of general and special goals of comparative research, the specifics and ways to obtain during its conduct comprehensive knowledge of historical and legal issues, ways to improve the effectiveness of comparative analysis – this is not a complete list of important issues that need to be addressed historical and legal comparative studies.

From the epistemological point of view, the study of the generalisation of the results of comparative analysis means a movement towards the transition of the methodology of historical and legal science to the paradigm of holistic, comprehensive and complex reflection of its objects that have long been the subject of abstract, unilateral and highly specialized scientific studies. Moreover, it is safe to say that a comprehensive approach to the study of the phenomena of historical and legal reality in itself becomes the most important methodological requirement. The growing role of an integrated approach in historical and legal comparative studies is primarily explained by the fact that the objects of comparative analysis are often extremely complex state and legal systems, comprehensive study of which objectively requires the widest scientific and methodological tools.

2. RESULTS AND DISCUSSION

2.1. Classification and typologization

Bringing the accumulated knowledge in a certain order is one of the most important theoretical tasks of the whole science and any individual scientific research. The problem is to choose a scientifically sound and appropriate method of organising the information data. In particular, it should be such that the result of grouping does not contradict practice and it could be applied in further scientific activity. In this case, the forms of scientific organisation of information about the subject of research are numerous and often depend on the nature of the subject area and exist within their science [19]. The main ways of organising information, which are often used in comparative historical and legal research, are typologization and classification.

Typologization is one of the universal procedures of scientific thinking, which consists in the distribution of objects and their grouping using a generalised, idealised model or type [20]. However, the concept of "typology" is not identical to the concept of "typologization", although they are interrelated. Typologization) of state and legal phenomena and processes during a comparative historical and legal study involves their typology. Typologization and typology differ in terms of process and result. If typologization means the process of grouping the studied phenomena based on a theoretical model (type), then typology is the result of this process.

Typology as a result of typologization gives a holistic knowledge of the object, reveals the system-forming connections between its various aspects, distinguishes its essential features and properties from the whole system of connections [21]. Classification, which is also used at the stage of systematisation of the results of comparative historical and legal research, is expressed in the division into classes of plurality of objects of a particular subject area based on their similarity in certain properties.

It should be clarified that the classification as the division of objects into certain classes is carried out in such a way that each class occupies a specific place relative to other classes [22]. During the comparative

historical and legal research, and especially at the stage of systematisation of the obtained results, the classification can be carried out based on many criteria. Among the latter, in particular, we can name ethnic, religious, psychological, racial, geographical, ideological, socio-cultural, etc. Therewith, each individual classification should be carried out on one basis, which is its basis. If there are several features, they are the basis for several classifications. At the same time, the classification is neutral to the essence of the studied phenomena, because it cannot be carried out according to a set of essential features, and thus differs from the typologization [23]. Quite clearly the essence of the classification can be traced in the work of D.V. Lukianov, where he based on various criteria distinguishes the following classifications of legal systems: 1) pure legal systems and legal systems of mixed type; 2) developed and underdeveloped legal systems; 3) maternal and child legal systems [21].

The main advantages of classification as a method of systematisation include the fact that it involves a variety of real objects; unites some objects and excludes others, thus contributing to the disclosure of real connections and relations of the objective world; has the ability to group objects in almost an unlimited number of directions. Therewith, with all the advantages of classification, it has certain disadvantages. Thus, any classification feature singled out by it is relatively necessary, and the grouping done on this basis is conditional, because the same objects can be distinguished by other features. In addition, the classification does not allow to identify patterns of the ratio of different classification planes, as each of them is completely autonomous. Finally, the classification, which is manifested in the separate and sequential consideration of features, is not able to identify the internal organisation of the grouped plurality, as a result of which it remains a simple set of different phenomena and is not revealed by the researcher as a whole and (or) system.

In the context of the above, it becomes quite clear that the importance of classification and typologization cannot be underestimated or exaggerated: each of these methods of cognition is in demand at the stage of systematisation of the results of comparative historical and legal research. However, it should still be recognised that when working with complex and contradictory historical and legal matter, typologization is more significant than classification. It is the typologization, which is expressed in the dismemberment of objects and their grouping using a generalised, idealised model or type, helps to organise the multiplicity of heterogeneous historical and legal phenomena and processes, as well as to establish certain patterns of their deployment in time and space. In addition, typological analysis has a higher degree of generalisation compared to simple grouping and classification. There are empirical and theoretical typologizations [24].

Characteristically, any typologization depends on the chosen criterion. For example, N.A. Petrunia-Pyliavska within the civilisational approach identifies such criteria of typologization as a specific historical period, geographical space, leading production technology, the specifics of political relations, type and type of religion [17]. An interesting typology is the division of cultural mentality (or state of culture of society) into seven types, proposed by T.S. Pronina, Yu.S. Fedotov and K.Yu. Fedotova in his latest work. Thus, they identified the following types: 1) adaptable; 2) passive; 3) the one who transforms; 4) mixed; 5) idealistic; 6) preaching; 7) ascetic. The typology typologization carried out by these scientists was based on several criteria, in particular, the spiritual and sensory components, which were specified in the value-needs and ways of their implementation [25]. In this context, the typology of states proposed by V.D. Tkachenko. Using the principle of legality as a criterion for typologization, the scientist distinguishes between civil and pre-civil types of states [26].

Significant scientific interest from the standpoint of choosing the criterion (criteria) of typologization during the systematisation of the results of comparative historical and legal research is the work of R.A. Romashov, devoted to the typology of states. In particular, the author as a basis for the typologization of states takes the category of cyclicality and the corresponding method, distinguishing such types of states as: city, patrimony (domain), public political and legal order (state). Analysing the following types in detail, R.A. Romashov emphasises that the selected types do not necessarily determine each other and may well coexist within a single historical period. For example, medieval Europe "used" city-states – republics and domain states (kingdoms, principalities) [27].

Thus, as the above examples show, the comparative historian, conducting a typologization of the results of comparative research, has the potential to widely realise their creative potential, admittedly, given the methodological limitations that are characteristic of this logical method of organising information data. And the new typologies of state and legal phenomena and processes, which will be a natural and indispensable result of such activity, are what is critically necessary for modern historical and legal science.

Notably, any historical and legal typology is always a model, a system of orderly ideas and knowledge about the object under study. It is possible to state only the degree of proximity of each created typological construction to the knowledge of this object, because none of the systems contains the whole truth, just as none of them can be considered completely false [28]. Admittedly, this does not detract from the importance of typologisation as a method of ordering information obtained during the comparison of historical and legal

objects: any alternative typologies, if they were carried out in compliance with the appropriate methodological procedures, are very positively perceived by historical and legal science, contributing to a deeper and more comprehensive knowledge of state and legal phenomena and processes.

2.2. Methods of cluster analysis

The result of comparative historical and legal analysis, especially in cases where macro-level objects are compared, such as civilisations, states, legal systems, etc., can be the receipt of entire arrays of information. To organise it, it is advisable to use cluster analysis methods, which are often used in statistical studies. This is largely due to the fact that modern social and historical and legal research is quite closely interconnected at the information level [29]. S.G. Serohina notes that cluster analysis occupies a particularly important place in those branches of science that are related to the study of mass phenomena and processes. The need to develop and use methods of cluster analysis is dictated primarily by the fact that they help to build scientifically sound classifications, to clarify the internal relationships between the units of the population that is observed. In addition, cluster analysis methods can be used to compress information, which is an important factor in the conditions of constant increase and complication of statistical data flows [30].

Cluster analysis is a set of methods that allow you to classify multidimensional observations. The purpose of cluster analysis is to create clusters – groups of similar objects [31]. In contrast to combinational groupings, cluster analysis uses the so-called political approach to the development of groups, when all grouping features take part in grouping at the same time. However, as a rule, clear boundaries of each group are not specified, and also it is not known in advance, how many groups it is expedient to allocate in the investigated set. The result of cluster analysis is to obtain a comprehensive, multifaceted classification of the studied historical and legal phenomena and processes, which avoids the influence of although substantial but random factors and features, or those whose overall role in characterising a phenomenon is offset by other factors or features [30].

The use of cluster analysis, as a rule, involves compliance with a certain algorithm of actions:

1. Defining a set of characteristics for evaluating objects to which cluster analysis is applied;
2. Finding the optimal number of clusters;
3. Determination of indicators to characterise the degree of similarity between objects;
4. Substantiation of methods and algorithms of cluster analysis;
5. Validation of results;
6. Presentation and interpretation of the obtained results [18].

An important issue in cluster analysis is the establishment of the necessary and sufficient number of clusters. As a rule, this number is determined from the indicators of homogeneity and proximity of clusters.

A rather striking example of the practical implementation of cluster analysis, which can be used in research of historical and legal orientation, is the work of M.G. Shenderyuk, in which she based on a meaningful analysis of a set of indicators taken from the county summaries of zemstvo censuses, identified 19 relative features of the grouping and classified 10 objects – counties of the Novgorod province. Thus, all objects were divided into three clusters, each of which included the most agriculturally similar counties, and each of the clusters was given a conditional name: I – "northern", II – "central", III – "southern" [32].

Thus, the main idea of cluster analysis is the sequential association of grouped objects on the principle of closest proximity or similarity of properties. The result of such grouping is the separation of clusters – groups of objects described by common properties. This method of systematisation of information data is very effective when in the course of comparative historical and legal analysis the internal heterogeneity of the compared objects is established, which requires its grouping, or when the main elements of the compared objects contain a large number of similar indicators with different qualitative content (as an example, we can cite a comparative study of the estate-representative authorities of Medieval Europe, where one of the main components will be the order of staffing of these institutions, which acquired considerable territorial specificity in each case).

2.3. Evaluation of the results of comparative historical and legal analysis

All the above methods of systematisation of information taken during the comparative historical and legal analysis are the basis for further evaluation of the data, the main element of which is an explanation. It is in the process of explanation that the essential aspects and relations of the compared historical and legal objects are revealed, the internal causal relationship between the studied state and legal phenomena is established, as well as their natural conditionality. To explain a state and legal phenomenon means to establish its fundamental properties and relations, the main causal conditionality, to identify the general laws to which it is subject [33].

The objective premise of the explanation is the general connection and interdependence of the phenomena of objective reality. Establishing this connection and interdependence is the main epistemological

function of explanation. Explaining, the comparative historian divides historical and legal objects into constituent parts, and then, based on the general laws of this class of objects, synthesises these parts, clarifying the internal connection and conditionality of the elements in the system of the whole. From a logical point of view, the explanation is the inclusion of comparable historical and legal objects in the system of theoretical knowledge, the spread of general provisions and principles of historical and legal science, based on which the most complete and deep understanding of these objects is achieved.

As an example of evaluation of the results of historical and legal comparison, we can cite a comparative analysis of medieval acts of a constitutional nature, conducted by S.M. Zharov. Thus, the scientist, in order to justify the point of view that the first constitutional act in the history of Russia was the "Charter granted to Moscow Archers, soldiers, guests, Posad officers and coachmen" of 1682, conducted a historical and legal comparison of this legal act with the Magna Carta of 1215. Interestingly, the following criteria were chosen for comparison: the political situation in which the act was adopted; sources of legal norms; structure and content of the text [34]. Thus, after characterising the political situation in which each of the compared documents was adopted, and the sources of their legal norms, S.M. Zharov considers the structure of both acts, noting that it is quite simple. In particular, their authors did not divide the text into any parts, but their construction allows us to distinguish the preamble, main part and conclusion.

Upon completion of the characteristics of the Magna Carta S.M. Zharov notes that despite the general similarity of the structure, the content of the "Charter granted to Moscow riflemen, soldiers, guests, Posad officers and coachmen" is somewhat different from the content of the Carta. Thus, the preamble to the Charter no longer records the "forgetting and forgiving" of murders and robberies committed during the riot (as stated in Article 62 of the Carta), but their recognition as lawful, committed in the name of justice and protection of the throne. As a result, it is forbidden to call rioters "rebels and traitors" and to persecute them for their actions. Explaining the results of the historical and legal comparison, S.M. Zharov concludes on the existence of a very similar Magna Carta of 1215. "Charter of Moscow archers, soldiers, guests, townspeople and coachmen" in 1682 allows us to conclude about the emergence of Russian constitutionalism in the XVII century. In addition, the "Letter of Merit…" demonstrates not only the existence of the constitutional idea of protecting the rights of the population by law, but also the implementation of this idea in a legal act that had legal force. The appearance of this document also marked the emergence in Russia of a new type of socio-political movement for the legal consolidation of rights, and its historical fate – inherent not only in Russia but also in other states dependence of rights and freedoms on their ability to protect and defend them, including force [34].

As you can see, evaluating the results of comparing two historical and legal acts, the researcher does not limit himself only to stating their similarities and differences, but also tries to go beyond the actual comparison as a formal and logical operation and, using its results, explain the influence of one of the documents on the historical development of the country to which it belongs. Note only that if there were more criteria for comparison, and, in particular, they included the category of time, the conclusions of the comparison would be more meaningful and allow to reach the level of isolation of historical and legal laws or construction of scientific theory in general. Thus, the explanation of the results of comparative historical and legal analysis has a fairly large heuristic potential and requires a comparative historian to take a creative approach to his work.

Representative of the modern school of chrono-discrete monogeographic comparative legal science O.A. Demichev, characterising the stage of systematisation and evaluation of research results, notes that the indisputable advantage of some historical and legal research is that based on historical experience, the authors offer recommendations for improving existing legislation in one area or another, recommendations for improving law enforcement practice. However, when writing historical and legal works, this is undoubtedly a positive but side effect. According to the scientist, it is incorrect to demand from historians clear recipes for the improvement of modern legal and state institutions. Nevertheless, the historian collects certain materials, makes theoretical generalisations and conclusions on the subject. Specialists in the relevant field of law should make specific proposals to improve the existing mechanism of legal regulation based on these materials [35].

We think that this is a somewhat controversial statement of a well-known scholar, because any scientific study of historical and legal orientation presupposes a corresponding awareness of the scholar who conducts it, both in historical and legal issues. And therefore it is necessary to state (especially since O.A. Demichev does not directly deny this) that at the stage of evaluating the results of a comparative historical and legal study, a comparative historian, in addition to a general explanation of the data obtained, has the right to provide specific proposals to improve a state and legal institution of today. Nevertheless, in contrast to the usual comparative historical and legal research before the representatives of the school of chrono-discrete monogeographic comparative jurisprudence one of the mandatory tasks is: based on comparing the historical experience of legal regulation and functioning of any institution recommendations for improving the relevant modern institution [35].

2.4. Forecasting and modelling method

Evaluation of the results of comparative historical and legal research does not end with a simple explanation, but can also continue in the direction of constructing a theory, as an attempt at a higher – theoretical – level to summarise information about the compared historical and legal objects. In addition, often the results of historical and legal comparisons can be used as a basis for scientific forecasting. The essence of historical and legal forecasting is not that the comparative historian based on the comparison should accurately determine future trends in the development of certain state and legal phenomena and processes, but to provide an exhaustive list of adequate scenarios for their deployment in the future. Historical and legal explanation and forecasting are quite closely related, but the logical basis of the latter is the method of modelling.

The essence of the modelling method, which along with classification and typologization is widely used at the stage of generalisation of the results of comparative historical and legal analysis, is to study the object **(**original) by creating and studying a copy (model) that replaces the original. That is, the specificity of modelling in comparison with other methods of cognition is that with its help the object is studied not directly, but with the help of another object [36]. It is significant that computer modelling has recently acquired its development, which in the future can be used in historical legal research, including comparative. Typically, computer modelling is used in cases where the mathematical model or system under study is too complex for independent analysis by the researcher [14].

The method of modelling is quite similar to the method of typologization; their similarity is manifested, in particular, in the fact that both the type and the model reproduce the object of study. At the same time, they are not identical, as they differ in the objectives of the study. Thus, the purpose of typologization is to study various aspects of the object by identifying individual features and qualities of the communication system as a whole (this refers, above all, to the development of an ideal type as a model of reality). Thus, the researcher is abstracted from a number of real qualities for the purpose of definition of the signs necessary for the development of ideal type; when modelling, on the contrary, the real qualities of the object are considered. Thus, typologization is described by schematism and abstraction, and modelling – the focus on reflecting the essence of the object under study [24].

The model always corresponds to the object – the original – in those properties that are to be studied, but at the same time differs from it in a number of other features, which makes the model convenient for studying the development of a modern state and legal phenomenon or process. All models used in scientific knowledge can be divided into two major groups: material and ideal. The first are natural objects that obey the laws of nature in their functioning. The second are ideal formations, consolidated in the appropriate sign form, and functioning according to the laws of logic of thinking that reflects the world [33]. Admittedly, in comparative historical and legal works, ideal models will be used. For example, the information obtained during a comparative study of the processes and results of reforming various spheres of state and legal life in western European countries of the XX century is a reliable basis for building several ideal models that can be used to study and develop realistic scenarios for such reforms in modern states, the conditions and vector of development of which are similar to those countries whose historical and legal experience was taken to develop appropriate models. This way of obtaining knowledge about the studied objects based on the construction of historical and legal models can be characterised as modelling with the help of idealised representations.

Characteristically, an integral structural component of any form of scientific modelling used in comparative historical and legal research is analogy. On the one hand, analogy means the objective correspondence of the model of the fragment of historical and legal reality that is reflected, on the other – it is a kind of inference, when the conclusion is logically produced based on similarities and differences in model and prototype properties. In this dual function of analogy, both the epistemological and the logical aspect of modelling historical and legal phenomena and processes find expression. The logical process as a reflection of the objective process is revealed through a certain form of cognitive activity – modelling, as a result of which this process of thinking by analogy becomes a method of model construction, extrapolation and substantiation of model knowledge. This explains the necessary unity of modelling and analogy [37], which is manifested, in particular, in the fact that the development of historical and legal models, as well as analogies, requires critical thinking and proper methodological training of the scientist [38].

I.D. Andreiev, in turn, notes that in a certain sense modeling is a kind of analogy. As a result, the scientific knowledge obtained through modelling is not absolutely true, because a complete analogy between the object of study and its model is impossible to achieve. Therewith, modelling is of great importance in scientific research, as the use of the model allows to obtain knowledge that is difficult or impossible to obtain in the direct study of the object under study [39]. We must agree with the opinion of K.A. Lopatka, which is the main thing in modelling – to avoid complications and simplifications, for which in each case it is necessary to conduct a thorough and comprehensive analysis of the modelling process, the degree of conformity of the

model and the studied process or phenomenon. Only based on such analysis the legitimacy of transfer of the received results of modelling on object can be found out [15].

The process of modelling at the stage of systematisation and evaluation of the results of comparative historical and legal research takes place in several stages. Thus, at the first stage the search and selection of a modern state-legal phenomenon or process that has a certain similarity or commonality with one or all (depending on the results of the comparison) historical and legal objects being compared. In this case, commonality or similarity can be established not only between qualitative but also between quantitative aspects and characteristics. At the second stage, the model is built and its research: based on information obtained during the comparison of the historical and legal object (objects), which acts as an analogue, builds a "substitute" of the studied object (modern state and legal phenomenon or process) – model. In epistemological terms, the model acts as a kind of image of the object, free from all the secondary and non-essential. By studying the model, all aspects, aspects and properties of the object are studied. In this aspect, the work of P. Ekamper, G. Bijwaard, F. Van Poppel and L.H. Lumey is very interesting, where modelling method is used to investigate the causes of increased mortality in the Netherlands in 1944-1945 [40]. In the third stage, the information obtained during the study of the model is extrapolated to the object under study (modern state and legal phenomenon or process) [41].

Thus, the modelling of historical and legal phenomena and processes based on the results of comparative historical and legal analysis, as in any other field of scientific knowledge, is based not on the relations of formal-logical identity, but on the relations of analogy. The inference by analogy characterises the model in terms of objective correspondence to the real system under study. Therewith, the method of analogy leads the creative thought of the comparative historian further by optimising the process of reflection of this system in the model, by implementing the results of modelling in some existing system, similar to what does not yet exist in reality, but which can theoretically be activation of a scenario. This predictive function of the historical and legal model is based primarily on inferences by analogy. In other words, to investigate the future of state and legal phenomena is possible only by carrying out certain operations on their past. To reproduce the results of historical and legal comparison of past state and legal systems and possible realistic scenarios for their development (and similar systems) in the future – this is where the historical and legal modelling is manifested.

CONCLUSIONS

Generalisation of the results of comparative historical and legal analysis is the last stage of comparative research. Despite the fact that the general method of systematisation and evaluation of data obtained during the comparison of historical and legal objects is in principle clear and we have repeatedly covered in previous articles, the technique of working with historical and legal information and its generalisation remained insufficiently studied. To fill this gap, we have used and adapted to the needs of historical and legal comparative studies developments in related fields and disciplines.

The main techniques that can and should be used by the comparative historian in systematising the results of comparative analysis to increase their information impact, are classification, typologization, methods of cluster analysis and modelling. The application of these techniques allows not only to extract more information at the last stage of comparative research, but also to reach the level of a broad theoretical generalisation of the obtained data.

Thus, the use of classification and typologization allows to divide historical and legal phenomena and processes into multiple classes and, accordingly, to form meaningful typologies, which together helps to better understand the reasons for similarities and differences between compared objects, and depending on selected criteria to identify deep connections between the studied phenomena. In this case, typologization, in contrast to the classification, has a higher level of generalisation, as it is carried out based on the most important features and may contain several criteria, which makes it more significant in the context of organising the results of comparative historical and legal analysis.

Methods of cluster analysis, in turn, allow to systematise the results of multidimensional research, which in most cases also include historical and legal comparisons. The application of cluster analysis involves compliance with a certain algorithm of sequential actions, and its result is to obtain a comprehensive, multifaceted classification of the studied historical and legal phenomena and processes. Finally, the method of modelling, based on the application of analogy, at the stage of systematisation of the results of comparative historical and legal analysis allows to move from simple grouping of data and construction of historical theories to forecasting historical and legal phenomena and processes. Therewith, the result of modelling based on the results of historical and legal comparison can be the receipt of ideal models of the state and legal future with a fairly high degree of probability.

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Suggested Citation: Honcharenko, V.D., & Shyhal, D.A. (2021). Technique of generalization of results of comparative historical and legal research. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(3), 74-84.

Submitted: 02.06.2021
Revised: 10.08.2021
Accepted: 01.09.2021

УДК 355/359
DOI: 10.37635/jnalsu.28(3).2021.85-96

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ЯК БУДУВАЛАСЯ АРМІЯ ДЕРЖАВИ АЛАШ?

Анотація. *Це був 1919 рік, тобто напередодні взаємного визнання Алашської автономії та радянської влади один одного та включення до складу СРСР Казахської автономії. Однак історичні факти підтверджують, що лідер казахів намагався побудувати національну армію, повністю легальну, навіть у період першої російської революції 1905-1907 років, отже, в період автократичного правління колоніальної імперії , незважаючи на низку непереборних перешкод, які ніби стояли на заваді. Стаття присвячена історичному аналізу процесу створення легальної національної армії населення Казахстану та політичної легалізації Автономної держави Алаш на території Російської імперії наприкінці 19 – початку 20 століття. Лідер казахського національного руху «Алаш» Аліхан Букейхан намагався створити легальну національну армію навіть у період першої російської революції 1905-1907 років. Однак він досяг своєї мети лише після Лютневої революції 1917 р. – напередодні громадянської війни, розпочатої більшовиками. Лідер казахського національного руху «Алаш» Аліхан Букейхан намагався побудувати легальну національну армію навіть під час період першої російської революції 1905-1907 рр. Однак він досяг своєї мети лише після Лютневої революції 1917 р. – напередодні громадянської війни, розпочатої більшовиками*

Ключові слова: *Аліхан, Державна Дума, конне ополчення, козацькі війська, армія Алаша*

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HOW WAS THE ARMY OF THE ALASH STATE BUILT?

Abstract. *It was 1919, that is, on the eve of the mutual acknowledgement of the Alash Autonomy and the Soviet rule of each other and the incorporation of the Kazakh Autonomy in the USSR. However, historical facts confirm that the leader of the Kazakhs was attempting to build a national army, a fully legal one, even during the period of the first Russian revolution of 1905-1907, therefore in the period of the autocratic rule of the colonial empire, despite a number of insurmountable obstacles that seemed to stand in the way. The article is devoted to a historical analysis of the process of creating a legal national army of the Kazakh population and the political legalization of the Autonomous State of Alash on the territory of the Russian Empire in the late 19th – early 20th century. The leader of the Kazakh National Movement "Alash", Alikhan Bukeikhan was attempting to build a legal national army even during the period of the first Russian Revolution 1905-1907. However, he achieved his goal only after the February Revolution of 1917 – on the eve of the civil war, launched by the Bolsheviks.The leader of the Kazakh National Movement "Alash", Alikhan Bukeikhan was attempting to build a legal national army even during the period of the first Russian Revolution 1905-1907. However, he achieved his goal only after the February Revolution of 1917 – on the eve of the civil war, launched by the Bolsheviks*

Keywords*: Alikhan, State Duma, mounted militia, Cossack troops, Alash army*

INTRODUCTION

When negotiating with the so-called "Omsk Government" led by Admiral Alexander Kolchak, which took place in February 1919 in Omsk concerning the issue of recognition of the autonomy of a six-million strong Kazakh nation, the leader of Alash-Orda (Alash-Orda – literally "Alash State". Author's Note) Alikhan Bukeikhan continued to resolutely and consistently defend the right of the Kazakhs to national self-governance, presenting another self-proclaimed. "All-Russian government" with a fait accompli of the existence of the Kazakh National Army: "You have misunderstood me regarding the militia. Our militia is an army. It already exists...". Bukeikhan was building the modern Kazakh army based on the principle, that "*an army should be organized like the Cossack troops with an independent military command*" [1].

The first obstacle was the decree of 1834, freeing the Kazakhs from military duty. "*Why have the Kazakhs not been conscripted before?*" – Qyr Balasy asked himself this question (Son of the Steppes – the most popular pseudonym of A. N. Bukeikhan) in 1913 in the article under the headline "Will the Kazakhs Be Recruited?" published in one of the first issues of the "Qazaq" newspaper and answered it himself, "*A decree exists which has freed the Kazakhs from military duty: 42nd article of the Regulation on Conscription states: "The population of Turkestan, as well as the Akmolinsk, Semipalatinsk, Semirechye, Ural and Turgay oblasts are freed from conscription"* [2]. According to Bukeikhan, in 1834, the Senior Sultan of the Akmolinsk oblast,

Sultan Konyr Kulzha, son of Khudaymende, travelled to St. Petersburg, where he announced to the Russian Tsar: that the Kazakhs were anxious that the Tsar may obligate them to do military duty (Kazakhs were still respected at the time!) and in connection with this, it is necessary to assuage the groundless worries of the Kazakhs. In reply, the government issued a letter to Konyr Kulzha, guaranteeing that "*The Kazakh nation from this day and in the future is freed from conscription – while maintaining its current nomadic farming or switching to settled farming having created their settlements*" [3] (Ivanov et al., 2008).

As Qyr Balasy noted in the same article, "*from October 1905 Russia began to follow in Europe's footsteps: in its manifest dated from October 17, 1905, the Russian Tsar declared that from that day forward, no law would be passed without discussion of the State Duma and approval of the State Council*" [4]. Consequently, the cancellation of the decree of 1834 and the implementation of conscription for Kazakhs now depended not on the will or whim of the autocrat-Tsar, but on the actions of the newly established State Duma – the first Russian parliament. Bukeikhan was faced with a difficult challenge. Still, the main obstacle was Kazakhs' gripping fear of military service in the alien Russian army [5]. For example, in the course of the first general census of the Russian Empire in 1897, Kazakhs concealed or understated the number of their children of pre-conscription and conscription age due to fear that "the census is conducted for the purposes of revealing the number of Kazakh children for conscripting them into service in the Russian Army". The fear ran so deep that a considerable number of Kazakh families simply migrated deep into the steppes to avoid the census [6]. This raises an important question: to what purpose did the leader of the Kazakhs seek to compel his semi-nomadic nation of many millions driven to the verge of extinction and extreme poverty by the predatory colonial policy to do military service in the regular army of the colonial empire on par with Russian peasants, Cossacks and other oppressed peoples? The answer is to be found in the works of Bukeikhan himself.

1. MATERIALS AND METHODS

Having thoroughly researched archive documents concerning the process of acceptance of the Kazakh Junior and Middle Jüzes' (hordes) allegiance to the Russian Empire in 1731, 1781 and toward the middle of the XIX century the annexation of the Senior Jüz (horde) as well as having studied all historical events following these annexations, Bukeikhan came to the conclusion that the Russian Empire took advantage of its strength and grossly violated all the conditions under which Kazakh Khanates swore allegiance to it and turned them into its colonies [7]. With the statutes concerning the Siberian and Orenburg Kyrgyz-Kaysak between 1822-1824 the sovereign institution of state rule as a Khanate was abolished in the Junior and Middle Jüzes and instead an institution of "senior sultan" was implemented, which, according to Bukeikhan's convictions was a gross interference of Russia in the internal political affairs of its subject vassal Kazakh Khanates and virtual termination of Kazakh statehood [8; 9]. The announcement of Kazakh territories property of the Russian treasury and implementation of the institution of "volost administrators" instead of "senior sultans" in the "Steppe Regulation dated from 21st October 1868", in the view of the leader of the Kazakhs was nothing other than annexation and complete elimination of the Kazakh national statehood [10].

Having confirmed the violation of the conditions by which the Kazakhs had sworn allegiance to the Russian Empire, Bukeikhan decided to dedicate himself fully to the struggle for the return of the Kazakh lands and restoration of national statehood in its former scope and borders at least within the Russian Empire to start with. However, after studying the ruthful experience of the largest armed uprising led by the last Kazakh Khan of all three Jüzes (hordes) Kenesary Kasymuly between 1837 and 1847, Bukeikhan chose for his people a peaceful and completely legal mode of battle for liberation. The establishment and convention in 1905 of the First State Duma only corroborated his point and foresight. Being a direct descendant of Genghis Khan, Bukeikhan knew how to set long-term strategic goals and objectives of the battle for national liberation and fight resolutely, flexibly, yet consistently to reach these goals [11]. These were: the general implementation of zemstvo in the Kazakh Steppe and Turkestan oblasts, the revival of the Kazakh national trial of biys, the translation of paperwork into the language of the indigenous population of the Kazakh lands, the return of illegally seized ancestral lands to Kazakhs with the sequential transfer into their ownership etc. For example, while fighting to implement zemstvo in the Kazakh regions, Bukeikhan saw "*the future of the Kazakh steppes in the purposeful realization of Western culture - in the broadest meaning of the term*" and planned the establishment of a modern democratic Kazakh state on a secure foundation – development of local and public self-government and infrastructure. "*Zemstvo*", Qyr Balasy wrote in one of his many articles, published in newspapers "Irtysh" and "Qazaq" in the period between 1906 to 1917, "*is an assembly chosen by the local population. There are no aspects of life that zemstvo (or local self-government) would not be involved in. Zemstvo builds schools, clinics, hospitals, institutions of culture and art, roads and bridges; opens institutes of higher education, industrial plants, factories... Zemstvo elects the judicial authority, forms the police and defense forces... If the Kazakhs elect worthy persons into the zemstvo and follow the progressive culture, they will survive...*" [12].

Aside from the above, Bukeikhan viewed zemstvo as the forge of national managers for running the state. The most distinguished progressive public-political figures and liberal political parties of Russia in the period between 1905-1917, with whom the leader of the Alash movement worked side by side in his political career came from the depths of zemstvo assemblies and boards [13]. No less important goal for the Son of the Steppes was the abolition of the decree of 1834, which freed the Kazakhs from military service, which was at first seen as a benefit, particularly after a century of bloody war with the Dzhungars (Oirat state), which threatened the whole Kazakh nation with extinction. However, more than half a century later, especially as consequence of the implementation of the reforms of 1867-1868, 1886 and 1891 by Russia, the aim of which was the step-by-step colonization of the Kazakh regions (later the Steppe and the Turkestan oblasts), this benefit turned out to be pure evil for the Kazakhs. Kazakhs involuntary became a "minority" on their own lands, annexed in 1868 and which were now completely at the disposal of the colonial rule. This evil came out of the lips of the next Governor-General of the Steppe oblast, Ivan Nadarov, not for the first nor the last time, who, in reply to the demand of the delegation of Kazakhs in 1906, forcefully evicted from their ancestral lands, to stop this lawlessness, openly and peremptorily stated: "*Kazakhs will never achieve equal rights because they are equal to others who do not perform military service. Kazakh land does not belong to Kazakhs but to the state. Therefore, if the state needs it, it will be taken from the Kazakhs in accordance with that need*".

Stubbornly working towards achieving compulsory military service for his people, Bukeikhan was pursuing two goals. One of them were the obvious, acutely necessary for the current moment equal rights with other nations, first and foremost the Russians and especially Cossacks, who served as the main weapon of colonial policy in the Kazakh steppes, the second goal was hidden, but aimed long term [14; 15]. It is very important to note, that he chose for his people not a recruitment service such as carried out by the Finnish, whose recruits could be sent to any region of the Russian Empire. The leader of the Kazakhs was not only working towards forming volunteer cavalry regiments out of his dzhigits (young men), but he was also intending them to have independent military command, which was precisely the hidden meaning of his goal. He foresaw that in the near future the Kazakhs would be forced to assert their ownership rights to their ancestral lands and the sacred right to national self-governance by force of arms. Getting ahead of myself, I would like to point out that in the meantime, in the string of articles in the "Qazaq" newspaper between 1913 and 1916, Bukeikhan justified the reason for necessity of voluntary service in cavalry regiments by the current interests of the nation by example of Cossack troops. Cossack voluntary military service in his opinion had a number of privileges and conveniences for the nomadic Kazakhs in comparison with regular compulsory military service or consignment. Firstly, horsemanship was a national tradition and part of everyday life for the Kazakhs. Secondly, upon turning 18, a Cossack would undertake three years of military training, at which point he becomes a true Cossack, and at 21 he would begin 12 years of real military service. In peacetime, a Cossack would spend all 12 years in his village, only spending 3-4 months every summer at annual reservist training in his home region. Thus, according to Bukeikhan, a Cossack would only spend 3-4 years of his 12 years of actual military service in training. After 12 years of service, a Cossack becomes a reserve at the age of 38 [16].

Thirdly, and most importantly, in Bukeikhan's view: "By law a Cossack has greater rights than a moujik [Russian peasant], the reason for which is history itself: the moujik had been a slave [serf], whereas the Cossack was at liberty and free and thanks to his voluntary 12-year military service he had greater advantages and more favorable rights to land use than the moujik. We will not be granted that right. If we are granted it, it will only be to our advantage," the Kazakh leader said, trying to convince his fellow countrymen.

2. RESULTS AND DISCUSSION

In July 1906 Bukeikhan, unanimously elected as a deputy member of the State Duma of the first convention of the Semipalatinsk oblast, travelled to St. Petersburg with the intention of passing a number of bills, among which was the draft of the decree of implementation of compulsory military service for the Kazakhs, preliminary having discussed the matter with his electors, which is evidenced by a short note published in the June edition of the "Semipalatinsk Leaflet:" "June 10, in Semipalatinsk, in the building of the National House at 12 o'clock, the first meeting of the Kazakh electors took place. More than 150 people attended... A.N. Bukeikhanov opened the discussion, familiarizing the assemby with the programme of the party "National Freedom", which all present decided to support. After him spoke: a Kazakh from the Genghis volost, Shakarim Khudaiberdin... Akhment Tyshkanbaev (from the Degelensk volost of the Karkalinsk district) about the land issue, Ilyas Dzhankarin (from Pavlodar district) about the same issue with regard to the settlement issue as well as the military service" [17].

Bukeikhan assumed, not without reason that the Duma of the first convention would approve of the bills which he was intending to put forward to be considered by the supreme legislative assembly. He would easily have been able to collect the signatures of many of his fellow deputy members, which were required for the

approval of the bills as part of the legislative work of the Duma. Since out of 448 deputy members of the Duma of the first convention, 153 were members of the Kadet faction, 4 of which were Kazakh and 1 unaffiliated deputy – Shaimerden Kosshygululy, elected by the Kazakhs of the Akmolinsk oblast. In addition to that, the whole leadership of the First State Duma was elected from the Kadet faction: the spokesman was Sergey Muromtsev, vice spokesmen – prince Petr Dolgorukov and Nikolay Gredeskul and finally, the secretary – prince Dmitry Shakhovskoy, a close friend of Alikhan Bukeikhan.

I will note that the Muslim faction of the State Duma of the first convention, as well as all the following, joined the Kadet faction. When the voting for his bills was taking place, Bukeikhan could confidently count on the complete support of the autonomist faction, consisting of members of the Polish kolo, Ukrainian, Finnish, Baltic, Tartar and other ethnic groups, 63 people in the first convention in total. 97 deputy members of the Labor party and 105 unaffiliated members would not have let him down either. Simply put, at the beginning of July 1906, the Kazakh leader seemingly faced a real possibility of reaching his strategic goals. However, this reality became a mirage in one instant. Bukeikhan arrived in St. Petersburg in the morning of July 8, 1906 – just on the eve of the forced dissolution of the State Duma of the first convention. As Bukeikhan himself commented in his memoirs, "Elections in the Steppe" dated from 1916, dedicated to the 10th anniversary of the State Duma, the elections in the Steppe and Turkestan oblasts were determined at the last minute, and at the moment of dissolution of the First Duma, elections in some of the regions of Turkestan did not even yet take place. It was no wonder that having crossed the threshold of the Tavrichesky Palace on July 8, 1906, Bukeikhan has barely managed to collect the signatures of the deputy members on the bills with the purpose of adding them to the agenda of the legislative assembly – the manifesto regarding the dissolution of the Duma was signed on the night of July 8, and the deputy members with Bukeikhan among them saw the manifesto on July 9 in the morning, posted on the doors of the Tavrichesky palace, where the State Duma met.

Despite it all, Bukeikhan did not lose hope since the second convention of the Duma was to take place. Not going into detail about why Bukeikhan voluntarily declined to run for deputy member of the Second Duma, being absolutely sure of his repeated election, which he described in detail in an open letter to the Kazakhs of the Semipalatinsk oblast on January 11, 1907, he sent his reliable comrade Temirgaliy Nurekenuly to the second convention with that goal in mind (Temirgaliy Tyunin-Norokonov or Norokonev), one of the five candidates nominated by him, among them, two nephews of the great poet and thinker Abay – Shakarim Khudayberdyuly and Kakitay Iskakuly [18]. However, a greater disappointment awaited Bukeikhan this time around. After 102 days of operation, from February 20, to June 2, 1907, the second convention was also dissolved. Simultaneously, with the decree on the dissolution of the Duma of the second convention the New Regulation on the State Duma elections, which deprived the five million strong Kazakh nation of voting rights and their removal from the Duma was published on June 3, 1907. Moreover, in December of the same year, by the special presence of the St. Petersburg district court, Bukeikhan was sentenced to a 3-month prison time for signing and publishing the "Vyborg Proclamation", and was stripped of the right to occupy public offices. Having served his sentence in the Semipalatinsk prison not for 3 months, but for 8, he was exiled into Samara [19].

However, even despite his exile in the period between 1908 and March 1917, he continued his furious struggle for the rights and national interests of Kazakhs, including the right to perform military service in the cavalry troops with independent troop command, having put forward a corresponding bill in the Duma of the third convention through the faction of Kadet deputy members. However, as is important to note, without much visible success. *"Among the many issues addressed by the Duma, the bill to alter "the Regulation on Compulsory Military Service", which concerned the implementation of compulsory military service for the Kazakhs, having found no luck anywhere, flickered and died along with other trivial matters..."* Bukeikhan wrote, denouncing the activity of the Third Duma, which after ceasing its operations, did not after all pass the bill of alteration of the "Regulation on Compulsory Military Service", which oversaw the implementation of compulsory military service even for Kazakh. *"In this way – some Muslim people are conscripted for military service in the most abnormal conditions, others instead of carrying out service are obliged to pay the infamous monetary tax, and others still (Turkestan oblast and Muslims of Akmolinsk, Semipalatinsk, Semirechye, Ural and Trans-Caspian oblasts) are completely forgotten (!)"*.

The leader of the "Alash" movement clearly realized that the nomadic Kazakhs, once a mighty warrior people, who made up the crushing impact force of the hordes of Genghis Khan, his son Jochi and grandson Batu Khan, over a period of more than half a century after their release from military service in 1834, have lost their former exceptional agility and mobility due to the settler colonization of the steppes and the shrinking of their habitat, as well as their free spirit and military valor, courage and boldness and withdrew from carrying military service and weapons. Moreover, military science as well as armaments, have not stood still in their development during that period passed. The last time that the Kazakhs exerted their former warlike character was in the first half of the XIX century. Namely, in 1812 the Kazakhs part of the Russian army participated in

the war against the French led by the Emperor Napoleon Bonaparte and in 1837-1847 they organized the largest armed uprising against the colonialist policy of the Russian Empire under the command of Kenesary Kasymuly (Kasymov), the last Khan of all three Jüzes [20]. Meanwhile with the election of the Duma of the fourth convention in 1912 arose a new opportunity for the approval of the bill of alteration of the "Regulation on Military Service". Simultaneously between 1913-1917 Bukeikhan on the pages of the first national newspaper "Qazaq" unfurled an open and turbulent debate about the necessity for the Kazakhs to perform military service, suggesting and explaining the conveniences of service in mounted and cavalry troops.

However, the colonial power of the empire did not share the enthusiasm of the Kazakh leader due to its justified fear of an even larger uprising of the Kazakhs against the policy of colonization of Kazakhstan illegal in both its nature and content, violating the conditions of mutual agreement regarding allegiance to Russia. The memory of the uprising of Khan Kenesary was still fresh in the minds of the people. It remains to add that for 10 years Russian military art and weapons were powerless in the war against Kenesary Khan's unmatched riders. The talented commander and politician, distinguished state figure and leader of the Kazakhs fell victim to an absurd accident in a clash with the Kyrgyz caused by a betrayal of his closest associates. Moreover, even before, the Russian empire again was convinced of the extraordinary militancy, courage and daring of the Kazakh riders in the Patriotic War of 1812. It is an established historical fact that the Kazakhs participated in the war with the French from the first battles at Neman and "Battle of the Nations" near Leipzig to the occupation of Paris. They fought mainly as part of the Orenburg Cossack cavalry regiment, rarely in Bashkir regiments as well as the national volunteer corps. Two Kazakhs, Baybaturuly and Zhanzhigituly (in the archive materials Baybatyrov and Dzhandzhigitov) were awarded silver medals for the occupation of Paris as part of the Bashkir regiment. Among the celebrated heroes of 1812, the names of cavalry officers Major Temirov, Cossack Captain Yusupov, sotnik (Cossack lieutenant) Yumashev etc.

In the second half of the XIX century, the Kazakhs were represented by four descendants of Genghis Khan from the Junior Jüz, three of who were Major Generals and one General of Infantry. The Khan of the Inner Bukey Horde, great-grandson of Abulkhair Dzhangir Bukeyuly earned the rank of general before anyone else. His eight sons also obtained military education. The son of Khan Gubaydulla Dzhangiruly was awarded the highest military rank in the Russian Cavalry – General of Infantry (Cavalry). He became the first and only Kazakh – full cavalier of his kind of troops. The Neplyuev Military School established in 1824 in Orenburg was the origin of many military officers among Kazakhs, which was later reorganized into a Cadet Corps. Each year 30 spots out of 200 were reserved for Kazakh youths. Kazakh youths also occasionally studied at the Omsk Cadet Corps. One of its talented graduates was Chokan Valikhanov – who became a prominent scientist with a world famous name. In general, in the XIX and the beginning of the XX century there were in the military-civilian service in Russia (approximately): one Cavalry General, three Major General, six Colonels, eight Lieutenant Colonels, six Cossack Majors as well as a fair number of majors, captains and staff captains, sotniks (Cossack lieutenant) etc.

The seriousness of the fear of the Russian Empire is confirmed by the fact that in the period of World War I, especially between 1915-1916, despite the heavy casualties and colossal material losses, it did not dare to conscript Kazakhs, not to mention organize them into cavalry units with independent military command. The situation at the Western Front at the beginning of 1915 showed that new battles required not only the mobilization of millions of citizens, but also an astronomical amount of armaments and ammunition. Pre-war stocks of armaments and ammunition were exhausted and the warring countries began actively restructuring their economies to match military needs. The war gradually evolved from being a battle of armies to a battle of economies [21].

Having increased their population to 6.5 million (or fifth largest nation of the Russian Empire) towards the beginning of World War I, the Kazakhs over a comparatively short period of time could have organized mobile cavalry troops numbering several hundred thousand warriors, who, in the event of being sent to the Western Front could have considerably supplemented the reserve of the Russian army and noticeably improved its situation in the war. However, in all probability, the Russian colonial empire feared to lose its complete control over the Great Kazakh Steppe by giving the indigenous nation of many millions the right to have their own military forces with independent military command. It would seem that in St. Petersburg it was considered that Kazakhstan was a gateway to Central Asia. Even at the turn of the XIX-XX centuries Kazakhstan was a key geopolitical zone. The loss of control over Kazakhs and their vast territories would mean virtual loss of control over all "Asian Russia" and naturally would have deprived Russia of access to Afghanistan, Iran, India and the Pacific Ocean in general.

Meanwhile between 1914-1916 the Kazakh delegation led by Bukeikhan in St. Petersburg, with the assistance of members of various factions of the State Duma, relentlessly pestered high offices starting with the Tsar himself, the State Duma, the Council of State, government and ending with the Ministry of Defense

and Internal Affairs with the hope that in the time of difficult challenges the colonial power would in the end meet the wishes of the Kazakh "minority" to "serve" the Russian crown. In the negotiations in St. Petersburg the leader of the Kazakhs concentrated the attention of his interlocutors on the assurances of the colonial power itself, voiced before Russia joined the World War: "We are not fighting for markets, not for the enrichment of the capitalists, but for freedom, for the self-determination of all nations and nationalities. And now we demand to be given what was promised to us". Bukeikhan insisted. Here it is necessary to remind the reader about another important historical fact, that in November-December 1916 Germany and its allies offered peace, however the military-political block of Russia, France and Great Britain – Atlanta – declined the offer, stating that "peace is impossible until the restoration of violated rights and freedoms, the recognition of the principle of nationalities and free existence of small states is ensured!"

Despite the obligations that Russia undertook to before entering the war, Russia was not yet ready to provide the Kazakhs with the right to self-determination, including the right to the formation of a national army. "During peace time the government is intending to conscript us to infantry troops" Qyr Balasy wrote on the subject in the article published under the heading "The Issue of the Conscription of the Kazakhs" in the "Qazaq". "If the people will find it acceptable, then let them not waste time and continue to be engaged in farming... To me however, it is evident that if the Kazakhs will be conscripted, then our people should serve as Cossacks do. Valid arguments in favor of it have been specified for the uninformed in the "Petrograd Letters...". While suggesting volunteer service in the cavalry with independent command (control), Bukeikhan was planning on educating these troops with the aid of Cossacks and found complete support among the Cossack members of the State Duma, which he reported in one of his "Petrograd Letters," published in 1916 in the "Qazaq": "*Here [in the State Duma] Cossack members have declared that if the Kazakhs wish to serve in the same manner as Cossacks, they will provide assistance. It is convenient for Kazakhs to be Cossacks*".

"However" he noted in the previous letter of the same series, "the issue of implementation of conscription of the Kazakhs in the Duma is still closed and it is unlikely to be put forward at this moment. "Nevertheless, Bukeikhan's political intuition told him that this issue would be positively resolved in the near future. His intuition did not fail him. The emperor of Russia on June 25, 1916 issued a decree on "The Requisition of the Indigenous People", in other words, the mobilization of the Kazakh "minority" of the Steppe and Turkestan regions, for performing auxiliary work, which was the last thing the Kazakh leader wanted. Another unexpected turn for Bukeikhan was the mass uprising of the Kazakh which broke out following the "June 25" decree, which only enforced the fear of the colonial power of Russia of granting Kazakhs the right to form their own cavalry troops. Moreover, an uprising, even more so an unprepared one, did not suit the plans and strategy of the leader of the "Alash" movement, or to be precise – fully contradicted his goals. It is also imperative to note, that the fundamental cause behind the civil commotion was not so much the decree itself, but more its hasty and rough execution by the representatives of the colonial power and their appointees, such as volost administrators, village elders and the steppe nobility. That is precisely the conclusion the private council of the Kazakhs from Turgay, Ural, Akmolinks, Semipalatinsk and Semirechye oblasts came to about the damage caused to farming by the mobilization of men for auxiliary work, which took place on August 7, 1916 in Orenburg led by Bukeikhan: "*The supreme decree of June 25, became known to the Kazakhs in the form of an announcement by the local government while the decree itself was not yet published. It struck the unprepared population out of the blue. The local government hastily began to enforce the decree. In the unpreparedness of the population, as well as the extreme haste, harshness and abuse in the actions of the authorities lay the roots of the past and current misunderstandings and tensions that now became known... When the population saw the distinct injustice being exercised, it took the matter into its own hands, at the same time forcefully taking the lists from the volost administrators. This happened in Turgay, Ural, Akmolinsk, Semipalatinsk, Semirechye oblasts. Thanks to the abuse of the Kazakh authorities the current generation got to meet brigades of Cossacks for the first time*".

"Everything that has happened until now, – in the protocol of the current counsel, – *is explained by the urgent haste of the execution of the supreme decree. It is necessary to take immediate measures to calm the population by withdrawing Cossack brigades out of the steppes and convening congresses of representatives of the population. The local authorities, namely volost administrators themselves caused civil commotion by their rash actions, their harshness and abuse of power, they perturbed the most peaceful and obedient to the supreme command people, whom they declared to be unruly and rebellious toward the authorities and law. All this is false – the Kazakhs obey the command*".

Having discussed the causes and consequences of the decree of June 25, 1916 and its actual execution, the private counsel of the Kazakhs drew up regulations containing 18 points, the first of which spoke of the "need for postponing the conscription of workers in northern uyezd (districts) until January 1, 1917 and the conscription of the southern districts until March 15, 1917" and in last point spoke of "regarding the above... petition the government".

As follows from yet another of his "Petrograd letters" (IV – "Qazaq", No. 192, 1916), at the beginning of September in Moscow, Bukeikhan discussed the matter of conscription of Kazakhs with Prince Georgy Lvov who led the United Committee of the Union of Zemstvos and the Union of Towns (ZEMGOR), an organization that aided the army, that maintained hospitals and ambulance trains, supplies clothing and footwear for the army, and who after the February Revolution between March and July 1917 became the Minister-Chairman and Minister of Internal Affairs of the First Provisional Government and also led the first coalition government. Later the Alash leader travelled to Petrograd where he met with Mikhail Rodzianko – the spokesman of the Fourth Duma, Andrey Shingarev, who was the chairman of the marine committee of the Fourth Duma between 1915 and 1917 and who in March-May 1917 became the Minister of Agriculture in the first composition of the Provisional Government. He also met with members of the State Duma of the fourth convention Alexander Kerensky, Ivan Yefremov and Mikhail Karaulov – being the chieftain (ataman) of the Terek Cossack Host. As it is not difficult to guess, Bukeikhan together with the Cossack members discussed not only the possibility of postponement of the conscription of Kazakhs for auxiliary work until the completion of farm work but also continued insisting on granting the Kazakhs the right to form cavalry troops with independent command. He was met with full support and was promised cooperation in the matter [22].

Prince Lvov undertook to place the Kazakhs mobilized for auxiliary work under the custody of ZEMGOR, which was reported in detail in issue No. 192 of the "Qazaq". After a series of meetings with the leader of the Alash movement prior to and during the period of civil commotion of 1916, on September 10, of the same year, A. Kerensky addressed the Duma with a summary report about his journey around the Steppe and Turkestan regions, in which he placed the blame for the bloody oppression of the civil commotion on the Tsarist government, accused the Minister of Internal Affairs of abuse of authority, demanded the impleading of the corrupt local Tsarist officials. At the time he was the head of the committee of the Fourth Duma for the investigation of causes and consequences of the events of 1916 in the Kazakh Steppe and Turkestan regions, having studied the events on the spot. He undertook his inspection trip into the Kazakh territory upon the insistent request of Bukeikhan, who sent Mustafa Shokay (Chokaev), his young associate to accompany him, who at the time served as the secretary of the bureau of the Muslim faction of the Fourth Duma.

Approximately from the end of 1915 Bukeikhan was a member of the bureau of the Muslim faction as a representative of the Kazakh population, at the end of October 1916 on his recommendation Mustafa Shokay became the second representative of the Kazakhs. As he sent Mustafa Shokay to accompany Alexander Kerensky in his trip to the Steppe and Turkestan regions, Bukeikhan was sure that they would find common ground. He knew that Kerensky and Shokay were both alumni of the Tashkent Gymnasium and the Law Faculty of the St. Petersburg University, albeit graduating in different years. The former graduated from the gymnasium in 1899 and university in 1904, while the latter graduated in 1910 and 1914. After recounting his report at the Duma, Kerensky as well as Karaulov and Yefremov promised Bukeikhan to send a telegram to the emperor who was on the front with the request to postpone the mobilization of the Kazakhs for auxiliary work from September 15 to a later time. Apart from everything else, upon the insisting request of the Alash leader, Andrey Shingarev personally addressed the Minister of War Dmitry Shuvaev on September 8, regarding the following: when and in what order will the Kazakhs be conscripted and will they be granted the benefits they asked for? Shuvaev replied: the Minister of War will make the decision regarding the conscription of the Kazakhs, only then will the issue be forwarded for consideration by the military department. "Now we are in search of a member who would positively resolve our matter with the Minister of Internal Affairs. It is difficult to predict anything, we are acting blindly. God help us!" Qyr Balasy wrote in his next Petrograd letter.

It follows that Alikhan Bukeikhan was able to find the person he was looking for, based on the order of the Minister of War Dmitry Shuvaev dated from October 14, 1916, the text of which was immediately published in the issue No. 202 of the "Qazaq" in 1916. However, the order did not meet the expectations of the leader of the Alash movement since it did not concern the right of the Kazakhs to form their own cavalry troops with independent command which was Bukeikhan's main goal. Instead, the order provided the following (loose translation of the author):

1) the authorization to recruit minorities, voluntarily choosing to serve in the Cossack troops is transferred to the troop atamans, namely the atamans of Cossack cavalry troops;

2) volunteer minorities will be recruited into the mounted cavalry troops participating in hostilities, in case of need, they may be placed at the disposal of reserve sotnik (Cossack lieutenants) to undergo military training;

3) minorities recruited as volunteers into the Cossack troops are obligated to enter service in their uniform (Cossack uniform) with their own weapons and horses;

4) volunteer minorities will serve as private Cossacks;

5) volunteer minorities will be freed from military service immediately after the war ends and will be sent home;

I order that the above decree of the Tsar will be executed with strictest compliance.

Signed: The Minister of War General of Infantry D. Shuvaev.

"Our military command", – Bukeikhan wrote sometimes later, "must consist exclusively of our own personnel. Otherwise a foreign officer instead of training our warriors would punish them for the slightest offense and put them in jail unjustly. However, if the officer is a Kazakh, the warriors will undergo appropriate training, they will be well educated and politically literate. A commander that does not know Kazakhs, their language, culture and mentality will only punish them".

Having achieved his goal – postponing the mobilization of the Kazakhs for the auxiliary works until the completion of the farm work, Bukeikhan together with his associates in the Alash movement lost no time and immediately set out for Kazakh regions with the aim to explain the situation to the people. He chose the hotspot for himself – the Trans-Caspian oblast. As Smakhan-tore Bukeikhan (the younger brother of the leader of Alash) wrote in his memoirs later, the chiefs of the Aday clan greeted Alikhan admiringly with banners and announcing "Our Khan has arrived!" In reply, Alikhan requested they put an end to rebellion [22].

His arguments were convincing. Firstly, a virtually unarmed uprising against modern regular troops of a warrior empire which had heavy casualties in the First World War was not only counterproductive, but also destructive to the people themselves. Secondly, the Kazakhs were being conscripted for auxiliary works, not the war. Thirdly, the youth will see a completely different world, another way of living and farming, modern weapons and conditions of war. This experience may come useful to the Kazakhs in the future, the leader explained to his fellow clan members. He convinced them to obey the decree of the Russian Tsar and let the dzhigits aged between 19 and 35 go to the front, promising to join them. At the end of 1916 Alikhan set out to follow them to the Western Front aiming to enter military service, ensure the living conditions and protection of rights of his young fellow clan members as well as all other "minorities" – Kyrgyz, Kalmyks, Buryats and others, he opened and led the "Department of Minorities" of ZEMGOR, taking the responsibility for providing the auxiliary works.

Following the February Revolution 1917, in the middle of March Bukeikhan was urgently summoned to Petrograd by the Provisional Government. On March 20, he was appointed the Commissar of the new democratic government of the Turgay oblast, about which he informed his people, sending a telegram to the "Qazaq". He was also appointed a member of the Turkestan Region Administration Committee [23]. The Kazakh national leader assumed that the time for organizing the national army has finally come and set out to create it, firmly, but nevertheless cautiously, officially naming it "militia". It is worthwhile to note that Bukeikhan began organizing the Alash army prior to the traitorous coup of the Bolsheviks in October 1917 and the creation in February 1918 of the bloody "Red Army".

This way in July 1917 Bukeikhan left the ranks of the Constitutional Democratic (Kadet) party and promptly began organizing the first Kazakh National Party "Alash", of which he informed the First All-Kazakh Convention, which convened between July 21-28 of the same year at his initiative. The 4th point of the agenda named "the Defense of the Homeland, "stated the following: "For the defense of the Homeland the army will not remain in its current condition. The youths having reached conscription age will undergo training and perform military service in their homelands; the youths have the right to perform military service according to their vocation: Kazakhs already perform military service in the mounted militia(!)"

Between the first and the second All-Kazakh conventions in July and December one more confidential and secret convention was held, where the regulation for organizing a Kazakh national militia-army was passed. This speculation is supported by the following quote of an article published on November 21, 1917 in the "Saryarqa" newspaper: "It is essential that we unite and reflect on the defense of our native land. The telegram sent by Alikhan, Akhmet and Myrzhakyp, published in the previous issue literally howls for the defense of the homeland and charges the citizens of Alash with it. What course of action the nation will take will be decided by the All-Kazakh Congress in Orenburg, planned to take place on December 5. In the meantime the main task is clear – to continue fulfilling the regulations of the September Congress(!)".

As was mentioned above, during the formation of the national mounted militia-army, for its training, provision of arms and ammunition, Bukeikhan at first relied on the support and aid of the Cossacks, for example, the Omsk, Orenburg, Ural and Semirechye Cossack troops. Simply put, the leader of Alash, no matter how strange it seemed, considered the Cossacks, who served as the weapon and pillar of the colonist policy of the Russian Empire, to be allies in the struggle of Kazakhs for their national self-determination. And as it appeared – was not wrong in thinking so. Where prior to the February Revolution, as seen above, he in his struggle for the rights and interests of his nation enjoyed understanding and strong support of the Cossack members of the Duma, in the above mentioned telegram from Alikhan Bukeikhan, Akhment Baytursynuly and Mirzhakyp Dulatuly, published on November 18, 1917 in the "Saryarqa" newspaper, on the eve of the second All-Kazakh Congress, it was said: "Parallel to our congress a general congress of Cossacks is taking place. We must also take part in this congress".

After the Bolsheviks rose to power, Bukeikhan set a new goal for himself: to build a modern, educated and literate army. "An ignorant soldier" he wrote "makes no distinction between good and evil. An uneducated, uncultured and undisciplined soldier is capable of committing utterly lawless acts. The civil bloodshed among the Russians is a consequence of ignorance and incivility of their soldiers". And one of the first legislative regulations of the National Council (government) of the Alash-Orda, passed between June 11-24, 1918 signed by Alikhan Bukeikhan concerned the issue of the creation of the Alash army: "To create a council of war of three members under Alash-Orda, entrust it with the functions of a military ministry and grant it with (authority) to open oblast and uezd level councils at the oblast and uezd departments of the Alash-Orda. The council of war will be charged with the responsibility to conscript dzhigits for fighting the Bolsheviks".

As it turned out, at this point the first Kazakh cavalry brigades were already formed and were ready to defend their homeland, which is confirmed by a note in the Omsk newspaper "Svobodnaya Rech" issued on June 21, 1918 under the headline "The Arrival of the Kazakh Brigade": "At noon on June 18, the newly formed Kazakh (originally Kyrgyz) cavalry of 500 men with officers-instructors in the steppes arrived in Alash. The brigade was greeted by the entire population of Alash... The brigade was taught the military art was armed". The editorial note of the next issue of the newspaper contained new details regarding how "a solemn meeting was arranged at the square near the church of St. Nicholas, where "the famous national figure [Alikhan] Bukeikhan arrived, in whose honor at the suggestion of the lieutenant colonel [Khamit] Tokhtamyshev, the riders uttered the word "Allah". The white banners carried slogans in the Kazakh language: "Long live the All-Russian and Siberian Constituent Assembly!" "Long live the true sons of the Motherland!" The speeches, said at the meeting, breathed of patriotism" [24].

Towards the middle of the summer of 1918 Bukeikhan was able to create not only a battle-ready division of the Alash state from several cavalry regiments, but also open a military cadet school for the training of national military officers. According to the Omsk newspaper "Svobodnaya Rech", some of the brigades of Alash were already actively participating in the combat operations on the Southern front in the Semirechye oblast. "The actions of the Kazakh volunteers" the Omsk paper wrote "are constantly reported to the current Kazakh Premier Minister A.N. Bukeikhan by the government of Alash-Orda. He recently received the following telegram from Arkat: "Musa was present at the taking of Sergiopol, he arrived there and personally beheaded nine Reds. The Bolsheviks fled to Urdzhar. The brigade of Habidzhanov was sent after them. Administrator [of the Premier-Minister of Alash-Orda] S. Akaev".

On June 16, Bukeikhan sent his ally, the head of the Bashkir Autonomy Z. Validov the following telegram: "The Semirechye oblast is cleansed of the Bolsheviks. The Kazakhs, Cossacks and offers are finishing off the remnants of the Bolshevik troops. Our (Kazakh) brigades were sent into the Altay guberniya". In the telegram sent on September 12. 1918 to the members of the government in the city of Alash (Zarechnaya Slobodka, Semipalatinsk) from Ufa, where he was negotiating with the Committee of the members of the Constituent Assembly (Komuch) on the matter regarding the recognition of the Kazakh Autonomy, its head A. Bukeikhan openly mentions the national army: "All efforts are to be concentrated on the formation of a national army. Russia will be saved by national armies. Alash is one of the ally states of Russia, therefore the Alash army is one of Russia's pillars. The Alash regiment must be provided with all necessities and must not be dissolved. Buy the necessary equipment, even on credit. Buy a sufficient amount of arms. In the Ural and Turgay departments of Alash-Orda brigades are hurriedly undergoing military training. We will prepare officers in the Ural department".

In February 1919, during the negotiations with the Omsk government led by Admiral Kolchak, the Premier-Minister of Alash-Orda, A.N. Bukeikhan announced the successes of his army: "Our militia is an army. It already exists: 700 of our dzhigits are on the front in Semirechye, 540 at Troitsk, 2000 in Urals oblast. When you read messages regarding the successes on the Semirechye front, bear in mind that these successes are owed to our brigades...". It is necessary to briefly mention that uniforms were designed and sewn for the army of the Alash state, different for the command officers and the enlisted personnel, several hymns (marching songs) were written... [25]

All for one sacred goal – to assert the right of his nation for self-governance, to achieve recognition and political legalization of the Autonomous State of Alash on the territory of nine oblasts, Bukey Horde of the Astrakhan guberniya and the adjacent Kazakh volosts of the Altay guberniya, between 1917 and 1920 Alikhan Bukeikhan acted according to the age-old principle "politics is the art of the possible". While creating the Alash army, Bukeikhan was not preparing for war – not with the Bolsheviks nor with anyone else, but was striving for asserting the national autonomy and preserve the fragile peace. "The militia is acutely needed simply due to the fact that now only those who are strong, armed and mounted can survive. "He wrote in yet another one of his articles. It became evident that at the height of the civil war in Russia, there was no other choice but to conclude an alliance with one of the warring sides in order to withstand the other, or vice versa.

No matter the choice, there was a chance for the salvation and recognition of the legitimacy of the young Kazakh state. Directly after the relocation of the National Council (government) of Alash-Orda to the city of Alash in March 1918, Bukeikhan attempted to establish communication – first - with the leaders of the Soviet power (negotiations with V. Lenin and J. Stalin via telephone were led by A. Ermekuly and Kh. Gabbasuly – his deputies). For the sake of political legalization of the state of Alash, the name Alash-Orda carries precisely that meaning, for the sake of preservation of the fragile peace and the relative stability in the region, the leader of the Kazakhs was prepared to make peace even with the devil himself. However, having been informed of the conditions of Alash-Orda regarding the acknowledgement of the Soviet power, the leaders of the Bolsheviks undertook to give their final answer in the nearest future and then went silent for a long time. Bukeikhan was forced to seek recognition and an ally in the opposing side, where, one self-declared All-Russian government replaced another every few months. The leader of Alash-Orda, Bukeikhan consistently and convincingly went before each new All-Russian government to assert the right of the Kazakh people to those lands and territories, declaring that, "The Alash Autonomy brings together the 6 million strong Kazakh-Kyrgyz population of the Kazakh Territory which has never been part of Siberia and the Turkestan oblasts; the Alash Autonomy… occupies a territory which is almost round in shape (!) and with its population of 10 million, forms a large political entity".

CONCLUSIONS

Thus, all for one sacred goal – to assert the right of his nation for self-governance, to achieve recognition and political legalization of the Autonomous State of Alash on the territory of nine oblasts. Alikhan Bukeikhan acted according to the age-old principle "politics is the art of the possible". While creating the Alash army, Bukeikhan was not preparing for war – not with the Bolsheviks nor with anyone else, but was striving for asserting the national autonomy and preserve the fragile peace. For the sake of political legalization of the state of Alash, the name Alash-Orda carries precisely that meaning, for the sake of preservation of the fragile peace and the relative stability in the region, the leader of the Kazakhs was prepared to make peace even with the devil himself. The former leaders of Alash-Orda did not abandon their goal to create a national army, even after the establishment of the Soviet regime in Kazakhstan. Turar Ryskululy (Ryskulov) wrote his famous letter to Joseph Stalin, proposed to the government of the republic to form a Kazakh national... Red Army under the command of Kazakh officers, referring to the regulations of VTsIK (All-Russian Executive Committee). However, the leaders of the Soviet power feared the Alash-Orda even more than the Tsarist autocracy did.

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Suggested Citation: Zhussip (Aqquly), S.K., Qamzabekuly, D., Syzdykov, S.M., Kemengger, K.R., & Maslov, Kh.B. (2021). How was the army of the ALASH state built? *Journal of the National Academy of Legal Sciences of Ukraine*, 28(3), 85-96.

Submitted: 15.05.2021
Revised: 08.07.2021
Accepted: 26.08.2021

УДК 929
DOI: 10.37635/jnalsu.28(3).2021.97-108

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ІДЕЯ НЕЗАЛЕЖНОСТІ І СВОБОДИ В ДІЯЛЬНОСТІ ХАСАНА ОРАЛТАЯ

Анотація. *Хасан Оралтай – казахський діяч за кордоном, дослідник національно-визвольного руху, історик, публіцист, автор творів турецькою, казахською, англійською, німецькою та іншими мовами, почесний професор Міжнародного казахсько-турецького університету. Усе своє життя він присвятив служінню на благо казахського народу. У 20 столітті казахи Східного Туркестану вели визвольну боротьбу за свою свободу та незалежність. Хасан Оралтай написав хроніку життя казахів, переслідуваних тоталітарною комуністичною системою на їхній батьківщині і здобувши свободу на Заході. Його твори висвітлюють історію національної інтелігенції алашів та всі нагальні проблеми Казахстану. Наукова новизна дослідження визначається тим, що у статті йдеться про письменницьку та, як відомо, історичну роль Хасана Оралтая, з точки зору того, що казахи Східного Туркестану, вибравши перо, оголосили першу ластівку національно -визвольної боротьби світу. Півстоліття тому в турецькому місті Ізмір вийшла його перша книга «На шляху до свободи. Казахські турки Східного Туркестану». До останнього періоду його життя всі твори, написані та організовані ним, були присвячені нагальним проблемам, що стосуються казахського народу, для казахського минулого та майбутнього. Радіо «Азаттик» (RL/RFE) першим заговорило про повстання казахської молоді проти радянської системи в грудні 1986 р. Пізніше Хасан Оралтай опублікував у західній пресі різні статті про грудневі події, збірки та книги, в яких він оцінили настрої протесту в радянському Казахстані. Практична значимість дослідження визначається тим, що за 27 років служби в Азаттику Хасан Оралтай постійно порушував нагальні проблеми казахів у Радянському Союзі. Дослідження зібрало всю інформацію про ідеї незалежності*

Ключові слова: *національна ідея, діаспора, визвольний рух, біженці, радіо Азаттик*

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THE IDEA OF INDEPENDENCE AND FREEDOM IN THE ACTIVITIES OF HASAN ORALTAY

Abstract. *Hasan Oraltay is a Kazakh figure abroad, researcher of the national liberation movement, historian, publicist, author of works in Turkish, Kazakh, English, German and other languages, honorary professor of the International Kazakh-Turkish University. He devoted all his life to serving for the benefit of the Kazakh people. In the 20th century, the Kazakhs of East Turkestan waged a liberation struggle for their freedom and independence. Hasan Oraltay wrote a chronicle of the life of the Kazakhs, persecuted by the totalitarian communist system in their homeland and gained freedom in the West. His writings highlight the history of the Alash national intelligentsia and all the pressing problems of Kazakhstan. The scientific novelty of the research is determined by the fact that the article deals with the writer's and, as is known, the historical role of Hasan Oraltay, from the perspective that the Kazakhs of East Turkestan, picking a pen, declared the first swallow of the national liberation struggle to the world. Half a century ago, his first book was published in the Turkish city of Izmir "On the way to freedom. Kazakh Turks of East Turkestan". Until the last period of his life, all works written and organised by him were devoted to urgent problems concerning the Kazakh people, for the Kazakh past and future. Radio Azattyk (RL/RFE) was the first to speak about the uprising of Kazakh youth against the Soviet system in December of 1986. Later, Hassan Oraltay published in the Western press various articles about the December events, collections and books, in which he assessed the protest mood in Soviet Kazakhstan. The practical significance of the study is determined by the fact that for 27 years of service in Azattyk, Hasan Oraltay constantly raised the urgent problems of Kazakhs in the Soviet Union. The study collected all information on the ideas of independence*

Keywords: *national idea, diaspora, liberation movement, refugees, radio Azattyk*

INTRODUCTION

In the past few decades, there has been a growing interest in diasporas as a subject of study in the social sciences. The growing popularity of this topic has led to a change in the use of the term "diaspora" to refer to any population that has moved from one country to another. This trend is also observed among immigrant groups who define themselves as a diaspora [1]. James Clifford explains that migrants increasingly define themselves as a diaspora because the term has positive connotations. The frequent use of the diaspora is not limited to academia and immigrant groups; it is also frequently used in the media and popular culture [2].

In his 2005 article "The Diaspora", Rogers Brubaker explains this recent phenomenon in detail. According to him, the term "diaspora" is overused to describe any group that moves from one place to another [3]. Brubaker, criticising such a popular use of the concept, argues that "the term loses its distinguishing power, its ability to distinguish phenomena, to make distinctions. The universalization of the diaspora, paradoxically, means the disappearance of the diaspora" [4]. According to Brubaker, the problem lies in the perception of the

diaspora in substantial terms, as a limited identity, not an idiom, position and statement [5]. Instead, he suggests looking at the diaspora primarily as a category of practice. For Brubaker, "as a category of ethnic practice, the diaspora is used to make claims, formulate projects, formulate expectations, mobilise energy, and appeal to loyalty" [6].

Based on Brubaker's concept, the authors will consider Kazakhs living in Turkey and Europe as a category of practice [7]. The Kazakhs of East Turkestan (Xinjiang) were forced to leave their homeland as a result of political events in the region in the middle of the 20th century. Then the Kazakhs were forced to live for some time as refugees in neighbouring countries, until they were finally accepted into Turkey as permanent settlers [8]. During this period, Kazakhs experienced seemingly insurmountable life events. Their first decades of living in Turkey were also not easy, despite the fact that citizenship and additional benefits to facilitate their assimilation and integration were provided upon arrival [9; 10]. They were first housed in refugee camps in Istanbul, and then the Turkish government resettled them to the main settlement areas [11]. Over the years, some Kazakh families left these primary settlements and moved to large cities, in particular to Istanbul. As part of labour migration agreements between the Turkish government and European countries, Kazakhs from Turkey have migrated to Europe as workers with Turks since the 1960s [12].

As soon as the Kazakhs adapted to the new life in Turkey, and then in Europe, they began to participate in actions aimed at preserving the borders of their group. Studying these acts and related discourses, it was examined how Kazakhs formulated and reformulated their identity and loyalty in their host states [13]. Many Kazakhs in Turkey and Europe came from Xinjiang (East Turkestan) in China and considered this region their homeland. However, with Kazakhstan's independence after the collapse of the Soviet Union, they began to reformulate their identity and loyalty to Kazakhstan as a new homeland. Therefore, an analysis will be conducted in relation to two periods: namely, before and after Kazakhstan gained independence [14].

1. MATERIALS AND METHODS

This article is based on publications (books and magazines) of Kazakhs in Turkey and Europe, newspaper articles, public statements, and websites of Kazakh organisations in host states [15]. Field studies conducted in Turkey, Germany, France and the Netherlands were taken from interviews with leaders of Kazakh diaspora organisations and other members of the diaspora. Observing the participants of the European Kazakh Kurultai (assembly) in Paris in May 2013 also allowed to better contextualize this issue.

In the next section, the basic elements of the concept of "diaspora" were first examined before proceeding to analyse the Kazakh diaspora as a category of practice. Further, the process of migration of Kazakhs to Turkey and Europe was considered [16]. The practices and discourses of the Kazakh diaspora before and after Kazakhstan gained independence in 1991 were analysed. This section described the activities of Kazakhstani associations abroad, as well as considered the main discourses among prominent leaders of the diaspora [17]. Through this analysis, the Kazakh diaspora was viewed as a category of practice (and not as a limited identity) and, in doing so, the changes taken place over the various generations of the Kazakh diasporas were explained [18]. Before the Russian conquest of the 18th-19th centuries, the state formations of Central Asia were based on a territorial, civilizational and confessional community, the population of which did not have a pronounced national identity [19; 20]. Despite the fact that many activities of the central government (both in the Russian Empire and in the USSR) were aimed at eradicating local norms of political, social and cultural life, all countries of the Central Asian region retained their way of life, religious customs and structure of relations [21-23].

The study of the history of the formation of the Kazakh diaspora should be considered in conjunction with the diasporas of other Central Asian countries. Since all of them, first of all, positioned themselves as immigrants of Turkestan, and called themselves "Turkestani". In addition, the reasons and consequences of their emigration abroad were very similar. It is also appropriate to consider their action as a socio-political, and at the same time, religiously motivated action [18]. For example, Kazakh refugees, having arrived in Pakistan, India and further Turkey, tried in every possible way to link their emigration with the "hijra". That gave its fruits. In the above-mentioned countries, in addition to receiving the status of "refugees", they were recognised as "muhajirs". As S. Panarin notes, the space of the new Central Asian states "seems to be torn apart by factors of economic, ethnic and cultural attraction outside the national territory." In Central Asia alone (without Kazakhstan, Northern Kyrgyzstan, Central and Southern Turkmenistan), five independent historical and cultural zones can be distinguished – Horezm, Northern Tajikistan, Samarkand with the adjacent territory, Southern Tajikistan and the Fergana Valley [24]. Characterising the specificity of Central Asian societies in the formation of a national idea, one should first of all note the presence of regional clan ties in their life. These ties are based on community unity and are structured in a certain way at all levels of social relations. For

centuries, "Valley" ("oasis") patriotism has played a key role in the processes of socialization and identification of people.

2. RESULTS AND DISCUSSION

2.1. Analysis of the social reality of the transition period in Kazakhstan

The 20th century in Kazakh history is characterised by complex and ambiguous processes that took place in all spheres of society without exception, which gradually changed its appearance. As a result of the political games of the Soviet Union and the repressive policies of the Chinese communists in East Turkestan (modern Xinjiang Uygur Autonomous Region), many representatives of the indigenous people (Uighurs, Kazakhs, etc.) were forced to flee the country. For refugees, the only way to escape, as well as gain freedom, lay through the Himalayas to India. Nobody was waiting for them. Kazakh refugees arrived in India and Pakistan between 1941-1951.

To get acquainted with the living conditions of Kazakh refugees, there is the example of Eliskhan Taiji's group in India and Pakistan in 1941-1952. In September of 1941, a group of Kazakh refugees from Xinjiang, led by Eliskhan Taiji, arrived at the Indian border through Tibet. According to the Altai Khalifa, after the fighting in Tibet, about 1000 families, consisting of 3039 Kazakhs, came to the Indian border. This figure is also given in the monograph by I. Svanberg, taken from the monograph of Altai Khalifa "Anayurttan Anadolu'ya" and confirmed during interviews with Kazakhs – participants in this transition. India at that time was under British rule, and arrivals were not immediately allowed into its territory. On September 25, 1941, the Kazakhs created a group to represent them, which began negotiations with the British authorities to obtain permission to cross the Indian border. The delegation included: Karamolla Okur (Seitkan Shoishhibayuly), Sauytbay Zhan Sadyr-uly, Hamza Inan Yahyauly, Sadei Sydyk Chalyshkan, Osmanuly and Alpys Doganuly. Only in the course of lengthy negotiations the British authorities allowed people to cross the border, disarmed them and took them under armed guard to Ladakh, a provincial town in Kashmir, where they made lists and placed them in the Muzaffer Abad refugee camp cordoned off and guarded from all sides by troops.

The process of climatic, economic, social and cultural adaptation of the Kazakhs in India was slow, with enormous difficulties. This was explained, first of all, by the fact that cataclysms occurred in the life of the Kazakhs of Xinjiang in a short time, the results were the loss of their homeland, isolation from traditional farming, the death of relatives and friends when crossing Tibet, the sands of the Lop Nor and Takla-Makan deserts, after which it was impossible to immediately recover either mentally or physically. As well-to-do members of society in Xinjiang, some of the Kazakhs came to India after a year-long war with the Tibetans in an almost pauperized mass. Foreign climate, restriction of freedom of movement, lack of opportunity to work, lack of knowledge of English and the languages of the peoples of India – all this aggravated the situation of the Kazakhs who were housed in a tent camp in Muzaffer Abad, where 10-15 people died every day. The remaining cattle were dying from lack of food. In this camp, Kazakhs received medical assistance on very rare occasions. All these circumstances prompted the Kazakh refugees to ask the authorities to move them to another place. Seeing the suffering of his relatives, Eliskhan Batyr, who brought people to India and considered himself responsible for their fate, decided to take a very risky step. In March 1942, Eliskhan Batyr, Ahmet Ali Molla Mardan and Saday fled the camp late in the evening and reached Punjab, where they stayed at the house of Mr. Aslam Khan, with whose help they asked for an audience with the British governor. Sir Fireyzer received Eliskhan Batyr, listened to him and gave permission to move from Muzaffer Abad to a camp in Punjab.

In April 1942, the British authorities transported the Kazakhs by truck to the village of Ternava near Rawalpindi. The infectious diseases that began in Muzaffer Abad continued to haunt people in the refugee camp located near the village of Ternava: they died from jaundice, tropical fever and an unusual climate. According to the data cited by Hasan Oraltay, 15 to 20 people died every day. Due to the constant heavy rains, it was difficult to bury the dead. Therefore, the Kazakhs filed a petition to leave Ternava. According to the Altai Khalifa, the number of refugees dropped from 3000 to 1200 in less than a year. In the first years of life in India, the Kazakhs did not have children, which was confirmed in their interviews by the direct participants in the transition through the mountain peaks of Tibet, who survived, that is, no natural increase in the group headed by Eliskhan Batyr occurred during this period, human losses were significant. The authorities allowed them to leave Ternava and offered the Kazakhs to move to Hyderabad or Bhopal. According to the recollections of Khalifa Altai and Jalil Hamzauli Inan, before leaving the camp, the refugees sent Osman Zaipuly, Hamza Yahya-uly Inan, Chakmak Tasekeuly and Kumar Kazanbasuly to look for places for possible resettlement. Ultimately, in March of 1943, 450 Kazakhs left for Bhopal, located in Central India. Among them were the aqsaqals Osman Tashtan, Hamza Inan, Sautbay Zhan, Chakmakbai, Muttalip, Khojan, Suleiman, Kabilbek, as well as Osman mullah and Idris mulla. About 700 people went north to Abbottabad,

Suwat and Chitral. This group included Eliskhan Batyr, Mardan Bek, Sadei, Karamolla, Kumar, Rakadyl, Akhmet Ali Molla and others.

For about two years, Kazakhs lived in Bhopal, in the area that was later named Kazakhabad, where they were engaged in sewing hats and clothes, since they were denied a monthly allowance, which they initially received from the authorities. In Bhopal, they were allowed to establish a "Kazakh Center"; a Kazakh school was opened, for the functioning of which preparatory courses for teachers were initially held. Kazakh, Arabic and other languages were taught at this school. In 1944, five Kazakh children – Kalima, Ghaffara, Sherifa, Azizs and Abdulkhaks – were sent to continue their education in colleges located in Delhi. It is historically known that there were several waves of refugees from East Turkestan. In September 1951, the last wave of Kazakh refugees, led by Kalibek Hakim, arrived at the borders of India. According to the memoirs of Hasan Oraltay, 174 people, including him, crossed the border. They were stationed in the city of Srinagar, in Kashmir. Here they also received some assistance from the Government of India. Despite the fact that living conditions were rather difficult, there was great hope for the future among the refugees. They stopped being afraid and running.

Hasan Oraltay's father, Kalibek Hakim, from the first days of entering the territory of India, tried to establish relations with the government of India, as well as establish contacts with representatives of Western countries, including the United States. His group attempted to establish contact with Kazakh refugees in Pakistan and the Kazakh diaspora in Europe represented by the head of the Turkestan Liberation Committee – "Türkeli" Karys Kanatbai. In addition, a stable correspondence was established, which grew into friendship, with an outstanding Bashkir intellectual in exile Zaki Validi Togan. Later Z.V. Togan several times gave advice to Kazakhs to emigrate to Turkey. Of course, the Kazakhs themselves felt a kinship with the Turkish people. It is to this group of Kazakh refugees that the world community drew attention.

All the events listed above contributed to the personal growth of the young Hassan. He, as the son of one of the leaders of the Kazakh people – Kalibek Hakim, witnessed many important events. From the national liberation movement in East Turkestan to the formation of the Kazakh diaspora in Turkey. Also, these events had a great influence in the further activities of H. Oraltay. Considering that Kazakhs consist of tribal associations and zhuzes, it is worth noting that the Kazakh diaspora in Turkey and Europe consists of the Kerei and Naiman tribes. Even in the modern period, most of the Kazakhs of Europe, considering themselves part of the large Kazakh people, retain their tribal identity. As is known, the efforts of the Soviet government, in particular, were aimed at eliminating such a phenomenon as clans, which survived, and from the mid-90s their influence on domestic politics began to manifest itself more clearly. Recently, there have been many works devoted to the study of the role of informal institutions. For example, K. Collins in his book "The Logic of Clan Policy in Central Asia" puts forward four theses regarding clan dynamics (Fig. 1).

Figure 1. Four theses of clan dynamics

A clan is an informal organisation that includes a group of individuals united by family ties. The latter defines the identity and obligations of the organisation. These obligations are vertical and horizontal, linking the elite and non-elite, the real and fictitious relationship. It is difficult for an individual to enter or leave a clan, although the size of the clan changes. In Central Asia, according to local journalists, they range from 2000 to 200000 people. In rural areas they are led by the elders, in urban areas – by the richest and oldest, "moreover, clans cross class boundaries". The clan elite uses clan ties to achieve their goals in the political or

economic system. Ordinary members need its help to get a job and an education. In other words, it is difficult to survive outside a clan.

In this regard, it can be said that not only national identity but also clan-regional identity is of great importance for the Central Asian ethnic groups. Regional disunity in sovereign Kazakhstan is due to the historical characteristics of the past nomadic life, when the Kazakhs were divided into three tribal associations (Senior, Middle and Younger zhuzes). The basis of this division was the specificity of the economic, cultural and historical process that took place in three areas, which arose in connection with the natural distribution of the territory of Kazakhstan into three geographical parts: Semirechye, Western and Central (including Northern and Eastern) Kazakhstan. The political life of modern Kazakhstan is largely determined by zhuz, tribal and clan-family relations. It is "determined by the power struggle among representatives of three large tribal associations – zhuz: Senior "Uly" (southern and south-eastern Kazakhstan); Middle – "Orta" (northern, central and eastern Kazakhstan) and Junior – "Kishi" (western Kazakhstan). And although by historical standards zhuzes were formed recently, at the beginning of the 17th century, the contradictions between them are firmly rooted in the mentality of the Kazakhs. The first President of Kazakhstan N. Nazarbayev noted in one of his publications that "regional affiliation has always played a significant role in the political structure" of the Republic. At the same time, he himself "categorically rejects the traditional political ideology, which is based on the restoration of archaic forms of social structure, tribal psychology." For Kazakhs, zhuzes are both abstract and real. Many Kazakhs are generally indifferent to their zhuz affiliation, and sometimes they do not know it. But zhuz kinship can be a tool in the struggle for power, thanks to strong corporate ties.

Nevertheless, in recent years, inter-zhuz, generic traditions and values have been developing in Kazakhstan. Today, family ties help many families to survive, which, incidentally, concerns not only Kazakhstan, but all the republics of Central Asia. The problem of clan-tribal relations in modern Kazakhstani society and its influence on the formation of modern statehood, the formation of the economic system is in the centre of attention of many scientists. Professor A. Nisanbayev noted in this regard that "in the context of the implementation of privatization and the formation of national statehood, the problem of tribalism as one of the types of intra-ethnic disintegration of the Kazakh ethnos, a brake on the path of consolidation of the entire Kazakh modernization of the Kazakh society, escalated".

Professor A. Nisambaev described the regulation of intertribal and inter-zhuz relations in modern Kazakh society in the following way: "One of the principles of the functioning of power in Kazakh society is an orientation towards compromise and political balancing. In other words, the activities and rivalry of various political groupings for personnel positions in the highest echelons of state power, as a rule, takes place in an atmosphere of complete secrecy through the compromise thinking of the subjects of power themselves, which, in turn, pushes the participants in the political process to reach a consensus or to sign a certain "gentlemen's agreement", which clearly defines the rules of conduct for each "player". Therefore, in order to better understand the nature of power in Kazakhstan, it is first necessary to study the traditional political culture of Kazakhs, the hierarchy of their values, political traditions and their role in the life of modern Kazakhstan." Thus, the social reality of the transition period in Kazakhstan "is formed under the influence of three multidirectional and at the same time interrelated factors: the traditional clan-tribal structure of the Kazakh ethnic society; the consequences of the Soviet socio-political system, the new realities of the post-Soviet development of the republic".

2.2. The role of historical heritage in the formation of the modern national idea in the countries of Central Asia

The second factor directly influencing the formation of the modern national idea in the countries of Central Asia is the active use of the historical heritage, in which they strive to "find" ideas, traditions of national statehood and culture. However, its interpretation may be speculative. According to D. Zhetpisov and T. Khabiev, the past is dressed in emphasised national clothes. But it was made by modern designers; in the real past it was hardly worn. The mythological pictures of history that arise as a result of this sometimes take on completely bizarre forms, but behind them are the real interests and needs of people, their fears and hopes. In Kazakhstan, in order to overcome the problems of zhuz disunity in history, the activities of Tauke-Khan (who headed the Kazakh Khanate at the end of the 17th – beginning of the 18th century) and Ablai-Khan (the khan of the three Kazakh zhuzes in the middle of the 18th century) are "hymned", under which Kazakh society reached the greatest success, especially in terms of strengthening the centralized state. For example, Professor B. Mailibayev considers "... the institution of the Kazakh president is the historical heir to the khan's power, which, in turn, had enormous democratic potential." In relation to the elite, B. Mailibayev sees the difference between the khan and the president in the fact that "the khan is the result of an elite consensus, the president himself forms and regulates the interaction of the elites". Also, considerable attention is paid to the historical heritage of Abai Kunanbayuly and his followers, represented by the Alash intelligentsia.

At the same time, the leadership of Kazakhstan is developing the doctrine of state ideology to unite various ethnic communities. Since the beginning of the 20th century, 5 million 600 thousand people have been resettled to Kazakhstan, on the other hand, about one and a half million Kazakhs have died. Many Kazakhs had to flee to other countries, and thus form the modern Kazakh diaspora. So, in the official statement of 1996 it is said about the need "to support in society the idea that Kazakhstan is a common homeland. The obligation of every citizen, regardless of nationality, to help create an atmosphere of friendship, peace and harmony." At the same time it is said that "Kazakhstan is the ethnic centre of Kazakhs; they have nowhere else in the world a state that cares about the preservation and development of Kazakhs as an ethnic group, about their culture, language and traditions."

In the created historical concepts, the role of the periods of existence within the framework of the Russian Empire and the USSR in the "development of statehood" was minimized, moreover, this time was assessed mostly negatively. "In fact, for the entire 70-year period of the Soviet empire, we tried to get out of the grip in which we were tightly squeezed ...", says one of the Uzbek researchers. The first president of Turkmenistan, S. Niyazov, described the Soviet period as "... 74 years of longing, despondency, and unbelief in tomorrow!" Thus, the official ideology of the Central Asian states is characterised by the following general features: they are secular, moderately nationalistic, conservative, closely related to the face of their creator – the leader of the state.

2.3. Religion as a factor in the formation of a national idea

The third component of the formation of the national idea is the strengthening of the religious factor in the countries of Central Asia. Since the end of the 80s of the 20th century the re-Islamization of the region began. For the leadership of all Central Asian countries, the primary task is national unity, and, naturally, they use the combining role of Islam to strengthen their states. Both statesmen and Muslim clergy speak about the role of Islam in the formation of national unity. At the same time, the constitutions of almost all countries declare the secular nature of the state (there is no such definition in the latest edition of the Constitution of Kyrgyzstan), religious life is controlled by the relevant committees.

The politicisation of Islam can create conditions for its transformation into an independent political force. "The rise of modern Islamism, or political Islam (Islamist ideologists define this phenomenon using the concept of "Nahda" – Islamic revival) is due to a complex of reasons. Along with the socio-economic factor, which acts differently in each individual country, and the foreign policy factor caused by the new alignment of forces in the international arena and the strengthening of the globalization process, socio-cultural, ethno-confessional and civilizational moments also affect. However, for example, the Australian researcher of political Islam Sh. Akbarzadeh came to the conclusion that in Kyrgyzstan and Turkmenistan this process is slowed down, firstly, due to the prevalence of low Islam characteristic of nomads, as well as isolation from the Muslim world during the years of Soviet power, and second, authoritarian pressure is exerted on representatives of the clergy. British political scientist G. Tazmini generally rejects the possibility of radicalization of Islam in Central Asia. In his opinion, the spread of radical forms of Islam is impossible for the following reasons (Fig. 2).

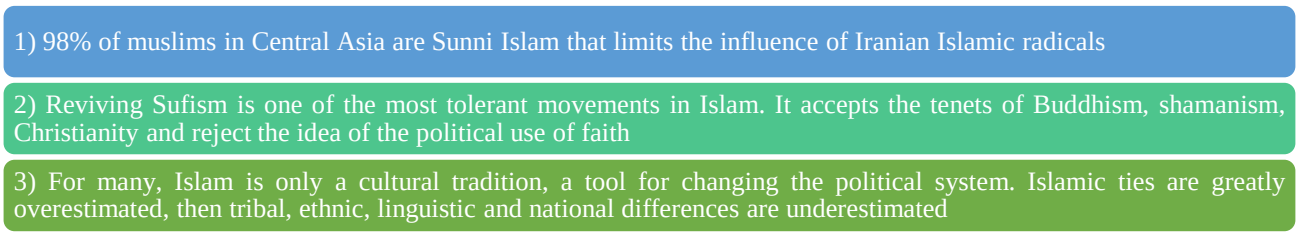

Figure 2. Reasons for the spread of radical forms of Islam

These disagreements do not necessarily block the path of joint Islamic activity, but they significantly slow down or even impede the development of the radical Islamic movement, G. Tazmini says, a scientist at the University of Kent in the UK. In the 90s, the governments of Central Asian states began to support traditional official Islam and clergy loyal to the government (mosques and madrassas were opened), but at the same time pressure on representatives of the so-called unofficial Islam, who in many cases were forced to act illegally, increased. Opposition Islam to a certain extent was engendered and, of course, intensified by the economic crisis and the impoverishment of the population, especially the rural population. E. Abdulaev calls the combination of Islam with the Soviet form of authoritarian rule the most characteristic feature of the decade of independence of the Central Asian states. However, he uses the terms "oppositional Islam". E. Abdulaev argues that in Central Asia, Islam is characterised not so much by national-state differences as by the difference

between Islam itself. The researcher divides it into 1) steppe (nomads and semi-nomads); 2) oasis (large cities); 3) mountain valleys (Tajikistan, Fergana Valley). In general, the issue of Islam in Central Asia is a complex and important issue that requires a separate thorough study.

Re-traditionalizing, which has affected to one degree or another all the states of Central Asia after the collapse of the USSR, has ambiguous consequences. The strengthening of clan, family, mahalla (community, neighbourhood), compatriot ties was caused not so much by the search for identity as by socio-economic reasons – they support large families, make it possible to raise children in the absence of parents, alleviate the consequences of the inevitable change in role functions in the family, mitigate the extremely heavy psychological blow for men who are used to feeding and providing for their loved ones. At the same time, traditional ties mean a significant decrease in the role of an individual, the dominance of collective values and the unconditional submission to the authority of older people or more successful and influential people. The study of the processes of socio-political development in the countries of Central Asia, understanding the background of these processes will make it possible to realistically assess and respond to events of both internal and external nature. The name of Hasan Oraltay is very closely connected with the concept of "independence" and "freedom". In fact, the name of Hasan Oraltay fully complements independence. He treated any issue concerning the Kazakh people from the point of view of national interests and tried to implement it. Until the last period of his life, all the works written and organised by him were devoted to urgent problems related to the Kazakh, with the Kazakh past and future, which were useful for the Kazakh people. The problem of independence, freedom was eternal, not left in the memory for a moment.

Hasan Oraltay is the former head of the Kazakh branch of Radio "Azattyk", a well-known writer, journalist, historian, translator, editor, an outstanding representative of the Kazakh diaspora, a public figure known to the Turkic world, author of fifteen books, hundreds of articles. Hasan Oraltay is a great man who deeply understands the power of the Kazakh language, who knows its properties, facing no matter what difficulties he did not stop, he tirelessly fought for complete independence and genuine independence of the bright future of the Kazakh people. Born in 1933 in Maylyzhayr, Tarbagatai district of the modern People's Republic of China. He witnessed the people's liberation movement of the peoples of East Turkestan. His father, Kalibek Raiymbekuly, was a loyal ally of the outstanding fighter for the freedom of Kazakhs Ospan batyr. As a result of the defeat of the liberation movement, the local population was forced to emigrate. This was written above [25; 26].

Young Hasan, in a group of Kazakhs led by Kalibek Raiymbekuly, paved their way to freedom through extreme lands – the Taklamakan desert, Tibet, the Himalayas. The Chinese troops pursuing on their heels did not allow to go to less dangerous places. Kalibek had 8 children. Of these, only two – Hasan and Bilal were able to reach the borders of India. Many refugees have lost their loved ones. Between 1951-1954 they lived in Kashmir. In Kashmir, Hassan Oraltay studied English and met National Geographic reporter Milton J. Clark, who came to Kashmir to write an article about Kazakh refugees. Later he wrote his doctoral thesis on "Leadership and Political Allocation in Sinkiang Kazak Society". The authors assume that his acquaintance with the American reporter gave impetus to his writing career.

In July 1954, Hasan Oraltay arrived in Turkey with his family, received Turkish citizenship. It is worth noting here the policy of Turkey, which recognised all Turkic peoples living outside Turkey, as "dış türkler" – "outside Turks". Kazakhs were also considered "outside Turks" and could count on all the benefits of the Turkish government. In Turkey, the Kazakhs tried to establish comprehensive relations, as well as preserve their national identity. The world community's interest in Kazakh refugees continued after emigration to Turkey. American, French and Turkish media wrote about them, books were published. So in 1956 in London the book "The Exodus of the Kazakhs" – "Kazakh exodus" by the writer Godfrey Lias was published.

From September 9 to October 11, 1957, in the daily political newspaper "Ege Ekspres", Hasan Oraltay publishes, in collaboration with journalist Özdemir Atalan, a series of articles "The Himalayan Saga" – "Himalaya destanı". This work is written in the first person and consists of 33 articles. Hasan Oraltay shared his memories of the past days for 33 days. From life in East Turkestan to emigration to Turkey. The work can be considered one of the first works written by Hasan Oraltay. In Turkey, Hassan Oraltay began to lead an active social activity, wrote articles, published newspapers and magazines. Here the formation of his worldview and principles ended. Analysing his works, one can trace in them patriotic, general Turkic, anti-communist, freedom-loving sentiments. He also supported and followed the ideas of Mustafa Shokai in every possible way [27]. In 1961 in the city of Izmir, a book by Hassan Oraltay was published on the theme "On the way to freedom. Kazakh Turks of East Turkestan". The book is dedicated to the people's liberation movement in East Turkestan and the role of Kazakhs in it. In 1976, in Istanbul, the second edition of the book was published with additions. This book has received good reviews from the Turkish scientific community.

He published such periodicals as "Büyük Türkeli" – "The Big Country of the Turks" (1962), "Komünizmle savaş" – "War against Communism" (1965-1967). Articles of such prominent personalities as Zaki Validi Togan, Fakhri Findikoglu, Baimyrza Hayit, Nihal Atsiz, Iskender Oxuz, and others were published here. On the title page of the magazine "Büyük Türkeli" a howling blue wolf – "kök böri" was, looking at the Muslim symbol – the moon and star. The image of the wolf has always been featured in the "Komünizmle savaş" newspaper. The purpose of the newspaper was to familiarise the public with the state of the Turkic peoples enslaved by the communist ideology. The content of the newspaper and magazine touched upon the problems of the whole Turkestan, including Kazakhstan. Particular attention was paid to the unity of all Turkic peoples.

In 1965, the book "The Great Turkic Poet Magzhan Zhumabayuly" was published in Turkish. The first chapter of this book was devoted to the kinship of all the Turkic peoples and the history in which they found themselves, in particular the Kazakh people too. And the second chapter is devoted to an outstanding representative of the Kazakh intelligentsia – Magzhan Zhumabayev. In addition, in this book, the poems of Magzhan are presented to the public of Turkey for the first time. Thanks to the translation of poems into Turkish, Turkish readers also could read. Since 1968, Hasan Oraltay started working for Radio Liberty. Working in the Kazakh radio service, he was able to touch upon topical issues of the history and everyday life of the Kazakh people. While working on the radio, he wrote a lot of articles and voiced them live on the radio. He headed the Kazakh radio service for various years. As former employees of the Kazakh service of radio "Azattyk" admitted, Hasan Oraltay put the national interests of the Kazakh people above. He, without fear, aired programs of a national and religious nature, which led to conflicts with the leadership of the radio. He worked very hard. Sometimes he stayed up late at work. Among the minuses in character, former colleagues indicated a tendency towards an authoritarian management style.

In 1971, in Munich, Hasan Oraltay published the saga (dastan) "Abylai" with his opening speech. The authorship of this work belongs to Mazhit Aitbai. This work has a great historical and cultural heritage for the Kazakh people. The work was written in 1944, when he was a member of the Turkestan Legion. The only surviving copy was found in the Munich library by Hassan Oraltay. In 1973 one of the most important books on the history of the national liberation movement Alash, entitled "Alaş. Türkistan türklerinin millı istiklal Parolası" – "Alash. National Liberation Anthem of the Turks of Turkestan". The book tells about the centuries-old national liberation struggle of the Kazakh people. This book is one of the first, which was written as close to the truth as possible at that time and regardless of the communist ideology. This is due to the fact that during that period of history in Kazakhstan, there were no practical studies on this topic, and those that were written could not escape the communist ideology and tried to denigrate rather than shed light on an unknown topic. Also, researchers may be interested in the work of the scientist on the topic "Some questions and answers of the history of East Turkestan", published in 1975. This work provides information about the national liberation uprising in East Turkestan and the peoples living there.

Together with his radio colleague, Charles Carlson, he wrote an article on the topic "Kül Tegin: Advice for the future?" in the Central Asian Survey in English. Published in 1983, this article told about the outstanding commander of the Turkic Kaganate Kültegin and analysed the text of the monument of the same name, which contains relevant materials about the Turkic will for freedom. The authors of the article, analysing the sayings on the monument, compared the state of the Turkic peoples who remained under the rule of foreigners and came to the conclusion that the outstanding commander left a great advice for the future for his descendants. It is worth noting that this article was written as a response to a positive assessment and celebration of the 250th anniversary of the "voluntary accession" of Kazakhstan to Russia in the Soviet Union.

In 1984, in Istanbul Oraltay translated into Turkish and published the "Explanatory Dictionary of the Kazakh Language" – "Kazak Türkçesi sözlüğü". It should be noted that the original of this translation was published in 1959 by the Academy of Sciences of the Kazakh SSR. In the translated work of Hasan Oraltay, Kazakh words were transcribed into Latin and an explanatory translation was given in Turkish. On his own behalf, H. Oraltai added the interpretation of the Kazakh words "Alash", "Alash Orda", "Qanau" – "Oppression", "Qandas" – "Consanguineous", which were absent in the original. In 1984, the article "Travel to East Turkestan" was published. Here the author wrote about a trip to East Turkestan, where he was invited by the Institute of Languages of the Xinjiang Uygur Autonomy of China. Hassan Oraltay was last here in 1949, when he was only 12 years old. The author wrote in the article about the life of the inhabitants of the region in comparison with the middle of the last century. As the author writes, since then, the life of the Kazakhs, and the entire region, has changed dramatically.

In 1985, the Central Asian Survey magazine published an article on the topic – "The alash movement in Turkestan". In the article, the author talked about the concept of "alash" and about the legend associated with it, as well as about the movement Alash and its prominent representatives. In addition, it is worth noting the great scientific value of his book-memoirs "Elim-ailap Otken Omir" – "Life passed for the sake of my

country." The source value of the book is very high. Also, Hasan Oraltay, when writing works, widely used pseudonyms. Among them are "Kazakbalası" – "Kazakh son", "Tarbağaraylı" – "From Tarbagatai", "Kırbalası" – "Son of the Steppe", "Türkistanlı" – "From Turkestan". The works written under this pseudonym have the same scientific value as others. The use of these pseudonyms again proves his love for his people. On was forced to leave his homeland in his youth. But he kept his love for her in his heart.

The work "17-18 Aralik 1986 Kazakistan Olayları" – "Events of Kazakhstan in December 17-18, 1986" was published in Istanbul in 1988. The author intended to combine the data for December into one work. Hasan Oraltay dwelled on the historical manifestations of the century-old struggle of the Kazakh people for freedom and independence against Russian colonialism. At the same time, he gave a lot of valuable information. He tried to explain the reasons for the December events in this way. In this direction, in April 1987 in the 47th issue of the magazine "Türk Dünyası araştırmaları" – "Studies of the Turkic world", published in Istanbul, a voluminous article by H. Oraltay "Kazakhstan – Kazakhs" was published. At the same time, America, France, Japan, Germany, England and other politicians and democrats from all over the world have collected a 4-volume book, which was generalised and distributed under the guidance of scientific centres, press centres around the world. At one time M. Shakhanov gave one of the versions of this collected 4-volume book. And it was Hassan Oraltay who was the first to proclaim the independence of Kazakhstan with his voice on the Azattyk radio. During his life, he was awarded the highest national award "Altyn Samruk" by the Kazakhstan Academy of Journalism. After he retired in 1995, H. Oraltay continued his active work. He wrote a lot and published articles in Kazakhstani and foreign editions.

CONCLUSIONS

In the history of science, there are individuals who, in spite of life's difficulties and hardships, walk an unbeaten path, thereby paving the way to true knowledge, and lead a whole generation of young and promising scientists. Hasan Oraltay was such a person. He had a chance to live and act in different historical times, in the conditions of sharp turns of social development, but always and invariably he showed his wonderful personal qualities – stamina, purposefulness, decency. Despite the difficulties, Hasan Oraltay did not stop his activities for a moment. He was one of the first abroad to publish various articles and books on the topic "Kazakh Turks". Until 1973 in the West there was no information about "Alash". This topic was briefly touched upon in the writings of Ahmet Zaki Validi and some articles by Mustafa Shokai. And in a situation where it was impossible to get information from Kazakhstan, heroism, words about "Alash", "Alashorda", the publication of books required painstaking work. However, Hasan Oraltay in 1973 published the book "Alaş. Türkistan türklerinin millı istiklal Parolası" – "Alash. National Liberation Anthem of the Turks of Turkestan". This book tells about the history and meaning of the name "Alash", about the Alash party and the government of Alashorda.

For 77 years of his existence, Hasan Oraltay devoted his life to the Kazakh people, to the Motherland – "elim-aylap atkizdi". On April 14, 2010, he passed away. Buried next to his father and brother Bilal in the city of Salihli, Turkey. His father Kalibek is a hero of the national liberation struggle of East Turkestan. To some extent, Hasan Oraltay is the continuation of this struggle. While working for radio "Azattyk", he very often touched upon the topic of the independence of the Kazakh people. He strongly criticized the issue of "voluntary" accession of the Kazakh people, as well as the entire Turkestan to Russia. In all his writings, he categorically denied this theory. Much has changed dramatically since the independence of the Republic of Kazakhstan. Contemporary Kazakh historiography is in many ways similar to the views of Hasan Oraltay. The view of the Kazakh diaspora in Turkey and Europe has changed from "traitors", "enemies of the people" to the opposite "freedom fighters", etc. And H. Oraltay himself is considered a national hero.

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Suggested Citation: Aktailak, B.B., Sadykov, T.S., Kushenova, G.I., Battalov, K.K., & Aliakbarova, A.P. (2021). The idea of independence and freedom in the activities of Hasan Oraltay. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(3), 97-108.

Submitted: 02.06.2021
Revised: 17.08.2021
Accepted: 09.09.2021

УДК 9. 327
DOI: 10.37635/jnalsu.28(3).2021.109-118

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ІСТОРІЯ ПАРТНЕРСЬКИХ ВІДНОСИН РЕСПУБЛІКИ КАЗАХСТАН З КРАЇНАМИ ДАЛЕКОГО ЗАРУБІЖЖЯ (1990–2000)

Анотація. *Особливе значення мають відносини з іноземними державами, які почали реалізовуватися в перші роки незалежності Республіки Казахстан. Відомо, що ведення економіки країни відповідно до вимог світових ринкових відносин, отримання інвестиційної та фінансової допомоги від цих країн, обмін досвідом, налагодження імпортно-експортних торговельних відносин стали основою майбутнього країни. Ось чому налагодження багатосторонніх відносин нарівні з іноземними країнами, економіка яких досягла рівня випереджаючого розвитку, включено до основного плану роботи зовнішньої політики Республіки Казахстан. У статті розглянуто політичне, економічне та культурне партнерство Республіки Казахстан з Японією, Туреччиною, Південною Кореєю, Індією, Ізраїлем, Монголією та іншими зарубіжними країнами в перше десятиліття незалежності. Були використані дані, документальні матеріали та праці вчених, що займаються міжнародною політикою, зроблено науковий аналіз висновків по темі та надано рекомендації щодо подальшого вивчення справи*

Ключові слова: *зовнішня політика, азіатський континент, культурні відносини, дипломатія, зовнішня міграція*

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HISTORY OF PARTNERSHIP RELATIONS OF THE REPUBLIC OF KAZAKHSTAN WITH FAR ABROAD COUNTRIES (1990-2000)

Abstract. *The relations with foreign countries, which began to be implemented in the first years of independence of the Republic of Kazakhstan are of particular importance. It is known that conducting the country's economy in accordance with the requirements of world market relations, receiving investment and financial assistance from these countries, exchange of experience, the establishment of import-export trade relations have become the basis for the future of the country. That is why the establishment of multifaceted relations on an equal footing with foreign countries, whose economies have reached the level of advanced development, is included in the main work plan of the foreign policy of the Republic of Kazakhstan. The article considers the political, economic and cultural partnership of the Republic of Kazakhstan with Japan, Turkey, South Korea, India, Israel, Mongolia and other foreign countries in the first decade of independence. Data, documentary materials and works of scientists dealing with international politics were used, a scientific analysis of the topic conclusions were made, and recommendations for further study of the case were given*

Keywords: *foreign policy, Asian continent, cultural relations, diplomacy, external migration*

INTRODUCTION

From the first days of its independence, the Republic of Kazakhstan has been focusing on relations with foreign countries located on different continents of the world. The establishment of relations with the countries of the Asian continent, the Middle East, which have developed economies, achieved world-class success in education, science and health, and developed economies in line with market requirements were among them. That is why it is necessary for Kazakhstan, which has just gained independence, to get acquainted with the achievements of these countries in this area and to exchange experiences at various levels. The achievement of investment plans of these countries in the economy of Kazakhstan was among them. To achieve this goal, "Kazakhstan considers the main direction of foreign policy as the further development and strengthening of relations with Central Asian countries" [1].

The Republic of Turkey, Japan, South Korea, India, Israel, Singapore, Malaysia and other developed countries were among those countries. Mongolia has been one of the countries that Kazakhstan established multilateral cooperation in the first period of independence. During this period, Mongolia's livestock and mining industries began to enter the market more intensively. At the same time, it was necessary to establish multilateral contacts with the large Kazakh diaspora living in Mongolia, to organize the return of their wishes to their historical homeland at the bilateral level. Researcher of international relations A.E. Dzhorobekova in her work "Theory of International Relations" wrote that "International relations is an integral part of science.

It covers the history of diplomacy, international law, the world economy, military strategy and other areas, and comprehensively studies various objects. Therefore, the theory of international relations plays an important role. It has its own concept, theory and methodology" [2].

Lee Kuan Yew led a delegation of the Government of Singapore to the Republic of Kazakhstan at the beginning of the planning period for the development of the Republic of Kazakhstan as an independent state in the early days of the collapse of the Soviet Union. The transcript of the meeting is stored in the archives of the President of the Republic of Kazakhstan. It should be noted that the leaders of the two countries discussed ways to develop the new state and analyzed many issues. At the meeting, Lee Kuan Yew met with President of Kazakhstan Nursultan Nazarbayev. He gave Nazarbayev a number of advice and recommendations on the development of the country. In particular, the issues of development of a market economy and restructuring of the state were discussed. Li-Kang-Yu President of Kazakhstan N.A. Nazarbayev was advised that in order to develop the state, first of all, it is necessary to develop small and medium-sized businesses [3].

Veteran of diplomacy of the Republic of Kazakhstan S.A. Kurmangozhin writes in his "45 Years of Diplomatic Service: Memoirs: "Kazakhstan's Ministry of Foreign Affairs began to take shape in the early 1990s. Interstate relations, interaction of diplomats and their relations with the central office have improved, as well as relations with foreign economic and foreign countries. Thus, the leadership of the republic began to pursue a foreign policy" – he wrote [4]. James Griffen, President of Mercator Corporation of the United States of America in his paper "We, Americans, "Time is money" expressed his viewpoint assessing Kazakhstan's partnership with foreign countries as a real witness "In my opinion, one of the most important steps taken in the country recently was the establishment of the National Agency for Foreign Investment. The existence of such organizations is typical for Western countries with developed economies" [5]. In the book "Belasu" the famous politician, diplomat, statesman (now the President of the Republic of Kazakhstan) Kassym-Zhomart Tokayev provides an in-depth and comprehensive analysis of the formation and development of foreign policy of independent Kazakhstan. The author writes: "International experts assess the prospects of Kazakhstan as a modern thinker who analyzes the relations between Kazakhstan and the Far East" [6].

Theoretical and methodological issues of the historical study of partnerships between Kazakhstan and foreign countries should be in the forefront. To do this, it is a very important issue to review the documents of bilateral or multi-vector negotiations, based on archival data and scientific literature, analyze it in terms of historical research and study the relationship of states on theoretical and methodological principles, referring to the works of experts and scholars on interstate relations. Therefore, the main object of research in this article is to consider the economic, political, diplomatic and cultural relations of Kazakhstan and the Far East. Then the issue of conceptual analysis of interstate relations is also important.

1. MATERIALS AND METHODS

New research data from the Archives of the President of the Republic of Kazakhstan (AP RK), the Archives of Foreign Policy of the Russian Federation (AFP RF), the State Archives of Turkestan region (SATR), the State Archives of Akmola region (SAAR) were used to write the research article. In addition, foreign and domestic research papers on diplomacy and international relations were analyzed and referenced.

The methods of historiography, objectivity, historical comparative analysis and historical sequence were mainly used in the theory and methodology of scientific research. It is obvious that the partnership of the Republic of Kazakhstan with foreign countries, which we are studying, is a connection of states of international level. Relations between the countries of the world are bilateral or multi-vector. In particular, they focus on specific areas such as economic, political and cultural ties. The most important issue is the historical study and research of interstate relations. In other words, considering the relationship between the two countries, we also see the ongoing processes of world-class relations. From these processes we can study the development, prospects and co-development of states with the rest of the world.

2. RESULTS AND DISCUSSION

Special mention should be made of the justified relations with the Republic of Turkey, one of the above-mentioned countries. It is known that Turkey and Kazakhstan are united by thousands of years of historical, cultural and ritual traditions. At the same time, "among the countries of the region, the Republic of Turkey is more adapted to European development, as it is a member of NATO, has active ties with the EU, and has close military-political ties with the United States and Europe. That is, Turkey is a window to Europe for the Muslim world, a real example of Eurasia. Turkey was one of the first countries to actively support Kazakhstan's initiative to establish the Conference on Interaction and Confidence Building Measures in Asia (CICA). He

fully understands Kazakhstan's desire to establish a structure to ensure the security and confidence of all members of this organization in the Eurasian Valley [7].

The first President of the Republic of Kazakhstan N.A. Nazarbayev wrote that "Turkey was the first country to recognize Kazakhstan's independence. Focusing on the specifics of relations with this country, it is an important regional partner for us. In April 1993, Turgut Ozal arrived in Kazakhstan. Speaking at the Supreme Council, the Turkish leader said: "Turkey is doing and will continue to help Kazakhstan, because the development of one nation contributes to the development of another". N.A. Nazarbayev: "My first official visit to Turkey in October 1994 raised bilateral relations to a higher level. A new Friendship and Partnership Agreement has been signed with the country's new President Suleyman Demirel and Prime Minister Tansu Chiller. During the first difficult years of independence, Turkey provided significant foreign policy support to Kazakhstan. Regular Kazakh-Turkish high-level meetings have become a tradition. Close political ties have deepened economic and cultural cooperation. In mid-1995, more than 150 Turkish companies were registered in Kazakhstan and direct flights were launched. Every year, hundreds of young Kazakhstanis study in Turkey, and Turkish students study in Kazakhstan" [8].

Attention was also paid to the implementation of cooperation in the field of defense and military relations between the two countries during the described period. In particular, "the Republic of Turkey is the first foreign country that has established active cooperation in the military sphere and in the creation of its armed forces since the independence of Kazakhstan. Since then, our countries have made great strides in defense cooperation. For example, agreements and integration in the field of technology, military cooperation, joint development and testing of defense products, as well as joint supply and integrated use of advanced defense equipment are being implemented" [9].

Until the mid-1990s, the foundations of economic relations between the states were laid steadily, and their volume has been growing year by year. For example: "Trade and economic relations between Kazakhstan and Turkey are developing steadily. Turkish companies have already invested $ 5 billion in Kazakhstan in 2000. 1.5 billion dollars. Today, more than 30 Turkish companies are accredited in Kazakhstan; more than 90 Kazakh-Turkish joint ventures operate. Turkish business can be found everywhere in Kazakhstan" [10]. At the same time, the types of activities between the Kazakh and Turkish diasporas living between Kazakhstan and Turkey, which are located in the two countries, have been identified and specific measures have been taken. According to official data from the 90s of the XX century" the number of Kazakhs in Turkey – no more than 20 thousand" [11]. Relations between the Republic of Kazakhstan and the Kazakh Diaspora in Turkey have been fruitful in the course of joint activities in a spirit of mutual understanding. The same can be said about the interstate cooperation with the Turkish diaspora in Kazakhstan.

For Kazakhstan, which has long been under the rule of others and has experienced the consequences of dependence, the implementation of the requirements of mutual equality and complete freedom in relations with the states in the new situation has been a priority since day one. This requirement has become an integral part of the foreign policy of the President. Well-known Kyrgyz politician Zh. Saadanbekov said "At the first Istanbul Summit of the Turkic states, N.A. Nazarbayev refused to sign a joint statement prepared by the Turks stating that the Central Asian states should unite around Turkey on the basis of common historical roots, common language and cultural brotherhood, and a common community. N.A. Nazarbayev was always on the side of the truth and remained a pragmatist because it was a legitimate step. The accuracy of his predictions was known. Kazakhstan has become a modern state on the basis of historical circumstances. It is necessary to restore the broken ties in a civilized way as like-minded people without starting the independence that has just been realized" [12].

Along with Turkey, the Republic of Kazakhstan has made significant progress in relations with Japan, South Korea and India [7]. It is because, as mentioned above, it was clear that it was necessary to establish relations with developed Asian countries. That is why in the early days of independence the foundation of bilateral relations with Japan was laid. After all, Japan, a distant Asian country, has also been interested in establishing comprehensive relations with Kazakhstan since independence. N.A. Nazarbayev wrote "In April 1994, I went on an official visit to the Land of the Rising Sun. I set several goals. I wanted to agree on the creation of production and economic platforms in Kazakhstan for the flood of Japanese goods spreading across Asia. It would be great if Kazakh-Japanese capital became a center of influence in Central Asia. We have every reason to believe so. There are enough sources of raw materials. Relevant laws have been adopted. The level of education of our people is also high. If we solve the land issue and provide additional guarantees for the activities of foreign companies, Kazakhstan would become the only bridgehead for Japan to enter the markets of the CIS and the West, China, Iran and Turkey. I suggested setting up a joint commission to discuss these issues. The issue of construction of the West Kazakhstan-Kumkol oil pipeline, the Central Asia-Kazakhstan-China-Japan gas pipeline was also discussed during the talks" [13].

As a result of the bilateral agreements implemented in this situation it is noted that "These days, bilateral cooperation between Kazakhstan and Japan is actively developing including political, economic and humanitarian cooperation. Japan is the largest supplier of our country among these countries. Japan's relations with Kazakhstan are dominated by economic sectors. Focusing on this issue, the main task of Kazakhstan is to attract Japanese investors. At the same time, Japan has become a major donor to our country. The main place in the deepening of Japan's relations with Kazakhstan is given to the economic direction. The main task of Kazakhstan was to attract large Japanese investments. In other areas, including the acceleration of scientific and technical cooperation, earthquake prediction, environmental protection, the peaceful use of space, the solution of the Aral Sea problem, etc." [14].

In particular, "Japan's Official Development Assistance" has allocated a number of funds to Kazakhstan. For example, in 1996, 72.36 million tenge was allocated for the reconstruction of the Dostyk railway station and in 1997, $215 million was allocated to Kazakhstan for the construction of a road bridge across the Irtysh River in Semey. An agreement on the distribution of US dollars was signed. Japan is a producer of vehicles (28% of imports), electrical equipment and household appliances (17%), as well as metal products (30%) to Kazakhstan. The large Japanese companies "Mitsubishi", "Mitsui", "Sumitomo", "Itochu", "Chori", "Nichimen", "Nisse Iwai" and others have witnessed the active participation in the development of economic ties between our countries.

Cooperation in science and technology is developing. In connection with the accession of our country to the NPT (Treaty on the Non-Proliferation of Nuclear Weapons), in March 1994 the Republic of Kazakhstan and Japan signed the Agreement on the Elimination of Certain Nuclear Weapons in Kazakhstan and the Agreement on the Establishment of the State System for Accounting and Control of Nuclear Materials" [7]. Kazakhstan's next integration with the Republic of Korea in the early 1990s began. "The main event in bilateral relations with the Republic of Korea was the signing of the Declaration on the main areas of cooperation and cooperation between the Republic of Kazakhstan and the Republic of Korea, the agreements on scientific, technological and cultural cooperation between the Governments of the Republic of Kazakhstan and the Republic of Korea. N.A. Nazarbayev paid an official visit to Seoul in May 1995. In March 1996, the Governments of the Republic of Kazakhstan and the Republic of Korea signed the Agreement on Support and Joint Protection of Investments.

The trade turnover of Kazakhstan with the Republic of Korea for seven months of 1996 amounted to 153405.3 thousand US dollars, including exports – 124105.4 thousand dollars, imports – 2919969 thousand dollars. The Kazakh-South Korean intergovernmental commission on trade, economic, scientific and technical cooperation has been established. Kazakhstan has begun to develop a number of joint economic projects with enterprises" [15]. According to official Russian data on the course of economic, trade and other relations between the two countries, "the priority for South Korea, a leading Asian country, is the establishment of joint ventures in Kazakhstan is the development of trade, which is less than a dollar. It should be noted that the Government of the Republic of Kazakhstan is actively calling for the investment of South Korean capital in the republic" [16].

Thus, from the first days of independence, Kazakhstan "has high hopes for financial and technological assistance to Japan and South Korea" [17]. And its results were characterized by more systematic implementation each year on the basis of mutual benefits. From the first years of independence, Kazakhstan's relations with India, a major Central Asian country, have also developed in a mutually beneficial manner. The reason: "The Republic of India is a major regional power that has a real impact on the situation in South Asia and the world. He is one of the well-known leaders of the Non-Aligned Movement and an authoritative member of the world community. The initiative of bilateral relations was taken by President N.A. Nazarbayev's official visit to India in February 1992. The Declaration on the main requirements and directions of interstate relations between the Republic of Kazakhstan and the Republic of India, the Protocol on the establishment of diplomatic relations, the Interstate Agreements in the field of trade and economic, science and technology, culture, art, education, media and sports were signed.

The Indian side supports Nazarbayev's initiative to convene the Conference on Interaction and Confidence Building Measures in Asia (CICA) and regularly participates in its meetings [18]. The level of multifaceted Kazakh-Indian relations in the 90s of XX century: "Currently, 6 Indian companies and partnerships operate in Kazakhstan, 9 joint ventures are registered. According to the results of 1995, the bilateral trade turnover amounted to 14.6 mln. dollars. The trade turnover in January-September 1996 amounted to 15 million 085.4 thousand dollars, including exports – 747.5 thousand dollars, imports – 14 million, 337.9 thousand dollars. The main types of exports are leather products, ferrous metals. Types of imports: grain products, processed vegetable products, organic chemicals, pharmaceuticals, essential oils, soap and detergents, paper and cardboard, technical equipment, mechanical equipment.

In 1993-1996 there were a number of major Indian trade representatives in Kazakhstan. An exhibition of Indian goods was organized in Almaty in December 1995. In October 1996, the largest exhibition of Indian goods and technology was held with the activities of the Chambers of Commerce of Kazakhstan and Indian goods. An important event in strengthening cultural cooperation was the celebration of the 150th anniversary of Kazakh poets Abai and Zhambyl in India, the publication of a collection of poems by Abai in Hindi, and the 125th anniversary of Mahmatma Gandhi in India, whose postage was issued in Almaty in October 1995" [19]. From the first days of independence, Kazakhstan's relations with Israel began to develop on a planned basis. The Kazakh side praised the cooperation between the two countries. Special attention was paid to the development of science, medicine and high technology. It is planned to develop cooperation in oil and gas production as well. In pursuit of this goal in December 1995, the President of the Republic of Kazakhstan N.A. Nazarbayev During his official visit to Israel and met with heads of state and business leaders: "Kazakhstan is the ninth largest country in the world. We have significantly higher per capita reserves of oil, coal, iron, chromium, manganese ores, many non-ferrous metals and phosphates than the world average.

The country is a major producer of grain and livestock products, grain exports in favorable years will reach 10 million tons. We produce 20 million tons of oil annually. Its proven reserves are two billion tons, and gas reserves are 2 trillion square meters. Their exploration and development is significantly related to the economic and export potential of our country. Today, the world's largest oil companies, which are waiting for their development, are showing real interest. In Kazakhstan Chevron, Mobile, British Gas, British Petroleum, Agip, Elf-Akiten and other companies are already operating. Non-ferrous metallurgy is one of the leading industries. Its share in the country's industrial output is 11.6%, and in exports – 35%. There are more than 40 enterprises in the field of chemical and petrochemical production. The products of mechanical engineering make up about 8% of the total industrial output of the republic and are concentrated in 380 production facilities" [20]. The pace of development of various sectors of the economy of Kazakhstan was reported. Many bilateral agreements have been signed. The Israeli government praised Kazakhstan's efforts to enter the market economy. The plan of joint work was approved. At the same time, full support was given to the initiatives of the leadership of Kazakhstan to regulate the world's hotbeds of war, non-proliferation of nuclear weapons, and the closure of test sites.

Since the early 1990s, the basis for multifaceted cooperation between the Republic of Kazakhstan and Mongolia has been laid, and its scope has been expanding year by year. Both countries were interested in establishing a new era of ties between the historically rooted Kazakh and Mongol peoples. "Kazakhstan-Mongolia relations are mainly active. About 30 agreements and treaties have been signed between the two sides. More than half of it is in economic direction" [21]. Along with the regulation of economic and trade relations, as well as integration in other areas, it became important for our country to establish various relations with the large number of Kazakhs living in Mongolia these days, resettled in different periods of history. Among the issues on the agenda was the relocation of those wishing to return to their historical homeland to Kazakhstan, as well as the joint decision on their resettlement [22].

It is known that from the first years of independence, Kazakhstan took many concrete measures and many Kazakh families living in Mongolia began to return to their historical homeland. New legal provisions and programs have been adopted to fulfill the wishes of Kazakhs living in all countries wishing to return to their historical homeland, to determine the international legal status of this case. For example, on December 31, 1996, the President of the Republic of Kazakhstan N.A. Nazarbayev's Decree No. 3308 approved the "Program to Support Compatriots Living Abroad". It sounded "The level of cultural, social and economic development of the diaspora in these countries is completely different. Comprehensive research and solution of the Kazakh diaspora, the unity and interconnectedness of scientific research and practical activities are not given much attention.

Comprehensive improvement of work with compatriots abroad will be possible only with regular and targeted state support. It is necessary to create a system of thoughtful measures to ensure maximum satisfaction of socio-economic, cultural, and educational needs of the Kazakh diaspora, to allow those who want to return to their historical homeland" [23]. With the adoption of the State Program, targeted work has begun on its implementation. Among such works, due to the large number of people wishing to relocate to Kazakhstan on a regular basis, a new impetus was given to the settlement of migration with the Republic of Mongolia. An official government report reads: "A draft Simplified Agreement on renunciation of Mongolian citizenship has been developed between the Ministry of Foreign Affairs of the Ministry of Employment and Social Protection of the Republic of Kazakhstan and other relevant agencies. The draft agreement on tax-free migration of migrants from Mongolia to Kazakhstan through the territory of Russia to the Russian side was developed and presented [24; 25].

Effective ways to address the existing problems in the regulation of migration between the two countries were considered. As a result, since then, the volume of comprehensive contacts with historical compatriots in Mongolia has increased. There are many types of legal and material conditions for those who want to relocate. There are plans to place them in different regions of Kazakhstan. The number of placement quotas has been increased and is beginning to be determined by efficiency. For example, in the Republic of Kazakhstan in the second half of the 1990s, according to the state plan for the repatriation of Kazakh citizens wishing to return to their homeland, "Akmola region was given a quota for the arrival of 150 families in 1996. 89 of them applied for reunion with their relatives. ... In total, 72 out of 89 families in the quota came. Almost all migrants from Mongolia with quotas were provided with housing. Families were provided with jobs in Atbasar, Krasnoznamensk and Tselinograd districts [26].

The directory of settlements of compatriots who voluntarily returned to their historical places in the regions of Akmola region for 1992-1996 was as follows. In particular: "From Mongolia: 18 families with 113 members in Alekseev district; 255 families with 1304 people are located in Atbasar district, 307 families with 1627 people in Mongolia in Ereimentau district, 243 families with 1257 people in Seleti district, 146 families with 694 people in Shortandy district. In total, 1457 families with 7470 people from Mongolia came and settled in the region" [27]. The repatriation of Kazakhs from abroad, including the Russian Federation, China, Mongolia, Iran and Afghanistan, where there are many of them, continues in the Republic of Kazakhstan on the basis of bilateral agreements with these countries. Its regions and districts of the Republic of Kazakhstan are also involved in cooperation with foreign countries. These ties are based on economic, trade, tourism, cultural, sports, health, education and science cooperation with the regions of these countries. In particular, during this period, "the foreign relations of the Southern region of the country for the purpose of sustainable economic, cultural and social development were distinguished by their breadth. For example, in the South Kazakhstan region". The geography of foreign trade turnover is very wide and the region interacts with more than 70 countries around the world [28].

The total foreign trade turnover of the region for six months of 2002 amounted to 147 mln. USD, and 92 million went to experts in the textile industry, chemical production, non-precious metals and leather and leather products. Turkish, Korean and Japanese companies supply machinery and equipment, plastics, rubber products and rubber. Today, 73 joint and independent foreign enterprises covering 9415 people operate in the region. The total authorized capital of joint ventures is 3.9 billion tenge, including 68.6% in the share of foreign founders. The amount of investments of these enterprises in fixed assets reached 755 million tenge. The enterprises provide services in the field of processing of petroleum products, cement, pharmaceuticals, clothing, furniture, tobacco, textiles, tea and real estate.

Most of the joint ventures and foreign companies are located in Shymkent. The companies, established with the participation of partners from Turkey and the United Arab Emirates, sell food, chemical products, construction materials and machinery. The largest of them are the joint ventures Coca Cola Almaty Botlers and Irma-2. Shymkent-Profile and Gunel Ltd. Pvs, which produce plastic and aluminum products using spare parts imported from Turkey, are a special category. In 6 months of 2002, these enterprises produced 75 mln. tenge worth of products. Since its inception 28 mln. Asia Nasib LLP, which has invested more than KZT 1 billion in the publication of Shara-Bara newspaper, provides publishing services [29; 30].

In the second half of the 90s of XX century, in accordance with the State Program of the Republic of Kazakhstan, the East Kazakhstan regional administration began to provide employment and accommodation services to returnees from Mongolia, China, Iran and other countries. According to archival documents, according to the East Kazakhstan regional department of migration and demography, as of September 1, 1998, there were 1,074 repatriate families in the region, amounting to 15,340 people. In order to implement the Decree of the President of the Republic of Kazakhstan "On the allocation of quotas for repatriates" in the budget of the region in 1998 provided 61.5 million tenge for the reception and placement of repatriates. Since the beginning of 1998, 21 houses for 2050.0 thousand tenge have been purchased for repatriate families, 22 more houses have been selected and paid for [31]. Most of these repatriates were Kazakh families returning from Mongolia. At the same time, contacts with representatives of Turkish and Korean enterprises and business circles of the East Kazakhstan region have been strengthened. In particular, "Officials of the Embassy of the Republic of Turkey and the DEDEMAN Hotel Association in Ust-Kamenogorsk prepared a project" that is "Training for hotel business managers", the results and recommendations of which were sent to the Republic of Turkey, Antalya, Belek" [31].

On November 3, 2014 a meeting of the Akimat of the East Kazakhstan region with the chairmen of the company "POSCO e&c" of the Republic of Korea was held. The issues of implementation of concession investment projects of East Kazakhstan region on the basis of public-private partnership were discussed during the meeting. In Ust-Kamenogorsk it was considered the construction of a multidisciplinary polyclinic for

300 people and the construction of a bridge in "Bukhtarma Reservoir" for a cost of 230 million US dollars. The funds allocated for the construction of the bridge amounted to 20.8 billion tenge, the cost of a multidisciplinary hospital – 14.4 billion tenge [31].

In addition to this work, the administration of the East Kazakhstan region is working on future contracts with foreign medical centers in the field of health care. For example:

1. According to the decisions of the agreement signed on March 19, 2014 between the Kangwon Province of the Republic of Korea and the Akimat of East Kazakhstan region, the research agency of the Korean Agency for International Community a memorandum on the implementation of the project "Strengthening the urgent medical support system in Kazakhstan" was signed. The purpose of the project is to strengthen the system of emergency medical care in East Kazakhstan, exchange educational and business experience with specialists of the Republic of Korea, conduct advanced training courses for medical workers of East Kazakhstan, provide capacity building in the field of emergency care.

2. The project "Construction and operation of the city polyclinic for 300 beds in Ust-Kamenogorsk" is developed and approved. The total cost of the project is 14.4 billion tenge [31].

The established trade, economic, political and cultural partnership of the Republic of Kazakhstan with the countries of the world, including the developed countries of the Asian continent, in the first decade of independence is characterized by its effectiveness and importance for further development. At the same time, it can be considered that the Republic of Kazakhstan has developed an exemplary experience in this field. Therefore, it is necessary to publish the first results of Kazakhstan's cooperation with these countries in the field of historical research, to make documentaries on the foreign policy and partnerships of the Republic of Kazakhstan, to make special educational programs, to organize fundamental research projects at the international level. We believe that attention should be paid to performance. We suggest that the research community should pay constant attention to the research and implementation of research projects that tell the story of the directions and stages of Kazakhstan's foreign relations and analyze the results. It is known that through such organizational work it is possible to achieve the promotion of the relevance, effectiveness and experience of the foreign policy of the Republic of Kazakhstan at the global level. And it is known that this will determine the worthy place of our state in world politics.

CONCLUSIONS

In conclusion, in the foreign policy of the first decade of independence of the Republic of Kazakhstan, the establishment of comprehensive relations with the above-mentioned countries with developed economies and a special place in the world community was characterized by such concrete results:

- relations with these countries are based on mutual equality and cooperation. In Kazakhstan, many joint ventures have been established and effective work has been done in the course of agreements with the business community, finance and industry of these countries;
- investments and financial assistance were provided to the industries of the country. Specialists from Kazakhstan's heavy and light industries, trade, finance and other fields visited these countries and exchanged experiences;
- stable cooperation in education, science, health, culture has been ensured;
- many regions of Kazakhstan are involved in multifaceted cooperation with these countries, and the work done has yielded positive results;
- these states have assessed Kazakhstan as a reliable partner as a result of concrete measures taken on the basis of such requirements of mutual equality and understanding.Such cooperation measures, which are characterized by their effectiveness in terms of mutual business, have continued since the beginning of the twentieth century.

The concrete work done has contributed to the integration of the economy of Kazakhstan, other areas of state development into the requirements of cooperation in a peaceful world, market relations. And this has determined the correctness and effectiveness of the foreign policy of our state in this era.

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Suggested Citation: Karasayev, G.M., Ospanova, R.R., Naimanbayev, B.R., Yerimbetova, K.M., & Kairgaliyeva, G.K. (2021). History of partnership relations of the Republic of Kazakhstan with far abroad countries (1990-2000). *Journal of the National Academy of Legal Sciences of Ukraine*, 28(3), 109-118.

Submitted: 14.05.2021
Revised: 09.07.2021
Accepted: 21.08.2021

УДК 94:327
DOI: 10.37635/jnalsu.28(3).2021.119-128

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ІСТОРІЯ РЕГІОНАЛЬНИХ ВІДНОСИН У ЗОВНІШНЬОПОЛІТИЧНІЙ ДІЯЛЬНОСТІ РЕСПУБЛІКИ КАЗАХСТАН (1991–2014)

Анотація. *Останнім часом сформувалася правова база відносин Казахстану з іншими країнами, зросла довіра та повага світового співтовариства до країни. У цій статті досліджуються регіональні партнерства Східно-Казахстанської та Північно-Казахстанської областей Республіки Казахстан у період з 1991 по 2014 роки на основі архівних даних, документів у збірниках та аналізу наукових праць. Досліджено багатогранні партнерські відносини регіонів Республіки Казахстан з регіонами, районами, прикордонними районами країни, що відрізняються їх важливістю та ефективністю. Досвід у цій сфері показує, що таке партнерство у зовнішній політиці дозволяє повною мірою реалізувати відносини, особливо в економічній та соціальній сферах. Завдяки такій співпраці можна буде поглибити міждержавні відносини на основі взаємної вигоди. Таким чином можна буде визначити особливості та двосторонні потреби регіонів та надалі регулярно встановлювати контакти. Отже, метою всіх угод з іноземними країнами, укладених з початку 90 -х років XX століття в економічній, культурній, охоронній, освітній, науковій та інших сферах, було залучити до цих відносин усі регіони Казахстану. Така діяльність враховує забезпечення співпраці та обмін досвідом із країнами, які розвивалися завдяки високому технічному розвитку*

Ключові слова: *звичаї, дипломатія, міжнародні відносини, інтеграція, багатовекторні напрями*

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HISTORY OF REGIONAL RELATIONS IN FOREIGN POLITICAL ACTIVITY OF THE REPUBLIC OF KAZAKHSTAN (1991-2014)

Abstract. *Lately legal framework of Kazakhstan's relations with other countries has been formed, the confidence and respect of the world community for the country has increased. This research article examines the regional partnerships of the East Kazakhstan and North Kazakhstan regions of the Republic of Kazakhstan from 1991 to 2014 on the basis of archival data, documents in collections and analysis of scientific papers. The multifaceted partnerships of the regions of the Republic of Kazakhstan with the regions, districts, border areas of the Republic of Kazakhstan distinguished by their importance and effectiveness are studied. Experience in this area shows that such a partnership in foreign policy allows for the full realization of relations, especially in the economic and social spheres. Through such cooperation, it will be possible to deepen interstate relations on the basis of mutual benefit. It will be possible to identify the specifics and bilateral needs of the regions, and further establish contacts on a regular basis. Thus, the purpose of all agreements with foreign countries concluded since the beginning of the 90s of the XX century in economic, cultural, health, education, science and other areas was to involve all regions of Kazakhstan in this relationship. Such activities take into account the provision of cooperation and exchange of experience with countries that have developed through high technical development*

Keywords: *customs, diplomacy, international relations, integration, multi-vector directions*

INTRODUCTION

From the very first days of independence, in the foreign policy of the Republic of Kazakhstan, special attention was paid to the active involvement of various sectors of the country. This is due to the fact that the main direction is to connect the vast regions of the country with the rest of the world, including the border areas of neighboring countries on industrial, economic, cultural, educational and scientific and other issues. Through such a plan, the purpose of all agreements concluded with foreign countries since the early 1990s in the economic, cultural, health, education, science and other areas was to involve all regions of Kazakhstan in this relationship. It is known that such activities are aimed at ensuring cooperation and exchange of experience with developed countries through high technical development.

When considering the foreign policy of the Republic of Kazakhstan during the years of independent development, it should be noted that the legal framework of Kazakhstan's relations with many countries has been formed, the confidence and respect of the world community for the country has increased. The necessary preconditions for Kazakhstan's integration into global and regional economic processes have been laid, and foreign policy priorities have been selected. Kazakhstan's foreign policy priorities were formed primarily

under the influence of long-term factors such as the country's geographical location and its national interests. Kazakhstan pursues a multi-vector foreign policy. A lot of work has been done in the field of foreign investment. Agreements have been reached with campaigns and companies from leading countries around the world. Specific directions in foreign policy have been identified. Currently, the Republic of Kazakhstan is a country with its own place in the world community [1].

1. MATERIALS AND METHODS

New research data from the archives of the President of the Republic of Kazakhstan (AP RK), the State Archive of the East Kazakhstan Region (SAEKR), the State Archive of the North Kazakhstan Region (SANKR) and the Archive of Foreign Policy of the Russian Federation (AFP RF) were used to write this research article. A set of documents related to international relations was used as well. Foreign and domestic research papers on the topic were analyzed and referenced. The authors believe that in order to scientifically determine the multi-vector policy of the Republic of Kazakhstan, it is necessary to comprehensively consider the theoretical and methodological literature, as well as archival data. Therefore, it is necessary to analyze the treaties on international relations, archival documents and the works of state figures and scientists. Regarding the problem of theory and methodology in international relations Russian scientist P.A. Tsygankov, noted: "The theory of international relations, which emerged in the early XX century, has rapidly strengthened and gained the status of one of the most important social disciplines in the academic community and the expert community. It has also gained recognition in the political arena among those who make important foreign policy decisions. The normative nature of the theory-methodology is related to the role of ideas and proposals in understanding its object. From this point of view, there are three ideas about its object. Theory and methodology as a system of international relations and as an international society. The denterminist methodology follows from the view of international relations as a system of relatively homogeneous elements – states that form a stable whole – international relations. Historically and functionally, international systems differ in the relative location of these elements and the way they are organized" [2].

The book "Belasu" by the famous politician, diplomat, statesman (now the President of the Republic of Kazakhstan) Kassym-Zhomart Tokayev provides an in-depth and comprehensive analysis of the formation and development of foreign policy of independent Kazakhstan. The author wrote: "After the collapse of the USSR, Kazakhstan was faced with a difficult choice. What foreign policy should be pursued to protect their interests as much as possible? After the signing of the Lisbon Protocol, the long work of diplomatic recognition in our country, the sending of foreign embassies and missions of international organizations to Kazakhstan, the First President of Kazakhstan N.A. Nazarbayev's meetings and talks with the leaders of the world's leading countries has been conducted. In the face of Kazakhstan, the world community has seen a mature state that is fully responsible for the fate of the world order, able to cooperate with and develop it, to engage in dialogue on the most pressing issues of international life" [3]. Therefore, from these conclusions, the authors see in a real historical context that the Republic of Kazakhstan has joined the world community and has taken its place in it and began to establish contacts with foreign countries.

Aitken Jonathan, a well-known British public figure, in his book "Kazakhstan. Surprises and Stereotypes" wrote that "Kazakhstan has a small population living in the vastness of the land. It is enough to see the scale of the country's challenges and opportunities looking at the map once. Its northern border with Russia (6847 kilometers) is longer than the land border of Canada and the United States. It is the ninth region in the world, stretching 1,533 km from the shores of the Caspian Sea, which borders Europe in Asia, to the border with Western China" [4]. In other words, these data provided by a foreign expert show that the Republic of Kazakhstan is a country with a large territory in the world, a great desire to cooperate with it, to get acquainted with its regions. It is clear that bilateral relations with developed countries are encouraging for Kazakhstan. It is necessary to study the history of partnership relations implemented by the Republic of Kazakhstan with neighboring countries and foreign countries during the period of sovereignty, analyze them on a scientific basis and show their importance. It is obvious that by providing such a scientific analysis, it is possible to make proposals to improve the efficiency of further development of the country's activities in this direction.

2. RESULTS AND DISCUSSION

After gaining independence in 1991, the Republic of Kazakhstan as a separate state established political, economic and diplomatic relations with near and far abroad. Kazakhstan has reached many agreements in partnership with foreign countries. For example, in 1995, Ispad International purchased 100% of the assets of the Carmet Metallurgical Plant in Temirtau ($200 million), which is a leading exporter of metal products in the Republic of Kazakhstan. The trade turnover between the two countries last year amounted to

307 mln. USA dollars. A well-known event in the relations between Kazakhstan and the United Kingdom was the exhibition "Investment Opportunities in Kazakhstan" in 1996 in London. Trade and economic relations between Kazakhstan and Germany are developing more actively. There are more than 70 German companies in the country. The well-known events in trade and economic relations with France include the following: Renault, Koch, Euroconter, Schneider, Sofrelia and others. A group of French businessmen, including leaders of large companies, visited Kazakhstan in 1996. During the visit, preliminary agreements were reached with Renault on the establishment of a joint venture, the construction of a gas pipeline from Aktobe to Karachaganak, the construction of a gas pipeline from Akmola airport, Almaty metro, Karachaganak field. Today, there are twenty joint Kazakh – French companies and banks in Kazakhstan, including the well-known "Elf Aquitaine", "Total" and "Mulikens".

Trade and economic relations between Kazakhstan and Turkey are developing steadily. Turkish companies are already carrying out construction work in Kazakhstan worth $1.5 billion, which should have reached $5 billion in 2000. Today, more than 30 Turkish companies are accredited in Kazakhstan, more than 90 Kazakh-Turkish joint ventures operate. "Turkish business can be found everywhere" [5]. It is known that as a result of such agreements, many regions of Kazakhstan are in contact with the regions of these countries and are working effectively together. From the first days of independence, special attention was paid to Kazakhstan's relations with the CIS member states and interregional ties. In particular in 1993-1994, Kazakhstan signed 5 agreements with Azerbaijan in order to regulate trade and economic cooperation and mutual obligations. In 1993-1995, 23 agreements were signed with Georgia on the regulation of economic relations, finance, customs, science and technology, agriculture, railway transport. In 1993-1994, 4 agreements on economic cooperation were signed with Armenia. Large-scale legal agreements have been established with Ukraine. Among them are more than 30 signed intergovernmental agreements: The Agreement on Friendship and Cooperation of January 20, 1994, the Agreement on Free Trade of September 17, 1994, 20 joint ventures on the basis of economic cooperation between the two countries in the field of heavy industry from 1994 to 2000. In 1994, Ukraine became the second largest economic partner of Kazakhstan in terms of trade relations with the CIS countries, accounting for 10% [6].

The President of the Republic of Kazakhstan N.A. Nazarbayev speaking at a joint meeting of CIS leaders and governments in Almaty on February 10, 1995, said: "Despite many unavoidable challenges, we have made significant progress in our movement, especially last year, which was marked by large-scale integration efforts. It can be said that there are zones of active integration, including Russia-Belarus-Kazakhstan interaction. These phenomena were preceded by an active beginning in the Central Asian region between Uzbekistan, Kazakhstan and Kyrgyzstan. Important decisions for the development of relations were made on the basis of bilateral agreements between Kazakhstan and Russia" [7]. Thus, he identified fundamental role in the future development of member countries. Multifaceted relations with a number of regions of Kazakhstan, and the Russian Federation, Central Asia, China and Mongolia have been established and many activities have been implemented. The importance and effectiveness of cooperation between the adjacent regions and territories of the Republic of Kazakhstan and the Russian Federation are marked among them. For example, meetings of heads of production and business circles of these regions with the participation of the Presidents of the Republic of Kazakhstan and the Russian Federation have become a tradition to sign multilateral and bilateral agreements. President of the Republic of Kazakhstan N.A. Nazarbayev noted that "There is a positive development of cross-border relations in the regions and territories of Kazakhstan and Russia" [8]. The border area cooperation between Russia and Kazakhstan is a key instrument of economic and humanitarian relations between the two countries. During the meeting in Omsk (January 26), the Vice Prime Ministers of the two countries (A.A. Bolschakov and V.L. Mette) signed an agreement on cooperation between the border areas of the Russian Federation and the Republic of Kazakhstan [9]. According to the Ministry of Foreign Affairs of the Russian Federation on June 3, 1999, "Kazakhstan (after Ukraine) currently ranks second in terms of intersectoral agreements with the subjects of the Russian Federation. There is an interregional association for the development of Siberian raw materials, which includes 12 Russian and 9 Kazakh regions (MACE). International agreements on cooperation between the border regions of Russia and Kazakhstan are being implemented. This is about the Altai, Astrakhan, Volgograd, Kurgan, Novosibirsk, Omsk, Orenburg, Saratov, Tyumen, Chelyabinsk regions and, accordingly, the border areas of Kazakhstan" [10].

Economic and other cooperation between the border areas of the two countries has been carried out systematically since the beginning of the XXI century. For example, in 2006, 76 out of 88 districts of the Russian Federation have trade and economic relations with the Republic of Kazakhstan. The most active participants in foreign trade are Astrakhan, Chelyabinsk, Omsk, Tyumen, Novosibirsk, Samara, Volgograd, Kurgan regions and Altai Region. 12 Russian border territories provide half of the volume of trade between the countries, and two-thirds belong to the Urals and Siberia. To date, more than 40 agreements in various

areas of interstate relations have been signed between the regions and territories of Kazakhstan and Russia. Currently, there are about 400 enterprises and representative offices in the border area. From the first days of independence, relations with certain border areas of the People's Republic of China began to be implemented in the interests of both countries. President of the Republic of Kazakhstan N.A. Nazarbayev in an interview with journalists of the magazine "Talents of China" on July 24, 1995 stated that "Our meeting in the autumn of 1993 gave an important impetus to the development of cooperation between Kazakhstan and China in various fields. The relations between our countries based on good neighborliness and friendship provide a good basis for deepening relations between Kazakhstan and China, deepening various ties between the two peoples. Kazakhstan assumes particular importance to the development of comprehensive relations with your country and appreciates the intensity and friendly nature of our relations" [11]. Thus, he stressed the importance of close bilateral ties in various fields.

An official intergovernmental statement at the time noted that "China is Kazakhstan's largest trading partner after Russia. The trade turnover between the two countries reached 600 million US dollars by the end of 1996, or almost doubled compared to last year. Karmetkombinat pays $120 million to China and a long-term agreement is being reached to supply steel and tin concentrate from China for the production of tin with the participation of Chinese partners at the suggestion of the plant" [12]. This showed the need for further cooperation. In the pursuit of the development of bilateral relations with the countries whose territories are bordered by the regions of Kazakhstan, the issue of establishing a clear connection with the historical homeland of the national diasporas in the border areas is taken into account. They included economic, cultural, educational, scientific, linguistic and other relations with the Kazakh population located in the border areas with neighboring countries and they aimed at systematic work in these areas. They covered the work on implementation of comprehensive contacts with non-Kazakh nationals living in the border areas of the country with their historical compatriots and thereby resolving the issue of interethnic relations with neighboring countries and other work. The examples of the East Kazakhstan region demonstrate that the main content of the relations of the Republic of Kazakhstan with the border areas of neighboring countries is aimed at the actual implementation of these goals. In particular, in the second half of the 90s of XX century, in accordance with the State Program of the Republic of Kazakhstan, the East Kazakhstan regional administration began to provide employment and accommodation services to repatriates from Mongolia, China, Iran and other countries. Most of the repatriates to this historical place were those who reluctantly moved from this region of Kazakhstan and aimed to establish close ties with the Kazakhs of the Altai, Tarbagatai, Bayan-Ulgii regions of the People's Republic of China and Mongolia. The Government of the Republic of Kazakhstan provided an opportunity for repatriates to settle down and work in a new place. According to archival documents of this content, according to the East Kazakhstan regional department of migration and demography, as of September 1, 1998, there were 1,074 repatriates in the region, amounting to 15,340 people.

In order to implement the Decree of the President of the Republic of Kazakhstan "On the allocation of quotas for repatriates" in the budget of the region in 1998 provided 61.5 million tenge for the reception and placement of repatriates. Since the beginning of 1998, 21 houses were purchased for repatriate families for 2050.0 thousand tenge, another 22 houses were selected and paid for. There are 1808 repatriates of working age in the region. 1054 of them are permanently or temporarily employed. Despite the complexity of socio-economic development and the severe lack of budget funds, the Akim of the region and local authorities are doing everything possible to receive, accommodate and prepare repatriates – ethnic Kazakhs for the new situation [13]. At the same time, the Government of Kazakhstan, on the basis of agreements with the Governments of the People's Republic of China and Mongolia, facilitates economic, social, cultural and educational cooperation of these repatriates with their relatives in these countries. The result of this work is that the number of Kazakhs returning to their homeland is constantly growing. At the same time, since the first decade of the XXI century, the East Kazakhstan region has become a kind of joint action of the state with the CIS and other countries in the economic, cultural, health, education and science spheres. Among them, the basis of external relations in the region has become tourism. According to actual data: "Compared to the total number of visitors in 2010, the number of tourists in 2013 increased by 28.8%".

In 2013, there were 277 accommodation facilities (hotels, country houses, boarding houses, camps, rural recreation centers), 347 symbols of the tourism industry (providing tourist services) in the East Kazakhstan region, which provided services in the amount of 3.2 billion tenge [14]. Therefore, the region pays regular attention to the development of international tourism and mutually beneficial relations with neighboring countries. In particular, for the development of domestic tourism in the region, the akimat annually organizes participation in international and national exhibitions. For example, on February 11, 2014 in Ust-Kamenogorsk International Tourism Exhibition "Introduce yourself and the East to the world" was organized. The exhibition was implemented with the participation of tourism companies from Russia, China, Mongolia, Slovakia,

regional governors, heads of national and local tourism organizations, and contributed to the development of tourism in the region at the international level. A number of memorandums were signed during the exhibition. They are: The first, the East Kazakhstan Department of Tourism and External Relations – "Machaon International", Slovakia. The European Commission "Mahaon International Association" has allocated 88 million tenge for the development of rural tourism in Ridder, Katon-Karagai and Kurchum districts; the second, LLP "Irtysh" and E.S. Kanapyanov planned to build a tourist base on the shores of Lake Sadyrkol (Sibe Lakes area); third, LLP "Meridian" (East Kazakhstan) and Xinjiang Uyghur Autonomous Region (China) – signed a visa agreement; the fourth, the Municipal State Institution "Tourist Information Center" and the Mongolian tourist company "Zavhan" signed an agreement to meet with representatives of travel agencies from Germany and France from May 28 to June 3. In cooperation with the United Arab Emirates, in March 2014, Abu Dhabi participated in the International Tourism Exhibition "GIBTM-2014". During these activities, a number of contracts were concluded.

LLP "Bayan" health complex – in the summer of 2014 signed an agreement with representatives of 6 companies ("TREDEWAY Sagency", "BINMOSTRAVEL") on the admission of UAE citizens for anthrax treatment, LLP "Katon-Karagai deer park" – a five-star "Rakha Beach hotel" in Abu Dhabi. Hotel has signed an agreement to open deer antler production offices. From April 27 to May 1, 2014 in the business and exposition areas of the city-resort of federal significance Belokurikha in the Altai Territory the International Tourism Forum "VISIT ALTAI" was held. Participation in this forum provided an opportunity to organize recreational and medical activities in the East Kazakhstan region. A Memorandum of Cooperation in the field of tourism was signed there. It is planned to regulate the single international tourist routes (Russian Federation – Republic of Kazakhstan – China). Officials of the Embassy of the Republic of Turkey, DEDEMAN Hotel Association in Ust-Kamenogorsk prepared a project "Training for hotel business managers", the results and recommendations of them were sent to the Republic of Turkey, Antalya and Belek cities. As part of the Program for the development of priority areas of the tourism industry of the Republic of Kazakhstan for 2010-2014, 4 important developing investment projects for the development of tourism in the East Kazakhstan region were considered. The Department of Tourism and External Relations of the East Kazakhstan region, in addition to the above, from the period of its justification, economic, cultural spheres organized relations in various fields. For example: April 8-10, 2014 in Barnaul "Days of the Altai Krai" of the East Kazakhstan region were held. As part of the event, meetings were organized with representatives of the East Kazakhstan region and business groups of the Altai Krai. The meeting took place in the Altai Business Incubator, as a result of which memorandums and contracts were signed.

According to the memorandum signed on April 9, 2011, on September 18, 2014 between the Kingdom of Saudi Arabia and the East Kazakhstan region was the opening of a children's tuberculosis hospital in Semey for 5.2 million euros. Within the framework of the meeting, Deputy Minister of Finance of the Kingdom of Saudi Arabia Mohamed Algafili met with Chairman of the Development Fund of the Kingdom of Saudi Arabia Mohamed Suleiman Aldalilan, as well as Ambassador of the Kingdom of Saudi Arabia to Kazakhstan Hamad Alnuwasir. On March 26-28, 2014, as part of the celebration of "Nauryz Holiday" in Shaueshek, Xinjiang, China, days of Culture of the East Kazakhstan region of international level were organized. It is known that mutual cooperation in the field of tourism between the People's Republic of China in the border area has been established since the first days of Kazakhstan's independence. In particular, the official document for the implementation of such relations between the two countries at that time it was written that "On July 16, 1992, an agreement was reached between the Republic of Kazakhstan and the Xinjiang Uyghur Autonomous Region of the PRC on further development of tourism tourism" [15]. The schedule of the tour group of the East-Kazakhstan regional sports department is compiled in conjunction with the customs. Today 3 groups (930 people) were missed. All these groups were organized by the company "Ust-Kamenogorsk Tourist" Kaztursovet, as it is the only one having a direct contract with the Foreign Policy Department of the Altai Krai of the People's Republic of China.

The regional administration together with the branch of the corporation "Atameken" recently accepted the delegation of the leadership of the Koktugai region. Altai (Xinjiang, China) and discussed the issues of trade, tourism, agriculture, etc. [15-17]. This relationship continued further. During the meetings of the heads of regions and business circles of Kazakhstan and China, the issues of further development of joint activities in the field of tourism, agriculture, construction of the Bakhty-Ayagoz railway, green energy were discussed. Following the meeting, memorandums on trade, economic, scientific, technical and cultural cooperation were signed between the Department of Culture, archives and documentation of East Kazakhstan region, Ayagoz district of East Kazakhstan region, Durbyzhyn district of Xinjiang, China. On May 23-24, 2014, at the initiative of the East Kazakhstan regional administration, the first exhibition "OSKEMEN EXPO – 2014" was held. The exhibition organized a project competition "Energy of the Future", after three meetings of expert groups, the

winners were determined in 21 nominations. The guests invited by the East Kazakhstan Department of Tourism and External Relations were Nobel Laureates Kurt Wutrich and Svyatoslav Timashev, as well as foreign scientists Klaus Thiessen, Alexei Kavokin, Giuseppe Eramo and they shared their achievements in science. Within the framework of the trade-economic, scientific-technical, cultural-humanitarian agreement between the Akimat of the East Kazakhstan region and the Akimat of the Plzensk region, a delegation of the Czech Republic headed by the Governor of the Plzensk region Vaclav Schleis visited on September 16-19, 2014. During the meeting it is planned to visit JSC "Asia Auto", dairy complex "Bobrovka", construction and energy facilities. According to the bilateral agreement, LLP "Techstroyinnovation" and the Czech company "Friedlantskiestroyirny Rasl and son" signed an agreement on the implementation of equipment for the production of thermal and sound and fire insulation boards with a capacity of 8950000 euros and a capacity of 30,000 tons per year. The total cost of the project is 22 million euros. On September 17 this year, a capsule was installed in Ust-Kamenogorsk for the construction of a plant for processing heat-generating materials for business development.

On October 16-18, 2014, Ust-Kamenogorsk hosted the 13th meeting of the International Coordination Council "Altai – our common home". The meeting was attended by leaders of the Xinjiang Uyghur Autonomous Region of China, Mongolia, the Altai Krai of the Russian Federation and the Altai Republic. They discussed joint projects in trade, economic, social and humanitarian spheres, cooperation with the Shanghai Cooperation Organization. The work plan of the International Coordinating Council "Altai – our common home" for 2015 was signed. On October 22-23, 2014, a delegation of the Federal Territory of Saxony met with Manfred Liebl, Chairman of the Saxony Economy in Russia, Vice President of the Expert Advisory Center for Mechanical Engineering. Within the framework of the meeting, a forum was held with the participation of entrepreneurs from the Federal Territory of Saxony and leaders of large enterprises of the East Kazakhstan region, including "Innovative production technologies that modernize entrepreneurship for metalworking enterprises". The main purpose of the forum was to develop business relations with enterprises of the East Kazakhstan region, to attract investment in the East Kazakhstan region. On November 3, 2014 a meeting of the Akimat of the East Kazakhstan region with the chairmen of the company "POSCO e & c" of the Republic of Korea was held. The issues of implementation of concession investment projects of East Kazakhstan region on the basis of public-private partnership were discussed during the meeting. Construction of a multidisciplinary polyclinic for 300 people in Ust-Kamenogorsk through the "Bukhtarma Reservoi" at a cost of 230 million tenge. The construction of a bridge in the amount of US dollars was considered. The funds allocated for the construction of the bridge amounted to 20.8 billion tenge, the cost of a multidisciplinary hospital – 14.4 billion tenge. Economic, cultural, social cooperation between the North Kazakhstan region and the neighboring regions of the Russian Federation, as well as with some areas of foreign countries, has been based on the first years of independence. Since the end of XX century, various agreements have been concluded with the border regions of Russia and several Polish provinces, and their implementation is being carried out.

To this end, in December 1999, an official delegation of the Kurgan region of the Russian Federation paid a working visit to the North Kazakhstan region. During the meeting the participants discussed "Cooperation in trade, economic, scientific, technical, humanitarian and other areas between the Kurgan region of the Russian Federation and the North Kazakhstan region". The issues of improvement and specification of the Agreement were discussed: law enforcement agencies of Korgan and North Kazakhstan regions, heads of customs services held working meetings to jointly address issues of illicit drug trafficking, arms trafficking, as well as coordination of the fight against organized crime; Following the meeting of the heads of enterprises of Petropavlovsk with the delegation of Korgan region in JSC "PZTM", the participants agreed to exchange information on the types of products, changes in prices in the domestic market, as well as the implementation of joint projects; Exchange of parts and units between "Kurgandormash" OJSC – "PZTM" OJSC; Electrical equipment between KEMZ JSC and Kirov Plant JSC; Kurganmashzavod OJSC – Power Aggregates Plant LLP production and production of low-capacity engines; JSC "KAVZ" – "On the development of individual components and parts for the implementation of the project" Ural buses "between the Petropavlovsk complex of machine-building enterprises" [18].

During the official visit of the delegation of North Kazakhstan region to Tyumen region of the Russian Federation on August 28, 2002, the issues of deepening multifaceted cooperation between the border areas of the two countries were discussed. Among them are the provision of conditions for education in the native language in preschool institutions in the districts of Tyumen region and sending high school graduates of Tyumen region to study at the North Kazakhstan University in "Kazakh language and literature", and high school graduates of North Kazakhstan region "Russian language and literature". "Agreements have been reached to send him to Ishim University to study in his specialty". Economic and social cooperation between the North Kazakhstan region and the neighboring regions of the Russian Federation, including Korgan,

Tyumen and Omsk regions, continues every year with new joint activities. For example, the official report of the Department of Economy of North Kazakhstan region reports on the implementation of the Agreement on trade, economic, scientific, technical, humanitarian and other cooperation between the Korgan region of the Russian Federation in the 1st quarter of 2001. It considered the issue of production of 200 small-capacity engines worth 75.0 thousand US dollars between Kurganmashzavod OJSC LLP "Plant for the production of small-capacity engines".

The trade turnover with the Kurgan region of the Russian Federation in January-February 2001 amounted to 1376.1 US dollars. The foreign trade turnover in 2001 amounted to 12.8 million US dollars, or 4.2% of the total turnover with the Russian Federation, including exports of 5.8 million US dollars, imports of 7.0 million US dollars. The main exports were chemical products, mineral products. The majority of imports, in particular, 36.6% are metallurgical products [19-21]. In addition, on the basis of joint plans, the North Kazakhstan region has established a number of areas of cooperation with the Russian-dominated Omsk region of Russia, and services are provided in accordance with bilateral plans. In order to further deepen such relations, an agreement "On cooperation in trade, economic, scientific, technical, humanitarian and other fields" was signed on September 3, 2001 between the leadership of the Omsk region of the Russian Federation and the akimat of the North Kazakhstan region of the Republic of Kazakhstan. The Parties shall, within their competence, promote the maintenance and development of socio-economic, scientific, technical and cultural ties between the Omsk region of the Russian Federation and the North Kazakhstan region of the Republic of Kazakhstan, guided by the principles of mutual respect and equality. It undertakes to refrain from actions that could cause economic, environmental or other damage to any of the parties. Along with the border regions of Russia, the foundation was laid in various directions of relations of this region of Kazakhstan with certain regions of the far abroad. For example, the relationship between entrepreneurs of the North Kazakhstan region and the voivodships of the Republic of Poland, established at the beginning of the XXI century, is very important. At the invitation of the Polish side, on May 27-31, 2001, a delegation from the North Kazakhstan region visited the Polish Voivodeship of Dolnosilez and on May 31 visited the Volikopolskoe Voivodeship. During the visit, the delegation visited the agricultural machinery manufacturer "PILMET" and the pharmaceutical company "NASSO-LEK", the Chamber of Commerce and Industry, more than 20 Western companies and partnerships visited the Valbzhihsk special economic zone. The delegation visited the enterprise "NEUREKA", which manufactures and maintains milk coolers. As a result, LLP "SK-Leasing" (Petropavlovsk) with the pharmaceutical company "NASSO-LEK" (Poland) in the North Kazakhstan region sent to the North Kazakhstan region 3 units of the company "Ffisomilk 4" with a capacity of 1.5 liters and Ffisomilk an agreement was signed on the sale of refrigeration units for 1 liter of milk [22].

CONCLUSIONS

In conclusion, the above differentiated data determine the course, results and significance of the accession of the two regions of Kazakhstan to the international relations of the country. The participation of the regions of the country in the implementation of the state's multifaceted foreign policy plans demonstrates the full integration of the republic into the world economic, social and cultural community. It is obvious that the work being done in differentiated directions in the East Kazakhstan and North Kazakhstan regions testifies to the full implementation of the multifaceted foreign policy of the Republic of Kazakhstan in accordance with the requirements of modern globalization. This is greatly influenced by the fact that independent Kazakhstan, which has a worthy place in the world community, is establishing mutually beneficial relations in geopolitics, economic and other areas. It is because Kazakhstan is located in the middle of the Eurasian continent and is known as a country that connects Europe and Asia and has great transit potential. That is, it shows that the Republic of Kazakhstan has every opportunity to establish and implement partnerships with any country in the world.

From the full participation of its regions in the multi-vector foreign policy of the Republic of Kazakhstan: the regions of the country will have the opportunity to exchange experiences with individual regions of neighboring countries through joint work in various areas; the prospects for the establishment of equal relations in the economic, transport, trade, social areas in accordance with the existing features of the population of the neighboring regions of the independent countries in the natural, historical, domestic, cultural, etc.; interregional direct contacts of neighboring countries in the field of education, science and culture will be established; bilaterally agreed areas at the governmental level will facilitate inter-regional equal cooperation, direct cooperation in the social, cultural, educational, scientific and health spheres in a short period of time; independent interactions between the nations of the border areas of the states will be established, as a result of which the implementation of joint measures for the further development of the diaspora as a nation, the

establishment of close ties with their compatriots will be ensured. This is evidenced by the fact that the multinational state pursues the policy of the nation, which provides understanding of neighboring countries.

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Suggested Citation: Karassayev G.M., Yensenov, K.A. Naimanbayev, B.R., Oskembay, A.A., & Ermukhanova, H.K. (2021). History of regional relations in foreign political activity of the Republic of Kazakhstan (1991-2014). *Journal of the National Academy of Legal Sciences of Ukraine*, 28(3), 119-128.

Submitted: 19.05.2021
Revised: 02.07.2021
Accepted: 28.08.2021

УДК 342.25
DOI: 10.37635/jnalsu.28(3).2021.129-143

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МУНІЦИПАЛЬНО-ПРАВОВА ПОЛІТИКА ЯК ПРІОРИТЕТНИЙ НАПРЯМОК ПРАВОВОВОЇ ПОЛІТИКИ В УМОВАХ РЕФОРМУВАННЯ ТЕРИТОРІАЛЬНОЇ ОРГАНІЗАЦІЇ ВЛАДИ ТА ЄВРОПЕЙСЬКОЇ ІНТЕГРАЦІЇ УКРАЇНИ

Анотація. *У статті досліджено проблеми формування та реалізації муніципально-правової політики в Україні. З'ясовано, що сутність муніципально-правової політики України, зважаючи на проваджувану реформу децентралізації, полягає у тому, що це відносно стабільна, організована, цілеспрямована діяльність органів державної влади та місцевого самоврядування, яка має на меті побудову спроможного місцевого самоврядування, адекватного потребам та інтересам територіальних громад. Охарактеризовано елементний склад муніципально-правової політики. Встановлено, що до її елементного складу можна віднести: концепцію системно-структурної та організаційно-функціональної організації та діяльності місцевої влади на різних рівнях адміністративно-територіального устрою; узгоджену систему нормативно-правових актів, які регулюють питання організації та діяльності місцевих органів державної виконавчої влади та місцевого самоврядування, встановлюють обсяг та межі їх компетенції, визначають особливості взаємодії та порядок вирішення спорів між ними; нормативно-правову основу ресурсного забезпечення місцевого самоврядування; законодавче визначення органу або посадової особи в структурі органів державної виконавчої влади, який представляє інтереси держави на відповідній території, має право здійснювати контрольні повноваження, а також є сполучною ланкою між територіальної громадою, органами місцевого самоврядування та системою органів державної виконавчої влади; формально-визначений алгоритм прийняття рішень з питань, що стосуються місцевого самоврядування; систему моніторингу муніципально-правової політики держави. Визначено основні блоки питань в межах дослідження, що у подальшому потребують використання комплексного наукового підходу до їх законодавчого вирішення*

Ключові слова: *муніципальна влада, місцеве самоврядування, децентралізація, муніципальна правова політика*

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MUNICIPAL POLICY AS A PRIORITY AREA OF LEGAL POLICY IN THE CONTEXT OF REFORMING THE TERRITORIAL ORGANISATION OF POWER AND EUROPEAN INTEGRATION OF UKRAINE

Abstract. *The present study investigates the problems of development and implementation of municipal policy in Ukraine. It was found that the essence of municipal policy of Ukraine, given the ongoing decentralisation reform, is that it is a relatively stable, organised, purposeful activity of public authorities and local governments, which aims to build a capable local government, adequate to the needs and interests of territorial communities. The study describes the elemental composition of municipal policy. The authors of this study established that its elemental composition includes: the concept of system-structural and organisational-functional organisation and activities of local authorities at different levels of administrative-territorial organisation; a coordinated system of regulations that govern the organisation and activity of local bodies of state executive power and local self-government, establish the scope and limits of their competence, determine the features of interaction and the procedure for resolving disputes between them; regulatory basis of resource provision of local self-government; legislative definition of a body or official in the structure of state executive bodies, which represents the interests of the state in the corresponding territory, has the right to exercise control powers, and constitutes a link between the territorial community, local governments and the system of state executive bodies; formally defined decision-making algorithm on issues relating to local self-government; system of monitoring the national municipal policy. The authors also identified the main blocks of issues under study, which require further use of a comprehensive scientific approach to their legislative solution*

Keywords: *municipal government, local self-government, decentralisation, municipal policy*

INTRODUCTION

The leading world trends in modern democracies are the recognition, consolidation, and implementation of the principles of regionalisation and decentralisation, subsidiarity and local self-government, both within internal and external policy and within the constitutional regulation of legal phenomena, institutions, and mechanisms.

International recognition of local self-government as the basis of any democratic system has significantly expanded the boundaries of municipalisation of the constitutional life of democratic countries [1].

Ukraine, which has nationally recognised the need to accelerate the reform of local self-government and territorial organisation of power, is not far behind global trends. The transformation processes transpiring in the present-day Ukraine are much more complex than some set of actions aimed at changing the form of government, establishing ties in the system of public authorities, local self-government, forming new political and legal institutions, etc. Instead, the establishment of democracy in Ukraine is a universal process that affects both the state and public authorities, as well as the territorial community and local governments. Most importantly, this refers to the development of capable self-government at the basic, district, and regional levels with the establishment of councils, optimisation of administrative-territorial organisation and the existing model of territorial organisation of power, introduction of effective mechanisms of local democracy. Furthermore, the successful implementation of local government reform will contribute to the effective implementation of Ukraine's policy of European integration, the development of cooperation with European institutions, in particular, the Council of Europe and the European Union.

Issues relating to the development and implementation of municipal policy in Ukraine remain unexplored to this day. Therewith, the problems of legal policy development have repeatedly become the centre of scientific discussions [2]. Thus, such researchers as O.Yu. Bytiak, M.I. Panov, O.V. Petryshyn, A.O. Selivanov, O.V. Skrypniuk, V.Ya. Tatsii and others investigated the problems of development and implementation of the national policy. The studies concerning certain aspects of municipal policy include the articles by O.O. Akhmerov, M.O. Baimuratov, O.V. Batanov, P.M. Liubchenko, R.V, Khvan and some others.

Thus, among complex scientific studies in this subject area the authors of the present paper highlight the dissertation by B.V. Popovych on the topic: “Conceptual Principles of National Municipal Policy in Ukraine in the Context of European Integration”, which singles out and investigates the theoretical and methodological principles of national municipal policy, institutional mechanism and policy cycle of its development and implementation, ways of developing the European-standard national municipal policy in Ukraine. At the same time, researchers have substantiated the legitimacy of identifying the institutional content of national municipal policy with public administration activities, which are carried out to create institutional conditions for the effective performance of local government functions. The study demonstrates that the content of national municipal policy is implemented at two levels of state regulation of local self-government – legislative and administrative. The role of public administration standards as elements of the methodology of the European national municipal policy, its conceptual legal bases and key factors of their implementation in Ukraine are highlighted. The study demonstrates that they are based on the principles, regulations and standards of local self-government, which are harmoniously combined in the concept of “good self-government” [3].

However, despite the strengthening of local self-government and local democracy in the world, the development of a global trend towards its effective development, both at the doctrinal and constitutional levels, the search for the best model of its organisation and activities, including the correlation with the system of state authorities is ongoing. The importance of local self-government for building a constitutional order based on the rule of law, democracy, and recognition of human rights necessitates a response on the part of the state by developing and implementing an appropriate legal policy as a system of principles, areas, and means of targeted legal influence on the course and aims of coresponding social processes and development of appropriate social institutions and norms.

The relevance and urgency of solving the above issues is confirmed, inter alia, by the growing scientific interest in the development and reform of public administration in general, including increasing attention of both theorists and practitioners to revise and amend the current legislation aimed at the establishment of an open, transparent, efficient, and effective system of public authorities and local self-government in Ukraine, establishment of various capable public services in terms of both competence, financial support, and professionalism, and solving everyday and development problems of territorial communities and regions [4]. Rethinking the essence and significance of local self-government towards the realisation of the impossibility of existence, normal functioning and development of a modern democratic state without capable and active local self-government leads not only to the development national municipal policy, but also to the possibility of transition to municipal policyas a system of strategic management of self-government activities [5]. Therefore, the purpose of this study is to identify and analyse the political and legal foundations for the development of capable local government in Ukraine in terms of ongoing reform of local government and territorial organisation of power.

1. MATERIALS AND METHODS

The methodological framework of this study includes both general and special methods. A dialectical approach

was used to clarify the essence and content of public authorities in the field of municipal policy as a phenomenon of reality in its dynamics, constant development and interrelation with other political and legal phenomena, namely with the reform of local self-government and territorial organisation of power, public administration reform, European integration of Ukraine, including public relations at the level closest to the citizens – at the level of local self-government (regions, individual communities), including the provision of sustainable socio-economic local development, development of affluent communities, etc.

The study employed the method of system analysis to investigate various levels, manifestations, actors in the development and implementation of municipal policy. The system-structural and functional methods were used to single out and examine the elements of national municipal policy, namely: the concept of system-structural and organisational-functional organisation and activity of local government at different levels of administrative-territorial structure; system of regulations, which govern the issues of organisation and activity of local bodies of state executive power and local self-government; regulatory framework of resource provision of local self-government; a body or official in the structure of bodies of state executive power, which represents the interests of the state in the relevant territory, has the right to exercise control powers in this area; formally defined decision-making algorithm on issues relating to local self-government; system of monitoring the national municipal policy.

Functional-instrumental method allowed identifying the main aspects and patterns of various methods of state regulation of local government and determine their impact on the further development of local government, its institutions and mechanisms for exercising municipal power. In particular, the study establishes that the national municipal policy as a set of measures aimed at legalisation and statutory regulation of public relations in the organisation and exercise of municipal power, is described by a constant search within the framework of conceptually different systems of local government, inhibiting its development through imperfection, inconsistencies, gaps in legal regulation.

The formal legal method enabled a consistent analysis of the content of legal norms and features of regulatory support for the establishment, development and reform of local self-government. The provisions of numerous acts of different legal force are subject to analysis, since the adoption of the Concept of Reforming Local Self-Government and Territorial Organisation of Power in Ukraine, approved by the Cabinet of Ministers of Ukraine on April 1, 2014, which defined the main areas and logic of reform. In particular, the present study established that since the adoption of the Concept, the regulatory framework for the reform has been developed and adopted, and numerous laws have been adopted that lay the foundation for the development of capable local self-government and community cooperation. Therewith, numerous acts have remained drafts to this day. Thus, regulatory resolution is pending for important problems of the existence and functioning of an effective and efficient system of local self-government in Ukraine (problems of state supervision and/or control; statutory regulation of the organisation and conduct of local referendums, including their procedural requirements and rules of rule-making of territorial communities, bodies and officials of local self-government; introduction of an effective system of monitoring the implementation of not only regional but also local municipal policy, etc.). The logical-semantic method provided an opportunity to formulate recommendations on areas that require further scientific substantiation and legislative support, including comprehensive and systematic measures to develop a capable local government. The forecasting method helped outline the prospects for the development of municipal policy, in particular, as a system of strategic management of self-government, including the development of strategies, development programmes, and the implementation of best modern European and world practices of providing quality and affordable public services with simultaneous adaptation to the concepts of good governance, e-governance, including the use and coordination with the principles, individual mechanisms and means of "new public management", etc.

2. RESULTS AND DISCUSSION

Strengthening local self-government and local democracy has become one of the trends in state and social development on a global scale. The importance of local self-government for building a constitutional order based on the rule of law, democracy, and recognition of human rights necessitates a response on the part of the state by developing and implementing an appropriate legal policy as a system of principles, areas, and means of targeted legal influence on the course and aims of coresponding social processes and development of appropriate social institutions and norms.

Municipal policy is a kind of legal policy on the subject of legal regulation; it is a scientifically substantiated system of goals, priorities, areas, tasks and concrete measures for creation of an effective mechanism of municipal legal regulation, for development and modernisation of local self-government in the country. The implementation of such a policy must be rational and consistent, comply with the principles of the constitutional order and the international obligations of the state, be focused on the priority of human rights

and ensure the capacity of territorial communities. In a democratic, legal statehood, municipal policy is the main tool for influencing the system of public relations in the field of local self-government and is dialectically combined with other forms and types of national policy [6]. It includes the coordinated activities of public authorities, local governments, their officials and officials, civil society institutions, territorial groups and individuals, which is carried out with a common purpose and in the manner prescribed by applicable law, and orients society to optimise municipal legal regulation. Municipal policy is designed to organise the process of municipal construction, because it cannot happen spontaneously, and in the municipal legal sphere requires its own strategy and tactics, internal logic and systematic action [7].

The specificity of municipal policy is that it is, on the one hand, the closest to the place of residence of citizens, and hence to their daily needs and interests, and on the other hand – it has a complex nature, because such are the issues of local importance. Municipal policy should develop legal algorithms to address the problems faced by communities and their elected authorities, ways to resolve conflicts and overcome crises, propose mechanisms that could work proactively, and thus related to scientific forecasting and planning at the local level. Modern Ukraine clearly lacks consistency, moderation and soundness in the development of municipal policy, as well as political will in its implementation, as evidenced by the constitutional reform of decentralisation, which was announced in 2014, but still not implemented, having managed to substantially change during this time not only its content, but also strategic guidelines.

Referring to Ukrainian scientific sources, which to a certain extent investigate the municipal policy, the authors of the present study agree that municipal policy is a legal policy pursued jointly by public authorities, local governments, civil society institutions involving members of local communities to development of local self-government [8]. The state is the leading subject of municipal policy development in Ukraine. It would seem that this is quite understandable given the sovereignty of state power, but not in the case of local self-government, the "top-down" construction of which contradicts the very nature of self-government, where the subject and object of power coincide in the face of the territorial community. Local self-government in Ukraine was initiated by state enforcement, as a result of which the local population was simply confronted with the fact that it currently has a different status, and the "power landscape" has changed radically. Therewith, the decrepit nature of local self-government persists throughout the years of Ukraine's independence, the most striking evidence of which is that all reforms in the municipal sphere are carried out at the initiative of the state and within the state vision of social development. As a result, contrary to the declared independence and autonomy from the state, local self-government remains the object of reform and even experimentation, being unable to oppose the will of the sovereign state power. Territorial communities and their authorities in the process of reforming their own existence are given, at best, an advisory role, while the centre of decision-making is concentrated in the capital, represented by the highest political bodies of the state. As a result, two parallel realities are formed: the abstract-idealised system of local self-government, which is seen in central government projects and reflected in strategies, concepts and laws, and a realitic system of local self-government, which is observed daily and which members of territorial communities face daily when solving their current issues.

In the process of voluntary and compulsory unification of territorial communities, the socio-territorial basis of local self-government was effectively destroyed, which conventionally was territorial communities as natural communities united by common interests and needs arising from living together within a single settlement. Newly created (united) territorial communities are artificial formations; members of such communities have no common ground. As a result, local self-government is transformed into a purely territorial administration and thus finally nationalised. Accordingly, initiative, democracy, reliance on the masses, publicity and local uniqueness of local self-government are lost, and thus all the creative potential embedded in the model outlined in the 1995 European Charter of Local Self-Government is levelled [9].

The starting points of the national municipal policy are the concepts of reform, strategies, plans for the development of local self-government, etc. Such documents underlie further transformation of the system of national legislation in the field of local self-government. The revision of the provisions of Ukrainian legislation on a new conceptual basis, in turn, is aimed at ensuring the purposefulness and systematisation of the state's transformations in the municipal sphere. Thus, the essence of municipal policy of Ukraine, given the decentralisation reform, is that it is a relatively stable, organised, purposeful activity of public authorities and local governments, which aims to build a capable local government, adequate to the needs and interests of territorial communities.

National municipal policy, its elemental composition (subjects, objects, purpose and means of activity, mechanisms of realisation, and also results of this activity and their estimation), depend on the following factors and conditions: 1) political value of a social problem (concept, strategy, recommendation, etc.); 2) the presence or possibility of developing a political administrative programme (legislation); 3) political-administrative

structure (vertical and horizontal connections of state authorities and local self-government), which makes provision for the definition of key actors (stakeholders), including institutional norms that affect their activities (specialised, sectoral laws); 4) the presence of an action plan, programme or their development (plans for the implementation of steps and stages, state target programmes, etc.); 5) acts of implementation (orders, instructions, methods, administrative documents of local nature), which are provided by the current legislation and correspond to the political administrative programme; 6) policy impact assessment (statistics and monitoring, administrative and financial audit, etc.) [10].

Therefore, the elemental composition of municipal policy is as follows:

1. Existence of the developed concept of system-structural and organisational-functional organisation and activity of local government (local bodies of state executive power and local self-government bodies) at different levels of administrative-territorial structure, including basic, intermediate, and regional levels.

2. An agreed system of regulations that govern the organisation and activity of local bodies of state executive power and local self-government, establish the scope and limits of their competence, including determine the features of interaction and the procedure for resolving disputes between them.

3. Regulatory framework of resource provision of local self-government (most importantly, financial and budgetary).

4. The definition of a body or official in the structure of state executive bodies, which represents the interests of the state in the relevant territory, has the right to exercise control powers and is a link between the territorial community, local governments and the system of state executive bodies.

5. Formally defined algorithm for decision-making on issues relating to local self-government (in particular, involves the participation of representatives of associations of local governments, including local needs and interests).

6. The system of monitoring the national municipal policy.

Taking the elemental composition as a basis, it is possible to investigate the ongoing changes by analysing the theoretical and conceptual and regulatory support of the reform.

1. The processes of regionalisation, decentralisation of public power, the development of a system of capable local self-government based on the principle of subsidiarity and universality are inherent in modern states with a liberal-democratic political regime. Decentralisation is usually understood as the reform of the system of public power in the state in the following main areas: 1) territorial reform (involves the reorganisation of territorial organisation, usually through the consolidation (agglomeration) of administrative-territorial units (voluntary, forced or mixed) 2) institutional reorganisation (redistribution of powers and relevant financial and other resources); 3) procedural reorganisation (reform of the system of public services (including administrative services), introduction of e-government, due (good) governance at different levels and in different subsystems of public authority, best world practices of organisation and activity, etc.) [11]. Reforms in these areas were comprehensively and meaningfully carried out in countries such as Poland, Latvia, Lithuania, the Czech Republic, Slovakia, Estonia, Italy, Portugal, Denmark, Finland, and others [12; 13]. In many other countries of the world, these areas of reform are at an early stage (awareness of the need, search for a model, development of a concept, planning and forecasting, etc.).

The main issues to be addressed by the decentralisation reform, including in Ukraine, are as follows: 1) significant deterioration in the quality and accessibility of public services due to the resource failure of the vast majority of local governments; 2) catastrophic deterioration of heat, sewage, water supply networks, housing in general, including the risk of anthropogenic disasters in conditions of serious lack of material, financial, and other resources; 3) difficult demographic situation in most territorial communities; 4) inconsistency, and often separation of local policy on socio-economic development with the interests of territorial communities; 5) lack of unified state regulation of forms of local democracy of participation, inability and lack of initiative of members of territorial communities to take solidarity actions aimed at protecting their rights and interests; 6) reducing the level of professionalism of local government officials, including due to the weak competitiveness of local governments in the labour market, reducing the prestige of positions, which leads to low quality of vital decisions for the community; 7) corporatisation of the system of local self-government bodies, high degree of secrecy and non-transparency of their activity, increase of corruption, which can lead to decrease in efficiency of use of own and involved material and financial resources, decrease of investment attractiveness of territories, increase of social tension; 8) politicisation of the decision-making process in this area of legal regulation, when representatives of the dominant party in Parliament pursue national interests without focusing on the affairs of territorial communities, while opposition parties, on the contrary, often sabotage the implementation of national policy, ignoring the interests of communities; 9) excessive centralisation of powers of executive bodies and financial and material resources, even considering changes in the budget and tax spheres; 10) increasing social tensions due to failure to ensure the ubiquity of local self-government, etc. [14].

Thus, the areas and logic of the reform were defined by the Concept of reforming local self-government and territorial organisation of power in Ukraine, approved by the Cabinet of Ministers of Ukraine on April 1, 2014. [15]. The reform is based on the following starting points: transfer of powers from the centre to the periphery; the relevant delegated powers must be provided with sufficient financial resources; determination of forms and limits of control over the activity of local self-government bodies.

2. Since the adoption of the Concept, the regulatory framework for the reform has been developed and adopted, and numerous laws have been adopted that lay the foundation for the development of capable local self-government and community cooperation. Furthermore, in 2015, the Law of Ukraine "On the Principles of National Regional Policy" was adopted [16], which defines the basic socio-economic, legal and other principles of national regional policy as a component of internal policy of Ukraine, including defines the purpose, principles, levels, objects and subjects of national regional policy, their powers in this area, financial support measures, including monitoring their implementation.

Substantial changes were also introduced to the Tax and Budget Codes of Ukraine (in terms of fiscal decentralisation – changes in the structure of the budget system with corresponding changes in the powers of local governments, etc.). In particular, in pursuance of the Decree of the President of Ukraine "On Urgent Measures to Ensure Economic Growth, Stimulate Regional Development and Prevent Corruption", the State Strategy for Regional Development for 2021-2027 was developed [17] This document provides not only objective changes, but also changes in approaches to regional development, subjective changes (until 2020, the relevant policies were developed and implemented the by central government; starting from 2021, it is expected that the development and implementation of this policy will be performed at all levels: central, regional, local, including with the involvement of non-governmental organisations), substantial changes in the funding of relevant regional development programs, including monitoring of relevant measures by the Government of Ukraine and, finally, all these efforts to strategically plan development and efficient management of resources, etc.

At the same time, the reorganisation of the administrative-territorial system was initiated. On the one hand, this process should have been facilitated by the adoption of the Laws of Ukraine "On Cooperation of Territorial Communities" [18], "On Voluntary Association of Territorial Communities" [19] of 2014 and 2015, respectively. These regulations laid the foundations for future territorial reorganisation, namely by defining the legal framework for cooperation of territorial communities, principles, forms, subjects and areas, mechanisms of such cooperation, its promotion, financing and control, and settlement of relations arising in the process of voluntary association of territorial communities of villages, settlements, cities, including voluntary accession to the united territorial communities, purpose, subjects of initiation, including decision-makers, funding issues, etc.

Therewith, the draft law, which should determine the principles of development of administrative-territorial organisation, conditions, and procedure for creating administrative-territorial units, their reorganisation, status of settlements, procedure for naming and renaming settlements and administrative-territorial units was not adopted by the Verkhovna Rada of Ukraine. The current situation, especially considering that the reform of local self-government and territorial organisation of power in Ukraine, administrative-territorial structure and national regional policy take place simultaneously, has an adverse impact on the ongoing process of territorial reorganisation, transfer of functions and powers, relevant resources, etc. Furthermore, the above issues, which were caused by a consistent and ill-considered policy in the field of territorial reorganisation, resulted in problems of establishment and organisation of new local governments, starting with the appointment and holding of elections to district councils of large communities and ending with financial and property and competence issues (unwillingness to take property on balance; unwillingness to take responsibility; problems of determining administrative centres and their proximity, accessibility, etc.).

At the same time, the Verkhovna Rada of Ukraine adopted some legislative acts on zoning, including amendments to the election legislation. In particular, according to the Resolution of the Verkhovna Rada of Ukraine "On the Formation and Liquidation of Districts" [20], a consolidation occured and 136 districts were created instead of 490. Furthermore, considering the introduction of new types of electoral systems for local council elections by the Electoral Code, and considering the need to hold not only regular but also the first local elections in a pandemic, the Law of Ukraine "On Amendments to Certain Laws of Ukraine Concerning the Improvement of Electoral Legislation" [21] eliminated gaps and inconsistencies, adjusted deadlines, simplified and unified election procedures to ensure compliance with international standards for elections and to ensure the sustainability of democratic principles and procedures in Ukraine.

The above issues are complex and reflect the inconsistency and unsystematic nature of actions in the development of the national system of legislation in the field of local self-government. Thus, the national

municipal policy as a set of measures aimed at legalisation and statutory regulation of public relations in the organisation and exercise of municipal power, is described by a constant search within the framework of conceptually different systems of local government, inhibiting its development through imperfection, inconsistencies, gaps in legal regulation.

3. It is clear that the territorial reorganisation, including the transfer of power (legal responsibilities of bodies and/or officials), and hence the responsibility involves the provision of appropriate material and financial resources. This provision is reflected both in the Concept of Reforming Local Self-Government and Territorial Organisation of Power in Ukraine and in the State Strategy for Regional Development for 2021-2027. Furthermore, substantial changes have been introduced to the current legislation of Ukraine.

Thus, the Law of Ukraine "On Amendments to the Budget Code of Ukraine Concerning the Reform of Intergovernmental Relations" [22] makes provision for increasing budgetary and financial independence of local budgets, stimulating communities to unite and forming capable territorial communities through the mechanism of transition of budgets of united communities to direct interbudgetary relations with the state budget, expanding the existing revenue base of local budgets, decentralisation of expenditure powers in socio-cultural areas and a clear division of competences, formed on the principle of subsidiarity, the introduction of new types of transfers, the establishment of a new system of equalisation of national taxes, simplification of local guarantees and borrowing from international financial institutions, etc. Legislative changes also gave local governments the right to approve local budgets regardless of the date of adoption of the Law on the State Budget.

Accordingly, the Law of Ukraine "On Amendments to the Tax Code of Ukraine and Certain Legislative Acts of Ukraine Concerning Tax Reform" [23], albeit not directly related to the reform of local self-government, makes provision for substantial changes in the tax system that affect all actors. In particular, the united territorial communities received powers and resources at the level of cities of regional significance, while revenues from such taxes and fees as property tax, single tax, including the fee for parking spaces, tourist tax remained on the ground. Moreover, with the entry into force of the Law of Ukraine "On Amendments to the Tax Code of Ukraine to Improve Tax Administration, Eliminate Technical and Logical Inconsistencies in Tax Legislation" [24], local governments shall not oblige to make annual decisions on the establishment of local taxes and/or fees. Local governments may not decide to impose local taxes and fees in the current year. In this case, subject to the adopted changes: 1) the single tax and property tax will handle the application of rates that were in effect until December 31 of the year preceding the budget period in which it is planned to apply such local taxes and/or fees; 2) property tax, fee for parking spaces for vehicles, tourist tax and land tax for forest lands (if established) – at the rates specified in the current decisions. In case of local self-government decisions, the provisions of which stipulate amendments to existing decisions only in part of the change of year or its exclusion in the title of the decision (indefinite decision), such decisions will not have the features of a regulation, and their adoption will not require procedures established by the Law of Ukraine "On the Principles of National Regulatory Policy in the Economic Activity Sector".

The Law of Ukraine "On Amendments to the Budget Code of Ukraine to Bring the Legislative Provisions in Line with the Completion of the Administrative-Territorial Reform" [25] continued the initiated transformations, making provision for the creation of an adequate resource base for the exercise of local government powers on a new territorial basis, in particular by dividing revenues and expenditures between budgets of districts and territorial communities, establishing the composition of revenues and expenditures of new communities (formed by the Cabinet of Ministers of Ukraine) in the amounts assigned to the budgets of cities of regional significance and united territorial communities, as well as establishing equal conditions for territorial communities (rural, settlement, urban) in budget support. The main sources of revenue of district budgets are revenues from the management of communal property (rent, income tax of communal enterprises, part of net profit) and administrative fees. The legislatively determined powers of district councils may be exercised within the limits of revenues to district budgets, including by attracting funds from village, town, and city budgets for joint social, infrastructural, economic, and other projects on a contractual basis. Therewith, due to a certain inconsistency of the transformation process (territorial and institutional reorganisation without prior proper regulatory framework: adoption of laws of Ukraine, including amendments to the Constitution of Ukraine, etc.), some terminological issues remain unresolved, such as clear definition and unambiguous understanding of the following terms: "local government budget", "territorial community budget", including the issue of some restriction of revenues to district budgets and their exclusion from the system of horizontal equalisation in favour of communities of villages, towns, and cities.

Both cumbersome and progressive are the competence and resource changes provided by the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning the Optimisation of the Network and Functioning of Centres for Provision of Administrative Services and Improvement of Access to

Administrative Services Provided in Electronic Form" [26]. Thus, on the one hand, it is assumed that the changes can improve and enhance the quality of administrative services provided to individuals and legal entities, including ensure budget revenues. On the other hand, such institutional and functional changes in practice are manifested in such problems as: the presence of the building or the need for its construction and/or equipment/re-equipment; staff training and encouragement; connection to registers; ensuring the availability of services by creating remote jobs and/or by concluding agreements on cooperation of territorial communities in common interests, etc.

4. The issues of transformation of local state administrations and/or introduction of the institution of prefect as a representative of the President of Ukraine in connection with structural and competence changes envisaged for the system of central executive bodies by the Public Administration Reform Strategy for 2016-2020 remain relevant and no less complicated, including in connection with the structural and competency changes provided for the system of local self-government by the Concept of Reforming Local Self-Government and Territorial Organisation of Power in Ukraine of 2014. Therewith, from a conceptual standpoint, the issue of transformation of local state administrations as state executive bodies on the ground and their interaction with local governments remains understudied, and the organisation and activities of these bodies still correspond to the outdated notion which is formed under the influence of the idea of centralised public administration with elements of excessive "guardianship" over local self-government [27]. Furthermore, the legislation does not contain a definition of the concept of administrative supervision and/or control over the activities of local governments and a clear mechanism for their implementation, which raises the issue of amending the Constitution of Ukraine [28], the Law of Ukraine "On Local State Administrations" [29] and/or the adoption of a separate regulation in this area.

According to Part 4, Article 143 of the Constitution of Ukraine, local governments on the exercise of powers of executive authorities are controlled by the latter. The Law of Ukraine "On Local Self-Government in Ukraine" [30] addresses these issues in several articles: 1) Article 20 stipulates that such control may be exercised only on the basis, within the powers, and in the manner prescribed by the Constitution and laws of Ukraine, and shall not lead to interference of public authorities or their officials in the exercise of local authorities' powers; 2) Part 10, Article 59 states that "acts of bodies and officials of local self-government on the grounds of their inconsistency with the Constitution or laws of Ukraine are recognised as illegal in court. "In this case, Part 2, Article 71 of the Law emphasises that executive bodies and their officials have no right to interfere in the lawful activities of bodies and officials of local self-government, including to resolve issues referred by the Constitution and laws to the powers of the latter, except in cases delegated by councils and in other cases stipulated by law. This provision is detailed in Part 2, Article 76, which stipulates that bodies and officials of local self-government on the exercise of their delegated powers of executive bodies are under the control of the relevant executive bodies. Furthermore, the principles of relations of local state administrations with local governments, which also apply to the implementation of administrative supervision and control are defined in Article 35 of the Law of Ukraine "On Local State Administrations" (interaction; assistance; restriction of supervision and control by law; considering the proposals of local governments and officials; prior notification of local governments in case of important issues at the local level, central authorities, etc.).

In this case, Paragraph 1, Article 8 of the European Charter of Local Self-Government stipulates that any administrative supervision and/or control (currently, should consider not only the specifics of the translation, but also the specifics of the concept of the origin of local self-government, system and model of local self-government in each country, including in different regions (constituent parts) within one state) by local authorities may be carried out only in accordance with the procedures and in cases provided by the constitution or law. The purpose of administrative supervision and/or control can only be to ensure compliance with the law and constitutional principles (Paragraph 2, Article 8). However, instances may exercise administrative supervision over the timeliness of the tasks assigned to local governments. This provision establishes a standard for combining oversight of legality with control over expediency (administrative oversight of the municipal authority's powers is exercised solely over legality; for delegates, control over legality and expediency is permissible if the latter meets the requirements of legal certainty and is not opposed to legality). Therewith, the lack of special procedures, the general nature of the competence of local state administrations, the excessive amount of delegated powers, their functional intertwining with their own powers allow controlling the activities of local governments in violation of legal certainty and legality. Furthermore, Part 3, Article 8 of the Charter amphasises the principle of proportionality of the measures of the controlling body to the importance of the interests it intends to protect. Instead, the principle of proportionality manifests itself differently depending on the subject of supervision or control and regarding which powers of local self-government bodies (own or delegated) such supervision and/or control is exercised. According to this principle, the supervising/controlling body in the exercise of its powers must act in such a way as to have the

least possible effect on local autonomy, while achieving the desired result. Furthermore, Recommendations of the Congress of Local and Regional Authorities of the Council of Europe No. R (98) 12 "On supervision of local authorities" [31] contain guidelines that determine the scope of administrative supervision.

The authors of the present study believe that despite the imperfection of the doctrinal base and the presence of numerous gaps in the field of administrative supervision and/or control in the municipal law sphere, the state administrative supervision and/or control can be distinguished 1) in the exercise of local government powers; 2) in the sphere of exercising the delegated powers of local self-government bodies. Therewith, the current legislation does not contain a single and clear procedure for state control and/or supervision.

In turn, the principles of the mechanism of state control and supervision over the observance of the Constitution and laws of Ukraine by local governments are defined in the Draft Law of Ukraine "On Amendments to the Constitution of Ukraine (on decentralisation of power)" and in the Draft Law of Ukraine "On Amendments to the Law of Ukraine "On Local State Administrations" and Some Other Legislative Acts of Ukraine on Reforming the Territorial Organisation of Executive Power in Ukraine" (No. 4298 of October 30, 2020) [32], which, according to the explanatory note, makes provision for the creation of a system of local state administrations of the prefectural type. Therewith, it is assumed that local state administrations continue to implement district and regional budgets, including some powers of local self-government by delegation, etc. Therefore, this does not refer to the fact that the system of local state administrations will be structurally and functionally built and will act as "prefecture-type" bodies (although this term is not explained in the draft), but that apart from the usual set of tasks and powers, the latter acquire additional legal responsibilities for "ensuring the rule of law in the exercise of local self-government". In particular, a new chapter "Ensuring the rule of law in the exercise of local self-government" (Chapter 6, Section II) is proposed, which defines the general principles and principles of ensuring the rule of law in the exercise of local self-government; the system of bodies (central, regional and district level) that ensure the rule of law, their functions and powers; certain measures to ensure legality (including appeals against decisions of local governments, proposals, appeals to relevant bodies, consultations, etc.).

A detailed study of certain provisions of this project suggests that the power to "ensure the rule of law in the implementation of local self-government" in combination with the implementation in practice of the role of their own executive bodies of district and regional councils can lead to redundancy and even direct interference in local government, which contradicts the very essence of the ongoing reform. After all, given the main goals of the reform of local self-government and territorial organisation of power in Ukraine, the creation of capable local self-government, primarily at the basic, subregional and regional levels is possible only if decisions can be made and implemented independently (including the implementation monitoring) within one subsystem of public authority (given the nature of local government). Instead, the Draft Law factually refers to the transformation of local state administrations into public authorities, which simultaneously "replace" their own executive bodies of local self-government at the subregional and regional levels and ensure: implementation of the Constitution of Ukraine, laws of Ukraine, acts of the President of Ukraine, Cabinet of Ministers and other executive bodies; law and order; observance of the rights and freedoms of citizens; implementation of state and regional programmes of socio-economic and cultural development, other programmes, reporting on their implementation; interaction with local self-government bodies and territorial bodies of central executive bodies. The implementation of such a project will not lead to the liquidation of local state administrations, as envisaged by the 2014 Concept and the draft constitutional reform on decentralisation in 2015, but to their further strengthening and even transformation into full-fledged, dominant bodies in the territory.

5. One of the determining factors in the establishment of capable local self-government is the optimisation of the decision-making process relating to local self-government. Most importantly, this refers to the coordinated and mutually coordinated activity of various public authorities, including their interaction both among themselves and with citizens. After all, over the past few years, relations between the government and citizens have deteriorated, in particular due to too high a degree of "secrecy" or "estrangement of the ruling elite" from the average citizen, and lack of real opportunity to influence decision-making, both state and local levels. In this context, the development of an active society that is ready to defend its interests and take part in rule-making, both at the national and local levels, is vital. Establishing interaction between the rulemaker and the public is one of a set of steps that can bring Ukraine closer to European standards of democracy. The primary need in such a situation is the revision of the current legislation on appeals (petitions) of citizens, public discussions and consultations, including the development of legal foundations for the introduction of new practices of public opinion.

Furthermore, to ensure a full opportunity for citizens to take part in the management of both state and local affairs, it is necessary to create an appropriate legal framework for not only national but also local

referendums, the organisation and conduct of which is currently not governed by Ukrainian legislation. This, in turn, implies: a) the need for a clear definition of the subject of the referendum; b) bringing the regulation of the procedure for preparing and holding referendums in line with the provisions of the election legislation; c) introduction of mechanisms that would prevent the use of the institution of referendums to achieve the political goals of a government; d) creation of legal foundations for conducting local public polls, separating their subject from the subject of relevant referendums, simultaneously consolidating the non-imperative nature of decisions made through public polls and the obligation to consider their results by corresponding public authorities. Important, but understudied and insufficiently regulated is the issue of involving specialists, experts in the decision-making process on local self-government issues, both in the development and during the examination and discussion of draft decisions, including in the ongoing decentralisation reform, which should become an effective basis for ensuring the broad rights of citizens in modern conditions, including direct involvement in addressing pressing issues of community development, regions, state.

Therefore, the implementation of concerted and coordinated actions of both public authorities and local governments, including members of the public to improve the legal regulation of rule-making activities in Ukraine in general, including the process of developing local regulations of local government in particular, further harmonisation of Ukrainian legislation and European Union, which is manifested in the convergence of the national legal system and its subsystems with the legal system of the European Union and the requirements of international law and standards, including training of qualified personnel, in our opinion, are determinants of successful development of Ukraine [33]. This may include, inter alia, the following measures: determining the types and legal force of regulations (including regulations of local self-government), establishing the procedure for their preparation, adoption, entry into force, rules of interpretation, accounting and systematisation; training of specialists in this field; improving mechanisms for involving citizens in decision-making, including by reviewing current legislation on the organisation and conduct of referendums, access to public information, consideration of citizens' appeals, organisation of public control, public examination of draft decisions, etc.; termination of the practice of adopting acts, the successful implementation of which is not ensured by the relevant financial and other conditions, revision of available regulations on their security.

6. Finally, a unified approach to the design and development of municipal policy of Ukraine, its definition and conceptualisation will help define a common strategy and tactics of legal development of society, improving the mechanism of legal regulation, ensuring human and civil rights and freedoms. The combination of efforts of leading theorists and practitioners around the scientific substantiation of the development of capable local self-government can have a positive impact on improving the system of local self-government and the development of individual territorial communities, and hence the state in general.

In this context, it is important to monitor the implementation of municipal policy. When considering this issue, it is vital to understand the very concept of legal monitoring, the list of officials/bodies, organisations, and persons authorised to implement it, including the mechanism for ensuring its implementation. However, these issues are not described by the unity of scientific approaches to their understanding, as well as the legal regulation of subject-object composition, powers (rights and responsibilities), and other elements.

In particular, the Law of Ukraine "On the Principles of National Regional Policy" stipulates that monitoring of the implementation of national regional policy is carried out by establishing appropriate indicators, the list of which is determined by the Methodology for Monitoring the Implementation of National Regional Policy approved by the Cabinet of Ministers of Ukraine [34]. Thus, in accordance with the provisions of the Law, the effectiveness of the Council of Ministers of the Autonomous Republic of Crimea, oblast, Kyiv, and Sevastopol city state administrations is monitored and evaluated to supervise the implementation of national regional policy, identify regional development issues and their causes, and improve managerial decisions of executive bodies in the field of regional development. The implementation of the national regional policy is monitored by determining the list of indicators, tracking their dynamics, preparation and publication of the results of such monitoring and includes: monitoring the implementation of indicators of the objectives of the documents that determine the national regional policy; monitoring of socio-economic development of the Autonomous Republic of Crimea, oblasts, cities of Kyiv and Sevastopol.

For example, ministries, other central executive bodies, the Council of Ministers of the Autonomous Republic of Crimea, oblast, Kyiv, and Sevastopol city state administrations submit an analytical note to the Ministry of Regional Development on socio-economic development of regions and urgent problems together with proposals for their solution in accordance with the form established by the Ministry of Regional Development. In particular, the Methodology includes the following indicators (subject to quarterly evaluation): economic efficiency; investment development and external economic cooperation; financial self-sufficiency; labour market efficiency; infrastructure development; renewable energy, and energy efficiency. Evaluation of the results lies in a certain comparison of the obtained data according to the corresponding formula.

Therewith, the essence and meaning of the term "monitoring", and specifically "monitoring the implementation of municipal policy", does not fit exclusively within the economic indicators (certain statistics), and is much more extensive. As an element of the legal system of society, legal monitoring is one of the tools to ensure the effectiveness of regulations and the practice of their application, which allows determining the current state of legislation (its quality), assess the effectiveness of legal regulation, identify reasons that hinder or prevent the achievement of the legal goals set. It is quite logical that the purpose of legal monitoring is to ensure the effective operation of the entire process of effective regulation of public relations. Therefore, the object of legal monitoring is public relations, which are covered by the scope of law and require appropriate legal regulation, and the subject — the relevant regulations and public relations, which are under the regulatory influence of such norms. In this regard, the main tasks of legal monitoring include identifying shortcomings in legal regulation and determining the effectiveness of legal norms for the systematisation and improvement of legislation; identifying trends and needs in the legal regulation of a certain scope of public relations; establishing the possibility and necessity of perception of foreign experience in the development of democratic legal institutions. These activities should be performed within the constitutional powers of public authorities and local governments, public organisations [35]. The essence of this activity is to collect and summarise information on the state of legislation, practice of its application, and its purpose – to identify their compliance with the projected result of legal regulation, including the expectations of participants (officials, civil society institutions, citizens). Monitoring should be performed at different levels and stages and in accordance with the tasks. The current legislation is yet to introduce a comprehensive approach to understanding the essence of this activity, especially in the context of monitoring the implementation of municipal policy. On the contrary, it is described by disorganisation, fragmentation, unprofessionalism, misunderstanding of the significance of its results for the further socio-economic development of the state and local self-government, etc.

Given these problems, which are addressed by a set of measures to decentralise reform, given the substantial ideological, cultural changes, including the complexity of modern socio-economic transformations, today one of the important tasks of the state as a whole is to ensure the development of capable local government, stimulating local innovative development, transition from the national municipal policy to the development of municipal policy as a system of strategic management of self-governing activities. After all, the modern socio-economic development of regions, individual territories and communities must be ensured based on the implementation of effective mechanisms of municipal policy. The mechanism of state regulation of regional development should be determined at both regional and local levels and based on the use of local resources, economic restructuring, environmental, demographic, social and numerous other problems, and municipal – considering the interests of the state and prioritising local interests.

The authors of the present paper believe that ensuring high results and dynamic, balanced regional and local development is possible only through close cooperation of all levels of government and administration. Therewith, today, as never before, there is a detachment of different levels of government, an inability to accept and listen to each other's problems and suggestions, etc.

In turn, the main activities of local authorities (currently local state administrations and local governments) in the regulation of socio-economic development at the regional and local levels include: 1) involvement in the development and further implementation of not only national, but also regional and local development strategies and programmes; 2) assistance and support of economic entities of the relevant territory, region in matters of organisational and methodological support, logistical and advisory assistance (new approaches and mechanisms are gradually being introduced); 3) assistance in the acquisition of new technologies and implementation of local innovative projects of enterprises (mainly on the initiative of business entities themselves, with the involvement of local governments); 4) promoting the development of infrastructure (currently with great difficulty given the ongoing reform process, including medical, educational, and other reforms); 6) stimulating the manufacture of new products (given the substantial slowdown in global economic development, including through the threatening scale of the pandemic and other threats); 7) improvement of resource provision by financing from local budgets and attraction of investment resources, etc. (only in some communities, subject to cooperation between local governments and businesses of interest) [36].

The ongoing process of reforming local self-government and territorial organisation of power in Ukraine, including the processes of improving all levels of the executive branch due to the spread of decentralisation and reorganisation of public administration considerably complicate the development of municipal policy as a system of strategic self-government.

CONCLUSIONS

Based on the above, the authors of this study outline the following main blocks of issues that require the use of a comprehensive scientific approach to their legislative solution:

1. Completion of the ongoing reform of territorial organisation of government and local self-government requires the development of appropriate municipal policy as a system of goals, priorities, areas, tasks and concrete measures for creation of an effective mechanism of municipal legal regulation, for development and modernisation of local self-government in the country. Both the development and implementation of this policy should involve not only public authorities, but also local governments, interested civil society institutions and local communities.

2. A local regulatory framework for the establishment and development of affluent communities should be created (at the level of Strategies, Action Plans for the implementation of the latter, etc.).

3. It is necessary to ensure a clear division of powers between local state administrations and local self-government bodies, including the redistribution of powers in the system of local self-government bodies, considering the principle of subsidiarity.

4. Training and advisory centres of local self-government bodies should be established to improve the skills of deputies of local councils, officials, and officers of local self-government bodies on the above-mentioned development issues at the local level.

5. It is necessary to redistribute funds in favour of local budgets and finance local projects within the objectives of the ongoing reform.

6. The goals, objectives, and ways of reform stated in the Concept of Local Self-Government Reform should be reflected and stipulated in other strategies, plans, and programmes of goals, in particular regulations issued by the state. One of the means of forming a consistent and coordinated national municipal policy should be the deepening and detailing of legal regulation in the municipal sphere through the development and adoption of the Municipal Code and others.

7. The implementation and protection of municipal rights and freedoms of members of territorial communities requires regulatory support, including through the development and adoption of the Law "On Local Referendum", and improving the legal regulation of other forms of local participatory democracy.

The basis for such transformations should be the reform of decentralisation of public power, which makes provision for the redistribution of powers and functions between different branches and levels, including subsystems of public power, in particular, considering the foreign practices of decentralised European countries. After all, the said practices demonstrate that the introduction of decentralisation reform has resulted not only in a substantial reduction in the effects of crises, solving many socio-economic problems, but also in the implementation of strategic objectives of national development of both leading and modern European countries.

Therefore, the highlighted issues require a comprehensive approach and concerted action of the main actors – the state, local government, the private sector, including specialists in the field of local self-government. The legislative implementation of the best modern European and world practices of providing quality and affordable public services while adapting to the concepts of good governance, e-governance, including the use and compliance with the principles, mechanisms and means of new public management will increase trust in public authorities and local self-government, ensure social harmony, increase economic benefits, etc. The authors of this study argue that changes in the system of government and the territory will open wide opportunities to meet the vital needs and interests of citizens, ensure a high level of quality and structure of consumption of material, social, cultural goods, because they correspond to human nature and purpose and create optimal conditions for its self-fulfilment. Furthermore, a comprehensive approach is required in the implementation of strategies, concepts and plans for the digitalisation of state and public life.

Thus, a certain result of the ongoing decentralisation reform should be an awareness not only of the nature of local government as a special form of public authority, but, above all, awareness of the indisputable fact that local governments, considering the legislative and practical implementation of the principles of subsidiarity and decentralisation, underlying their organisation and activities should become those entities that will be in organisationally, legally and financially capable of ensuring local socio-economic development.

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Suggested Citation: Serohina, S.H., Bodrova, I.I., & Petryshyna, M.O. (2021). Municipal policy as a priority area of legal policy in the context of reforming the territorial organisation of power and European integration of Ukraine. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(3), 129-143.

Submitted: 27.05.2021
Revised: 09.07.2021
Accepted: 13.08.2021

УДК 351:323.4
DOI: 10.37635/jnalsu.28(3).2021.144-153

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ГЕНДЕРНІ ВИМІРЮВАННЯ В СИСТЕМІ КООРДИНАТ ПУБЛІЧНОГО УПРАВЛІННЯ І АДМІНІСТРУВАННЯ

Анотація. *Нині тривають конституційні реформи, спрямовані на розвиток демократичної правової держави та євроінтеграції. Рівні права та можливості для обох статей є одним із фундаментальних принципів демократії та поваги до особистості. Гендерна рівність пронизує всі положення Конституцій Киргизії та України. Фактично, Основний закон визначає гендерну стратегію для держави. Найважливішою лінією жіночого руху останніх років є лобіювання необхідних змін у законах та законопроектах, що стосуються гендерних питань. У дослідженні аналізуються деякі аспекти представництва жінок у діяльності державних органів в Україні та Киргизькій Республіці. У дослідженні представлені теоретичні та практичні думки, експертні оцінки щодо представництва жінок у правовій державі. Також вирішуються проблеми реформування законодавства та основ суспільних відносин з початку 1990-х років і до теперішнього часу, що призвело до переосмислення сутності гендерної рівності та сприяло активізації розвитку нових підходів до правове регулювання у даній предметній сфері. Під час аналізу було відзначено, що для виконання міжнародних зобов'язань щодо досягнення гендерної рівності у досліджуваних країнах були розроблені конституційні рамки та гарантії дотримання принципу рівності, що також конституйовано положеннями Основного закону Киргизстану Республіки та Конституції України*

Ключові слова*: гендерна рівність, виборчі права, баланс, участь жінок, права людини*

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GENDER DIMENSIONS IN THE COORDINATE SYSTEM OF PUBLIC MANAGEMENT AND ADMINISTRATION

Abstract. *Nowadays, constitutional reforms are continuing, which are aimed at the development of a democratic state governed by the rule of law and European integration. Equal rights and opportunities for both genders constitute one of the fundamental principles of democracy and respect for the individual. Gender equality permeates all the provisions of the Constitutions of Kyrgyzstan and Ukraine. In fact, the Fundamental Law determines the gender strategy for the state. The most important line of the women's movement in recent years has been lobbying for necessary changes in laws and draft laws related to gender issues. The study analyses some aspects of women's representation in the activities of government bodies in Ukraine and the Kyrgyz Republic. The study presents theoretical and practical opinions, expert assessments on the representation of women in a state governed by the rule of law. The problems of reforming the legislation and the foundations of public relations since the beginning of the 1990s and up to the present time are also addressed, leading to a rethinking of the essence of gender equality and contributing to the activation of the development of new approaches to legal regulation in the given subject area. During the analysis, it was noted that to perform international obligations to achieve gender equality in the countries under study, constitutional framework and guarantees of adherence to the principle of equality were developed, which is also constituted in the provisions of the Fundamental Law of the Kyrgyz Republic and the Constitution of Ukraine*

Keywords: *gender equality, electoral rights, balance, women's participation, human rights*

INTRODUCTION

Over the past decades, society has undergone considerable changes in the understanding and legitimisation of gender relations, and steps are constantly being taken to introduce an institutional mechanism for ensuring gender equality. The successful implementation and regulation of gender relations in society involves the affirmation of the value of gender equality both in society as a whole and in its various institutions in particular. These predominantly include the prevention of gender discrimination, ensuring equal participation of women and men in making socially important decisions (primarily in politics and in the labour market in general), ensuring equal opportunities for women and men to combine professional and family responsibilities, preventing gender-based violence, etc. The general principles of law, one of which is the principle of equality, represent the basic values, fundamental provisions, standards in ensuring the rights and freedoms of a person and a citizen; therefore, every developed state attempts to consolidate them in the provisions of its constitution. The corresponding principles are also consolidated in the Constitution of Ukraine. In particular, its provisions embody the internationally recognised principle of equal rights and freedoms of women and men. Equal rights and opportunities for both genders constitute one of the fundamental principles of democracy and respect for

the individual. An important component of the establishment of democracy is the gender component, which ensures the enjoyment of constitutional human rights and freedoms without gender-based discrimination. The establishment of a true democracy in all areas can only take place in a society with a factual principle of equal and equivalent civil dignity of women and men, ensuring equal opportunities for each of its members. Despite the fact that "women's participation in development" is currently an almost mandatory part of the catechisms of social and economic justice in most developing countries, the implementation of gender policy ambitions through State institutions has improved the situation of women only on the verge of survival at best, and has consistently failed to increase women's participation in decision-making, whether in the family, society, bureaucratic institutions, or the State. This persistent institutional failure to respond to the needs and interests of women in development, despite the constant efforts of gender policy advocates to adapt feminist political ambitions to changing development programmes, and despite the sometimes sincere good intentions of governments, draws theoretical attention to the gender aspects and public administration policies that underlie this particular model of institutional failure [1; 2].

The problem here is not just that the ambitions of feminist politics are being turned to dust by the slow click of bureaucratic mechanisms in the way of such redistributive policies. Instead, this study argues that public administration constitutes a gender-based process in and of itself, so that its outcomes, internal organisation, and culture reflect and promote the interests of men. "Gender" refers to socially constructed and institutionalised forms of identity that are associated with biological gender differences, and "gender approach" is the process that generates these forms through the provision or retention of significant social, political, and economic resources and values. The economic and political centrality of public services in the context of development is such that we use the term "gender policy" as an abbreviation for policies aimed at redistributing resources and values in the development process between the genders to change the asymmetry of importance and power associated with gender differences. Gender policy differs from the more familiar term "Women's Development Policy" in that the emphasis on gender constitutes a reminder that men are as limited as they are involved in the opportunities to contribute to this process [3-6]. Due to this, women can reflect and reproduce the pathologies of female marginality that arise as a result of the interaction of a wide range of other institutions. At the same time, they constitute an important stage to take a stand against this process and transform it in the interests of women. By the mid-1990s, the Kyrgyz Republic began the process of reforming legislation, which continues at the current stage due to the constant transformations of social and political life. In the same vein, the role of women in Kyrgyz society was re-evaluated at the level of their involvement in the sphere of state-building and governance. There was an anthropological turn, when women began to be granted a greater amount of rights, and which logically led to their development in the Kyrgyz Republic.

The presented understanding is conditioned by the recognition of the importance of the principle of equality in a state governed by the rule of law, which Kyrgyzstan has been gradually moving towards over the past 30 years. The development of gender equality in the Kyrgyz Republic is based on the recognition of international obligations through the development of the constitutional framework in the provisions of the Fundamental Law of the Kyrgyz Republic [7]. Admittedly, these processes were activated much earlier, but in the current conditions of social and legal reality, they have come to the fore. The issues of sustainable gender differentiation require close attention, both in the general conceptual aspect and in the specific historical conditions.

1. MATERIALS AND METHODS

Equality is one of the fundamental ideals underlying the French Constitution. The principle of gender equality was included in the preamble to the Constitution of 1946, which, like the Constitution of 1958, referred to the Declaration of the Rights of Man and of the Citizen of 1789. The reinstatement of the position of Secretary of State for Women's Rights and Equality in the Workplace in 2000 gave a new impetus to the national policy of gender equality and the full integration of gender equality into the legal framework of the European Union (EU). After the 2012 elections, an increased commitment to gender equality led to the re-establishment of the independent Ministry for Women's Rights, which had been closed two decades earlier. This has led to the mandatory adoption of a gender equality action plan by each ministry, as well as the appointment of gender equality officers in each policy area, reporting to the Minister for Women's Rights. However, the Government has currently reduced the level of responsibility for promoting gender equality to an Assistant Minister/Secretary of State [8-11]. France's approach to gender agenda mainstreaming is expected to be implemented through the institutionalisation of gender equality structures and inter-agency cooperation. For example, the Women's Rights and Gender Equality Service (SDFE) is responsible for addressing gender inequality issues at the local level.

While there is a legal framework to address the current problems of unequal power sharing between the genders, in practice it becomes increasingly dependent on goodwill and the ability to establish inter-agency cooperation, with specific structures and methodologies seemingly abandoned. France has a tradition of legislation on gender equality in the employment sector and professional life. Since the Equal Pay Act of December 22, 1972, at least 12 laws have been passed on this subject area until 2014. In February 2019, the Ministry of Labour launched the Index of Gender Equality (Indice d'Egalite de Genre) to measure and combat the gender pay gap and other gender inequalities at work [12]. Although France has experience with the adoption of legislation on gender equality, the first explicit references to the consideration of existing problems with the unequal division of rights and opportunities between the genders in national policy documents emerged only in 2000. It developed as a way to promote gender equality in society and public policy from the late 1990s to the early 2000s. Regional, departmental, and local authorities can initiate their individual gender equality policies. Decentralised services, such as the SDFE, monitor the implementation of the national gender equality policy at the regional or departmental level.

The policy-making of the European Union (EU) has also had a considerable impact on the institutionalisation of gender equality policy in Germany, while EU initiatives to address the existing problems of unequal distribution of rights and opportunities between the genders have stimulated discussion of appropriate tools and institutional mechanisms. The Fundamental Law of the Federal Republic of Germany of 1949 (Grundgesetz, GG), which is essentially the German Constitution, guarantees the principle of gender equality (Article 3 II GG). The Fundamental Law has been applied to the reunified state of Germany since 1990 and guarantees the equality of all citizens. The GG specifically addresses equality between women and men and obliges the German State to promote gender equality and eliminate existing inequalities. The gender equality mandate under the Constitution was amended in 1994 as follows: “The state promotes the effective implementation of equal rights for women and men and works to eliminate existing shortcomings” [13].

By a Cabinet decision of 23 June 1999, the Federal Government recognised the goal of gender equality as the guiding principle of its activities and adopted the consideration of existing problems with the unequal division of rights and opportunities between the genders as a joint strategy of all federal ministries.

2. RESULTS AND DISCUSSION

It is important to focus on the fact that the current spectrum of Kyrgyz parties purposefully affects the level of women's participation in political processes. It is no secret that in traditional societies, including the Kyrgyz Republic, there are still stereotypes about the secondary role of women. If the parties do not recognise their significant role, then, accordingly, the prospects for their election to more responsible positions become practically unachievable. The authors consider the participation of women in the system of government as an achievement of democracy, which allows recognising the difference of opinions and positions, which contain many debatable conceptual legal issues.

In the Kyrgyz Republic (the KR), as in many democratic states, men and women have equal rights, effective prerequisites for their implementation are laid down, which is implemented in the Constitution of the Kyrgyz Republic (2016) [7], the Laws of the Kyrgyz Republic “On State Guarantees of Equal Rights and Equal Opportunities for Men and Women” [14], “On State Civil Service and Municipal Service” [15]. The above-mentioned laws guarantee the provision of equal rights in all areas. One of the tasks of the conceptual order was the creation of an effective mechanism for ensuring equality of rights. This approach of the legislator has found the implementation of ensuring gender equality by the following means:

– optimisation of the regulation that takes into account the gender balance and gender-sensitive indicators;
– development of the institutional framework for gender equality;
– initiation of broad-based programmes in the country format;
– elimination of the imbalance in capabilities;
– integration of gender policy into long-term development programmes;
– mandatory recognition and implementation of the generally recognised provisions of the KR in this area.

The current state of affairs was preceded by a long journey. In the KR, work was initiated in 2012, and then the National Strategy for Achieving Gender Equality until 2020 was adopted [16], which defined the stages of the development of women's rights. According to the recognition of leading legal experts and human rights organisations, national practice can be recognised as positive, not only in one country, but also in the context of the whole CIS in general. Next, the study analyses a number of provisions of this Strategy. This concerned equal provision of rights through the implementation of the institutional framework: equality of rights and obligations; equality of opportunities for the genders; equality in family and domestic relations. Admittedly, all these achievements are not exhaustive, since there are still unimplemented points that also require detailed information. Thus, the equality of rights is stated in the Electoral Code of the KR with the

principle of double quotas, which can be interpreted as follows: "When determining the list of candidates, the party must take into account no more than 70% of persons of the same gender, with a difference in the order of candidates in the lists and not exceed three positions". Consideration of this theoretical position corresponds to the expansion of the representation of women. Recognising the current imbalance, the Kyrgyz Government adopted the above-mentioned Strategy, which primarily affected the political leadership, economic and social activity, and social passionarity of Kyrgyz women. To achieve the objectives set out in the Strategy, a National Action Plan (NAP) was adopted [16], which details all aspects of gender equality. A similar law regulating the rights of men and women in Ukraine and establishing a balance for both genders in all sectors was adopted in 2005 [17].

The Government of the Kyrgyz Republic and local self-government bodies are also actively working to increase the number of women in various segments of the economy. According to the latest data, private preschool institutions are being supported, which will allow women to go beyond the household sphere. Innovations in the provision of micro-loans in rural areas and their access to broader resources can be considered a certain achievement, which will increase the level of financial independence of women in the Kyrgyz Republic. The government is also working on the development of adult education as another lever outside the Kyrgyz Republic, with the unemployment problem of surplus labour resources remaining the stumbling block for the state. Undoubtedly, the measures taken by the state will improve the situation in all segments of the economy, education, culture, and healthcare. Proceeding from forecasts, the employment structure in the KR will be transformed as well, which will affect the migration of the working-age population, including women. There is also controversy surrounding the recognition of the value of care-giving and household management on the principles of shared responsibility. In a number of states, namely in Germany, this issue has already been addressed at the legislative level. In 2012-2014, the specificity and peculiarity of the labour market in the KR were fully taken into account [16]. In Ukrainian legislation, such issues are regulated by the Law of Ukraine "On Ensuring Equal Rights and Opportunities for Women and Men", namely, in the section on "Ensuring equal rights and opportunities for women and men in the socio-economic sphere" [17].

In 2013, by Government Resolution No. 109 "On Functional Changes in the System of State Bodies of the Kyrgyz Republic", gender equality was coordinated by the Ministry of Social Development of the Kyrgyz Republic. In 2012, the National Council for Gender Development was established [18]. This is a consultative and advisory coordinating body, which includes the Government of the Kyrgyz Republic, deputies of the Kyrgyz Republic, heads of state bodies, local self-government, and trade unions. Thus, to achieve 30% representation of women among the deputies of the Supreme Council of the Kyrgyz Republic, as well as for other quotas, certain measures were implemented. For example, the 2012 elections under the majority system did not fully meet the expectations of women's involvement. Their participation in local elections was the result of the lack of implementation measures in the legislation of the Kyrgyz Republic. Therewith, the number of women on quotas is gradually increasing, an example of which is the elections in a number of districts as of 2019-2020.

First of all, the gender balance in the legal field is regulated in Ukraine by the Constitution. Article 24 of the Constitution of Ukraine stipulates that citizens have equal constitutional rights and freedoms and are equal before the law. There can be no privileges or restrictions based on race, skin colour, political, religious or other beliefs, attitude towards gender, ethnic and social origin, property status, place of residence, language, or other attributes [19]. Equality of rights of women and men is ensured by:

- providing men and women with equal opportunities in socio-political and cultural activities, in obtaining education and professional training, in work and remuneration for it;
- special measures for the protection of labour and health of women, the establishment of pension benefits; the creation of conditions that allow women to combine work with motherhood;
- legal protection, material and moral support for motherhood and childhood, including the provision of paid leave and other benefits to pregnant women and mothers. The gender issue is also regulated by the Law of Ukraine "On Ensuring Equal Rights and Opportunities for Women and Men". There is a clear definition of discrimination and a number of mechanisms that should ensure equal rights for both genders in the state [17]. The problem of insufficient implementation of the principle of ensuring equal rights and opportunities for women and men is expected to be solved by applying an integrated approach and implementing measures aimed at meeting such priorities;
- improvement of the legal framework, the mechanism for conducting gender-legal expertise and the introduction of statistical indicators in the field of ensuring equal rights and opportunities for women and men. One of them is the indicator of the gender component in economic and social development programmes, taking into account the current needs of industries and regions [20-22].

Through the execution of the Programme, it is planned to improve the mechanism for ensuring equal rights and opportunities for women and men to contribute to the establishment of a basis for comprehensive implementation of the provisions of the law of Ukraine "On Ensuring Equal Rights and Opportunities of Women and Men", international obligations and recommendations of the international monitoring bodies on sustainable implementation of the principles of gender equality.

The following results are expected to be achieved:

- expanding women's and men's access to goods and services by applying the principle of gender equality in all spheres of society's life by taking into account the gender component and the special needs of different categories of women and men related to such basic characteristics as age, place of residence, disability, and socio-economic status;
- the increase in the share of women among people's deputies of Ukraine, deputies of regional councils and local councils (cities of regional significance);
- reducing the wage gap between women and men;
- introduction of amendments to regulations on the improvement of the mechanism for conducting gender-legal expertise;
- establishing a comprehensive system for responding to and preventing gender-based discrimination;
- introduction of issues on ensuring equal rights and opportunities for women and men in the programmes of advanced training courses for civil servants, local government officials, and employees of state institutions on a permanent basis and ensuring the training of at least 10 percent of civil servants, local government officials, and employees of state institutions;
- ensuring the availability of statistical information on gender determination for indicators that comply with the EU acquis;
- creation of an effective system of cooperation between state authorities, international organisations, and public associations, whose activities are aimed at ensuring equal rights and opportunities for women and men in society [23; 24].

In the shadow report of the Committee on the Elimination of Discrimination against Women (CEDAW) for 2016, representatives of civil society noted that the strategic consideration of existing problems with the unequal division of rights and opportunities between the genders is not implemented comprehensively, fully, and sustainably [25-27], and noted problems with data collection (such as the creation of an independent institution), gender budgeting, and a specific implementation plan. Ukraine ranks 69th on the gender equality index (in the ranking among 142 countries). The index is calculated based on statistical data on the ratio of inequality between men and women in four important areas: economic participation and career opportunities, education, health and survival, and political rights and opportunities. The top 10 countries on the gender equality index included Iceland, Norway, Finland, Sweden, Ireland, Rwanda, the Philippines, Switzerland, Slovenia, and New Zealand. Comparing these data with the indicators of previous years, it is obvious that the state of gender equality in Ukraine has deteriorated. Thus, Ukraine indicated the best result in 2006, taking the 48th place. Then, according to some of the four computational parameters, Ukraine approached the level of 1.00, which means full gender equality in this area. Ukraine's position also declined quite significantly during the period from 2014 (56th place) to 2015 (67th place).

According to the results of the above-mentioned study, Ukraine traditionally has the best indicators in the field of access to education for both genders. As for higher education, women have even better indicators (in the ratio of 88 to 77). The number of women deputies (12%) in the national parliament and local representative bodies, in the highest positions of the executive branch or in local government bodies is extremely low. And although this trend of a certain "estrangement" of women from political and economic participation, in general, is yet inherent in global trends, the indicators still differ substantially. On average, women hold 22% of seats in national parliaments worldwide. A new impetus for the development of gender policy in Ukraine was the Association Agreement with the European Union [28; 29]. Ensuring equal opportunities for women and men, and combating discrimination are important goals of cooperation defined by the Agreement. These principles, combined with the best practices of the EU, have made it possible to prepare a result-oriented "State Programme for Ensuring Equal Rights and Opportunities for Women and Men for the period up to 2016" [30]. Furthermore, in 2016, the issue of gender balance in state structures was included in the "Strategies for the Development of Public Administration for the period 2016-2020" [31].

In 2003, the Council of Europe adopted a Recommendation on the Balanced Participation of Women and Men in Political and Public Decision-making. The governments of the Member States committed to achieving a minimum representation of 40% of women and men in political and public life through legislative, administrative, and supportive measures, and to adopt indicators to measure progress. In most Council of Europe Member States, the full and equal participation of women in political and public life, including in

legislative, executive, judicial, diplomatic, and administrative bodies at the local, regional, and national levels, is still below the minimum target of 40 % of the total number of people. Although women make up half of the population and half of the electorate, their percentage remains insufficient in all political and state processes. Women make up only a quarter of decision-makers in most areas of power (Fig. 1).

Figure 1. Gender balance in the Parliamentary Assembly of the Council of Europe

The diplomatic sector has a solid glass ceiling. The highest percentage of women (30.5%) were found in the lowest category (envoy advisers), while only 13% of women held the highest-level positions: ambassadors Extraordinary and Plenipotentiary. In most countries, the average participation of women in all four categories was below 20%. Both chambers of the Congress of Local and Regional Authorities of the Council of Europe exceeded the planned 40% in 2016: in the Chamber of Local Authorities, on average, 43% are women, and in the Chamber of Regional Authorities – 44.8%. The average percentage of women representatives and their deputies in the Parliamentary Assembly of the Council of Europe was 35.7% (Fig. 2, 3).

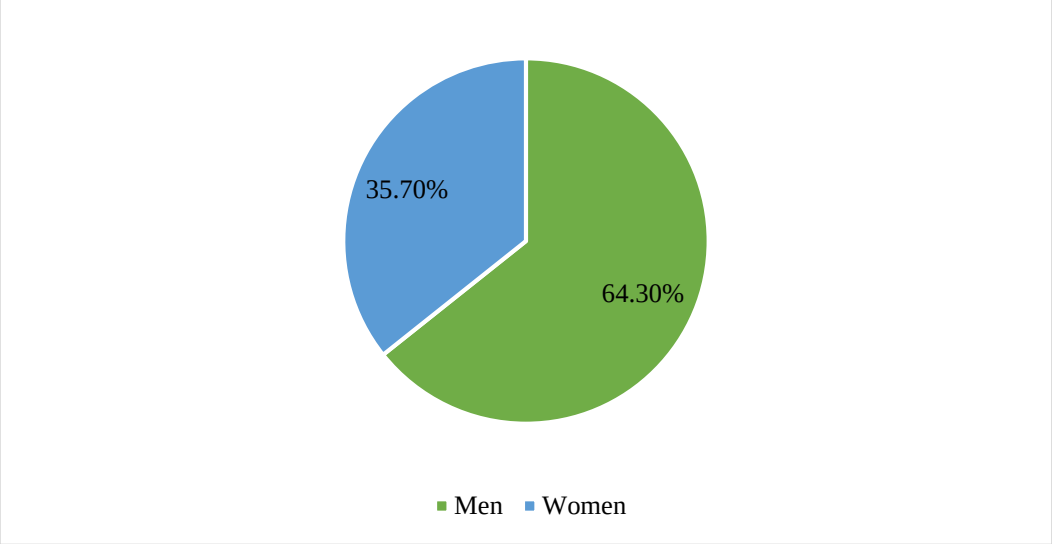

Figure 2. Percentage of women and men in the Parliamentary Assembly

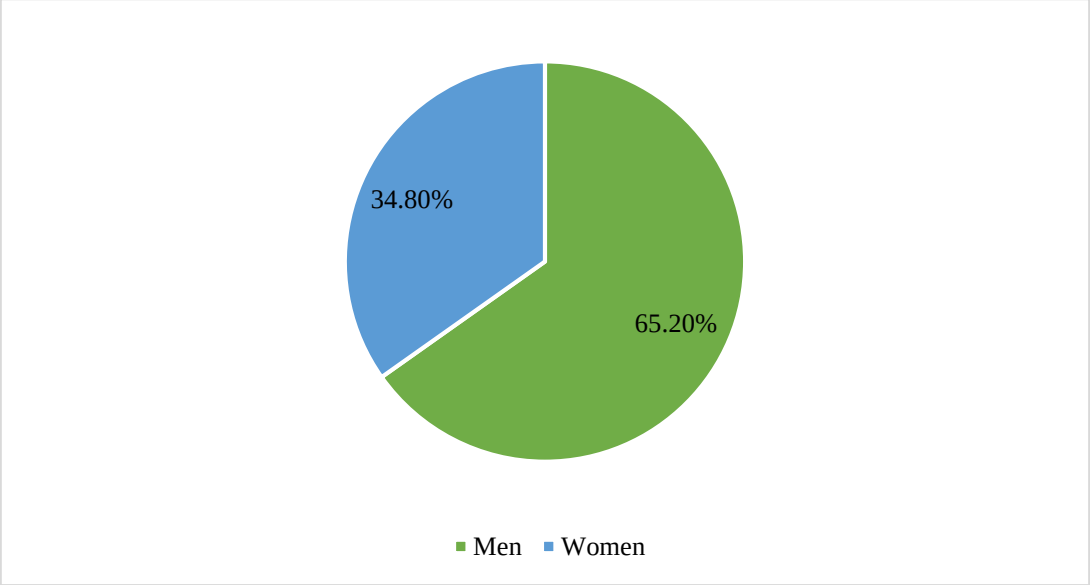

Figure 3. Percentage of female and male judges of the European Court of Human Rights

In the European Court of Human Rights, an average of 34.8% of female judges remain below the minimum target of 40%. The Praesidium of the Court was still dominated by men.

CONCLUSIONS

Truly democratic institutions must reflect gender differences. The balanced participation of women and men in political and public decision-making is a key indicator of gender equality and women's full enjoyment of their human rights, a condition for equality, social justice, and cohesion. Summarising the results of the analysis, the following was identified: in the KR are implemented universally recognised provisions and principles of gender equality, which are compulsory in nature; institutional mechanisms are established for equal representation; the provisions, the principles of equality and non-discrimination form the basis of the Constitution and are reflected in the current legislation; the introduction of peremptory provisions of representation in political parties, as well as optimisation of quotas have become the next stage of institutionalisation; statistical data testifies to the increase in the participation of women in government authorities of the KR.

In Ukraine, the gender issue also requires further scientific research. As in many other areas of public life, the “pathos” and strictness of Ukrainian legislation are catastrophically devalued by the non-binding nature of its implementation and the lack of direct prescriptions. That is why many legislative provisions governing the electoral process, state financing of political parties, secondary education, social insurance, labour, and family relations should be reviewed.

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Suggested Citation: Muratbaeva, G.N., Nikolaiev, V., Vasylieva, O.I., Vasylieva, N.V., & Moskalenko, S.O. (2021). Gender dimensions in the coordinate system of public management and administration. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(3), 144-153.

Submitted: 19.05.2021
Revised: 03.07.2021
Accepted: 15.08.2021

УДК 061.23:61
DOI: 10.37635/jnalsu.28(3).2021.154-161

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РОЛЬ МІЖНАРОДНОГО КОМІТЕТУ ЧЕРВОНОГО ХРЕСТА У ВИРІШЕННІ МІЖНАРОДНИХ КОНФЛІКТІВ

Анотація. *Актуальність досліджуваної проблеми полягає у наявності збройних конфліктів на міжнародній арені та наявності різноманітної кількості способів їх регулювання. Основною метою цього дослідження є визначення основних положень міжнародного права, що застосовуються у міжнародних конфліктах, через призму ролі Комітету Червоного Хреста у його розвитку. Це дослідження охоплює та ретельно аналізує історію та основну мету зародження організації. Крім того, дослідження передбачає поглиблене вивчення основних завдань та принципів діяльності Комітету. В результаті дослідження будуть чітко визначені існуючі теорії участі та впливу Комітету у міжнародних правовідносинах, а також ті теорії, які виникли завдяки інноваціям у правовому мисленні і здатні охопити специфічні риси практику та ефективність цієї неурядової організації. Крім того, позначення актуальних проблем існування цієї організації, її актуальності в сучасному світі та сили підтримки світового суспільства. Серед успіхів наукового аналізу ролі Міжнародного комітету Червоного Хреста у розвитку міжнародного гуманітарного права, що застосовується у міжнародних конфліктах, – аргументовані гіпотези та підтверджені заяви про важливість Комітету, які описуються особливостями сучасність, актуальність та відповідність інформаційно-технологічному розвитку суспільних відносин учасників здорових міжнародних відносин, їх прихильників та опонентів. Це також включає систематизацію наукових досліджень, їх аналіз та розумне спростування. Подорож в історію виникнення міжнародних конфліктів, їх модифікація відповідно до розвитку суспільних відносин, а також процесів глобалізації стане предметом порівняльного аналізу, спрямованого на виявлення нових методів та способів їх уникнення*

Ключові слова: *гуманітарне право, міжнародний конфлікт, військовий конфлікт, тема, Червоний Півмісяць*

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THE ROLE OF THE INTERNATIONAL COMMITTEE OF THE RED CROSS IN RESOLVING INTERNATIONAL CONFLICTS

Abstract. *The relevance of the problem under study lies in the presence of armed conflicts in the international arena and the presence of a diverse abundance of ways to regulate them. The main purpose of this study is to identify the main provisions of international law applicable in international conflicts through the lens of the role of the Committee of the Red Cross in its development. This study covers and thoroughly analyses the history and the main purpose of the origin of the organisation. Furthermore, the study engages in an in-depth examination of the basic tasks and principles of the Committee's activities. As a result of the study, the existing theories of the participation and influence of the Committee in international legal relations will be clearly identified, as well as those theories that have emerged due to innovations in legal thinking and are capable of covering the specific features of the practice and effectiveness of this non-governmental organisation. In addition, the designation of the actual problems of the existence of this organisation, its relevance in the modern world, and the strength of the support of the world society. Among the successes of the scientific analysis of the role of the International Committee of the Red Cross in the development of international humanitarian law applicable in international conflicts is the reasoned hypotheses and confirmed statements of the importance of the Committee, which are described by the features of modernity, relevance, and compliance with the information and technological development of social relations of participants in healthy international relations, their supporters and opponents. This also includes the systematisation of scientific research, their analysis and reasonable refutation. A journey into the history of the emergence of international conflicts, their modification according to the development of social relations, as well as the processes of globalisation, will be the subject of comparative analysis aimed at identifying new methods and ways to avoid them*

Keywords: *humanitarian law, international conflict, a military conflict, the subject, the Red Crescent*

INTRODUCTION

Thus, the subjects of international law can be considered participants in international relations who have the rights and obligations that they exercise based on international law and, if necessary, bear international legal responsibility. This study is not limited to the classical views and legal statements of researchers of legal science, it is also based on the causes and prejudices of various international conflicts of peoples, organisations, nations, castes, etc. A glimpse at the evolution of conflicts in recent years proves that there is currently a change in the actual nature of conflicts in general and internal conflicts in particular [1-3]. Such conflicts in their current form are different from the national liberation wars of the second half of the 20th century. Today's conflicts take place against the background of a crisis in the legitimacy of the state. They are distinguished by a wide variety of opposing sides and motivations of the struggle, among which are opposition to the government, the desire to achieve the right to land, access to natural resources, resistance to the oppression of certain ethnic groups or indigenous populations, etc. After all, at present, the central government can be simultaneously opposed by several opposition groups, each of which has its set of goals and methods of combating. This is also facilitated by the increasing duration of conflicts, where the number of opposing groups is growing, and numerous gaps appear in the hierarchical structure of the movement's leadership, arising from ethnic or other reasons that have no place in modern international law. Unfortunately, over time, what started as a politically motivated movement degenerates into robbery and anarchy. What is called civil society can provide clues to the nature of an armed conflict, influence its outcome, and deal with its consequences. Different reasons and pretexts exist in this regard, which in turn give rise to different means, methods, as well as authorised subjects for their solution [4; 5].

International humanitarian law is generally one of the most relevant and problematic aspects of international law in the international arena. The logical explanation for this is that there are military clashes and conflicts that exist in the modern world. Despite the considerable progress made by modern international law in regulating the use of force in international relations, armed conflicts remain a daily reality even after the adoption of the UN Charter. The nature of armed conflicts has changed over time. At present, a considerable decrease in the number of classic inter-state wars can be observed, but more often and violent are those armed conflicts where the state (or states) are opposed by non-state armed groups, as well as situations where such groups are at war with each other. The conduct of armed conflicts remains an important area of human activity,

and as such requires organisation and appropriate settlement by legal means [6; 7]. The nature of the legal regulation of armed conflicts is determined by humane values that are common to all humankind and do not depend on considerations of cultural relativism. Experience also illustrates that, compared to previous decades, the number of direct losses in current conflicts is generally lower, but indirect losses are very high. Current conflicts generally last longer, and during the long transition period to peace, there is little concerted effort to address the underlying causes of the conflict, which in many cases makes it possible to resume hostilities [1]. In recent decades, both the nature of the conflict and the relevant activities at the interstate and international levels have changed; views on how a military instrument can be used for political purposes have also changed. Notably, however, there is a change in the nature of peacekeeping operations, including: expanding the activities that are carried out in missions; increasing readiness for the use of force; readiness to provide the United Nations with opportunities to intervene in the affairs of a state with a higher element of risk than in previous UN missions; readiness to intervene in some cases without the consent of the warring parties. The shifting of roles and responsibilities between the civilians and the military has become an important factor for peacekeeping operations. One of these special subjects of international law is the International Committee of the Red Cross (hereinafter referred to as "the Committee").

The Committee is one of the components of the International Red Cross and Red Crescent Movement. The International Red Cross and Red Crescent Movement is also called the International Red Cross. This movement includes: National Red Cross and Red Crescent Societies (National Societies), the International Committee of the Red Cross (International Committee or ICRC), and the International Federation of Red Cross and Red Crescent Societies. Notably, the International Committee of the Red Cross is a neutral, impartial and independent humanitarian organisation. It was created more than 130 years ago. The active participation of the ICRC in international humanitarian activities in the process of progressive development of international humanitarian law, as well as the conclusion of transactions with states – all this indicates that the ICRC is becoming an organisation that has the attributes of an international intergovernmental organisation [8]. Indeed, according to the will of states, the treaty sources of international humanitarian law record a number of powers of the ICRC in the field of promoting the implementation and dissemination of international humanitarian law, monitoring its compliance, and taking part in international humanitarian activities, which it can exercise independently or on behalf of states.

The activities of the International Organisation of the Red Cross are very influential in the entire humanitarian sphere and in the field of contract law. However, its contribution in times of conflict is invaluable. That is why all of the above necessitates the scientific research on the role of the International Committee of the Red Cross in armed conflicts, and is the main purpose of this study.

1. MATERIALS AND METHODS

The methodology of this study constitutes a multi-level system, which includes principles, approaches, and methods that combine the tools of the classical (principles of development, interrelation of phenomena, consistency, determinism) and non-classical (the principle of pluralism, tolerance, complementarity) methodology. In accordance with the latter, the axiological, anthropological, comparative, systemic, and functional approaches were used, and they are the main ones in scientific cognition. In terms of legal methods, the dialectical method is interpreted as a constitutive one, being applied in the course of the entire scientific research and serving as the initial method in all the constituent parts of the scientific article. In particular, the dialectical method was used in the process of defining the category of international humanitarian law, designating the original sources of the non-governmental organisation of the Red Cross and the Committee as its component in the context of a historical journey. The study used the method of rising from the abstract to the concrete to identify the prerequisites of international conflicts and methods of their solution. Theoretical analysis was used in the process of determining the nature of the Committee of the Red Cross, its goals, tasks, objectives, principles of activity and the concept of modern development.

In addition, in the course of the study, a full-fledged block of logical methods was applied, including classification, extrapolation, induction and deduction, analogy, abstraction, comparison. Notably, the method of analogy and the method of comparison are key methods in the research process, due to detailed cognition of the subject of this study by analysing various statements, opinions, and worldviews of political giants and leaders of the world community, which translate into the adopted regulations and means of their implementation in the world. In addition to the above, the comparative legal method was actively used during the study of the role of the Committee of the Red Cross in international humanitarian law, by comparing and comparing all kinds of ideologies, views and worldviews, as well as outlining the values of the existence of contract law and the importance of its provisions. The structural-functional method was used to display the structural foundations of contract law and its legal force in the activities of international law organisations. In

turn, the hermeneutical method was used to interpret the essence and content of the main definitions that describe the level of conflict in international relations, their conversion and the risks of occurrence. The historical legal method was used during the study of historical stages, as well as the study of the establishment and development of the Red Cross organisation and its components. The use of the method of normative and dogmatic analysis made it possible to interpret the legal texts of international treaties, resolutions of international organisations, national legislation of states and constituent documents of the ICRC and the Movement, as well as materials reflecting the process of their development and practice of application, decisions of international judicial bodies, etc.

The theoretical basis of this study includes the scientific articles of scientists on the role of the Committee of the Red Cross in international humanitarian law, used in the process of regulating international conflicts, including the consequences of militant and non-peaceful protests.

2. RESULTS AND DISCUSSION

The legal rules governing the conduct of war are as ancient as the war itself. The relevant customs can be found in all regions of the world, in particular in Asia, Africa, America, and Europe; therefore, the provisions of international humanitarian law, most of which are not universal in the way they arise, are universal in nature, since their foundations are contained in most non-European systems of thought. However, despite their origin, these ancient customs had a substantial drawback: their application was limited to specific regions and very often to a specific war [9]. At present, the essence of international humanitarian law is to ensure the protection of war victims. Any actions, qualifications, principles, provisions of international humanitarian law must be interpreted exclusively through this imperative of international humanitarian law. The attempt to use the norms and provisions of international humanitarian law for other purposes is insignificant and illegal, and contradicts its main purpose. There are often attempts to make the qualification of an armed conflict self-sufficient, to translate the qualification of an armed conflict within the framework of international humanitarian law into a political and legal plane. The qualification of an armed conflict within the framework of international humanitarian law is necessary to the extent that it ensures the achievement of its main goal – the protection of the victims of war. In some cases, to effectively protect the victims of war, it is advisable to limit the statement of the fact of the existence of an armed conflict and apply the maximum possible scope of international humanitarian law in this particular situation. Thus, analysing its main essence, one can conclude that the main task of international humanitarian law is to ensure the maximum possible protection during an armed conflict for all persons who are not fighting or have stopped fighting for various reasons.

International humanitarian law was created based on three main aspects. These are the “Geneva Law”, represented by international conventions and protocols adopted under the auspices of the International Committee of the Red Cross, the main purpose of which is to protect the victims of conflict; the “Hague Law”, based on the results of peace conferences held in the Dutch capital in 1899 and 1907, where the permissible means and methods of warfare were mainly discussed; the efforts of the United Nations to ensure respect for human rights during armed conflicts and to restrict the use of specific weapons. Various international organisations with different legal status play a considerable role in protecting the victims of war and overcoming the humanitarian consequences of armed conflicts [10-14]. They are united by the right to humanitarian access, a right that depends on the status and mandate of the organisation, as well as the relevant rules of international humanitarian law. Among these organisations, there are intergovernmental organisations that act in accordance with their charter and the mission-specific mandate, which determine the status of these missions and delegations. In times of armed conflict, these organisations interact with each other based on a cluster approach, according to which each of them specialises in a particular area of humanitarian action. The second group comprises non-governmental organisations that form the part of the International Red Cross and Red Crescent Movement. Components of the Movement include the ICRC, the International Federation of Red Cross and Red Crescent Societies, and Red Cross and Red Crescent national societies, which are non-governmental organisations with special status in times of armed conflict. This predominantly concerns the ICRC, whose powers and functions are reflected, among other things, in the Geneva Conventions I-IV and the Protocols Additional. The ICRC ensures the coordination of the Movement's components in times of armed conflict.

According to its legal status, the ICRC is an association (a legal entity under private law), whose activities are determined by Article 60 and other provisions of the Civil Code of Switzerland. However, to fulfil its humanitarian mandate and its goals and objectives, the ICRC is granted a status similar to that of an international intergovernmental organisation and has an international legal personality in the conduct of its activities. Notably, having analysed the current situation of military conflicts in the world, the Assembly of the Committee of the Red Cross has identified the main strategic areas of its activities for 2015-2019 as follows:

– reinforcement of activities (the Committee will increase the relevance and effectiveness of the support it provides to people affected by armed conflict and other situations of violence);

– strengthening of the contextualised multi-disciplinary responses to existing challenges;

– performance optimisation (ensuring an appropriate balance between achieving consistency across the organisation and supporting operational flexibility in managing its work).

In fact, it is for these reasons that we currently see the three pillars of the Red Cross movement – the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies, which were mentioned earlier, and national societies – together they operate to fulfil an important mission: to do good and by their example to teach people to support each other in need, selflessly and wholeheartedly aiding the helpless. That is why today the ability to respond to the needs that arise in connection with any conflict situations around the world remains extremely important for the ICRC. This implies a willingness to act quickly and effectively in an acute crisis. In this regard, the ICRC is determined to make the best use of its practical experience and the advantages of having a structured early warning, rapid response and warning system. The ICRC constitutes a mixed-type organisation established under Swiss law, but its functions and activities are enshrined in an international mandate. They are also established by the provisions of international humanitarian law, which is based on such universal agreements as the Vienna Conventions. At present, the ICRC is an organisation recognised by international law, it maintains representative relations with states, similar to diplomatic ones, and concludes international agreements that:

– recognise the ICRC as a subject of internal law, its legal personality, which allows it to conclude contracts, acquire ownership and alienate property in the territory of the host state;

– the ICRC is granted privileges and immunities on the same grounds as to other international organisations.

Equally important is the ability to implement long-term programmes in the context of chronic crises, early stages, transitional or forgotten, or paying little attention to situations of violence. It is worth noting the great contribution of national societies to ensuring this ability, which do so by sharing their experience and skills. In addition, the concept of operational activities, which the ICRC adheres to, makes provision for maximum proximity to the territories in need of assistance, and, consequently, the need to create and maintain a wide network of employees working in different regions, based on a security management system with a high level of decentralisation. This also implies a general recognition of the risks associated with operating in extremely diverse and often unpredictable situations. Notably, the recent large-scale crises (Iraq, Darfur, Pakistan) have demonstrated a high level of trust in the ICRC, the International Federation and national societies. The public believes that the ICRC can provide practical support to the victims. From this, its responsibility and significance only increase. Thus, based on the above, it can be concluded that the International Committee of the Red Cross, as a subject of international law, has sufficient legal personality to take part in international relations and plays an important role in ensuring the protection of victims of internal and international armed conflicts [15; 16].

Based on the provisions of international treaty law, the ICRC has an active ambassadorial right in accordance with the Geneva Conventions, which follows from its right to send delegates to states in the territory of which there is an armed conflict to promote compliance with international humanitarian law. However, despite the fact that the ICRC has its missions (regional and operational delegations) on the territory of member states of the international treaties in the humanitarian field, it does not always have diplomatic privileges and immunities as representatives of states acting under international organisations or representatives of the latter on the territory of states. In this case, everything depends on the nature of the obligations contained in the agreements on the conditions of stay of the ICRC mission concluded between individual states and the ICRC. Furthermore, it is worth noting that, despite the role of the ICRC as a substitute for the Protecting Power being clearly established in the Geneva Conventions and Protocol Additional I, it has never acted in its capacity as a substitute, fearing that public expression against certain violations of international humanitarian law may, at least in the eyes of the violator, undermine its impartiality and, ergo, subsequently damage other potential activities of the ICRC in this conflict [17-19].

Analysing this topic, the fact that the ICRC has become a unique and important actor in the field of human rights over the past 130 years cannot go unnoticed. In fact, it is a private non-governmental organisation, although it has received an official status in public international law. Despite this recognition, the ICRC remains largely private for three reasons:

– it pursues its individual policy as a Swiss private association, and is not guided by the instructions of public authorities;

– it is often presented to public authorities as a private entity, sometimes even when operating in an armed conflict supposedly governed by public international law;

– it provides its detailed reports privately to the relevant authority, rather than publishing them, although other information is provided [20; 21].

The ICRC has received a mandate from the international community to act in all situations of armed conflict and violence around the world. In this respect, the experience gained by national societies and their support are of great service. Such situations are by definition sensitive, and to cope with its role, the ICRC must seek to be accepted by all those directly involved in or affected by the conflict and try to engage in dialogue with them, no matter how difficult the task may seem. Therefore, the ICRC should be neutral and independent, and this is how it should be perceived [22-24]. Although the ICRC, as a human rights defender, has occupied a unique and generally respected position in international relations, its activities have been repeatedly criticised. The first criticism is that the agency is not trying hard enough to fulfil its mandate. Secondly, some believe that this mandate is too dependent on tradition and dilettantism. Finally, some believe that the agency has serious organisational problems, starting with its all-Swiss membership. This analysis of the ICRC's position in the Red Cross Movement against the background of international law provides a basis for discussing the main critical assessments of the ICRC's activities. By now, it should be clear that international law recognises what is essentially a private ICRC. This recognition itself reflects a long tradition of involvement in armed conflict and political detention. But this historical, legal, and practical report should not say that the ICRC is easy to manage. On the contrary, the ICRC is facing many difficult elections, which are worrisome to criticise and constitute the reason for the active work of this organisation.

The influence of the International Committee of the Red Cross on the formation, development, and codification of treaty provisions of humanitarian law is demonstrated in the development and signing of the main treaties in the field of international humanitarian law, namely: the Geneva Convention of 1864, the Hague Conventions of 1899 and 1907, the Geneva Conventions of 1949, the Protocols Additional of 1977. The ICRC has received a mandate from the international community to develop the international humanitarian law. This right is stipulated in the Geneva Conventions of 1949 and in the Charter of the Movement. The ICRC's right to take the initiative is particularly important in this process. Notably, the ICRC never takes part in the treaties that it develops. Such practice allows it to remain neutral and not violate its charter principles, namely impartiality and neutrality. In addition, the ICRC seeks to exercise a monitoring function in relation to the parties to the treaties, and if they are signed, it becomes the subject to be monitored.

The main forms of participation of the ICRC in the development of the international humanitarian law treaties are as follows:

– establishment of special bodies for the development of contracts;
– organisation of conferences;
– aiding at all stages of the law-making process as an expert organisation.

CONCLUSIONS

The protection of human life and dignity constitutes one of the most important objectives of international humanitarian law. If it is properly applied, accordingly, then it provides the necessary protection for the life and dignity of all those who have been victims of armed conflict. Its provisions are intended to protect civilians, people deprived of their liberty, those wounded in war, and those under military or foreign occupation. The parties to an armed conflict have an obligation to comply with and respect these legal provisions, and the international community must ensure such compliance. Therefore, the existence and effective functioning of the ICRC is a requirement of a civilised society.

Thus, the work of the International Committee of the Red Cross is not only important but also labour- and capital-intensive, as this organisation is truly global and the aid it provides is enormous not only in scope but also in the hope it gives people through its actions. Indeed, the organisation's contribution to global wellness is extraordinary in terms of the size of the territories where aid is provided. The organisation has grown substantially from its initial importance and has become the world's largest charitable organisation that deals with the problems of not only injured soldiers in military operations, but also aids civilians during natural disasters or any problems related to human activities. Perhaps certain financial issues are being handled inadequately and in violation of international financial law, but this is not a reason to accuse the organisation of completely squandering the funds provided for various programmes. The Red Cross is a vital organisation for many backward countries in Africa, where thanks to this organisation, the problem of starvation of the population, providing it with vital food and medicines, is reduced. That is why, because of non-existent alternatives, we cannot consider the option of destroying an organisation, unfortunately or fortunately, it is not up to us to decide, but this organisation is vital for millions of people around the world.

The ICRC plays an important role in shaping the doctrine of the international humanitarian law. Such influence takes two main forms: the development of new doctrines and the interpretation of international humanitarian law provisions. The first is carried out in areas not regulated by the international humanitarian law, or in cases where such regulation is ineffective. Its main task is to fill in the gaps in international law and to develop at least minimum rules of conduct in such cases. The interpretation of the international humanitarian law rules is carried out with the purpose of regulating relations more effectively by improving the implementation or extension of existing international humanitarian law provisions to new relations. The work of the ICRC on the development of the doctrine is purposeful and constitutes the first stage in the process of developing the provisions of contract law.

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Suggested Citation: Othman, A.D. (2021). The role of the International Committee of the Red Cross in resolving international conflicts. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(3), 154-161.

Submitted: 20.05.2021
Revised: 19.07.2021
Accepted: 31.08.2021

УДК 340.15:340.01
DOI: 10.37635/jnalsu.28(3).2021.162-175

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ҐЕНЕЗА КОНЦЕПТУ ВИПРАВНОГО ПОКАРАННЯ: ВІД АНТИЧНОСТІ ДО НОВОГО ЧАСУ

Анотація. *У статті досліджено ґенезу ідеї виправного покарання. Авторами проаналізовано концепції та погляди на мету покарання Платона, римських юристів, європейських гуманістів, а також англійських тюремних реформаторів XVIII ст. Актуальність цієї тематики для вітчизняної правничої науки зумовлена триваючою трансформацією підходів до визначення мети покарання, переглядом у зарубіжній пенології стратегій у сфері покарань і розробкою виправної політики, з огляду на нові цілі. Ерою виправного покарання, безумовно, стало XIX ст. Основою пенітенціарного дискурсу у цей період була упевненість, що за допомогою належного тюремного режиму, сегрегації, гуманного ставлення та духовної опіки неодмінно вдасться виправити засуджених. І хоча ідеї виправного покарання з'являються ще в античну добу та набувають свого практичного втілення в середньовічній християнській традиції європейських держав, в історіографії превалює думка про першість англійських та американських тюремних реформаторів у справі започаткування пенітенціарних систем. Неупереджений аналіз систем знань та відмова від методології ідеологічної заангажованості дозволили довести, що пенітенціарні системи XIX ст. лише розвинули моделі тюремної дисципліни, започатковані у попередні періоди. Насправді мало місце відродження античної патерналістської концепції виправного покарання, доповненої релігійною доктриною, що передбачала вплив не на тіло, а на душу правопорушника з метою покаяння, виправлення та, як наслідок, повернення в суспільство. У кінці XVIII ст. світська влада запозичить зазначені дисциплінарні моделі. Найбільш масштабно вони будуть реалізовані у виправних та пенітенціарних будинках в Англії у процесі тюремної реформи 70-90-х років і в подальшому стануть основою для формування пенітенціарних систем, які реалізовуватимуться на практиці у більшості країн світу упродовж XIX – початку XX ст.*

Ключові слова: *виправне покарання; в'язниця; покаяння; пенітенціарні системи; паноптичний нагляд; виправний заклад*

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GENESIS OF THE CONCEPT OF CORRECTIONAL PUNISHMENT: FROM ANTIQUITY TO MODERN TIMES

Abstract. *The article examines the genesis of the idea of correctional punishment. The authors analyse the concepts and views on the purpose of punishing Plato, Roman lawyers, European humanists, as well as English prison reformers of the XVIII century. The relevance of this topic for domestic legal science is due to the ongoing transformation of approaches to determining the purpose of punishment, the revision of strategies in the field of punishments in foreign penology and the development of correctional policy, taking into account new goals. The era of correctional punishment, admittedly, was the XIX century. The basis of penitentiary discourse during this period was the belief that with the help of a proper prison regime, segregation, humane treatment and spiritual care, it would certainly be possible to correct convicts. Although the ideas of correctional punishment appear in ancient times and acquire their practical implementation in the medieval Christian tradition of European states, the idea of the primacy of English and American prison reformers in the establishment of penitentiary systems prevails in historiography. An unbiased analysis of knowledge systems and the rejection of the methodology of ideological bias allowed proving that the penitentiary systems of the XIX century only developed the models of prison discipline that began in previous periods. In fact, there was a revival of the ancient paternalistic concept of correctional punishment, supplemented by a religious doctrine that provided for the influence not on the body, but on the soul of the offender to repent, correct and, as a result, return to society. At the end of the XVIII century, the secular authorities adopted these disciplinary models. They will be most widely implemented in correctional and penitentiary houses in England during the prison reform of the 70s and 90s and will later become the basis for the formation of penitentiary systems that will be implemented in practice in most countries of the world during the XIX-early XX centuries*

Keywords: *correctional punishment; prison; penance; penitentiary systems; panoptic supervision; correctional institution*

INTRODUCTION

Discussions of theorists and practitioners about the correctional purpose of punishment have not been subsided for more than 200 years. Even John Howard, as one biographer noted, might be accused of regarding prisoners almost as animals that do not think about their actions and the future – only needed clean, dry housing and adequate food to reach acquiescence in their confinement. One could imagine his ideal prison as rather like a modern zoo, with well-scrubbed animals, staffed by well-tempered keepers. But any reformative hopes in such prison were speculative and accidental [1, p. 92].

The belief that with the help of a proper prison regime, segregation, humane treatment and spiritual care, it will certainly be possible to correct convicts was the basis of penitentiary discourse in the second half of the XIX – early XX centuries. This period can be confidently called the era of correctional punishment: imprisonment, along with the traditional punitive component – isolation from society, was increasingly presented as a correctional tool, prisons changed their name to penitentiary houses and reformatories – their main goal is to change the criminal. But the establishment of penitentiary systems of the XIX century was preceded by a significant period during which the beginning and rising ideas of correctional punishment were born, evolved and implemented in practice at the national level. Actually, the study of these ideas and their

conceptualisation is the purpose of this article. Our task is to show what path Western Penology has taken to establish correctional punishment as the basis of penitentiary systems, and to expand the traditional chronological framework for correctional prison Research.

The relevance of the problem of correctional punishment for Ukrainian legal science (not only the history of law, but also criminal and criminal executive law) is due to the transformation of approaches at the present stage to determining the purpose of punishment at the doctrinal level and at the level of legislation. The draft Criminal Code, prepared by leading Ukrainian experts in criminal law as part of the Working Group on the development of criminal law, does not mention correction as the purpose of punishment, unlike the current Criminal Code and Criminal Executive Code. The skeptical attitude of lawyers is explained by the fact that the process of correction is an abstract possibility that lies in the plane of psychology rather than jurisprudence. There is also a widespread opinion that the correction of a criminal is exclusively connected with the Soviet criminal law doctrine. The fact that the system of execution of sentences in the USSR since the 1930s was called correctional labour, and the main element in the mechanism of repression was correctional labour camps, adds to the negative attitude. But initially, Soviet penitentiary science was formed in line with progressive world trends and criticism of existing methods of correction – solitary confinement, meaningless mechanical labour, prayers and silence. The basis of penitentiary affairs in the Soviet state, as noted by Ya. Berman, in contrast to intimidation and punishment of bourgeois law, should have been the goal of correcting the criminal on new principles [2, p. 49-50].

In the 20-30s of the XX century and in the Western world, the penitentiary policy was revised, the transition to a therapeutic model began, it was replaced by a rehabilitation one [3], but they were also recognised as ineffective over time. The model of crime control, popular in the 1980s and 1990s, gave way to the reform approach revived in new economic, technological and social conditions, when the emphasis was placed on the reintegration of the convicted person into society. Now foreign criminologists insist on revising strategies in the field of punishments, since even a significant the quantity and quality of prison programming – by itself – will not fundamentally change the life course of prisoners, resulting in continued high return-to-prison rates for these offenders. With this in mind, they call for the development of corrections and sentencing policies – and the hiring of corrections personnel – based on the new goal of corrections: individual and community rehabilitation [4].

As we can see, the world penology is constantly in search of new, more effective forms of correction, using the achievements of psychology, medicine, and social management [5; 6]. Theorists and practitioners associate their hopes for achieving positive changes, as evidenced by the theme of their speeches at the current program of the 4th Technology in Corrections Conference: Disrupting Corrections, with the latest technologies, the possibilities of artificial intelligence, virtual reality, etc. And here it is fair to recall the thesis of Gerhard O.W. Mueller says that with rapid technological progress, people lose confidence in any institutions that existed in previous times. Brains conditioned in the mathematics of technological obsolescence cannot believe that previous generations have invented anything which can possibly be of more than historical interest for today's society. But the fact is that man's advance on the plane of ideas has proceeded at a snail's pace-compared with his lightning-like technological progress-and does not at all justify such a confidence bordering on arrogance [7, p. 58-59].

We believe that a retrospective analysis of the ideas and views of lawyers regarding the institution of correctional punishment is of research interest not only from the point of view of the history of law, but can also be useful in the context of integration of the Ukrainian legal system and its penitentiary component into the European community, orientation to global values and trends. The available research of the institute of correctional punishment at the doctrinal level concerned mainly views on the purpose of punishing individual lawyers and humanists, in particular Plato [8; 9], Filarete [10], Miquel de Giginta [11; 12], Filippo Franci, Jean Mabillon [13; 14], Jeremy Bentham [15] or the attention of scientists is focused on a certain historical period and the correctional concept was considered among a wide range of problems of organising prisons or houses of correction [1; 16-19].

1. MATERIALS AND METHODS

Regarding the methodological aspects of this study, it should be noted that in the conditions of the inability to explain numerous problems of legal and state reality using classical and non-classical methodology, the authors used mainly postmodern methodology. And it is even worth talking about a combination of methodological approaches that combine the provisions of classical, modernist and postmodern methodologies to solve the tasks set, based on the historical dimension.

Admittedly, the difference between an “objective” and a “subjective-interested” view of the historical past is rather conditional. Therefore, when claiming to be objective, researchers are forced to adhere to the

convention established in the profession. These conventions tend to change, reflecting the realities of their time. Thus, in the XVII century, in the conditions of that religious and moral atmosphere, ethical and aesthetic considerations were taken as a basis. However, in the following centuries, during the development of states-nations, the formation of national consciousness, historians tried to adhere to "national interests". The main guiding star in the picture of the world, for each particular nationalism, was the ideal image of ourselves, the national self-portrait, which was used as a template that was projected onto reality, and the latter was built in accordance with it. This trend began to increase from the second half of the XIX century, turning into "party historiography", where it was natural to be ideologically engaged, and "bias" was justified by the pressure of the present over historians.

It is this political expediency that has led to the formation of national myths that have developed around the institution of correctional punishment. Thus, we have a powerful Anglo-Saxon narrative, which, by the way, is accepted in Ukrainian penal science and is constantly reproduced in current research. At one time, French scientific thought followed the same path, and the Spaniards did not lag behind it. As for the Italians, there was no need to strain and invent something, just remember the ancient and canonical achievements. However, it is possible to remove this concept, invented first by the British, and then developed and widespread by American historical and legal thought, thanks to a methodology devoid of national ideological bias.

Therefore, the methodological basis of this research was formed by a functional approach, the essence of which consists in the perception of primary sources in the context of their functioning in the middle of the tradition that actually gave rise to this or that source. Working with texts that are considered as a historical source in this study, the internal criteria of scientific knowledge were taken as rationality and mutual correlation of empirical and theoretical knowledge. Special attention was paid to ensuring that in each Penitentiary discourse regarding the institution of correctional punishment, it was possible to clearly trace why and based on which documents, certificates, practices a particular sequence of events, versions and concepts was proposed. For this purpose, a number of primary sources were analysed by knowledge systems to study the possibilities of spreading previously formulated theories and their impact on other knowledge systems. It was this analysis that allowed questioning the persistent myth of the exceptional primacy of British and American prison reformers in the foundation of penitentiary systems.

The use of a system-information approach made it possible to visually structure the main problems associated with the use of empirical material in historical and legal research. Actually, a special feature was the use of information from the architectural field of knowledge. Because the emergence and formation of penitentiary systems is inextricably linked with the implementation of these ideas in the spatial plane. To introduce the concept of correctional punishment, an appropriate material base is urgently needed. Prison as a complex architectural structure, in the new system of execution of sentences, should provide certain technical, domestic, organisational conditions for correcting delinquents. Admittedly, the study of the object took place based on a dialectical paradigm, where problems acquire a historical character and are known by revealing existing contradictions. And the historical reconstruction of the model of correctional punishment was based on information from sources that were subjected to dogmatic understanding based on a critical attitude to the reliability or fallacy of a particular information.

2. RESULTS AND DISCUSSION

Research on the origins of the modern correctional prison, postulating the thesis of its "relative youth", is usually limited to the framework of the XVIII–XIX centuries. However, a small passage from Plato's famous *Dialogue* makes some reservations. Book X of the *Laws* we proclaims: prisons in the state (this refers to an imaginary utopian city Magnesia – *auth.*) there will be three: one on the square – general, for detainees and defendants; the second – correctional (sophronisterion (Greek: σωφρονιστήριον)); the third – in a remote place – for punishment [20].

Against the background of the all-encompassing punitive practices of Athenian penal practices, the philosopher drew attention to the criminal's personality and inner world. Since the offender, as Plato believed, commits a crime because of a sense of lawlessness in the soul, the punishment should be imposed depending on how spoiled his soul is, and be aimed not at his behavior, but at changing the state of mind [16, p. 31-35]. According to this, Plato established two categories of criminals: curable and incurable. Among the latter were those who had committed major crimes and also those where the curative treatment had once failed [8, p. 199].

In general, ancient Greek legal thought is characterised by the view of criminal behavior as a social disease. Thus, punishment is a certain "cure". Plato also followed this approach, but, in contrast to the current practice: expulsion of the criminal from the community or physical destruction, he proposed to "treat" in society, differentiating the means of influence depending on the internal state of the criminal from educational to repressive [8, p. 198-200; 16, p. 31-33].

Researchers of Plato's criminal-right views note that the philosopher was one of the first to develop a correctional system of punishments, the main purpose of which is "therapy" of the criminal's state of mind [9, p. 354]. Plato, being convinced that law – abiding behavior is the result of appropriate upbringing and education, believed that criminals who did not have a completely spoiled soul could be corrected by placing them in a Special Correctional Institution – sophronisterion, which literally means "a house where wisdom is taught". Their rehabilitation should take place for 3 or 5 years in isolation from the outside world according to a certain program: discipline, a clear daily routine, etc. Such convicts had to be visited by members of the Night Council (the highest body responsible for the moral education of Polis residents). They were supposed to instruct and take care of saving the souls of offenders. Communication with virtuous respectable citizens should lead to the formation of positive skills and law-abiding behavior, partly through imitation, partly through self-education [16, p. 35-36]. The philosopher believed that after serving the established term in a correctional prison, a person who has been rehabilitated and normalised can return to society [20].

As Virginia Hunter rightly points out, apart from its reformative innovations, it is also worth noting that Plato's prison anticipates some of the principles that lay behind the penitentiary of the nineteenth centuries. In both cases, the focus of penal practice is on the criminal's face and inner world. With the only difference that Plato's goal of such correctional punishment is to heal the soul, but he does not talk about redemption of guilt and repentance [8, p. 201]. These concepts will be introduced by Christian doctrine as early as the late antique period.

Being the quintessence of existing practices and innovations, Plato's doctrine of punishment was later subjected to numerical interpretations and in its pure form the ideas of correctional punishment were not borrowed. However, based on his concept, a paternalistic vision of the role of the ruler in the upbringing of subjects, the formation of their law-abiding behavior not only through punishment, but also encouragement was formed, which was developed by Roman lawyers, in particular Seneca. The mercy shown by the head of the family in relation to the members of the Roman family subordinate to him in its broad sense should also become the virtue of the emperor as a "father" to his subjects when assigning punishment. Seneca tried to derive the concept of Imperial punishment from parental and therapeutic influence on the offender and used the term *emendatio* in the sense of the means of influence that parents applied to children, which, according to the philosopher, could also be extended to the practice of punishments. Seneca also repeatedly used the word *castigatio* – corrective measures. It was in them that the philosopher saw the realisation of the thesis that punishment should look to the future, not the past, and be in favor of the criminal as a medicine. Strict measures should have been applied only if it was extremely necessary [16, p. 38, 49-50, 56; 21].

In Latin, in the context of the purpose of punishment, the terms *castigatio* and *emendatio* were equivalent to Greek *κόλασις* and *νουθεσία* and meant correction, improvement, treatment of the disease, etc. One of the synonyms *emendatio* there was a verb *corrigo* [16, p. 38-40]. Actually from this Latin word and its variations *correctum* also comes English *correct*. In the first centuries of the new era, correctional influence increasingly begins to compete with punishment. Roman emperors tried to differentiate punishments depending on whether the offender should be removed from the community, or whether his "shortcomings" are acceptable and he can integrate into society. The reaction to minor offenses was *emendatio* – educational activities. Although they were not widely used in ancient Roman practice. With the establishment of Christianity, the ancient educational concept *emendatio* supplemented by *penitential*. Theological reflections on sin and repentance, as well as the emperor's responsibility for the sinfulness of his subjects, further strengthened the attitude to the offense as a disease, the reaction to which must first be "therapeutic" measures of influence, and only if this did not work, severe punishments [16, p. 113].

Christianity has shifted the focus in the penalised discourse to the identity of the offender. But if Plato believed in the restoration of the soul solely through educational influence on the individual, then the church fathers, in particular St. Augustine, argued that the salvation of the soul is possible only through acceptance of one's sinfulness and repentance. Tertullian connects these two concepts with respect to the purpose of repentance: But where there is no fear, in like manner there is no amendment; where there is no amendment, repentance is of necessity vain, for it lacks the fruit for which God sowed it; that is, man's salvatio [22, p. 258]. Thus, among early Christian theologians, correction becomes possible only through penance as an awareness of sin, which was considered, so to speak, a preparatory stage for God's judgment.

The British researcher Julia Hillner proves that Christian apologists, introducing the ideas of penance, did not reject their own punishment, but, identifying sin and crime, offered a merciful alternative to severe punishment – a therapeutic approach [16, p. 113-114], which was supposed to lead to "correction-recovery". For its implementation, monastic imprisonment was most suitable, which was presented as a bloodless humane punishment [17, p. 86]. Unlike a traditional Roman prison, it is filled with a new meaning: isolation for a certain period (including solitary confinement) not for suffering and punishment, but for the purpose of

repentance and correction, through prayer and restriction. Fasting, silence, physical and other restrictions in such conditions were presented as a path to spiritual rebirth, not punishment.

Monastic incarceration, the conceptual basis of which was the church's postulates on spiritual repentance, also carried a certain potential for Public penalty practices as a humane, merciful means of influencing the offender, who, ideally, will return to society after repentance. Penitential isolation corresponded to the church doctrine of punishment, the purpose of which is to rehabilitate the sinner-criminal and return him to the bosom of the church. The main means of achieving this goal eventually became prison. It was she who connected punishment, repentance, and reconciliation with God. Thanks to this, the prison was no longer considered as a terrible place of physical torment and waiting for death. Instead, it became an institutional metaphor for repentant sinners, bringing them closer to the Kingdom of God [23; 24, p. 104].

In the Middle Ages, monks involved in systematic spiritual reform in the fight against apostates received broad powers for "forced correction". And the "penitentiary system" moved from the monastery to the city center, where the first inquisitorial prisons were organised [25, p. 108]. Incarceration in secular prison, which since the middle of the XIII-XIV centuries have become familiar urban institutions, unlike inquisitorial prisons, which supported the penitential and Correctional component of isolation, was not a sacred act and a metaphor for "vita angelica", only a pre-trial or punitive procedure. This was a different vector of development of punishment practices compared to the monastic-penitential one.

Among the first to criticise the existing system of punishments in the XV century were Italian humanists [10, p. 71]. In the philosophical treatises of the XV century, the images of the universe not only reflect the worldview of the early Renaissance, but also views on the further development of penal practices. In 1464, the Milanese architect Filarete, published *A treatise on architecture (Libro architettonico)*, in which I outlined it the perfect city Sforzinda. The image of the city comes from reality, supplemented by elements whose time has not yet come, where the real and the desired meet. Filarete's treatise is often called a revolutionary book precisely in the history of ideas [26, p. 28]. Sforcinda is a metaphor for a city with specific instructions for social and spatial transformation. This transformation is possible only if a person is constantly educated and instilled with virtues. The influence on the individual in Sforcinda occurs in various ways: through the organisation of urban space; through institutions, particularly schools and prisons; through "speaking" buildings, such as the famous House of Virtues and Vices [27, p. 53].

The prison in Sforcinda fully corresponded to the current practices in Italian cities: mostly debtors and defendants were held there. Unlike Sforcinda, in Pluziapolis, which the author presents as a model city, the author's fantasy is depicted – a hard labor prison Ergastolon, is intended for the detention of criminals "worthy of death", since the death penalty was not applied in Plusiapolis [28, p. 378-382]. The motive for the rejection of the death penalty and, accordingly, its replacement with imprisonment, in Filarete is not Christian charity or even Platonic correction-improvement that was supported by some Italian humanists, but effectiveness: it is unwise to take a person's life if he can benefit Society [10, p. 72]. Filarete insisted not only on the employment of convicts, but also on the unemployed, tramps. Therefore, Ergastolone can also be considered as a prototype of workhouses that will appear in European cities only in 150 years, as well as penitentiaries, the time of which will come only in the XIX century.

Regarding the education of antisocial elements (not criminals), according to Filarete, the key to improving and correcting vices lies through work and knowledge. This idea is embedded in the project of the House of Vices and Virtues. It was supposed to be a ten – story building with a tower in the center and galleries around it. The striking similarity of Filarete's sketch of the building is striking [26, p. 22] and the appearance of the Bentham's Panopticon. Filarete's main message was that the path to pleasure and vice was easy and disastrous: entertainment venues, wineries, baths and a brothel were located on the lower floors. It is easy to get there, but as the face sinks lower and lower (both literally and figuratively), it is unlikely to be able to get out – a prison is designed on the lowest floors, in the basement [26, p. 21]. To gain virtues and knowledge, a person had to climb up and achieve them by work. Separate narrow staircases led to the upper floors, where there were classes of arts, crafts and sciences [28, p. 333-342]. The concept of the House of Vices and Virtues will become very relevant during the period of social reforms initiated in the XVI century in European countries in the context of the fight against poverty and idleness, and later will find its implementation in penitentiary reforms.

Labour, not only as a punitive element for criminals, but also as a correctional element for a wide range of delinquents, will become a key component in the new Protestant ethics and broader discourse of social transformation. At the turn of the XV-XVI centuries, refugees, impoverished peasants, pilgrims, tramps and petty thieves filled the cities and became a real threat. In traditional Catholic doctrine, charity and charity towards such persons is the duty of every good Christian. And the church in no way tried to eliminate the cause of pauperism. On the contrary, she called on believers to perceive poverty as part of providence. Such a

"solution" to the problem of poverty critics of the prevailing doctrine called sentimental, haphazard and even harmful, since it only contributed to the formation of a whole "class" of professional beggars [29, p. 446-447]. Protestant theologians insisted on a more rational model of helping the poor, fighting not the consequences, but the causes: idleness, vagrancy, laziness, etc.

Despite the contradictions in approaches to social transformations, their origins lay not in the religious dogmas of individual camps, but, as Pieter Spierenburg notes, in general, in the humanism of the new era, which was a through stone of a broad intellectual movement [18, p. 28-34]. The first person who theoretically justified the need for social policy itself was the Catholic theologian Juan Luis Vives. In 1526 his work was published *De Subventione Pauperum Sive de Humanis Necessitatibus* [30]. Book one *On private assistance* she described general principles and traditional approaches to helping the poor. The second book *On public relief* had more interest and publicity. It contained practical instructions on the organisation of social care as the duty of the ruler to ensure the "health of the city". In J.L. Vives, we meet the paternalistic approach familiar to us from ancient times: "let us act as wise doctors in relation to the sick, as wise fathers in relation to lost sons, even if they resist, but this is for their own good" [31, p. 236]. Vives calls idleness a source of personal and social troubles and offers employment as a universal means of rehabilitation [31, p. 188-189].

Vives' treatise became widely known in Europe and influenced the development of legislation on the poor in England, Spain and other countries where workhouses began to be organised. Despite the well-established opinion, Pieter Spierenburg argues that workhouses were not a product of Protestant ethics alone [18, p. 26-28]. The practice of workhouses in Catholic countries, where they appeared even earlier than in Amsterdam, proves this. However, we believe that it was the Protestant approach to work – not only as a way to earn a living, but as a means to change themselves, as a path to the Lord-that brought reformist meaning to isolation. Therefore, the experience of prison workhouses in Northern Europe is of interest in the context of the evolution of correctional punishment. Although, it should be noted that their work was only one of the elements of correction. The main goal was to teach the craft, take jobs and earn money for the maintenance of workhouses.

The topic of employment, segregation and correction of delinquents is also central in the Treatise of the Spanish lawyer, canonica Miquel de Giginta *Tratado de remedio de pobres* (1579) [32]. In the midst of discussions in Spain about different approaches to social care, Giginta outlined his own proposals for organising assistance to the poor, the essence of which was reduced to the idea of "controlled freedom" in special institutions – mercy houses and hospitals for the poor. *The author proposed to organise charity houses on new principles: control of local authorities, a combination of municipal funding, collection of targeted donations and self-sufficiency, simplicity and economy* [11].

The architectural plan of the House of Mercy – in the form of a Greek cross, in the center of which is an altar, made it possible to more efficiently control the persons held in the institution, and place them in categories. It was Giginta who came up with the idea of "centralised supervision", which, with the light hand of Michel Foucault, we used to associate exclusively with the Panopticon of Jeremy Bentham [15]. In the treatise, it was proposed to equip a room above the altar where the steward and his family would live, from which, through the louvered windows facing four sides in accordance with the wings of the building, everyone could be constantly secretly observed. Such supervision is especially important at night. For this purpose, the sleeping areas were designed in such a way that each bed was visible from a central point and illuminated by a lantern all night [32, p. 33-34].

Researchers of Giginta's work doubt what exactly inspired the author to come up with this idea: a secret door in monasteries, a control and eavesdropping system in the Sultan's Palace, or a treatise on architecture by an unknown Italian author [11]. The question also remains unanswered: were the Bentham brothers familiar with Giginta's treatise? In the spatial solution of the manufactory Samuel Bentham the caretaker in the center was not invisible [33, p. 719-720], but in the Panopticon "the central box of the overseer" is already equipped with blinds (as an option, it was proposed to cover it with a cloth that would have small holes [34, p. 73]). By approval Francisco Alvarez Uria, the National Library of Spain houses an anonymous manuscript, the authorship of which is attributed to Giginta. It states that the author has found a "way to correct the poor" (it is about this centralized invisible surveillance – ***auth.***) and provided it is implemented, "begging will be easily eradicated". If the number of poor people is large enough, then supervision can be strengthened by additional officials who would be in each building, on a hill covered around the perimeter with a thin linen cloth to create the appearance of permanent control [35, p. 68].

As you can see, Giginta was the forerunner of panoptic surveillance not only because he proposed this spatial solution. The more important goal he set was to create the illusion of constant supervision when the presence of a manager or other official became optional. Delinquents cannot be sure at any time that they are not being watched, and a sense of natural shame or fear does not allow them to violate the rules of decency [12].

Thus, Foucault's "reproaches" to J. Bentham, who launched the panoptic disciplinary "machine", are misplaced. In fact, it was developed 200 years before the "invention" of the Bentham brothers]. Thus, even in the XVI century, we see the origins of not only reformation influence, occupational therapy, but also control and supervision as a means of correction. These components will become the basis of penitentiary systems of the XIX century and will not leave their relevance in our time. During the same period institutions were formed that will determine the concept of Correctional punishment in the XVII-XVIII centuries: ordinary prisons, the purpose of which is isolation and punishment, prison workhouses, where work was the main component of the regime, and charitable institutions operating under the patronage of the Catholic Church, their purpose is to provide social assistance and control over the homeless, prostitutes and beggars.

In the middle of the XVII century, within the framework of the concept of charitable assistance to those in need, an understanding was formed that in addition to punitive functions, these institutions should also carry corrections. Especially for juvenile delinquents and children who were jailed by their parents for disobedience or misdemeanor. A separate section of a lengthy treatise *De visitatione carceratorum* (1655), authored by Bishop Giovanni Battista Scanaroli, dedicated to the correctional punishment of minors. Scanaroli proposed to establish special prisons that would correct the causes of sin by mercy, not by punishment [36, p. 41-42].

In fact, it was a revival of the ancient concept of correctional punishment – *emendatio*, initiated by Plato, which, according to Antonio Parente, in Italy earlier and to a greater extent than in other countries, was implemented in practice [37, p. 95]. In 1677, a correctional department was organized for the first time in the Pious House of Refuge for poor boys in the Hospice of San Filippo Neri of Florence, where homeless people and orphans were kept. It was intended for two categories: violators of discipline and Sons of Florentine families who were placed there by their parents or guardians. Privacy was important to the family's reputation, so the correctional facility was located in a remote part of the shelter. The cells were exclusively solitary. This ensured not only anonymity, but also isolation from the outside world. Solitary confinement (both day and night) was supposed to contribute to reformation: young people were left alone with their thoughts, could reflect on their behavior and repent. Founder and ideologist of the shelter Filippo Franci this approach was justified by the fact that he "sought not punishment, but correction" [38, p. 64].

Persons placed in the correctional department could attend worship services, but for the sake of complete privacy, their heads were covered with hoods. The arrival and departure from the hospice was also as secret as possible. This approach was later borrowed and implemented in the practice of penitentiary houses organised according to the Pennsylvania System [13, p. 109-110]. But in the XIX – early XX centuries, the reason for wearing masks or hoods by convicts is different-to divide and even more privacy. Thus, over time, the absolute utilitarian goal of privacy was transformed into an inhumane prison method.

Prisoners of the shelter St. Filippo Neri were allowed to communicate only to two protectors, who were to treat them with fraternal charity and should be shown the right road of living by efficacious exhortations. Filippo Franci insisted that compassion and friendliness was much more effective than rigor and severity [13, p. 107-109]. Rumors about the success of F. Franzi's activities spread around the city, the hospice gained fame as a correctional institution and began to specialise in this. Small young thieves were also placed there in the hope of correction [38, p. 60-62].

There is an assumption that the shelter St. Filippo Neri it was taken as a model during the organisation of St. Michael's House of Correction for juvenile delinquents in Rome, built in 1703-1704 on the initiative of Pope Clement XI. However, considering the regime of the latter – solitary confinement at night and joint work during the day in complete silence, then it rather implements the concept of the Holland spinhouse [13, p. 110-111]. The spatial solution of the House of Correction for Boys in the Hospice of Saint Michael was developed by the papal architect Karl Fontana, taking into account the requirements of the regime and supervision. The solitary cells were arranged in three stories along the galleries on either side of the large rectangular hall. Only three guards could effectively carry out supervision due to the fact that each cell had two windows: one External, the other facing the hall and everything that happened in the middle was clearly visible [39, p. 309].

In general agreement with the conclusions of Thorsten Sellin that the solitary confinement regime in the shelter of St. Filippo Neri was the first practical attempt to use this mode of treatment for the avowed purpose of correction and his use of cellular segregation by day and by night preceded the so-called Pennsylvania system by more than a century [13, p. 112; 40], we note that the analysis of the regimes of correctional institutions in Florence and Rome gives grounds to conclude that both models of prison discipline (solitary confinement and congregate system) originated in the late XVII – early XVIII centuries. Given this thesis, Sean McConville, that the forerunners of these systems of prison discipline were the regime principles of Prisons in Horsham and Petworth in West Sussex seems such that it does not correspond to reality [40, p. 98]. Because English prison reformers only developed the models of prison discipline introduced in Italian houses of correction.

It is obvious that the basis on which the model of correctional punishment in shelters for minors established by religious fraternities was formed was penitential ideas and corresponding prescriptions of canon law. More systematically, they were implemented in the principles of organising new prisons for clergy and monks, founded by the Roman Curia in the same period and called Penitentiary houses. At the initiative of Pope Urban VIII, such a prison was opened in Corneto in the XVII century. The main purpose of keeping it, in addition to the actual isolation, was re-education, which should be achieved not by violent methods, but by charity, spiritual practices, conversations with the confessor, admonitions and prayers. In the regime of penitentiary houses, the principles of medieval monastic penitential imprisonment were revived. Ideologists of the revived penitentiary punishment believed that isolation in a cell should automatically have a positive effect on the soul of the criminal [41].

The Corneto prison regime and its rules were an innovation. The conditions of detention of clergy and monks who committed crimes in France, Spain, and Portugal were more severe and continued inquisitorial practices. It was the latter that drew criticism from the Benedictine monk Jean Mabillon. About what he wrote an essay in the 90s of the XVII century *Reflections on the prisons of the monastic orders* with a call to reform the system of church punishments.

In *Reflections on the prisons of monastic orders* Mabillion developed a penitential approach and compared secular and ecclesiastical legal proceedings. The main goal of the secular court is to restore law and order and intimidate, while the ecclesiastical court is to restore the soul and its well – being. Therefore, you should always use tools that would make it possible to achieve the goal. When implementing church punishment, preference should be given to the means of influence that are most able to fill sinners with the spirit of mercy and repentance [42, p. 332].

Mabillion emphasised a paternalistic attitude towards sinners: "judges (like the church and, ultimately, God) should show first of all mercy and parental care. Analysing the history of church punishments, Mabillion notes that the Church and of Religion, which does not employ such punishments except to bring its children to a salutary correction" [42, p. 324]. Thus, in the penal concept of Mabillion, the focus is on correction, but it is not related to strict regime. He was skeptical of strict solitary confinement: monks were kept in complete isolation, excommunicated from mass, and there was no one to attend. Such forced "repentance" alone in 4 walls will only lead to the fact that they will lose their minds without communication, walking, or a certain occupation. In such conditions, the prisoner will not feel God's grace, but only sadness and sadness.

What did the author suggest to change? Persons who commit offenses for the first time, according to Mabillon, should not be punished in the form of imprisonment. Fasting and physical labour would be more effective in correcting them. As for the length of the imprisonment, it should depend on the nature of the offense and the disposition of the culprit. One would be more punished by six months in prison than another by several years there [14, p. 591; 42, p. 333]. Prisoners, according to Mabillon, should not be permanently isolated. They should be allowed walking in the fresh air, meeting their loved ones, and providing access to books that would encourage them to repent. But a prisoner can't just read, meditate, and pray for years. It would be worth arranging courtyards near the cells, where convicts could walk, breathe fresh air and work [42, p. 335].

The head of the prison should use all means to comfort prisoners, study their personal qualities, instruct them to correct and repent: "treat the sick, not dominate" [14, p. 591]. It would also be good if priests or decent members of the community visited and communicated with prisoners. Mabillion allowed a certain relaxation of the regime of detention after the first stage of imprisonment, provided that the person took the path of Correction and repentance: first solitary confinement, and then general detention [14, p. 592; 42, p. 335]. Mabillon concluded his essay with the phrase: "I am sure that all this will pass for an idea from a new world but whatever is thought and said about the matter, it will be easy when the desire arises, to make these prisons both more useful and more easy to end" [42, p. 335]. This can be considered the slogan of future prison transformations, although Mabilion's essay has remained a monument of penitentiary thought. Mabilion's ideas not only did not fit into the penal theories of his time [14, p. 593], but also in the penitentiary concept of the XIX century. However, they are understandable from the point of view of modern approaches to serving a sentence: the introduction of correctional programs, social adaptation, and the establishment of positive relations between staff and convicts, as is the case in Scandinavian prison systems [43].

Thus, the ideas of correctional punishment were formed in Europe at the level of doctrine and were implemented in practice in Italian houses of correction for juvenile convicts and penitentiary houses in the second half of the XVII – early XVIII centuries. This was a revival of the ancient paternalistic concept of correctional punishment, supplemented by a religious doctrine that provided for the influence not on the body, but on the soul of the offender to repent, correct and, as a result, return to society by a law-abiding citizen. Essential elements of the correctional regime were: solitary confinement, silence, prayers and spiritual care by

a mentor. The implementation of correctional punishment at this stage took place, in fact, only within the limits of ecclesiastical jurisdiction. At the dawn of large-scale prison transformations in European countries, secular authorities will borrow these disciplinary models, complementing them with the concept of occupational therapy from the experience of European workhouses. They will be most widely implemented in bridewells and penitentiary houses in England as part of the prison reform of the 70s and 90s of the XVIII century.

One of the first English prison reformers to develop the doctrine of correctional punishment was Jonas Hanway. He developed the thesis of *Cesare* Beccaria that it is necessary to apply only those punishments that […] would have the greatest impact on the soul of the criminal [44, p. 103, 105]. J. Hanway was an ardent advocate of solitary confinement for penance and re-education, and was skeptical of joint prison work. The perfect prison that would change the soul of a criminal, J. Henway called it a reformatory. Convicts should be provided with sufficient food, kept in comfortable, safe conditions for health, and there should be no violence in word or deed. A special role was assigned to the priest. The very spirit of prison should carry repentance, then, believed J. Henway, the most notorious criminal will change [45].

In law, the rule of "reforming the individuals" as the purpose of punishment by imprisonment, particularly in the penitentiary house, was first established in the Penitentiary Act of 1779 [46, p. 419], based on which local county prison acts were developed. The Houses of Correction built in counties in the wake of prison reform in 1779-1786 were fundamentally preventive rather than reformatory. The criminals were isolated for the night in solitary confinement, and during the day they worked together. According to Sean McConville, any reformative hopes were speculative and accidental [1, p. 92]. The first institution based on the ideas of reform influence and the principles of strict solitary confinement was the Petworth House of Correction, opened in 1787. The Rules of the House of Correction prohibited contact between convicts: they had to stay in their cells both day and night, performing work that was possible in conditions of strict solitary confinement. In fact, the construction of the Petworth House of Correction revived the isolation of correctional institutions from ordinary prisons, not only in name, but also in content [1, p. 94].

The Petworth House of Correction regime was based on the concept of correctional confinement, which was defended by representatives of Protestant churches. It was first publicly voiced in 1740 by the influential theologian Joseph Butler: "Then, as the only purposes of punishments, less than capital, are to reform the offenders themselves, and warn the innocent by their example, everything which should contribute to make this kind of punishments answer these purposes better than it does, would be a great improvement. And whether it be not a thing practicable, and what would contribute somewhat towards it, to exclude utterly all sorts of revel mirth from places where offenders are confined, to separate the young from the old, and force them both, in solitude with labour and low diet, to make the experiment how far their natural strength of mind can support them under guilt, and shame and poverty. Then again, some religious instruction particularly adapted to their condition would as properly accompany those punishments which are intended to reform as it does capital ones. But since it must be acknowledged of greater consequence in a religious as well as civil respect how persons live than how they die" [47].

A proponent of this approach was George Onesiphorus Paul, who implemented a large-scale prison reform in Gloucestershire and opened England's first penitentiary house in 1791 in Gloucester. G.O. Paul noted: "I am far from thinking that prisons should be places of *Comfort*. They should be Places of Real Terror, to those whom the Laws would terrify; of Punishment to those whom they would punish […] The regime should be such as will produce Reflection; the Food such as will support Life, and preserve Health, but by no means animate the spirits. Dejection and Solitude are the natural Parents of Reflection'. Even religion was to offer little comfort: The Terrors of a future World are Essential to the Reformation of Men, who have learnt to brave the Powers of this" [1, p. 100].

A different approach to correction was implemented in the Southwell House of Correction: solitary confinement was applied only to newly arrived convicts and violators of discipline; convicts were placed in separate blocks of 5 people. Chaplain of the institution Rev. John Thomas Becher argued that the correction and formation of positive habits is possible only in society. Joint detention extended to a small number of people, which, with the careful control of supervisors, made it impossible for criminals to negatively influence each other, but allowed achieving correctional influence [1, p. 122]. Thus, in Gloucester, correction had to be achieved through solitude and reflection and, as a result, repentance, and in Southwell – through work, the formation of positive skills and social adaptation. But in both cases, the prison chaplain should have been the key figure in the correction process.

These approaches to correcting J. Bentham contrasted the concept of a Panopticon, which combines correctional influence and control. A criminal in solitary confinement in a Panopticon is not so much to reflect on what he has done, pray and repent, as to learn to control himself and work. These are the main components of correction and a return to a law-abiding life. Solitary confinement, as noted by J. Bentham, in essence,

corresponds to the purpose of correction and Panopticon is most suitable for this. For a jailer, there are many prisoners, but not a crowd, all of them alone. Thanks to the architectural solution of the Panopticon (the rounded shape of the building, cell windows and latticed doors), everything that happens in the cell is clearly visible from the central point where the inspector's inspection "cabin" is located and he can observe all the cameras, but remains invisible [48, p. 5-20].

As you can see, J. Bentham adopted Giginta's idea of centralised surveillance, the purpose of which is to influence delinquents (even technical subtleties are borrowed, and this suggests that J. Bentham or his brother Samuel was familiar with the Spanish treatise – *auth*.) and supplemented it with architectural innovations, which were first tested in the House of Correction of St. Michael in Rome. J. Bentham tried to create the illusion of constant surveillance in the Panopticon. The convict could never be sure that he was not being controlled, and was forced to constantly behave as if he was being watched.

Later J. Bentham revised the thesis of solitary confinement as a necessary condition for correction. After analysing the organisational foundations of the new prisons, where the division only for the night prevailed, J. Bentham came to the conclusion that the disadvantages of solitary confinement are much more than the benefits. Security and correction can be achieved through clear rules and proper management, not just strict isolation. With a reasonable distribution of convicts for cohabitation, the Reformation impact should have been preserved [34, p. 33-34].

The Project of the Panopticon by J. Bentham was one of the last purely theoretical correctional concepts. At the level of doctrine at the beginning of the XIX century in Britain the concept of *a system of penitentiary imprisonment*, which is understood as "a system of imposition, not confined to the safe custody of the person but, extending to the reformation and improvement of the mind, and operating by seclusion, employment, and religious instruction" [49]. It is this approach that will be decisive in the next 100 years: prison reformers will implement disciplinary models in practice, organising large-scale penitentiary institutions for hundreds of prisoners and experimenting with correctional measures.

CONCLUSIONS

The conceptualisation of correctional punishment was the basis of the penitentiary discourse of the XIX century. The Anglo-Saxon experience became a model for building national penitentiary systems, which led to the creation of the myth of the exceptional primacy of English and American prison reformers in their foundation. However, it was not possible to create an ideal model of correctional punishment, and the world penology is constantly in search of effective forms of correction. Although it is difficult to imagine that previous generations have created concepts that may be of not only historical, but also practical interest, it is worth noting the modest progress of humanity in the field of ideas, and this, on the contrary, forces us to get rid of mythological perception and recreate the origins of the doctrine of correctional punishment.

The first conceptual ideas regarding correctional punishment are found in Plato's reflections, which contain a paternalistic vision of the role of the ruler in the upbringing of subjects, the formation of law-abiding behavior, which was developed by Roman lawyers. Thus, even in ancient times, an anthropocentric concept of punishment was formed, the purpose of which is to correct and return to society. In the early Christian period, it is supplemented with a penitential component. The first penitentiary institution, in fact, in which the origins of correctional punishment in the form of imprisonment lie, was monastic imprisonment.

Calls for the humanisation of the system of punishments during the Renaissance are conditioned by a utilitarian approach: it is unwise to take a person's life, if it can bring benefits – to work. In the XVI century, labour, not only as a punitive element, but also as a correctional one, became the basis of social policy implemented in workhouses. Innovative ideas for the organisation of centralised supervision of delinquents to achieve their correction first formulated by Miguel de Giginta in 1579. This approach was later upgraded by Jeremy Bentham in the Panopticon concept.

The ideas of correctional punishment were formed in the European expanses at the level of doctrine and had practical implementation in correctional and penitentiary houses in the late XVII – early XVIII centuries. This was a revival of the ancient paternalistic concept, supplemented by a religious doctrine that provided for influencing the soul of the offender for the purpose of repentance and correction. The analysis of the regime principles of correctional institutions in Florence and Rome gives grounds to conclude that it was during this period that two penitentiary systems: solitary confinement and congregate system which in the XIX century will compete for the championship in penal practice in most countries of the world. Given this, the thesis that the forerunners of these systems were the regime principles of English correctional houses seems such that it does not correspond to reality. The main components of the correctional regime that originated in previous periods: solitary confinement, silence, spiritual care and work, at the end of the XVIII century were borrowed by English prison reformers, supplemented and implemented in the practice of correctional houses.

The quintessence of the above-mentioned concepts became the basis for the formation of penitentiary systems of the XIX century, which proves the progressiveness of the ideas of correctional punishment, especially given the fact that some of their elements are still used in the practical activities of prisons and correctional institutions.

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Suggested Citation: Yarmysh, O.N., Sokalska, O.V., & Kyrychenko, V.Ye. (2021). Genesis of the concept of correctional punishment: from antiquity to modern times. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(3), 162-175.

Submitted: 16.06.2021
Revised: 19.08.2021
Accepted: 10.09.2021

УДК 342.5
DOI: 10.37635/jnalsu.28(3).2021.176-185

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НАПРЯМКИ РЕФОРМУВАННЯ НОРМАТИВНОГО РЕГУЛЮВАННЯ АКАДЕМІЧНОЇ ДОБРОЧЕСНОСТІ В УКРАЇНІ

Анотація. *Академічна доброчесність є найважливішою вимогою до наукових досліджень. Втім правове регулювання відносин, пов'язаних із забезпеченням академічної доброчесності у науковій та освітній діяльності, є фрагментарним та не містить дієвих механізмів впливу на порушника академічної доброчесності. Це зумовлює необхідність доктринального дослідження категорії «академічний плагіат» та напрацювання напрямків реформування чинного законодавства в цій сфері. Тому метою цієї публікації є аналіз нормативного врегулювання академічної доброчесності як явища, поняття академічного плагіату, його відмінності від плагіату в контексті дотримання авторських прав, визначення кола суб'єктів, відповідальних за встановлення фактів порушень академічної доброчесності та їх повноважень у сфері реагування на відповідні порушення, процедури притягнення до відповідальності у випадку порушення академічної доброчесності. У статті на підставі як загальних (історичного, порівняльного, логічного і системного), так і спеціальних (структурно-функціонального, формально-юридичного, соціологічного, статистичного тощо) методів аналізуються перспективи нормативного врегулювання порівняно нового для України поняття «академічний плагіат», а також норми законодавства, що стосуються встановлення поняття академічної доброчесності, видів порушень академічної доброчесності, процедури розгляду питань про імовірні порушення академічної доброчесності, видів відповідальності за порушення академічної доброчесності та органи, що мають право їх застосовувати, перевіряється їх відповідність міжнародним стандартам. Аналізується практика роботи Національного агентства із забезпечення якості вищої освіти України як з питань розгляду скарг про порушення академічної доброчесності, так і в межах акредитації освітніх програм. Звертається увага на протиріччя діючих правових норм в законодавстві України у сфері академічної доброчесності. Формулюються пропозиції до діючого законодавства з метою оптимізації правового регулювання проблематики дотримання академічної доброчесності. висловлюється авторська позиції про необхідність акумулювання правового регулювання академічної доброчесності в межах одного закону «Про академічну доброчесність» з метою визначення закладів вищої освіти та наукових установ головним суб'єктом забезпечення дотримання принципів академічної доброчесності, а Національне агентство із забезпечення якості вищої освіти – переважно апеляційною інстанцією стосовно рішень закладів вищої освіти з питань порушень академічної доброчесності; корегування переліку порушень академічної доброчесності та конкретизація процедури їх встановлення та стимулювання закладів вищої освіти до реального а не формального дотримання принципів академічної доброчесності*

Ключові слова: *академічна доброчесність, порушення академічної доброчесності, академічний плагіат, плагіат, відповідальність за порушення академічної доброчесності*

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AREAS OF REFORMING THE STATUTORY REGULATION OF ACADEMIC INTEGRITY IN UKRAINE

Abstract. *Academic integrity is the most important requirement for scientific research. However, the legal regulation of relations ensuring the academic integrity in scientific and educational activities is fragmented and does not contain effective mechanisms for influencing the violator of academic integrity. This necessitates a doctrinal study of the category "academic plagiarism" and the development of areas for reforming the current legislation in this field. Therefore, the purpose of this study is to analyse the statutory regulation of academic integrity as a phenomenon, the concept of academic plagiarism, its differences from plagiarism in the context of copyright compliance, to identify the scope of subjects responsible for establishing the facts of violations of academic integrity and their powers in the field of responding to corresponding violations, procedures for bringing to justice in case of violation of academic integrity. The present study, based both on general (historical, comparative, logical, and system) and special (structural-functional, formal legal, sociological, statistical, etc.) methods analyses the prospects of statutory regulation of the relatively new concept in Ukraine, which is academic plagiarism, including the legislative norms concerning the establishment of the concept of academic integrity, types of violations of academic integrity, procedures for considering issues of possible violations of academic integrity, types of responsibility for violations of academic integrity and bodies that have the right to apply them, verifies their compliance with international standards. The paper analyses the practice of the National Agency for Quality Assurance of Higher Education of Ukraine both on the consideration of complaints about violations of academic integrity, and within the framework of accreditation of educational programmes. Attention is drawn to the contradictions of current legal provisions in the legislation of Ukraine in the field of academic integrity. Proposals to the current legislation are formulated to optimise the legal regulation of the issue of compliance with academic integrity. The authors express their opinion on the necessity of accumulating legal regulation of academic integrity within the framework of a single law "On Academic Integrity" to define higher education institutions and scientific institutions as the main subject of ensuring compliance with the principles of academic integrity, and the National Agency for Quality Assurance of Higher Education – mainly by the appellate instance regarding decisions of higher education institutions on violations of academic integrity; adjusting the list of violations of academic integrity and specifying the procedure for their establishment and stimulating higher education institutions to real and not formal compliance with the principles of academic integrity*

Keywords: *academic integrity, violation of academic integrity, academic plagiarism, plagiarism, liability for academic dishonesty*

INTRODUCTION

Nowadays, compliance with the principles of academic integrity is considered as one of the most important requirements for the content of scientific research. Cases of violations of the principles of academic integrity are vividly discussed in the scientific and educational environment, and most frequently – in social networks. But in the professional discussion of these problems, it is noted that the regulatory framework governing the rights and obligations, procedures and powers of all subjects participating in legal relations to establish the presence or absence of violations of academic integrity, within a particular case, is rather imperfect. Most

importantly, attention is drawn to the fragmented legal regulation of relations ensuring academic integrity in scientific and educational activities, the "dispersion" of relevant legal provisions for various regulations, the presence of numerous gaps, the lack of effective mechanisms for influencing violators of academic integrity. An illustrative example is the question of a subject authorised to establish the presence or absence of a violation of academic integrity. Thus, if this refers to the educational process participants, the legislation provides appropriate opportunities for educational institutions, in particular, to create bodies to consider issues of compliance with academic integrity, establish appropriate procedures and penalties for such violations. But there are almost no examples of practical implementation of these opportunities. Only a few educational institutions have created full-fledged systems for ensuring academic integrity, capable of effectively responding to its violations, which would be confirmed by the practice of their work.

Until the adoption of the current Law of Ukraine "On Higher Education" [1], these functions were assigned to the Ministry of Education and Science of Ukraine, and nowadays these powers should be transferred to the National Agency for Quality Assurance of Higher Education. At the same time, the final transfer of powers has not yet taken place, as a result of which the Ministry of Education and Science of Ukraine is no longer considering the issue of establishing the facts of violation of academic integrity (in the form of academic plagiarism in scientific papers, as a result of which a scientific degree was awarded), and the National Agency for Quality Assurance of Higher Education was forced to suspend consideration of these issues, since numerous unresolved issues (mainly of procedural nature) led to an active appeal in court to almost every decision that was made by the Agency in connection with the revealed facts of violation of academic integrity. It should also be considered that the judicial practice in this category of cases is inconsistent and ambiguous. These objectively existing factors create a rather tense situation in the scientific and educational environment – information about the facts of academic plagiarism is actively distributed in social networks, tables comparing fragments of various papers are placed, etc. The public develops a perception of impunity for such obvious violations. A particularly acute reaction is observed in cases where the facts of academic dishonesty are revealed in the scientific papers of officials and other public figures. Thus, when it comes to the need to respond to possible violations of academic integrity in the results of scientific studies, the legislation of Ukraine impresses with its legal surrealism. It identifies subjects who are required to respond to violations of academic integrity, but each of them lacks the completeness of legal structures for the exercise of their powers.

Thus, there is a rather contradictory situation: the legislation defines subjects that are required to respond to the facts of violation of academic integrity, but in practice there are no proper legal structures and mechanisms that would provide these subjects with the opportunity to effectively exercise their powers. The mandatory procedures that must be followed when reviewing information about possible violations of academic integrity are determined, but the procedures themselves are not approved. Strict types of liability for violations of academic integrity are established, but there is almost no practice of their application. Such a situation implicitly indicates the necessity of amending the Ukrainian legislation on compliance with the principles of academic integrity and responsibility for its violation. In the process of solving this important issue, it is advisable to consider the practices of foreign countries and independent specialised organisations. Thus, the International Centre for Academic Integrity (ICAI) uses a positive approach in determining academic integrity and relies on values that must be respected: honesty, trust, justice, respect, responsibility, and courage [2]. Notably, this is a fairly common approach that does not establish liability for violations, but invites the public to join the recognised values. This factors in the historically formed university autonomy, which lies, inter alia, in the right of educational institutions to independently resolve all issues relating to the violation of academic integrity by educational applicants or teachers, including the possibility of bringing to all types of academic responsibility. Along with the definition of the very concept of academic integrity, foreign researchers pay great attention to certain types of violations of academic integrity, as well as mechanisms for their detection and proof, for example, various forms of plagiarism [3; 4].

Of interest are also the results of a comparative legal analysis of the statutory regulation of academic integrity in general, or the causes of violation of academic integrity, types of misdemeanors in this area in different countries [5, p. 84-96]. At the same time, along with differences in the regulation of such phenomena, absolutely similar problems can also be noted in the educational institutions and scientific institutions in other countries. Violation of academic integrity in the form of academic plagiarism or in other forms is a serious issue for many educational institutions, scientific institutions, and publishing houses because they can lead or actually lead to the fact that students, due to committed violations, have the opportunity to get credits without achieving educational goals; researchers, using academic plagiarism, can increase the number of their publications and the citation index and get research funding, not having proper qualifications in reality [6, p. 13; 7]. It is noted that violations of academic integrity have a devastating impact not only on education and

science, but also on economic, social, and political processes in general [8]. Attention is also drawn to the most pressing challenges in the field of academic integrity – the transition to distance learning in the context of a pandemic [9] or the importance of web citation [10, p. 1046; 11]. In Ukraine, in most cases, the problem of academic integrity is analysed in the context of the organisation of the educational process and the quality of higher education [12]. Conventionally, the problem of compliance with the principles of academic integrity is considered in the context of intellectual property, copyright or related rights [13; 14]. There are also quite in-depth scientific studies of the concept and types of plagiarism [15] (which does not always coincide with the specifics of academic plagiarism), elements of academic integrity [16] and ways to combat academic plagiarism [17]. At the same time, sufficient attention is not paid to the specifics and significant shortcomings of the legal regulation of liability for violations of academic integrity. Therefore, the purpose of this study is to analyse the statutory regulation of academic integrity as a phenomenon, the concept of academic plagiarism, its differences from plagiarism in the context of copyright compliance, to identify the scope of subjects responsible for establishing the facts of violations of academic integrity and their powers in the field of responding to corresponding violations, procedures for bringing to justice in case of violation of academic integrity.

1. MATERIALS AND METHODS

The methodological basis of the present study includes a set of general scientific and special methods and techniques of scientific research. All methods were applied in an interconnected way, which ultimately contributed to ensuring the comprehensiveness, completeness, and objectivity of scientific research, correctness and consistency of conclusions. The methodological framework of the study includes universal methods of dialectics used at all stages of covering the essence of academic integrity, the history of its development in European countries, and the prospects for reform in Ukraine. In the course of the study, its authors employed general scientific methods as historical, comparative, logical, and systematic methods. Historical allowed studying the features of statutory regulation of the state's attitude towards such a phenomenon as academic integrity in its various manifestations, the gradual identification of two main aspects of academic integrity: ethical and legal, the development of rules for observing academic integrity, determining responsibility for its violation and mandatory elements of the decision-making procedure. Using the comparative method, the study compares the provisions of the current legislation of Ukraine, European countries, and international norms, considers the legal regulation of academic integrity and its reform in foreign countries. The system method helped justify the independence of the principles of academic integrity, made it possible to conceptually form and substantiate the theoretical foundations and develop a terminology necessary for studying the problems of regulating academic integrity.

Special methods were also applied at certain stages of the study, namely the structural-functional method, which mares provision for the consideration of any phenomenon as systemic with a mandatory analysis of the functions of interacting elements, was used to determine the mandatory components of academic integrity, the list of principles of academic integrity, the mandatory components of the procedure for considering the presence or absence of a violation of academic responsibility. The formal legal method was also used to analyse the legal norms of corresponding regulations that define the concept of academic integrity, provide a list of its principles, determine the types of violations of academic integrity and types of punishments for violations of academic integrity, a list of subjects competent to decide on the presence or absence of violations of academic integrity and the measure of punishment in case of confirmation of violations, the rights and obligations of all participants in the process of considering violations of academic integrity. The methods of sociological, statistical, and generalisation were also used to analyse the standpoints of students, teachers, and representatives of the administration of higher educational institutions regarding the effectiveness of legislation in the field of compliance with the principles of academic integrity during training and scientific activities, real opportunities to protect their violated rights. The specifics of the area and subject of this study also necessitated the use of the methods of induction and deduction analysis, synthesis, comparison, analogy, which became vital tools for selecting factual material.

The regulatory framework of this study includes the standards and recommendations for quality assurance in the European Higher Education Space (ESG 2015), international legal acts ratified by the Verkhovna Rada of Ukraine, laws and other regulations of Ukraine in the field of education and science, the legislation of foreign countries that have joined the European higher education space and have success in observing the principles of academic integrity. The main stages of the study of the state of compliance with the principles of academic integrity in Ukraine and the areas of reforming the statutory regulation of this phenomenon included: 1) the hypothesis that regardless of the level of development, the size of the territory and other indicators, the education and science system of most states of the world have approximately the same new challenges in the field of compliance with academic integrity, which creates prerequisites for consolidating

efforts to overcome them; 2) the analysis of the state of legal regulation in Ukraine of academic integrity as a mandatory space of educational and scientific activity, the history of the development of the domestic regulatory framework in the corresponding area, the shortcomings of current legislation; 3) the study of doctrinal approaches and practices of foreign countries on the scope of legal regulation of academic integrity issues; 4) formulation of the conclusion that the current legislation of Ukraine does not meet all the requirements for regulating legal relations in the field of academic integrity, changing individual parts of a considerable number of laws will not be the solution to the problem, so the most effective solution to the problem is the adoption of a separate Law of Ukraine "On Academic Integrity".

2. RESULTS AND DISCUSSION

At present, the issue of developing the foundations of academic integrity is becoming increasingly pressing in the scientific and educational space of Ukraine. At the same time, the importance of academic integrity has not always been the case, and the recognition of this phenomenon as a problem at the legislative level has occurred relatively recently. Within the framework of the historical analysis of the development of academic integrity and its impact on the quality of higher education, it can be noted that the legislator first normalised academic integrity as a phenomenon at the legislative level only in 2017. The Law of Ukraine "On Education" of September 5, 2017 [18] defines academic integrity as a set of ethical principles and rules defined by the laws of Ukraine, which should guide participants in the educational process during training, teaching, and conducting scientific (creative) activities to ensure confidence in the results of training and/or scientific (creative) achievements (Part 1, Article 42). Therewith, this does not mean that until 2017, Ukrainian educational institutions were not supervised and were not obliged to adhere to the corresponding ethical principles or legislatively defined rules in the field of training, teaching, scientific activities to ensure confidence in their results. However, all this had a different form of implementation and was not perceived within the framework of a single phenomenon, which is academic integrity. In particular, Article 52 of the Law of Ukraine "On Education" of 1991 [19] obliged all participants of the educational process (pupils, students, cadets, trainees, interns, clinical residents, postgraduates, doctoral students) to comply with legislation, moral and ethical standards. It was noted that persons with high moral qualities can engage in teaching activities (Part 1, Article 54). The duty of pedagogical and scientific-pedagogical workers was to establish respect for the principles of universal morality by setting and personal example: truth, justice, loyalty, patriotism, humanism, kindness, restraint, hard work, moderation, and other virtues; to observe pedagogical ethics, morals, and respect the dignity of a child, pupil, or student (Article 56). Even the responsibility of a higher educational institution in making decisions on the development of academic freedoms, the organisation of scientific research, the educational process, etc. was recognised (within the framework of defining the concept of autonomy of a higher educational institution – Article 46).

However, this law had not yet defined measures of liability for violation of these duties. In fact, the relevant norms were declarative in nature. This was explained by the fact that higher education institutions, applicants for higher education and research and teaching staff were still at the stage of awareness of the category of integrity, ethical and moral principles, which were not always perceived as priority or mandatory. The Law of Ukraine "On Higher Education" of 2002 [1] factually duplicated the provisions of the Law of Ukraine "On Education" of 1991 concerning the duties of teachers and research and teaching staff (Article 51). And the duties of persons studying in higher educational institutions included the necessity of compliance with legislation, moral and ethical norms was not mentioned at all (Article 55). Under such conditions, liability for violation of ethical and moral principles was not stipulated. At the same time, it is impossible to describe the higher education in Ukraine before 2017 as such that was completely unaware of and not characterised by the ethical rules of educational and scientific activities. The legislation of independent Ukraine initially established the requirement to refer to the sources used in scientific papers and the responsibility for "identifying text borrowings without reference to the source in a dissertation, the author of which has already been issued a Doctor or Candidate of Sciences Diploma" in the form of "making a decision to deprive them of their scientific degree" (Paragraph 14 of the procedure for awarding scientific degrees of 2013 [20]; Item 16 of the Order of awarding of scientific degrees and assignment of a scientific rank of the senior researcher [21]; Paragraphs 16, 46 of the Order of awarding of scientific degrees and assignment of scientific ranks of 1997 [22]; Clause 4, Article 2, Articles 18, 56 of the rocedure for awarding scientific degrees and conferring academic titles of Ukraine in 1992 [23], etc). In fact, these requirements correspond to the modern definition of "academic plagiarism" and are a type of violation of "academic integrity" in the context of current legislation.

In addition, one should not forget about the requirements of the civil legislation of Ukraine, which have always considered plagiarism as a violation of copyright and established responsibility for such violations, allowing the possibility of extending these rules to scientific and creative activities. However, the evolution of

scientific and educational processes has led to the realisation that the available volume of statutory regulation is clearly insufficient to ensure the proper development of higher education and scientific activities in Ukraine, and the lack of official recognition of academic integrity as a prerequisite for the quality of higher education and scientific activities significantly distorts their purpose in society and in general leads to the loss of advanced positions in this issue on the world stage. Based on the importance of this problem, the Law of Ukraine "On Higher Education" of 2014 [24] introduced the concept of academic plagiarism and a clear and strict responsibility of all subjects involved in its admission was established, while the Law of Ukraine "On Education" of 2017 not only defined the concept of academic integrity, but also made provision for manifestations of its violation, the obligation to comply with the principles of academic integrity for all participants in educational activities and responsibility for its violation. This position of the legislator should be recognised as quite reasonable. The scientific and educational community, the society in general, should be aware that violation of the rules and principles of academic integrity makes it impossible to obtain a high-quality education, regardless of the institution of higher education or scientific institution where the training takes place. Such violations really call into question the results of training and complicate the self-fulfilment of a young specialist with a higher education diploma obtained in an institution where the principles of academic integrity do not apply. That is why an active policy of all participants in the educational process and scientific activities in the field of familiarisation and promotion of the rules of academic integrity is critical. High hopes for the mass dissemination of knowledge and practices of academic integrity in the field of higher education and scientific activities were associated with the creation of the National Agency for Quality Assurance of Higher Education in Ukraine (hereinafter referred to as "the National Agency"). This body was empowered to directly or indirectly take part in shaping practices of respect for academic integrity and responsibility for its violations at all levels:

a) the National Agency is directly obliged by the current Law of Ukraine "On Higher Education" to respond to violations of academic integrity in the form of academic plagiarism, forgery, falsification in the qualification work of an applicant for the degree of Doctor of Philosophy (Clause 6, Article 6; Clause 9, Article 19). This primarily concerns the responsibility of research and teaching staff;

b) regarding the development of principles and practices of academic integrity at the level of higher educational institutions, including applicants for education – the activities of the National Agency are indirect and these factors are verified in the process of accreditation of curricula.

Thus, when accrediting each curriculum, the National Agency tries to establish whether the higher education institution has defined a clear and understandable policy, standards and procedures for observing academic integrity, which all participants in the educational process must consistently adhere to upon implementing the curriculum. A higher education institution should promote academic integrity (primarily through the implementation of this policy in the internal culture of educational quality) and use appropriate technological solutions as tools to counteract violations of academic integrity. Furthermore, the institution of higher education should ensure compliance with academic integrity in the professional activities of scientific supervisors and postgraduates (adjuncts), in particular, take measures to exclude scientific leadership by persons who have committed violations of academic integrity. Notably, in the process of implementing each accreditation, experts of the National Agency are required to hold meetings with students and find out their assessment of both the institution's activities in the field of ensuring academic integrity and in ensuring the quality of education in general. Furthermore, participants in the accreditation process or any other person have the right to apply for protection of their rights to the Ethics Committee of the National Agency. In the process of training experts of the National Agency who carry out accreditation of curricula, special skills and abilities are developed to comply with the procedures and procedure for verifying information on compliance with academic integrity standards within a particular institution of higher education (scientific institution). Thus, to confirm the information received from a higher education institution (scientific institution) that ensuring academic integrity is part of their internal system of ensuring the quality of education, experts should state the presence of at least such elements:

1) the policies, standards, and procedures for observing academic integrity must be pre-defined, clear, and understandable, and take the form of a code of honour or other document in accordance with the decision of the higher education institution. Procedures should include both mechanisms for monitoring compliance with academic integrity (verifying written papers to identify text and other borrowings without correct references, peer review of scientific texts before publication, an anonymous survey of higher education applicants about the presence/absence of violations of academic integrity, etc.), and effective, clear, and transparent procedures for responding to such violations and bringing to academic responsibility;

2) institutional ensuring of compliance with academic integrity implies the presence of a separate structural unit (official) that handles issues of academic integrity, or a clear distribution of relevant functions and powers

among the existing structural divisions (officials) of the higher education institution;

3) availability of appropriate information and technological means used by the institution of higher education to prevent and counteract manifestations of violations of academic integrity;

4) measures to promote academic integrity among applicants for higher education may include, in particular, the introduction of individual educational components dedicated to academic integrity and academic writing skills into the educational programme, the implementation of individual short-term training modules on this topic, etc.;

5) declaring and maintaining a zero-tolerance policy towards any manifestations of violations of academic integrity, which is embodied in the institutional culture and supported by appropriate procedures and institutional practices [25].

The analysis of the practicec of the National Agency and the activities of higher education institutions and scientific institutions in the field of compliance of participants in the educational and scientific space with the principles of academic integrity suggests rather disappointing conclusions. Firstly, the contradictions between the provisions of the Laws of Ukraine "On Education" and "On Higher Education", as well as the practical absence of relevant sub-legislative acts in the field of ensuring the implementation of the requirements of the relevant laws, practically level the results of the work of the National Agency and stop the work of the Ministry of Education and Science of Ukraine regarding compliance with the principles of academic integrity. This is manifested in the fact that the Ministry of Education and Science of Ukraine no longer has the authority, and the National Agency does not yet have the proper legal tools to effectively respond to complaints (appeals, reports) about violations of academic integrity. Basically, this refers to reports about the presence of academic plagiarism in dissertations that have already passed the stage of defence in specialised academic councils. Sometimes this refers to other forms of violations of academic integrity (falsification or forgery in combination with academic plagiarism), again, in already defended dissertation research. It is not uncommon for attention to be drawn to procedural violations in the process of defending dissertations (non-compliance with the requirements for posting texts themselves, reviews of official opponents on the websites of relevant institutions of higher education (scientific institutions), requirements for the procedure for entering the defence, refusal of specialised academic councils to respond to such violations, etc.) in combination with violations in the design of dissertations. Complaints are received that accuse the admission of academic plagiarism in scientific articles that were considered during the defence of scientific achievements or were published after the defence of dissertation research and obtaining an academic degree. There are also accusations of a different nature: bribery (within the meaning of the Law of Ukraine "On Education"), biased assessment, etc.

The Law of Ukraine "on Higher Education" stipulated legal grounds for such appeals. In particular, it is noted that the National Agency forms an Ethics Committee to consider issues of academic plagiarism (performing other powers assigned to it by the National Agency), an appeal committee to consider appeals, applications, and complaints about the activities and decisions of specialised academic councils (Paragraph 9, Article 19). To approve the decisions recommended by these committees, the National Agency is authorised by the Law to monitor the activities of specialised academic councils (Paragraph 9, Part 1, Article 18), cancel the decision of the specialised academic council to award an academic degree in case of detection of academic plagiarism (Paragraph 6, Article 6), etc. Under such conditions, it is quite understandable that participants in educational or scientific activities who have witnessed violations of academic integrity or who have become aware of them, having familiarised themselves with the content of the Law of Ukraine "On Higher Education" and having a desire to contact the appropriate and competent authority to eliminate the identified violations and bring the perpetrators to academic responsibility, approach the National Agency, especially in conditions when the Ministry of Education and Science of Ukraine, in case of receiving appeals on such issues, is forced to answer that the competent authority in matters of academic plagiarism is the National Agency. However, there is no effective procedure for exercising these powers, which must be approved by the Cabinet of Ministers of Ukraine.

For the Ethics Committee of the National Agency to fully consider numerous complaints about academic plagiarism received by the National Agency, the procedure for cancelling the decision of the dissertation council to award an academic degree must be approved. For the full-fledged work of the appeals committee of the National Agency, a new procedure for awarding academic degrees and the procedure for accreditation of specialised academic councils should be developed and approved. To eliminate contradictions between the Laws of Ukraine "On Higher Education" and "On Education" on academic integrity issues, it is necessary to amend the Law of Ukraine "On Education". The delay in the adoption of these sub-legislative acts leads not only to the fact that the decisions of the Ethics Committee of the National Agency (solely on formal grounds), without any assessment of their content component, are challenged in court, but also to the fact that almost all cases of violation of academic integrity remain without a proper reaction from the state and undermine

confidence in the level of Ukrainian scientific studies. This causes fair criticism amongst the scientific and educational community. These circumstances should not serve as grounds for the refusal of the National Agency to perform its tasks in the field of ensuring the quality of higher education and compliance with high principles of academic integrity. The search for all possible solutions must continue. Thus, the law not only empowers each educational institution, but also obliges them to approve the internal procedure for identifying and establishing violations of academic integrity, internal provisions on types of academic responsibility and apply these documents in practice.

Therefore, the National Agency should cooperate with higher education institutions, apply to them with a proposal to verify particular information about violations of academic integrity. In turn, higher education institutions should inform the National Agency about the results of such inspections, and the latter should consider the information provided when accrediting educational programmes. This solution requires more time, since several subjects are involved: higher education institutions and the National Agency. But the expansion of the subject composition also includes a positive aspect: not only the National Agency, but also higher education institutions take part in this work. Each educational institution or scientific institution should be involved in this process and be responsible for the results of educational activities [26, p. 39; 27, p. 13] and scientific research as an essential component of ensuring the quality of education. It should be borne in mind that the place of education is crucial for the development of a culture of integrity and shapes the future behaviour of a graduate as a person and specialist [28, p. 134].

Secondly, the results of accreditation of curricula by the National Agency indicate, unfortunately, that higher education institutions (scientific institutions) mainly formally approach the problem of compliance with academic integrity. Most higher education institutions and scientific institutions have approved internal rules of academic integrity, procedures for considering relevant issues, and established ethics commissions or other bodies. However, there is virtually no practice of establishing the facts of violation of academic integrity and bringing the perpetrators to academic responsibility. The overhwelming majority of institutions claim that applicants for education, postgraduates, research and teaching staff, and representatives of the administration are informed about the rules of academic integrity, adhere to them in good faith and do not allow violations. In the meantime, the National Agency receives numerous complaints about blatant violations of academic integrity. This situation indicates that there are all signs of tolerance for violations of academic integrity in higher education institutions. Furthermore, it is not uncommon for a National Agency to establish violations of academic integrity on the part of particular researchers within the framework of its activities and transfer such information to higher educational institutions for an appropriate response, but the latter refused to recognise the existence of such violations and bring their research and teaching staff to academic responsibility. They even officially appealed to the National Agency and other bodies with a proposal not to look for violations of academic integrity in the results of scientific activities of their representatives. The analysis of these problems confirms the need to develop and adopt a unified legislative act that would function as a "special law" and define the main requirements and procedures for compliance with the rules of academic integrity, procedures for establishing its violation and bringing to justice. The authors of this paper believe that the Draft Law of Ukraine "On Academic Integrity" should perform the following tasks:

– accumulate legal regulation of all aspects of academic integrity within the framework of a single law;

– identify institutions of higher education (scientific institutions) as the main subject of ensuring compliance with the principles of academic integrity, providing them with additional opportunities to respond to its violation;

– define the National Agency for Quality Assurance of Higher Education as primarily an appealate instance for decisions of higher education institutions on violations of academic integrity;

– identify the types of violations of academic integrity and specify the procedures for their establishment;

– encourage institutions of higher education and scientific institutions to actually, rather than formally, comply with the principles of academic integrity through the introduction of liability for failure to identify violations of academic integrity and counteract these violations.

CONCLUSIONS

As a final conclusion, it can be noted that today in Ukraine an active scientific and educational environment perceives the importance of developing a culture of compliance with the principles of academic integrity in educational processes and scientific activities in the same way as in other developed countries of the world. Despite territorial, social, economic, or any other differences, the main difficulties faced by representatives of the state, higher education institutions, and scientific institutions in combatting violations of academic integrity are almost the same in most countries. This can become an essential argument for combining the efforts of representatives of different countries, namely in the European educational and scientific space, to jointly

develop an action plan for the development of systematic measures to combat any manifestations of academic integrity. Furthermore, there are insufficient real mechanisms for detecting and countering violations of academic integrity in the Ukrainian legal space.

Well-known international principles of academic integrity in the field of higher education and scientific activities are recognised, but mostly not observed. In most cases, this is not connected with conscious, systematic activities that are incompatible with the concept of academic integrity, but most frequently indicates a desire to prevent the disclosure and dissemination of information about violations detected and resolve conflicts "peacefully". Under such conditions, it is vital and necessary to activate the national policy aimed at stimulating transparency of processes in the field of compliance with academic integrity and responding to its violations, and developing a culture of compliance with academic integrity. An effective scenario for solving a considerable part of the problems of compliance with academic integrity can be the adoption of the Law of Ukraine "On Academic Integrity", which would ensure not only recognition of the importance of this phenomenon for the future of Ukrainian higher education and its presentation in the European Space, but also clearly define that not only the National Agency, the Ministry of Education and Science of Ukraine, or other state body, but also all higher education institutions and scientific institutions are responsible for the quality of higher education and research results, and, accordingly, for compliance with the principles of academic integrity.

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Suggested Citation: Kuznietsova, N.S., Nazarov, I.V., & Yefimenko, L.V. (2021). Areas of reforming the statutory regulation of academic integrity in Ukraine. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(3), 176-185.

Submitted: 14.05.2021
Revised: 20.07.2021
Accepted: 23.08.2021

УДК 378.4.01/.09:34](477)(082)
DOI: 10.37635/jnalsu.28(3).2021.186-196

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ПРАКТИКООРІЄНТОВАНИЙ ХАРАКТЕР НАВЧАННЯ ЯК ВАЖЛИВИЙ КОМПОНЕНТ РЕФОРМУВАННЯ ЮРИДИЧНОЇ ОСВІТИ В УКРАЇНІ

Анотація. *Актуальність дослідження практикоорієнтованого навчального процесу зумовлена процесами реформування юридичної освіти в Україні, спробами теоретичного визначення методики викладання навчальних предметів та проведенні самостійних занять. Дослідження особливостей організації виконання студентами самостійних завдань, їх перевірка та аналіз помилок зумовлене його метою, яка полягає у вивченні практикоорієнтованого характеру навчання та виявленні навчальних труднощів при виконанні студентами самостійної роботи, пропонування напрямів їх усунення та обґрунтування варіанту удосконалення навчального процесу. Завдяки основним методам наукового пізнання, зокрема загальнонауковим та спеціально-юридичним, розкривається сутність самостійної роботи студентів, яка у своїй роботі містить принцип розвиваючого навчання, як без участі викладача, так і під його безпосереднім керівництвом. На основі філософського та функціонального методу вдалося окреслити основну функцію навчального процесу – одержання максимального обсягу знань, їх закріплення і перетворення у вміння і навички. Послуговуючись структурно-функціональним методом досліджено, що серед найбільш корисних навичок для студентів при самостійному вирішенні завдань є написання есе та робота групами. Завдяки соціально-статистичному методу розкривається сутність групової роботи студентів, яка сприяє взаємному контролю, підвищенню рівня мотивації, розвитку пізнавальної діяльності, зацікавленості у виконанні спільної роботи тощо. Результат проведеного дослідження полягає в його обґрунтованості щодо раціональної організації методичного забезпечення самостійної роботи студентів, а також щодо можливості якісному засвоєнню навчального матеріалу студентами, закладає основу для подальшої самоосвіти та самовдосконалення. Обґрунтовано, що виконання студентами-правниками самостійних домашніх завдань як теоретичного, так і практичного характеру позитивно впливають на формування і розвиток спеціальних (предметних) умінь і навичок, зокрема на володіння і правильне тлумачення юридичної термінології, визначення найважливіших ознак і природи правових категорій, уміння формулювати й обґрунтовувати власну позицію при аналізі ситуації з позиції права*

Ключові слова: *вища освіта, методика викладання, самостійна робота, домашнє завдання, приватноправові дисципліни, перевірка завдань*

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PRACTICAL-ORIENTED NATURE OF LEARNING AS AN IMPORTANT COMPONENT OF LEGAL EDUCATION REFORM IN UKRAINE

Abstract. *The relevance of the study of practice-oriented educational process is due to the processes of reforming legal education in Ukraine, attempts to theoretically determine the methods of teaching subjects and conducting independent classes. The study of the peculiarities of the organisation of students 'independent tasks, their verification and analysis of errors is due to its purpose, which is to study the practice-oriented nature of learning and identify learning difficulties in students' independent work, suggest ways to eliminate them and justify improving the learning process. Thanks to the basic methods of scientific knowledge, in particular general and special legal, the essence of independent work of students is revealed, which in its work contains the principle of developmental learning, both without the participation of the teacher and under his direct supervision. Based on the philosophical and functional method it was possible to outline the main function of the educational process – obtaining the maximum amount of knowledge, their consolidation and transformation into skills and abilities. Using the structural-functional method, it was investigated that among the most useful skills for students in solving problems independently are writing essays and working in groups. Thanks to the socio-statistical method, the essence of students' group work is revealed, which promotes mutual control, increases the level of motivation, development of cognitive activity, interest in performing joint work, etc. The result of the study is its validity on the rational organisation of methodological support of independent work of students, as well as on the possibility of high-quality assimilation of educational material by students, lays the foundation for further self-education and self-improvement. It is substantiated that the performance of independent homework by students-lawyers of both theoretical and practical nature has a positive effect on the formation and development of special (subject) skills, including mastery and correct interpretation of legal terminology, definition of the most important features and nature of legal categories, ability to formulate and substantiate their position when analysing the situation from the standpoint of law*

Keywords: *higher education, teaching methods, independent work, homework, private law disciplines, task verification*

INTRODUCTION

In today's world, higher education is the foundation of human development in general and civil society in particular. Admittedly, it is also a guarantor of individual development of personality, because it contributes to the formation of intellectual, spiritual and productive potential of man. Therefore, the development of education should be harmoniously combined with the development of the state, in which each individual would receive favourable conditions for full individual development, satisfaction of both intellectual and material needs. The problem of ensuring the quality of higher legal education, especially with the introduction modern information technologies of distance learning and in conditions coronavirus infection COVID-19 is a cornerstone among other problems of modern higher education. The state as a guarantor should have the function of controlling the quality of higher education. At the same time to control not only the learning process, teaching disciplines, licensing, accreditation of higher education institutions, but also the “result” of education, in particular by conducting a single state qualifying exam. Therewith, it is necessary to realise that the quality of legal education, and therefore its effectiveness depends primarily on teaching and methodological support, the use of interactive teaching methods, creative approach of the teacher to prepare materials and tasks, systematic regulation and implementation of independent work. As noted by OO Cat, an independent problem is that studying in law schools in fact does not provide students with practical skills at a level sufficient to use their knowledge after obtaining a diploma of higher education [1, p. 132]. Moreover, as rightly noted by S.O. Pogribny, we can confidently say that the importance of understanding the specifics of legal education

goes far beyond professional legal practice, it is a matter of formation and formation of the rule of law in general [2, p. 142]. That is why the methodical analysis of the peculiarities of the organisation of students' independent work, their verification and analysis of errors requires a separate scientific substantiation and research, and therefore the issues stated in the article are relevant.

In modern conditions of intensive socio-economic development of society, it is extremely important to increase the educational level of training of highly qualified specialists in the field of jurisprudence, enriching their intellectual and creative potential. An important condition for solving this problem is the need to "arm" future lawyers with knowledge that will allow them to communicate freely on a professional basis with both Ukrainian and foreign colleagues, by familiarising themselves with scientific doctrine, judicial practice of different countries in the original language, which will contribute to the effectiveness of performing professional tasks. These skills are "instilled" in future lawyers during the teaching of the discipline "Private Law", "Civil Law" and others. According to A.S. Dowgert, it is with the help of these disciplines that future lawyers are explained the principles, nature, structure and role of private law in the organisation of civil society and laid knowledge about the main categories, institutions of the general part of private law (subjects, objects, legal facts, the content of civil relations, etc.) [3, p. 199]. Thus, the training of future specialists in higher education in the field of private law acquires special social significance, as their knowledge is an important factor in the high professional competence of future lawyers, whose main task is to protect the rights and interests of individuals and legal entities. That is why, among the types of educational and cognitive activities, which according to the normative plan of functioning of a certain educational institution is planned and organised by a teacher of private law educational disciplines, in the educational process there are activities planned and organised by the subject. It is an independent individual work that has a fairly wide range of pedagogical tasks aimed at expanding and consolidating knowledge, mastering the methods of cognition, the formation of the need for self-education, education of volitional traits and other positive traits [4, p. 146–147].

Analysing the current substantive state of legal education, R.O. Stefanchuk notes that today there is an urgent need to shift the emphasis primarily on the training of a specialist in the field of law as a highly qualified specialist who is able to professionally solve the tasks set before him. It is necessary to stop educating "crossword puzzle players" who can give an answer to any question from the field of "general knowledge", and should direct their efforts to the formation of highly qualified specialists in the field of law, who have systematic deep knowledge and sufficient skills of practical training in this field and can independently solve the tasks assigned to them [5, p. 223-224]. The importance of ensuring the implementation of independent work by law students is due to the introduction of the Bologna process in the Ukrainian education system, according to which a significant increase in independent student work (up to 50-60%) and individualisation of education [6, p. 101]. Since the transition to the Bologna Process, such constructions as credit-module system of education, academic mobility of teachers and students, lifelong learning, distance work of students, etc. have become clear. There is much debate about whether legal education in the Bologna Process is good or bad, but the opportunity for self-realisation in the professional sphere is obvious, the level of competitiveness of professionals in the labour market today is quite high, which is impossible without quality higher education.

The growing requirements for the quality of professional skills of a student of law encourage the improvement of forms and methods of teaching, which make it possible to shift the emphasis to the training of a lawyer in the field of law as highly qualified, able to professionally solve problems practical training skills in this area. Accordingly, the student's orientation in the educational process to independent work is also due to the rapid pace of development of scientific and technological progress. The organisation and methodological support of students independent work have been repeatedly discussed in scientific circles [7-10] however, modern realities of life, in particular the spread of the global pandemic, have somewhat changed the perspective of important components of the educational process, which provide for the integration of various types of collective or individual educational activities, which are carried out during classroom, extracurricular activities, with or without the participation of a teacher, as well as under his guidance. That is why it is extremely important to review the methodological features and specifics of organising students ' independent work, change the verification of their homework, etc. The purpose of this study is to determine methodological features and specifics of the organisation of independent work of law students, checking homework and analysing mistakes.

1. MATERIALS AND METHODS

To analyse the prospects for further development of Higher Education, the latest developments of the Ukrainian doctrine, methods of teaching academic disciplines, possession of elementary skills in solving practical problems, in particular, the analysis of the practice of the court, the European Court of human rights, the Ukrainian and international standards of higher education were worked out, the main trends in the

development of higher education in Ukraine were traced, the methodology for conducting independent work with students was studied, which allows identifying practical problems, in particular to identify errors and analyse them. The structure of scientific research on the organisation of students ' independent work (tasks), their verification and analysis of errors should contain traditional elements: problem statement, putting forward initial provisions and their theoretical development, collecting and analysing empirical data, justifying the conclusion, formulating questions that need to be solved in the future [11]. For its part, the main tasks in the study of methods of performing independent tasks by students, their verification and analysis of errors should be a focus on: Western standards of education; democratic approach based on the experience of European countries; determining the optimal ratio of public and private law; on the philosophy of perception of civil, not totalitarian society. This approach to the study of the discipline "Civil Law" will enable a comprehensive analysis of private law categories and phenomena, and allow achieving the purpose of teaching the discipline.

Private law disciplines should be based on the special mentality and national traditions of the country, which is formed more than one millennium and contains the dynamics of studying the history of private law and Roman private law in particular. The world practice of civil society development testifies to the objective nature of the optimal balance of private and public disciplines, and therefore in this perspective it is worth developing a scientific plan in higher education today. The most important courses for students should be "Civil Law", "Property Law", "Contract Law", "Torts", "Civil Procedure Law", "Corporate Law", "Family Law", "Inheritance Law", "Labor Law" "Consumer protection". At the same time, the scope of their teaching should meet European standards, and not contain echoes of non-private design law, such as operational management and economic management and others. Scientific knowledge of private law disciplines should be based on the principles of scientific objectivity, unity of modern theory and practice, which will cultivate in the minds of future lawyers professional skills depending on modern ideology, politics, development of civil society. After all, the science of private law has its own methods, which are formed through the methods of formal logic and so on. The comparative legal method, which became the basis for determining the content of such private legal categories as "civil legal relations", "individual", "legal entity", etc. and allowed identifying their inherent features, etc.

With the help of the method of abstraction the conclusions of the research are formed in the article, the method of deduction and induction allowed performing the corresponding search of ideas and conclusions concerning methodical features of the organisation of performance by students of independent tasks, their check and the analysis of errors. To achieve the goal of scientific research were also used methods of scientific knowledge, including comparative, dialectical, formal-logical, structural, method of analysis, induction, interpretation of legal norms, simplification of the concept, theological method, "golden rule" and so on. The regulatory framework of this study included curricula and programmes of teaching disciplines [12; 13], codified regulations – sources of civil legislation of Ukraine, in particular the Civil Code of Ukraine [14], Family Code of Ukraine [15]. Therewith, to properly illustrate the application of the relevant methodology and teaching skills, a number of methodological guidelines and instructions, instructions, standard plans of academic disciplines, etc. are analysed. This applies entirely to the methods of teaching private law disciplines and conducting independent students.

2. RESULTS AND DISCUSSION

Independent work of students is based on the principle of developmental learning both without the participation of the teacher and under his direct supervision. During the independent work of students the main function of the educational process is realised – the student receives the maximum amount of knowledge, their consolidation and transformation into skills and abilities. Through independent work, students develop the ability to: consciously show motivation and purposefulness in acquiring knowledge; to cultivate self-organisation, self-control and other personal qualities; to fill the "information vacuum" with the necessary scientific knowledge; get rid of the so-called "phenomenon of secondary illiteracy", in particular the inability to read meaningfully, analyse the information obtained, draw their conclusions; to form professional competence; to acquire skills of independent work for future professional activity; take responsibility, solve problems independently, find constructive solutions, solutions to crisis situations. Proper organisation and methodological support of independent work of students will allow developing both general and integral competencies, a variety of which is the ability to abstract thinking, analysis, synthesis, generation of new ideas, etc., as well as the ability to use scientific theories and concepts, acquired practical knowledge for conducting scientific research. For example, when studying the theoretical understanding of the mechanism of legal regulation, students develop skills not only in terms of its abstract understanding, but also the implementation of its model in practice due to its elements. After all, as is known, the mechanism of legal regulation includes the rules of law, social regulators, legal facts, civil law [16]. During the study, the student must be tuned to an

effective process of cognition, feel a personal interest in it, understand why and why he performs these tasks. It is known that educational activities cannot bring a positive result without motivation. Legislative changes, which are usually based on the results of scientific and comparative analysis, can serve as such a motivating feature for the student.

The mechanism of formation of educational motivation is the development of a single structure of the purpose of educational activity. Therefore, the timely and systematic formulation by the teacher of the purpose of learning, which students must accept and direct their efforts to achieve it, plays an important role. At this stage it is important to properly organise the pedagogical interaction of teacher and student. In the psychology of higher education, scientists distinguish the following principles of organisation of interaction: 1) dialogue; 2) problematisation; 3) personalisation; 4) individualisation; 5) differentiation. According to the principle of dialogisation, the lesson (both practical and lecture) should not turn into a simple message of knowledge (reading the material). It should be built as a discussion of different views, as a joint search for truth, i.e. in the form of dialogue, not a monologue of the teacher. In such a process of creative discussion of theoretical and practical aspects of the legal problem, students will form (actualize) cognitive, professional and social motives. The principle of problematisation provides an opportunity to develop skills for the systematic creation of problem situations, conditions for their independent solution and students' cognitive tasks. The principle of personalisation allows developing the skills of personal communication between teacher and student, which takes place in partnership. The principle of individualisation and differentiation of education allows considering the individual characteristics and interests of students, to create the most favourable conditions for the development of their abilities and inclinations [17]. Thus, motivation to study is one of the main conditions for the implementation of the educational process, which promotes the development of intelligence, thinking, analysis of independent decision-making, and is a driving force for improving the professionalism of law students. It is the motivation to study that allows students to perform their work independently.

Independent work is the basis for higher education and an integral part of the training process. According to V.I. Zagvyazinsky, independent work forms a willingness to self-education, creates a basis for lifelong learning, the opportunity to constantly improve their skills, if necessary, then relearn, be a conscious and active citizen [18]. It is known that the process of real, long-term and high-quality acquisition and structuring of knowledge occurs as a result of independent work of students. That is why the ratio of classroom hours and hours allocated for independent work in higher education institutions in Europe and America is 1: 2 (one to two), and in some educational institutions in Finland in general 1: 3 (one to three), this is despite that we rarely have even a ratio of 1: 1 (to each other). In this regard, the role of the teacher in the training of highly qualified lawyers is changing, which involves a creative approach to the organisation of the educational process using innovative teaching methods and knowledge control. This requires raising the level of qualification of the teaching staff, because the teacher goes from the status of “lecturer” to the status of “supervisor (consultant)”. At this stage, teachers often use the method of analysis of scientific articles, which provide an analysis of case law and legal doctrine. For example, in the article “Contractual regulation of joint property relations of individuals in Ukraine (on the example of transactions on the transfer of property ownership)” the authors rightly stated that a civil contract acts as a regulator of joint property relations of individuals, clarifies the place and role of civil legal agreement among the grounds for the emergence of joint property rights of individuals and proposed the author's concept of civil law agreement as a regulator of property relations, highlighted its basic conditions, taking into account the analysis of judicial practice [19]. This approach gives students the opportunity to rethink the material passed and understand the scientific approaches of the authors.

The student's independent work combines individual classroom and extracurricular (home) activities with the development and practical application of knowledge, competencies, abilities and skills. The organisation of independent work of students is carried out, as a rule, based on educational and methodical literature recommended by the course programme and the teacher with obligatory control of quality of training by qualified experts, examiners and experts. The purpose of independent work of students is to master a certain amount of knowledge and skills. Independent work of law students can be of two types: organised by the teacher and independent work without supervision by the teacher (homework), when he acts only as a consultant on self-education. Types of independent work of students include both classroom and extracurricular independent work. The first type involves solving problems according to the topic of the lesson, individual tests, surveys, etc. The second type includes writing essays, reports, essays, speeches at conferences, student competitions, and so on. Independent work of students is associated with different levels of knowledge, skills and abilities to search for information, work with online publications and more. Unfortunately, the implementation of scientific projects, writing legal essays, etc. mostly contains formal signs, and the responsible attitude of students to such tasks is below expectations. The effectiveness of students' independent work largely depends on how independent it is and how the teacher controls it. The system of independent

work of students, as well as the control depends on its planning and organisation directly by the teacher. Thus, the main content of independent work of students, its methods and forms, deadlines, their sequence are determined by the teacher within the discipline. The main content of independent work of students depends on its planning and organisation by the teacher, as well as on the system control.

For successful independent work of students it is necessary to emphasise attention: 1) statement of cognitive tasks; 2) algorithms, methods and forms of control; 3) determining the types of consulting assistance, etc. The organisation of independent work of students should be combined with all teaching methods and together with them represent a single system of tools in the acquisition of knowledge and skills. Among all the most useful skills for students in solving problems or writing essays, we consider working in groups. As a rule, 2-3 people take part in such a group, they solve typical or complex tasks, at the same time they can be given the opportunity to check small tasks of other people (group members) or write reviews of their reports. Group work of students, thanks to mutual control, promotes increase of level of motivation, development of cognitive activity, interest in performance of joint work. These forms of pre-classroom independent work of students are the most significant and very effective for students. This way of independent work of students is the most effective in preparation for a speech at scientific conferences, round tables, etc. In addition to the above, "learning channels" on the YouTube platform are becoming increasingly popular in modern education. The question of whether they can be considered a full-fledged scientific platform for higher education cannot be answered in the affirmative, as such educational platforms are only a good help to broaden students' horizons.

Regarding the practical component of training, we note that the task is quite complex. After all, it is almost impossible to answer in the affirmative the question of whether university graduates have practical understanding and skills in professional ethics or legal responsibility? Did they teach them to express their opinion correctly in writing, to speak in public, etc.? These skills are definitely "lived" by students during seminars, practical classes and play an important role in the legal profession. That is why they take place among the independent work of students. Independent work of students involves the integration of different types of individual and collective learning activities, which can be carried out during classroom, extracurricular activities, and without the participation of the teacher or under his direct supervision. Time aspects of students' independent work should be from 15 to 55% of the curriculum. This attitude is the optimal combination of classroom and independent work of a lawyer for the proper accumulation and consolidation of the level of knowledge through the student's own activities. We are convinced that the independent work of students should dominate among other types of educational activities of students, as it serves as a good basis for their practical training. In addition to practical importance, independent work of students also has educational value, because it forms independence not only as a set of certain skills and abilities, but also helps to form independence as an important feature of the character of a lawyer. No wonder the important task of legal education in general and legal schools in particular is not only to provide young professionals with the appropriate level of knowledge directly by teachers, but also the formation of a constant need to update their knowledge with changes in legislation, legal positions of courts and more.

When analysing the independent work of students, we pay attention to the qualification criterion. In particular, according to the method of management and control, the quality of knowledge, students' independent work is divided into*:* classroom (extracurricular); collective work under the supervision of the teacher and individual lessons with the teacher. By level of compulsory: compulsory, which is defined by the curriculum and work programme (preparation for lectures, practical work, preparation of undergraduate practice, preparation and writing of term papers, etc.); recommended (participation in the work of a legal clinic, scientific circles, preparation of scientific theses, articles, reports at conferences, etc.); initiated (participation in various competitions, grants, etc.). Students' independent work is also proposed to be divided according to the level of creativity, in particular into:

– reproductive, carried out according to a certain pattern (solving typical problems, filling in tables, modelling schemes, performing training tasks that require comprehension, memorisation and simple reproduction of previously acquired knowledge);

– reconstructive, which involves listening to and supplementing the teacher's lectures, drawing up plans, abstracts, abstracts, etc.;

– heuristic, aimed at solving problems, obtaining new information, its structuring (compilation of reference notes, schemes-summaries, annotations, construction of technological maps, solving creative tasks);

– research, which is focused on conducting research (experimentation, theoretical research, etc.) [20].

The organisation of independent work of students consists of two main aspects: a) development of methods of organisation of control over independent work of students; b) educational and methodological support of independent work. For its part, the control of students' independent work should also include listening to abstracts, checking solved problems, answers to control or test questions, checking completed

individual tasks, working with educational and scientific literature, and so on. Consider the above in more detail. It is known that in the educational process the dominant place is occupied by the work of students with scientific, reference and educational literature. Scientific articles, monographs, laws of Ukraine, decrees of the president of Ukraine, regulations of the Cabinet of Ministers of Ukraine, decisions of the Supreme Court, etc. are a source of professional knowledge and contribute to the development of priority skills among students. The ability to use such sources determines the quality of writing written works, including essays, term papers, essays and more. One of the forms of independent work is homework of students. It is carried out without the guidance of a teacher, but on his assignment. Doing homework, students allocate their time, determine the order of work, control it, find and correct mistakes. The success of homework depends on these skills, preparedness for independent homework in general and on a specific topic in particular [21].

It is worth noting that the task of independent homework is a necessary part of the educational and methodological complex of a discipline of the private law segment, the development of which is entrusted to the teacher. Tasks for independent homework of students the teacher develops together with the necessary educational and methodical complex of the discipline and submits it to the department before the beginning of the academic year or semester. At the beginning of the semester it is necessary to acquaint students with the organisation of work in a certain discipline, with the forms of control, with the organisation of independent, in particular homework, with the criteria for its evaluation. We believe that the main feature of this type of educational process is reflected in the student's homework, which complements classes in private law disciplines, is characterised by great independence and lack of teacher guidance. The success of independent work depends on the following factors:

1) formation of cognitive interest;

2) pedagogical guidance and control by the teacher;

3) adherence to didactic principles, in particular accessibility and affordability (they are also called the principle of increasing complexity – from simple to complex).

The methodological feature of ensuring the successful completion of the student's independent task is reflected in a clear explanation by the teacher of its content and methodology. The amount of independent work in private law disciplines should be regulated in accordance with the norms of time, because the volume task combined with tasks from practical classes and preparation for lectures can lead to excessive student workload and quality losses in preparation for practical classes and lectures. Therefore, based on didactic tasks, it is advisable to highlight the following types of homework in the disciplines of the private law segment:

1) tasks aimed at preparing the perception of new educational material (superficial acquaintance of the student with the material of the future lecture);

2) tasks aimed at consolidating knowledge, skills and abilities (preparation of abstracts, essays, selection and analysis of literature on specific issues, etc.);

3) tasks that require the application of acquired knowledge in practice (step-by-step description of solving a specific case, search and correlation of general and special rules of law, etc.);

4) creative tasks aimed at activating creative thinking (preparation by students of substantiation of the opposite position from the case solved by the group in a practical lesson, use of the style of expert opinions).

In addition, when determining the content and scope of homework in private law disciplines, it is important to take into account the individual level of development of thinking and learning skills and the interests of individual students. A differentiated approach to this issue has a positive effect, while an individualised approach is needed to homework for students who have gaps in knowledge, skills, abilities after skipping classes. Therefore, it is useful to combine frontal, differentiated and individual tasks. Differentiation and individualisation of homework is appropriate not only for the degree of complexity, but also for the interests and specialisation of students. Thus, in our opinion, the methodological feature of ensuring the successful completion of homework by the student is its proper structuring. Each homework for a law student in private law disciplines should consist of three main components: 1) theoretical (consideration of information on a particular issue); 2) methodical (preparation of the corresponding clarity, the plan-summary to a certain subject); 3) practical (creative approach and quality in performing a specific task). Within the individual approach, it is necessary to plan the work of law students so that each of them received a task in accordance with their personal capabilities and abilities. This, in turn, requires: a) determining the level of theoretical and practical training of each student in the group; b) determination of their individual psychological characteristics; c) development of individual programmes for independent work on a particular private law discipline. Based on the above, we highlight the rules of effectiveness of homework, in particular:

1) the rule of mandatory planning of the optimal amount of homework (its volume should provide the opportunity to allocate the necessary and sufficient time for practical training to check it).

2) the rule of validity of tasks (they should not be “punitive” in any case).

3) the rule of focusing homework on the development of specific qualities of a lawyer (memorisation; control / self-control; independent cognitive activity; work with regulations, documents, court decisions, etc.).

4) the rule of explaining homework and motivating the student to do it properly.

Therewith, independent homework of students is organised by the teacher through a system of tasks, the performance of which must be assessed by the teacher, and this assessment should be included in the semester assessment of the student. Homework assignments, depending on its specifics, students can perform individually or in groups of 2-5 people, while the types of homework assignments for students depend on the characteristics of the discipline of the private law segment. These can be, for example: abstracting of scientific sources (begins with the independent choice of the topic of the abstract, defining the purpose, tasks and problems that reveal the essence of the chosen topic, selection of literature, compiling a bibliographic list of main sources, reviewing and summarising selected textbooks and articles, writing the abstract, its design); search for scientific literature on certain issues (the teacher prepares topics for the course or part of it and presents them to students who have to pick up the relevant literature in the library and on the Internet); solving legal problems and resolving disputes of private law nature (the teacher selects (develops) legal problems for certain sections of the course and offers to solve them in writing. Students can report on the solution in writing or (more effectively) in a practical lesson in front of a general group of students); writing an essay as a type of written educational work (is to express the student's own subjective assessment of a particular rule of law or legal position of the court, as well as the activation and development of non-standard (creative), original coverage of the material. It is also a free style with possible elements of improvisation; drafting documents, in particular civil law agreements and appendices to it, preparation of constituent documents of a legal entity (allows developing in a law student such competencies in legal documentation as the ability to properly organise the documentation of practical legal activities); analysis of situational exercises (the teacher offers law students a problem situation, in the process of analysis of which they must formulate a legal problem, translate it into a problem and solve it using the relevant provisions of regulations); creation of situational exercises (this form of homework activates the student's mental activity, promotes the development of analytical skills and improves the skills of working with regulations, which is almost the main prerequisite for the success of a lawyer's professional activity).

Among all types of independent work of students the most widespread is writing of abstracts. Abstract (from Latin *referre* – "report") is a type of written work of a research nature, which is quite concise, overview of the essence of a particular scientific issue. Today, with free access to the Internet and, accordingly, with unlimited information opportunities for students, it is necessary to narrow the topics of course work. During their examination, you should pay special attention to the quality of writing and full disclosure of this topic. After all, it is known that students to quickly resolve this issue usually turn to the Internet, find relevant topics, download essays and with a sense of "duty" give them to the teacher. In most cases, such works are of low quality, contain many stylistic, logical, grammatical errors, distort the names of the authors, their quotes are not sustained structurally and do not correspond to reality. Given this, we believe that both the teacher and the student should be responsible for this task. Formal submission of an abstract without further coverage of its content cannot be considered a full-fledged independent work, does not give the student the right to claim a high grade and does not lead to positive learning outcomes. Another no less interesting type of independent work of students is a scientific report. A scientific report is a short (5-10 minutes) report that summarises scientific information, achievements, discoveries and results of scientific research. The scientific report can be a supplement to the main issues of the course and is practiced during seminars, conferences, symposia, round tables, etc.

To perform this task, students should spend many hours of work related to gathering information, writing a text, preparing for a speech, preparing material in accordance with the requirements, and so on. For the greatest understanding and perception of the material, it is proposed to form the report according to the following structure: 1) introduction, which analyses the problem field or the specific problem that caused the report; 2) the main part, which publishes the author's idea of solving the problem, the course or results of scientific research, etc.; 3) the result in which the conclusion is made, recommendations are given, prospects are defined. We believe that the work done by students will form the appropriate skills, abilities to study, collect and analyse scientific material, the necessary information and more. By uttering it publicly, the student not only develops the skills of public speaking, which are crucial for a lawyer, but also provides an opportunity for public discussion (discussion). Discussion (from Latin *discussio* – "research", "analysis") is a kind of independent work of students, during which there is a collective discussion, the purpose of which is to find the right solution to the issue by expressing their opinions and comparing opponents' views on the problem. During the scientific discussion, students voice opposing views, identify different positions, emotional and intellectual stimulus leads to active thinking, and thus stimulates the relevant professional skills.

The next no less effective element of students' independent work is an essay. Essay is an attempt at independent analysis, substantiation of a theoretical hypothesis, etc. There are opinions that the modern dimension of social problems and their understanding, constant socio-economic changes, causes and trends of legal phenomena require students to apply not so much a research approach as a competent analysis, appropriate problem definition, ability to professionally formulate an alternative, hypothesis, prove ability or failure its practical existence. Writing an essay, as well as preparing for it, gives students access to self-education, non-traditional accumulation of knowledge, including through the Internet, expands opportunities for creativity, an extraordinary approach to solving legal conflicts, problems and more. The essay allows covering individual impressions of students and does not pretend to exhaustive interpretation. As a work of reasoning of small size, the essay expresses individual considerations on a particular issue, problem, etc., consciously does not claim to be an exhaustive interpretation of the topic. The essay uses a free style of writing with possible elements of improvisation, in other words – it is the author's demonstration of the view through the written expression of thoughts. Essay is closer to the remark, which is addressed to the reader "prepared", familiar with the subject of the essay. Such "targeting" provides an opportunity to focus the reader's attention on the disclosure of new content, rather than accumulating in writing the details of the case known on the topic.

First of all, students should carefully read the proposed topic of the essay. Think of relevant examples, and possibly certain quotes that will organically complement and illustrate their point of view, provide statistics and analyse them. Pay attention to whether the logical structure of the essay is preserved, as well as whether the arguments correspond to these theses. The main purpose of the essay is the student's independent vision of the problem, question, topic based on the processed material and arguments, etc. Unlike other methods of control and testing of knowledge, the purpose of the essay is to diagnose the productive, creative component of the cognitive activity of the student, who analyses information, compares facts, approaches and alternatives, personal assessment and conclusions. The use of essays in independent work of students contributes to a clearer formulation of ideas, helps to arrange them in a logical sequence, involves fluency in the language of terms and concepts, reveals the depth of educational material. When evaluating an essay, the teacher's focus should be primarily on the student's ability to critically and independently evaluate the available data, points of view, positions, arguments; ability to understand, evaluate and establish connections between key points of problems and issues; the ability to differentiate opposing approaches to the model, applying them to empirical material or discussion of fundamental issues. Lack of clear answers, clear organisation of the plan, structure of the essay, argumentation of evidence, arguments, conclusions, excessive and superficial manipulation of data, simple statement of fact instead of generalisation, stating the views of others while "silencing" their position, excessive repetition negatively affects evaluation. Thus, carefully worked out methodical work of the teacher during drawing up by students of the essay will allow transferring any student from the passive consumer of knowledge to the expert capable to formulate a legal problem, to analyse ways of its decision and to find optimum result.

Execution of the above types of independent homework, as a rule, is provided for students of private law disciplines full-time. For its part, due to the specifics of distance learning for law students who choose it, there is also the implementation of homework, which is conducted in each course from the first to the fourth year of study. At the same time, the number of tests for each semester is determined by the curriculum of the faculty. The content and topics of control tasks are based on the study material, which is planned in the Curriculum of private law discipline in accordance with the year of study and faculty. The purpose of creating homework is the final control of knowledge, skills and abilities of law students obtained during the academic year and is the main condition for admission to the exam or test in the discipline. It is important to note that the purpose of homework (DKR) is primarily to check the level of preparation of students in the process of independent study of educational material. The content of each DCR must fully correspond to the working curriculum of the discipline. Thus, homework in distance or blended learning is a lecture-related task that is individually developed and set by teachers and must be completed by students, indicating the date of completion and sending it to the teacher to check and grade. This type of assessment in distance learning allows students to observe the process of their development, interact with the teacher, increase motivation and be responsible for their results.

Homework uploaded to one or another distance learning system is evaluated by the teacher. At the same time, it is worth emphasising the significant workload of the teacher in terms of distance learning, because each student's work should be reviewed, errors – corrected, inaccuracies – updated, and the work – evaluated. Assessment of homework is important, because this stage informs students about their success and manages the learning process. Therewith, the control over the performance and assessment of homework of students of private law disciplines in the distance form of education has its own specifics and mainly depends on the instructions of the teacher. Thus, the discussion of the results of homework can take place with the help of

synchronous distance learning technologies, when communication between teacher and student takes place in real time (contact through communication). This can be video, audio, chat, etc. Admittedly, this method of checking and evaluating homework has many advantages, because during synchronous communication the teacher can check the level of student knowledge of homework, as well as his understanding of the material. For his part, the student has the opportunity through dialogue with the teacher to understand and analyse the mistakes made while doing homework. In addition, homework can be checked and graded asynchronously, in particular through the exchange of e-mails.

CONCLUSIONS

All comparative studies show that distance learning can be as effective as classroom learning if the methods and technologies are appropriate, there is interaction between students and there is timely feedback between teacher and student. Successful distance learning programmes are based on the consistent and comprehensive efforts of students, faculty, and school administration. Summarising all the above, it should also be noted that the rational organisation of methodological support for independent work of students will provide an opportunity not only for high-quality learning, but also lay the foundations for further self-education and self-improvement. Properly formed didactic purpose of independent work of students will provide purposeful study of the material, which will determine the development of creative thinking, taking into account the individual capabilities of the individual. Execution by students-lawyers of independent homework of both theoretical and practical character will positively influence formation and development of special (subject) abilities and skills. The most important of them are as follows:

– possession and correct interpretation of legal terminology;
– identification of the most important features and nature of legal categories;
– competent interpretation of the provisions of regulations and commenting on legal texts;
– ability to apply legal knowledge to analyse specific life situations;
– ability to formulate and substantiate one's own position when analysing the situation from the position of law;
– ability to draft legal documents (receipts, civil contracts, powers of attorney, etc.);
– ability to design lawful behaviour in legally important situations.

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Suggested Citation: Hryniak, A.B., Pleniuk, M.D., Lapko, A.H. (2021). Practical-oriented nature of learning as an important component of legal education reform in Ukraine. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(3), 186-196.

Submitted: 16.06.2021
Revised: 07.08.2021
Accepted: 10.09.2021

УДК 347.91/95(477)
DOI: 10.37635/jnalsu.28(3).2021.197-208

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МІЖНАРОДНИЙ СТАНДАРТ ДОСТУПНОСТІ ПРАВОСУДДЯ ТА ПРЕДМЕТ ЦИВІЛЬНОГО ПРОЦЕСУАЛЬНОГО ПРАВА

Анотація. *Сучасний стан розвитку національних систем цивільного судочинства характеризується все більшим впливом ідей доступності та ефективності правосуддя у цивільних справах та вимагає гармонізації національних систем із міжнародними стандартами справедливого судочинства. Зазначене зумовлює необхідність переосмислення окремих класичних положень доктрини цивільного процесуального права з метою їх відповідності сучасним реаліям. Метою статті є дослідження еволюції та підходів до сучасного тлумачення міжнародного стандарту доступності правосуддя у цивільних справах, а також його впливу на вчення про предмет цивільного процесуального права на доктринальному рівні. В основу статті покладено діалектичний, історико-правовий, системно-структурний, логіко-правовий, порівняльно-правовий методи дослідження, а також методи аналізу та синтезу, автономного та еволюційного тлумачення Європейської Конвенції з прав людини (ЄКПЛ). У статті авторами обстоюється широкий підхід до поняття доступності правосуддя, що включає доступ до суду, доступ до ефективних засобів правового захисту та доступ до альтернативних способів вирішення спорів. Крізь призму міжнародного стандарту доступності правосуддя розглядаються ідеї процесуального центризму, заснованого на уявленні про судовий захист як основну та найбільш ефективну форму захисту порушених прав, та процесуального плюралізму, що виходить із положення про множинність форм захисту, ефективність яких визначається, виходячи з обставин конкретного спору. Авторами обґрунтовується висновок про доцільність сприйняття на рівні національного правопорядку ідеї процесуального плюралізму. Проводиться паралель між ідеями процесуального центризму та плюралізму, що склалися у зарубіжній літературі, та вузькою і широкою концепцією предмета цивільного процесуального права, що сформувалися у вітчизняній доктрині. З урахуванням автономного тлумачення поняття "суд", закріпленого у п. 1 ст. 6 ЄКПЛ, а також дедалі більшої популяризації альтернативних способів вирішення спорів наводяться аргументи на підтримку широкої концепції предмета цивільного процесуального права, що включає в себе цивільне судочинство та альтернативні способи вирішення спорів, зокрема, третейське судочинство, міжнародний комерційний арбітраж, медіацію тощо*

Ключові слова: *доступність правосуддя, доступ до суду, право на справедливий судовий розгляд, процесуальний плюралізм, альтернативне вирішення спорів*

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INTERNATIONAL STANDARD OF ACCESS TO JUSTICE AND SUBJECT OF CIVIL PROCEDURAL LAW

Abstract. *The current state of development of national systems of civil justice is described by the growing influence of the ideas of accessibility and efficiency of justice in civil cases and requires the harmonization of national systems with international standards of fair trial. This necessitates a rethinking of some classical provisions of the doctrine of civil procedural law to comply with modern realities. The aim of the article is to study the evolution and approaches to the modern interpretation of the international standard of access to justice in civil cases, as well as its impact on the doctrine of the subject of civil procedural law at the doctrinal level. The article is based on dialectical, historical-legal, system-structural, logical-legal, comparative-legal research methods, as well as methods of analysis and synthesis, autonomous and evolutionary interpretation of the European Convention on Human Rights (ECHR). The authors advocate a broad approach to the concept of access to justice, including access to justice, access to effective remedies and access to alternative dispute resolution. Through the prism of the international standard of access to justice, the ideas of procedural centralism, based on the idea of judicial protection as the main and most effective form of protection of violated rights, and procedural pluralism, based on the provision of multiple forms of protection, the effectiveness of which is determined by the circumstances of a particular dispute. The authors substantiate the conclusion about the expediency of the perception of the idea of procedural pluralism at the level of the national legal order. A parallel is drawn between the ideas of procedural centralism and pluralism that have developed in foreign literature, and the narrow and broad concept of the subject of civil procedural law, formed in the domestic doctrine. Taking into account the autonomous interpretation of the concept of "court", enshrined in paragraph 1 of Art. 6 of the ECHR, as well as the increasing popularization of alternative dispute resolution, provide arguments in support of a broad concept of the subject of civil procedural law, including civil litigation and alternative dispute resolution, in particular, arbitration, international commercial arbitration, mediation, etc.*

Keywords: *access to justice, access to court, right to a fair trial, procedural pluralism, alternative dispute resolution*

INTRODUCTION

Access to justice has become a cornerstone in the doctrine of civil procedural law in recent decades. In essence, it has become existential in the development of the theory of civil procedural law and in the reform of civil justice in European countries, because the real access to justice for persons whose rights are unrecognised, challenged or violated is now recognised as one element of the rule of law in a democratic society. International standards of access to justice have become guidelines for the reforms of domestic civil procedural legislation in recent years. The founders of the movement for access to justice in Europe are well-known proceduralists M. Capelletti and B. Garth [1], who laid the methodological basis for understanding this concept. Scientists proposed the so-called instrumental approach to the problems of studying the access to justice in a comparative perspective, which was based not only on identifying the so-called "waves" of access to justice as the main directions of development of this theory, but also investigated effective mechanisms that could be used to overcome certain negative phenomena in the field of civil procedure. The founders of the movement themselves noted that the idea of access to justice is a response to liberalism, which, admiring the declarative slogans of the proclamation of human rights, did not pay due attention to the mechanisms for their implementation. But the movement for access to justice was designed to overcome the formalistic understanding of law in its exclusively normative aspect as a "system of norms" created by the state, replacing it with the so-called "contextual" concept of law, which shifted the emphasis to ensuring the implementation of certain rights, overcoming obstacles to such implementation [2, p. 282-283].

As a doctrinal concept proposed in the late 1970s, access to justice eventually became the main leitmotif of civil justice reforms in foreign countries. However, such popularity of this concept has not added unity to

the understanding of its content, which is still debated, which has long gone beyond the purely legal issues and doctrine of civil procedural law, also covering economic, sociological, psychological and other dimensions. The modern understanding of access to justice as a certain international standard in the field of administration of justice in civil cases allows addressing the broader issue of access to justice as a problem that should be considered at the supranational level. At the same time, international acts do not define the concept of access to justice, which often leads to its identification within the convention system with access to a court as a guarantee of the right to a fair trial (paragraph 1 of Article 6 of the European Convention on Human Rights (ECHR) [3]) and the right to an effective remedy (Article 13 of the ECHR), and within the European Union (EU) protection system – with the right to an effective remedy and to a fair trial (Article 47 of the EU Charter of fundamental rights [4]). In addition, access to justice is increasingly not limited to judicial protection, but also includes access to alternative dispute resolution (ADR), including arbitration, international commercial arbitration, mediation, conciliation, collaborative proceedings, etc. These circumstances indicate the lack of unity of approaches to determining the structural characteristics of the international standard of access to justice at the supranational level.

The study of certain aspects of access to justice was paid attention to in the pages of scientific literature on civil procedural law. Most often in this context, the issues of substantive characteristics of the concept of access to justice were studied [5; 6], ensuring access to justice for certain groups of persons or in certain categories of disputes [7; 8], as well as the implementation of certain elements of access to justice (free legal aid, court costs, rational jurisdiction, judicial immunity, efficiency of court proceedings, the availability of class actions, simplified procedures, execution of court decisions, etc.) [9-11]. At the same time, insufficient attention has been paid to the institutional characterization of the international standard of access to justice in the literature. In view of the above, the issue of studying the institutional dimension of the international standard of access to justice in civil cases and its impact on the classical provisions of domestic procedural doctrine, in particular in terms of rethinking views on the subject of civil procedural law. For a long time, the doctrine was dominated by a narrow approach to defining the subject of civil procedural law, which meant social relations that arise during the conducting the trial in civil cases. At the same time, the broader approach, which also included non-judicial forms of protection in the field of civil procedural law, in particular, alternative dispute resolution, was less popular. Therefore, there is an urgent need to rethink approaches to defining the subject of civil procedural law, considering international standards of justice and access to justice in civil cases, as well as the increasingly popular concept of procedural pluralism, which involves recognising the multiplicity and effectiveness of various forms of protection of violated and disputed rights and interests of individuals. Therefore, the *purpose of this article* is to investigate the evolution and approaches to the modern interpretation of the international standard of access to justice in civil cases, as well as to trace its impact on the doctrine of the subject of civil procedural law at the doctrinal level.

1. MATERIALS AND METHODS

The research methodology is determined by the peculiarities of its purpose and subject area of civil procedural law. The article uses general philosophical, general scientific and special research methods. The dialectical method forms the methodological basis of the study and is used to clarify the nature and content of the concept of access to justice, its conceptual foundations, intersystem relations and the relationship between international legal and domestic regulation of access to justice as a standard of civil proceedings in the aspect of implementing the requirements of the ECHR and the current civil procedural legislation. The historical-legal method is used in the study of the evolution of understanding the concept of access to justice as an international standard of civil justice and enshrining its elements in regulatory sources at the national and supranational levels. The method of analysis and synthesis allowed the authors to analyse and systematise the main approaches proposed in foreign and domestic scientific literature and international documents to define the concept of access to justice in civil cases. Using this method through the prism of the international standard of access to justice, the ideas of procedural centralism, based on the idea of judicial protection as the main and most effective form of protection of violated rights, and procedural pluralism, based on the provision of multiple forms of protection, the effectiveness of which circumstances of a particular dispute. The authors draw a parallel between the ideas of procedural centralism and pluralism, which have developed in foreign literature, and the narrow and broad concept of the subject of civil procedural law, formed in the domestic science of civil procedural law.

The system-structural method allowed providing a structural description of the access to justice in civil proceedings, highlighting such elements as access to court, access to effective remedies and access to alternative dispute resolution. This method also allowed analysing the content of these components of access to justice. The logical-legal method revealed the inconsistency of the interpretation of the current legislation

of Ukraine with international standards of access to justice, in particular, regarding a narrower understanding of the concept of justice within domestic constitutional provisions compared to foreign doctrine and international documents. The comparative law method was used in the analysis of the regulation of certain elements of access to justice within the two regional systems of protection of rights, in particular, within the framework of the conventional protection of the ECHR and the system of protection of rights within the EU. This method was also used to project the doctrinal provisions that have developed within the European movement for access to justice and the American theory of procedural pluralism, in the field of domestic science of civil procedural law.

The use of an autonomous and evolutionary method of interpretation of the concept of "court", enshrined in paragraph 1 of Article 6 of the ECHR, in the practice of the ECHR allowed substantiating the need to extend guarantees of the right to a fair trial to quasi-judicial methods of alternative dispute resolution, in particular, arbitrations, international commercial arbitrations, labour dispute commissions, etc. This made it possible to further argue the expediency of recognising a broad concept of understanding the subject of civil procedural law. The theoretical basis of the study were the works of leading domestic and foreign scholars in the field of the civil procedural law and theory of law, dealing with international standards of access to justice, the concept of procedural pluralism and the doctrine of the subject of civil procedural law. The legal basis of the study is international documents in the field of human rights protection at the regional level, in particular, the ECHR and the EU Charter of Fundamental Rights, as well as current provisions of domestic constitutional, civil procedural and civil law on access to justice in civil cases. The empirical basis of the study is based on the case law of the European Court of Human Rights on the interpretation and application of the right to a fair trial in civil cases, analytical intelligence of the European Commission on the Efficiency of Justice (CEPEJ).

2. RESULTS AND DISCUSSION

2.1 Access to justice as an element of the fundamental principle of the rule of law

Despite the fact that the principle of the rule of law is a fundamental principle of law, today its content in the literature is still hotly debated. In general, it is a dichotomy between formal (thin) and substantive (thick) conceptions of the rule of law. Formal conceptions make formal demands on the field of legal regulation, requiring that legal prescriptions be adopted in accordance with the procedure established by law, be of a general nature, be non-retrospective, clear, consistent, etc. But substantive conceptions, taking into account formal requirements, also relate to the content of legislative prescriptions, including the content of the rule of law, the guarantee of human rights and freedoms, the need to comply with general principles of law, ensuring material justice by courts when considering cases, etc. [12, p. 91-113; 13; 14]. At the same time, despite differing approaches to the rule of law, there is currently some consensus within the European region on the minimum requirements of this principle, as reflected in the Report on the Rule of Law of the European Commission for Democracy through Law (Venice Commission), where key elements the principle of the rule of law recognises: 1) legality, including a transparent, accountable and democratic process for enacting law; 2) legal certainty; 3) prohibition of arbitrariness; 4) access to justice before independent and impartial courts, including judicial review of administrative acts; 5) respect for human rights; 6) non-discrimination and equality before the law [15].

Evidently, ensuring an accessible, fair and independent system of administration of justice is given one of the central places in the context of the requirements of the rule of law, which allows individual authors to contemplate the need to distinguish, along with the formal and substantive requirements of the rule of law, also a third group of requirements – procedural. Thus, J. Waldron notes that: "the procedural understanding of the rule of law requires not only that officials apply the rules as they are set out; it requires application of the rules with all the care and attention to fairness that is signalled by ideals such as "natural justice" and "due process" [16, p. 7-8]. Thus, one of the key requirements of the rule of law is to ensure access to justice. However, it is worth noting that there is currently no consensus on the concept of access to justice, which is increasingly no longer associated with access exclusively to state courts. T. Bingham believes that one of the elements of the rule of law should be considered the existence of a dispute resolution system in civil cases, which allows considering a dispute without excessive costs and delays [17, p. 85]. Therewith, the author notes that this does not exclusively refer to judicial guarantees of fair proceedings, but also to alternative ways of resolving disputes, which are better to call "appropriate" (additional) ways of resolving disputes, because they allow choosing the most optimal way to resolve a dispute, considering the specifics of the latter. Such methods are considered by the author to be consultation, mediation, arbitration, but the court is considered by him as the last way to apply when the previous ones do not give the desired result [17, p. 85-86]. Such a broad

approach to defining the concept of access to justice in the context of the implementation of the rule of law in a democratic society necessitates the study of the international standard of access to justice in civil cases.

2.2 International standard of access to justice in civil cases: origins and evolution of understanding

The concept of access to justice is associated with the international movement for access to justice, the founders of which were Italian scholars M. Cappelletti and B. Garth, who edited the study "Access to justice: the worldwide movement to make rights effective: a general report" in the late 1970s [1]. This study addressed such alarming tendencies in the field of civil justice that were characteristic of most European legal systems at the time, such as excessive length of court proceedings, excessive court costs and the general inefficiency of court proceedings. As a result, scholars have identified the so-called three waves of access to justice, aimed at overcoming the relevant negative trends: the first - aimed at ensuring the efficiency of court costs and the introduction of free legal aid mechanisms for vulnerable groups; the second was aimed at protecting group and collective interests; the third was aimed at the general simplification of civil proceedings and the unloading of the judicial system through the introduction of alternative dispute resolution [1].

Later the issue of access to justice in foreign countries has gone far beyond the reform of the judiciary, covering a wider range of issues. Thus, the famous Canadian scientist R. MacDonald, using the metaphor with waves of access to justice, highlights among the latter: 1) "access to lawyers and courts", which provides for the provision of free legal assistance for vulnerable segments of the population; 2) "institutional restructuring", aimed at changes in the administration of courts and the reform of civil proceedings (the introduction of simplified proceedings and the institution of class actions, the creation of commissions for the protection of human rights and other out-of-court bodies for unloading courts); 3) "demystification of law", aimed at popularising ADR, increasing legal awareness of the population and legal education; 4) "preventive law", which was aimed at ensuring the existence of effective preventive means of dispute resolution by ensuring access to all institutions where laws are created, increasing legal awareness of the population; 5) "proactive access to justice", which provides for ensuring equal opportunities for individuals to receive legal education, hold positions in public authorities, restore confidence in state bodies, etc. [18, p. 20-23]. As can be seen, the proposed interpretation of the concept of access to justice differs significantly from its original understanding and goes beyond civil justice, affecting a wider range of issues of legal practice and legal culture.

Returning to the problems of implementing the accessibility of justice in civil proceedings, it should be emphasised that the approach proposed by M. Cappelletti and B. Garth not only had a great influence on changing the scientific aspects of research in the field of civil procedure, but also became the leading leitmotif for reforming the civil procedural legislation of foreign countries. Thus, improving access to justice was the motto of the famous reform of civil justice in England, carried out by Lord Wolf. The latter noted, in particular, that to ensure the access to justice, the civil procedural system must: a) be just in the results it delivers; b) be fair in the way it treats litigants; c) offer appropriate procedures at a reasonable cost; d) deal with cases with reasonable speed; e) be understandable to those who use it; f) be responsive to the needs of those who use it; g) provide as much certainty as the nature of the particular case allows; h) be effective, inter alia, adequately resourced and organised [19, p. 4, 7]. The issue of access to justice was also addressed by the European Commission on the Efficiency of Justice (CEPEJ), which prepares a report every two years on the efficiency and accessibility of justice in European countries. According to the CEPEJ approach, access to justice includes all legal and organizational factors that affect the availability and effectiveness of judicial institutions, which allows obtaining the maximum number of decisions at reasonable taxpayer costs, while maintaining the quality of such decisions [20, p. 13]. Consequently, the key element of access to justice is recognised as access to the court, which depends on such indicators as the number of courts and their geographical proximity to court users, the use of electronic court proceedings, information awareness of persons applying to the court regarding their case and civil proceedings, the right to free legal assistance, the availability of simplified procedures, the possibility of applying for mediation [20, p. 31, 152; 21, p. 71, 196, 206, 223-224].

A separate aspect of the issue of access to justice is the relationship between the concepts of "access to justice" and "access to justice", which becomes especially relevant in the context of convention provisions. Interesting in this context is the view of N.Y. Sakara, according to which the concept of "access to justice" should be understood in two meanings: a) as the right of access to justice, arising from paragraph 1 of Article 6 of the ECHR and is one of the guarantees of the right to a fair trial; b) as an international standard of access to justice for fair and effective judicial protection, covering the requirements that must meet not only civil proceedings, but also the entire judicial sphere [9, p. 80]. At the same time, the author identifies two groups of elements of the international standard of access to justice: 1) those that guarantee the unhindered exercise of the right of access to the court of each person ("rational" jurisdiction of the court, the right of public interest, due process, reasonable time of a trial); 2) those that remove obstacles that arise when applying to the court of

a particular person ("the right of poverty", procedural mechanisms for providing legal assistance) [9, p. 91]. At the same time, it is easy to notice that the author refers to the elements of access to justice quite diverse institutions, in particular, some elements of the right to access to court, institutions considered in the context of the movement for access to justice, some elements of the right to a fair trial. This approach leads to a certain identification of access to justice and the right to a fair trial. Undoubtedly, the modern interpretation of the concept of access to justice cannot be imagined without the approaches laid down by the ECHR when interpreting the right of access to a court in the context of paragraph 1 of article 6 of the ECHR, in particular, this refers to developing an approach to assessing the legitimacy of restrictions on the right of access to court, taking into account the principle of proportionality, highlighting obstacles to access to court (jurisdictional, economic, formal, etc.) and effective mechanisms for overcoming them. At the same time, in our opinion, the problem of access to justice today should be considered in a broader plane of the entire procedural scope of guarantees provided within the framework of the convention system, and not just the guarantees of judicial protection provided for in paragraph 1 of Article 6 of the ECHR.

Interesting in this context is the broader approach to determining the structure of access to justice presented in the study of the EU Fundamental Rights Agency (FRA), which proceeds from the fact that the international standard of access to justice obliges states to guarantee everyone not only the right to access the court, but in some cases access to ADR. The accessibility of justice in this study correlates not only with Article 6 (1) of the ECHR, but also with Article 13 of the ECHR, which establishes the right to effective remedies, as well as Article 47 of the EU Charter of Fundamental Rights, which establishes the right to an effective remedy and to a fair trial [22, p. 16]. Apart from the classical judicial protection, this study also draws attention to the so-called "other paths to justice", that is, this refers to other non-judicial administrative bodies that can ensure the consideration of the case and settlement of the dispute, for example, national institutions for the protection of human rights, data protection agencies, ombudsman institutions, specialised tribunals, etc. [22, p. 48]. Such bodies, according to the FRA, can provide faster remedies and collective redress, and can therefore be considered to ensure access to justice, provided that they do not deprive a person of the right of access to a court and their decisions can be objects of judicial review. In addition, the availability of justice can also be provided by ADR, which are an alternative to obtaining justice by "formal judicial routes" [22, p. 48]. The modern broad approach to the accessibility of justice must take into account not only the right of access to a court in the context of paragraph 1 of Article 6 of the ECHR, but also the right of access to effective remedies provided for in Article 13 of the ECHR, according to which everyone whose rights and freedoms recognised in the ECHR have been violated has the right to an effective remedy before a national authority, even if such a violation has been committed by persons exercising their official powers. As can be seen, paragraph 1 of Article 6 of the ECHR establishes special guarantees of judicial protection and is a special norm, but Article 13 of the ECHR provides for broader guarantees, extending to the non-judicial sphere. The application of paragraph 1 of Article 6 of the ECHR excludes the need to apply Article 13 of the ECHR, except for some exceptions, for example, in cases where there are effective remedies for violating the right to a reasonable time of trial and enforcement of a court decision (*Kudla v. Poland*).

In its practice, the ECHR has developed certain established approaches to the interpretation of the right to an effective remedy. Thus, the ECHR proceeds from the fact that such a tool should allow the competent domestic authorities to consider the relevant complaint about the violation of convention rights and provide appropriate compensation (*Halford v. the United Kingdom*). At the same time, several means of protection can also provide effective protection, having a cumulative effect (*Silver and Others v. United Kingdom*). The criteria for the effectiveness of a remedy are reduced to the following provisions: a) a remedy must be effective both in theory and in practice (*Rotaru v. Romania*); b) an effective remedy is considered to be one that can prevent, stop, or allow appropriate redress for a violation that has already occurred (*Ramirez Sanchez v. France*); c) a remedy must be adequate and accessible (*Paulino Tomás v. Portugal*); d) the introduction of a certain type of remedy is not required, but the nature of the right that a person requests to be protected affects the type of remedy that the state must provide in each case (*Budayeva and Others v. Russia*); e) the institution that guarantees the use of a certain remedy does not necessarily have to be judicial (*Kudla v. Poland*); f) the effectiveness of the remedy does not depend on the satisfaction of the claims of the person using the said remedy (*Costello-Roberts v. The United Kingdom*). The ECHR may also establish additional specific requirements for the remedies of certain convention rights, an example of which is the above-mentioned remedies for the right to a reasonable time of trial and execution of a court decision, because the inability to protect this right at the level of the national legal order, in fact, leads to its illusory nature and indicates the lack of access to justice for persons whose rights have been violated.

In view of the above, in our opinion, the content of access to justice should also include the right to effective remedies. At the same time, the inclusion in the content of this concept of all elements of the right to

a fair trial in accordance with paragraph 1 of Article 6 of the ECHR is inappropriate and leads to the actual identification of the right to a fair trial with the access to justice, which eliminates the importance of these categories as self-sufficient. Consequently, the element of the international standard of access to justice is precisely the right to access to a court as an element of the right to a fair trial, and not all the guarantees of paragraph 1 of Article 6 of the ECHR. Thus, the concept of access to justice includes: a) the right of access to court; b) the right to an effective remedy; c) the right of access to the ADR. In our study, we will focus on the study of the right of access to court and the right of access to ADR, because the issue of the right to effective remedies is not covered by the subject of civil procedural law, but concerns extrajudicial administrative remedies, with their defining characteristics be able to judicially review their decisions.

2.3 Access to justice, procedural pluralism and the subject of civil procedural law

The proposed broad understanding of the concept of access to justice allows reaching a broader issue of methodological principles and the modern paradigm of civil procedural law. In the legal literature attention was drawn to the difference in the perception of dispute resolution procedures from the standpoint the ideas of legal centralism and legal pluralism [23], which were the basis of two modern theories of the legal process – procedural centralism and procedural pluralism [24, p. 147]. Proponents of procedural centralism consider judicial protection to be the only and main way to resolve disputes, and the courts are the centre of the world of dispute resolution [25, p. 199], unified bodies that administer justice, and monopoly conductors of law and values in society [24, p. 148]. Under this approach, the access to justice is reduced to ensuring unimpeded access to state courts of the classical type. Instead, procedural pluralism is based on the recognition of the legitimacy of the diversity of dispute resolution procedures, in which judicial protection is seen as only one of the possibilities along with other ways of resolving disputes. It is based on the recognition of a wide range of values [24, p. 149] and the idea that non-judicial methods of dispute resolution sometimes allow achieving better results than classical legal proceedings, due to their flexibility and ability to adapt to the specifics of a particular dispute [24, p. 149]. Therefore, ADR is not interpreted as an alternative to judicial protection, but rather "appropriate" ways of resolving disputes. Currently, the theory of procedural pluralism has become one of the main trends not only in the field of ADR, but also in the doctrine of civil procedural law [24; 26-28].

A broad approach to defining the concept of access to justice, which is actually based on the idea of procedural pluralism, actualises the discussion on the subject of civil procedural law, which is recognised as a classic in domestic legal doctrine. In the last few decades, civil procedural law has been considered as an independent branch of law, the subject of which is the social relations that arise during conducting a trial in civil cases. This approach, admittedly, is extremely important, because part 1 of Article 55 of the Constitution of Ukraine [29] establishes the right to judicial protection, which at the international level is called the "right to a fair trial" or "right to a trial". The right to judicial protection belongs to the basic constitutional rights of a person and citizen, has a general character, cannot be restricted and is implemented in accordance with the principle of the rule of law in appropriate judicial procedures of justice that guarantee the right to a fair trial [30, p. 410]. The idea of the subject of civil procedural law as a system of relations in the field of administration of justice in civil cases in domestic science has become traditional and almost universally accepted. This indicates that nowadays the doctrine of civil procedural law is dominated by the idea of civil litigation as a form of administration of justice in civil cases and the identity of the concepts of civil litigation and civil procedure, which echoes the idea of procedural centralism proposed in foreign literature. In the scientific literature it is customary to distinguish between a broad and a narrow concept of understanding the subject of civil procedural law. A narrow concept is reduced to the identification of civil procedure with civil litigation as an activity for the administration of justice in civil cases [31, p. 7; 32, p. 74], and broad-related to its extended interpretation, according to which this concept covers not only civil litigation, but also related areas of judicial activity, in particular, enforcement proceedings, ADR, etc. [33; 34, p. 106; 35, p. 96].

A broad concept of understanding the subject of civil procedural law in Soviet literature was proposed by N.B. Zaider back in the 1960s. It was based on the view that the subject of civil procedural law, in addition to legal relations arising from the consideration of cases by courts in civil litigation, should also include legal relations formed during the consideration of civil cases and other bodies of civil jurisdiction, because civil procedural law provides for a plurality of procedural forms of protection of civil rights (arbitration, friendly courts, notary, etc.) [33, p. 81]. This concept was supported at that time by some other scientists [36, p. 55-56; 37, p. 4-8], but did not become widespread during the Soviet period. The phenomenon of differentiation of civil jurisdiction still exists today, despite the fundamentally new principles of organization and functioning of the judiciary, enshrined in the Constitution of Ukraine and current legislation. Yes, the Civil Code of Ukraine [38] (hereinafter - the Civil Code) provides that each a person has the right to apply to the court for protection of civil rights and interests (Article 16 of the Civil Code). Such protection may also be carried out

in an administrative manner (Article 17 of the Civil Code) or by a notary by making a writ of execution on a debt document in the cases and in the manner prescribed by law (Article 18 of the Civil Code). Some labour disputes are considered by commissions on labour disputes, except for disputes that are subject to consideration directly in district, district in the city or city courts (Article 232 of the Labour Code of Ukraine [39]). Individuals also have the right to refer a case to arbitration courts (Laws of Ukraine "On Arbitration Courts" [40] and "On International Commercial Arbitration" [41]) or try to resolve the dispute through mediation, which has recently become increasingly popular as a consensual method of ADR, although it is not enshrined in law. Finally, the protection of civil rights and interests can be carried out as self-defense, the methods of which can be chosen by a person or established by contract or acts of civil law (parts 1, 2 of Article 19 of the Civil Code).

Forms of protection are a category of civil procedural law used to denote jurisdictional procedures for civil cases, and therefore the content of the legislative definition of forms of protection of subjective rights and interests is to ensure the implementation of these rights through appropriate enforcement mechanisms, i.e. through appropriate legal procedures. S. Kurylov proposed typological characteristics of forms of protection of civil rights, based on the existence of objective reasons for this in terms of advantages (simplicity, accessibility, etc.) of one form or another and the effectiveness of law enforcement [42]. Depending on the nature of the jurisdiction's relationship with the parties to the dispute, the author singled out such forms of protection of civil rights and legitimate interests as: 1) resolving the case by a jurisdictional act of one of the parties to the dispute: 2) resolving the case by a jurisdictional act of an organ which is not a party of the dispute, but is connected with one or both parties of the dispute by certain legal or organizational ties; 3) resolution of the case by a body that is not a party of the dispute and is not related to them by legal or organizational relations, except of procedural nature [42, p. 162, 170-171]. These scientific observations and generalizations in one way or another really reflect a certain legislative practice. At the same time, modern procedural law, based on the priority of judicial protection, also provide opportunities for the protection of civil rights in other procedural forms, in particular, through ADR methods. At the same time, their use has a dispositive character, does not exclude the possibility of judicial protection and is generally assessed as a positive moment and a factor in the unloading of courts.

The existence of various forms of protection of civil rights is a positive fact in the context of the implementation of the international standard of access to justice. At the same time, in its practice, the ECHR has repeatedly emphasised the need for an autonomous interpretation of the concept of "court" in paragraph 1 of Article 6 of the ECHR, which should not be understood exclusively as a state court, but should be considered in its essential meaning (*Regent Company v.* Ukraine). This approach entails the need to comply with the standards of fair trial not only by courts but also by other bodies of civil jurisdiction, which, in the opinion of the ECHR, meet the characteristics of "court", which are: a) the presence of full jurisdiction to clearly established procedures; b) the existence of the power to make binding judgments, which may not be set aside other than by a court of higher instance; c) incoherence of the court with the conclusions of other bodies used in the case; d) the existence of guarantees of independence and impartiality of the relevant body [35, p. 122-123]. Thus, the ECHR assumes that the term "court" should be interpreted broadly, sometimes including quasi-judicial and non-judicial bodies, in particular, disciplinary commissions of doctors and lawyers, administrative bodies that authorised land sales, the High Council of Justice, the parliamentary committee etc. (*Ringeisen v. Austria*; *Sramek v.* Austria; Oleksandr Volkov v. Ukraine). In addition, the ECHR extended, with some limitations, the guarantees of paragraph 1 of Article 6 of the ECHR for arbitration (*Regent Company v. Ukraine*; Court v. the Czech Republic), which in the sense of the above provisions are considered "courts", despite the fact that by their nature they are a method of ADR. This clearly indicates the existence of common fundamental approaches to court proceedings and through quasi-judicial ADR methods, although with some peculiarities regarding the latter, which should be considered in the context of general standards of the right to a fair trial.

So, the problem of forms of protection, although genetically and institutionally determined by the status of judiciary and the fundamental value of justice, reflects the real state of the procedural sphere of legal regulation (the sphere of civil jurisdiction in general) as a system of civil courts, other bodies that protect civil rights, and the system of relevant civil procedures. This conclusion is of conceptual significance for the theory of civil procedural law from the standpoint the ontological essence of the interaction of the principle of the fundamental principle of the rule of law, the constitutional right to judicial protection and the convention right to a fair trial, which in the practice of the ECHR applies to procedures during which civil rights and obligations are determined. In this respect, it is extremely important that the constitutional right to a judicial protection and the convention right to a fair trial, which has a broader subject of legal regulation, are, so to speak, hybridised. The phenomenon of such hybridization determines the fact not only of the real interaction of the

right to a court at the national and international levels, but also the fact of ontological unity of legal relations arising in connection with the trial to determine civil rights and obligations [34, p. 105].

At the same time, this theoretical approach should not be taken as undermining the basic constitutional values of justice, in particular, recognising that justice in Ukraine is administered exclusively by courts and delegating court functions, as well as assigning these functions to other bodies or officials is impossible (Article 124 of the Constitution of Ukraine). At the constitutional level, the indisputable values of justice are fixed as a form of exercising the judiciary, which must be separated from the legislative and executive, and have specific, unique functions. Interpretation of Art. 124 of the Constitution of Ukraine is found in the practice of the Constitutional Court of Ukraine. Thus, considering the case on the constitutional petition of 51 People's Deputies of Ukraine regarding the compliance of the Constitution of Ukraine (constitutionality) with the provisions of para. 7, 11 st. 2, art. 3, item 9 of Art. 4 and Section VIII "Arbitration Self-Government" of the Law "On Arbitration Courts" (case on the tasks of the arbitration court) [43], The Constitutional Court of Ukraine noted that justice is an independent branch of state activity, which courts carry out by considering and resolving in court in a special, established by law, procedural form of civil, criminal and other cases. Instead, arbitration of disputes between the parties in the field of civil and commercial relations is defined as a type of non-state jurisdictional activity, which arbitration courts carry out based on the laws of Ukraine by applying, in particular, arbitration methods. The exercise by arbitration courts of the function of protection provided for in paragraph 7 of Article 2, Article 3 of the law of Ukraine "on arbitration courts" is not the exercise of justice, but the resolving the disputes between the parties in civil and economic legal relations within the limits of the right defined in Part 5 of Article 55 of the Constitution of Ukraine. It is noted that arbitration is not justice, and the decisions of arbitration courts are only acts of non-state jurisdictional institutions to resolve disputes between the parties in the field of civil and economic relations. Arbitration courts make decisions only on their own behalf, and these decisions themselves, adopted within the current legislation, are binding only on the parties to the dispute. Ensuring the enforcement of decisions of arbitration courts is beyond the scope of arbitration and is the task of the competent courts and the state executive service.

Thus, we can conclude that despite the fact that in accordance with domestic law courts are recognised as the core of the system of civil jurisdiction, the existence of various procedural forms of protection of civil rights does not deny the exclusivity and unity of the judiciary, which together mean formal and effective constitution state of a single and equal court for all. This approach makes it obvious that the concepts of civil litigation and civil procedure do not coincide, as the latter covers not only civil litigation, but also other jurisdictional procedures for consideration and resolution of civil cases [34, p. 106]. The broad concept of understanding the subject of civil procedural law, proposed at one time by N.B. Zaider, has not received wide support in scientific circles, but now it seems extremely relevant, given the recent reforms of civil procedural legislation in Ukraine and foreign countries, the evolution of civil procedure and the further differentiation of various forms of legal proceedings. This approach allows identifying the most common patterns of formation of the procedural sphere and the functioning of the system of civil jurisdiction to optimise procedural law in general.

The expediency of a broad approach to defining the subject of civil procedural law should also be considered in view of the need to build a new value paradigm of civil procedure in the context of the fundamental principle of the rule of law, which focuses on respect for human rights and freedoms. Civil litigation and ADR are related to a single subject matter, which is a dispute over civil rights and obligations. European doctrine of civil procedure recognizes the fact that justice should not necessarily be carried out exclusively in courts, because alternative methods of dispute resolution, for example, mediation, are sometimes more appropriate procedures for resolving a particular dispute, because they allow achieving better results than classical legal proceedings in terms of the possibility of developing solutions that satisfy both parties, eliminating the dispute between them. Thus, the Supreme Court of Canada, in interpreting the principle of proportionality, noted that "a process can be fair and just, without the expense and delay of a trial, and that alternative models of adjudication are no less legitimate than the conventional trial. This requires a shift in culture [...]. The proportionality principle means that the best forum for resolving a dispute is not always that with the most painstaking procedure" (*Hryniak v.* Mauldin, SCC 7, [2014] 1 S.C.R. 87). It is in this sense that both the judiciary and the ADR ensure access to justice in civil matters in a democratic society governed by the rule of law. Separately in this context, attention should also be paid to the hybridization of civil proceedings, which is associated with the blurring of the boundaries between "formal" and "informal", "public" and "private" justice [24, p. 335]. A clear example of such hybridization is the integration of mediation into litigation, which results in, on the one hand, a certain degree of formalization and the introduction of some element of publicity, and on the other - strengthening the consensual principle in civil proceedings. Successes in expanding the scope of ADR methods have given grounds to talk even about the "privatization" of the field of civil litigation [2, p. 294]. In fact, this indicates the gradual blurring of the boundaries between public and

private justice in the modern world, based on the idea of procedural pluralism and recognition of the polymorphic structure of dispute resolution, which should be explored in all its diversity, not separately.

CONCLUSIONS

Analysis of modern approaches to defining the concept of access to justice leads to the urgent need to rethink some classic postulates of the theory of civil procedural law, due to Ukraine's desire to integrate into the European legal space and recognition of the rule of law as a fundamental principle of law in a democratic society. Despite the lack of established views in foreign and domestic literature on the interpretation of the concept of access to justice in civil cases, we can trace certain patterns in this area. The study concludes that a broad approach to the interpretation of the international standard of access to justice in civil cases is appropriate, according to which its elements such as access to justice, access to effective remedies and access to ADR can be distinguished. This approach is based on the idea of procedural pluralism, which is based on the provision of coexistence of multiple forms of protection of violated rights of persons, the effectiveness of which is determined based on the specifics of a particular dispute. Under this approach, the court is recognised as only one of the possible appropriate ways of resolving disputes, along with other ways of resolving disputes.

Nowadays, we can say that the idea of procedural centralism corresponds to the domestic narrow concept of the subject of civil procedural law, and the idea of procedural pluralism - with a broad concept of the subject of civil procedural law. Considering the autonomous interpretation of the term “court” in the practice of the ECHR regarding the interpretation of paragraph 1 of Article 6 of the ECHR, as well as the growing popularity of alternative dispute resolution, it is now advisable to adopt a broad approach to defining the subject of civil procedural law, which should cover both the classical form of judicial protection (civil litigation) and various ADR methods, in particular arbitration, international commercial arbitration, mediation, conciliation, etc. In view of the above, the concepts of civil litigation and civil process do not coincide and are not identical. Civil procedure are a more general concept that encompasses both civil litigation and other jurisdictional procedures for the consideration and resolution of civil cases to protect the subjective rights and interests of disputant.

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Suggested Citation: Komarov, V.V., & Tsuvina, T.A. (2021). International standard of access to justice and subject of civil procedural law. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(3), 197-208.

Submitted: 02.06.2021
Revised: 17.08.2021
Accepted: 04.09.2021

УДК 351.863:371.214.2
DOI: 10.37635/jnalsu.28(3).2021.209-223

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ЕКОНОМІЧНИЙ СУВЕРЕНІТЕТ ТА ЕКОНОМІЧНА БЕЗПЕКА УКРАЇНИ (ВЗАЄМОЗВ'ЯЗОК ТА ВЗАЄМОРОЗУМІННЯ) В КОНТЕКСТІ ЇХ ДОКТРИНАЛЬНОГО ТА ПРАВОВОГО ЗАБЕЗПЕЧЕННЯ

Анотація. *Метою цієї статті є звернення до актуальних проблем доктринального і правового забезпечення економічної безпеки держави з актуалізацією питань щодо співвідношення понять «економічна безпека» та «економічний суверенітет» у їх взаємозв'язку та взаєморозумінні. В роботі авторами приділено увагу аналізу існуючих у національних правових доктринах окремих держав світу наукових підходів до визначення поняття «економічний суверенітет», з'ясовано його основні ознаки, проаналізовано наукові підходи вітчизняних та зарубіжних дослідників щодо визначення поняття «економічна безпека» та на підставі цього наведено власне бачення інструментального наповнення цих дефініцій. Аргументовано, що поняття «економічний суверенітет» є первинним стосовно поняття «економічна безпека». У статті досліджено національні системи (моделі) забезпечення економічної безпеки держави, серед яких, зокрема, американська, японська, китайська, моделі інституційних утворень (зокрема, ЄС), моделі, характерні для держав з перехідною економікою. Авторами встановлено, що для України характерною є система (модель) економічної безпеки держав з перехідною економікою, яка вирізняється фрагментарністю та непослідовністю її побудови, що в кінцевому результаті впливає на стан забезпечення економічної безпеки держави в цілому. З'ясовано, що основною метою України на даному етапі її розвитку в контексті побудови національної моделі забезпечення економічної безпеки є створення ефективної системи засобів подолання або мінімізації наявних чи потенційних загроз, особливо в умовах глобалізації торговельно-економічних відносин. В роботі наголошується на необхідності запозичення позитивного зарубіжного досвіду правового забезпечення відносин із створення та запровадження національних систем забезпечення економічної безпеки держави з метою поступового перетворення України на вагомого учасника процесів забезпечення міжнародної економічної безпеки*

Ключові слова: *державний суверенітет, економічний суверенітет, економічна безпека, національні системи забезпечення безпеки, національні інтереси*

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ECONOMIC SOVEREIGNTY AND ECONOMIC SECURITY OF UKRAINE (INTERRELATION AND MUTUAL UNDERSTANDING) IN THE CONTEXT OF THEIR DOCTRINAL AND LEGAL SUPPORT

Abstract. *The purpose of this article is to address current issues of doctrinal and legal security of economic security of the state with the actualisation of issues concerning the relationship between the concepts of "economic security" and "economic sovereignty" in their relationship and mutual understanding. The authors pay attention to the analysis of existing in the national legal doctrines of individual countries scientific approaches to the definition of "economic sovereignty", clarify its main features, analyse the scientific approaches of domestic and foreign researchers to define the concept of "economic security" and on this basis own vision of the instrumental content of these definitions. It is argued that the concept of "economic sovereignty" is primary in relation to the concept of "economic security". The article examines the national systems (models) of economic security of the state, including, in particular, American, Japanese, Chinese, models of institutional entities (in particular, the EU), models typical of countries with economies in transition. The authors found that Ukraine is characterised by a system (model) of economic security of countries with economies in transition, which is fragmented and inconsistent in its construction, which ultimately affects the state of economic security of the state as a whole. It was found that the main goal of Ukraine at this stage of its development in the context of building a national model of economic security is to create an effective system of means to overcome or minimise existing or potential threats, especially in the context of globalisation of trade and economic relations. The paper emphasises the need to borrow positive foreign experience of legal support of relations for the creation and implementation of national systems of economic security of the state to gradually transform Ukraine into an important participant in the processes of international economic security*

Keywords: *state sovereignty, economic sovereignty, economic security, national security systems, national interests*

INTRODUCTION

Today's economic security is a state of development of the economic system of the state, in which it must be maximally protected from existing external and internal threats and can develop without much deviation towards the deterioration of economic processes, even if they are actively influenced. Achieving the desired state of economic security, which would ensure the balanced development of the state economy is impossible without reference to the category of "economic sovereignty", as the content of this definition is specified through the definition of basic sovereign rights of the state, including the right to constitutional and/or legislative principles of national economic policy; the right to be an equal participant in international economic relations; the right to respect for national economic interests, etc. Fulfilment of the key task for any state – ensuring economic sovereignty – is impossible without recourse to the studied categories, as ensuring the balanced development of the state's economy involves the existence of a separate system of social relations in which the state is both regulator and participant and subject of control and monitoring the functioning of such a system. Furthermore, the complexity of building national economic systems in the context of ensuring economic sovereignty and economic security of the state as interrelated categories shows that the process of achieving them will be multifaceted and extremely differentiated, which ultimately is objectified in a certain model of relations. Analysis of the experience of doctrinal and legal support of economic security of developed countries also convincingly proves that this process is characterised by increasing tendencies to the constant expansion of the scope, range and scale of tasks [1].

It should be noted that the state economy is the environment of functioning of participants in economic relations of all forms of ownership without exception, and therefore in a democratic, legal state, the possibility

of only imperative influence on economic processes is excluded, in connection with which the state's desire to achieve the common good, an indispensable element of which is unquestionably considered economic security as a certain state of the economy, and therefore economic stability in society, does not justify its unlimited interference in the activities of subjects participating in these relations. This, however, does not mean that the state should not create appropriate legal conditions for the effective functioning of business entities, for the development of all sectors and sectors of the national economy, for the development of economic subsystems of the regions (region) of the state, balanced development of the economic system of the state as a whole, so that the very model of their existence allows to achieve the desired state of ensuring economic sovereignty and economic security. In a state governed by the rule of law, relations between subjects in any potentially significant sphere of public life are subject to legal regulation. Therefore, the state has a monopoly on the establishment and protection of law and order, which is actually embodied in its regulatory influence. The main purpose of this legal order in the context of our research should be considered doctrinal and legal support of economic sovereignty and economic security of the state, which is objectified through the creation of a mechanism (system) of legal support of economic sovereignty and economic security. The formation and effective functioning of this mechanism in a democratic state is conditioned by the use of exclusively legal means, as the law itself is the primary basis for ensuring the necessary regulatory influence of any social relations, including relations to ensure economic sovereignty and economic security. According to V.V. Yakovenko and A. S. Peshkova, "the economic security of the state is ensured by a nationwide set of tools and measures aimed at the permanent development of the state and involve a large number of actors in this process. This testifies to the need for the existence of a system of legal support, because only the law is the only way to legitimise the models and forms of social relations" [2]. Some experts emphasise that ensuring the economic sovereignty and economic security of the state can and should take place exclusively within the framework of national legislation and only by means established and enshrined in law, in particular by means of state coercion. This opinion is held in particular by L.I. Abalkin [3], I.I. Bogdanov [4], V.K. Senchagov [5] and others. The positions of these scholars demonstrate the dependence of legal doctrine on national policy in the field of economic sovereignty and economic security. Today, the predestination of the legal doctrine by national interests, in particular in the field of ensuring economic sovereignty and economic security, can be traced to the example of "trade wars" unleashed by the United States with China, the Russian Federation, the European Union and a number of other countries [6] and which are implemented through trade sanctions and protectionist means provided for at the level of national legislation.

The relevance of the study at the present stage is also due to the fact that the domestic legal doctrine has not yet formed the generally accepted concepts of "economic sovereignty" and "economic security", there is no unified methodological approach to elaborating the components of these definitions, not developed theoretical and methodological tools, the place of the categories "economic security" and "economic sovereignty" in the domestic legal science is not defined either.

The priority of this work is to address the actual problems of doctrinal and legal support of economic sovereignty and economic security of Ukraine with the updating of issues regarding the role of domestic law and legislation as a determining basis in ensuring economic sovereignty and economic security of the state, among which the most attention deserves: optimisation of national legal support of economic sovereignty and economic security and its unification with the legislation of individual states of the world, having a positive experience of building effective national systems of ensuring economic sovereignty and economic security; improvement of national policy in the field of legal support of economic sovereignty and economic security; clarification of Ukraine's place in the world system of ensuring international economic security.

The theoretical framework of this study included papers by researchers of such as V.M. Heiets, V.S. Zagashvili, V.A. Lipkan, H.A. Pasternak-Taranushenko, V.G. Pylypchuk, V.T. Shlemko, and others.

Certain aspects of ensuring the economic sovereignty and economic security of Ukraine were investigated in the studies of such foreign researchers as A. Anghie, C.-J.J. Chen, M. Kahler, as well as Ukrainian researchers: S.V. Mochernyi, M.M. Khapatniukovskyi, O.F. Skakun, and others. At the same time, in the domestic legal science the complex analysis of questions of doctrinal and legal maintenance of economic sovereignty and economic security of Ukraine in their interrelation and mutual understanding was not carried out.

1. MATERIALS AND METHODS

The methodological basis of this study includes the following general and special research methods: dialectical, comparative law, system-structural, hermeneutic, theoretical and prognostic, and others. The basis of the research methodology is the dialectical method as the main philosophical method that allows to consider and know the subject of research through the prism of its development, changes that occur with it, and the connections it has with other phenomena. The dialectical method of cognition accompanied the whole process

of this scientific research and allowed to consider the issues of economic sovereignty and economic security of Ukraine in the context of their doctrinal and legal support. In particular, this method allowed to reveal in detail the essence of such complex phenomena as economic sovereignty and economic security. Furthermore, the dialectical method was used to comprehensively study the principles of formation and functioning of the mechanism (system) of legal support of economic sovereignty and economic security of Ukraine, linking the categories of "economic sovereignty" and "economic security" with domestic legal doctrine, domestic legislation. As a result of resorting to this method, the issues of economic sovereignty and economic security of Ukraine in their relationship and mutual understanding were studied.

The comparative legal method helped to reveal the approaches inherent in the legal systems of individual foreign countries to the features and patterns of legal regulation of relations to ensure economic sovereignty and economic security of the state and identify opportunities to use their positive experience to improve domestic legislation in this area. This method is the main method in the system of methodology of comparative legal research and acts as a set of methods and techniques for identifying the origin, development, functioning of different legal systems based on a comparative study of general and specific patterns. This method is described by comparing legal concepts, phenomena, processes of the same order and determining the similarities and differences between them. This method was useful for the analysis of scientific views and experience of foreign countries within this issue. By addressing him, it was found that the analysis of foreign experience in regulating the principles of national economic security by individual states and institutional entities in general allows us to conclude on the permanence and priority of purely national interests. Even regardless of the involvement of countries in the system of international economic security, the focus is mainly on domestic problems and threats. And only the overdeveloped countries: the United States, Japan, and some EU countries – among the main tasks of ensuring economic sovereignty and economic security are considering the protection of their own foreign economic priorities.

The use of the hermeneutic method contributed to the interpretation and interpretation of regulations and scientific works of scientists, which formed the basis for the formulation of the terminology of this study. Thanks to the hermeneutical method, it became possible to collect and record material on the subject of this research, which allowed identifying its meaning, this method of research became exactly the tool with which it was possible to solve the issue of meaningful content of the concepts of "economic sovereignty" and "economic security" in their interrelation and mutual understanding. With the help of the system-structural method, the place of Ukraine in the architectonics of the system of ensuring international economic security was determined, namely, it is a state with a transition economy, the system of economic security of which is characterised by the fragmentation of the implemented national policy, aimed mainly at stabilising economic processes after independence and a rather weak instrumental content of this system.

The theoretical and prognostic method was the basis for developing forecasts for further development of domestic legal doctrine in the field of economic sovereignty and economic security of Ukraine, which allowed formulating a number of criteria and goals for Ukraine's development as a participant in international economic security. Furthermore, the appeal to this method allows improving the quality of legislation in this area in the future, justifying the need to make changes and additions to them to build a logically structured mechanism (system) of legal support for economic sovereignty and economic security of the state to achieve significant results in protecting the domestic economy in the context of globalisation of trade and economic relations.

2. RESULTS AND DISCUSSION

The category of "economic sovereignty" in its content is an economic and legal category, the nature of which is covered by special legal methods of cognition and is the ability of the state to make decisions on economic development. This interpretation is general and to some extent even somewhat conditional. This is explained by the fact that the functioning of the modern state is due to trends in the globalised world economy, and in some cases also the national interests of economically more powerful countries and their integration associations. Therefore, the choice of national economic model at the present stage of human development is often due to some limited strategic opportunities for economic development of the country, and economic sovereignty is the ability of political power to choose one of the alternatives for further development.

The term "economic sovereignty", as well as similar categories ("financial", "fiscal", "customs", "technological" sovereignty, etc.) were actively used in economic and legal literature mainly in the era of decolonisation [7, p. 211-214] due to the need to ensure permanent sovereignty over natural resources as a

condition that affects the state's economy beyond significant economic progress[1] as well as in the late XX – early XXI centuries in the post-Soviet space[2] in particular, in Ukraine. In other states, primarily in Western countries, the category of "economic sovereignty" is usually not used (the exception is publications devoted to European integration, in particular on issues of limiting the economic sovereignty of member states in favor of the goals of political integration, as well as assessing the impact on the economic sovereignty of a state as a result of the activities of international financial organisations) [9-13]. Instead, in the research of foreign authors, the concept of "economic power" is widely used [14-17], "economic security" [18; 19], "economic interests", etc.

It can be argued that although "economic sovereignty" and its derivatives are actively used in the national legislation of the Russian Federation, the Republic of Belarus and some other countries, mostly post-Soviet space, in the decisions of their constitutional courts, other official documents[3], in legal science, these concepts are just beginning to develop. It should be noted that the introduction into scientific circulation of the concept of "economic sovereignty" in some way gave impetus to the development of the doctrine of sovereign rights of the state, its content [20; 21]. In the process of scientific research, the basic sovereign rights of the state were determined, which specify the content of the category "economic sovereignty". Such rights of the state include: the sovereign right of the state to dispose of its own resources; the right to determine the principles of national economic policy at the constitutional and/or legislative level[4]; sovereign right both to join and leave the integration associations of economic orientation (for example, the EU) and international economic organisations (World Bank, International Monetary Fund, Organisation for Economic Cooperation and Development, IBRD, WTO); the right to be an equal participant in international economic relations; the right to respect for national economic interests; the right to take part in solving international economic problems, especially those that affect national interests.

Since the concept of "economic sovereignty" is cross-scientific, its features have both legal and economic origins. Among the main features should be noted: unity; inalienability; extraterritorial activity of resident economic entities; priority of national interests; indivisibility; availability of own currency; availability of own tax system. Unity as a sign of economic sovereignty of the state is the existence of a single sovereign power of the Ukrainian state, exercised by a system of bodies, including representative, throughout Ukraine. Ukraine's economic independence is manifested through the activities of relevant state institutions, bodies and organisations, in the general sense, aimed at ensuring the implementation of the strategy of its economic development. Strategy is an integral element of economic sovereignty, although not a feature of it, but performs an important function of ensuring stable and predictable development of the country's economy. These two categories (economic independence and economic development strategy) are the initial criteria for determining the effectiveness of the economic security system, which demonstrates the relationship between economic sovereignty and economic security.

[1] In resolution 523 (VI) "Integrated economic development and commercial agreements" (1952) the General Assembly considered that "the underdeveloped countries have the right to determine freely the use of their natural resources and that they must utilise such resources to be in a better position to further the realisation of their plans of development in accordance with their national interests, and to further the expansion of the world economy"; "commercial agreements shall not contain economic or political conditions violating the sovereign rights of the underdeveloped countries, including the right to determine their own plans for economic development". Permanent Sovereignty as a Principle of international economic law was enshrined in resolution1803 of the UN General Assembly. This allowed its development to be more rapid than it would have been through more conventional methods of law-making, such as evolving State practice or diplomatic conferences [8, p. 3] common article 1 of both Covenants affirms, in paragraph 2, "All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence".

[2] The appeal of politicians and scholars of this category is due in some way to ideological guidelines, as well as the fact that after the collapse of the Soviet Union in the transition from socialist to market economy, the national economy of the newly formed states was open, structurally primitive and highly dependent on foreign policy.

In modern conditions, military force has ceased to be the main instrument of coercion in international relations, while economic power is becoming increasingly important. In this regard, the popularity of the concept of "economic sovereignty" in the Russian Federation and Belarus is due to the application to these states of economic sanctions by the United States and the European Union.

[3] The provisions of regulations and decisions of constitutional courts usually relate to mechanisms to ensure economic sovereignty, in particular, the restriction of foreign investment in strategic sectors of the national economy; introduction of covert mechanisms of protectionism; anti-offshore regulation, etc.

[4] This refers to the ability to independently determine and implement financial and trade policy, legislate the activities of foreign companies, foreign investment, the nationalisation of foreign property and more.

The inalienability of the economic sovereignty of the state is manifested in its inseparable connection with the direct performance by public authorities of the functions of ensuring balanced economic development. No other body, institution or organisation, which does not have the appropriate mandate, can perform organisational and administrative functions in the field of management of the economic system of the state. However, it should be clearly understood that almost all economic entities and market agents have the potential to influence economic processes in the country to one degree or another, but their influence is manifested discreetly, within the dispositive models of economic behavior enshrined in law. Legitimate public authorities have much more power, and in particular, they determine the boundaries of all other participants in economic relations.

Extraterritorial activity of resident economic entities means their ability to conduct their activities outside the territory of the state in the process of achieving economic interests of both their own and national. The essence of this feature is that no matter what interests are pursued by resident businesses, one way or another they ensure the economic growth of the state as a whole, including by: generating profits and transferring part of them in the form of taxes to the budgets of different levels; ensuring employment; development of socio-economic infrastructure of the territory, etc. In addition, the active activities of resident economic entities, their development contribute to improving the efficiency of the system of economic security of the state.

The concept of extraterritoriality is closely related to the concept of priority of national interests, because to ensure economic independence, the state must have the appropriate resources, mechanisms and tools to respond to situations of various kinds. The fact that the national legislation, within which economic relations take place, is completely focused on national interests, is quite logical, but, in addition, the same orientation should have business – "public contract". Today, such a concept is already spreading and taking the form of social responsibility, when business structures are delegated by the authorities' part of the powers to solve socio-economic problems of the territories where the production facilities of enterprises are located. At the international level, this feature is embodied in the vector of foreign economic and foreign policy development of the state. This, in fact, determines the position of the state in globalisation processes, its direction and the choice of the organisation of which it seeks to become a member.

Indivisibility of economic sovereignty means the ability of the state to ensure its fullness and, according to the law, only to delegate their sovereign rights to state-authorised bodies, international organisations etc. From the point of view of globalisation, the delegation of economic functions of the state to the level of, for example, international organisations is the most relevant and controversial issue. The fact is that such delegation can lead to a partial loss of self-identity of the state, the subordination of its interests to the interests of more developed economies and ultimately - to the weakening of economic security of the state. At the same time, full integration is impossible without such delegation. As for Ukraine in particular, joining various integration associations is objectively necessary for the further development of the state. At the constitutional level, the supremacy of the norms of international law over the norms of domestic law is recognised, however, in the case of ratification of the former. This situation leads to ambiguity in the processes of development and adoption of regulations, as in the first place is the criterion of their compliance with international agreements. This can be clearly demonstrated by the example of Ukraine's accession to the WTO and the desire for EU integration. In the first case, the process of so-called "harmonisation" of legislation lasted almost five years and continues today. Therewith, the position of Ukraine's economic security in relation to certain sectors of the economy was significantly worsened due to the adoption of a number of laws(primarily concerning the ratification of WTO agreements), which, on the one hand, weakened the position of the national commodity producer, but on the other, opened up new opportunities for Ukraine in international trade markets. Nominally, Ukraine has not lost its economic sovereignty or even weakened it, because the relevant decisions were made without pressure, independently, considering the results of market analysis and strategic prospects for development.

This statement fully applies to Ukraine's potential membership in other associations and unions, including the EU. As for joining the EU, Ukraine must radically reform the system of public administration decisions and independently transfer part of its powers in the economic sphere to the level of interstate superstructure in the form of EU institutions. The above clearly demonstrates that integration into world economic unions, alliances and other entities is possible only if the legislator maintains the ability to adequately respond to the economic challenges of the future. If such regulation does not take place, the country may find itself in the situation that took place in Ireland, Iceland and Cyprus in 2008-2010, when all the negative effects of the global financial and economic crisis from the European economy was transferred to the economy of these countries. That is why it is important to strike a balance between national interests and strategic decisions regarding the state's membership in such integration associations.

The presence of its own currency is traditionally seen not only as a sign but also a prerequisite for the state to ensure its own economic sovereignty. The importance of the national currency lies in the ability of the state through the central bank to independently control its circulation: increase or decrease in demand, which will directly affect the controllability of inflation. At the same time, the country can freely circulate world currencies, in particular the US dollar, euro, currency of other countries, but the state, in the case of its own currency, has the opportunity to regulate the conversion rate. Economic growth, industrial development, export activity of enterprises, as well as the monetary and financial stability of the state depend on this. In addition, the presence of its own currency significantly expands the stabilisation of the economic security of the state, but also makes it vulnerable due to the ability to accumulate currency by other actors in international economic relations, which thus gain additional leverage on the economic situation within the country. Therewith, trends in the development of the European integration process show that in the conditions of State membership in a supranational integration Association, the preservation of the national currency is the exception rather than the rule[1]. The creation of a single market, banking and monetary unions implies the abandonment of member states' own currency.

The last sign of our declared economic sovereignty is the existence of our own tax system. Taxes are a legal way to redistribute monetary and financial resources to maintain the apparatus of public economic management. The economic essence of taxes can be expressed as follows: pre-established and fixed fee of taxpayers for the maintenance of a sustainable system of regulation of economic activity. The importance of taxes for the economic sovereignty of the state is due to the fact that in this way – by obtaining relatively independent sources of funding - ensures the inalienability, unity of power and priority of national interests. In the context of economic security, taxes are a potential resource that can ensure its full functioning, but first of all they are considered as the most important source of replenishment of the state budget, and therefore they are the object of national economic security. Even in the context of a state's membership in the European Union, tax policy as the last tool of national governments in the process of regulating their own economy remains important: tax policies of member states reflect the features of national socio-economic models, which are quite different, which complicates the process of their harmonisation within the EU.

The close relationship between the economic sovereignty of the state and its economic security is a priori and objective, but these categories should be clearly distinguished not only by content but also by origin. Economic sovereignty is paramount in terms of economic security. As the ability of state power, one of its characteristics, economic sovereignty further determines the emergence of economic security and the creation of a system of its provision. Therewith, it is not necessary that economic sovereignty will be fully realised, but it will not disappear, but will remain in the category of conditional categories, while the phenomenon of "economic security" is more categorical. It can be complete, powerful, comprehensive or partial, weak, and in some cases, it may not be at all, even when the country's authorities have the potential to secure their economic sovereignty.

Economic security, in contrast to economic sovereignty, is a certain state of the system, and therefore this category has a material nature, which determines its structural and logical scheme and features. Instead, economic sovereignty is a category that characterises state power, and therefore outside the system of power relations, its use is meaningless. The relationship of these categories, if viewed through the prism of state regulation, can be depicted as a material embodiment (security system) of the economic will of the state (sovereignty). In general, it should be noted that the economic sovereignty of the state is an extremely complex category and needs further research in the context of determining the mechanisms for its provision. As an objective characteristic of state power, economic sovereignty arises with the formation and legitimate registration of the state and its governing bodies, but for its full and real provision requires an appropriate economic system that is formed, managed and controlled by the state.

Scientific sources on the study of the categories of economic sovereignty and economic security in their mutual understanding and interrelation suggest that most Ukrainian and foreign researchers, namely Z.S. Varnalii [22], A.A. Mazaraki, O.P. Korolchuk [23], V.K. Senchagov, B.V. Gubin [24], V.T. Shlemko, I.F. Binko [25], and others identify these concepts to a certain extent. Thus, for example: P. Yakovenko and A.A. Mazaraki [23] in their research come to the general conclusion that economic security objectifies the economic independence of the state. That is, the achievement of a certain state of development of economic processes, in which we can talk about the presence of all signs of economic security, according to researchers,

[1] Jean Monnet believed that Europe would be created by currency or would never be created. Today, the European Union uses the opportunities of the euro as a factor of financial and political pressure, internal consolidation, the creation of a favorable environment, cultural expansion abroad and – due to the above – the construction of a special European identity that revives forgotten imperial ambitions.

makes the state completely independent in the international economic environment. In our opinion, this statement is quite debatable, because even with an extremely high level of economic security in the context of globalisation and integration processes, hardly any country in the world can be considered independent at least in foreign economic activity, as international markets do not depend on the level their economic sovereignty, instead, it is international economic processes that affect the state of development of the national model of economic relations.

In this context, it is expedient to cite the point of view that can be traced in the works of G.I. Bashtyanin, O.I. Kovtun and P.A. Kutsyk. Researchers are talking about the need to revise the content of the principle of sovereignty in the field of economic relations [26]. That is, in fact, they propose to level the very content of the economic sovereignty of the state in the context of globalisation[1], explaining this by the fact that it is mutually limited in different states by their agreement, which is achieved through the tools of established and created international organisations and international economic cooperation based on them. Such a position would be appropriate if the principle of sovereignty were subject to revision in both political and other spheres of public life. But at this stage of development of the world's states, we consider the pressure and possible adverse impact of globalisation processes on the state of economic security of the state only as a justification for the inability of a particular state to ensure the proper level of security.

A similar point of view is expressed by R. Keohane and J. Naem, who, analysing the nature of the development of national economies of countries in their transition period, as well as studying the phenomenon of transnationalisation of the world global economy and the formation of the so-called "transnationalism of world politics", make an attempt to scientifically prove the existence of a trend towards full liberalisation of global regulatory processes, when international organisations actually take over the functions of the state, and the latter delegate them to them [27; 28]. We believe that such tendencies actually exist, but to say that they are objective is premature. The fact is that the loss of economic sovereignty, as described by researchers, occurs through the voluntary transfer of some decision-making functions on the general outlines of the global market, rather than on decisions relating to the economic security of the state. In our opinion, the state is not deprived of opportunities and capabilities to ensure its own economic security, even with membership in international organisations, but on the contrary, we define such membership as additional opportunities to ensure sustainable development of the national economy and economic stability.

Therefore, from our point of view, S.I. Tkalenko's statement is more appropriate that "economic sovereignty and ensuring economic security for Ukraine is the basis for ensuring strategic development based on national ideas and interests". Ensuring economic security is a guarantee of state independence of Ukraine" [29]. This scientific position coincides with our idea that the sovereignty of the state can be fully revealed only when the state has created the right conditions for comprehensive security development.

In this context, the position of O. Skrypnyuk is also appropriate, which indicates that "state sovereignty can be properly ensured only through the further and irreversible establishment of Ukraine as a democratic, legal and social state, including in the sphere of Economic Policy" [30]. That is, the realisation of sovereignty, including economic, depends not only on independence in decision-making in the field of economic security, but also on the nature of measures of state and regulatory influence. A somewhat similar position is supported by I.F. Binko and V.T. Shlemko [25], who believe that the democratic nature of national economic policy is largely itself decisive for achieving the maximum level of economic independence.

M.M. Khapatniukovskyi notes that "economic sovereignty is the regulatory ability of the state to create conditions and mechanisms for the expanded reproduction of its national economic system based on a combination of endogenous and exogenous sources and development factors, while ensuring the preservation of control of the national state/community over the possession (use) of strategic resources and assets" [31]. In our opinion, such a vision is focused on the needs of economic sciences, but for legal science it reveals new planes of possibilities for studying the essence of the phenomenon of "economic sovereignty". According to M.M. Khapatnyukovsky, whom we support, economic security is comprehended by a certain set of means that the state is able to provide and implement only if it has reached the appropriate state of development of economic sovereignty. In other words, freedom of choice of mechanisms for the implementation of strategic directions of national economic policy is a necessary condition for the implementation of economic sovereignty.

[1] It should be agreed that globalisation has undermined the established approach to understanding economic security, which was based on the economic vulnerability of the state by other states. Globalisation has led to a rethinking of economic security in the light of the risks posed by cross-border networks of non-state actors and the economic instability of the new global environment. However, national institutions remain key to ensuring economic security. Regional and global institutions can complement each other, as well as the actions of national governments in reducing new economic insecurity [19].

Moreover, M.M. Khapatnyukovsky, investigating the directions of improving the regulatory capacity of Ukraine to ensure economic sovereignty, focuses on the need to consider the conditions of global imbalances. That is, economic sovereignty, according to the researcher, will be fully revealed only when the state will be able not only to create certain conditions for the development of the national economy and ensure proper economic security, but also to effectively counter external threats. In this approach, in our opinion, the relationship between the categories of "economic sovereignty" and "economic freedom" is extremely accurate, as both of these categories characterise the economic system of the state as an integral object of the global system of economic relations.

Some researchers, for example O.P. Gradov [32] or Ya.A. Zhalilo [33], use, but do not define the category of "economic sovereignty", interpreting it as a certain state of development of the economic system of the state, without linking the need for its implementation in the fundamental law of the state (usually the Constitution). It should be noted that their positions deserve support, because it is possible to objectify by enshrining at the level of law only those economic processes and forms of relations that have practical measurability or manifestation. Furthermore, the relations of economic sovereignty in the domestic legal doctrine of today also have even scientific uncertainty at the level of theoretical and methodological understanding of the tools that provide it.

V.V. Mikitas and S.V. Tyutyunnikova note that "despite the increasing influence of external determinants of globalisation processes on national socio-economic development, the need to preserve and use national identity, national subjectivity in the formation of economic policy of the state aimed at improving the competitiveness and quality of life of the population is being updated" [34]. We support this position of scholars, supplementing it only by the fact that the ability to preserve the economic sovereignty of the state will reveal and characterise the quality of economic policy pursued by the state and the level of competence of the political leadership of this state.

In turn, A.F. Skakun considers the economic sovereignty of the state as a component of state sovereignty, defining the former as a political and legal property expressed in the supremacy of the Economic will of the state on its own territory and independence in foreign economic relations [35]. However, as noted above, the maximum level of independence in the global economic environment is unlikely to be achieved, but the risks and economic challenges of the global economy can and should be effectively addressed. That is why it is expedient, in our opinion, to supplement the proposed definition with such an element as self-sufficiency in decision-making on the choice of directions of economic development.

Separately, S.V. Mocherny addresses the problem of economic sovereignty in his works, who notes that a significant drawback of the existing definitions is abstraction from economic property relations, and therefore from the political and economic aspect of the problem. The researcher interprets economic sovereignty in the political-economic aspect as the property of the people for their own national wealth, based on which their authorised bodies independently regulate the economy and foreign economic activity, primarily in the interests of employees [36]. In our opinion, this position of the scientist needs to be detailed because, defining the bearer of economic sovereignty as the people, by analogy with public and political sovereignty, it is necessary to clarify that we are talking primarily about those who directly exercise their economic rights, i.e. participants relations in the field of management (Article 2 of the Civil Code of Ukraine). We believe that they should be considered the primary carriers of economic sovereignty of the state.

S.G. Vatamanyuk and S.M. Panchishin, studying the above category, come to the conclusion that the most important feature of the category "economic sovereignty" is not independent regulation by the economy, since this feature is secondary or derived from the presence of a sovereign state, nation or people ownership of all national wealth, natural resources, land, etc. Therewith, economic sovereignty is organically associated with such a feature of state sovereignty as the supremacy of the state in its own territory. Thus, economic sovereignty is defined as the ability of the state at the expense of representative bodies to implement the will of the majority in the context of managing the country's economy [37]. This position of researchers can be agreed, however, the term "will of the majority", in our opinion, should be replaced by the term "national interests" or "public interests". Furthermore, economic sovereignty is a manifestation of the ability of public authorities to regulate and organise economic processes in the state in a way that maximises the quality of economic security, and thus creates conditions for balanced development of the state economy and its self-strengthening.

As O.O. Ashurkov rightly notes in this regard, if earlier the sovereignty of any state, as well as the degree of its completeness, did not raise doubts, then in the conditions of current globalisation, the question of the possibility of state sovereignty of an individual country does not just arise, but already comes to the fore, because today's reality largely unfolds against such sovereignty, admittedly, in its essential, and not formal implementation: the presence of formal sovereignty does not guarantee the existence of real sovereignty at all [38].

The researcher uses the categories "economic security" and "economic sovereignty" not identically, but concludes that the first category is only an element of the second. The author notes that the main thing to ensure economic sovereignty is a consistent policy of self-strengthening, the use of all legal means that promote self-strengthening, starting with a clear enshrinement in the Constitution of the economic system and ensuring public order in the economy. Only a state that is strategically aimed at self-empowerment can successfully resist the negative external influences that always exist in the world economy. In other words, the researcher states that economic sovereignty is the ability of a state to withstand the external economic pressure of other states and global integration entities. Although this definition of economic sovereignty is debatable, it is this understanding of this category that is most appropriate in the context of our research.

Furthermore, in the context of ensuring national economic security as a component of ensuring the economic sovereignty of the state, it is important not only the theoretical and methodological justification of the instrumental content of these categories, but also the legal regulation of the relations under study, since the creation of appropriate transparent and effective tools for Legal Regulation, understandable to all participants in these relations, is the key to the effectiveness of the national policy implemented in this area. Therefore, it is relevant and important for Ukraine to analyse foreign experience in this aspect, but not only those states that have a strong system of protecting the national economy and promote aggressive foreign economic policy, but also those countries that have a lot in common with Ukraine in terms of their level and historical development.

As V.Y. Yedynak rightly notes in this regard, "the entire period of formation of the economic system of any country is accompanied by an increase in dependencies in the world economy, which were caused by the processes of internationalisation of production and globalisation, which causes the emergence of new threats to the functioning of the economy of such a country. In fact, the problem of ensuring the economic security of the country arises with the emergence of the state itself, its national interests and awareness of the latter" [39]. In our opinion, this means that each state, as a sovereign, as a bearer of economic power, forms, implements and ensures the functioning of its own system of economic security. This statement fully applies to Ukraine, which, given its own specifics of establishment and development, independently determines the architecture of its own model of economic security. Today in the world there are a large number of models of national economic security (according to the number of countries in the world), each of which has its own purpose, and is characterised by a different set of government mechanisms. At the same time, there are states whose national models of economic security can serve as a guide for Ukraine to solve a purely applied task – to build its own effective, efficient system of economic security, considering the national specifics of the domestic economy. Such borrowing of certain elements of the national systems of economic security of those states that are successful in the economic sense, can not be considered as a component of partial loss of economic sovereignty, because, first, the state must always focus on national economic interests, and secondly, treatment to such a positive experience allows the state to quickly integrate into the general world economic space [40]. We believe that, given the current geopolitical and geoeconomic situation, the experience of building national systems of economic security of those states and institutional entities, which we will consider below, may be most useful for the state of Ukraine.

The American model is characterised by the main emphasis of national policy on ensuring a balanced system of tools and measures to counter internal and external threats. The security system of the domestic economic sector considers the main global threats and risks, the source of which are international economic processes. This model is the most utilitarian and is used by many developed countries.

When studying the US experience in building a system of economic security, we should pay attention to the following key aspects. First of all, the state is focused exclusively on the protection of national interests, i.e. public authorities work in such a way as to maximise the development of national producers, as well as provide maximum methodological, practical, stimulating support to businesses in their foreign economic activity. In this way, the United States carries out economic expansion through its enterprises and TNCs. "The main directions of the US national security policy are presented in the National Security Strategy in three main blocks: the formation of a secure international environment in America, ensuring an adequate response to threats and crises, proper preparedness of American society for unpredictable trends and future phenomena. Virtually every area involves measures to solve problems of economic security" [41]. It should also be noted that most of the mechanisms and tools of public administration actions aimed at ensuring economic security are provided in the United States by separate regulations.

Notably, the long process of finding effective ways to protect national economic interests has allowed creating an effective regulatory framework for economic security. US economic security is considered an integral and most important of the structural components of national security in the National Security Strategy and is implemented in the laws on certain aspects of its provision, in particular:

- General issues of economic security are concentrated in The Economic Security Act of 1996;

– improving the efficiency of national education and science is reflected in the law on education for economic security (The Education for Economic Security Act of 1999);

– issues of tax regulation, priorities of economic development, customs protectionism – in the law on economic security and reproduction (The Economic Security & Recovery Act of 2001);

– issues of the labour market, the fight against unemployment, economic protection of the population – in the Job Creation and Economic Security Act of 2002, etc. [42].

The Japanese model is the main regulatory emphasis is on ensuring the stability of social processes, the development of society and the nation. The economic system of the state is seen as a means of achieving social development goals and therefore requires balanced development and a certain level of isolation from global processes to prevent the export of economic crises and other negative manifestations of the global economic environment.

It should be emphasised that Japan is characterised by a certain isolation of its own society, traditions and its own economy from other economies in the world. Japan, on the other hand, is a clear example of successful globalisation, when Japanese corporations have introduced the practice of so-called "creeping globalisation", which means the penetration of TNCs into all sectors of the international economy without exception. Such secrecy, on the one hand, contributed to the resilience of the Japanese economy during many global financial and economic crises, and on the other – constantly supported the growth of competitive advantages of national corporations in the almost complete absence of non-resident competitors.

Japan's economic security system is based on the following principles:

– preservation and increase of economic potential and economic power of the country;

– maintaining the domestic market of a country with a high level of purchasing power;

– creating conditions for the gradual globalisation of Japanese corporations, which will ensure national interests. This goal is achieved through the country's inflows of surplus profits from Japanese corporations received in global markets or abroad.

The Chinese model is common only in countries that are trying to build a socialist society. The concept of economic security is well known, based on the ideas and provisions of the structural rigidity of the economic system, its manageability, a high level of protection from external challenges and threats. The main condition of economic security is considered resources, capacity, stability, manageability. In fact, China's economic security is a synthesis of Confucian philosophy, reform and openness, the right balance between reform, development and stability [41]. However, China's current national policy in the field of economic security is based on market principles and the principles of free competition. However, this competition is carried out in a way that is not typical for most developed countries of the world, since the Chinese government largely acts as a guarantor for national producers, subsidises and subsidises a large number of sectors of the economy and directly enterprises, which creates additional advantages that are difficult for non – resident business entities to compete with.

Another feature of state regulation of economic security in China is the way to overcome the crisis. Unlike democracies, the Chinese government independently develops crisis management programs and scenarios that define the roles of even businesses, i.e. in China, the state independently manages the process of avoiding and minimising negative factors, rather than regulating it. This imperative way of ensuring economic security has its positive sides, but it is difficult to note its effectiveness in the future due to the spread of globalisation and the gradual intervention in Chinese markets of foreign TNCs. As a separate phenomenon in the context of the development of the notion of economic security, in our opinion, it is necessary to consider the provision of economic security in unions, associations of states, in particular in the EU.

The experience of EU countries shows that ensuring national economic security has the effect of securing a specific place in the global world that would correspond to its geostrategic significance and potential. In the EU, the concept of "economic security" depends on the position of this association in the world economic system. The EU dictates the importance of European integration to achieve a high level of competitiveness in the context of globalisation. According to the EU's strategic approaches to development, each EU member state has much less potential for economic resources than other developed countries, and the synergy effect of resource sharing increases the EU's ability to ensure a high level of economic security and competitiveness. Therewith, the ultimate goal of ensuring economic security in the EU is the formation of a fully integrated Europe with the same standard of living in all member states [43].

Examining the doctrines of most EU countries, it can be emphasised that the main task of security policy in national doctrines is to strengthen the European space of stability through the development of European integration and active EU neighbourhood policy with Eastern Europe, South Caucasus, Central Asia and the Mediterranean. Although here it is impossible not to agree with the opinion of A. Otsepek that each EU country applies its own concept of economic security, which has common provisions and goals with the EU concept [43].

For example, in Germany there is no separate law that would determine the principles of economic security. Ensuring economic security in practice is carried out through laws that regulate the main areas of market activity and give the state significant competence in the field of control. The main interests of the state in the field of national security, including its economic component, are presented in the form of an official directive of the Ministry of Defense. The leading means of ensuring the safe development of the economy in Germany include actions to maintain the civilised nature of market relations, ensuring a level playing field, preventing monopolisation in certain industries and maintaining the stability of the European currency.

In France, conceptual approaches to the model of economic security define it as the prevention of economic threats through the formation of new schemes, adaptations of norms and structures of international security and the creation of a network of cooperation, in particular between public and private sectors and between states [44].

Conceptual approaches to economic security in Spain are considered in the context of addressing this issue in the context of economic security throughout the EU. But, as A.I. Prilepsky rightly notes, the country has a system of ensuring national interests in the economic sphere. The scientist emphasises that its basis is: adaptive legal framework; unambiguous delimitation of the competence of ministries, departments and organisations in the implementation of regulations relating to economic development; the presence at each level of development of a legally approved program of economic priorities, which in theory could make it impossible to distribute targeted privileges; availability of special state control services [44].

For Ukraine, given its real economic potential and place in the system of global economic relations, the experience of such countries as Belgium, the Netherlands, Denmark, Luxembourg is indicative. They are deprived of the opportunity to influence the trends of international economic processes, and therefore must shape domestic security policy in such a way as to be maximally prepared and adapted to external economic threats [45]. The essence of the policy of national economic security in these countries is to form a system of indicators to prevent negative phenomena for the national economy with the development of appropriate scenarios for overcoming or avoiding them.

The conceptual foundations of economic security in Poland, the Csech Republic, Slovakia, and the Baltic States are based on the convergence of national interests with European ones, as well as political, economic, and institutional transformation in accordance with Western European standards. As evidenced by the development of these countries, the study of their economies in scientific papers [46], in the early 1990s, these countries have chosen almost the same model of economic security, which consisted of:

- assessments of the regional geopolitical situation;
- determination of strategy and vector of development;
- formation and implementation of a model of behavior, in particular in the economic sphere, in accordance with the trends of regional and global evolutionary process;
- the ratio of basic quantitative and qualitative indicators of development with global and regional standards;
- adjusting the course of economic reforms.

It should be noted that the successful provision of national economic security by EU countries depends on the stability and strength of their national economies. It is absolutely obvious that only a strong economy allows effectively protecting national economic interests in the context of globalisation and economic crisis. In view of this, the state must not only develop a national concept of security, based on world experience, but above all to reform the domestic and foreign economic policy to protect all economic entities. The protection of economic entities is an element of economic security at the micro level, but the degree of protection of enterprises and organisations in the economic sphere depends on economic security at the meso and macro levels.

Special emphasis should be placed on the fact that economic security in the EU is subject to regulation. The supranational bodies and institutions of the EU independently develop recommendations to the EU member states on taking certain actions aimed at eliminating the shortcomings of economic development or counteracting economic crises.

Although such recommendations are not binding, their utilitarianism and effectiveness are obvious, and most countries use them as elements of a national system of economic security. This does not mean a loss of economic sovereignty, but it is extremely effective from cooperation within the EU, as models and mechanisms for overcoming economic crises and negative trends in economic development are equally effective for all EU member states.

Thus, the experience of EU countries shows that ensuring economic security has a decisive influence on securing for the state a clear place in the global world, which would correspond to its geostrategic significance and potential. That is why today the adaptation of the experience of EU countries in ensuring economic security

should become one of the priorities of Ukraine's foreign policy not only in terms of achieving stability and efficiency of the national economy, but also in terms of long-term national development strategy [42].

The systems of economic security inherent in countries with economies in transition are characterised by the presence of unsystematic fragments of national policy aimed primarily at stabilising economic processes after the independence of the state, changes in the political regime, etc. In our opinion, such a model of economic security is inherent in modern Ukraine, which indicates, rather, the low efficiency of state decision-making in the context of building an effective and efficient system of economic security and weak theoretical, methodological and regulatory support in this area.

CONCLUSIONS

Economic sovereignty is the ability of a state to make full use of a set of conditions and factors, measures and means (primarily legal) that ensure the independence of the national economy, its stability and stability, the ability to constantly renew and self-improvement for further economic development, despite or minimising negative external pressure of other participants in globalisation processes. The content of economic sovereignty is a sequence of policies of economic self-strengthening, the use of legal means and internal economic reserves and potential that contribute to the formation of an economically independent and self-sufficient state.

Economic security of the state is a certain state of the country's economy, which should ensure the ability to counter internal and external threats to the economic system of Ukraine, is the embodiment of the ability of the state to resist external economic pressure from other states, Interstate economic associations, TNCs, powerful market agents-non-residents and independently, independently implement their own economic policy, ensure the ability of national business entities to compete in foreign economic markets, maintain the balance of national economic interests, including legal means, this directly affects the state of economic sovereignty of the state.

The appeal to the national systems of economic sovereignty and economic security of individual countries of the world allowed determining the features of their functioning depending on the type of state economy and legal means to ensure the functioning of such systems, namely: American (characterised by the main emphasis of national policy on ensuring a balanced system and external threats); Japanese (emphasis is placed on ensuring the stability of social processes, the development of the nation); Chinese (corresponds to the socialist guidelines for the development of society); European (on the example of the EU), characterised by differences that are associated with the presence of different potentials of the economies of the EU, which leads to the existence of different approaches to the creation of national systems of economic security); States with economies in transition (including Ukraine) – is characterised by fragmentary national policy in the field of economic security of the state, rather weak theoretical and methodological and regulatory support in this area.

It should be important for Ukraine to understand that it is possible to achieve significant results in protecting the domestic economy only by creating an effective system of means to overcome or minimise existing or too potential threats, especially in the context of globalisation of trade and economic relations, when each state tries to export such threats from its own economic system to a weaker one. Instead, to strengthen its position on the world market, Ukraine must gradually become an important participant in the processes of ensuring international economic security.

Given the above, we can say that today Ukraine must simultaneously counter external economic threats and try to most effectively and quickly realise its own foreign economic ambitions by creating an effective mechanism (system) of legal support for economic sovereignty and economic security.

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Suggested Citation: Tatsii, V.Ya., Bilousov, Ye.M., & Kosinova, D.S. (2021). Economic sovereignty and economic security of Ukraine (interrelation and mutual understanding) in the context of their doctrinal and legal support. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(3), 209-223.

Submitted: 01.06.2021
Revised: 30.07.2021
Accepted: 27.08.2021

УДК 349.2
DOI: 10.37635/jnalsu.28(3).2021.224-237

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ОПТИМІЗАЦІЯ ОПЛАТИ ПРАЦІ В УКРАЇНІ В УМОВАХ ЄВРОПЕЇЗАЦІЇ ЕКОНОМІКИ

Анотація. *В умовах активних законотворчих перспектив трудового законодавства України в аспекті їх євроінтеграції назріли питання розроблення і впровадження в життя ефективних систем оплати праці та їх оптимізації, які мають бути націлені на розв'язання завдань розвитку вітчизняної економіки, забезпечення поєднання економічних і соціальних інтересів і цілей окремих співробітників і керівників підприємств. Це потребує застосування нових підходів організації оплати праці з урахуванням специфіки діяльності підприємств і накопиченого досвіду вітчизняних і зарубіжних компаній, а також науковців у питаннях оплати праці. Значну роль у розв'язанні відповідних питань відіграє встановлення дієвих механізмів у системі оплати праці, які мають забезпечувати соціальну й економічну справедливість у трудових правовідносинах. Це передусім дотримання, охорона й поновлення суб'єктивних прав найманих трудівників щодо оплати праці у разі їх порушення. Якщо більшість окреслених загальних суспільних та економічних проблем вирішити тими чи іншими засобами не має можливості, то сформулювати першочергові суто правові завдання, що стосуються оптимізації правового регулювання оплати праці не лише можливо, а й необхідно. У статті знайшли відображення: 1) міжнародно-правове підґрунтя формування належного рівня оплати праці, 2) зарубіжний досвід формування оптимізованого розміру оплати праці та 3) науково-прикладні підходи до оптимізації оплати праці в українській економіці під впливом євроінтеграційних процесів. Під час написання цієї статті, для комплексного розкриття порушеної проблематики, досягнення об'єктивного наукового результату і сформулювання відповідних висновків, авторами використовувалися загальнонаукові та спеціальні методи пізнання (діалектичний, функціональний, формально-логічний, порівняльно-правовий, герменевтичний, метод компаративістики). У статті зроблено висновки, що існування безлічі внутрішньогалузевих тарифних сіток в Україні на практиці лише ускладнює правозастосування. Якби існувала дійсно Єдина тарифна сітка, яка враховувала б усі професії, їх особливості і специфіку умов праці, не було б потреби для кожної сфери економіки країни розробляти власну тарифну сітку. Наразі склалася ситуація, коли всередині самої ЄТС існує значна кількість інших внутрішніх тарифних сіток у різних сферах і галузях виробництва. Слід ЄТС розробити на підставі Класифікатора професій, оскільки саме він є тим уніфікованим актом, який містить перелік професій, що існує в економічному житті України. Отже, кожній з указаних професій мають бути присвоєні свій тарифний коефіцієнт і відповідний розряд. Зростання рівня заробітної плати повинно залежати від кваліфікації працівника, рівня його освіти, і продуктивності праці*

Ключові слова: *оплата праці, тарифна система, заробітна плата, відплатність, трудові правовідносини, європеїзація*

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SALARY OPTIMISATION IN UKRAINE IN THE CONTEXT OF THE ECONOMY EUROPEANISATION

Abstract. *In the context of active legislative prospects of the labour legislation of Ukraine in the aspect of their European integration, there are issues of developing and implementing effective remuneration systems and optimising them, which should be aimed at solving the problems of developing the Ukrainian economy, ensuring a combination of economic and social interests and goals of individual employees and managers of enterprises. This requires the application of new approaches to the organisation of wages, considering the specifics of enterprises and the experience of domestic and foreign companies, as well as scientists in the field of wages. The establishment of effective mechanisms in the remuneration system, which should ensure social and economic justice in labour relations, plays a significant role in resolving the relevant issues. This is primarily the observance, protection and restoration of the subjective rights of employees to pay in case of violation. If most of the outlined general social and economic problems cannot be solved by one means or another, it is not only possible but also necessary to formulate priority purely legal tasks related to the optimisation of legal regulation of wages. The article reflects: 1) the international legal basis for the establishment of an appropriate level of wages, 2) foreign experience in the establishment of optimised wages and 3) scientific and applied approaches to optimising wages in the Ukrainian economy under the influence of European integration processes. During the writing of this article, for a comprehensive disclosure of the issues, to achieve an objective scientific result and formulate appropriate conclusions, the authors used general and special methods of cognition (dialectical, functional, Aristotelian, comparative legal, hermeneutic, method of comparison). The article concludes that the existence of many intra-industry tariff grids in Ukraine in practice only complicates law enforcement. If there really was a Unified Tariff Grid, which would consider all professions, their features and the specifics of working conditions, there would be no need for each sector of the economy to develop its own tariff grid. Currently, there is a situation when within the UTS itself there is a significant number of other internal tariff grids in various areas and industries. The UTS should be developed based on the Dictionary of Occupational Titles, as it is the unified act that contains a list of professions that exist in the economic life of Ukraine. Therefore, each of these professions must be assigned its own tariff coefficient and the corresponding category. Wage growth should depend on the employee's qualifications, level of education, and productivity*

Keywords: *wages, tariff system, wages, retribution, labour relations, Europeanisation*

INTRODUCTION

In the context of European integration transformations in Ukraine, labour remains the main source of income for the population, and therefore the issues of wages are important for the paradigm of post-industrial development of all economic systems. Unfortunately, the state currently has a policy of low wages, which has an adverse impact on productivity growth. As a result, wages almost do not fulfill their key function – the reproduction of the energy expended by human resources and the motivation of workers to work productively. The low level of wages compared to the cost of the consumer budget required for the normal reproduction of

the worker's labour force is a limiting factor in increasing the purchasing power of the population, and hence the progressive growth of the economy. In this regard, without correcting the institutional environment – formal and informal norms, public ideas about the normal level of market price for labour – stable labour relations between the employee and the employer are impossible, and hence the achievement of high socio-economic results of state development, which, in turn, significantly slows down the process of interest of European partners in the Ukrainian economic space.

The effective operation of modern enterprises is largely determined by the performance of their employees and an effective system of remuneration, which must meet the strategic goals of these enterprises, create a reliable assessment of the contribution of individual employees and units in achieving high results, create conditions for staff tasks, to form loyalty and to be perceived by all employees as fair. Thus, as of today, in terms of active legislative prospects of labour legislation of Ukraine in terms of their European integration, the issues of development and implementation of effective remuneration systems and their optimisation are ripe, which should be aimed at solving problems of domestic economy, ensuring a combination of economic and social interests and goals of individual employees and managers. This requires the application of new approaches to the organisation of wages, considering the specifics of enterprises and the experience of domestic and foreign companies, as well as scientists in the field of wages.

The scientific and theoretical basis of this study were the works of such Ukrainian and Belarusian researchers in the branch of labour law as Yu. M. Burniahina [1], N.M. Vapniarchuk [2], O.Ye. Lutsenko [3; 4], O.V. Moskalenko [5; 6], K.L. Tomashevskyi [7], O.M. Yaroshenko [8-10] and others. Ukrainian and Belarusian scholars have revealed only some aspects of wages, but no attention has been paid to reformatting the wage system. To deeply understand the possible ways to modernise the wage system in Ukraine under the influence of European transformations, the authors in writing this article turned to the scientific work of foreign scientists – M. Camarero, G. D'adamo, C. Tamarit, G. Bosch, K. Goraus-Tan´ska, P. Lewandowski, J. Gautié.

Ukraine has practically created a legal framework for regulating wages in accordance with international labour standards. At the same time, the mechanisms of its state and collective bargaining regulation do not yet work in full. In addition, their functioning is negatively affected by the imperfection of the reform of the monetary and tax system, a clear lag in the establishment of new economic entities, in the creation of a full-fledged system of social partnership etc.

At present, one can observe a fairly broad liberalisation of labour relations, including the issue of establishing a system and the amount of wages. The development of the Ukrainian economy is directly related to the level of wages received by workers and which it affects. The more a person earns, the more needs of different personal nature he can meet. In this regard, there is a need not only for centralised regulation of wages, but also to establish differentiated approaches to determining the latter for certain categories of workers or for all employees of the enterprise, institution or organisation. This creates the need for a doctrinal justification of the strategy of reforming wages in labour relations, in the economic system and society in general.

The establishment of effective mechanisms in the remuneration system, which should ensure social and economic justice in labour relations, plays a significant role in resolving the relevant issues. This is primarily the observance, protection and restoration of the subjective rights of employees to pay in case of violation. If most of the outlined general social and economic problems cannot be solved by one means or another, it is not only possible but also necessary to formulate priority purely legal tasks related to the optimisation of legal regulation of wages.

1. MATERIALS AND METHODS

The impetus for writing this article was a substantial deterioration in the level of wages in Ukraine in recent years. Moreover, during the pandemic the situation became extremely complicated. This is confirmed by a sociological survey conducted by the Razumkov Centre's sociological service from May 21 to 26, 2021, which showed that over the past year, 54% of the economically active population's wages have not changed, 37% have decreased, and only 3% – increased. The reduction of wages is more often indicated by employees of the private sector than the public (respectively 40% and 26%), noting that it has not changed - respectively 52% and 67%, and that it has increased – respectively 3% and 4% [11].

Thus, the authors of the article aimed to explore the international legal basis for the establishment of an appropriate level of wages, to study foreign experience in the establishment of optimised wages and to develop scientific and applied approaches to optimising wages in the Ukrainian economy under the influence of European integration processes. To do this, the authors used a number of scientific papers by both Ukrainian and foreign scientists, international instruments and best practices of economically developed countries in matters of wages.

During the writing of this article, for a comprehensive disclosure of the issues, to achieve an objective scientific result and to formulate appropriate conclusions, the authors used general and special methods of cognition. The scientific research is based on the dialectical method, which contributed to the comprehensive study of wage optimisation processes in the context of European integration changes in labour legislation in their relationship and interdependence, which revealed the current state of the subject. The functional method was useful in clarifying intra-system, inter-system and external system connections in the construction of the wage system. The Aristotelian method was chosen in the process of critical analysis of the legislation in matters related to the legal regulation of wage formation, which helped to develop proposals for improving labour legislation. The method of comparative studies is used to analyse foreign experience in the legal regulation of remuneration systems.

First of all, the authors used the method of comparative law and hermeneutics to understand the content of wages in international instruments and foreign experience. In particular, the content of the Concept of development of legal bases and mechanisms of functioning of the welfare state in the Commonwealth and the essence of the category "wages", which in world practice is consistent with the key principle of labour relations – remuneration. This means that all employees are entitled to a fair remuneration that will ensure their adequate standard of living. Apart from the obligation of the employer to pay for the results of the employee's work, there are also other obligations of material content. They relate to costs that are mainly aimed at the protection of labour and health of the employee or to ensure a minimum standard of living, including downtime, i.e., suspension of work caused by lack of organisational or technical conditions necessary to perform the latter, inevitable force or other circumstances (force majeure, etc.).

During the establishment of scientific and applied approaches to the optimisation of wages in the Ukrainian economy under the influence of European integration processes, the authors used the laws of dialectics, applied Aristotelian and functional methods of scientific research. Based on these methods, the authors were able to identify effective approaches to improving the legal regulation of wages in Ukrainian enterprises. Furthermore, the authors concluded that the system of calculating super-tariff elements of salaries of state employees (allowances, surcharges, and bonuses of a stimulating and compensating nature) requires further improvement towards developing progressive motivational systems with particular understandable indicators and methods, their calculation and accrual, which will not depend on the changing mood of the management of the enterprise, institution, or organisation.

2. RESULTS AND DISCUSSION

2.1. International legal basis for the establishment of an appropriate level of remuneration

The key principle of the social state, around which the entire system of social and economic rights is built, is the provision formulated in Part 1, Article 25 of the Universal Declaration of Human Rights [12]: "Everyone shall have the right to such a standard of living, including food, clothing, housing, medical care and necessary social services, as is necessary to maintain the health and well-being of themselves and their family, and the right to security in the event of unemployment, illness, disability, widowhood, old age or other loss of livelihood due to circumstances beyond their control". This principle is developed in Part 1 of Article 11 of the International Covenant on Economic, Social, and Cultural Rights [13], ratified by the decree of the Presidium of the Supreme Soviet of the Ukrainian SSR on October 19, 1973 [14]: member states hereunder not only recognise the right of everyone to an adequate standard of living for them and their family (including adequate food, clothing, and housing) and to a steady improvement in living conditions, but also undertake to take appropriate measures to ensure the exercise of this right, while recognising the importance of international cooperation based on free consent. These provisions were further developed in the European Social Charter (revised) (1996) [15], ratified by the Law of Ukraine of September 14, 2006 [16], according to which the Member States of the Council of Europe agreed to ensure the social rights mentioned in these documents to improve the standard of living and social well-being of their population.

The welfare state is characterised by a constant dialogue with man in the fields of politics, economics and culture. The basis of material security of each citizen is the innovative development of information technology, which arose as a result of scientific and technological progress and serve as a means of further development of the latter. Innovative development enriches the consciousness of the population, its social and political interests, requirements, which contributes to changing the functioning of state institutions in various fields.

However, it is not necessary to idealise the welfare state, but we must first consider that the implementation of the above is associated with certain negative aspects, namely: a) the possibility of replacing temporary measures of radical solutions to certain social problems; b) in an attempt by the State only to mitigate the social consequences of its own failed or unpopular reforms; c) with excessive public spending on the social sphere,

which can lead to crises in the economy; d) with the presence of possible excessive social claims of the population, which may weaken the implementation of the principle of citizens' own responsibility; e) with the acquisition by the self-proclaimed state of new social, sophisticated, perfect forms of control over society, which strengthens the role of state power in people's lives; e) with the economic dependence of the citizen on the state, which paralyses and disorganises the social process [17].

The concept of formation of legal bases and mechanisms of functioning of the welfare state in the Commonwealth, adopted by the Interparliamentary Assembly of the CIS member states on May 31, 2007, interprets the welfare state as legal and democratic, which proclaims man the highest value and creates conditions and self-realisation of creative (labour) potential as a person [18]. This international legal document calls the criteria for assessing the degree of sociality of a democratic state governed by the rule of law:

- observance of human rights and freedoms;
- conducting an active and strong social policy;
- ensuring decent living standards for most citizens;
- targeted support for the most vulnerable segments and groups of the population, reduction and further eradication of poverty;
- guarantees of creation of favourable conditions for real involvement of citizens in development and social examination of decisions at all levels of the power and management;
- observance of the rights and guarantees that recognise and develop the system of social partnership as the main mechanism for achieving public consent and balance of interests of the employee and the employer in the regulatory role of the state;
- guarantees under which any business entity or owner must bear specific social responsibility;
- social justice and social solidarity of society, ensured through the development of shareholder ownership of employees, as well as through tax redistribution of income from rich to poor and a greater workload of the most able-bodied members of society to help the less able;
- gender equality of men and women;
- involvement of all citizens in the management of state and public affairs, employees - in the management of production, the development of social partnership;
- observance of rights and guarantees aimed at strengthening the family, the spiritual, cultural and moral development of citizens, especially young people, their careful attitude to the heritage and succession of generations, the preservation of the identity of national and historical traditions [19].

According to Article 1 of the ILO Protection of Wages Convention No. 95 [20], ratified by Ukraine on August 4, 1961 [21], the term “wages”, whatever the name and method of calculating the latter, means any remuneration, earnings, established by agreement or national law, which may be calculated in money which the employer must pay to the worker for work already performed or to be performed, or the same for services that have already been provided or should be provided. This definition corresponds to the definition of “salary”, provided in Part 1, Article 94 of the Labour Code of Ukraine [22] and in Part 1, Article 1 of the Law of Ukraine “On Remuneration of Labour”[23]: it is a remuneration, calculated, as a rule, in monetary terms, which the owner or his authorised body (employer) pays to the employee for the work performed by him. The Constitutional Court of Ukraine has concluded that the terms “wages” and “remuneration”, which are governed by the laws governing employment, are equivalent in terms of the parties who are in employment, the rights and obligations to pay, the conditions of their implementation and the consequences to be incurred in the event of failure to fulfill these obligations.

The content of the category “wages” is consistent with one of the principles of labour relations, such as remuneration, which is reflected in Paragraph 4, Part 1 of the European Social Charter (revised) of May 3, 1996 [24], ratified by the Law of Ukraine No. 137-V of September 14, 2006 [16], according to which all employees are entitled to a fair remuneration that will ensure their adequate standard of living. Apart from the obligation of the employer to pay for the results of the employee's work, there are also other obligations of material content. They relate to costs that are mainly aimed at the protection of labour and health of the worker (employee) or to ensure a minimum standard of living, including in the event of downtime, i.e., suspension of work caused by lack of organisational or technical conditions necessary to perform the latter, by inevitable force or other circumstances (force majeure, etc.). These obligations comply with the minimum state guarantees established in Article 12 of the Law of Ukraine “On Remuneration of Labour” [23], in particular, regarding the payment of downtime, which took place through no fault of the employee.

2.2. Scientific and applied approaches to the optimisation of wages in the Ukrainian economy under the influence of European integration processes

In today's European integration environment, when developing a strategy and policy of remuneration in

enterprises should consider 3 main criteria, which (a) must be internally fair (employees must be paid in proportion to the relative value of their work), (b) competitive (employee wages must correspond to the market price of the position), and (c) create personal interest in employees. The fourth goal, which in practice often remains hidden from line managers, is to facilitate wage management. However, at the same time the implementation of the first 2 criteria is often impossible, as a result of which the organisation has to sacrifice something for the sake of another; achieving the third goal means a high degree of individualisation, which complicates the implementation of the fourth goal [25].

In modern conditions, the system of remuneration at industrial enterprises of Ukraine is of great socio-economic importance. To ensure its flexibility, it is advisable to apply an appropriate approach, which is to develop a strategy for forming such a system, i.e., the direction of certain actions aimed at achieving the goals of the latter to provide staff, its preservation and motivation to work in accordance with strategic objectives and resources. The correct choice of strategy for the establishment of the remuneration system is the basis of its effective functioning [26].

Effective approaches to improving the legal regulation of wages at Ukrainian enterprises can now be seen:

1) coordination of the process of establishment of the remuneration fund with the general goals of enterprise development, its corporate and personnel strategies. This approach, in particular, provides for the establishment of a balanced system of indicators as well as the introduction of a rating system of jobs based on their value to the company [27];

2) optimisation of the structure of the wage fund. As you know, the payroll is structurally composed of such components as (a) the basic salary (remuneration for the work of the employee, calculated in accordance with certain labour standards), (b) additional wages (remuneration for work in excess of certain norms, for special working conditions or achievements in employment), (c) other incentive and compensation payments. The shares of each of these elements in the general fund of remuneration vary depending on the industry and the specifics of a particular enterprise. However, according to O.S. Litvinova and O.O. Sukach, in general, the Ukrainian economy contains a violation of the rational structure of this fund, which leads to a decrease in the labour interest and motivation of employees. Based on the study of foreign experience, scientists consider the share of basic wages optimal at the level of 80-85%, which will provide a stimulating value [28];

3) the use of flexible forms of remuneration and their differentiation depending on the category of personnel of the enterprise. These forms will contribute to a differentiated approach to the establishment of wages of employees in accordance with the level of their labour efforts, characteristics, qualifications, as well as individual labour results, which will ensure the implementation of the incentive function of wages. At the same time, it is advisable to establish different forms and systems of remuneration for different categories of staff, considering the specific features of their work [29]. In the scientific economic literature, it is argued that the strengthening of income differentiation of the population in Ukraine is primarily associated with different opportunities for assigning income from labour, property, capital, and entrepreneurial activities, which are distributed among the owners of production in the form of wages, rent, interest, and profit. Ukraine has not created conditions for equal access of broad sections of the working population to these factors, which prevents the real opportunity for every citizen to fully realise their economic and social functions [30].

4) ensuring clarity, clarity and transparency of payroll mechanisms. Establishing clearly defined and transparent criteria for calculating wages can solve 2 problems at once. On the one hand, the presence of determined and consolidated criteria in the Regulation on Remuneration of Labour will contribute to the unification of the current approaches to calculating wages, reduce the labour intensity of the relevant process, and on the other hand, employees, clearly understanding the process of forming their earnings, will be focused on achieving the appropriate criteria, which will stimulate the growth of productivity and quality of their labour. We can talk about the dual role of the state in the legal regulation of labour relations on wages. First, the state actually undertakes to establish state guarantees for the rights of workers and employers, to control and supervise their implementation, to ensure the right of everyone to protection of his rights and freedoms, including in court. Secondly, in modern conditions the state in the person of certain state bodies actually acts as a participant of social partnership. The result of its implementation of the functions of a participant in such a partnership is the adoption of collective decisions agreed by the social partners. Thus, the state acts in 2 interrelated guises – as a legislator and as a participant in social partnership. Given this, its role in streamlining labour relations, including wages, is unique and has no analogues in any field of law [31];

5) introduction of an effective mechanism for assessing the characteristics of employees and their labour contribution. The use of the incentive function of wages is not only to ensure the growth of productivity of the latter, but also in their motivation to improve their skills. That is why a periodic staff appraisal system, the results of which will affect the level of remuneration, will encourage workers to support and improve their skills to increase potential earnings. The authors of the present study believe that when performing a

comprehensive assessment, it is advisable to factor in the indicators of labour performance, behaviour (compliance with discipline and corporate culture, relationships with colleagues, subordinates, and managers, etc.), as well as the qualification achievements of the employee (category, qualification level, higher education, mastery of a foreign language, etc.). It is clear that an adequate system of such assessment to ensure its objectivity involves the definition of relevant criteria for each category of workers.

The importance of the mechanism of formation of the wage fund in terms of efficiency of any enterprise is quite difficult to overestimate, so the development of effective measures to improve it is an important lever to ensure the stability and competitiveness of the business entity. A comprehensive approach to the implementation of the proposed measures will increase the efficiency of both the establishment of the payroll and the activities of the organisation as a whole [32].

Currently in Ukraine there are 2 parallel systems of remuneration of public sector employees: one is based on the actions of the Unified Tariff Grid; the second is regulated by regulations that can be attributed to special legislation governing the remuneration of certain categories of workers, namely: civil servants, judges, law enforcement officers, prosecutors, etc.

None of the current systems of remuneration of public sector employees is effective, and therefore there is an objective need to improve the system of their wages. The main task of the state in this direction is to steadily increase the salaries of state employees, considering inflation, as well as the adoption of such regulations, which should contain effective measures to improve the financial situation of these workers. The income policy of the latter should be aimed at reviving key industries for development (science, education, state-building, health care, industry, high technology, etc.), i.e., those that today, during the 3rd industrial revolution, have become a reliable foundation of economic growth worldwide. Let us further define other tasks that are no less important for the state.

The authors of this study believe that special attention should be paid to the problem of establishing the optimal range of the tariff grid. After all, for the construction of the system of remuneration of state employees, depending on their qualifications, the range of the tariff grid is extremely important. This is explained by the fact that the division of the levels of tariff coefficients, and hence the rates of workers of intermediate levels of qualification, depends on the accepted range. The question of the UTS range is closely related to 2 factors – the difference in the complexity of work (the degree that objectively determines this range) and the size of the rate of the first category: the higher this size (other things being equal), the more reasons to narrow this range. The principle of grid compression is positive in terms of mitigating contradictions in the remuneration of state employees in the event of a financial deficit. Due to the re-tariffing of employees by category and the introduction of over-tariff surcharges in the structure of the latter, an increase in the minimum wage is achieved, and on this basis – the rates of wages by category.

This is how the advantages are created for raising the wage rates of the main contingent of public sector workers, i.e., for those who will be charged at medium and higher levels. Unjustified convergence in the salaries of persons who perform simple and complex work, which arose as a result of a long-term policy of raising the minimum wage, is automatically eliminated. The system of calculating super-tariff elements of salaries of state employees (allowances, surcharges, and bonuses of a stimulating and compensating nature) requires further improvement towards developing progressive motivational systems with particular understandable indicators and methods, their calculation and accrual, which will not depend on the changing mood of the management of the enterprise, institution, or organisation.

The authors of this study believe that the current Unified Tariff System should be radically changed, as it lacks the appropriate logic and consistency. And the worst thing is that it is not aimed at ensuring fair remuneration of workers for the performance of a particular job. First, the very structure of the Scheme of tariff categories of positions is unclear, as it is based on certain areas of the economy, within which the ranges of categories for UTS (in particular, education, science, health, social protection, theaters, concert organisations), followed by specific enterprises, institutions and organisations, namely: the National Television Company of Ukraine, the National Radio Company of Ukraine, the Parliamentary TV Channel Rada, the State Television and Radio Company World Service Ukrainian Television and Radio Broadcasting, the National Agency for Quality Assurance in Higher Education, Educational Ombudsman and the Education Ombudsman Service, State Institutions "All-Ukrainian Youth Center" and "Ukrainian Institute for Educational Development", UTS.

This approach is unclear, because if we take as a basis the direction of economic activity, the development of the UTS should be guided by the Classification of Economic Activities. If you develop for each individual enterprise, institution or organisation separately UTS, it should be done at the local level. However, from our point of view, the UTS should be developed exclusively at the state level, and at the local level an approach should be developed to adjust the salaries of employees, considering labour intensity, special ranks, awards, achievements and other characteristics that may serve good reasons for accrual and payment of allowances and surcharges.

Second, the qualifications assigned to many professions are illogical and unfounded. For example, according to the current UTS, the head of the office and the head of the farm have 5-8 grades, while the head (director) of an out-of-school educational institution has 12-16 grades, although according to the Dictionary of Occupational Titles these positions belong to one group. So why is there such a striking difference in the range of qualifying ranks? Here is another example: in the Scheme of tariff categories of jobs (professions) common to all budgetary institutions, establishments and organisations, it is very difficult to understand the logic of assigning categories. In particular, those employees who perform simple unskilled work are assigned the 1st or 2nd tariff category. At the same time, employees who perform skilled (complex) work are assigned the 2nd-5th tariff category. So how can the 2nd category be intermediate? After all, different in complexity work logically cannot have the same category. The same applies to low-skilled and highly skilled workers, because there is an intermediate 3rd category. The whole UTS is completely imbued with such controversial and illogical ordering.

We propose to develop the UTS based on the Dictionary of Occupational Titles, as it is the unified act that contains a list of occupations that exist in the economic life of Ukraine. Therefore, each of these professions must be assigned its own tariff coefficient and the corresponding category.

Currently, according to the current ETS, the calculation of salaries (tariff rates, wage rates) is based on the size of the salary (tariff rate) of the employee of the 1st tariff category, set at the subsistence level (i.e., 2102 UAH) for able-bodied persons on January 1, 2020. Thus, if calculated in this way, only workers whose professions correspond to the 13th category (out of 25) have a minimum wage. This category has a tariff coefficient of 2.27, respectively, the official salary (tariff rate) is 4772 UAH, while the minimum wage on January 1, 2020 is 4723 UAH. In other words, until the 12th category, all employees do not receive even the minimum wage for their salaries (tariff rates). The Cabinet of Ministers of Ukraine has imposed on employers the obligation, so to speak, to keep all these salaries up to the level of the minimum wage. But if the size of the 1st tariff category had been calculated and established at the legislative level economically, such a situation, admittedly, would not have arisen. Moreover, this is the state of affairs that provokes employers to commit a number of violations: the issuance of salaries in "envelopes", tax evasion, non-registration of employees under an employment contract, and others. The analysis of the provisions of the UTS showed that the 12th category contrains many managers, professional doctors and representatives of other professions, who do not receive even the minimum wage (salary rate), and employers have to correct this situation at their own expense.

2.3. Foreign approaches to the formation of optimised wages

Countries with a long history and a developed market economy have extensive experience in operating a variety of pay systems. They have distinctive features, in particular: a) there is a joint and several salary in Sweden; b) in Japan – payment for seniority; c) in Germany, stimulating productivity growth; d) in the USA – payment for qualification; e) in the United Kingdom, payment under individual contracts; (e) in France – individualisation of wages; g) in Italy, the payment of individual and collective allowances to the sectoral tariff rate and the increase in the cost of living. At the same time, there is a general focus of wage systems on improving production efficiency. However, in all cases, labour standards are set directly at enterprises. The latter receive practical assistance in this regard from non-profit and private counselling centers and associations, which are professionally engaged in labour rationing issues and provide appropriate software using modern computer technology. In a number of foreign countries, labour law establishes: a) rules for the payment of holidays and vacations, downtime, marriage and other guarantees and compensatory payments; b) the procedure and frequency of salary payments, ways to protect workers' earnings from excessive deductions; c) indexation of wages, etc. Many of their enterprises (organisations) use hourly wages to improve the quality of products, rather than its volume [33].

Over the past 15 years, real wage trends across the Eurozone countries have been very diverse, reflecting differences in aggregate unit labour costs [34, p. 25]. The mechanism of state regulation of wages in the EU is based on the ratio of such components as: (a) the minimum wage, the limits of its growth during inflation, (b) tax policy (government regulation), (c) the general procedure for income indexation, (d) forms and systems of remuneration (in particular, collective bargaining at the sectoral level), (e) the rates of tariff rates, salaries, surcharges and allowances (collective agreements), (e) the average wage (labour market) [35]. Of the 28 European Union member states, 22 had minimum wages established at the national level, for example, in Bulgaria, the Czech Republic, Croatia, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, and Slovenia. We focus on this group of countries in our paper. The other EU countries had minimum wages established at the sector (Austria, Denmark, Finland, Italy) or occupation (Cyprus) level, usually as a result of collective bargaining [36, p. 297].

In France and the Netherlands, collective agreements fix minimum wage levels at the industry level, which are then usually extended by the government to uncovered workers throughout the industry. These

agreements not only set a minimum pay floor but also establish a complete pay scale with different rates for different types of jobs and employee characteristics (mainly skills and seniority) and, in many cases, additional industry specific premiums and bonuses as well as some fringe benefits. In Germany, in a small number of industries such as construction, cleaning and postal services, the government declares the minimum wage set in the industry collective agreement as binding within the industry but generally does not extend other terms of the agreement. In Denmark, the social partners agree on a national minimum wage floor, which is enforced by unions and employers. Finally, the United Kingdom, the United States, France, and the Netherlands have a legislated national minimum wage rates (NMW in the following), often called "statutory" or "legal" minimum wages.12 In France and the Netherlands, if the minimum pay rate set by the industry collective agreement is lower than the NMW, the latter must apply [37].

Three characteristics of a NMW play key roles in shaping the wage distribution: its coverage, its level, and its implementation. One may define the legal (or "formal") "inclusiveness" of a NMW by the extent of its legal coverage. This coverage does not differ much across the four countries in this study with a NMW, since almost all industries and firms are covered. But there are also some special rates for young workers that constitute legal "exit options" (i.e. legal ways to avoid and/or circumvent stricter regulations). In the Netherlands, these youth rates are very low and, in that sense, the NMW in that country is less "inclusive" than it is in France, the UK and the US [38, p. 313-317].

As we can see, the countries of the European Union have abandoned administrative and centralised planning mechanisms and methods of wage setting, which has opened a wide way for social dialogue. Wage issues in them are usually resolved through collective bargaining or individually at the enterprise level. At the enterprises of the EU countries today we observe a tendency to individual wage setting, which is reduced to the following, such as: a) determination of a certain amount of the minimum annual salary for each employee, considering all remuneration; b) unequal wage increases within the proposed increase in its total fund; c) refusal to index wages due to rising prices; d) considering the merits of employees and not their seniority in determining personal allowances; e) regulation of the procedure for considering these merits.

The experience of Japan in economic stimulation of labour, investigated by V.V. Baranov, deserves special attention. One of the factors of successful development of the Japanese economy is an effective system of such incentives. It integrates properly thought-out and consistently used forms and methods of increasing the labour activity of staff (especially in large enterprises), which by their nature are divided into 2 closely related groups of economic and psychological incentives. In the framework of this scientific work we will consider in more detail the group of economic incentives. As you know, the main economic incentive to increase the labour activity of workers is wages. Apart from the basic salary, employees receive cash bonuses twice a year (summer and winter), the amount of which depends on the company's performance. An effective incentive to increase such activity of employees is to provide them with material assistance in the form of various one-time payments – for housing, some utilities, food, clothing, transport, cultural and medical expenses. These payments are one-time and are provided only in exceptional cases as a kind of charitable assistance.

Along with the in-house system of severance pay in this country, there are a number of national types of social insurance, which must cover all enterprises, even with the number of staff of 5 people. This is a comprehensive national social insurance system, which includes both social insurance and pensions. Unlike in-house severance pay systems, all types of insurance are paid. Insurance funds are formed at the expense of mandatory monthly contributions of the directly insured, as well as enterprises and the state [39, p. 141-144].

The pay system in Japan is based on lifelong employment, rotation, reputation and training of the employee in the workplace. It is these factors that directly affect the formation of the Japanese wage system, making it a powerful factor in the country's economic growth. This system of remuneration in the country began to develop companies selling Japanese electrical goods. Its specific feature was the distribution of the basic and additional part of the salary, which was in the proportion of 80% + 20%, and the increase in remuneration for qualifications and work results was carried out only under the condition of on-the-job training. These and other concepts of remuneration have served as a prototype for the incentive models used in Japanese enterprises today. The formation of total earnings in Japan can be influenced by 6 main factors: a) age, experience, education (this is the type of wages that exist in metallurgy); b) position, profession, responsibilities; c) working conditions; d) results of work; e) assistance for family, housing, transport; f) regional aid (considering the specifics of the region where the enterprise is located).

Currently, 85% of businesses in Japan pay family benefits. In the banking sector, the level of assistance is the highest – 37 thousand yen per dependent. Transport benefits are paid by 90% of enterprises (travel to and from work by bus, train, etc.). At the same time, employers in Japan adhere to the regime of wage savings. If, for example, they believe that the work is not so far from the place of residence, transport assistance is not paid. Once a year (April 1), the wages of workers in all Japanese companies traditionally increase. This is at

the request of trade unions and by mutual agreement with employers in accordance with the principles of social partnership of tripartism.

With all the variety of Japanese models of remuneration, it is possible, from the point of view of some scholars, to identify 5 main common features [40, p. 179-197].

1. The first is the dependence of remuneration on the length of service and age of the employee – a system of payment for years of service. This system is an effective method of control, in which pay and promotion are proportional to the age of the employee and the number of years of continuous service. The expectation of promotion, which in the future depends on seniority, helps to consolidate the employee in the company and expand the use of the labour market within the organisation. The category "lifelong employment" does not mean the conclusion of an agreement on lifelong employment. In reality, there are no enterprises where remuneration is determined only by age and number of years of continuous service, as remuneration is only partly determined by age and number of years of continuous service, and partly by a person's ability to perform official duties. However, it should be borne in mind that in favor of the promotion of a person in proportion to age and number of years of continuous service is also evidenced by the fact that his qualifications increase in proportion to age and number of years of the latter.

Assessment of the employee's ability to perform their duties is carried out not only by the complexity of the work performed by him and the degree of its performance, but also by hidden abilities, considering the disclosure of which in another assessment creates a strong incentive for their development. Assessment of a person's ability to perform to perform the duties assigned to him – the prerogative of the management of the enterprise. The system of payment for years of service itself stimulates competition between employees.

The system in question is characterised by 3 important elements in determining the amount of wages: (a) concern for the cost of living, (b) encouraging him to increase productivity and (c) stimulating the development of their own abilities. There are very few piece-rate workers in Japanese enterprises; there is no such method of inducing work as a threat of dismissal by the boss. As you can see, it is believed that employees of Japanese companies have a strong incentive to work, because the existing system of remuneration for years of service actively encourages them to professional growth, and the assessment of their ability to perform their duties is carried out by management.

The effectiveness of the system of payment for years of service also lies in the fact that it significantly contributes to the creation of an environment of cooperation and mutual assistance, as well as that it establishes a direct link between labour and wages and forms a flexible attitude of workers to relocation. Thus, the dependence of wages in this country on age and length of service should not be taken literally. The Japanese constantly emphasise that this is just an outer shell, which is deceptive. In reality, the salary increases not for the length of service and age of the person, but for his work skills and professionalism, which, admittedly, increase with increasing length of service. If such growth does not affect the increase in productivity and skills of the employee, the amount of remuneration in this case (which is extremely rare) does not increase.

2. The second feature of the Japanese system of remuneration of workers is the dependence of the latter on the so-called peaks of life. This clearly indicates the real concern of the state for a particular person. The employee feels and knows that in difficult life situations he is not alone, that the company will help him financially. Living in such conditions is much calmer and more reliable, and therefore the appropriate attitude of the employee to the enterprise is formed and his self-sacrifice is formed. Thus, the Japanese economy can be described as socially oriented.

3. Apart from seniority and qualifications, an increasing influence on the growth (or decrease) of wages has an indicator of the actual labour contribution of the employee, i.e., an indicator of the actual results of their work. This is the third feature of the wage system in Japan. The mechanism of this relationship at different enterprises of the state is different. For example, there are certain gradations in groups of workers – for "white" and "blue collar". In other words, under equal conditions (experience, education, position, etc.) employees who are in the same group, depending on the actual results of work are attributed to different grades for pay. As of today, in Japan, wages are more than 60% of total wages, and this trend is growing.

There is a certain variant of interrelation of payment of work of workers with actual results of their work. According to the results of the latter and, accordingly, the level of payment, all employees are divided into 5 ranks. Notably, this classification is mobile. Each employee of the company is faced with the task set by him and his immediate supervisor. After 6 months, based on the results of her work, the employee independently assesses to which salary rank he belongs. If he completed the task by 120% – to a special rank (highest) – "5", if 100% – "4", 80% – "3"; 60% – "2" and 40% – "1". If the estimates of the employee and his manager coincide, this rank is assigned to the person for the next 6 months. If the assessments are different, an interview is conducted, the parties present their arguments for their assessment and find a common solution.

4. Dependence of managers' salaries on the results of the enterprise is the fourth feature of the Japanese remuneration system. All workplaces use a system of so-called floating salaries. For example, the basic rates of the plant director, shop managers, other managers vary depending on the dynamics of the cost of production, the volume and range of production and other indicators for which a manager is responsible. By the way, the head of the shop has a salary of 700 thousand yen. If his shop has reduced the cost of production by 10%, the salary will automatically increase by the same 10%, etc. These conditions are determined by the provisions on remuneration at a particular enterprise. By the way, the President of the Japan Center for Productivity of Socio-Economic Development, who previously headed a large oil company, gave the following example. Once the company was in crisis, and he was forced to convene all managers to discuss with them the size of the reduction of their salaries and bonuses (these measures in Japan are a priority and mandatory for every company). As a result, the head of the company reduced his salary by 20%, senior managers – by 15%, middle – by 5-10%. And this was done voluntarily, based on a survey of each leader. At the same time, earnings for all workers were increased by 30%. Due to this adjustment of the salaries of managers and employees in one or two months, this company was rehabilitated, and no staff reductions were made. In Japanese companies, they prefer to transfer problems better to managers than to workers.

5. The fifth feature of the wage system in Japan is the presence of one of the world's lowest wage differentials (it is lower only in Sweden – 1:3). This means that the lowest-skilled worker receives only three times less than the highest-skilled worker. In this country, a locksmith, salesman, engineer, doctor receive 4-5 times less than the president of the company, as an example, in the company "Nissan", where the CEO receives 5 times more than an employee of the lowest qualification [40, p. 182].

So, is it good or bad? Is it possible to use this experience in Ukraine? From our point of view, this is one of the 5 named features of incentives for Japanese workers, namely low differentiation in wages, is unacceptable for Ukraine. So far, this feature (which is this paradox) is inherent in the economy of highly developed countries. If you use this ratio (1:3), Ukrainian companies will have significant problems with highly qualified workers, engineers, directors. As for the 10% of the richest Japanese, their income is only 2.8 times higher than the income of 10% of the poorest [40, p. 197].

CONCLUSIONS

The existence of many intra-industry tariff grids in Ukraine in practice only complicates law enforcement. If there really was a Unified Tariff Grid, which would consider all professions, their features and the specifics of working conditions, there would be no need for each sector of the economy to develop its own tariff grid. Currently, there is a situation when within the UTS itself there is a significant number of other internal tariff grids in various areas and industries. The UTS should be developed based on the Dictionary of Occupational Titles, as it is the unified act that contains a list of professions that exist in the economic life of Ukraine. Therefore, each of these professions must be assigned its own tariff coefficient and the corresponding category.

In Ukraine, the tariff rate is the main initial normative value that determines the amount of wages. Tariff rates set the amount of wages for workers who perform various jobs per unit time. The formation of the tariff grid (salary scheme) is carried out based on the tariff rate of the worker of the 1st category and inter-qualification (inter-job) ratios of the sizes of tariff rates (official salaries). To differentiate wages according to working conditions, increased tariff rates of the 1st and subsequent categories are set, as well as lists of occupations of employees whose work is paid at higher tariff rates are considered.

Using tariff grids and tariff-qualification categories, the size of tariff rates of specific employees is determined considering their qualifications and the complexity of their work. The higher the level of qualification of the worker, the higher the tariff rate based on which his salary is calculated. Therewith, the number of digits of the tariff grid is not regulated by the state (except for budgetary institutions) and for different organisations and different sectors of the economy it may be different. Tariff rates in many sectors of the economy are differentiated depending on the intensity of the labour process. The tariff rate of an employee of the 1st tariff category may not be less than the minimum official salary (tariff rate), which is equal to the subsistence level for able-bodied persons. Wage growth should depend on the employee's qualifications, level of education, and productivity.

RECOMMENDATIONS

The scientific value of this article is that the authors, based on the understanding of international, foreign experience in the formation of an effective wage system, for the first time identified applied problems of the wage system in Ukraine and revised the approach to its formation. Thus, the authors insist that the tariff rate of the worker of the 1st tariff category cannot be less than the minimum wage. The minimum salary must also

be not less than the minimum wage. This, according to the authors of the article, will overcome the burden on employers to pay supplements to the minimum wage. And as for employees, this approach will be more balanced and fairer.

Inter-job ratios of tariff rates should be based on the unit for which the indicator is taken, not lower than the minimum wage. It is proposed to install them at the state level, based on a factor of 0.02. This will allow implementing a fair and balanced approach to the establishment of salaries, as each tariff category itself has a differentiation depending on the complexity and prestige of the profession.

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Suggested Citation: Yaroshenko, O.M., Lutsenko, O.Ye., & Vapnyarchuk, N.M. (2021). Salary optimisation in Ukraine in the context of the economy Europeanisation. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(3), 224-237.

Submitted: 21.06.2021
Revised: 19.08.2021
Accepted: 08.09.2021

УДК 349.2
DOI: 10.37635/jnalsu.28(3).2021.238-247

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СИСТЕМНІ ОЗНАКИ НОРМАТИВНО-ПРАВОВОГО РЕГУЛЮВАННЯ ОХОРОНИ ПРАЦІ У РЕСПУБЛІЦІ ПОЛЬЩА

Анотація. *Проаналізовано питання щодо сутності та структури нормативно-правового регулювання охорони праці у Республіці Польща. Актуальність обраної теми першочергово пояснюється тією обставиною, що в цій країні на фоні безсумнівних економічних успіхів відбувається інтенсивний процес вдосконалення правових та організаційних засад відповідного спектру соціально-трудових відносин. Вивчення даного питання першочергово важливе для тих країн, які мали з Польщею приблизно однакові «стартові умови» – рецидиви державного соціалізму, які знецінювали засади ринкової економіки та можливості повноцінного захисту людей праці. Метою статті визначено наведення та обґрунтування системних ознак охорони праці у Республіці Польща в складних умовах сьогодення. Дослідження спирається на розуміння методології як складної інтегральної системи сприйняття дійсності та наукового пізнання, і проведене на основі необхідного кола методів, а саме: методу системного аналізу, історико-правового методу, структурно-функціонального методу, методу порівняння, спеціального порівняльно-правового методу, а також крос-темпорального аналізу. Відзначено, що нормативно-правовому регулюванню охорони праці у Республіці Польща властиві всі ознаки системності. Першочергово це пояснюється гармонійним співвідношенням двох складових: суто нормативно-правового та організаційно-правового забезпечення відповідної частки соціально-трудових відносин. Слід відзначити і невпинне вдосконалення нормативно-правового регулювання сфери охорони праці залежно від сучасних викликів та загроз. Для країн, які об'єднані з Польщею недавнім минулим у вигляді державного соціалізму, важливим є і досвід налагоджування роботи тристоронніх учасників соціального діалогу (урядових структур, представників роботодавців та працівників). Наукова цінність статті першочергово полягає в необхідності та доцільності аналізу системних ознак нормативно-правового регулювання охорони праці. У такому разі важливим є як застосування методу системного аналізу, так і чітке розмежування категорій «системне дослідження» і «дослідження систем» (останнє у даному разі постає і як система нормативно-правового регулювання охорони праці, і як складна сукупність органів публічної влади та інших організацій, причетних до виконання важливого завдання щодо належного забезпечення безпеки і гігієни праці)*

Ключові слова: *Республіка Польща, безпека і гігієна праці, нормативно-правові засади, трудове право, соціальний захист, колективний договір*

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SYSTEM SIGNS OF STATUTORY REGULATION OF OCCUPATIONAL HEALTH AND SAFETY IN THE REPUBLIC OF POLAND

Abstract. *The study analyses the question of the essence and structure of statutory regulation of occupational health and safety in the Republic of Poland. The relevance of the subject under study is primarily explained by the fact that in Poland, against the background of undoubted economic success, there is an intensive process of improving the legal and organisational foundations of the corresponding range of social and labour relations. The study of this issue is of paramount importance for those countries that had approximately the same "starting conditions" with Poland – the recurrence of state socialism, which devalued the principles of a market economy and the possibility of full protection of working people. The purpose of this study is to present and substantiate the systemic features of occupational health and safety in the Republic of Poland in difficult present-day conditions. The study is based on understanding the methodology as a complex integrated system of perception of reality and scientific cognition, and conducted based on the necessary scope of methods, namely: method of system analysis, historical legal method, structural-functional method, comparison method, special comparative legal method, and cross-temporal analysis. The authors of the present paper noted that the statutory regulation of occupational health and safety in the Republic of Poland has all the features of systemic nature. Most importantly, this is explained by the harmonious correlation of two components: purely statutory and legal support of the corresponding share of social and labour relations. Notably, the statutory regulation of occupational health and safety is undergoing continuous improvement depending on current challenges and threats. For countries that have been united with Poland in the recent past in the form of state socialism, the experience of establishing the work of tripartite participants in social dialogue (government agencies, employers' and workers' representatives) is also important. The scientific value of the present paper primarily lies in the necessity and feasibility of analysing the systemic features of statutory regulation of occupational health and safety. In this case, it is important to use both the method of system analysis and a clear distinction between the concepts "system research" and "research of systems" (the latter in this case appears both as a system of legal regulation of occupational health and safety and as a complex set of public authorities and other organisations involved in the important task of ensuring due occupational health and safety)*

Keywords: *Republic of Poland, labour safety and hygiene, statutory bases, labour law, social protection, collective agreement*

INTRODUCTION

The use of world practices in standardising the corresponding share of social and labour relations is vital for improving the state of occupational health and safety in Ukraine, because it is an invaluable experience gained by many countries to improve the scope of social and labour relations. Admittedly, the world practices of many countries have long and successfully employed methods and approaches based on the principle of prevention of accidents and occupational diseases. In this sense, the Polish practices of streamlining labour relations deserve special attention. Over the past 30 years, Poland has gone from balancing on the brink of bankruptcy to one of the world's 20 largest economies, with its GDP quadrupled and its exports tenfold. Such changes are accompanied by continuous improvement of the occupational health and safety management system.

The issue of statutory and organisational principles of occupational health and safety in the Republic of Poland is analysed by K. Baran, P. Czarnecki, L. Florek, G. Goździewicz, Z. Hajn, K. Koldinská, M. Mielczarek, L. Pisarczyk, A. Reda-Ciszewska, M. Seweryński, B. Surdykowska, K. Skorupińska,N. Szewczyk, D. Skupiien, W. Szubert, A. Świątkowski, D. A. Wirth, M. Wujczyk, and some other researchers.

Therewith, in some in-depth analytical investigations, even against the background of numerous impressive economic successes, there are substantial miscalculations in the field of statutory support for occupational safety and social protection of workers. Thus, A. Sviatkowski and M. Wujczyk on the example of compliance of Polish legislation and law enforcement practice with international social and labour standards indicate that nowadays workers have considerable opportunities to actively defend their rights [1, p. 252-253]. At the same time, the statement of A. Dral should be considered. He performed a separate professional study investigating the legal innovations concerning the fixed-term contract in this country, and notes that "proposals aimed at lowering the standards of protection of workers on a permanent contract by reducing the notice period and their approximation are particularly concerning" [2, p. 155]. It is therefore clear that a "holistic system of occupational health and safety" has yet to be established in this country.

The studies of authors discussing particular proposals for the adaptation of Polish labour legislation to the corresponding innovations of the European Union are also noteworthy. Thus, the study by X. Shevchyk (N. investigates the implementation of EU Directive 2019/1937 on the protection of persons who report violations of Union law [3]). In particular, the author points out that the relevant representations of workers, trade unions, and post-trade unions should take an active part – within their statutory powers – in the process of drafting new Polish legislation resulting from the implementation of EU Directive 2019/1937 (in particular insisting that employee and employer representations must ensure a balance between the collective protection of the rights and interests of employees and the protection of the interests of the employer, for example, against the disclosure of company secrets and employee competition) [4, p. 10]. In this regard, the study by D. Schiek also deserves attention, who, proceeding from a risk-based approach, proposes measures to improve the social protection of workers in collective agreement relations in this country in accordance with European Union law (in particular in the part referring to the impossibility of collective bargaining based exclusively on economic feasibility and economic integration) [5, p. 387, 401-403].

The purpose of the present study is to present and substantiate the systemic features of statutory regulation of occupational health and safety in the Republic of Poland in challenging present-day conditions. To achieve this purpose, the tasks were identified as follows: to generalise modern theoretical approaches to the analysis of occupational health and safety in Poland, to clarify the features of the initial conditions for the establishment and development of national policy in occupational health and safety based on market economy and democratic governance; to describe the specific features of the legal regulation of social, labour and occupational health and safety relations, to outline certain solutions of topical issues in ensuring occupational health and safety in this country.

The composition of the purpose and objectives of the study is based on a modern interpretation of the essence of international labour and occupational health and safety standards. As substantiated in the previous article of the authors of this study, all four strategic objectives of the ILO Declaration on Social Justice for Fair Globalisation 2008 are fundamental to occupational health and safety: Promoting employment through an institutional and economic environment; development and expansion of social protection measures; promoting social dialogue and tripartism; observance, promotion, and implementation of fundamental principles and rights in the world of labour (the provisions of the Declaration are presented in abbreviated form, for more details on the authors' study of the outlined issues, see [6, p. 121]).

Therewith, the authors this study referred to the content of the ILO Centenary Declaration, which states that all workers must be guaranteed adequate protection in accordance with the Decent Work Agenda, considering the following factors: respect for their fundamental rights; adequate minimum wage (to be established legislatively or through negotiations); setting the maximum working time limit; occupational health and safety. Moreover, safe and healthy working conditions were recognised as a fundamental factor in ensuring decent work (see item D, Section II and Item B, Section III of the Declaration) [7].

1. MATERIALS AND METHODS

The study is based on the understanding of methodology as a complex integrated system of perception of reality and scientific cognition, which covers fundamental general theoretical concepts, general philosophical laws and categories, general and specific methods, etc. Accordingly, special attention is paid to the concept of "sectoral methodology" or "methodology of sectoral sciences", i.e., the selection of the general methodological arsenal of relevant starting points and principles of a certain scope of related subjects, phenomena, and processes (for the subject of this study, a particular emphasis on the concept of occupational health and safety from a complex set of social and labour relations, a comprehensive study of a set of legal norms aimed at regulating the field of occupational health and safety, accentuating the legal force of such acts and the specific features of their enforcement). Therefore, the methodology of legal science in this regard has great theoretical

and practical value (providing, among other things, general tools for formulating and substantiating conclusions that have practical significance and scientific originality in the field of labour law).

The method of system analysis or system approach is of paramount importance, being recognised as one of the main methodological areas of special scientific cognition. It allows joining all necessary structures and processes into a single whole (in this respect, a complex set of all public authorities and public organisations involved in ensuring occupational health and safety in this country, as well as all the necessary set of regulations of different legal force, which in the form of particular norms are aimed at regulating the corresponding scope of social and labour relations). Therewith, special attention is paid to the diversity of internal and external relations of the system, to the specific features of harmonisation of the Polish legal system with the occupational health and safety standards of the European Union.

Notably, the state system in the interpretation of Polish researchers (namely J. Kucinski) is "a certain systemic whole, comprising the fundamental principles that determine: a) the organisation and functioning of the state; b) the structure of the state organisation; c) the mechanisms of functioning of the state" [8, p. 14]. Therefore, agreeing with the above statement, the emphasis on "systemic integrity" should form a methodological framework for the analysis of any area of public and state-government relations, including in the field of occupational health and safety.

The elucidation of systemic features of occupational health and safety in Poland is also based on numerous other methods, namely historical legal method (to clarify the impact of the political and legal system of state socialism on occupational health and safety and the emergence of a modern national occupational health and safety system; the so-called "initial conditions"); structural-functional method (for full coverage of the importance of norms both for individual institutions and for the establishment and development of a unified national policy in the field of occupational health and safety); method of comparison (resulting in additional arguments on the achievements and gaps in the investigation of this issue, as well as highlight the essential and promising areas of development of the national legal system to ensure occupational health and safety; special comparative legal method (to find similar and different sources of labour law and law on occupational health and safety in Poland and the European Union, as well as to implement the risk-oriented approach in this country, inherent in the current activities of the International Labour Organisation in the field of occupational health and safety) and cross-temporal method (to compare protection of workers in this country at different times, as well as to establish the so-called "nodal" or strategically important solutions to improve the state of occupational health and safety in Poland). In this sense, the authors of this study highlight the importance of using a communicative resource, which not only indicates the coverage of all participants in social interaction by the subject area of analysis, but also allows emphasising the so-called "feedback", active involvement in ensuring proper occupational health and safety of the workforce members.

2. RESULTS AND DISCUSSION

In Poland, during the propagation of state socialism and the so-called communist ideology, any principles of civilised development and the organisation of social and labour relations were destroyed. Thus, national policy at that time was to guarantee people full employment and well-being. Strikes and other collective actions, although not prohibited by law, were not perceived as a legitimate element of trade union activity (in fact, trade unions were to play the role of a "mediator" between the ruling party and the workforce). According to present-day estimates, formulated by M. Seweryński and D. Skupień, "the general reform of Polish labour legislation after the Revolution of Solidarity has not been completed to this day, and many of its fundamental issues have yet to be resolved" [9, p. 122].

According to L. Balcerowicz, who is fairly considered the organiser and ideological inspirer of Polish economic reforms, "the economic consequences of socialism were extremely bad" [10, p. 6]. At the initial stage of reform, as emphasised by M. Lahiga and S. Yegorycheva, "workers' market" was transformed into "employers' market", who were guided primarily by economic calculations and efficiency criteria, which led to a substantial increase in unemployment (from 6% to over 20%) and lower social standards" [11, p. 151].

The undoubted economic success inherent in modern-day Poland has yet to be ensured by an adequate level of occupational health and safety. Admittedly, the process of improving the legal framework of the corresponding scope of social and labour relations should consider the general trend towards changing the structure of employment, which L. Arendt and A. Gajdos even described as "increasing tension in some segments of the labour market" [12, p. 13]. Most importantly, such changes include the growing number of employees with higher education and, at the same time, the demand for professions requiring low and medium qualifications, as well as the imbalance of the labour market due to strong labour migration processes. In fact, L. Arendt even considers it necessary to discuss the growing trend of increasing polarisation in employment,

which will continue in the near future [13]. All this once again testifies to the numerous issues and the complexity of reforming and developing labour policy in Poland.

The management system of occupational health and safety in Poland clearly distinguishes two components: purely legal and organisational. The first combines legal norms that establish criteria for occupational health and safety requirements for workers. The second is the actual organisation of occupational health and safety at all levels of social and labour relations.

The legal framework for occupational health and safety in Poland comprises the following regulations:

– Constitution of the Republic of Poland;

– Labour Code and sub-legislative acts adopted in accordance with the provisions of this Code;

– other laws with a related scope of regulation (e.g., the Law "On the State Sanitary Inspection" and the Law "On the State Technical Inspection");

– national and sectoral labour standards;

– regulatory documents that define working conditions in various spheres of activity (in mining, construction industries, etc.);

– employment agreements;

– local (corporate) statutes and rules.

The fundamental regulatory act establishing the right to safe and healthy working conditions is the Constitution of the Republic of Poland of April 2, 1997. Article 5 of the Constitution states as follows: The Republic of Poland guards the independence and inviolability of its territory, ensures the freedoms and rights of man and citizen, security of citizens, guards the national heritage, and ensures the protection of the environment, guided by the principle of balanced development. In accordance with the provisions of Paragraph 1, Article 66, everyone has the right to safe and healthy working conditions. The procedure for exercising this right, as well as the responsibilities of the employer, are determined by law. The content of Article 24 is also important for the subject of the present study: The labour is protected by the Republic of Poland. The state supervises the observance of working conditions [14].

A separate chapter (Chapter 10) of the 1974 Labour Code (Kodekspracy) covers occupational health and safety. Thus, in accordance with the provisions of Article 207 of this Code, the employer is responsible for occupational safety at work and is obliged to protect the health and lives of workers, ensuring safe and hygienic working conditions with proper use of scientific and technical achievements. In particular, the employer is obliged to: 1) organise work in such a way as to ensure safe and hygienic working conditions; 2) ensure compliance with the provisions and rules of occupational health and safety in the workplace, issue orders to eliminate deficiencies in this regard and monitor the implementation of these instructions; 3) respond to the needs in terms of occupational safety and adapt measures taken to improve the existing level of health and life of workers, considering fluctuating working conditions; 4) ensure the development of a consistent policy for the prevention of accidents at work and occupational diseases, considering technical issues, work organisation, working conditions, social relations and the impact of factors of the working environment; 5) consider the health of adolescents, workers who are pregnant or breastfeeding, and workers with disabilities as part of the preventive measures taken; 6) ensure the implementation of orders, statements, decisions, and directives issued by regulatory authorities on working conditions; 7) ensure the implementation of the recommendations of the inspector of social work [15].

Attention should also be paid to the articles of this chapter prescribing the rules of occupational health and safety of women, as well as establishing the basics of occupational health and safety of minors. The Labour Code also refers to other sources of labour law, namely the regulatory agreements concluded between the social partners (i.e., collective agreements) and other agreements, such as corporate acts, rules, and charters. Notably, in accordance with the provisions of this regulation, risk assessment is consolidated as one of the main responsibilities of the employer. Thus, in accordance with the provisions of Article 226, the employer has the following responsibilities: 1) to assess and document the occupational risks associated with the work performed, and to apply the necessary precautions to reduce the risk; 2) to inform employees about the occupational risk associated with the work performed, as well as about the measures to be taken to reduce these risks.

Among other things, the analytical material prepared by the International Labour Organisation (hereinafter referred to as "the ILO"), which is presented as a guideline for the implementation of ILO Recommendation No. 198 on labour relations, analyses and promotes the Polish practices of regulating the employer's responsibilities in the field of risk. It is stated, in particular, that all types of risk shall be borne by the employer: technical risk (e.g., the obligation to pay remuneration during periods when work cannot be performed for technical reasons), personal risk (e.g.,, employer's liability for employee actions), economic risk (e.g., the losses of the employer should not affect the right of employees to receive remuneration), and social

risk (e.g., certain benefits paid to the employee in case of temporary incapacity for work or absence from work for personal reasons). The transfer of risk to an employee would not, in principle, qualify such person as an employee [16].

As an example of the continuous improvement of the legal framework for occupational health and safety in Poland, it is worth noting the attempt to consider the latest trends in the world of labour, namely the growing demand for remote and temporary work. Thus, the so-called "telework" or "telecommuting" was legislatively regulated in 2007 – remote work or distance work, or work at home – work performed in a place remote from the places of use of its results (i.e., offices, warehouses, shops, etc.)In accordance with the provisions of the Labour Code, the conditions of use of telework are determined by an agreement between the employer and the trade union organisation (or several trade union organisations operating at the enterprise) (Article 67/5). Article 67/11 of the same regulation obliges the employer to import the necessary equipment for the teleworker, to compensate the funds relating to the installation, service, development, and maintenance of the equipment, to provide the teleworker with technical assistance, etc. and the necessary training in equipment maintenance, unless the employer and the teleworker decide otherwise in a special agreement [17, p. 279-280].

In this regard, the content of the European Framework Agreement on Telework of 16 July 2002, signed by the European Trade Union Confederation, the United Confederation of Employers of Europe, the European Small and Medium Business Association and the European Business Association, deserve particular attention. The said Agreement is based on the principle that telecommuting employees shall enjoy the same protection as employees working for employers [18].

At present, in connection with measures to counter the spread of the COVID-19 pandemic, the issue of remote work or "telecommuting" is of paramount importance. Thus, the law of March 2, 2020 introduced the possibility of instructing an employee to work remotely at the official order of the employer. However, K. Naumowicz draws the attention to the fact that the concept of remote work is not defined by the legislator. The corresponding provisions of labour legislation also do not define it, which causes difficulties in distinguishing remote work from distance work, which is referred to in Article 67/5 of the Code. According to Naumowicz, the question of the scope and form of permissible control over the employee also remains controversial. Remote work within the meaning of the COVID-19 Law means work performed outside the place of its permanent execution. This includes, but is not limited to, the ability to work from the employee's home, i.e., the home office. According to Naumowicz, it is especially problematic then to determine the limits of permitted control of the employer, considering the employee's right to respect for their private life and privacy of their household members, as well as the employer's need to apply personal data protection rules [19, p. 28].

One of the innovations of labour legislation was also a clearer regulation of the terms of a fixed-term agreement (a fundamental change in accordance with Article 25^1 of the Code was the legislative limit on the time for which this agreement can be concluded, which is 33 months). Moreover, in this case, both the legislator and experts appeal to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (the European Trade Union Confederation, the Union of Industrial and Employers' Confederations of Europe, and the European Centre of Employers and Enterprises providing Public Services). This particularly refers to the part of the introduction stating that "agreements of indefinite duration are and will be the main form of employment relations between employers and employees. They also recognise that fixed-term employment agreements meet, in certain circumstances, the needs of both employers and employees [20]."

For example, L. Florek, noting the tendency to increase the demand for temporary work, points to the fact that the fixed-term agreement does not provide the employee with full social protection. The author also makes suggestions for clearer regulation of the termination of such agreements, as well as the number of fixed-term agreements with the same employee [21, p. 6]. Furthermore, A. Pysiak, interpreting the corresponding amendments to the Labour Code, argues that some innovations raise doubts about their compliance with European legislation (namely in the part where there is a possibility of abuse of employers in the field of concluding employment agreements) [22, p. 406]. As generalising conclusions concerning practice of current issues of realisation of contractual legal relations in the field of labour it is expedient to use developments of L. Pisarchyk, which are set out in a recently published article with the eloquent title "The Crisis of the Collective Bargaining System in Poland". Pisarchyk, citing the fact that the Polish market with almost 17 million workers is one of the largest in Europe, notes that only 15% of workers are covered by the provisions of collective agreements (according to him, the most impressive feature of the system of guaranteeing social and labour rights employees is a lack of collective agreements with several employers, including sectoral agreements) [23, p. 58-59, 61].

It is here that the study by B. Surdykowska and her colleagues becomes especially relevant, as these authors aimed at improving the regulation of trade unions in the field of industrial relations and additional

protection of workers' rights (it is noted, in particular, that such platform of common interests of trade unions in Central and Eastern Europe, allows achieving the so-called "convergence from below") [24, p. 321].

Apart from the Labour Code, the rules of general application in the field of occupational health and safety also include other regulations that specify the provisions of this document, as well as general rules relating to particular industries or types of work. Mandatory rules are established, for example, by the legislation on the establishment of supervision and control over working conditions (the material on this is provided below). Other provisions, which specify the above rules, can be divided into those rules that are established based on an agreement between the social partners (first of all – collective agreements), and internal rules that are set by the employer.

The first group includes provisions on occupational health and safety, which are included in collective agreements. Thus, the part of the Labour Code that was aimed at streamlining collective agreements determines the parties to such agreements, as well as occupational health and safety standards. In accordance with the content of Paragraph 2 § 1, Article 238, a trade union organisation representing employees is a trade union organisation uniting employees with whom an agreement has been concluded. This also applies to an association (federation) of trade unions to which these trade unions belong, as well as to a national inter-union organisation (confederation) that unites such trade union organisations or associations (federations) of trade unions. It is also clearly stated below that the parties to the agreement may not introduce into the agreement the rules for employees less favourable than the provisions contained in the mandatory rules. Thus, collective agreements in the field of occupational health and safety can either establish additional powers of the employee, or clarify the powers arising from the mandatory rules.

Most frequently, collective agreements include the following rules in the field of occupational health and safety:

– providing additional benefits in the field of healthcare;

– providing additional guarantees for social protection;

– providing additional vacation for those categories of employees who work in hazardous or difficult working conditions, as well as financial compensation and reduction of working hours for them.

The analytical material prepared by the ILO, which has already been mentioned in this paper, cites the practices of Poland in terms of trade union involvement in the protection of working people as a positive example (with reference to Article 19 of the Law on Trade Unions). The local acts of the employer in this area are primarily internal rules. Such rules are defined in Article 104 of the Labour Code and include the following provisions:

– organisation of work, conditions of stay in the workplace during and after work, equipping employees with tools and materials, as well as clothing and footwear, personal protective gear and hygiene;

– systems and schedules of working hours, as well as the accepted periods of calculation of working hours;

– night work;

– date, place, time, and frequency of remuneration;

– lists of works prohibited for minors and women;

– types of work and a list of jobs allowed for minors for training purposes;

– a list of light work permitted for minors for purposes other than professional training;

– occupational health and safety obligations, including informing employees of the occupational risk associated with their normal work;

– the method of confirming the arrival of employees to the employer and presence at work, as well as justifying the absence from work.

The rules of procedure are set by the employer in agreement with the trade union organisation of the enterprise when hiring 20 or more people. However, if the employer cannot agree on the content of such Rules with the trade union or where there is no such organisation, they are established by the employer.

The issue of establishing a decent social dialogue to improve social and labour relations also deserves special attention. The right to collective bargaining is stipulated both by the Constitution of Poland and the international conventions ratified by this country. Article 20 of the Constitution proclaims solidarity, dialogue, and cooperation between the social partners, as well as freedom of economic activity and private property as pillars of the economic system in Poland. It is known that the beginnings of the formalisation of such relations date back to the restoration of democratic governance and the establishment of market relations. In general, this circumstance is also due to the creation of the Trilateral Commission (TC) in 2001 with the corresponding scope of regulation.

For example, J. Gardawski notes the fact that the creation of TC has led to a qualitatively new stage of cooperation between workers' and employers' organisations in the field of ensuring safe working conditions.

Therewith, the researcher insists that Polish trade unions still have limited opportunities to mobilise workers to protect their interests [25, p. 74-75]. According to Ł. Pisarczyk and D. Skupień, the practical significance of collective agreements in this country remains quite limited, and the lack of a developed system of collective bargaining distinguishes Polish labour legislation from the legislation of Western European countries. It is also a critical obstacle to social development [26].

The Polish practices of standardisation of various aspects of activity in the field of occupational health and safety is sometimes cited and analysed in the documents of international organisations, as well as in the labour practice of some foreign countries. In this sense, the activities of the ILO, which has been in charge of the protection of workers and the development of international labour standards for more than a century, deserve priority attention. At the same time, in times of transition, due to the instability of national legal systems, the issue of compliance of regulations with international labour standards, as well as the correlation of regulations of the highest legal force and sub-legislative with the corresponding area of regulation, becomes particularly acute [27, p. 105]. Moreover, the subject of such interest is increasingly often the regulation of non-standard forms of employment and the search for answers to questions about additional social protection of workers in challenging modern-day conditions.

In this regard, it is important to investigate and apply the Polish practices. However, what may seem paradoxical at first glance, most modern ILO analytical publications contain only sporadic references to the legal framework and the practice of standardising the share of social and labour relations (as a reverse example, the authors of this study cite the report "Legal Regulation of Labour Relations in Europe and Central Asia" of 2014, which has already been discussed). The organisational system of occupational health and safety management in Poland also covers the structures responsible for supervision and control over compliance with labour legislation and occupational health (State Labour Inspectorate, the Main Sanitary Inspectorate and its field offices). This should be supplemented with the activities of local authorities and management, which to some extent are responsible for maintaining the proper state of occupational health and safety at the local level.

CONCLUSIONS

Thus, the statutory regulation of occupational health and safety in the Republic of Poland has all the features of systemic nature. Most importantly, this is explained by the harmonious correlation of two components: purely statutory and legal support of the corresponding share of social and labour relations. Notably, the statutory regulation of occupational health and safety is continuously improving depending on current challenges and threats (e.g., considering various risks and threats in legislative activities, improving the regulation of "telecommuting" and temporary work, as evidenced by legislative amendments to the fixed-term agreement). The functioning of the national legal occupational health and safety system "at the entrance" (primarily as the impact of European Union legislation on legislative protection of occupational health and safety) and "at the exit" (primarily as an attempt to effectively integrate the national occupational health and safety management system with the corresponding European legal field) is clearly observed, as well as the dissemination and promotion of the Polish practices of statutory regulation of occupational health and safety). For countries that have been united with Poland in the recent past in the form of state socialism, the experience of establishing the work of tripartite participants in social dialogue (government agencies, employers' and workers' representatives) is also important. At the same time, there are some miscalculations and so-called "sore spots" in this area, which should deserve additional attention in the process of improving the legal regulation of occupational health and safety (most importantly, this refers to miscalculations in regulation of social contractual relations, as well as to some shortcomings in the relation between employers and employees).

The scientific originality of the provisions formulated in the present paper is primarily that based on a clearly stated methodology and the necessary range of sources, the authots of the study formulated and substantiated the concept of systemic features of statutory regulation of occupational health and safety. This is, most importantly, a complex set and a harmonious correlation between the two components of the regulation of the corresponding share of social and labour relations: purely regulatory and legal. The practical significance of the study primarily lies in the fact that the provisions substantiated herein can be used in the current work of public authorities, trade unions and other persons involved in occupational health and safety.

The scientific value of the present paper primarily lies in the necessity and feasibility of analysing the systemic features of statutory regulation of occupational health and safety. In this case, it is important to use both the method of system analysis and a clear distinction between the concepts "system research" and "research of systems" (the latter in this case appears both as a system of legal regulation of occupational health and safety and as a complex set of public authorities and other organisations involved in the important task of ensuring due occupational health and safety).

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Suggested Citation: Yarotskiy, V.L., Dreval, Yu.D., & Zaika, S.O. (2021). System signs of statutory regulation of occupational health and safety in the republic of Poland**.** *Journal of the National Academy of Legal Sciences of Ukraine,* 28(3), 238-247.

Submitted: 07.05.2021
Revised: 21.07.2021
Accepted: 31.08.2021

УДК 343.2/.7
DOI: 10.37635/jnalsu.28(3).2021.248-256

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КРИМІНАЛЬНИЙ ЗАКОН ЯК ЗАСІБ ОХОРОНИ ПРАВ І СВОБОД ЛЮДИНИ В СУЧАСНОМУ СВІТІ

Анотація. *Ця робота є комплексним дослідженням проблем кримінального права як засобу захисту прав і свобод людини в сучасному світі. Актуальність теми роботи полягає у систематичних порушеннях конституційних прав і свобод людини та бездіяльності кримінального законодавства у таких випадках. Нині кримінальне право як засіб захисту прав і свобод людини у національному та міжнародному праві характеризується недосконалістю його адаптації до швидко мінливих суспільних обставин, що, відповідно, призводить до проблем у їх правовому захисті. Для цього в правовій сфері існують різні причини, наприклад, прогалини у правових положеннях, колізії правового регулювання та невідповідність норм законодавства існуючим суспільним відносинам у державі. Усе вищесказане визначає актуальність предмета даного дослідження. Таким чином, метою статті був комплексний аналіз теоретичних та прикладних питань, що стосуються засобів захисту прав людини та законних інтересів проти суспільно небезпечних посягань, а також формулювання науково обґрунтованих пропозицій щодо вдосконалення чинного законодавства України та практики його застосування у цій сфері. Зрештою, це дослідження виявило правові характеристики прав і свобод людини як на національному, так і на міжнародному рівнях. Засоби захисту прав були продемонстровані через приціл кримінального права. Крім того, у дослідженні проаналізовано форми впровадження міжнародної практики у національне законодавство України як засіб захисту прав і свобод людини в сучасному світі. Важливість результатів цього дослідження була виражена в подальшому дослідженні суміжних предметів, що стосуються цього питання, а саме історії розвитку стандартів кримінального права ЄС та історичного утвердження концепції прав людини та громадянина та законних інтересів. Крім того, матеріали цього дослідження можуть бути використані при підготовці навчальних матеріалів, методичних рекомендацій, а також у навчанні з різних галузей юридичної науки. Це, у свою чергу, дозволить належним чином використовувати кримінально-правовий захист прав і свобод людини без порушень з боку органів кримінального правосуддя*

Ключові слова: *кримінальне законодавство, права людини, міжнародна практика, кримінальне право, засоби правового захисту, публічно -правова охорона, заходи, засоби*

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CRIMINAL LAW AS A MEANS OF PROTECTING HUMAN RIGHTS AND FREEDOMS IN THE MODERN WORLD

Abstract. *This paper is a comprehensive study of the problems of criminal law as a remedy for human rights and freedoms in the modern world. The relevance of this subject lies in the systematic violations of constitutional human rights and freedoms and the inaction of the criminal law in such cases. Nowadays, the criminal law as a remedy for human rights and freedoms in national and international law is described by imperfection in its adaptation to rapidly changing social relations, which, accordingly, leads to problems in their legal protection. There are various reasons for this in the legal sphere, such as gaps in the legal provisions, conflicts of legal regulation and inconsistency of the rules of legislation with existing public relations in the state. All of the above determines the relevance of the subject matter of this study. Thus, the purpose of this study was a comprehensive analysis of theoretical and applied issues relating to the remedies for human rights and legitimate interests against socially dangerous encroachments, and the formulation of scientifically sound proposals for improving the current legislation of Ukraine and the practice of its application in this area. Ultimately, this study identified the legal characteristics of human rights and freedoms at both the national and international levels. The remedies for rights were demonstrated through the lens of criminal law. In addition, the study analysed the forms of implementation of international practice in the national legislation of Ukraine as a remedy for human rights and freedoms in the modern world. The significance of the results of this study was expressed in the further research of related subjects concerning this issue, namely the history of the development of EU criminal law standards and the historical establishment of the concept of human and citizen rights and legitimate interests. Furthermore, the materials of this study can be used in the preparation of educational materials, methodological recommendations, as well as training in various fields of legal science. This, in turn, will allow properly using the criminal law protection of human rights and freedoms without violations on the part of criminal justice bodies*

Keywords: *criminal legislation, human rights, international practice, criminal law, remedy, public legal protection, measures, means*

INTRODUCTION

Human rights are one of the most important concepts in law, a social value and at the same time a great asset and an invention of humankind. It is also a concept used both to designate a specific list of legislative provisions or international standards, and to determine the status of a particular individual in society [1]. Rights are one of the attributes of modern society and the state, a measurement of their "humanity". Furthermore, the concept of human rights has its own value dimensions, which complicates the identification of its content. Therefore, human rights are the main opportunities and guidelines necessary for a decent and free existence

and development of the individual. Today, people strive for the unhindered use of their legal rights and freedoms both in everyday life and in the case of bringing them to criminal responsibility. Notably this is a natural human desire to protect their rights and legitimate interests, to achieve the creation of a society based on the principles of justice and legality, the rule of law, the adoption of laws that would meet their needs. Ukrainian society is no exception, wherein great importance is paid to the legal mechanism for ensuring the constitutional rights of citizens in each sphere of their application [2]. The problem of protecting human rights and freedoms has existed for more than a decade. Civilised humanity has put it (the problem of protection) in the category of global ones that require a priority solution. The problem of criminal legal protection of persons is relevant in connection with numerous controversial issues arising during application of criminal law provisions relating to the protection of public relations in the state. The criminal legislation of Ukraine is not ideal. The level of control over its compliance does not create the full conditions for the protection of inalienable human rights, the number of socially dangerous acts against the individual is growing [3], and necessitates the improvement of criminal law provisions to improve the protection of persons [2]. It is necessary that national legislation be more effective and efficient in the fight against crime.

Criminal legislation makes provisions for the protection of fundamental (natural) human rights, namely their life, health, and freedom [4]. However, even though criminal legislation establishes responsibility for crimes against life and health, a person does not have adequate protection. Most criminal acts against the individual remain unpunished. Therefore, it is currently quite important to strengthen criminal responsibility for certain crimes, which is explained by the increase in crime, and therefore, indicates the ineffectiveness of the criminal law. An important problem is the fact that the dispositions of most articles do not contain a clear formulation of the signs of a crime, which complicates their practical application. Thus, the criminal legal protection of citizens needs to be improved, and criminal and criminal procedural legislation need to be harmonised with international standards. After all, the duty of the state to respect, promote, protect, and enable the exercise of rights is primary, and the duty of regional or international tribunals (courts) is auxiliary, coming into play mainly in cases where the state consciously or consistently violates legitimate rights. Everyone knows examples of how recourse to regional and international mechanisms has become necessary to recognise violations at the national level. Regional and international interests or assistance can be a trigger mechanism for protecting rights within a country, but this is done only when all internal opportunities have been used and exhausted [1]. That is why the existence of effective remedies for human rights in national law is of particular importance in the democratically developed countries of the world.

Criminal law protection of human rights is a rather complex phenomenon that requires a comprehensive, system-functional, conceptually new approach, which should be reflected in the new Concept of Criminal Law Protection of the Human Right to Life as an element of the National Programme for Ensuring and Protecting Human and Civil Rights and Freedoms. Underdevelopment of the specified aspects of the subject in the criminal law literature, as well as its research and practical significance determine the relevance of the subject under study. The main scientific and theoretical sources of this study, apart from the legislative framework, included the studies of researchers who actively develop the theory of human rights, mechanisms for ensuring them, and investigated national and international standards for the protection of human rights. These issues were addressed by D.L. Vasilenko [5], Kh.M. Gritsak [6], Yu.V. Kirichenko [7], P.G. Nazarenko & V.V. Bakuta [8], A.A. Punda [9], T.M. Slinko [10] and others. The generic and direct object of crimes against human and civil rights and freedoms were studied by such researchers as V.F. Sirenko [11], A. Kostyuchenko [12], S.G. Volkotrub [12] and others. However, a separate, complete, comprehensive study of the issues concerning the remedies for individual rights in criminal proceedings is not yet available in legal science. Although the urgent need for this has already arisen in the light of the activities of law enforcement and other authorised state bodies in this area.

1. MATERIALS AND METHODS

This study was not limited to classical methods and methods of legal cognition, because its subject and object are ambiguous and combine different spheres of the legal plane. It has been repeatedly proven that legal science can be perceived as an independent unit of study in the world of science, based on independent philosophical, historical, and methodological subsystems. The methodology of this study constitutes a multi-level system, which includes principles, approaches, and methods that combine the tools of the classical (principles of development, interrelation of phenomena, consistency, determinism) and non-classical (the principle of pluralism, tolerance, discourse, complementarity) methodology. In accordance with the latter, the axiological, anthropological, comparative, systemic, and functional approaches were used, which determined the main strategy of this study. The main method was the dialectical one, which was used in the course of the entire study and was the basic one in all components of the research. In particular, it was applied upon identifying

the history of the emergence of human rights and their further classification, as well as the development of the terminology, the explication of the development features of the problems concerning remedies for rights and the historical excursion. The study used the method of ascension from the abstract to the concrete to establish the varieties of human rights and freedoms and methods of legal science. Theoretical analysis was used to investigate the experience of understanding approaches, highlighting the structure of methodology, etc.

Theoretical synthesis was used to designate the methodology of legal science as a full-fledged phenomenon. Furthermore, an entire set of logical methods was applied, including classification (upon creating a complete classification and structuring rights and freedoms, and approaches in modern legal science), extrapolation, induction and deduction, analogy, abstraction, comparison. The latter of these methods was one of the key research methods in this study, since the subject of the analysis covers not only the issues of Ukrainian criminal law, but also of the European Union countries in their multifaceted comparison. Thus, a comparative legal method of cognition was used in the study of the specific features of the regulation of values (human rights and freedoms) in the legislation of Ukraine, the European Union regulations, as well as the outline of the value of human rights in different legal cultures. The structural and functional method was used to identify individual structural elements, methods and tools of protection, to establish the presence or absence of a connection between them. The Aristotelian method was used in the analysis of theoretical developments, the current legislation and the practice of its application, which relate to remedies for the rights and legitimate interests of citizens, and also allowed identifying the shortcomings and discrepancies in the current legislation and scientific approaches to the subject under study, as well as proposing certain changes and amendments to the legislation so as to improve it in terms of remedies for human rights and legitimate interests. Furthermore, the hermeneutic method was used to interpret the essence and content of the main definitions that describe criminal and constitutional processes and the stages of their development. The historical legal method was used in the study of historical stages, as well as the study of the establishment and development of certain natural human rights and their regulation at the legislative level. The theoretical basis of this study included the scientific papers of Ukrainian and foreign scientists concerning the criminal law as the main remedy for human rights and freedoms in the world.

2. RESULTS AND DISCUSSION

The issues of human rights and freedoms and society at the modern level of life constitute the most important problem of the internal and external policy of all states of the world community. The state of affairs in the sphere of ensuring the rights and freedoms of the individual and their practical implementation is the criterion according to which the level of democratic development of any state and society in general is determined. By choosing the path of independent development and consolidating it in the Constitution, Ukraine confirmed its desire to develop and strengthen a democratic, social, legal state, one of the main principles of which is to ensure the rights and freedoms of human and citizen. A confirmation for this was the ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms by Ukraine [6]. It goes without saying that the protection and understanding of human rights ultimately depends on developments and mechanisms at the national level. Laws, policies, procedures, and mechanisms in place at the national level are key to the implementation of human rights in each country. Therefore, it is extremely important that human rights form part of the national constitutional and legal systems, that justice professionals are trained in the application of human rights standards, and that human rights violations are condemned and punished. National standards have a more direct impact, and national procedures are more accessible than at the regional and international levels [2].

As for the international practice and regulation of the remedies for human rights and freedoms in the world, states have come together to develop certain agreements on human rights issues. These agreements establish objective standards of behaviour for states, assigning them certain responsibilities towards people. They can be of two types: legally binding or optional [14]. A binding instrument, often referred to as a treaty, convention, or covenant, is a voluntary obligation of states to respect human rights at the national level. States individually undertake to implement these standards through ratification or accession. States can make reservations or declarations in accordance with the 1969 Vienna Convention on the Law of Treaties, which exempts them from certain provisions of the document, while the idea is that as many states as possible should sign them. However, this mechanism can sometimes be abused and used as a pretext for denying basic human rights, allowing the state to "escape" international control in certain areas [15].

However, human rights have also become legally binding at the national level. International human rights standards have inspired states to include such standards in national constitutions and other legislative acts. They can also provide remedies for human rights violations at the national level. On the contrary, a non-binding document is, in fact, merely a declaration or a political agreement of states that all attempts will be made to

ensure compliance with a set of rights, but without any legal obligations to do so. In practice, this usually means the absence of any formal implementation mechanisms, although there may be serious political obligations regarding their availability. In accordance with the requirements of this Convention, human rights and freedoms constitute an absolute value, form an integral part and belong to everyone from birth. In any society, they are an important institution regulating the legal status of a person, establishing the boundaries of intrusion into their privacy and guarantees for the protection and implementation of their rights and freedoms. Therefore, ensuring them is one of the main functions of the state. It is no accident that the central place in the constitutions of modern states is given to the rights and freedoms of human and citizen. Thus, the Constitution of Ukraine [16], adopted by the Verkhovna Rada of Ukraine on June 28, 1996, the provisions of which are norms of direct action, proclaimed that a person, their life, health, honour and dignity, inviolability and security constitute the highest social value. It puts human rights at the centre of the national policy. The Constitution establishes that the state is responsible for its activities to the individual. The assertion and maintenance of human rights and freedoms is its main duty and the link between the state and its society.

To ensure the possibility of enjoying all human and civil rights and freedoms, the state must provide a mechanism for the implementation of the rights and freedoms guaranteed by the Convention on the Protection of Human Rights and Fundamental Freedoms. The situation regarding human rights in Ukraine is not the same – albeit a certain progress in some areas, some serious problems remain. The adoption of many provisions of the Convention is still pending. Therefore, in practice, actual (real) human rights often do not meet European requirements in this area. As for the subject under study, namely the role of the criminal law in ensuring human rights through the provisions of the Criminal Code of Ukraine, it is necessary to consider the current two general theoretical problems. The first is a problem that has a somewhat axiological nature and goes beyond the boundaries of criminal law, but at the same time is closely related to it. This refers to the classification of human rights and freedoms and the determination of the place of natural rights in this system. A derivative of this issue is the question of determining the place of crimes that make provision for criminal liability for violation of natural rights in the system of current criminal legislation. In the science of constitutional law, the vast majority of researchers [2; 17; 18] divide the constitutional rights and freedoms of a person and a citizen into the following types:

- personal (civil, physical) – the capabilities of a person which facilitate physical and biological existence, the satisfaction of all necessary needs for a person's self-fulfilment;
- political – the capabilities of a person and a citizen to take part in public and state life through state authorities and local self-government bodies, political parties; public, trade union organisations taking part in elections or referendums, due to the activities of the media, etc.;
- economic – the capabilities of a person and a citizen to take part in the distribution of material goods, the right to property, including intellectual property, to entrepreneurial activity, to work, to its safe conditions, to fair and timely payment, to strike;
- social – the capabilities of a person and a citizen to ensure appropriate social living conditions;
- cultural (intellectual, spiritual) – the capabilities of a person and a citizen to enjoy educational, cultural, and artistic benefits, the right to freedom of technological, and artistic creativity, to protect intellectual and industrial property, the right to profess a particular religion or not to profess any religion and conduct atheistic propaganda, etc.

Analysing public relations and the rules that govern them, one can conclude that each of the above rights (within the framework of the structural element of public relations) constitutes an object of crimes stipulated in criminal legislation. The authors of this study cannot but agree that this stage contains inaction and human rights violations that are improperly regulated. After all, the law on criminal liability as an element of the Concept of Criminal Law Protection of Human Rights reflects the main idea of the policy concerning remedies for human rights and is designed to ensure comprehensive, complete, and priority protection of natural human rights. Being a regulatory act adopted by the authorised state body, it contains legal provisions establishing the grounds and principles of criminal liability for socially dangerous encroachments on human rights, defines the range of socially dangerous acts that constitute crimes against human rights and the penalties that are stipulated for their commission. However, the presence of already existing provisions allows operating the term "protection", and not only "remedy". The protective function should be recognised as one of the main functions of criminal law. This function lies in protecting the enforceable interests by establishing a criminal law prohibition and implementing the provisions of the criminal law in case of a crime. Thus, the authors of this study concluded that in criminal law it is advisable to touch upon the stage of protection (i.e., the stage of legitimate exercise of rights and freedoms) and the stage of remedying, citizens' rights are violated, when the violated right is subject to restoration, the creation of conditions that compensate for the loss of the right, on

the one hand, and bringing the perpetrators to justice, on the other hand. If this refers to a human right, then in the vast majority of cases of its loss, remedy is manifested only in bringing the perpetrators to justice [19-21].

A detailed analysis of the criminal law provisions allows specifying the object of the crime, its subject, the objective and subjective side, as well as the subject of the illegal act. Such specific features increase the chances of bringing the guilty person to criminal responsibility, as well as improve the statistics of the qualitative application and operation of the criminal law in the country and the world. Moreover, the national justice system, which comprises the competent executive authorities during the pre-trial investigation and the court itself, actively uses the criminal law, but already at the stage of protecting human rights [12]. Notably, in general, the intensification of the application of the European Convention and the decisions of the European Court by national courts corresponds to the trend of the growing role of national courts in the functioning of international law, the expansion of the interrelation between international and national law. By applying the provisions of international human rights, national courts affirm international standards in this extremely important area, which is an acceptable experience for the country [8]. The state should not only refrain from interfering in the enjoyment of a person's rights and freedoms, but it is also obliged to provide such person with appropriate protection and remedies. In addition, the Constitution recognises the right of everyone to protect their rights and freedoms, the rights and freedoms of others from encroachments, including from encroachments of government officials or other officials [22].

Consequently, security of human rights lies in providing the relevant subject with effective remedies in case such rights are violated. This is logical, because the effective operation of any right can only be discussed in the presence of a valid remedy for it. Therefore, the structure of the remedy should be displayed as follows: the regulated right to such remedy, because only consolidation of the rule of law in the Constitution of the state and other regulations would allow the protection of legitimate interests without violating, at the same time, the boundaries of the legal field; the mandatory existence of alternative forms of legal remedies, which are defined as complexes of special procedures regulated by law, carried out by law enforcement agencies; compulsory remedies. In any case, all possible remedies for human rights are included in this mechanism, and the very possibility of protection serves as the basis, generating this mechanism, and the created system of bodies and organisations functions for the enjoyment of this right. That is why the effectiveness of the remedies for individual rights, the conditions of which are guarantees of human rights, is important. These guarantees give rise to the actions of legal institutions, as well as opportunities for individuals to remedy their rights when criminal proceedings are initiated either by the state or by other persons of public and private law. Importantly, there is a possibility of protection both from an equal subject of law in terms of position and status, and from a higher subject, such as the state, which itself creates these provisions of criminal law. Therefore, the essence of this mechanism is that a particular right can always be protected, regardless of who violated it [23; 24].

As international experience shows, the effectiveness of mechanisms for the protection of human and civil rights and freedoms depends on the level of development of legal principles and institutions of democracy, the state of the economy, the means of distributing life benefits, the law-making atmosphere in society, the level of legal education and culture of the population, the degree of public consent, the presence of certain elements in the system of functioning of state power [25]. Indeed, the mechanism has various remedies that need to be investigated and analysed not only in theory, but also in practice. Each of the institutions protects rights differently, and sometimes one needs to turn to each of them to restore a violated or disputed right. The mechanisms of addressing all bodies may not always be simple and effective, so their essence should become the subject of separate study. But for the provisions of international treaties to really work, it is not enough just to call them part of internal law [25]. Generally recognised provisions of international law by their nature are not valid in themselves, they are perceived by the legal system not as regulatory provisions, but as norms-principles. The only way to implement them is to issue an appropriate legislative act aimed at fulfilling the international legal provision. Consequently, the national legal system presupposes the direct impact of duly ratified provisions of international treaties along with national legislation, but the priority of the latter is that it provides the means for the enjoyment, protection and remedying of human rights.

The analysis of judicial practice has shown that nowadays the activity of the state through its competent authorities to ensure law and order and fight crime is very relevant. Due to the turbulent events of the anti-terrorist operation, the consequences of which are an increase in the turnover of illegally imported weapons, the internal uncontrolled migration of persons serving sentences has led to a considerable increase in the number of criminal and administrative offences in percentage terms compared to previous years, namely offences against human life and health. In turn, the corresponding factors of crime growth, according to the authors of this study, oblige the highest political figures of the state to design a policy aimed not only at the development of public services, but also at combating crime, directing efforts and resources towards reform of the entire law enforcement system. This can happen through legislative activity, tougher penalties, active

informative activities, an increase in the number of solved criminal offences, rapid response to violations and facts of committing illegal actions, and much more. This is the proof that there is no such thing as the uniform implementation of conventional standards and rules of national law. The perception of fundamental human rights and freedoms protected by criminal law is influenced by three main issues: constitutional mechanisms, legal traditions and culture, as well as practical circumstances. Although the provisions of many conventions are still in force and relevant, there is a very real risk that they will be bypassed or, at least, diluted to increase the effectiveness of the fight against crime, protecting the legitimate interests of a person.

CONCLUSIONS

The effectiveness of the state's activities in the field of criminal justice lies in the fact that it not only proclaims human rights, but also provides the necessary mechanism for their real implementation. This mechanism covers the process, starting from the moment of creating conditions for the proper exercise of a person's rights, after which it is transformed into the protection of the rights of each person, and in case of violation or threat of violation of these rights. The mechanism of ensuring rights should be considered as a dynamic system of legal means implemented through the activities of state bodies, authorised persons. It is due to this activity that the implementation, protection and remedying of the rights of every person takes place. Based on the information analysed, nowadays, the main tasks of the state should be the creation of effective remedies for human rights and freedoms, systematisation and improvement of legislation; strengthening of the principles of civil society and reinforcement of the state legal system; improvement of the practice of law-making, the right to implement and monitor the implementation of the law; raising the level of legal culture, legal awareness of citizens and overcoming legal nihilism.

Thus, there are many definitions of human rights in theoretical and practical legal science. They are defined in different terms, but the most accurate and justified is the understanding of human rights as opportunities implemented both personally and in relationships with other persons, private and public, and provide for the existence of a certain space of freedom, the boundaries of which are determined by the corresponding spaces of freedom of other rights holders. The construction “human rights” can and should be used as a universal one to denote all relevant opportunities. Regardless of the racial or religious definition of an individual, the criminal law undertakes to be an effective instrument for the protection, and later for the remedying of all human rights and freedoms throughout the world. That is why research in this branch serves as the basic source of its application in practice by the relevant persons.

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Suggested Citation: Haltsova, V.V., Kharytonov, S.O., Khramtsov, O.M., Zhytnyi, O.O., & Vasyliev, A.A. (2021). Criminal law as a means of protecting human rights and freedoms in the modern world. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(3), 248-256.

Submitted: 18.05.2021
Revised: 11.07.2021
Accepted: 30.08.2021

УДК343.13
DOI: 10.37635/jnalsu.28(3).2021.257-267

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РІШЕННЯ ЄСПЛ ПРО ВІДМОВУ У ЗНЯТТІ З ОСОБИ ІМУНІТЕТУ, ПЕРЕДБАЧЕНОГО СТАТТЕЮ 1 ШОСТОГО ПРОТОКОЛУ: ОКРЕМІ ПІДХОДИ ДО РОЗУМІННЯ СУТНОСТІ ТА НАСЛІДКІВ

Анотація. *В Україні на сьогодні ні в національному кримінальному процесуальному законодавстві, ні в теорії кримінального процесу, ні серед суддів, слідчих, прокурорів немає одностайної відповіді на питання щодо сутності та наслідків рішення ЄСПЛ про відмову у знятті з особи імунітету, передбаченого статтею 1 Шостого протоколу. Тому й поставлено перед собою мету спробувати сформулювати окремі підходи для вирішення такої проблематики. Актуальність задекларованої тематики обумовлена її теоретичною та практичною складовими. Перша з них полягає в тому, що наукових розвідок у цій царині вкрай обмаль, а судова практика, серед іншого, потребує певного наукового базису для формулювання власних позицій у їх єдності. Запропонована у назві цієї наукової розвідки дилема також була предметом вирішення членами Науково-консультативної ради при Верховному Суді, до яких зверталися судді Великої Палати для отримання наукових висновків, що підкреслює гостроту та нагальну потребу отримання практиками feedback від представників наукової спільноти. Такі загальнонаукові та спеціальні методи дослідження, як діалектичний, індукція та дедукція, формально-логічний, системно-структурний, метод вибірки, порівняння та правового прогнозування були застосовані для формулювання тих окремих підходів, які складають загалом мету цього дослідження. Доведено, що не дивлячись на ту обставину, що рішення ЄСПЛ про відмову у знятті з особи імунітету, передбаченого статтею 1 Шостого протоколу, яке прийняте його пленарним засіданням відповідно до статті 4 Шостого протоколу до Генеральної угоди про привілеї та імунітети Ради Європи є "процедурним", все ж таки Велика Палата Верховного Суду має повноваження здійснювати провадження за заявою такої особи про перегляд судового рішення саме за виключними обставинами. При цьому підкреслено, що розглядуване рішення ЄСПЛ варто вважати таким, в якому не ставиться мета кінцевої оцінки кримінального провадження, тому воно й не може бути ототожнене з рішенням міжнародної судової установи, яке б констатувало порушення Україною міжнародних зобов'язань при вирішенні справи судом та й порядок його виконання буде різнитися. Звернено увагу на ту обставину, що наслідки рішення ЄСПЛ про відмову у знятті з особи імунітету, передбаченого статтею 1 Шостого протоколу є вкрай важливими. Адже таке рішення ЄСПЛ є тим "дзвоником" для держави Україна, який, серед іншого, може побіжно свідчити й про ймовірність виявлення Судом фактів допущення порушень прав людини*

Ключові слова: *привілеї та імунітети, виключні обставини, права людини, міжнародні зобов'язання, процедурне рішення*

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ECHR DECISION TO REFUSE TO WAIVE THE IMMUNITY OF A PERSON UNDER ARTICLE 1 OF THE PROTOCOL NO. 6: INDIVIDUAL INTERPRETATIONS OF THE ESSENCE AND CONSEQUENCES

Abstract. *In present-day Ukraine, there is no unanimous answer to the question of the essence and consequences of the ECHR decision to refuse to waive immunity under Article 1 of the Protocol No. 6 either in the national criminal procedural legislation, or in the theory of criminal procedure, or among judges, investigators, prosecutors. Therefore, the purpose of the present paper is to try to attempt to formulate individual approaches to address this issue. The relevance of the subject under study is conditioned upon its theoretical and practical components. The former is that there this area is heavily understudied, and judicial practice, among other things, requires a certain scientific basis to formulate individual positions in their unity. The dilemma proposed in the title of this study was also addressed by members of the Scientific Advisory Board of the Supreme Court, who were approached by judges of the Grand Chamber for scientific opinions, emphasising the urgency and necessity of feedback from practitioners. To formulate the individual approaches serving the purpose of this study, the authors employed such general and special research methods as dialectical, induction and deduction, Aristotelian, system-structural, sampling method, comparison, and legal forecasting. Notwithstanding the fact that the ECHR decision to refuse to waive the immunity stipulated in Article 1 of the Protocol No. 6, adopted by its plenary session in accordance with Article 4 of the Protocol No. 6 to the General Agreement on Privileges and Immunities of the Council of Europe, is "procedural", it was proven that the Grand Chamber of the Supreme Court has the authority to conduct proceedings on the application of such a person to review the judgment precisely in exceptional circumstances. It is emphasised that the ECHR decision should be considered as one that does not aim at the final assessment of criminal proceedings, so it cannot be equated with the decision of an international judicial institution, which would state Ukraine's violation of international obligations in court and the order of its execution will differ. The authors also address the fact that the consequences of the ECHR decision to refuse to waive the immunity stipulated in Article 1 of the Protocol No. 6 are critical. After all, such a decision of the European Court of Human Rights is the "bell" for Ukraine, which, among other things, may hint at the probability that the Court will identify the facts of human rights violations*

Keywords: *privileges and immunities, exceptional circumstances, human rights, international obligations, procedural decision*

INTRODUCTION

According to the national criminal procedural "algorithm of actions" when the European Court of Human Rights (hereinafter referred to as "the ECHR", "the Court") finds a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms [1] (hereinafter referred to as "the Convention") and its protocols, applications are submitted to the Grand Chamber on review of a court decision in exceptional circumstances (Part 3, Article 463 of the Criminal Procedural Code of Ukraine (CPCU)). A logical question arises: what is the criminal procedural mechanism for eliminating the consequences of the pre-trial investigation authorities' violation of the immunity guaranteed by Article 1 of the Protocol No. 6 to the General Agreement on Privileges and Immunities of the Council of Europe (hereinafter referred to as "the Protocol No. 6") and does it exist at all? This also refers to the so-called "procedural" decisions of the ECHR, which should not be equated with the decisions of an international judicial institution whose jurisdiction is recognised by Ukraine. These include the ECHR decision to refuse to waive the immunity of a person under Article 1 of the Protocol No. 6 (hereinafter referred to as "the ECHR Decision"). This study covers the approaches to interpreting the essence of such decisions and the importance of their consequences. To achieve the stated purpose, the tasks are set as follows: to establish the presence of legal grounds to equate the ECHR Decision

with a decision of an international judicial institution that would state the Ukraine's violation of international obligations upon litigation; to establish the possibility, based on the ECHR Decision, of interfering in the decisions of the investigating judge and the appellate court, adopted in the order of judicial control over the pre-trial investigation of other persons; to establish the presence of procedural mechanisms addressing the consequences of the pre-trial investigation authorities' violation of the immunity guaranteed by Article 1 of the Protocol No. 6 [2]?

Along with the attempt to offer original scientific approaches to solving the declared problems, the authors of the present study do not consider themselves pioneers in this subject area, since several other authors have already conducted corresponding discourses. In particular, those who referred to the source of the review of cases and the resumption of proceedings at the national level in connection with the ECHR decisions, suggested that the Recommendation of the Committee of Ministers of the Council of Europe [3], preceded by the ECHR decision in Papamichalopoulos v. Greece. According to this ECHR decision, if the Court finds a violation, it obliges the respondent state to put an end to such violations, as well as to make commensurate reparations to restore the situation. This enables the implementation of the principle of international law restitutio in integrum [4, p. 232]. Evidently, following such recommendations in the national legislation, the Supreme Court of Ukraine was and is provided with these powers. In turn, upon a thorough analysis of the doctrine of banning the use of "poisonous fruit" and exceptions to it, Judge of the Grand Chamber of the Supreme Court Oleksandra H. Yanovska states that of the 108 applications for review of decisions on exceptional grounds stipulated by Section 2, Part 3, Article 459 of the CPCU, 55 applications with the provided materials were returned to the applicants, proceedings were denied on 32 applications and decisions in 21 cases were reconsidered. There is a practice according to which the Court refuses to initiate proceedings in cases where the application of the restitutio in integrum principle cannot be an adequate way to restore the applicant's rights, violation of which was recognised by the ECHR (for example, see the Judgment of the Grand Chamber of the Supreme Court No. 182/166/15-k, proceedings No. 13-36zvo20 dated May 19, 2020) [5-7]. The authors of this paper believe that such ECHR decisions should separately include the position on to the so-called "procedural" decisions, with a particular emphasis on the refusal to waive the immunity stipulated in Article 1 of the Protocol No. 6 [8].

The authors' "scientific concern" with this issue is caused by its practical side, that according to the data published by the Supreme Court, the Grand Chamber carries out such proceedings [9]. The second important factor for this investigation is to prove the presence of gaps in the current criminal procedural legislation in this subject area, as well as different practical and scientific approaches to interpreting the essence and consequences of the ECHR Decision. Given such context, there are no grounds to contemplate the unity or sustainability of judicial practice, the development of which is an urgent task [10, p.128]. Thus, analysing the conflicting provisions of the current criminal procedural legislation, the authors came to the conclusion that the said ECHR decision renders lawful proceedings against persons covered by immunity under Article 1 of the Protocol No. 6 impossible [11, p.11-15]. Therewith, in the vast majority of cases, it cannot serve as grounds for interfering in the decisions of the investigating judge and the appellate court based on the results of their review, adopted in the order of judicial control over the pre-trial investigation of other persons. However, due to the gaps and conflicts of the current criminal procedural legislation in this area, the authors partially supported Ya. Zeikan's opinion on the approval of the "standard of proof of reasonable suspicion" [12] to avoid unjustified criminal prosecution of persons and preventing indirect measures to ensure criminal proceedings against such persons.

Ultimately, it is necessary to appeal to the fact that the Grand Chamber of the Supreme Court appealed to the members of the Scientific Advisory Board of the Supreme Court to obtain relevant scientific opinions on a certain list of issues [2]. Such conclusions were prepared by researchers, expressing their personal opinions [13], but so far, the decision of the Grand Chamber is absent. This only emphasises the urgency of the issues raised in this paper and the necessity of developing scientific ways to address them. Admittedly, in this discussion, the authors priorities the judges of the Grand Chamber of the Supreme Court because the ECHR categorically approaches the importance of judicial practice and repeatedly emphasises that the relevant established judicial practice cannot be ignored [10, p.133].

1. MATERIALS AND METHODS

Thus, this study will attempt to offer the scientific community a systematic review of sound conclusions and recommendations of leading specialists in procedural and international law, professors, including O.V. Butkevych [14], A.M. Drozdov [15], O.V. Kaplina [16; 17], L.M. Loboiko [4], O.H. Shylo [10; 18], O.H. Yanovska [6; 7; 19], who, considering their individual scientific interests, expressed their opinions on the issue of observance of conventional and constitutional human rights and freedoms, application of ECHR

practices, etc. at the monographic level. Such a review has become possible and informative as a result of applying an inductive approach and a system-structural method, which allowed considering human rights and the need to track their violations through the lens of the entire system of issues concerning the consequences and the specific features of executing the ECHR Decision. In addition, the applied system-structural and comparative methods allowed concluding that the implementation of the ECHR Decision, due to its inherent procedural features, should be carried out according to the rules of Part 3, Article 463 of the CPCU on review in exceptional circumstances, even though this study proved that the ECHR Decision should not be equated with the decision of an international court referred to in Part 3, Article 463 of the CPCU.

Using the comparative method and the method of sampling, the authors carried out an excursion to the judicial practices of both Ukrainian courts and the ECHR. As a result, the study identified the gaps and shortcomings in the Law of Ukraine "On Enforcement of Judgments and Application of the Judicial Practice of the European Court of Human Rights". In particular, the authors highlighted the inaccuracy of the wording of basic concepts, such as "ECHR practices", "ECHR decision", used in the Ukrainian legislation, which does not contribute to the stability and unity of judicial practice. Admittedly, a similar issue is inherent not only in the category of decisions that are the subject of this study, but is generally inherent in the implemented terms, as well as situations where conventional approaches to the definition of certain concepts are abandoned [20, p. 162].

Legal forecasting allowed modelling a set of negative legal consequences, including human rights violations, the admission and/or non-recognition of which are foreseeable and highly probable given the narrow and limited interpretation of the ECHR Decision by lawyers. Using sampling and the Aristotelian method, the authors of the present study selected the court decisions placed in the Unified State Register of Judgments that are of scientific and practical interest and/or can serve as an illustrative example to identify and emphasise the urgency and practical need for the development of original approaches to interpreting the essence and consequences of the ECHR Decision. Furthermore, in a separate legal situation, which is a consequence of the ECHR Decision, the Aristotelian method allowed proposing a certain logic of application of the current CPCU to eliminate the consequences of pre-trial investigation authorities' violation of immunity guaranteed by Article 1 of the Protocol No. 6.

Dialectical approaches and sampling methods have formed the basis for the assumption that the Law of Ukraine "On Enforcement of Judgments and Application of the Judicial Practice of the European Court of Human Rights" and the current CPCU do not fully define the appropriate mechanism and effective means to remedy the applicant. As a result, the application of these methods further developed the scientific opinions of researchers on supplementary individual measures [21] that are the key to effective and rapid implementation of the ECHR Decision and, accordingly, a guide to restore the applicant's condition that they had been in prior to the violation committed against them [13, p.14-17].

The authors of the present study are eagerly awaiting a scientific discussion since the scale of the subject matter is significant and the dilemma itself is very ambiguous, and this issue is generally understudied. From the standpoint of a practical approach [4] the authors applied a research-to-practice investigation providing for three logically interconnected blocks.

2. RESULTS AND DISCUSSION

2.1. Analysis of the legal grounds for identifying the ECHR Decision with the decision of an international judicial institution [7]

The current state of both Ukrainian and international law is described by new trends in the optimisation of mechanisms aimed at ensuring decent protection of human rights and freedoms in any state [22]. The development of each country as a democratic and legal state requires the protection of the rights of all population categories [23]. Implementation of measures to protect human rights at the national level is possible only by harmonising Ukrainian legislation, its adaptation to European Union law, including criminal procedural legislation, specifying the aspects of such adaptation, thereby creating proper theoretical grounds for future legislative innovations [18, p. 110].

Appealing to national strategies relating to the observance of human rights to a certain extent, considering law enforcement activities, Yu.M. Chornous states that there is an urgent need to increase the efficiency of criminal investigations in accordance with international standards and the judicial practice of the ECHR [24, p. 269]. Contrary to the conciseness of this scientific opinion, its content is extensive, as it covers not only such a cumbersome stage of criminal proceedings as pre-trial investigation, but also stages of appeal, which will have their individual course in case of human rights violations committed upon pre-trial investigation, as well as consideration in the ECHR in case of relevant grounds. Furthermore, it is worth emphasising the fact of a decades-long fruitful scientific discussion on those components of legislative activity,

personal qualities and competencies of "professional participants in criminal proceedings" [25, p. 286], which in their symbiosis capable of immensely improving the state of investigation and trial, adding quality to such activities. At present, Ukraine has numerous "international doors" to fulfil its national potential in various areas, as Ukraine is a member of the United Nations, a member of the Organisation for Security and Cooperation in Europe, the Council of Europe, the International Monetary Fund, The World Bank and other international intergovernmental organisations. This level of participation which imposes on the state of Ukraine – a sovereign subject of international law – the corresponding obligations [26, p. 120-122]. Numerous laws and resolutions of the Cabinet of Ministers of Ukraine have been adopted to effectively perform these obligations. In the case under study, the authors focus on one of them, such as the Law of Ukraine "On Enforcement of Judgments and Application of the Judicial Practice of the European Court of Human Rights" No. 3477-IV of February 23, 2006 (hereinafter reffered to as "the Law", "the Law of Ukraine").

Researchers fairly emphasise that Ukraine is one of the few Council of Europe states that has directly regulated the practice of enforcing ECHR decisions by a separate Law of Ukraine. However, this Law, as argued by O.V. Butkevych, has several conflicts and gaps [14, p. 12], which will be closely considered below. The analysis of the preamble to this Law of Ukraine suggests that one of the parties in these relations must be the state of Ukraine, against which a complaint has been filed in the form of a violation of fundamental rights or fundamental freedoms protected by the Convention and its Protocols. Furthermore, Ukraine is therefore obliged to eliminate the causes of violations of the Convention and its Protocols [27]. Under Section 1, Article 35 of the Convention, the Court accepts applications only after all internal remedies have been exhausted. That is, one should first turn to the national courts to, including the relevant higher court, within whose jurisdiction the one's case falls, to protect their violated rights they intended to remedy through the Court. It is necessary to comply with national procedural rules, especially the legislatively provided time limits. The Court may consider only those allegations of violations of the rights that are guaranteed by the Convention and its Protocols [28]. These include Article 2 "Right to life", Article 3 "Prohibition of torture", Article 5 "Right to liberty and security of person", Article 6 "Right to a fair trial", Article 8 "The right to respect for private and family life", Article 10 "Freedom of expression", Article 11 "Freedom of Assembly and Association", Article 13 "Right to an effective remedy" and others of the Convention [26, p. 120-123]. As for some of these violations of Ukraine's international obligations found by the ECHR during the pre-trial investigation and trial, there are extensive studies and even guidebooks translated by Ukrainian proceduralists to update such issues as the way to avoid such violations of the Convention and minimise them [15].

In turn, the national criminal procedural "algorithm of actions" in the ECHR's finding of violation of the Convention and its Protocols by Ukraine, is prescribed, albeit not flawlessly. Thus, based on the fact of ECHR's finding of violation of international obligations by Ukraine upon delivering justice, the Grand Chamber of the Supreme Court must consider the materials of criminal proceedings (criminal case) under the rules of proceedings in exceptional circumstances in accordance with Chapter 34 of the CPCU [26, p. 120-123]. The authors of this study believe that the phrase "…upon delivering justice" employed by the legislator has a substantial semantic load. Firstly, it a priori determines that procedural decisions made during pre-trial investigation and the conclusions obtained must be reviewed by a court. Moreover, it is no longer just a matter of trial at first instance, but a priori it is assumed that the available Ukrainian appeal mechanisms have already been exhausted. Therewith, the attention to the violations committed during the pre-trial investigation is not reduced in any way, although in comparison with the Civil Procedural Code of 1960 the current CPCU slightly shifted the emphasis towards the importance and juxtaposition of pre-trial and trial stages of criminal proceedings. Legal literature contains scientific publications, the authors of which tend to believe that the pre-trial investigation has currently lost its flagship [29, p. 153; 30, p. 151-156]. This opinion is highly controversial, especially among practitioners – prosecutors, interrogators, and investigators, who justifiably defend their professional positions, appealing to the provisions of the current CPCU, which only emphasise the importance of criminal proceedings in the first stage of criminal procedure. The authors of this study believe that pre-trial investigation and trial cannot be compared, equated, or dominate over each other because they are separate stages of criminal procedural activity with their participants, terms, procedure, procedural decisions, etc. Proceduralists have repeatedly addressed this both under the Civil procedural Code of 1960 [31, p. 122-126] and the current CPCU [4, p. 21-23]. Stages, forming a single system of proceedings, replacing each other, should ultimately solve the problems of criminal proceedings, regulated by Article 2 of the CPCU. The overarching goal is to establish the truth (although some researchers, as well as the legislator, who virtually "bypassed" such a principle of criminal proceedings in the current CPCU, do not share this goal) [32, p. 161-173]. Given the stages and importance of each, only the court has a duty to directly investigate the decisions, procedural actions and conclusions that took place during the pre-trial investigation. Based on this, the court formulates a conclusion about their pertinence, admissibility, truthfulness, and sufficiency [33, p. 53]. This is

the content of the eponymous principle of criminal proceedings, stipulated by Article 23 of the CPCU and the establishment and development of which in Ukrainian legislation was directly influenced by the ECHR decisions [16]. Therefore, as a general rule, those pieces of evidence that have not been directly examined by a court cannot acquire the status of appropriate, admissible, or truthful. Conversely, only the court ultimately finds the evidence to be inadequate, inadmissible, and untrue.

Secondly, based on the above, it is illogical to state the number and nature of violations of the Convention and its Protocols at the stage of pre-trial investigation, as the collection and verification of evidence by investigators and prosecutors is ongoing and will continue. Only after the completion of the pre-trial investigation, at the trial, judges have the right to evaluate the existing violations of both the current CPCU and the Convention. Judges may also commit such violations in their activities and/or fail to properly evaluate the violations that occurred during the pre-trial investigation. It is worth remembering that in criminal proceedings, justice is delivered exclusively by a court, and refusal to deliver justice is prohibited (Parts 1-2, Article 30 of the CPCU) [34]. A person has the right to file a complaint against the state of Ukraine to the ECHR only after exhausting all national mechanisms of appeal [28].

In turn, the ECHR decision to waive the person's immunity under Article 1 of Protocol No. 6 is initiated by a party and adopted (or refused) by the plenary session of the Court at the stage of pre-trial investigation or at the stage of including information in the Unified Register of Pre-trial Investigations (this is a very debatable issue that can be discussed in a separate study). At none of these stages is it possible at all to contemplate a final assessment of the evidence in criminal proceedings, which is performed only at the trial stage. The authors of the study believe that this is why the question of the final evaluation of evidence in criminal proceedings as such should not be raised in the first place. Admittedly, the interim evaluation has some relevance and its presence affects the prudence and objectivity of the decision to waive immunity or refuse to do so. Therewith, the Court first considers the fact that privileges and immunities are granted to judges not for their personal benefit, but to ensure their independence in the performance of their duties. The plenary of the Court shall waive the immunity of a judge in all cases where, in its opinion, the immunity interferes with the delivery of justice and when it may be revoked without prejudice to the purposes for which it was granted (Article 4 of Protocol No. 6) [35].

Therefore, the ECHR decision to waive the immunity of a person should be considered procedural, interim, which gives the pre-trial investigation authorities the possibility of opening criminal proceedings against one of the judges, their spouses or both, their minor children and carrying out any investigative, coercive measures, interrogation of them as witnesses. Similarly, the ECHR interim decision refusing to waive the person's immunity, taken by its plenary session, should be described as procedural in accordance with Article 4 of Protocol No. 6.

At the same time, the decision of the ECHR to refuse to remove a person's immunity is the “bell” for the state of Ukraine, which, among other things, signals not only the existence of a well-formed belief of the court, which sat in plenary sessions, that the cancellation of the granted immunity is not possible without prejudice to the purposes for which it was granted, but can also casually indicate the likelihood that the court will detect human rights violations in the process of studying the materials provided to it. After all, it is logical that those materials, including criminal proceedings, that are sent to the ECHR to resolve the issue of immunity under Article 1 of protocol no. 6, are aimed at convincing the court that the person has committed (continues to commit) illegal activities that fall under the qualification under a certain article(we) of the Criminal Code of Ukraine and there is a need to apply certain measures to this person to ensure criminal proceedings. As for the status of this person as a participant in criminal proceedings, it is logical that if there is the specified immunity, she cannot be legally recognized as a suspect(we are talking about drawing up such a procedural document as a notice of suspicion), because this will automatically indicate a violation of the immunity guaranteed to her. Moreover, even the fact of carrying out certain procedural actions against this person, which, according to the current provisions of the Criminal Procedure Code of Ukraine, will themselves determine his status as a suspect (we are talking about his detention on suspicion of committing a criminal offense), is unacceptable without a positive decision of the issue by the plenary session of the ECHR to lift this person's immunity.

But this state of affairs is a partially idealized training case, which does not exclude those negative trends in the investigation process that may take place and, in their final result, have every chance of leading to a violation of the rights of individuals. In this regard, we partially support the position of Ya. Zeikan regarding the urgency of developing a “standard for proving reasonable suspicion” [12] in order to exclude the indirect adoption of measures to ensure criminal proceedings against individuals. We are inclined to agree that such a standard should also be reserved for such unacceptable criminal procedural activities, the results of which may de facto indicate that the subjects authorized for pre-trial investigation treat a person as a suspect, considering him such. At the same time, we cannot support the arguments and the statement itself as an absolute author's

fact of the fact that "despite the fact that investigative judges and courts of Appeal are obliged to check whether a reasonable suspicion is proved, but in practice investigative judges check only the fact of reporting a reasonable suspicion, and not its content" [12]. We do not share our position on the totality of such egregious manifestations, based on our analysis of investigative and judicial practice, although we have no reason to object that in some cases such situations can actually take place.

So, despite the fact that we adhere to such positions, which cannot be identified with the decision of an international judicial institution that would State a violation of Ukraine's international obligations when deciding a case by a court, the decision of the ECHR to refuse to lift a person's immunity under Article 1 of protocol no. 6, because it should be considered procedural, intermediate, such that the aim of the final assessment of evidence in criminal proceedings is not set, but still the Grand Chamber of the Supreme Court has the power to carry out proceedings in exceptional circumstances if there is an application from a person in respect of whom the lifting of immunity provided for in Article 1 of protocol no is refused. 6. this suggests only one clarification that the legislator should make appropriate additions to Paragraph 2 of Part 3 of Article 459 and Part 3 of Article 463 of the Criminal Procedure Code of Ukraine. In this situation and these circumstances, in each specific case, using the provided criminal procedural mechanisms, it is very important in the activities of the Grand Chamber of the Supreme Court not only to clarify the existence of human rights violations, but also to stop the violation of Rights, restore the position of the applicant.

2.2. Can the adoption of such an act by the ECHR be grounds for interfering with the decisions of the investigating judge and the court of appeal based on the results of their review, adopted in the order of judicial control over pre-trial investigations against other persons? [2]

We fully agree with such a scientific position that the law does not specify what should be attributed to the practice of the ECHR, whether these are decisions that relate to Ukraine, or the entire practice of the ECHR, as well as whether we are talking about Case Law (own decisions on cases) or the entire practice of the ECHR (administrative and procedural decisions) [14, p. 12-14]. Although leading processalists also reasonably emphasize that "given that Ukraine recognizes the jurisdiction of the ECHR in all matters concerning the interpretation and application of the convention, its application by courts should be carried out with mandatory consideration of the practice of the ECHR not only in relation to Ukraine, but also in relation to other states" [36, p. 745]. And it is based on this that scientists and practitioners, respectively, in their scientific research [37, p. 383-384; 38, p. 551] and professional activities, rely on the decisions of the ECHR not only in relation to Ukraine and operate with them. At the same time, we fully agree that, unfortunately, there is no legislative clarity on this issue.

The question of whether the decisions of the Chamber of the court or the president of the Chamber of the court belong to this practice also remains open. It would be worth noting here the types of case-law decisions of the court (which constitute the concept of "case-law of the Court"). More relevant is the concept of the court's "case-law": a decision on bringing to the attention of the government, on admissibility, a decision on the merits. In general, speaking about the significance of ECtHR decisions in the law enforcement practice of Ukraine, we can note a not sufficiently correct interpretation of the concept of "ECtHR decisions" in the law of Ukraine "on the execution of decisions.", because these are not only those decisions that recognize the violation of the ECHR by Ukraine, since the standards and principles of the court for the protection of human rights can also be contained in decisions on the inadmissibility of the case. Decisions against Ukraine with a finding of a violation but without just satisfaction must also be enforced (for example, decisions in Savinsky v. Ukraine, no. 6965/02, 28 February 2006), as well as judgments in which the court finds no violation of the convention (judgment in Gennadiy Naumenko v. Ukraine, no. 42023/98, February 10, 2004) [14, p.12-14].

As we can see, the author of the above thorough scientific and practical discourse does not resort to considering and describing such a decision of the ECHR as refusing to remove the immunity provided for in Article 1 of protocol no. 6, which we consider procedural. And this is not surprising, because our own scientific search has established that solutions like the ONE analyzed are isolated in all practice during the existence of the ECHR, and, obviously, for this reason, there is practically no scientific intelligence on these problems in domestic science, including Criminal Procedure. At the same time, we hope that our international colleagues and processalists will respond very thoroughly to the stated issues, because they are relevant. The sixth protocol to the general agreement on privileges and immunities of the Council of Europe was ratified on May 15, 2003 by law of Ukraine No. 800-IV , so it is part of the national legislation of Ukraine (Article 9 of the Constitution of Ukraine, Part 1 of Article 19 of the law of Ukraine "On International Treaties of Ukraine").

In the case under consideration, as was already stated during the consideration of the previous issue, the decision of the ECHR to refuse to remove the immunity provided for in Article 1 of protocol no from a person. 6 is one that, as a result, does not allow the pre-trial investigation authorities to initiate criminal proceedings

against one of the judges, their spouses or both, their young children and to carry out any investigative actions, coercive measures, questioning them as witnesses, that is, it makes it impossible for such procedural activities legally in respect of the listed persons who are subject to the immunity provided for in Article 1 of protocol No. 6.

At the same time, Article 2 of the code of Criminal Procedure imposes certain obligations on the investigator, prosecutor, court to protect the person, society and the state from criminal offenses and bring to justice those responsible, and by virtue of such a basis of criminal proceedings as publicity, the prosecutor, the investigator are obliged, within their competence, to start a pre-trial investigation in each case of direct detection of signs of a criminal offense (except in exceptional cases), as well as to take all measures provided for by law to establish the event of a criminal offense and the person who committed it (art. 25 of the Criminal Procedure Code of Ukraine). In turn, the principle of legality also imposes on the prosecutor, the head of the pre-trial investigation body, and the investigator the obligation of a high-quality and impartial investigation of the circumstances of criminal proceedings (Part 2 of Article 9 of the Criminal Procedure Code of Ukraine). It follows from the above that despite the existence of such a circumstance as the existence of an ECtHR decision, which legitimately makes certain procedural activities impossible in respect of persons covered by the immunity provided for in Article 1 of protocol no. 6, such a decision of the ECHR cannot be considered as an obstacle to the performance of all those tasks defined in Article 2 of the Criminal Procedure Code of Ukraine. Unlike persons covered by the immunity provided for in Article 1 of protocol no. 6, in relation to other persons who are participants in criminal proceedings and to whom this and other immunities do not apply, the legal procedure provided for by the current Criminal Procedure Code of Ukraine should also be applied. At the same time, the investigating judge, whose powers in accordance with paragraph 18 of Part 1 of Article 3 the code of Criminal Procedure of the Russian Federation is supposed to exercise, in accordance with the procedure provided for by the code of Criminal Procedure of the Russian Federation, judicial control over the observance of the rights, freedoms and interests of persons in criminal proceedings, must exercise these powers, including in relation to those participants in criminal proceedings to whom immunities do not apply.

It is worth listening to the recommendations of experts on the expediency and urgency of making amendments and additions to the law of Ukraine “on the implementation of decisions and application of the practice of the European Court of human rights”, in particular, among other things, already proposed by well-known international researchers [14, p. 25] and mentioned above, to highlight the practice of implementing the decision of the ECHR on refusal to remove immunity from a person, which was adopted by its plenary session, in accordance with Article 4 of protocol no. 6 to the general agreement on privileges and immunities of the Council of Europe and on the removal of immunity from a person.

2.3. Are there procedural mechanisms for remedying the consequences of a violation by pre-trial investigation authorities of the immunity guaranteed by Article 1 of protocol no. 6? [2]

It has already been noted that despite the fact that the payment of compensation to the applicant, the adoption of measures of a general nature are ways of implementing the ECtHR decision provided for by the Basic Law of Ukraine, the adoption of additional measures of an individual nature (reopening of the proceedings and re-examination of the case in a domestic court instance) is capable not only of correcting the violation of the convention committed by the state of Ukraine, but is also a way of bringing the applicant's condition into the same state as he was before the violation of the convention (restitutio in integrum) .Also additional measures of an individual nature, according to Paragraph “B” of Part 2 of Article 10 of the law, there are “other measures provided for in the decision”.

Based on the above, we believe that the foresight in the ECtHR decision on refusal to remove immunity from a person of such additional measures of an individual nature is the key to its effective and rapid implementation and, accordingly, a pointer to bringing the applicant's condition to the same state in which he was before the violation committed against him [11, p. 14-17]. However, in the situation we are considering, there are no such clarifications regarding additional individual measures in the ECHR decision.

Since the decision provided for in Paragraph 2 of Part 3 of Article 459 of the Criminal Procedure Code of Ukraine and the decision of the ECHR to refuse to remove a person's immunity under Article 1 of protocol no. 6 differ in essence, then their execution will obviously have certain differences. If existing violations of the rights of persons covered by the immunity provided for in Article 1 of Protocol No are found. 6, and / or breach by the pre-trial investigation authorities of the immunity guaranteed by Article 1 of protocol no. 6, then such persons, among other things, have the right to raise questions and demand compensation for the damage caused to them in civil proceedings, if there are appropriate grounds for this. At the same time, damage caused by illegal decisions, actions or omissions of a body carrying out operational search activities, pre-trial investigation, prosecutor's office or court is compensated by the state at the expense of the state budget of

Ukraine in cases and in accordance with the procedure provided for by law, and having compensated for such damage, the state applies the right of reverse claim to these persons in cases provided for in Part 2 of Article 130 of the code of Criminal Procedure of Ukraine. As for the grounds and conditions for imposing civil liability for the damage caused on the state, the explanation was provided by the Grand Chamber of the Supreme Court in a decision of September 3, 2019 [39]**.**

CONCLUSIONS

Despite the fact that the ECtHR's decision to refuse to lift a person's immunity is "procedural" and refers to those decisions in which, among other things, the ECtHR does not summarize a violation of the convention "which would be directly related to the ongoing judicial proceedings and the judicial decisions taken as a result of them" [2;3], nevertheless, the Grand Chamber of the Supreme Court has the power to conduct review proceedings for exceptional circumstances (Part 3 of Article 463 of the code of Criminal Procedure of Ukraine) if there is an application from a person in respect of whom the immunity provided for in Article 1 protocol no. 6. In order to avoid different perceptions of the provisions of the current code of Criminal Procedure of Ukraine regarding the powers of the Grand Chamber of the Supreme Court to carry out these procedural activities, the legislator should make appropriate additions to Paragraph 2 of Part 3 of Article 459 and Part 3 of Article 463 of the code of Criminal Procedure of Ukraine. It would be advisable to provide for a separate paragraph of the powers for consideration by the Grand Chamber in relation to other decisions of the ECHR, which, although "procedural", should also be recognized as exceptional circumstances at the level provided for in Paragraph 2 of Part 3 of Article 459 of the Criminal Procedure Code of Ukraine.

Unlike persons covered by the immunity provided for in Article 1 of protocol no. 6, in relation to other persons who are participants in criminal proceedings and to whom this and other immunities do not apply, the legal procedure provided for by the current Criminal Procedure Code of Ukraine should also be applied. The decision under consideration may be the "bell" for the state of Ukraine, which, among other things, signals possible violations of human rights identified by the court in the course of studying the materials provided to it, despite the fact that the purpose of the ECHR's decision to refuse to lift a person's immunity under Article 1 of protocol no. 6 is not a general assessment of criminal and judicial proceedings.

Proven violation of the rights of persons subject to immunity under Article 1 of protocol no. 6, and / or breach by the pre-trial investigation authorities of the immunity guaranteed by Article 1 of protocol no. 6th creates, among other things, prerequisites for resolving the issue of compensation (compensation) for damage caused by illegal decisions, actions or omissions of the body carrying out operational search activities, pre-trial investigation, prosecutor's office or court, based on the provisions of Article 130 of the code of Criminal Procedure of the Russian Federation.

We sincerely hope that our scientific research will understand the essence and consequences of the ECHR's decision to refuse to remove a person's immunity under Article 1 of protocol no. 6, which was adopted by its plenary meeting in accordance with Article 4 of protocol no. 6 to the general agreement on Privileges and immunities of the Council of Europe will be useful for continuing scientific discussion in this area, and final judgments can at least partially withstand both scientific discussion and well-deserved reasoned criticism, both from fellow scientists and judges and other practicing lawyers.

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Suggested Citation: Shchur, B.V., & Basysta, I.V. (2021). ECHR decision to refuse to waive the immunity of a person under article 1 of the protocol no. 6: Individual interpretations of the essence and consequences. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(3), 257-267.

Submitted: 18.09.2021
Revised: 11.08.2021
Accepted: 02.09.2021

УДК 343.1
DOI: 10.37635/jnalsu.28(3).2021.268-276

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ДОПИТ МАЛОЛІТНІХ ТА НЕПОВНОЛІТНІХ СВІДКІВ У КРИМІНАЛЬНОМУ ПРОВАДЖЕННІ: АКТУАЛЬНИЙ СТАН ТА ПЕРСПЕКТИВИ УДОСКОНАЛЕННЯ

Анотація. *Актуальність дослідження зумовлюється необхідністю удосконалення процедури отримання відомостей, які надаються під час допиту малолітніми та неповнолітніми свідками щодо відомих їм обставин у кримінальному провадженні під час судового розгляду, із забезпеченням якнайкращого дотриманням інтересів дітей. При проведенні дослідження авторами використовувались філософські, загальнонаукові та спеціально-наукові методи пізнання, які дали можливість провести детальний аналіз процедури допиту малолітніх та неповнолітніх свідків на стадії судового розгляду. З метою розроблення наукових пропозицій щодо удосконалення законодавчого врегулювання проведення допиту малолітніх та неповнолітніх свідків під час судового розгляду визначено принципи правосуддя дружнього до дитини, що повинні бути дотримані під час проведення такої процесуальної дії, а також гарантії, визначені у КПК України та спрямовані на реалізацію міжнародних стандартів забезпечення прав неповнолітніх осіб у кримінальному провадженні. Констатовано, що визначення на законодавчому рівні вимог, які ставляться окремо до педагога, психолога та лікаря, що беруть участь у допиті малолітніх або неповнолітніх свідків, а також порядку залучення таких осіб судом та органом досудового розслідування, значно б покращило якість надання необхідної допомоги неповнолітнім свідкам та відповідало б міжнародним стандартам. Проведено аналіз міжнародного досвіду в частині запровадження інституту представництва під час судового розгляду попередньо записаних показань малолітніх та неповнолітніх свідків. Встановлено, що запровадження такого інституту є абсолютно виправданим та таким, що матиме виключно позитивний ефект як для малолітніх та неповнолітніх свідків, так і для процесу доказування, і може бути імплементованим у національне законодавство. Розроблено наукові пропозиції щодо удосконалення законодавчого врегулювання проведення допиту малолітніх та неповнолітніх свідків під час судового розгляду*

Ключові слова: *кримінальне провадження, судовий розгляд, малолітні та неповнолітні свідки, допит, представництво інтересів, міжнародні стандарти*

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INTERROGATION OF MINOR AND JUVENILE WITNESSES IN CRIMINAL PROCEEDINGS: CURRENT STATE AND PROSPECTS FOR IMPROVEMENT

Abstract. *The relevance of the study is determined by the need to improve the procedure for obtaining information provided by minors and juvenile witnesses during interrogation regarding the circumstances known to them in criminal proceedings at the litigation stage, while ensuring the best respect for the children's interests. The authors employed philosophical, general scientific, and special scientific methods of cognition, which allowed conducting a detailed analysis of the procedure for interrogating minor and juvenile witnesses at the litigation stage. To develop scientific proposals for improving the legislative regulation of the interrogation of minor and juvenile witnesses during the litigation, the study defined the principles of child-friendly justice that must be observed during this procedural action, as well as the guarantees stipulated by the Criminal Procedural Code of Ukraine and aimed at implementing international standards for ensuring the rights of minors in criminal proceedings. The authors of this study state that the legislative definition of requirements imposed separately on the teacher, psychologist, and doctor involved in the interrogation of minor or juvenile witnesses, as well as the procedure for involving such persons by the court and the pre-trial investigation body, would considerably improve the quality of the required aid to minor witnesses and would meet international standards. The study analyses the international practices concerning the introduction of the institution of representation in the litigation of pre-recorded testimony of minors and juvenile witnesses. The authors established that the introduction of such an institution is absolutely justified and will have an exceptionally positive effect both for minor and juvenile witnesses, as well as for the process of proof, and can be implemented in Ukrainian legislation. Scientific proposals have been developed to improve the legislative regulation of the interrogation of minor and juvenile witnesses during court proceedings*

Keywords*: criminal proceedings, litigation, minor and juvenile witnesses, interrogation, representation of interests, international standards*

INTRODUCTION

Conventional practices of delivering justice involving minors are based on the adaptation of adult criminal justice to the principles of child-friendly justice, which is frequently ineffective against minors and juveniles due to their special development trajectory. The Law of Ukraine "On Child Protection" defines child protection in Ukraine as a strategic national priority, which is important for ensuring the national security of Ukraine, the effectiveness of the internal policy of the state, and the realisation of the rights of the child to life, health, education, social protection, comprehensive development and upbringing in the family environment establishes the fundamental principles of national policy in this area, based on ensuring the best interests of the child [1]. This approach of the legislator is conditioned upon the fact that children, due to their age characteristics, are the most unprotected and vulnerable, easily influenced and suggestible, and are subject to trauma, including repeated one [2]. Ensuring the best interests of the child entails actions and decisions aimed at meeting the individual needs of the child in accordance with his or her age, gender, health status, developmental specifics, life experience, family, cultural and ethnic identity, as well as consideration of a child's opinion when they reach an age and development level that enable them to express it.

In the context of the participation of minors and juveniles in criminal proceedings, the key is to better ensure the interests of the child and consider their opinion by minimising the negative consequences that can take the form of influencing the emotional intelligence of the child, their social activity, comprehensive healthy development, and upbringing. Researchers and practitioners note that the adolescent brain is at a stage where emotional intelligence is actively developing, social adaptation occurs, and the process of associating decisions and behaviour with long-term consequences occurs [3, p. 52]. In adolescence, there are changes in cognitive processes that play an important role in the development of emotional intelligence, with features of the cognitive and emotional sphere that primary school children do not possess. A high level of emotional intelligence contributes to success in various areas of a person's life. An essential difference in the development of emotional abilities in adolescence in comparison with the period of childhood in the scientific literature is a substantial expansion of the spheres of social activity of a person and a change in their significance for this person [3, p. 52]. Notably, the best way to ensure the interests of a child in criminal proceedings affects not only a particular participant in criminal procedural relations, but also the course of criminal proceedings themselves. The purpose of the criminal proceedings is to ensure a swift, complete, and impartial investigation and litigation, effectively holding everyone who has committed a criminal offence accountable to the extent of their guilt, ensuring that no innocent person has been charged or convicted, no person has been subjected to unjustified procedural coercion, and that appropriate legal procedure is applied to every participant in the criminal proceedings. Therefore, the issue of striking a balance in criminal proceedings is critical when it comes to contributing to the best possible protection of the child's interests upon performing the above set task.

The provisions of the current Criminal Procedural Code of Ukraine (hereinafter referred to as "the CPCU") in terms of protecting the rights and interests of suspected or accused minors improving the litigation procedure involving such participants in criminal proceedings, the institution of their representation, the procedure for conducting separate procedural actions both at the stage of pre-trial investigation and litigation with their involvement, indicate the orientation of the legislator to minimise the adverse impact of criminal proceedings on the psyche of minors, bringing Ukrainian legislation in line with the requirements of international law in the field of protecting the rights of minor participants in criminal procedural relations. As for other minor participants in criminal proceedings, in particular witnesses, the current legislation needs to be improved, because when children come into contact with the law as victims, witnesses, civil plaintiffs, or as offenders, it is equally important that they encounter a system that understands and respects their rights disregarding their procedural status [4, p. 153]. In previous studies, the authors proposed to improve the current criminal procedural legislation concerning the involvement of minor witnesses in criminal proceedings, namely arguing the need for the introduction of mandatory presence of a legal representative, teacher, or psychologist, and if necessary – a doctor upon interrogating all minor witnesses in court proceedings; the implementation of interrogation, in case of detecting negative influence from legal representatives on the process of a procedural action, using a specially equipped office using a two-way mirror in combination with the possibility of remote litigation; the introduction of mandatory appointment of a minor witness representative, who can serve as a defender in criminal proceedings – a lawyer**;** the improvement of the interrogation procedure for minor witnesses by introducing mandatory recording of this procedural action by technical means [5].

Despite the fact that Ukraine currently experiences a stable trend towards a decrease in the number of crimes committed, and in 2020 the crime rate on all counts decreased by 25-30%, which is associated with the establishment of quarantine and the introduction of enhanced anti-epidemic measures in the territory with a considerable spread of acute respiratory disease COVID-19 caused by the SARS-CoV-2 coronavirus [6, p. 40], Ukraine, according to the Numbeo service**,** has risen to the first place in the ranking of countries with the highest crime rate in Europe. The crime index of Ukraine is 48.84. Sweden ranks second (47.43), and France ranks third (47.37). They are followed by Moldova, Ireland, Belgium, the United Kingdom, and Italy. Therefore, the issue of interrogating minor witnesses in criminal proceedings for information regarding the circumstances known to them, while ensuring the best respect for the interests of children, remains topical and requires further research to develop proposals for improving this procedural action. The purpose of the present study is to conduct a detailed analysis of the procedure for interrogating minor and juvenile witnesses at the stage of litigation and develop proposals for improving the legislative regulation of this procedural action.

1. MATERIALS AND METHODS

The statutory framework for this study included the provisions of the Constitution of Ukraine, international regulations governing international norms and standards for the protection of human and civil rights and ensuring the rights of minors in criminal proceedings, a codified regulation governing the criminal procedural relations – the CPCU [7], regulations governing the issues of child protection (the Law of Ukraine "On Child

Protection" [1] and the Law of Scotland "On Vulnerable Witnesses (Witness Statements in Criminal Cases)" [8]). The study employed philosophical, general scientific, and special scientific methods of cognition. The dialectical method allowed covering the content of basic guarantees during litigation upon interrogating minor witnesses, aimed at implementing the principles of child-friendly justice.

Aristotelian methods (analysis, synthesis, abstraction, generalisation, analogy, induction and deduction) were used to investigate individual features (signs, characteristics) of representation of the interests of minor and juvenile witnesses in criminal proceedings. The leading Aristotelian method is analysis, which was used to study the specific features of involving a legal representative, teacher, psychologist, doctor in the interrogation of minor and juvenile witnesses. Thus, as a result, the study analysed the specific features of involving a teacher, psychologist, and doctor in the interrogation of minor and juvenile witnesses and their role in criminal proceedings, and determined the requirements that such participants in the relevant procedural action must meet. The authors of the present study analysed the institution of representation during the litigation of pre-recorded testimony of minor witnesses and considered the possibility of its application in Ukraine. The synthesis method allowed determining the guarantees aimed at implementing international standards for ensuring the rights of minors in criminal proceedings at the stage of litigation, namely upon interrogating minor witnesses. The method of abstraction allowed formulating the conclusions of the study, while deduction and induction – to search for initial ideas (regulatory prescriptions and corresponding doctrinal provisions). Consequently, induction and deduction were used to search for the necessary material for summarising and developing proposals in terms of improving the statutory regulation of the interrogation of minor and juvenile witnesses and the possibility of implementing provisions on the representation of pre-recorded testimony of minor and juvenile witnesses during litigation in national legislation.

The formal legal (dogmatic or legal-technical) method was used to study and interpret the norms of the CPCU, as well as to describe and systematise them. The comparative legal method was used in the study of the implementation of international standards for ensuring the rights of minors in criminal proceedings and the introduction of the institution of representation in court proceedings of pre-recorded testimony of minors and juvenile witnesses considering international practice. The hermeneutical method was used in the interpretation of scientific concepts of the theory of law and legal norms, which allowed covering the content of the legal context of the mechanism for conducting interrogations of minor and juvenile witnesses. Special legal methods were also used, namely specific sociological and system-structural methods. The specific sociological method allowed examining the judicial practice and conclude on the effectiveness of implementing the guarantees stipulated by the CPCU for minor and juvenile witnesses, as well as the need to improve the current legislation. The system-structural method was used in the development and research of the terminology of this study, namely when explaining the content of the categories "principles of child-friendly justice", "international standards for ensuring the rights of minors in criminal proceedings". The method of generalisation provided an opportunity to consistently bring individual facts into a single whole and formulate reasonable conclusions aimed at improving the legislative regulation of the issues under study, namely concerning the legislative determination of the requirements to the teacher, psychologist, and doctor, as well as the procedure for involving such persons by the court and the pre-trial investigation body in the interrogation of children, and the introduction of the institution of representation during the litigation of pre-recorded testimony of minors and juvenile witnesses.

2. RESULTS AND DISCUSSION

The procedure for conducting an interrogation, as well as any other procedural action involving a child in criminal proceedings during a litigation, must comply with the principles of child-friendly justice as defined in the Guidelines on Child-Friendly Justice adopted by the Committee of Ministers of the Council of Europe [9], namely in the following part:

1) ensuring the protection of children from harm, including intimidation and secondary victimisation in all court and out-of-court proceedings;

2) application of special measures if the suspect is one of the child's parents, family member or primary guardian;

3) the need to treat children according to their age, special needs, maturity, and level of understanding, as well as consider any communication difficulties that they may have;

4) ensure that children are protected from viewing images or information that may be harmful to their well-being;

5) determine the conditions for conducting a survey and collecting applications of children, considering the age, maturity, and level of comprehension, as well as any difficulties that they may have;

6) use of children's audiovisual statements who have been victims or witnesses, while respecting the rights of other parties to challenge the content of such statements;

7) facilitating the avoidance of direct contact, confrontation, or communication between the child victim or the child witness with the suspect to the extent possible, unless such child demands otherwise;

8) ensuring the possibility for children to testify in criminal proceedings in the absence of a suspect.

Article 354 of the CPCU stipulates the following guarantees aimed at implementing the above-mentioned international standards for ensuring the rights of minors upon interrogating minor witnesses at the litigation stage in criminal proceedings:

1) a minor witness and, at the discretion of the court, a juvenile witness is interrogated in the presence of a legal representative, teacher, or psychologist, and, if necessary – a doctor;

2) the presiding judge explains the obligation to give truthful testimony to a witness who has not reached the age of sixteen;

3) a witness who has not reached the age of sixteen is not warned about criminal liability for refusing to testify and for deliberately false testimony, and is not sworn in;

4) prior to the start of the interrogation, the legal representative, teacher, psychologist, or doctor is informed about their obligation to be present during the interrogation, as well as the right to protest against questions and ask questions;

5) the presiding judge has the right to assign a question posed to a minor or juvenile witness;

6) the possibility of applying remote litigation in cases where it is necessary for objective clarification of the circumstances and/or protection of the rights of a minor or juvenile witness.

Given the analysis of the criminal procedural law, the authors of the present study are forced to admit that for many years the interests of a witness, in particular a minor, were not the subject of legal protection, and the bodies of pre-trial investigation, prosecutor's office, and court often nihilistically and dismissively treated the requirements of criminal procedural legislation to ensure the rights, legitimate interests, and safety of witnesses [10, p. 298]. The purpose of questioning minor witnesses is to obtain reliable information about facts and circumstances relevant to criminal proceedings and subject to proof. For this, the presiding judge must create a favourable atmosphere and ensure such mutual understanding that the communication with the child on quite important and sometimes unpleasant things and events is their common task, which must be performed [11, p. 80]. The key elements that will help achieve this purpose and establish a contact with the interrogee are as follows:

1) consideration of the level of development and capabilities of the child;

2) flexibility of the interrogation procedure and flexibility as a characteristic of the interrogator;

3) objectivity, manifested in the impartiality of all persons involved in the interrogation;

4) emotional empathy, which will allow understanding what the interrogated child thinks and feels.

In this regard, the consideration of the child's level of development and capabilities is required to notice information about his or her communicative abilities, knowledge about the world around them and the circumstances of proceedings, memory, thinking, and emotional maturity and use such information in contact with this child. Questions addressed to the child should correspond to language capabilities, as well as knowledge and experience [11, p. 80]. In general, when interrogating adults and children, the type of question most affects the accuracy of testimony, which is a reproduction of the memory of witnesses. Thus, open questions contribute to more correct indications than closed questions [11, p. 80]. And if upon interrogating an adult in criminal proceedings it is sufficient to formulate clear questions about the circumstances known to them, then upon interrogating minor witnesses to obtain such information, it is necessary to establish an emotional connection and trusting relationship [2], which will contribute to the development of a safe attachment and relaxedness of the child [12], thereby considerably increasing the amount of information that needs to be obtained from the interrogee, namely information regarding the situation and the initiating/preceding event, people's intentions in the event, emotions and goals of people, as well as the interrogee, the action that occurred during the event and the consequences that occurred after the event [13].

2.1. Participation of a legal representative, teacher, psychologist, or doctor during the child's interrogation

The CPCU defines the circle of persons to be present during the interrogation of a child: a legal representative, a teacher, a psychologist, a doctor. However, the presence of these persons is an optional condition in the case of questioning a minor witness who is not a minor, and depends on the subjective opinion of the interrogator, in this case – the presiding judge. The legislator does not explicitly specify the list of persons who may be legal representatives of juvenile witnesses. Considering the fact that Article 354 of the CPCU concerns issues of interrogation of witnesses and victims, by analogy, we the legal representatives of juvenile witnesses can be persons defined in Part 2, Article 44 of the CPCU, namely parents (adoptive parents), and in their absence –

guardians or custodians of the person, other adult close relatives or family members, as well as representatives of guardianship and custodianship authorities, institutions and organisations under whose guardianship or custodianship the minor is held [7]. The participation of a legal representative during the interrogation of minors and, if necessary, juvenile witnesses is conditioned upon the need to provide such persons with general psychological and emotional support. The CPCU gives the legal representative a majority of the procedural rights of the minor whose interests they represent, which allows compensating for the inability of minors to be active subjects of criminal procedural relations due to their psychophysiological immaturity and a certain socio-psychological maladaptation to fully independently exercise and defend their rights and interests [5, p. 130].

Upon interrogating a child witness, it should be considered that, as a rule, he or she is more easily suggestible than an adult, prone to fantasising, which may be the result of a misunderstanding of the procedural action and the influence on this child of both legal representatives and other persons involved in the interrogation [14, p. 384]. Therefore, the interrogator should consider the influence of those present during the interrogation, including those close to the child, on the interrogation. In addition, this procedural action frequently involves other persons who are strangers to the child, but also influence the content and form of this child's statements. In such cases, it is necessary that they are positioned as far away from the child as possible, are not in front of his or her eyes and behave passively, without expressing any emotions. The optimal scenario is when they are positioned in another room with the possibility of monitoring the progress of the procedural action through one-sided glass or using audio equipment [11, p. 81]. I. Bandurka notes that the task of a teacher or psychologist, as well as, if necessary, a doctor, is to help the person conducting the interrogation establish psychological contact, develop the correct tactics for conducting the interrogation, formulate questions considering the child's psyche or individual characteristics of the minor's psyche [15, p. 167]. In court proceedings, a teacher, psychologist, or doctor is to be involved based on a court order. The legislator also does not define the requirements that certain subjects must meet. In previous studies, the authors have proposed a system of such requirements and proposed to divide them into two groups depending on the functional purpose of these persons during the interrogation of minor or juvenile witnesses:

– mandatory (higher education in the speciality; no less than 5 years of professional experience; no less than 3 years of experience in working with children);

– optional (the teacher should be engaged in the upbringing and training of minors or juveniles of the same age as the interrogee child, be positively described at the place of work and have special skills in interrogating minors involved in criminal proceedings; the psychologist should be a specialist in the field of child and juvenile psychology, considering the characteristics of the minor's personality, given that such a person can receive psychological help for the first time, despite possible psychological health issues and a history of trauma [16]; the doctor should have the necessary knowledge and skills to work with children to correctly recognise and respond to physiological changes in the body of a particular child).

Most frequently, in their decisions, courts approach the education departments of local self-government bodies to ensure the participation of a teacher in court proceedings, which is certainly a correct and motivated decision. However, it is not uncommon for judges to fail to specify in the court decision which teacher, psychologist, or doctor should be involved, and from what institution. Such an approach cannot be considered positive; therefore, it is appropriate to define the procedure for attracting these persons in the CPCU, including the list of institutions that the court or pre-trial investigation body can approach. Legislative definition of the specific requirements for a teacher, psychologist, and doctor, as well as the procedure for involving such persons by a court and a pre-trial investigation body, would considerably improve the quality of providing the necessary aid to minor witnesses involved in interrogation and would meet international standards for ensuring the rights of minors in criminal proceedings.

2.2. Pre-recorded testimony of minor or juvenile witnesses

Admittedly, a positive step for bringing the Ukrainian legislation closer to international standards for ensuring the rights of minors in criminal proceedings is the possibility to apply remote litigation in cases where it is necessary for objective clarification of circumstances and/or protection of the rights of a minor or juvenile witness, which is stipulated by the CPCU. Thus, a minor or juvenile witness, by a court order, may be interrogated outside the courtroom in another room using a video conference. However, in some cases, such a measure will not be sufficient to properly protect children from the adverse impact that may occur during the litigation. For a child who has witnessed the commission of a particularly grave crime or a crime involving this child's inner circle, any mention of what they saw and experienced already causes repeated trauma. Children who witness such crimes, especially those relating to domestic violence, have an increased risk of school development delays, cognitive delays, emotional and behavioural issues, individual symptoms of psychological trauma, and mental health disorders in childhood [17]. Participation in a court session via

videoconference cannot fully protect the child from repeated injury, and does not guarantee that the child will not see the accused and hear their remarks and questions. An innovation in the field of protecting the rights and interests of juvenile witnesses in international law is the introduction of the institution of representation during the litigation of pre-recorded testimony of such persons in Scotland. The corresponding Law of Scotland "On Vulnerable Witnesses (Witness Statements in Criminal Cases)" [8] was unanimously adopted on May 9, 2019, and received royal approval on June 13, 2019.

Such innovations in the legislation of Scotland provide that child witnesses can now present their evidence pre-recorded in some High Court cases, which will ultimately prevent further child's trauma, which is frequently the case when they appear in court during the litigation. Kate Wallace, Chief Executive Officer of Victim Support Scotland, commented: "attending a court hearing and testifying can be traumatic for anyone, and for vulnerable witnesses, including children, it is even more relevant. It is therefore important that child witnesses are given the right support to protect them from this. Therefore, we welcome this new law as an important step forward in protecting and supporting children and families involved in violent crimes" [18]. According to the provisions of the CPCU, the use of such a mechanism in Ukraine remains impossible. Thus, the Supreme Court, in its decision of November 19, 2019 in case No. 750/5745/15-k, ruled that the testimony during the previous litigation is similar in its legal properties and consequences to those procured in accordance with Article 225 of the CPCU. Article 225 of the CPCU makes provision for the possibility in certain cases (the existence of a danger to the life and health of a witness or victim, their serious illness, the presence of other circumstances that may render their interrogation in court impossible or affect the completeness or reliability of testimony) to conduct a judicial interrogation of a person during a pre-trial investigation, and such testimony is permissible, provided that the procedure stipulated by this provision is observed. The most essential components of this procedure are the performance of interrogation before a judge in a court session, the participation of the parties and compliance with the rules of interrogation provided for in litigation. The Supreme Court also points that Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms does not establish any rules on the admissibility of evidence, which are primarily subject to regulation by national law. Therefore, the practice of the ECHR, which recognises the use of testimony provided to the police or prosecutor's office during litigation, cannot be applied in Ukraine [19].

The authors of the present study believe that the introduction of the institution of representation during the litigation of pre-recorded testimony of child witnesses is absolutely justified and will have an exceptionally positive effect on both young and juvenile witnesses, as well as on the process of proof, and can be implemented in Ukrainian legislation. Minor witnesses, being surrounded by a limited circle of persons, namely a person authorised to conduct an interrogation, a legal representative, a teacher, a psychologist, and, if necessary, a doctor, will feel more comfortable and safer. The absence of contact with the prosecution and defence parties will ensure the procurement of clear answers to the questions posed, without emotional content, outside influence, and with minimal trauma to the psyche of the interrogee child. The evidence obtained can be demonstrated during the court session, and in case of additional questions, the court will be able to order an additional interrogation of the minor using the same procedure. The authors of the study consider it appropriate to introduce such an institution for certain categories of criminal acts mandatorily, namely in criminal proceedings concerning grave and particularly grave crimes. In criminal proceedings concerning minor crimes, the use of such a measure should be applied by a court decision during preparatory proceedings if the relevant request is submitted by the parties to the proceedings. When choosing such a measure, the court must allow all statements to be provided to the minor witness prior to the litigation, unless the court is sure that the application of such a measure will have an adverse impact on the examination of evidence during the litigation. To minimise the number of evaluative concepts in the criminal procedural legislation the authors of the present paper also propose to make provision for cases when the court may refuse to apply such a measure, namely if:

1) the provision of all statements of a minor or juvenile witness prior to the commencement of the litigation would entail a serious risk of jeopardising a fair litigation or otherwise affecting the interests of the parties to the criminal proceedings;

2) such risk considerably exceeds any risk of causing harm to the interests of a minor or juvenile witness in case they testify at a court session;

3) the age of the child to be interrogated at the court session is 12 years and older as of the date of initiation of criminal proceedings;

4) a minor or juvenile witness expresses a desire to testify in a court session that meets their interests.

If the court concludes that the application of such a measure is inappropriate, the court must make an appropriate ruling, providing the reasoning for its decision with reference to the above grounds.

CONCLUSIONS

Analysis of the procedural situation of minor witnesses in criminal proceedings at the stage of litigation indicates the existence of complex and debatable issues, mainly due to shortcomings in the legislative regulation, for the elimination of which it is necessary to amend the current criminal procedural legislation in terms of improving the procedure for conducting the interrogation of minor and juvenile witnesses during the litigation, namely the legislative determination of requirements for the teacher, psychologist, and doctor involved in the interrogation of minor and juvenile witnesses, as well as the procedure for involving such persons by the court and the pre-trial investigation body. Similarly to any procedural action involving children in criminal proceedings and the activities of the court, the interrogation procedure should comply with the principles of child-friendly justice, namely every child should be provided with support and professional assistance during his or her interrogation.

To ensure the delivery of accessible and swift justice in Ukraine, which is also adapted and aimed at meeting the needs, considering the interests and ensuring the rights of the child, and during which the rights and interests of every child are respected, including the right to a fair trial, to take part and understand the litigation, to respect for private and family life, honour and dignity, it is necessary to consider the possibility of introducing the institution of representation during the litigation of pre-recorded testimony of child witnesses in criminal proceedings. The authors of the present study consider it appropriate to introduce such an institution for certain categories of criminal acts mandatorily, namely in criminal proceedings concerning grave and particularly grave crimes. In criminal proceedings concerning minor crimes, the use of such a measure should be applied by a court decision during preparatory proceedings if the relevant request is submitted by the parties to the proceedings. To minimise the number of evaluative concepts in the criminal procedural legislation, the authors propose to make provision for cases when the court may refuse to apply representation during the litigation of pre-recorded testimony of child witnesses. Such changes in legislation and increased state interest in children can bring the Ukrainian legal system closer to the established international standards in the field of protecting and ensuring children's rights in criminal proceedings, as well as contribute to the development of a healthy generation.

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Suggested Citation: Kaplina, O.V., Kuchynska, O.P., & Krukevych, O.M. (2021). Interrogation of minor and juvenile witnesses in criminal proceedings: Current state and prospects for improvement. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(3), 268-276.

Submitted: 04.05.2021
Revised: 15.07.2021
Accepted: 22.08.2021

УДК 343
DOI: 10.37635/jnalsu.28(3).2021.277-289

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КІБЕРБУЛІНГ ЯК ОДИН ІЗ СПОСОБІВ ДОВЕДЕННЯ ДО САМОГУБСТВА В ЕПОХУ ЦИФРОВІЗАЦІЇ

Анотація. *Фундаментальною основою правових систем, заснованих на загальному праві, є те, що люди мають вільну волю і несуть відповідальність за свої дії. Особливо складні та суперечливі питання кримінальної відповідальності виникають, коли одна особа спонукає іншу до самогубства, і, відповідно, питання свободи волі, причинності та відповідальності набувають все більшого значення. Причини самогубства мають насамперед соціально-економічний характер. Певну частку самогубств становлять ті, що стаються через негативний вплив третіх сторін на жертв. У цьому випадку слідча дія повинна встановити, що злочинець виявляв умисел у своїх діях таким чином, щоб піддавати потерпілого високому ризику серйозних психологічних ушкоджень. В епоху цифрової трансформації особливу увагу слід приділити стосункам злочинця з потерпілим, уважно вивчивши соціальні мережі обох, враховуючи той факт, що типовий учасник Інтернет-спілкування, що призводить до самогубства, емоційно нестійкий, підлеглий, невпевнений у собі, таємничий, невпевнений підліток, і ця категорія більшою мірою представлена жіночою аудиторією. Масштабованість цифрових втручань дозволяє проникнути до населення, недоступного для звичайної медичної допомоги. Таким чином, існує потреба у використанні цифрових інтернет-втручань, у тому числі для допомоги у роботі правоохоронних органів у виявленні Інтернет-спільнот, які спонукають і схиляють людей до самогубства. Зроблено висновок, що епоха цифрових трансформацій постійно розвивається, соціальні мережі стають більш доступними як для злочинців, так і для їх жертв, внаслідок чого відповідні вимоги до розслідування та подальшого судового переслідування за підбурювання до самогубства ускладнюються. Наведені у дослідженні наукові пропозиції вчених -юристів спрямовані на вирішення відповідних проблем*

Ключові слова: *самогубство, цифрова трансформація, жертва, психологічне насильство, злочинність*

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CYBERBULLYING AS A WAY OF CAUSING SUICIDE IN THE DIGITAL AGE

Abstract. *The fundamental basis of legal systems based on common law is that people have free will and are accountable for their actions. Particularly difficult and controversial issues of criminal liability arise when one person instigates another to commit suicide, and, accordingly, issues of free will, causality, and responsibility become increasingly important. The reasons for committing suicide are primarily socio-economic in nature. A certain proportion of suicides are those that occur due to the negative impact of third parties on the victims. In this case, the investigative action must establish that the perpetrator displayed intent in his or her actions in such a way as to expose the victim to a high risk of serious psychological harm. In the era of digital transformation, special attention must be paid to the relationship of the criminal with the victim, carefully studying the social networks of both, taking into account the fact that a typical participant in Internet communication leading to suicide is emotionally unstable, subordinate, insecure, secretive, unassertive teenager, and this category is represented to a greater extent by a female audience. The scalability of digital interventions allows to penetrate populations beyond the reach of conventional mental health care. Thus, there is a need for the use of digital Internet interventions, including to assist in the work of law enforcement agencies in the detection of Internet communities that instigate and incline people to commit suicide. It is concluded that the era of digital transformations is constantly evolving, social networks are becoming more accessible for both criminals and their victims, as a result of which the corresponding requirements for the investigation and subsequent prosecution for incitement to suicide become more complicated. The scientific proposals of legal scholars presented in the study are aimed at solving the corresponding problems*

Keywords*: suicide, digital transformation, victim, psychological abuse, crime*

INTRODUCTION

According to the World Health Organisation, one person dies from suicide every 40 seconds [1]. The global age-standardised suicide rate for 2016 was 10.5 per 100,000 people. However, the rate varied widely across countries, from 5 suicides per 100,000 to more than 30 per 100,000. While 79% of the world's suicides occurred in low- and middle-income countries, the rate was the highest in high-income countries – 11.5 per 100,000 people [2]. Suicide is one of the leading causes of death among young people aged 15-29, second only to road traffic accidents. Among adolescents aged 15-19, suicide was the second leading cause of death among girls (after maternal illness) and the third leading cause of death among boys (after road injuries and

interpersonal violence).

Suicide is a desperate attempt to avoid suffering that has become unbearable. Most people make the decision to attempt suicide shortly before and on impulse, neglecting careful planning. While there are many factors that can influence a decision to commit suicide, the most common one is severe depression, which can cause people to experience severe emotional pain and loss of hope, leaving them unable to find any other way to relieve pain other than to end their life. Traumatic experiences, including childhood sexual abuse, rape, physical abuse, or military trauma, are the largest risk factors for suicide. Drugs and alcohol can also affect a suicidal person, making them more impulsive and more likely to act on their urges. The level of substance use and alcohol disorders is also higher among people with depression and other psychological disorders, which, as K. Snyder emphasises, together contribute to an increased risk of suicide. If a person suffers from chronic pain or illness with no hope of recovery or relief from suffering, suicide may seem like a way to regain dignity and control over one's life [3]. Often times, people may decide to commit suicide when faced with loss or out of fear of some kind of loss. These situations may include: academic failure, situations of arrest or imprisonment, the end of a close friendship or romantic relationship, loss of a job, loss of recognition from friends or family due to disclosure of sexual orientation, loss of social status. Many studies have found that hopelessness, whether short-term or long-term, contributes to the decision to commit suicide.

In this context, the need to consider issues related to unlawful acts aimed at driving to suicide in the era of digital transformations is very relevant, which indicates the advisability of conducting research in the relevant field. To achieve the intended goal, the tasks of the study are determined as follows: 1) to investigate the main tasks and ways of implementing international regulation of suicide prevention, taking into account modern digital transformations; 2) to consider the features of the current mechanism for regulating criminal liability for a wrongful act aimed at driving to suicide in the era of digital transformations using the example of the regulations of the Russian Federation; 3) to outline the criminological problems of the investigation of a crime and the specific features of bringing to criminal responsibility for an unlawful act aimed at driving to suicide in the era of digital transformations in the Russian Federation and possible prospects for their resolution, taking into account the experience of foreign countries.

1. LITERATURE REVIEW

Sometimes people try to commit suicide not so much because they really want to die, but because they simply do not know how to get help. Suicide attempts are not a cry for attention, but a cry for help. Unfortunately, these cries for help can sometimes be fatal if the person underestimates the lethality of the method chosen. People who make a failed attempt are also at a much higher risk of trying again, and their second attempt is more likely to be fatal. In the era of digital transformations, social networks have become the basis for positive communication and exchange of opinions, ideas and information of many people and organisations, but also with the development of Internet technologies, completely new ways of mental influence on victims have appeared, such as, for example, cyberbullying and its an extreme manifestation – cyberbullycide, which K.A. Krasnova defines as "a suicide that occurred as a result of facing direct or indirect aggression online" [4]. Notably, in 2019, the Russian Federation entered the top three countries in terms of the number of suicides committed, and rated first by the number of suicides among men. The results of the analysis carried out by the Federal State Budgetary Institution" V.P. Serbskiy Federal Medical Research Centre for Psychiatry and Narcology" indicate the fact that the rates of suicide frequency in the age groups of 10-14 years old and 15-19 years old exceed the world average levels by 1.5 times.

The greatest resonance among the society in the Russian Federation was caused by G. Mursalieva's study "The Death Groups", which analysed the mechanism of functioning of criminal groups operating in a new environment – social media. Adults with well-formed life orientations can also become objects of cyberbullying. An example of this is one of the first Russian cases of incitement to suicide on the Internet. Anna Symonenko, aged 31, was accused of registering on the Odnoklassniki social network under various fictitious names and deciding to take revenge on a young man who decided to end a romantic relationship with her. On the page of the young man, who had just returned from the army at the time of the quarrel with Symonenko, the woman posted false information about his "non-standard sexual orientation". As a result, Symonenko's ex-boyfriend decided that his honour was besmirched, and he was forced to commit suicide, which he repeatedly told his relatives about. On March 21, 2010, the young man fulfilled his intention and committed suicide.

And while the number of deaths is growing, the dynamics of criminal cases under articles on driving to suicide and inclining to suicide is changing towards decreasing. According to judicial statistics for 2018, under Part 1 of Article 110 of the Criminal Code of the Russian Federation, 14 people were convicted, under Part 2 of Article 110 – 2 people, under Part 3 of Article 110.1. – 3 people, under Part 5 of Article 110.1 – 1 person [5].

Lawyer Kaloi Akhilgov points to the fact that "in recent years it has become more difficult to prove a causality between the impact on a person who committed suicide and the suicide itself". According to the lawyer, the number of suicides themselves and cases of driving to them is not decreasing in Russia, since there is no practice of preventing them.

In modern theory and practice of legal science, a considerable number of fundamental works, studies, abstracts, and publications cover the issues of unlawful actions associated with driving to suicide. However, modern digital transformations and the challenges of globalisation have qualitatively influenced and continue to exert a corresponding reformatory impact on the criminological aspects of this type of crime around the world. Thus, the research carried out by the author in this study is based on the works of such authors as: D. Butler [6], M. Torok, S. Baker, D. Khan, M.E. Larsen et al. [7], A.M. Bychkova [8], R. Baron [9], E.K. Volkonskaya [10], N.M. Eliseeva [11], V.A. Lelekov and E.V. Kosheleva [12], K.A. Krasnova [4], N.E. Krylova [13], M.A. Campbell [6], A.M. Bychkov and E.L. Radnaeva [8], F.S. Safuanov [14], K. Snyder, V.K. Spittal et al. [15], O.V. Sosnina [16], R.S. Tokunaga [17], S.V. Filippov [18] and other authors.

The studies of these authors are of immense scientific and practical importance. At the same time, with the emergence of new forms of committing crimes, a number of issues of determining the nature and content of prevention of driving to suicide remain unresolved. The relevance of the subject matter is determined by the high level of latency, the degree of social danger of driving to suicide, as well as the difficulty of identifying the criminal acts of the personality of the offender and the victimological signs of the victim that affect his or her behaviour when committing this crime. The subject of the study is also mainstreamed by the need to develop ways to prevent the commission of violent crimes against the individual in the era of digital transformations.

2. MATERIALS AND METHODS

The methodological basis of the research covered in this study comprises the provisions of the theory of knowledge and conceptual provisions of forensic science. Thus, the dialectical method as a general scientific method of cognition of social and legal phenomena served as a stable basis for scientific research in the selected subject. With the help of this method, the study considered the criminological foundations of preventing the incitement to suicide in their dynamics and interrelation with criminal law approaches. The use of the dialectics of the general and the particular in the study of acts aimed at driving to suicide has led to a complex system approach and the use of various scientific methods, for example: Aristotelian, systemic, historical legal, statistical and comparative legal, and other methods and techniques. The complex-systemic approach was used upon examining the literature of other scientific areas: philosophy, logic, psychology, general theory of law, criminology, international law, as well as appeals to encyclopaedias, dictionaries, and other reference publications.

In the course of the study, a systemic-structural method was used, which allowed to work out and identify problems in the features of the forensic characteristics of driving to suicide, to determine its constituent elements; to develop a system of standard versions for the development of general author's conclusions and proposals in the field of reforming the national legislation of the Russian Federation; a set of criminal intelligence activities and a typical set of forensic examinations for the investigation of incitement to suicide) allowed to analyse the practice of law enforcement and develop a comprehensive idea of the vectors of modifying approaches in the implementation of investigative actions in this category of cases in the era of digital transformations; the Aristotelian method was used to identify criteria for the classification of elements of forensic characteristics, typification of investigative situations and investigative versions; the functional method has found its application in the study of methods of driving to suicide, methods of committing suicide, establishing the features of the organisation of the investigation of this category of crimes; the comparative method was used to determine the specifics of the method of committing this type of crime); the comparative legal method allowed to conduct a comparative analysis of the criminological aspects of this type of crime in various jurisdictions with the subsequent possibility of testing positive foreign practice; the statistical method was used in the generalisation of criminal cases, as well as in the study of statistical information provided by law enforcement and judicial authorities.

The method of content analysis allowed to distinguish between the materials of criminal proceedings according to individual quantitative and qualitative parameters with the subsequent interpretation of the results obtained; the dogmatic method was used in the interpretation of criminal law and criminological categories, in the improvement of the terminology of the study; the logical and normative method was applied to analyse legislative and departmental (interdepartmental) regulations on the prevention of a person's suicide; method of system analysis was applied upon considering theoretical and practical issues of the activities of law enforcement agencies.

With the help of the formal dogmatic (logical) method and the systemic method, the objective and

subjective signs of the corpus delicti of this crime were considered, the shortcomings of the provision enshrined in the Criminal Code of the Russian Federation were covered, proposals were formulated regarding the improvement of the legislative regulation of criminal liability for driving to suicide. The historical legal method helped explore the history of the development of legislation, which stipulated responsibility for driving to suicide. Conducting a historical legal analysis is impossible without taking into account the transformations that took place not only with the object of study, but also with all the processes and phenomena associated with it. The above, first of all, allows to identify and consider all the factors and conditions that determined the evolution of the criminological component of this type of crime; therefore, the historical legal method was used to determine the stages, analogues and determinants of the development of national legislation and its enforcement in the studied area; problem-chronological method allowed to structure the text of the study, empirical analysis contributed to the comparison of historical facts.

3. RESULTS AND DISCUSSION

At present, for criminological science, undoubtedly, examples of suicide are relevant, according to which the desire to die was developed from the outside, through the deliberate creation of situations by other persons leading to the commission of suicide. The concept of driving to suicide is broad, since it covers both the process comprising a certain set of actions, including instigation, impelling suicide, and the result of such actions. Thus, "driving" makes provision for a completed action aimed at depriving the victim of his or her life, allows one to qualify the act as driving to suicide, regardless of the consequences. The concept of "abetting" is narrower, it covers only the process of developing the victim's intentions to commit suicide, that is, this is a deliberate influence on another person, aimed at causing (inciting) the person's determination to commit suicide, namely, actions to convince, persuade, force and, ultimately, induce the victim to commit suicide. Therewith, abetting is also participation in committing suicide by creating appropriate conditions for the implementation of the intention to take one's life, assisting in this with advice, instructions, providing information, means or tools, or removing obstacles to committing suicide [16]. In turn, modern realities have led to a qualitative change in approaches to the commission of unlawful acts, and one specific phenomenon in the Internet space was also identified – the criminal activity of users or their communities, the result of which is driving other users to commit suicide by means of mental influence on them in social networks. Traditional bullying on the Internet, involving overt or covert verbal, relative, and physical aggression, has focused on bullying between children and young people, but recent studies have indicated that bullying among adults can also have serious consequences [19].

This is how the concept of "cyberbullying" was gradually introduced into modern reality. There is currently no consensus among scientists as to what behaviour is cyberbullying and what is its definition. Media representations of cyberbullying focused on interactions between young people using mobile phones and the Internet, highlighting cases where cyberbullying was a factor in suicide or self-harm [20]. This contributed to the widespread belief that cyberbullying occurs exclusively among young people and is more serious than traditional personal bullying, reinforced by adults' lack of awareness of the means by which cyberbullying occurs. However, scientists such as M.A. Campbell and C. Privitera argue that cyberbullying is simply a new form of conventional bullying, often leading to suicide, adapted to new technologies [19]. R.S. Tokunaga defines cyberbullying as "any behaviour committed through electronic or digital media by individuals or groups that repeatedly communicates hostile or aggressive messages aimed at causing harm or discomfort to others" [17]. In support of the description of cyberbullying as an old problem in a new form, according to D. Butler, S.M. Kift, M.A. Campbell, says the fact that when comparing both conventional and cyberbullying, both situations include the intention to harm the victim, create an imbalance of power, repetition or threat of further aggression, and the victim's inability to defend oneself [6]. While power imbalances are usually related to the physical strength or social status of the perpetrator, in a cyberbullying situation, "the act of intimidation itself" creates an imbalance of power, often leading to suicide, along with the anonymity offered to online criminals.

Digital communications can include repetition, both in the traditional form of a series of repetitive messages, and in terms of the digital longevity of communications. A single harmful comment on a social networking site like Facebook can be viewed by hundreds of others, who can "like" or "share" the comment, keeping it publicly available and damaging the target as much as traditional repetition. Aside from these similarities, cyberbullying poses unique challenges that offline bullying incidents do not. In addition to the problems associated with longevity and anonymity, the global reach of the Internet means that digital communications have a much greater potential geographic reach than non-digital communications. Combined with the speed at which digital communication is spreading, this creates a considerably wider audience for cyberbullying incidents, increasing the probability of target harm. Cyberbullying is primarily carried out via the Internet or from mobile phones. However, as increasingly more mobile phones allow users to access the

Internet and Internet messaging services, the distinction is blurring. Cyberbullying can take many forms, including wilful, hostile insult, online harassment, cyberbullying, and defamation, which often leads to victim suicide.

For the "suicidal cult" that has developed on the Internet, the following points are characteristic: ideology of devaluation of life guidelines, such as love, friendship, family; distinctive symbolism, in the capacity of which the image of a blue whale is used (associating with whales being thrown ashore with their subsequent death); specific audio sequence and slang: "to off oneself" – commit suicide; "offing" – suicide; "play the blood violin" – slit one's wrists; "a whale" – a suicide or a participant in the corresponding "challenge", etc.; video sequence: broadcasting documentary frames containing falls from a height, cutting veins, hanging processes, jumping in front of a moving vehicle, or using the corresponding feature films; visual sequence: pictures with images of cuts, bruises, gallows, drowned men, lips pierced with needles, tongue, etc.; text sequence: quotes and slogans ("Whales die in puddles of gasoline", etc.).; "suicide icon", the image of which is attached to Rina Palenkova (Rina #Nya-Poka, real name – Renata Kambolina) – on November 23, 2015, this 16-year-old girl put her head on the rails in front of a moving train, and the day before her death she was photographed against the background of a freight carriage and posted a photo with the inscription "nya.bye", and a photo of a body with a cut off head on the day of her death appeared on the Internet, and later the administrator of the suicide group F57, in order to promote the group, started a rumour that Rina had committed suicide influenced by this community; the idea of continuing life after suicide – thus, the participants are peddled the idea of "existence beyond the grave" as a "psychoenergy-informational essence", which corresponds to the worldview of modern youth about the structure of the world.

In this context, archaic legal regulation requires its qualitative renewal and transformation aimed at effective prevention. The primary vectors of such activities were laid down in the policy of the World Health Organization (WHO), which is aimed at preventing suicide. An example of this is the publication of the First WHO World Suicide Report "Suicide Prevention: A Global Imperative" in 2014 [20], the main purpose of which was to increase the level of knowledge about the importance of suicide and suicide attempts, and, accordingly, the role of suicide prevention in the healthcare system. Implementing a community strategy, the WHO, in collaboration with the Mental Health Canada Commission, developed Suicide Prevention: A Toolkit for Community Engagement, which was published on 24 June 2019 [20] and provides a step-by-step guide for countries wishing to start activities to prevent suicide in their communities. It describes a collaborative bottom-up process through which communities (including community leaders, healthcare professionals, parliamentarians, teachers, social workers, police and firefighters, and business leaders) can work together to prioritise and implement appropriate interventions. The said Toolkit includes tips and practical tools to help set goals and develop an action plan, as well as examples of successful initiatives in Canada, India, Kenya, Nepal, Trinidad and Tobago, USA.

As for the national legal regulation, the responsibility for driving, attempt, abetting, assistance, and inducement to suicide is given serious attention in the legislative acts of the Russian Federation. Article 110 of the Criminal Code of the Russian Federation [5] stipulates criminal liability for a criminal act related to driving someone to suicide or to attempted suicide using threats and cruel treatment. In the same Article, legislators have introduced situations containing confirmed data on the systematic humiliation of human dignity. In Part 2 of this Article, the emphasis is placed on the commission of an act against a minor, a helpless person, financially dependent on the perpetrator of this act. The legislator singled out as separate aggravating criteria – driving pregnant women to suicide (the offender being aware of pregnancy), a crime committed against two or more victims, committed by a group of persons by prior conspiracy or by an organised group. A special place in this Article is given to responsibility for driving to suicide in public engagement, publications on the Internet, and in the media. Part 1-2 of Article 110.1 of the Criminal Code of the Russian Federation [5] make provision for liability for abetting to commit suicide or assistance in committing suicide. Part 3 of Article 110.1 prescribes the same situations as Part 2 of Article 110. Article 110.2 of the Criminal Code of the Russian Federation [5] contains provisions of responsibility for organising actions, the result of which is inducement to commit suicide. Any individual is considered a victim of this type of crime. Criminal liability is stipulated for any person contributing to the dissemination of defamatory information and threats, including people who are complete strangers for the victim. Based on forensic research, in the "criminal-victim" relationship in the process of bringing to suicide, depending on the nature of social contacts, it is possible to distinguish the corresponding types of victims of this crime. The victim could be in a relationship or family relationship with the offender. In addition, the victim could have been an acquaintance of the criminal at the place of residence, birth, work, study, military service, joint recreation. These types of victims can also include situations that have arisen as a result of chance encounters on the streets; participation in criminal activities. Also, the victim is a stranger to the criminal, they met just before the crime. At the present stage of

the development of society, which is based on digital transformations, situations in which the acquaintance of the victim with the criminal takes place on the Internet is of particular relevance.

The objective side of the corpus delicti contains: the actions of the guilty person; creating a hopeless situation for the victim; based on these actions, a victim makes a decision on suicide. Threats, cruel treatment, systematic humiliation of the victim's human dignity are criminally punishable components of driving to suicide. When considering the nature of the threats, it is important that the perception is real, posing a threat to the life of the victim. In this context, ill-treatment implies the regular humiliation of human dignity, carried out in the repeated acts of bullying and insults of the victim. The corresponding methods act as mandatory alternative signs of the composition of bringing to suicide. The result of driving to suicide is considered to be the moment of suicide or an attempt on it by the victim. In accordance with the Commentary to the Criminal Code of the Russian Federation [5], driving to suicide is carried out with indirect or direct intent. The subject in this case is a sane natural person who at the time of the crime turned 16 years old. Legal scientists classify this act as a crime of average gravity. The structural element of the forensic characteristic of driving to suicide is the personality of the perpetrator. When characterising the personality of a criminal who commits such a crime in the form of intent, it is necessary to take into account that the subject of the crime is a person in relation to whom the victim was in material or other dependence. This crime is classified as a violent, intentional encroachment on a person's life, which is contrary to the moral principles of human community. The personality of a criminal, like any other person, is described by a variety of signs: demographic (gender, age, health status), moral (worldview, interests, orientation), social (work, family, and household) and psychological (emotions, temperament, volitional qualities, etc.). These signs are reflected in the individual properties of the personality of the offender, his or her relationship with the victim. The personality of the offender is described by a number of forensically significant attributes specific to driving the victim to suicide, reflecting the way the victim is driven to suicide, the characteristics of the behaviour of the offender, his or her temperament, skills in life and work. Such attributes are as follows: cruel treatment of the victim, humiliation of the victim's human dignity, blackmail, use of material and other dependence of the victim on the offender, spreading rumours about the victim's alleged intentions to commit suicide, staged suicide or an accident, which may indicate the cunning of the offender, his or her intellectual level. When committing a crime, especially when preparing for it, the offender assesses not only the environment where he or she will act, but also the victim (gender, age, physical strength, intellectual capabilities, moral, psychological, and other personal features).

The behaviour of a criminal when committing criminal acts is associated with his or her psychological, moral, social properties and manifestations. The perpetrator models his or her behaviour to provoke the victim to attempt suicide. A person commits a crime due to the exploitation of the victim's material (or other) dependence on him or her, brings it to a state of frustration, heat of passion, and auto-aggression (suicide). Through the result of the criminal's actions (suicide of the victim), it is possible to determine the purpose, motive and method of committing a crime, because based on it, there is a real opportunity to get an idea of the main elements of the criminal's activity, his or her social and psychological qualities. The issue of considering the emotional state of the offender is a mandatory attribute of corpus delicti. Violence of the perpetrator in various forms affects the victim, has its manifestations, features, it can perform the function of not only coercion, but also direct suppression or destruction of the object of violence. The offender, as a rule, is aware that his or her actions will lead to the suicide of the victim. Aggression is often the cause of frustration; the latter can be associated with other possible prerequisites for aggression. The criminological characteristics of the personality of a criminal during the driving to suicide is identified through personal characteristics: hatred (behaviour), aggression (personality type), destructiveness. Psychologists distinguish the following defects in a criminal: individual sense of justice, pathology of the needs of the sphere of personality and mental development. The most common features of violent criminals include selfishness, disregard for the interests and opinions of members of society, lack of ability and desire to put oneself in the victim's place, cruelty, and affective behaviour. Violent motives for committing a crime describe the behaviour of the offender: cruel treatment, blackmail, coercion into unlawful actions, systematic humiliation of human dignity. Unlike conventional bullying, cyberbullying is becoming especially common. The development of technological communications allows criminals to embarrass their victims in front of a huge audience, and such communications can never be completely destroyed. According to the time of occurrence, the connection can be divided into the one that arose to commit a crime, and the one that arose in the process of criminal encroachment. By the nature of the interaction between the victim and the offender (presence or absence), the connection can be direct and mediated. According to the circumstances, the creation of a connection can be divided into: developing as a result of certain relationships that existed between the offender and the victim to commit a crime; to the resulting acute conflict situation, intermediate before or at the time of the crime. In modern realities, a special place in the establishment of this connection is given to the study of social networks,

the participants of which were both the perpetrator and the victim.

A portrait of the personality of a modern victim from driving to suicide: a man aged 25, who is described by the fact that in his entire life he did not have mental illnesses, but was in a state of mental disorder at the time of the suicide; the result of this case was self-inflicted death; also described by the presence of close relationships with those who, according to the evidence of the investigation (court), could drive (drove) to suicide. The following motives can be attributed to the motivation of a suicidal act (%): "psychological" (47.6%), "medical" (40.5%), "criminological" (35.7%), "personal" (23.8%), "material and household" (11.9%) [15]. A teenager may be tempted to commit suicide due to certain life circumstances, such as having a mental disorder, including depression; loss or conflict with close friends or family members; a history of physical or sexual abuse or exposure to abuse; problems with alcohol or drugs; a physical or medical problem, such as pregnancy or a sexually transmitted infection; factors of bullying; uncertainty about sexual orientation; susceptibility to suicide of a family member or friend. Warning signs of teenage suicide may include statements such as, "I am going to kill myself" or "I will not be a problem for you anymore"; refusal of social contacts; mood swings; increased use of alcohol or drugs; feeling trapped or hopeless about the situation; change in the daily routine, including eating or sleeping patterns; engaging in risky or self-destructive behaviour; giving away personal belongings when there is no other logical explanation why it is being done; developing personality changes, severe anxiety or agitation when some of the warning signs listed above appear [21]. The public outcry caused by articles about cyberbullying in the mass media led to a corresponding reaction from the state authorities of the Russian Federation. In 2017, the activity of about 1.4 thousand "death groups" was recorded on the social networks VK, Instagram, Facebook, YouTube, RuTube, Odnoklassniki, which included more than 12 thousand users. About 200 thousand corresponding messages were found, 1.279 thousand administrator accounts were recorded, 234 criminal cases were initiated on the fact of persuading minors to commit suicide in prohibited associations, and a number of organisers were arrested. Law enforcement officials found that the age category of the organisers included young people from 13 to 25 years old, the fact of supervision by girls whose age did not exceed 18 years became characteristic. The leaders of such groups were people from well-to-do families, dismissive of suicide victims, classifying such adolescents as representatives of "bio-waste".

In this regard, the adoption of the Federal Law No. 248-FZ "On Amendments to the Criminal Code of the Russian Federation" of July 29, 2017 [5] was rather important. In accordance with this law, there was a legislative increase in liability for the above criminal acts (for up to 15 years), which was reflected in the relevant articles. The maximum penalties for inciting another person to commit suicide have a wide range and require the accused to have intent for the victim to commit suicide. In addition, based on the Order of the Government of the Russian Federation No. 2098-p "On the approval of a set of measures until 2020 to improve the system of prevention of suicide among minors" of September 18, 2019 [22], in March 2020, the Ministry of Healthcare of the Russian Federation prepared guidelines "Suicidal behaviour of minors (preventive aspects)", which are used by school psychologists in their work; specialists of medical organisations; employees of anti-crisis centres; mass media; electronic resources. Recommendations can become a substantial component of federal and local anti-crisis developments with a statement of age, professional and clinical groups with the highest risk of suicidal behaviour, which will facilitate productive interaction of mental health professionals.

Proceeding from the above, the following conclusions can be drawn:

– the criminological characteristics of the personality of the offender during the drive to suicide is revealed through the defects of personal characteristics: hatred (behaviour), aggression (personality type), destructiveness;

– the most typical characteristics of a criminal's personality include: 1) demographic; 2) professional education; 3) the sphere of employment; 4) communication with the victim; 5) propensity to commit crimes (convictions) 6) physical, psychological state;

– in the era of digital transformations, special attention must be paid to the connection between the offender and the victim, carefully studying the social networks of both;

– a typical participant in death groups is an emotionally unstable, driven, notorious, secretive, insecure teenager, and this category is represented to a greater extent by a female audience, despite the fact that, according to statistics, men commit suicide on average 4 times more often;

– cyberbullying is a real problem in Russian society, which can have serious consequences for health and life due to the spread of the suicide factor;

– in the Russian Federation, attitudes towards violence are changing, combined with the growing importance of digital communication technologies in modern conditions, which has led to a legal solution to the problem of cyberbullicide in terms of a corresponding increase in criminal liability.

There are factors that, according to R. Baron and D. Richardson, influence the transition from frustration to aggression, these include: the level of frustration that a potential aggressor feels; the presence of prerequisites for aggression; the degree to which the frustrator behaves unexpectedly; emotional and cognitive

processes of frustration of the aggressor [9]. Psychologists, studying aggression, identified in it the concept of criminal aggression – a form of behaviour of a criminal who fulfils any intention or urge regarding the victim and who is associated with this intention due to a certain meaningful attitude, objectively aimed at causing harm to the life and health of the victim. As F.S. Safuanov notes, the criminal may not be capable of implementing his or her intentions for reasons beyond his or her control [14] (for example, the victim commits suicide and remains alive). The affective state of the victim is preceded by an acute conflict situation with the guilty person, prompting an immediate response. The signs of such a situation are: circumstances that threaten human life and the actions of others; their statements, social assessments that deeply affect or traumatise the person. Involvement of the offender in the consequences when driving to suicide in most cases is expressed in the form of indirect intent. When driven to suicide with indirect intent, the perpetrator realises that his or her actions (inaction) are cruel or degrading the dignity of the victim, that is, they are socially dangerous; the perpetrator assumes that his or her behaviour towards the victim may lead to suicide or attempted suicide, but the perpetrator does not want the victim's death, treats it indifferently and deliberately admits it. In case of criminal arrogance, the perpetrator realises that the actions (inaction) performed by him or her are capable of driving a person to suicide, but in this particular case, in his or her opinion, this should not happen, since there are circumstances that can prevent suicide. Negligence in bringing to suicide makes provision that the perpetrator failed to foresee the possibility of suicide as a result of his or her unlawful or immoral actions (inaction), but was on the spot and could have foreseen it. Research shows that even when the perpetrators can be identified, they and their victims often need help. A study in the Netherlands found that boys who bully others are eight times more likely to develop suicidal thoughts than girls. Students who reported bullying others also reported “higher levels of school loneliness” and lack of school connections compared to those who did not. The correlation between the suffering of cybercriminals and their violent behaviour is unclear, but these results indicate that these situations need to be investigated. If factors such as loneliness, lack of school connections and aggression are found to cause bullying, they must be addressed before bullying and cyberbullying can be reduced or eradicated.

According to E.K. Volkonskaya, 14 years should be defined as the minimum age limit for suicide. This age threshold (in the vast majority of cases) corresponds to such a level of development of the psyche, which allows, when performing independent actions, not only to realise their importance in individual and social relations, but also to exercise the necessary control over them [10]. The lawyer, based on the fact that criminal liability for incitement to suicide is stipulated with regard to a sane person who has reached the age of 16, concludes that if proceeding from the above provision, according to which the minimum age limit for suicide is 14 years age, the age of the person who drove the victim to suicide should also be recognised as equal to 14 years and older. E.K. Volkonskaya believes that amending this provision at the legislative level will increase the effectiveness of suicide-preventive activities in the field of application of the criminal law. The existing editions of articles of the Criminal Code of the Russian Federation, which stipulated criminal liability for actions related to the promotion of suicide, require further development. Articles 110 and 110.1 of the Criminal Code of the Russian Federation are in many respects similar, and in carrying out the acts stipulated in them, the offender performs actions that lead to the same result [5]. According to legal scholars, the optimisation of these articles will allow for the correct concentration of the presentation of legal information and the proper capacity of criminal law regulations, thereby simplifying the work of the law enforcement officers. This suggests the possible merging of the said articles. In connection with the change in the content of the propaganda of deviant violent behaviour in social networks and other means of exchanging information, which is becoming more widespread in the context of the informatisation of society, scientists propose to expand the scope of Article 110.2 of the Criminal Code of the Russian Federation by establishing criminal liability for incitement to commit a murder through the dissemination of information about the methods of murder, as well as calls to commit it. The proposed wording of the article would cover socially dangerous acts that do not currently fall under the signs of any corpus delicti, but which take place in reality.

In this regard, N.M. Eliseev, to ensure the correct qualification of the analysed acts, differentiation of criminal liability, construction of reasonable sanctions and the subsequent individualisation of punishment for driving to suicide, guided by the provisions of the institution of complicity, based on the provisions of Articles 110, 110.1, and 110.2 considers it appropriate to construct one article of the Criminal Code of the Russian Federation in a new wording (excluding Articles 110.1 and 110.2 from the Code) [11]. S.V. Filippova [18] suggests that the main components of the abetting to commit suicide and the facilitation of its commission be formed according to the type of material components, as a result of which the responsibility for committing ineffective actions, i.e., not leading to suicide or attempted suicide, will proceed in accordance with the general rules of an unfinished crime. A.M. Bychkov and E.L. Radnaev believe that in the case of Article 110.2 of the Criminal Code of the Russian Federation, the legislator does not quite correctly define the object of the encroachment:

the article is located in Section VII ("Crimes against a person"), while in this case, according to the scientist, the object lies in fundamentally different social relations [8]. After the emergence of information about the phenomenon of "death groups", the legal scientists concluded that the actions of organisers of such groups extend to an individually indefinite circle of people. Consequently, these acts encroached on the health of the population and public morality and could be qualified under Article 239 of the Criminal Code of the Russian Federation. N.E. Krylova came to a similar conclusion [13]. Reasonable opinion is expressed by V.A. Lelekova and E.V. Kosheleva, who believe that upon studying the problems of deviant behaviour of minors, social institutions such as family, school, work collective, etc. deserve special attention, which, unlike in the Soviet period, are of lesser importance in the socially positive socialisation of the personality of a teenager, first of all, in solving the key issue – the development of the right attitude towards life [12]. Young people who experienced bullying or cyberbullying as perpetrators or victims had more suicidal thoughts and were more prone to attempt suicide than those who did not experience similar forms of peer aggression. In addition, victimisation was more closely associated with suicidal thoughts and behaviour than with insult. admittedly, the scholars emphasise, educators must be careful not to instil in young people the idea that suicide is a viable solution to their interpersonal problems. However, it is important to boldly (but delicately) address this subject to prevent this form of harm and remind young people that help is always available. Parents should also discuss the connection between offline and online peer harassment and suicidal thoughts, and consider using stories in the news to highlight the seriousness of the issue. Self-directed digital interventions, designed for use without professional guidance and delivered via web programmes or mobile apps, have proven effective in preventing and reducing depression and anxiety in many countries. Over the past 5 years, digital suicide prevention techniques have been developed that can and should be widely promoted through the Internet and digital distribution platforms such as application services as part of suicide prevention efforts [15]. Their ability to provide quality therapeutic support at the discretion and pace of the user, anonymously and at minimal cost, means that digital interventions can overcome barriers to accessing conventional care and offer a sustainable, scalable solution. Currently, there is growing international interest in finding immediate, technology-based solutions with a focus on suicidal ideation and mental health, especially in countries with no adequate mental health services and in countries where access to such services is insufficient. Determining whether these innovative solutions will work has become a global public health priority. There is growing evidence of the effectiveness of digital interventions in reducing suicidal ideation.

M. Torok, D. Hahn, S. Baker, A. Werner-Seidler, J. Wong, M.E. Larsen [7] point to the efficiency of self-directed digital interventions for suicide prevention and emphasise the importance of including information on direct suicide prevention in digital interventions. Scientists point to the fact that digital interventions directly aimed at combating suicidality can and should be promoted on the Internet and integrated into health systems in the countries where they have been tested so that they are available to those who need them, especially after any security problem has been ruled out. There is also a need to expand and test their use in various countries, including the Russian Federation, to help law enforcement agencies in detecting Internet communities that abet suicide.

In the Russian Federation, international programmes for the prevention of suicide are successfully applied. An example of this is the Facebook content monitoring programme developed by the UK, Ireland, the USA, and Norway. The result of the corresponding project was the use of a specific form that allows to report a potential suicide with the subsequent immediate transfer of this data to the police and social services. In April 2020, the Public Chamber of the Russian Federation formulated a proposal to toughen the responsibility for insults and bullying on the Internet, due to the fact that these atrocities often lead to suicide of victims. The corresponding initiative was submitted to the State Duma and the Federation Council. In particular, it is proposed to stipulated up to seven years of forced labour for the threat of murder and grievous bodily harm in the social media, and a fine of up to 6 million roubles for libel. Both chambers of parliament are ready to consider the amendments that are to be introduced to the Criminal Code and the Administrative Code. Lawyers believe that the innovations will expand the capabilities of law enforcement officers to qualify crimes in the network, in particular, with respect to Article 110 of the Criminal Code of the Russian Federation [5]. The discussion provided an opportunity to state the following: a) in the era of digital transformations, it is necessary to scrutinise the existing factors that influence the transition of frustration to the aggression of a criminal who leads or induces suicide on the Internet, paying attention to such a concept as "criminal aggression"; b) the involvement of the offender in the consequences when driving to suicide in most cases is expressed in the form of indirect intent; c) the correlation between suffering on the part of cyber bullies and their violent behaviour is unclear, but the results of this study indicate that these situations need to be investigated, and an anti-bullying education campaign to address the causes and consequences of bullying can help both criminals and their victims; d) 14 years of age should be defined as the minimum age limit for suicide; therefore, the age of a

person who has driven another person to suicide should also be recognised as equal to 14 years and older; e) Articles 110 and 110.1 of the Criminal Code of the Russian Federation are in many respects similar, and by carrying out the acts stipulated in them, the offender performs actions leading to the same result, thus, it is possible to merge these articles; f) scientists propose to expand the scope of Article 110.2 of the Criminal Code of the Russian Federation by establishing criminal liability for incitement to commit a murder by disseminating information about the methods of murder, as well as calls to commit it; f) the actions of the organisers of "suicidal quests" are aimed not only at specific users, but also at an individually indefinite circle of people; therefore, these acts infringe on public health and public morality and can be qualified under Article 239 of the Criminal Code of the Russian Federation; g) in solving the key issue – the development of the correct attitude towards life, when studying the problems of deviant behaviour of minors such social institutions as the family, school, work collective, etc. deserve special attention, which, in contrast to the Soviet period, have less significance in the social positive socialisation of the personality of a teenager; h) serious attention is paid to the prevention of suicides in the Russian Federation, as evidenced by effective international programmes; i) legal scholars emphasise that parents have a responsibility to discuss the relationship between offline and online peer harassment and suicidal thoughts, and consider using stories in the news to highlight the seriousness of the issue; j) digital interventions directly aimed at combating suicidality can and should be promoted on the Internet and integrated into health systems; k) there is a need to use digital Internet interventions in the Russian Federation, including to assist in the work of law enforcement agencies in detecting Internet communities that induce people to commit suicide.

CONCLUSIONS

The criminological characteristics of the criminal's personality during the driving to suicide is determined through the defects of personality features: hatred (behaviour), aggression (personality type), destructiveness; the involvement of the offender in the consequences when driving to suicide in most cases is expressed in the form of indirect intent. Cyberbullying is a real problem in Russian society, which can have serious consequences for health and life due to the spread of the suicide factor. In the era of digital transformations, special attention should be paid to the connection between the offender and the victim, carefully studying the social networks of both, taking into account the fact that a typical member of "death groups" is an emotionally unstable, subordinate, insecure, secretive, unassertive teenager, and this category is represented to a greater extent by a female audience. In the Russian Federation, attitudes towards violence are changing, combined with the growing importance of digital communication technologies in modern conditions, which has led to a legal solution to the problem of cyberbullicide in terms of a corresponding tightening of criminal liability. In the era of digital transformations, it is necessary to scrutinise the existing factors that influence the transition of frustration to the aggression of a criminal who leads or induces suicide on the Internet, paying attention to such a concept as "criminal aggression".

The result of the discussion was the conclusion that 14 years of age should be defined as the minimum age limit for suicide; therefore, the age of the person who drove another person to suicide should also be recognised as equal to 14 years and older; Articles 110 and 110.1 of the Criminal Code of the Russian Federation are in many respects similar and by carrying out the acts stipulated in them, the offender performs actions leading to the same result, thus it is possible to merge these articles; in addition, it appears acceptable to expand the scope of Article 110.2 of the Criminal Code of the Russian Federation by establishing criminal liability for incitement to commit suicide by disseminating information about the methods of suicide, as well as calls to commit it. It is concluded that parents, school teachers, and work groups are obliged to discuss the connection between offline and online harassment and suicidal thoughts. It can also be concluded that the Russian Federation pays serious attention to the prevention of suicides, as evidenced by effective international programmes. Digital interventions (such as online or app-based) represent a promising strategy for removing many of the barriers to treatment because these interventions are confidential, can be accessed in a timely manner from anywhere, and they empower people to help themselves. The scalability of digital interventions allows to reach populations beyond the reach of conventional mental healthcare. Thus, there is a need to use digital Internet interventions in the Russian Federation, including to assist in the work of law enforcement agencies in the detection of Internet communities that abet people to commit suicide.

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Suggested Citation: Amelin, O.Yu., Kyrychenko, T.M., Leonov, B.D., Shablystyi, V.V., & Chenshova, N.V. (2021). Cyberbullying as a way of causing suicide in the digital age. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(3), 277-289.

Submitted: 28.04.2021
Revised: 19.06.2021
Accepted: 02.08.2021

УДК 343
DOI: 10.37635/jnalsu.28(3).2021.290-300

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ВІДБІР БІОЛОГІЧНИХ ЗРАЗКІВ ДЛЯ ЕКСПЕРТИЗИ ВІДПОВІДНО ДО ЗАКОНОДАВСТВА УКРАЇНИ ТА ЙОГО ВІДПОВІДНІСТЬ СТАНДАРТАМ ЄС

Анотація. *Аналіз слідчої та судової практики показує, що деякі адвокати розцінюють відмову особи надати добровільно біологічні зразки для експертизи як виконання її права не свідчити проти себе. Аналіз положень окремих рішень Європейського суду з прав людини дозволяє зробити висновок, що фізична недоторканність особи охоплена поняттям «приватне життя», що охороняється статтею 8 Конвенції про захист прав людини та основоположними Свободи та стосуються найбільш інтимних аспектів приватного життя, а примусове медичне втручання, навіть незначне, є втручанням у це право. Отже, у статті наведено кримінально-процесуальну характеристику отримання біологічних зразків для експертизи. Автори проаналізували та відповіли на питання: які саме зразки слід віднести до біологічних, і чи можна відмовитися від добровільного надання біологічних зразків на експертизу відповідно до реалізації права не свідчити проти себе. Розглянуто можливість отримання біологічних зразків для експертизи від особи, яка не є учасником кримінального провадження або не набула процесуального статусу. У статті також йдеться про законність отримання зразків для експертизи до подання інформації до Єдиного реєстру досудових розслідувань. Запропоновано алгоритм дій щодо отримання біологічних зразків для експертизи, включаючи примусове замовлення. Були використані такі загальнонаукові методи дослідження: діалектичний метод правових явищ, за допомогою якого вивчалося поняття та правова природа біологічних зразків для експертизи; порівняльний метод – у процесі порівняння норм Кримінально -процесуального кодексу України (КПК) з нормами Європейського суду з прав людини (ЄСПЛ) та рішень ЄСПЛ тощо*

Ключові слова: *слідчі дії, отримання зразків, процесуальне розпорядження, кримінальне провадження, законодавство України*

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TAKING OF BIOLOGICAL SAMPLES FOR EXPERTISE UNDER THE LEGISLATION OF UKRAINE AND ITS CONFORMITY WITH EU STANDARDS

Abstract. *The analysis of investigative and judicial practice shows that some lawyers regard the refusal of a person to provide voluntarily biological samples for examination as an execution of his/her right not to testify against him/herself. Analysis of the provisions of separate Judgements of the European Court on Human Rights allows us to conclude that the physical integrity of a person is covered by the concept of "private life" protected by Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms and concerns the most intimate aspects of private life, and compulsory medical intervention, even insignificant, constitutes an interference with this right. Therefore, the criminal-procedural characteristic of obtaining of biological samples for expertise is given in the article. The authors analyzed and answered the questions: which particular samples should be attributed to biological ones, and whether it is possible to refuse to voluntarily granting of biological samples for examination in accordance to the realization of the right not to testify against him/herself. The possibility of obtaining of biological samples for examination from a person who is not a party to criminal proceedings or has not acquired procedural status has been considered. The article as well deals with the legality of obtaining of samples for examination before submitting information into the Unified Register of Pre-trial Investigations. The algorithm of actions of obtaining of biological samples for examination, including the compulsory order, is proposed. The following general scientific research methods were used: the dialectical method of legal phenomena, with the help of which the concept and the legal nature of biological samples for examination were studied; the comparative method – in the process of comparing the norms of the Criminal Procedural Code of Ukraine (CPC) with the norms of the European Court of Human Rights (ECHR) and decisions of the ECHR, etc.*

Keywords: *investigatory action, obtaining of samples, procedural order, criminal proceedings, Ukrainian legislation.*

INTRODUCTION

An expertise is one of legal means of collecting, verification and evaluation of evidence during the proving process in the preliminary investigation stage. An expert's report is a procedural source of evidence and the actual data contained therein is relevant for particular criminal proceedings is considered to be evidence [1]. The evidence contained in the expert's report is evaluated as admissible if obtained according to the rules foreseen by the CPC [2]. That is, the evidence obtained as a result of expertise may be recognized inadmissible by the court if the procedure of obtaining of samples for examination was violated [3] (execution of procedural actions requiring prior court warrant without such a warrant or in case of violation of substantial terms of the warrant (s.1 p. 2 Art. 87 of the CPC)), or if samples for the expertise are obtained with significant violation of human rights and freedoms (torture, cruel, inhuman or disregarding treatment or punishment – s.2 p. 2 art. 87 of the CPC) [2].

The procedural rules for obtaining of samples for the expertise depend on what concrete samples should be obtained [4]. After analyzing the provisions of Article 245 of the CPC, we can conclude that the legislator

divides all samples for examination into: samples from belongings, samples from documents, biological samples from a person. According to p. 2 and p. 3 Art. 245 of the CPC obtaining of biological samples from a person voluntarily should be carried out on the basis of a decision of a prosecutor, and obtaining of samples from belongings and documents, and biological samples in a compulsory order – on the basis of the warrant issued by an investigating judge [2]. The other requirements and limits on the obtaining of samples are not foreseen in the legislation of Ukraine.

In most European countries the police can require a deoxyribonucleic acid (DNA) sample if they've arrested a person for a criminal offence that carries a possible jail term, or if they intend to charge a person with one of those offences [5]. If a person is a suspect but they don't have enough evidence to arrest him/her or charge, they can ask to give a sample voluntarily, and if a person refuses, they can only get a sample if they go to a judge and get a court order – called a "compulsion order" [6]. In some countries certain elements must be established before an order can be issued. An application for an order (warrant) must be accompanied by a sworn statement showing that the police have reasonable grounds to believe: 1) that one of the specific offences has been committed, 2) that a bodily substance has been found at the crime scene, on the body or clothing of the victim, 3) that the person against whom the order (warrant) is to be executed was a party to the offence, and that a DNA sample from that person is needed to determine whether or not it matches the bodily substance found by the police [7].

1. MATERIALS AND METHODS

The theoretical basis of the article is composed of scientific works on criminal procedure. The normative legal basis of this work is: The Criminal Procedure Code of Ukraine (CPC), the European Convention on Human Rights and Fundamental Freedoms (ECHR), the practice of the ECHR. The reliability and validity of this research is also provided by empirical material, which include: analyses of judicial practice of the Supreme Court of Ukraine and other courts of Ukraine; court decisions placed in the Unified State Register of Court Decisions (USRS); results of studying of 193 case files based on the results of consideration of claims, applications and complaints submitted to investigative judges of the court of first instance and summarized data obtained during the survey of 240 judges and 80 assistant judges in Dnipropetrovsk, Donetsk, Zakarpattia, Zaporizhia, Ivano-Frankivsk, Kyiv, Kirovohrad, Luhansk, Lviv, Mykolaiv, Odesa, Poltava, Sumy, Ternopil, Kharkiv, Kherson, Khmelnytsky and Cherkasy regions during 2017-2019 [8].

When preparing the article, the following general scientific research methods were used: the dialectical method of legal phenomena, with the help of which the concept and the legal nature of biological samples for examination were studied; the comparative method – in the process of comparing the norms of the CPC with the norms of the ECHR and decisions of the ECHR; logical-legal method – in the analysis and interpretation of legal norms that regulate the grounds and procedural order of selection of biological samples for examination; sociological method – in the study of legal practice, criminal proceedings and questioning of practical employees, as well as other methods. At the same time, all scientific research methods were applied in correlation, which contributed to the comprehensiveness, completeness and objectivity of this research.

The analysis of the investigative materials of criminal proceedings and interviewing of the law enforcement, who conducted the obtaining of samples for the expertise, made it possible to conclude that the most unresolved issues during the application of Art. 245 of the CPC are: 1) vagueness of the current legislation in distinguishing which particular samples of a person should be attributed as biological; 2) correlation of the refusal to provide voluntarily biological samples for conducting an examination with the right not to testify against oneself; 3) the ambiguity of the practice of taking biological samples for examination from a person who is not a party to criminal proceedings or has not acquired a procedural status; 4) the lack of clear legislative rules regarding the possibility of obtaining of samples for examination before submitting the information into the Unified Register of Pre-trial Investigations (hereinafter referred to as the URPI); 5) the absence of a clearly regulated procedure for obtaining of biological samples for examination in the CPC of Ukraine [2].

2. RESULTS AND DISCUSSION

2.1. Characterization of a biological sample from the standpoint of legislation

The vagueness of the current legislation in distinguishing which particular samples of a person should be attributed as biological also affects the procedural order of their obtaining, as far as separate investigators obtain such samples as fingerprints, samples of voice, samples of handwriting without consent of the prosecutor or a judicial order (warrant) because they consider such samples to be not biological. In other cases, investigators request to the prosecutor or investigative judge to take an order (warrant) for obtaining of

biological samples. Human biological samples are defined as constituent parts of a human body, or human biological material, including organs and parts of organs, cells and tissues, and body fluids [9].

Different legal acts issued in Ukraine use different terms for designation of the category "biological samples". In particular, the Rules for Conducting Various Types of Forensic Examinations, approved by the Order of the Ministry of Health No. 6 [10], contain a number of relevant provisions. Thus, in section 1.11.2 of the Rules for Conducting Forensic Medical Examinations (Research) such terminology as "... blood samples, excrements and other biomaterials..." is used. The term "samples of biomaterials" is used in section 1.5 of the Rules. This document does not contain a definition of what it is considered to be biological materials, but from its contents it follows that they include liquid blood, gall, urine, saliva, muscles, parts of the internal organs, bones, tampons and strokes with the contents of the vagina, oral cavity, etc. In section 1.9 of the Rules the term "objects of biological origin" is used, among which bits of organs and tissues of a person are indicated. As we see, in these documents the term "blood samples" coincides with the term "samples of biomaterials". In turn, the latter also contains parts of the organs and tissues of a person, and here it coincides with the term "objects of biological origin". Therefore, it can be summarized that biological samples in medicine include specimen of liquids and tissues from the human body.

The variety of types of biological (clinical) samples is sufficiently described in methodological recommendations "The Order of Taking, Transporting and Storing the material for Research by a Polymerase Chain Reaction Method", approved by the Order of the Ministry of Health No. 662 [11], in particular, blood (plasma); materials from the urogenital tract of women; materials from the urogenital tract of men, including sperm; urine; spinal cord fluid; mucus fluid; allocation of the conjunction; material from the human respiratory tract (swabs from the nasal cavity, oropharynx, sputum, etc.); saliva; biopsy and autopsy material, etc. In accordance with the provisions of the Instruction on the Procedure for Detecting Signs of Alcohol, Drugs or Other Intoxication or Staying Under the Influence of Medicine that Reduce the Attention and Speed of Reaction in the Drivers of Vehicles, approved by the Order of the Ministry of Internal Affairs of Ukraine and the Ministry of Health of Ukraine No. 1452/735 [12], samples of the biological environment are selected for the laboratory study to determine the narcotic substance or psychotropic substance in a person (Section 12. The subject of study of the biological environment may be saliva, urine and serum from the surface of the lips, skin of the face and hands. Section 13. Blood may be used for the study of the biological environment if it is not possible to take samples of the biological environments specified in paragraph 12).

According to Art. 3 of the Law of Ukraine "On the United State Demographic Registry and Documents Confirming the Citizenship of Ukraine, Identification of a Person or its Special Status" [13], biometric data is personal data collected on the basis of fixing its characteristics that have sufficient stability and significantly differ from similar parameters of other persons (biometric data, parameters – digital person's signature, digital face image of a person, digital fingerprints). From the contents of p. 2 Art. 26 ("Creation of Information Resources by the Police") of the Law of Ukraine "On the National Police" [14] we can see that biometric data includes fingerprints and DNA samples, the collection and accumulation of which the police perform through accomplishing the banks of data. Additionally, fingerprints and DNA samples can be sent as objects (samples) for examination. Thus, the difference in terminology, used in legal acts, some contradictions among them do not allow fully to understand the meaning of the term "biological samples". Therefore, it should be noted that, until it is clearly set out at the legislative level, the problem of correct interpretation of the provisions of Article 245 of the Criminal Procedural Code will remain unresolved.

In our opinion, until the relevant amendments to the legislation are made, the biological samples of a person are all the samples related to the person's vital functions as a biological being: samples of fingerprints, handwriting, speech and voice of a person, samples of dental imprints, prints of any surface of the human body (lips, elbows, feet, etc.), smell traces of a person, as well as all samples of biological origin in their classical sense (saliva, blood, sperm, sweat, hair, nails, etc.) [3], and their obtaining must be carried out according to p. 3. Art. 245 of the CPC. Analysis of some Judgements of the ECHR, in particular: "PG and JH against the United Kingdom" [15] and "Saunders v. the United Kingdom" [16] allowed to reach the conclusion that biological samples of a person are all samples related to the person's livelihoods. In the Judgement "PG and JH v. The United Kingdom" samples of voice are considered as something like blood samples, hair or other physical samples. And in the Judgement "Saunders v. the United Kingdom" [16] the ECHR decides that samples of blood, hair or other tissues, as well as materials that are produced in the process of the vital functions of the body, such as, for example, breathe, urine, voice samples belong to biological material.

The above conclusion is confirmed by the Summary of the Higher Specialized Court of Ukraine on Civil and Criminal Cases on June 3, 2016, "On the judicial practice of investigative judges dealing with investigative actions" [17], where it is noted that "there have been cases of errors in judicial practice in application of the provisions of the CPC. For example, for the examination of the recording and sound, the investigator submitted

to the investigating judge a request for the obtaining of the voice sample of the suspect M., who refused to speak loud during procedural actions with his participation with the use of audio fixation. On March 12, 2014, the investigating judge of the Dniprovsky District Court denied in a request, because the investigator did not provide sufficient proofs for believing that the voice is a biological product of human life. We cannot agree with the above court order, since the Art. 245 of the CPC uses the general concept of "samples for expertise" and two derivative concepts from "samples from belongings and documents" and "biological samples". Therefore, the affiliation of the voice to the biological samples does not belong to those circumstances that must be proved in the court. In addition, Art. 245 of the CPC foresees a single procedure for deciding the requests for the compulsory obtaining of samples from belongings and documents and biological samples, while the procedure for the obtaining of such samples is regulated by Art. 241 of the CPC [18-20].

According to this classification it is not clear to what category samples for a dactyloscopy (fingerprint) examination should be taken and what procedural order should be implemented for their obtaining. Dactyloscopic examination is a kind of trassological examination whose main task is to identify the person through his/her fingerprints of the hands (feet) left on the crime scene. Biological samples for examination are blood, urine, hair, sperm, etc. Samples from belongings and documents include the traces left on them, or these same belongings and documents, identified in Art. 98 and art. 99 of the Criminal Procedural Code of Ukraine. Having analyzed the foregoing, we should conclude that samples for the dactyloscopic examination cannot be attributed to one or another group. The ambiguous understanding of samples for a fingerprint examination leads to the fact that, for example, in acts of taking of dactyloscopic prints for a fingerprint examination, such prints are sometimes referred to as objects or documents. This is due to the fact that they are formed as a result of pressing a sheet of paper to the previously treated surfaces of the fingers. In this way, they immediately appear on the paper after being pressed, separated from a person, stored and used like evidence without person's consent as documents or material evidence.

Therefore, one part of the lawyers (namely 26 (36%) of the 72 questioned investigators, prosecutors, judges and defence lawyers working in the city of Kyiv and Kyiv region) did not consider them to be biological samples, while the other (35 of the respondents (49%) – that biological samples are obtained only for conducting examinations requiring special knowledge in the field of biological sciences, which do not include dactyloscopy. Those, who support these options, consider that obtaining of dactyloscopic prints is simply the access to belongings and documents of a person. But there are no fingerprints of a person on a paper until the dactyloscopy is done. This approach is unacceptable, as far as treating a person or parts of his/her body as a thing, object, or document always humiliates the honour and dignity of a person.

Thus, fingerprinting is a process of taking fingerprints, and dactyloscopy is a science that studies papillary patterns of phalanges of fingers in order to distinguish a person. Proceeding from this, the biological components in the fingerprints are sufficient, and due to them with special paints, capable to fix colourless cavernous secretions of papillary lines, the combination of which is stable, restorative and unique for everyone, the prints are always biological samples of a person. In fact, they are special signs of a person for the detection of which the investigator is authorized to carry out examination (Part 1 of Article 241 of the CPC of Ukraine). Therefore, fingerprinting should be carried out in accordance with the rules of conducting this investigative (search) action. If a person refuses to provide voluntarily his/her fingerprints, the investigating judge shall decide on their compulsory obtaining after the consideration of the request of a party to criminal proceedings. In this case, the requests, orders and records should refer to the forced (compulsory) obtaining of biological samples – fingerprints, and not to temporal access to them as belongings or documents, since they cannot be considered as things, but biological samples.

2.2. Voluntarily and compulsory obtaining of biological samples

The analysis of investigative and judicial practice shows that some lawyers regard the refusal of a person to provide voluntarily biological samples for examination as an execution of his/her right not to testify against him/herself, as provided for in Art. 18 of the CPC. A systematic analysis of the provisions of the Criminal Procedural Code and separate Judgements of the ECHR [21] allows us to conclude that the physical integrity of a person is covered by the concept of "private life" protected by Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the Convention) [22] and concerns the most intimate aspects of private life, and compulsory medical intervention, even insignificant, constitutes an interference with this right (Decision "X and Y v. the Netherlands" [23]), but such interference is usually justified in accordance with Clause 2 of Art. 8 of the Convention as urgency to prevent a crime ("Tirado Ortiz and Losano Martin v. Spain" [24]).

Biological samples are considered by the ECHR as physical or objective tests used in forensic analysis and not subjected to the right not to testify against oneself ("PG and JH v. The United Kingdom" [15]), but

such procedures should not reach even the minimum level of cruelty for which they would constitute a violation of Art. 3 of the Convention ("Tirado Ortiz and Losano Martin v. Spain" [24]). In order to obtain such samples, the suspect is usually asked to passively withstand a slight violation of his physical integrity or receive a sample that is produced in the course of the natural life of the body ("Saunders v. The United Kingdom" [16; 25]), without the risk to health ("Yalloh v. Germany" [26]). In addition, under our national law, the right not to testify against oneself is understood as the right of a person not to speak anything about suspicion or accusation against him/her, and to refuse to answer questions at any time, therefore, in the process of taking of biological samples for expertise, a person may take advantage of the aforementioned right only when obtaining samples of voice and handwriting [27-29].

Before conducting a compulsory obtaining of biological samples, the person indicated in the order (warrant) of the investigating judge must show the order (warrant) to the person who is subjected to the compulsory sampling and hand over a copy of an order (warrant) to him/her (Part 3 Article 245, Part 2 Article 165 of the CPC). As neither Art. 245 of the CPC, nor Art. 241 and Art. 160-166 of the CPC provide the procedure for the compulsory obtaining of biological samples for examination, we consider that practical workers during the conduct of this procedural action should be guided by the provisions of Art. 28 of the Constitution of Ukraine [30], Art. 11, 143 of the CPC and the above-mentioned Judgements of the ECHR.

In our opinion, the compulsory obtaining of biological samples should be carried out by analogy with Art. 143 of the CPC, which regulates the execution of the warrant on taking into custody, namely: in the case of failure by the person subjected to compulsory obtaining of biological samples to give such samples, physical measures may be applied to him/her. The use of physical measures must be preceded by a warning about the intention to apply them. In case when it is impossible to avoid the use of physical measures, they should not exceed the measures necessary to comply with the warrant to compulsory obtaining of biological samples. In our opinion, the direct taking of biological samples should only be carried by a doctor (forensic specialist). The results of compulsory obtaining of biological samples should be described in a record of proceedings (Part 3 Article 245, Part 5 Article 241, Article 104 of the CPC). Providing a copy of the relevant record to the person, who was subjected to compulsory obtaining of the biological samples, is obligatory.

The legislator in Art. 245 of the Criminal Procedural Code of Ukraine allows obtaining biological samples for examination from a person who actually owns them. Consequently, the investigator can take biological samples from persons, who are parties to the criminal proceedings, but not from persons, who do not belong to any of the parties (for example, a witness) or did not at all obtain procedural status. This conclusion is fully coherent with the above-mentioned Summary of the Higher Specialized Court of Ukraine on Civil and Criminal Cases, "On the judicial practice of investigating judges dealing with investigative actions" [17], which states: "It is controversial that the investigating judges decide the requests for obtaining of biological samples for examination from a person who is not a party to criminal proceedings". For example, the investigating judge of the Kyiv District Court of Odessa by his Order on June 27, 2014, denied the request for the compulsory obtaining of biological samples for examination from N., as the procedural status of this person in criminal proceedings has not been determined.

However, there has been different approach in judicial practice. For example, the investigating judge of the Pechersk District Court of Kyiv in his Order on May 13, 2013, granted the request for forced obtaining of fingerprints from the police officer S., since the court assessed that S. can use his status of a police officer as an opportunity to avoid giving samples. S. also does not relate to any of the parties to the criminal proceedings. Art. 245 of the Criminal Procedural Code of Ukraine does not define the list of persons from whom samples for examination can be obtained. However, the systematic approach to interpreting the provisions of Articles 245 and 163 of the Criminal Procedural Code (the provisions on temporary access to belongings and documents) gives grounds for concluding that samples for examination in criminal proceedings may be obtained from a person who actually owns them, regardless of whether this person is a party to criminal proceedings. Therefore, we cannot agree with the practice of those investigating judges, who refuse to accept requests for the forced obtaining of samples for examination solely on the grounds that the person, who actually possesses such samples, is not a party to criminal proceedings.

Uncertainty among the theorists and practitioners about the lawfulness of obtaining samples for examination before submitting the information to the Unified Register of Pre-trial Investigations is due to the fact that the obtaining of samples for examination is not considered by a group of lawyers to be an investigatory action. Therefore, it is believed that the prohibition, which is regulated in part 3 Art. Article 214 of the Criminal Procedural Code, is not applied to the execution of the obtaining of samples for examination. Art. 214 p. 3 of the CPC of Ukraine: "Conducting pre-trial investigation (that means – conducting of any investigatory action) before submitting the information in the Register or without such entering shall not be permitted and shall entail liability established by law. Inspection of the place of crime may be carried out before submitting the

information in the Unified Register of Pre-Trial Investigations which shall be done immediately after completion of the inspection". In this scientific and practical dispute, we support the position of those scholars, who consider that obtaining samples for examination prior to submitting the information to the Unified Register of Pre-trial Investigations is not legal and we agree with the conclusion of the Higher Specialized Court of Ukraine on Criminal and Civil Cases, where it stated that obtaining of biological samples for conducting an examination is an investigatory action.

Further, the Court stated that "one of the grounds for refusal to satisfy the request for compulsory obtaining of samples for examination was the lack of legal grounds for conducting of investigative actions. Thus, the investigating judge of the Kuybyshevsky District Court of Zaporizhzhia Region in the Order on November 19, 2013, refused in satisfaction of M.'s request for the compulsory obtaining of biological samples. On November 18, 2013, M. appealed to the law enforcement with a statement about a running-down accident, committed by G. Also, in her statement, M. requested for medical examination of G. for alcohol intoxication, which was not carried out by the law enforcement officers. After that M. appealed to the investigating judge with a request for compulsory obtaining of biological samples for examination to fix a degree of alcohol intoxication of G. A report on the running-down accident on M. was not submitted to the Unified Register of Pre-trial Investigations. The police officer presented in court all the documents, which indicate that the consideration of the application of M. was terminated in connection with the absence of corpus delicti of any criminal offense in the actions of G., but G. was brought to administrative responsibility under p. 1 Art. 122 of the Code of Ukraine on Administrative Misdemeanors. We should agree with this position of the court, since the Criminal Procedural Code considers obtaining of samples for examination to be a type of investigative actions, which can only be carried out after submitting the information about the criminal offense to the Unified Register of Pre-trial Investigations (with the exception of such investigatory action as the inspection of the crime scene)".

2.3. Procedural order for obtaining of biological samples for expertise

System analysis of the Criminal Procedural Code, investigative and judicial practice gives us grounds for determining the following procedural order for obtaining of biological samples from a person:

1) passing a resolution of the prosecutor on the obtaining of biological samples from a person (Part 3 Article 245, Part 2 Article 241 of the CPC). The necessity of submitting of such a resolution is envisaged in Part 3 of Art. 245 of the Criminal Procedural Code of Ukraine, which regulates that such investigative action is carried out in accordance with the rules provided in Art. 241 of the CPC, namely: on the basis of the resolution of the prosecutor. It seems that the legislator focused on such a procedure to increase the prosecutor's responsibility for the observance of individual rights and freedoms and, at the same time, the need to exclude the possibility of abusing such a right. Nevertheless, in practice there are cases when such a procedural action is carried out without any methodological justification for the disclosure of a criminal offense, and is used in connection with another "hidden" motive – creating the effect of law enforcement dominance by interfering in privacy;

2) presentation of the resolution of the prosecutor to a person, who is subjected to obtaining of biological samples (Part 3 Article 245, Part 3 Article 241 of the CPC). The necessity of such a presentation is regulated in Part 3 of Art. 241 of the Criminal Procedural Code and must be fixed in the records of the obtaining of biological samples;

3) offering a person to provide voluntarily the necessary biological samples (Part 3 Article 245, Part 3 Article 241 of the CPC). The agreement or refusal of a person to provide voluntarily biological samples should be fixed in the proceeding's records, because the absence of a fixed refusal to provide voluntarily the biological samples by a person is considered by the investigating judges as the absence of the circumstances, which substantiate the arguments of the request for the compulsory obtaining of biological samples for examination. For example, the investigating judge of the Nosivsky district court of Chernihiv region in his Order on January 18, 2013 refused to satisfy the request of the investigator on the forced obtaining of biological samples from the victim S., since the investigator did not introduced substantial evidence that victim S. refused from the voluntary giving of biological samples: during the court hearing it was established that victim S. did not receive the copy of the resolution on the appointment of molecular genetic expertise and did not know about the necessity to give biological samples for expertise.

In the case of a person's refusal to provide voluntarily biological samples: the investigator, after adjusting with the prosecutor, the public prosecutor or representatives of the defence party, appeals to the investigating judge with a request for the compulsory obtaining of biological samples from a person for conducting examination (part 3 Article 245, Article 160 of the CPC); consideration of a request for the compulsory obtaining of biological samples from a person for examination and delivering the order by the investigating

judge (Article 3, Article 245, Article 163, 164 of the CPC). Consideration of the above-mentioned request must take place with the participation of the party to the criminal proceedings, who filed the request and the person, who is subjected to the compulsory obtaining of biological samples. Failure to appear to the court hearing of a person who is subjected to compulsory obtaining of biological samples without valid reasons or failure to inform the court of the reasons for non-arrival is not an obstacle to the consideration of the request. The investigating judge after the court hearing delivers the order on the compulsory obtaining of biological samples from a person for expertise (examination), if the party to the criminal proceedings, who filed the request, proves the existence of sufficient grounds to consider that biological samples belong to the concrete individual, and, in themselves or in combination with the other evidence, are essential for establishing important circumstances in criminal proceedings. The corresponding order must meet the requirements of Art. 164 of the Criminal Procedural Code;

4) obtaining of biological samples for expertise (examination) (Part 3 Article 245, Part 2, 4 Article 241, Part 7 Article 223 of the CPC). The obtaining of the above-mentioned samples is carried out by the investigator or prosecutor with the participation of a forensic expert or doctor if necessary. It has still been a discussion among the theorists and practitioners whether biological samples can be taken from an individual by operational units on the basis of an investigator's warrant. Such uncertainty is due to the fact that separate lawyers refer the obtaining of samples for examination as well as exhumation to the procedural rather than to the investigative actions, and the investigator and the prosecutor according to Art. 36, 40-41 of the Criminal Procedural Code have the right to assign only the conduct of investigatory (search) actions. We agree with the position of the Higher Specialized Court of Ukraine, which stated that obtaining of biological samples for examination is an investigative (search) action, and we believe that, in the case of the order (warrant) from an investigator or prosecutor, operation officers are authorized to conduct the obtaining of biological samples. At the same time, many issues remain unresolved regarding the procedure of obtaining samples itself, which can be used by the defence as an abuse of their right in an attempt to declare the evidence obtained on its basis inadmissible.

At the time of obtaining of biological samples for examination, at least two identifying witnesses must be present, but their participation can be replaced by the use of continuous video recording of this investigative action (Part 7 Article 223 of the CPC). If obtaining of biologic samples is accompanied by denudation of the individual, it is conducted by an individual of the same sex, with exception for a doctor, and upon consent of the individual examined. Investigator, public prosecutor has no right to be present when an individual of other sex is being examined, if the examination involves the necessity to denude the individual examined. During the taking of biological samples actions that humiliate the honour and dignity of a person, or are dangerous for his/her health, are not allowed. Before conducting a compulsory obtaining of biological samples, a person indicated in the order of the investigating judge must show the script of the corresponding order to a person who is subjected to the forced obtaining of samples for examination, and hand over a copy of the judge's order to a person (Part 3 Article 245, Part 2 Article 165 of the CPC). As far as neither in Art. 245 of the CPC, nor in Art. 241 and Art. 160-166 of the CPC the procedure of compulsory obtaining of biological samples for examination is regulated, we consider that the law enforcement during the conduct of this investigative action should be guided by the provisions of Art. 28 of the Constitution of Ukraine, Art. 11, 143 of the Criminal Procedural Code and separate Judgments of the ECHR.

In our opinion, the compulsory obtaining of biological samples should be carried out by analogy with Art. 143 of the Criminal Procedural Code, which regulates the execution of the warrant on compulsory appearance (taking into custody), namely: in the case of failure by the person, subjected to compulsory obtaining of biological samples, to execute legal requirements of the Order on compulsory obtaining of biological samples, physical measures may be applied to him/her. The use of physical measures must be preceded by a warning about the intention to apply them. If it is impossible to avoid the use of measures of physical impact, they should not exceed the measures necessary for the execution of the Order on compulsory obtaining of biological samples and should be minimal to the individual;

5) making a record on obtaining of biological samples (Part 3 Article 245, Part 5 Article 241, Article 104 the CPC). The record of obtaining of biological samples shall be drawn up as prescribed in the Criminal Procedural Code. A copy of the record of obtaining of biological samples is handed over to the individual who has been forcibly examined [31].

CONCLUSIONS

Summarizing the above, we can draw the following conclusions:

1) as long as no changes are made to the legislation, the biological samples of a person are considered to be all samples related to the vital activity of a person as a biological being, and their obtaining must be

carried out in accordance with Part 3 of Art. 245 of the Criminal Procedural Code;

2) refusal to provide voluntarily biological samples for expertise (examination), except for samples of voice and handwriting, should not be regarded as the exercise of the right not to testify against oneself;

3) biological samples can be taken from persons, regardless of their procedural status and being a party to the criminal proceedings;

4) obtaining of biological samples for examination is an investigative action which is prohibited until the data are submitted to the Unified Register of Pre-trial Investigations;

5) we have offered a procedural order for obtaining of biological samples for examination, including a compulsory order as well.

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Suggested Citation: Rohalska, V.V., Bronevytska, O.M., Boreiko, H.D., Shapovalova, I.S., & Serkevych, I.R. (2021). Taking of biological samples for expertise under the legislation of Ukraine and its conformity with EU standards. *Journal of the National Academy of Legal Sciences of Ukraine,* 28(3), 290-300.

Submitted: 16.05.2021
Revised: 22.07.2021
Accepted: 04.09.2021

УДК 342.9:342.352
DOI: 10.37635/jnalsu.28(3).2021.301-310

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ЗАПОБІГАННЯ ЗЛОЧИННОСТІ ЮРИДИЧНИХ ОСІБ: ЗАРУБІЖНИЙ ДОСВІД ТА ПЕРСПЕКТИВИ ЗАСТОСУВАННЯ В УКРАЇНІ

Анотація. *Актуальність досліджуваної проблеми полягає в тому, що нині в країнах світу зростає злочинність серед юридичних осіб. Це явище є надзвичайно небезпечним, оскільки корпоративна злочинність пов'язана із скоєнням економічних злочинів - легалізацією незаконно отриманих доходів та корупцією, що негативно впливає на економіку окремої держави та світову економіку. Щоб запобігти злочинності серед юридичних осіб, урядам країн необхідно вжити заходів, спрямованих на протидію корпоративній злочинності, скористатися технічним прогресом у виявленні та запобіганні правопорушенням серед юридичних осіб. Метою цього дослідження є виявлення особливостей заходів щодо запобігання корпоративній злочинності в зарубіжних країнах, аналіз перспектив застосування досвіду інших держав у розробці їх ефективних заходів протидії. Також були запропоновані інноваційні підходи та методи, які підвищать ефективність заходів протидії корпоративній злочинності. Провідні методи, використані у цьому дослідженні, є теоретичними: вивчення наукової літератури, а також нормативних документів для з'ясування стану досліджуваної проблеми. Були використані аналіз, синтез, порівняння, узагальнення та моделювання, що дозволило описати термінологію. Крім того, системний метод, діалектичний та історичний методи аналізу були використані при вивченні нормативних актів, включаючи також такі спеціальні методи, як метод юридичного тлумачення, метод правового прогнозування. Результатом цієї роботи є виявлення важливості запобігання корпоративним злочинам, ефективні заходи, які застосовуються до юридичних осіб для виявлення та запобігання корпоративним злочинам. В результаті цього дослідження були запропоновані можливі заходи, спрямовані на запобігання корпоративній злочинності, враховуючи позитивний досвід зарубіжних країн. Проаналізувавши стан корпоративної злочинності в інших країнах світу, автори роблять висновок, що Україні слід впровадити заходи щодо запобігання злочинам серед юридичних осіб, щоб зменшити кількість правопорушень та підвищити рівень національної економіки*

Ключові слова: *корупція, корпоративна злочинність, економічні правопорушення, протидії, кримінальна відповідальність*

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LEGAL ENTITIES' CRIME PREVENTION: FOREIGN EXPERIENCE AND PROSPECTS OF APPLICATION IN UKRAINE

Abstract. *The relevance of the problem under study lies in the fact that crime among legal entities is currently increasing in the countries of the world. This phenomenon is extremely dangerous, because corporate crime is associated with the commission of economic crimes – the legalisation of illegally obtained income and corruption, both of which negatively affect the economy of an individual state and the global economy. To prevent crime among legal entities, governments of countries need to take measures aimed at countering corporate crime, take advantage of technological advance in detecting and preventing offences among legal entities. The purpose of this study is to identify the features of measures to prevent corporate crime in foreign countries, to analyse the prospects for applying the experience of other states in developing their effective counteraction measures. Innovative approaches and methods that will increase the effectiveness of measures to combat corporate crime were also proposed. The leading methods employed in this study are theoretical: the study of scientific literature, as well as regulatory documents to clarify the state of the problem under study. Analysis, synthesis, comparison, generalisation, and modelling were used, which allowed describing the terminology. Furthermore, the system method, dialectical, and historical analysis methods were used in the study of regulations, also including such special methods as the method of legal interpretation, the method of legal forecasting. The result of the present paper is the identification of the importance of corporate crime prevention, effective measures that are applied to legal entities to detect and prevent corporate crime. As a result of this study, possible measures aimed at preventing corporate crime were proposed, considering the positive experience of foreign countries. Having analysed the state of corporate crime in other countries of the world, the authors conclude that Ukraine should implement measures to prevent crimes among legal entities to reduce the number of offences and increase the level of the national economy*

Keywords: *corruption, corporate crime, economic offences, counteraction measures, criminal liability*

INTRODUCTION

A legal entity has the same rights as an individual: it owns property, borrows money, and can be a party to a lawsuit. Furthermore, a legal entity may commit offences, including those covered by criminal legislation [1]. Offences committed by legal entities are called corporate offences. Corporate crime is a set of socially negative phenomena that result in a corporation or an interconnected group of people committing criminal acts over a certain period of time [2]. Corporate crime is described by the commission of offences relating to business activities, or even economic activities that are completely or partially of a criminal nature, regardless of the type of property [3]. The issue of bringing legal entities to criminal responsibility has not previously been considered in the criminal law of many states [4]. Thus, examples of such countries are common law states – Canada, Australia, Scotland, Ireland, India; the states of the Romano-German legal family – Spain, Austria, the Netherlands, France, Belgium, Portugal, Luxembourg, Japan; the Scandinavian legal family – Denmark, Norway, Finland, Iceland, the Muslim legal system – Jordan, Lebanon, the Socialist People's Republic of China (PRC); and the post-socialist legal family – Slovenia, Hungary, Romania, Lithuania, etc. However, most countries of the world have added legal entities to the list of subjects of criminal offences.

To prevent corporate crime, it is necessary to develop the corresponding preventive measures [5]. Crime prevention is defined as the purposeful influence of the state, society, individuals, and legal entities on the processes of determining and causality of crime to prevent the involvement of new persons in crime, the commission of new criminal acts, and the expansion of criminalisation of public relations. In the context of countering corporate crime, due to its specifics, the degree of social danger, the status of offenders and the consequences of relationships, it differs in many aspects from other forms of modern crime [6]. The complexity, diversity, and dynamism, as well as the cover-up of corporate crime, require continuous improvement and the creation of adequate criminal justice measures. In this sense, it is necessary to harmonise criminal legislation, namely the issue of criminal liability of legal entities. Furthermore, new methods need to be developed, considering the possible use of advances in the natural, technical and social sciences, the application of which is of particular importance in providing financial or personal evidence in the process of explaining and proving certain crimes related to corporate crime [7].

The object of this study is the measures taken to effectively prevent corporate crime in different countries of the world. The relevance of the problem of crime prevention among legal entities is confirmed by the large-scale nature of scientific interest in this issue. Thus, there is a sufficient amount of theoretical material on

identifying measures to counteract crime among legal entities. Researchers argue that corporate crime is a dangerous phenomenon that can undermine global entrepreneurship and the economy [7]. As a result, representatives of all states must develop measures aimed at preventing crime among legal entities. Ukraine, in turn, has the opportunity to apply foreign practices to increase the effectiveness of countering crime.

The purpose of this study is to identify the features of measures to prevent corporate crime in foreign countries, to analyse the prospects for applying the experience of other states in developing their effective counteraction measures.

1. MATERIALS AND METHODS

Theoretical methods – study of scientific literature, regulatory documents to clarify the state of the problem under study. Analysis, synthesis, comparison, generalisation, and modelling were used, which allowed describing the terminology, features of crime prevention among legal entities in other countries and in Ukraine, prospects for applying foreign experience in Ukraine. The system method was used to analyse the terminology of the subject under study; the method of historical analysis and the dialectical method – in the study of regulations that reflect the transformations of the institution of criminal liability of legal entities in different countries. Mathematical and statistical methods – comparative methods, quantitative and qualitative analysis of the spread of corporate crime among legal entities. The study also considered the influence of crime prevention measures on the state of corporate crime in European countries, the United States of America (USA) and Ukraine. The following special methods were also used:

- method of legal interpretation – upon covering the content of regulatory documents governing the state of corporate crime in Ukraine and other countries;
- a method of legal forecasting that helped predict the consequences of implementing foreign practices in crime prevention measures among legal entities in Ukraine.

The regulatory framework of the study covers legal acts governing corporate crime in Ukraine and other countries. Thus, the study analysed the following regulations: Criminal Code of Ukraine [8], Law of Ukraine No. 361-IX "On Prevention and Counteraction to Legalisation (Laundering) of Proceeds from Crime, Financing of Terrorism and Financing of Proliferation of Weapons of Mass Destruction" [9], Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering [10], Criminal Convention on the Fight against Corruption [11], UN Convention against Transnational Crime [12], Bank Secrecy Act [13], Money Laundering Control Act [14], Money Laundering and Financial Crimes Strategy Act [15], Public Bodies Corrupt Practices Act [16], Prevention of Corruption Act [17], the Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations [18], Resolution of the Board of the Central Bank of the Republic of Uzbekistan Department combating economic crimes under the Prosecutor General of the Republic of Uzbekistan No. 3266 "On Approval of Internal Control in Combating Legalisation of Proceeds Derived from Criminal Activities in the Payment Organisation, Payment System Operators, System Operators of Electronic Money, Terrorist Financing and Financing Weapons of Mass Destruction" [19], Bribery Act [20], Decision of the National Agency for Prevention of Corruption No. 75 "On Approval of the Standard Anti-Corruption Programme of a Legal Entity" [21], Draft Law of Ukraine "On Principles of National Anti-Corruption Policy for 2020-2024" [22].

2. RESULTS AND DISCUSSION

Every year, cases of corporate crime in different countries of the world are becoming more frequent. Having analysed the regulations of Ukraine and other countries, the most common crimes among legal entities are crimes in the economic sphere: legalisation (laundering) of illegally obtained income or income gained as a result of illegal activities, corruption offences, terrorist financing, the use of funds obtained from illegal drug trafficking. The non-governmental international organisation Transparency International [23] annually studies the state of corporate crime in the world. Thus, the organisation forms a Corruption Perceptions Index, which indicates the effectiveness of measures aimed at countering such a dangerous economic crime as corruption. Transparency International [23] statistics are critical for the development of an anti-corruption programme among legal entities. Furthermore, the annual update of statistics allows government officials to identify the most effective measures to combat corporate crime, which measures require improvement, and which are completely ineffective. The data in Table 1 demonstrate that European countries are implementing effective measures to prevent the corporate crime of corruption.

Table 1. Corruption Perceptions Index – 2020

Country name	Score	Place in the world ranking
Denmark	88	1
Finland	86	2
Germany	80	9
United Kingdom	77	11
France	69	23
USA	67	25
Spain	62	32
Ukraine	33	119
Uzbekistan	26	146

Source: [23]

Such countries as Denmark, New Zealand, Finland, Singapore, Sweden, Switzerland, Norway, Germany, Canada, and the United Kingdom have the best results in the fight against corruption. Ukraine, in contrast to these countries, is on the 117th place among the 179 countries studied. Such a low indicator points to an insufficiency of anti-corruption measures, especially among legal entities. This state of corporate crime has a bad effect on the country's image in the world and the national economy (Fig. 1).

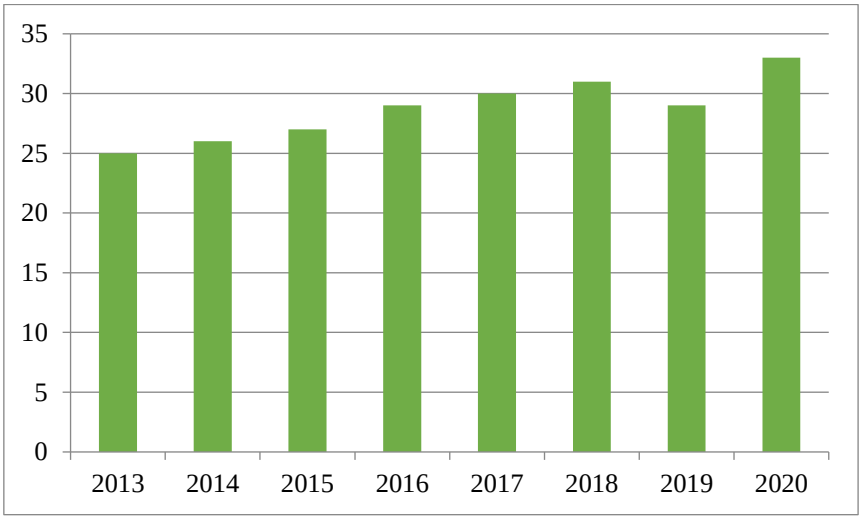

Figure 1. Corruption Perceptions Index in Ukraine 2013-2020

Source: [23].

Figure 1 demonstrates that the Corruption Perceptions Index in Ukraine has been higher since 2013. The improvement is caused by the adoption of new legislative acts that establish measures to prevent corporate crime. Furthermore, control, monitoring, and auditing are performed in organisations and corporations. Since Ukraine has been striving for integration into the European community for several years, the question arises regarding the need to streamline the legislative system. All branches of law must comply with global and European trends, including criminal law, as one of the most important areas of law. This resulted in changes to the Criminal Code of Ukraine [8] on September 1, 2014. Most importantly, the government has legislatively established provisions concerning criminal liability of legal entities. Thus, in Ukraine, legal entities are responsible for such dangerous economic crimes as money laundering, terrorist financing, and corruption. It is worth considering the specific features of regulating these crimes, as well as the main regulations that establish measures to prevent corporate crimes. In Ukraine, the rules for countering the legalisation of proceeds from crime are stipulated in the Law of Ukraine No. 361-IX "On Prevention and Counteraction to Legalisation (Laundering) of Proceeds from Crime, Financing of Terrorism and Financing of Proliferation of Weapons of Mass Destruction" [9]. The act improved the control system in the financial sector, harmonised it with the financial monitoring standards established by international provisions, namely those of Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering [10].

As for corruption offences, world practice demonstrates that compliance with the anti-corruption policy is the most effective method of combating corruption among legal entities. For this, every enterprise or organisation must have the position of Commissioner for supervision of anti-corruption policy. This person has the right to exercise supervision and control over both employees of enterprises and the reputation of counterparties. The development of anti-corruption programmes for legal entities is an effective method for developing an anti-corruption system [24]. The Law of Ukraine No. 1700-VII "On Prevention of Corruption" [25] establishes the necessary requirements for the development of measures to prevent corruption. Decision of the National Agency for Prevention of Corruption No. 75 "On Approval of the Standard Anti-Corruption Programme of a Legal Entity" [21] was approved, which contained measures necessary and sufficient to prevent, detect, and counteract corruption in the activities of a legal entity. Such measures include a systematic analysis of corruption risks, which can be both internal (conducted once a year) and external (conducted by companies that provide audit, legal, or consulting services, or independent experts). Furthermore, the Draft Law of Ukraine "On Principles of National Anti-Corruption Policy for 2020-2024" [22] will be adopted in the near future. It has now been adopted by the Verkhovna Rada of Ukraine in the first reading. The anti-corruption policy for 2020-2024 is based on a combination of two approaches: further improvement of the overall system of preventing and combating corruption; reduction of cases of corruption in important areas, and implementation of effective reforms.

Having analysed the Draft Law of Ukraine "On Principles of National Anti-Corruption Policy for 2020-2024" [22], it becomes clear that the Draft Law invites not only to approve the Anti-Corruption Strategy for 2020-2024 [26], but also to amend some provisions of the laws of Ukraine, which are aimed at increasing the effectiveness of audit mechanisms. Furthermore, to increase the effectiveness of corporate crime prevention measures, the following measures are also necessary:

– determination of the legal status of the National Agency for the Prevention of Corruption, control mechanisms, and the procedure for evaluating the effectiveness of the national anti-corruption policy;

– creation of a special information system to ensure the transparency of information on the implementation of the national anti-corruption policy;

– analysis of the regularity of preparation of national reports on the effectiveness of the national anti-corruption policy.

The institution of criminal liability among legal entities in the United States of America deserves special attention when considering the issue of combating crime. One of the first international documents that actually set a precedent for the application of criminal law to legal entities in the United States was the Criminal Convention on the Fight against Corruption (1999), which consolidated 14 elements of crimes for which states must fight corruption. The UN Convention against transnational crime [12] defined new approaches in the fight against organised crime, where it recommended that member states (including Ukraine) introduce criminal liability of legal entities for certain criminal acts. The institution of anti-money laundering is the most developed in the United States. The US government has developed numerous legislative provisions aimed at combating money laundering. One of such most crucial acts is the Bank Secrecy Act [13]. This provision was adopted to combat illegal trade, money laundering, and other financial crimes, which are most often committed by legal entities. Equally important is the Money Laundering Control Act (1986). The provision is of great importance, because it is thanks to it that money laundering has become recognised as a separate crime.

In the United States, there are other legislative acts that establish the prevention of money laundering, among them the most prominent is the Money Laundering and Financial Crimes Strategy Act [14], which is aimed at improving the supervision and skills of bodies. Furthermore, the legislative provisions contain norms governing the expansion of powers and motivation of banks in the fight against a negative phenomenon. According to researchers, the banking system is the first in protecting the country from money laundering by legal entities [27-29]. Only the supervision and control of banking authorities can protect the entire country's economy from criminal groups, terrorists, and corrupt officials. Therefore, it is banks that should play a key role in preventing and detecting cases of money laundering. Notably, in the United States, to prevent crime among legal entities, the Financial Monitoring System for countering the legalisation of proceeds from crime is based on the effective restriction of access to the financial system for persons engaged in the legalisation of income and the financing of terrorism. Furthermore, crime prevention is also based on strengthening the capacity of government agencies to identify the main organisations and systems used to finance terrorism and launder proceeds of crime. Strengthening and improving the implementation of measures for financial institutions also contributes to the prevention of money laundering and terrorist financing [6].

In the case of the UK, liability of legal entities has existed since the mid-19th century. The UK legislation has been further updated with minor amendments at the end of the transition period through the adoption of the Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations [18]. Thus, the UK

legislation has received certain positive changes that contribute to increasing the effectiveness of crime regulation. In Germany, a financial intelligence unit has been created, whose task is to combat the legalisation of criminal funds. The German legislator approved a particular list of criminal acts, the consequences of which are recognised as money laundering. As for the countries of Central Asia, it is worth paying attention to the Republic of Uzbekistan. Thus, the Board of the Central Bank of the Republic of Uzbekistan Department fighting economic crimes under the Prosecutor General of the Republic of Uzbekistan adopted the Resolution No. 3266 "On Approval of Internal Control in Combating against Legalisation of Proceeds Derived from Criminal Activities in the Payment Organisation, Payment System Operators, System Operators of Electronic Money, Terrorist Financing and Financing Weapons of Mass Destruction" [19]. The rules set out in this document stipulate as follows:

– organisation of the internal control system;
– methods for checking clients to the required extent;
– criteria and features of suspicious financial transactions;
– list of operations that are performed only with the participation of persons involved or suspected of involvement in terrorist activities, the distribution of weapons;
– requirements for submitting information to the authorised state body;
– procedure for storing, processing and ensuring the secrecy of documents and information;
– responsibility of management and employees of the internal control service and other departments.

Within conventional legal systems with effective local experience in combating corruption at the legislative level, the most interesting is the experience of the UK, which is described by a systematic approach. The UK regulates the prevention of corruption, which is most common among legal entities, at the state and international levels [2]. English legislation is quite large-scale in terms of the volume of anti-corruption regulations. Thus, the following acts were adopted: Public Bodies Corrupt Practices Act [16], Prevention of Corruption Act [17]. Within the framework of the fight against corruption, special attention in the UK legislation is paid to countering such a dangerous criminal act as bribery. Since the UK does consider bribery as a dangerous crime, the question arises concerning the importance of preventing the commission of this crime. After a long debate, the British parliament adopted the Liberia Act (2010), which entered into force on July 1, 2011. In fact, the law reaches the socio-psychological level of the fight against corruption and requires systematic work with persons with authority, so that they exercise them in good faith and impartially, in accordance with the working charter. Furthermore, it is innovative that an organisation is also found guilty if its branch, employee, agent, or other person associated with this organisation is convicted of bribery, and regardless of its location. However, the law exempts an organisation from liability if it can prove the fact that, despite the case of bribery, it carried out procedures to prevent such cases [30-32]. The Bribery Act application guide [20] sets out six systemic key principles that organisations should follow to prevent bribery. The key ones are as follows:

1. Appropriate procedures for preventing the risk of bribery:
– control over gifts, representative spending, charitable and political contributions;
– monitoring of permanent and temporary employment;
– control of business relations with individuals, including pre-contract and post-contract agreements;
– financial control, including proper accounting statements, auditing and approval of expenses;
– transaction transparency and disclosure;
– control over organisational decision-making;
– adoption of detailed disciplinary regulations and introduction of sanctions for violation of anti-corruption rules;
– introduction of procedures for informing about risks and cases of bribery;
– adoption of a detailed plan for the introduction of anti-corruption procedures;
– promulgation of the organisation's bribery policies and procedures and appropriate instruction to staff;
– monitoring and evaluation of bribery prevention procedures.

2. Commitment of senior management to the fight against bribery:
– publication of the organisation's position on bribery;
– management participation in the fight against bribery: selection and instruction of senior managers, "code of conduct", contacts with external organisations and media to reflect the organisation's position, assessment of corruption risks, general supervision of compliance with anti-corruption procedures.

3. Due diligence. The purpose of this principle is to encourage a commercial organisation to take the measures necessary to prevent cases of bribery [33; 34].

4. Communication and instruction. Internal communication involves the publication by the organisation's management of the policy in the field of bribery and procedures for its prevention. External

communication involves the development of a "code of conduct" to prevent cases of bribery on the part of counterparties.

5. Monitoring and evaluation. The need for a commercial organisation to constantly monitor and evaluate its anti-corruption procedures is conditioned by changes in the nature of the company's activities and the nature of risks [35].

Apart from internal sources of information, which take the form of periodic reports to senior management, the organisation also uses information from regulatory or supervisory authorities. Furthermore, to obtain an independent assessment of the effectiveness of anti-corruption procedures, commercial organisations can undergo special certification performed by industry associations or multilateral bodies [36]. Thus, the Bribery Act [20] provides one of the strictest regimes in the world under which it is companies that will be held responsible for committing bribery in the public and private sectors by their employees and agents [27]. Within the framework of the fight against corruption in Britain, the creation of a Committee on Standards in Public Life was also initiated in 1994. The Committee's functional responsibilities include addressing issues relating to the conduct of public officials, including agreements concerning financial and commercial activities; developing recommendations for guaranteeing rules of decency [25]. Paying attention to the place in the rating of the Corruption Perceptions Index occupied by the UK, in practice, measures to prevent corruption have fully justified themselves as a deterrent in the prevention of corruption crimes in the UK [24]. One of the countries that successfully prevents crime of legal entities, primarily in the field of corruption, is Germany. At present, according to official data, Germany is the country where corruption crimes are quite rare. However, German law still considers corruption as one of the most dangerous crimes. Most often, corruption scandals occur with the involvement of high-ranking officials and representatives of the top state authorities, but corruption crimes are also common among legal entities.

Anti-corruption experts believe that the fight against corruption in Germany has now become more effective. Thus, bodies were created that deal with corruption prevention issues, and closer contact was established with the population, which is provided by the criminal and tax police [6]. According to the results of 2020, Germany ranked 9th in the world among 179 countries in the Corruption Perceptions Index. The study was conducted on a 100-point scale by the non-governmental organisation Transparency International (2020). The corruption prevention policy aims to take all measures that will make it impossible for civil servants to abuse their official position [3]. In 1997, the Gesetz "Zur Bekämpfung der Korruption" [37] was adopted in Germany, based on which regulations were adopted in the federal states to counteract this phenomenon, and special bodies were created to investigate corruption crimes under the police departments. The introduced special measures have had a positive impact on the corruption situation in the country. The German judicial system has developed effective ways to combat corruption among legal entities. Among them, the most influential are the increased responsibility for committing corruption offences. Thus, the following types of punishments are applied to offenders: imprisonment; deprivation of the right to hold certain positions or engage in certain activities; confiscation of the violator's property obtained dishonestly in favour of the state.

The above-mentioned sanctions are most widespread in Germany. Due to these measures, upon committing a crime, the violator risks losing much more than he would have gained as a result of committing corrupt actions. For a legal entity – a German firm or organisation – to be involved in a story with bribes is a serious blow to the business reputation. The threat of listing or banning the activities of corrupt firms is the most effective, but also the most deterrent. An effective fight against corruption requires not only careful implementation of preventive measures, but also an effective system of criminal prosecution. In Germany, cases of bribery are considered primarily by special unit prosecutors. Strict prosecution of acts of corruption can have a deterrent effect. Furthermore, in Germany, there is interdisciplinary cooperation between prosecutors, police investigators, financial inspectors, auditors, and accountants. This way, they can gather all aspects of a corruption case as quickly as possible and plan steps for a quick and effective investigation. Ukraine should embody the ideas and trends of European states in its policy to combat crime among legal entities, since economic crime has a considerable impact on organisations around the world, no branch of the economy can feel protected from the consequences of economic crime. Apart from serious economic damage, economic crime can cause a big blow to the image of an organisation, ruin its reputation.

It is worth addressing the development of a code of conduct. It should become part of the employment contract. The responsibility of managers and heads in the fight against corruption should also be emphasised. They should regularly discuss this topic at staff meetings, organise and take part in special events, and get acquainted with typical indicators of corruption. Ukraine, embodying foreign experience, can develop its own programme that would help improve the situation with corporate crime. Thus, to achieve a better result in the prevention of crime among legal entities, Ukraine can codify the main corporate values that should underlie internal and external business operations, norms of behaviour regarding gifts, the duty of confidentiality, the

main ban on "side activities", if this is not explicitly allowed, a strict separation of private and corporate interests. All rules aimed at preventing corporate crime should be set out in particular guidelines and protocols. Furthermore, the norms of behaviour should become components of the employment contract.

It is also worth paying attention to regular training, organisation of public discussions by representatives of state authorities and political parties, identification of positions where many corruption cases occur. Foreign experience also shows that maintaining internal corporate documentation, strengthening control and supervision over the work of legal entities, and systematically updating workers can considerably improve the situation with crime. In many European countries, in particular in Germany and the United Kingdom, there is such an anti-corruption measure as the "four eyes principle". It means that several people must attend official procedures [3]. Ukraine should also take advantage of this principle. Considering foreign experience, there will be considerably fewer corruption cases among legal entities. A more innovative approach is the use of artificial intelligence. Currently this idea is at the initial stage, since artificial intelligence remains understudied and underdeveloped. Artificial intelligence, due to its large-scale capabilities, will allow detecting and possibly predicting corruption that was previously undetected. To do this, the artificial intelligence system simply analyses ledgers, business trip reports, receipts and invoices, emails, phone calls, and text messages. Having checked all this data, artificial intelligence can detect which transfers of funds are suspicious.

CONCLUSIONS

Having analysed the experience of foreign countries in preventing crime among legal entities, it can be concluded that legal entities (organisations, corporations) are most involved in economic offences, responsibility for which occurs under criminal legislation. Thus, it was revealed that legal entities most often commit such dangerous violations as legalisation of illegally obtained income or as a result of illegal activities, corruption. Violations require the immediate adoption of a programme aimed at developing measures to combat corporate crime, because economic crimes are recognised as one of the most dangerous, as they can undermine the economy not only of an individual country, but also of the world. considering the foreign experience of countries with the best indicators of combating crime among legal entities, the key factor in combating corruption is the introduction of an effective system of internal control, audit, and responsibility of organisations for failure to take measures to prevent corporate crime.

Furthermore, the effectiveness of corporate crime prevention considerably depends on the state of regulations. They should be structured and focused on implementing measures to combat corporate crime. The experience of foreign countries in effective legislative prevention of crimes among legal entities is useful for Ukraine, which occupies a low position in the fight against corporate crimes. Ukraine has the opportunity to take advantage of innovative methods developed by other countries, as well as pay attention to the achievements of technical sciences, primarily the artificial intelligence system, which can help prevent corporate crime. Moreover, the countries of the world should be aware that a more effective method of countering corporate crime is to bring this issue to the international level, since economic crimes are large in scope and common to all states of the world.

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Suggested Citation: Skoromnyi, D.A. (2021). Legal entities' crime prevention: foreign experience and prospects of application in Ukraine *Journal of the National Academy of Legal Sciences of Ukraine*, 28(3), 301-310.

Submitted: 08.06.2021
Revised: 13.08.2021
Accepted: 05.09.2021

УДК 342.922
DOI: 10.37635/jnalsu.28(3).2021.311-319

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ПРАВОВЕ РЕГУЛЮВАННЯ ДІЯЛЬНОСТІ ПІДРОЗДІЛІВ ПОЛІЦІЇ ЄВРОПЕЙСЬКИХ КРАЇН У СФЕРІ БЕЗПЕКИ ДОРОЖНЬОГО РУХУ

Анотація. *Адміністративно-правові інструменти та інструменти у діяльності поліції у сфері безпеки дорожнього руху є малодослідженими питаннями у науковій літературі, а правоохоронна та міжнародно-правова організаційна практика не завжди відповідають закону. Нечітке правове регулювання безпеки дорожнього руху – одне з питань зменшення аварій та смертей. Метою цієї статті є виявлення ефективності правового регулювання діяльності поліцейських підрозділів у європейських країнах у сфері безпеки дорожнього руху. Методологія дослідження базується на «антропологічному підході, в якому загальний контекст дослідження підкреслюється у тексті». Дані вторинних інтерв'ю та аналіз змісту публікацій за 2008-2021 роки були використані для проведення якісного дослідження з метою вивчення політики та норм ЄС. Результати демонструють прогрес у сфері безпеки дорожнього руху завдяки комплексному системному підходу до впровадження політики в рамках Програми безпеки дорожнього руху на 2011-2020 роки. Покращення дотримання правил є одним з основних компонентів політики ЄС, що реалізується різними країнами на національному рівні за допомогою національних програм безпеки дорожнього руху. В результаті посилення контролю більшості країн ЄС вдалося зменшити кількість нещасних випадків та смертей, але в країнах із середнім рівнем доходу все ще існують проблеми з діяльністю поліції. Ці проблеми стосуються неадекватної застарілої правової бази, яка неефективна в умовах динамічної зміни дорожньої інфраструктури, інтеграції інтелектуальних систем на дорогах для посилення контролю та запобігання аваріям. Політика ЄС та національне законодавство часто залишаються досить розпливчастими, особливо в контексті безпеки мотоциклістів та пішоходів, особливо в міських районах. Відсутність точності та деталізації у законодавстві заходів безпеки загострює проблему аварій. Діяльність поліції часто не забезпечує достатнього рівня контролю, коли під тиском навколишнього середовища поліція не може забезпечити якісний трафік та управління даними*

Ключові слова: *культура безпеки дорожнього руху, заходи безпеки дорожнього руху, дорожньо-транспортні пригоди, водій автомобіля, стратегія безпеки дорожнього руху*

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LEGAL REGULATION OF THE POLICE UNITS' ACTIVITIES OF EUROPEAN COUNTRIES IN THE ROAD SAFETY FIELD

Abstract. *Administrative and legal tools and instruments in the activities of the police in the field of road safety are little-studied issues in the scientific literature, and law enforcement and international legal, organizational practice do not always comply with the law. Blurred legal regulation of road safety is one of the problems of reducing accidents, accidents and deaths. The purpose of this article is to identify the effectiveness of legal regulation of police units in European countries in the field of road safety. The research methodology is based on the "anthropological approach in which the overall research context is emphasized in the text". Secondary interview data and content analysis of publications for 2008-2021 were used to conduct a qualitative research to study EU policy and norms. The results demonstrate progress in road safety through a comprehensive system approach of policy implementation under the Road Safety Program 2011-2020. Improving compliance with the rules is one of the main components of EU policy implemented by various countries at the national level through national road safety programs. As a result of increased controls, most EU countries have managed to reduce accidents and deaths, but in middle-income countries there are still problems with police operations. These problems concern the inadequate outdated legal framework, which is not effective in the conditions of dynamic change of road infrastructure, integration of intelligent systems on roads for the strengthened control and accident prevention. EU policy and national legislation often remain rather vague, particularly in the context of motorcyclist and pedestrian safety, especially in urban areas. The lack of accuracy and detail in the legislation of safety measures exacerbates the problem of accidents. Police activities often do not provide a sufficient level of control when, under environmental pressures, the police are unable to provide quality traffic and data management*

Keywords: *road safety culture, road safety measures, traffic accidents, car driver, road safety strategy*

INTRODUCTION

Road safety is an important component of state and human security. Administrative and legal tools and instruments in policing in this area are little-studied issues in the scientific literature, and law enforcement and international legal, organizational practice do not always meet the rule of law [1]. In the EU, legislation is being reformed due to the need to increase road safety in the face of growing road traffic and vehicles [2]. Reform is taking place using deterrent road monitoring and tracking tools, the development of sophisticated preventive policies and safety strategies [2]. Police units ensure restraint and compliance with traffic rules. A systematic approach to road safety has been a priority in EU policy for the last ten years [3]. The part of a systemic approach is a law enforcement by the police within the EU. In the early 1990s, sustainable safety

vision began to be actively discussed as a concept of road safety in the EU, particularly in the Netherlands and Sweden [4]. Therefore, a systematic approach is integrated into the activities of police units. However, new challenges in this area are urbanization, population density, changing vehicle modes, and new automotive technologies [3]. These challenges increase the pressure on the police and ensure effective control over road safety.

The purpose of this article is to identify the effectiveness of legal regulation of police units in European countries in the field of road safety.

In the scientific literature, the main areas of research in the field of police units legal regulation in European countries in the road safety field are: 1) the provisions of EU legislation to ensure information exchange at the international level and the complexity of international cooperation [5]; 2) compliance with the law in the field of road safety [1; 5]; 3) administrative measures to ensure security in police activities, international organizational and legal practice to study the effectiveness of police activities [1; 6]; 4) changes in legislation, law enforcement practices and compliance with traffic rules to determine the impact on the level of road accidents [2]; 5) public policy, road safety tools [4; 7-9]; 6) safety performance indicators within the European project SafetyNet and the development of new approaches to their improvement [10; 11]; 7) models and strategies for road safety [12-14]; 8) automated road incident detection systems, mathematical models of traffic forecasting and modeling as tools in police practice [15; 16]. The activities of police units are based on the legal structure of road safety and concern the control, prevention, detection and imposition of sanctions on violators of the law. Legal regulation is conditionally divided into regulation of traffic behavior, detection of violations, judicial investigation of violations, punishment of violators within the developed administrative and civil, criminal law [6].

Recent studies have changed the level of government responsibility for road safety and new management practices. This means the division of responsibilities between public authorities and a wide range of road users through "soft management" measures [17]. However, there is a lack of understanding of those responsible for road safety within the EU, which may require new participants in safety control and management [18]. The analysis of scientific publications shows the lack of a comprehensive study of the legal regulations of the police of European countries in the field of road safety. The identified areas of research focus mainly on the causes and ways to overcome accidents. Instead, the legal basis for policing can significantly improve the level of control and prevention of incidents.

1. MATERIALS AND METHODS

In this article is used a qualitative research methodology based on the "anthropological approach in which the overall research context is emphasized in the text" [19]. This approach provides a research and understanding of a complex number of issues related to road safety policing [19].

A qualitative research used secondary interview data and content analysis of publications during 2008-2021 to examine the extent to which EU policy has reduced accident rates and incidents since the adoption of the Road Safety Program 2011-2020 [20]. Secondary interview data was studied using content analysis of scientific publications that studied police activities and conducted research on the causes of accidents, the culture of driver behavior, the relationship between the legal basis of police units and the culture of driver behavior.

Search for publications was carried out in databases of ScienceDirect, IEEE explore, Springer, Wiley Online Library. The search was carried out by keywords: 1) Police influence on Road Safety in EU; 2) Police Enforcement in the EU; 3) road safety measures; 4) road safety culture; 5) risk Factors of Road Work Zone Crashes; 6) road safety strategies; 7) road traffic injuries; 8) police perspectives on road safety. In total, an analysis of 253 scientific publications for the period 2008-2021 was conducted, from which 34 researches were selected, which are related to the objects of study of the legal regulation of police activities to ensure road safety in the EU. Eurostat 2020 data for the period of 2000-2018 on the number of people killed in road accidents in the EU were used to confirm the effectiveness of police activities.

2. RESULTS AND DISCUSSION

Legal regulation of policing in the EU is an extremely important component of preventing and monitoring the behavior of road users in order to ensure safety and reduce mortality. Failure to comply with traffic rules and lack of control over the use of seat belts, drunk driving, speed limits, helmets and child restraints leads to a lack of progress in reducing mortality, especially among pedestrians, motorcyclists and their injuries. There is a lack of control and practice over compliance with traffic rules; the rules are unlikely to be enforced and are more likely to affect the behavior of road users and the level of safety. Effective law enforcement involves the adoption, regular updating and monitoring of compliance at national, municipal and local legislation, taking

into account the risk factors mentioned above. Legal regulations also provide the determination of appropriate sanctions for violations.

The European Union approved the Road Safety Program 2011-2020 [20] in 2011 to reduce road deaths in Europe by 50% during 2011-2020. This Program includes the following main components of reducing mortality and accidents: 1) taking measures to improve safety for vehicles; 2) development of safe road infrastructure; 3) use of intelligent technologies; 4) education and training of road users; 5) increasing the level of control over compliance with the rules; 6) approval of the purpose of injury indicators; 7) measures to reduce injuries associated with the movement of motorcycles [20]. The intensity of control and supervision in order to combat injuries forms the preconditions for reducing mortality. Law enforcement has remained a major problem within the EU for the last twenty years. The EU therefore affirms the need to develop national control plans. However, recent studies by police officers, particularly in Germany, show not significant changes in legislation, which are often ineffective, and the rules of law are questionable and do not provide support for traffic rules [21]. This situation is due to the complexity of traffic rules, sanctions and fines. Excessive regulation of traffic causes increased pressure on all participants, outdated legislation and lack of changes in the rules of conduct of vehicles causes non-compliance of 85% of roads with the law. Among the main problems are the following: the lack of a clear state policy to address issues in the field of traffic infrastructure, risks of traffic due to driving by the elderly, insufficient level of promotion of bicycle traffic, speed limits on highways, lack of automated regulation of certain sections of the highway with speed cameras, which puts pressure on police officers [21]. Police enforcement influences the cultural characteristics of driving and the behavior of road users. Traffic culture is formed in particular in the process of monitoring the behavior of participants [22].

Despite the overall reduction in mortality within the EU (Fig. 1), in some countries (Poland, Romania, Luxembourg, Greece, Bulgaria, Finland) the mortality rate decreased by an average of 2-4% between 2000 and 2018. This is particularly due to the road safety culture, which differs from country to country. For example, the use of seat belts differs from one EU country to another. Greek drivers are more aggressive and violent than Norwegian drivers, who are more accommodating and polite [23], and in Poland, cultural driving habits are risky driving and carelessness [24]. Poland has an average of 23 deaths per million inhabitants, which is twice the EU figure, and speeding is one of the leading causes of death. Other causes of accidents in Poland are poor assessment of the road situation, poor quality of road infrastructure and the condition of cars. Multilateral action by the Polish government is not sufficient to reduce accidents [24]. Legislative changes do not affect the reduction of accidents and deaths on the roads. The lack of accuracy and detail in the legislation of safety measures exacerbates the problem of accidents. At the same time, safety applies not only to drivers and pedestrians, but also to police officers. For example, the complexity of the equipment of police cars causes threats to the work of staff [25]. This means the need to improve the policy of technical passive safety of personnel. Legal norms should ensure effective control over the method of forming police cars.

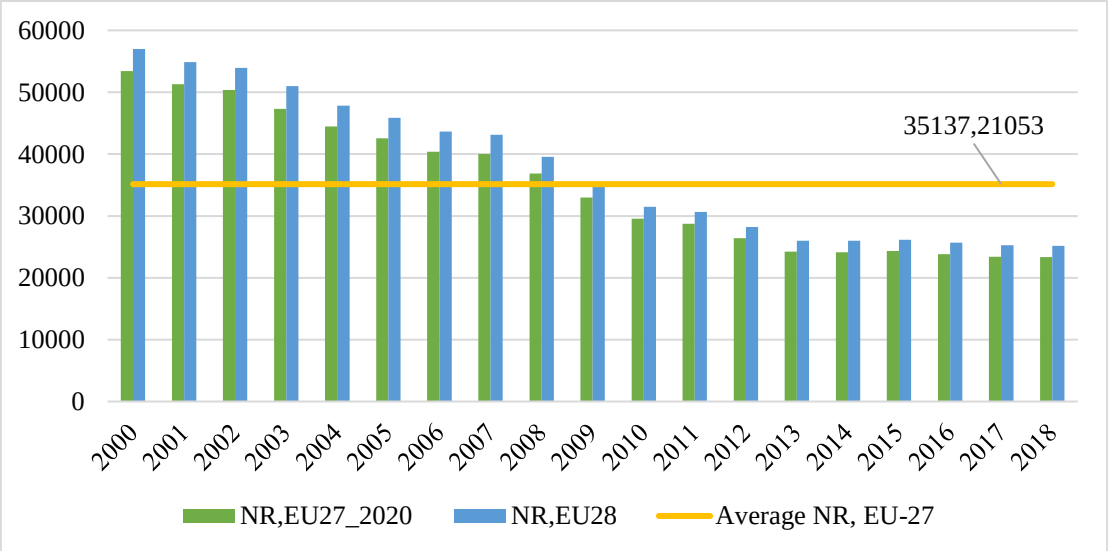

Figure 1. People killed in road accidents in EU, 2000-2018, persons (According to SDG 11.40)
Source: [26]

Among the main gaps in the legal protection of road users is the limited protection. For example, the legal protection of pedestrians in Poland begins after entering the roadway. In other EU countries, legal protection begins before departure [24]. To increase the level of traffic safety in Poland, various participants and safety actors are involved on the basis of the National Road Safety Program 2013-2020 [27].

Police Enforcement is costly, but not always effective in improving of the road safety (Table 1). For example, the cost-benefit ratio of seat-belt wearing for light-vehicle occupants is 28.7, which is an effective safety measure. Alcohol Interlock Program (10.9) and Random breath tests (7.7), Section control (19.5) are also cost-effective. For comparison, Red light enforcement cameras or Police enforcement of speeding measures are practically ineffective (B/C ratio is 3.7 and 1.1), while the cost per 1 unit of measures is 282 thousand euros and 84 thousand euros.

Table 1. Police Enforcement Measure Influence on Road Safety

Enforcement measure	**Description**	**B / C ratio Best estimate**	**NPV * per unit implemented**
Enforcement of seat-belt wearing for light-vehicle occupants	Increased police checks on seat-belt wearing	28.7	€ 143,348,096
Alcohol Interlock Program	Compulsory alcohol interlock program for serious offenders. Alcohol interlocks are automatic control systems, which are designed to prevent driving with excess alcohol by requiring the driver to blow into an in-car Breathalyzer before starting the ignition.	10.9	€ 29,174
Red light cameras	Red light enforcement cameras	3.7	€ 282,577
Random breath tests	Random breath tests to detect drunk driving	7.7	€ 219
Section control	Speed enforcement scheme in which cameras measure average speeds over a longer road section	19.5	€ 2,834,895
Police enforcement of speeding	Checking and penalizing drivers who exceed speed limits by means of police enforcement	1.1	€ 84,271

***Note**: * NPV are calculated per unit of analysis*
***Source**: [28].*

The scientific literature also examines the reasons for the ineffectiveness of security measures, including inaccuracy of police data on accidents: inaccuracies of location and date, traffic data, inconsistencies in databases, incorrect classification of accidents, inaccuracy of identification of causes of accidents [29]. This means the need for further integration of intelligent systems of supervision and control of road traffic and road users. In general, there are similar problems and causes of accidents within the EU. In Portugal, accidents are higher in pedestrian areas, mainly in cities, which requires increased monitoring and signaling of the likelihood of an accident [30-32].

The analysis demonstrates the need for further EU policies aimed at reducing accidents, especially in middle-income countries, with a focus on key components of international security policy. The key safety issues identified in the Road Safety Program 2011-2020 remains a challenge. For example, driver training and education in all countries remains a problem due to the level of violations and incidents [33]. Therefore, road safety components must include:

1) taking measures to improve safety for vehicles;
2) development of safe road infrastructure, in particular lighting of working areas in urban areas, signaling and control with the use of equipment;
3) use of intelligent technologies;
4) raising the level of consciousness, education and training of road users;
5) increasing the level of control over compliance with the rules;
6) approval of the purpose of injury indicators;
7) measures to reduce injuries associated with motorcycle traffic [20].

For some time, road safety strategies around the world have been based on the common notion that road traffic injuries in any single road transport system are the shared responsibility of all participants and organizations in that system. Nevertheless, discussions about who is actually responsible for road injuries were rare and usually concerned only a subgroup of the most prominent participants and organizations. Police units monitor compliance with traffic rules by monitoring and measuring the behavior of road users (e.g. speeding),

testing for alcohol and drugs, checking the condition of vehicles and issuing warnings and fines. However, security issues remain a problem in the EU, despite the developed legal framework for policing. Incident prevention controls are increasingly integrated into EU safety policy: monitoring driver behavior, providing feedback on performance and educational activities carried out by parents, friends and family, workplace leaders and schools. Finally, mechanics and vehicle inspectors monitor the condition of road vehicles to ensure compliance with the standards, required rules and regulations of road licensing [18].

In an article describing the STAMP model, Leveson [34; 35] describes various forms of control, including managerial, organizational, physical, operational and production. It is interesting to note that all forms of control described by Leveson have been preserved in the EU road transport system. For example, management and organizational control is exercised through government at higher levels of the system, as well as through organizations that hire professional drivers. While higher levels are characterized by managerial and organizational control, lower levels require more physical control in the sense that attempts are made to actively control road users when interacting on the road. For example, vehicles and road infrastructure provide physical control over road users in terms of where they can go, with whom they can interact and how fast they can move. In turn, road users provide physical control over vehicles and other road users. Police officers and traffic rules provide operational control. Production control measures are also obvious, for example, in international car production standards [36].

As for the control measures used to prevent five fatal behaviors, the study proves the management of a culture of behavior based on government strategies and road safety policies at higher levels, in particular, by organizations such as the police and the highway, and applied on the road or directly by the police, or indirectly by other persons, such as parents, peers and other road users. The main form of control is compliance with traffic rules (for example, selective breath testing and speed cameras). An interesting finding is that the police rely heavily on control (for example, through law enforcement). It may be worthwhile to identify other participants who can also exercise control. Examples of existing practices for the use of other control methods include seat belt warnings in vehicles and roadside speed cameras. With the ever-expanding use of advanced technologies, future research should examine how technology and other controls can be used to implement both existing and new road safety measures. Examples include automotive fatigue detection systems, alcohol locks, and cell phones that become unusable in road vehicles. With increasing environmental pressures, new forms of control may be needed, and the introduction of controls should apply not only to the police but also to other actors. The relative strength of control is also interesting, especially compared to other more strictly regulated transport systems, such as aviation and rail transport. Although similar forms of control are used in other transport systems, it is clear that some forms of control are weaker in road transport. As a result, there is more freedom of action and, in turn, more opportunities for management. For example, control of driver violations is perhaps stricter in areas such as civil aviation, where pilots must adhere to strict alcohol regulations and are frequently tested for alcohol before flying an aircraft (large airlines are required to conduct spot checks on alcohol each year. at least 10% of their staff and drug testing of at least 25% of their staff [37]). Despite the fact that road users rules and can be checked by selective breath testing, the nature of the road transport system is such that alcohol control is less comprehensive and therefore road users have more freedom to drive while intoxicated. The impact of this is manifested in a significant accident when driving while intoxicated and the occurrence of road accidents [38].

The same can be said for other key behaviors related to road injuries (fatigue, speeding, distraction, not wearing seat belts), while other transport systems obviously have more stringent and effective means of controlling similar problems with through rules and regulations, performance monitoring and procedures. The task of the road safety community is to strengthen the control and influence of road users, while ensuring that they are practical in application and do not become overly intrusive. It is likely that this requires new forms of control, rather than simply trying to increase the frequency of police inspections, within which existing means of control are introduced, through means such as shallower breathing and more careful monitoring of road users' behavior and speed. Rather, new approaches to preventing driver behavior that underlie road accidents may be needed. For example, in the case of drunk driving, alcohol blocking is one of the obvious means of strengthening control. However, although their effectiveness in preventing drunk driving has been proven in scientific studies [39], the practical aspects of embedding locking devices in all cars are questionable. The systems approach will allow the development of a set of controls aimed at participants and organizations throughout the road transport system, by identifying non-traditional methods of intervention, especially at higher levels of the system. For example, given the increase in work-related drivers, government or insurer subsidies to fleet safety companies and driver training initiatives may cross-influence drivers' behavior and employee expectations when driving for personal use.

CONCLUSIONS

This study identified progress in road safety through a comprehensive systems approach to policy implementation under the Road Safety Program 2011-2020 (European Commission 2010). Improving compliance with the rules is one of the main components of EU policy implemented by various countries at the national level through national road safety programs. As a result of increased controls, most EU countries have managed to reduce accidents and deaths, but in middle-income countries there are still problems with police operations. These problems concern the inadequate outdated legal framework, which is not effective in the conditions of dynamic change of road infrastructure, integration of intelligent systems on roads for the strengthened control and accident prevention. The uniformity of the causes of accidents within the EU was the basis for the introduction of uniform rules of law in order to reduce congestion, incidents, control of pedestrian mortality. At the same time, EU policies and national regulations often remain rather vague, particularly in the context of ensuring the safety of motorcyclists and pedestrians, especially in urban areas. The lack of accuracy and detail in the legislation of safety measures exacerbates the problem of accidents. The activities of the police in this case often do not provide a sufficient level of control, when under environmental pressure the police are not able to provide quality management of traffic and data. This is confirmed by the problems of inaccuracy of identification of the causes of accidents, traffic, databases, incorrect classification of accidents by police officers. Therefore, the issue of ensuring effective control remains relevant within the EU. This is determined in particular by the significant influence of control and Police enforcement on the cultural characteristics of driving and behavior of road users. The culture of traffic is formed in particular in the process of monitoring the behavior of participants.

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Suggested Citation: Chervinchuk, A., Pylypenko, Ye., Pekarskyi, S., Rekunenko, T., & Koller, Yu. (2021). Legal regulation of the police units' activities of European countries in the road safety field. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(3), 311-319.

Submitted: 24.05.2021
Revised: 16.07.2021
Accepted: 02.09.2021

Journal
of the National Academy
of Legal Sciences of Ukraine

Volume 28, Issue 3
2021

Responsible for the release of *V. Zhuravel*

Desktop publishing *K. Sosiedko*

Signed to the print with the original layout 20.09.2021
Mind. print. ark. 37.2

The publisher the Right of National Academy
of legal Sciences of Ukraine and the Yaroslav Mudryi National Law University
61002, 80A Chernyshevskaya Street, Kharkiv, Ukraine
Tel/Fax: (057) 716-45-53
Website: www.pravo-izdat.com.ua
e-mail for authors: verstka@pravo-izdat.com.ua
e-mail fororders: sales@pravo-izdat.com.ua

Certificate of registration of the subject of publishing in the state register of publishers,
manufacturers and distributors of publishing products series DK No. 4219 dated 01.12.2011

Вісник
Національної академії
правових наук України

Том 28, № 3
2021

(Англійською мовою)

Відповідальний за випуск *В. А. Журавель*

Комп'ютерна верстка *К. Д. Сосєдко*

Підписано до друку з оригінал-макета 20.09.2021
Ум. друк. арк. 37,2

Видавництво «Право» Національної академії правових наук України
та Національного юридичного університету імені Ярослава Мудрого
вул. Чернишевська, 80а, Харків, 61002, Україна
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Свідоцтво про внесення суб'єкта видавничої справи
до державного реєстру видавців, виготівників і розповсюджувачіввидавничої продукції – серія ДК
№ 4219 від 01.12.2011 р.