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, № 4
2021

Харків
«Право»
2021

УДК 34
DOI: 10.37635/jnalsu.28(4).2021

ISSN 1993-0909
E-ISSN 2663-3116

Рекомендовано до друку вченою радою
Національного юридичного університету імені Ярослава Мудрого
(№ 5 від 23 грудня 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, № 4. – 311 с.

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

Видавець:
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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 4
2021

Kharkiv
"Pravo"
2021

UDC 34
DOI: 10.37635/jnalsu.28(4).2021

ISSN 1993-0909
E-ISSN 2663-3116

Recommended for publication by the academic
CouncilYaroslav Mudryi National Law University
(Protocol No. 5 dated 23 December 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. 4. – 311 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

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УДК 340.1
DOI: 10.37635/jnalsu.28(4).2021.15-28

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СТАНОВЛЕННЯ ІДЕЇ ПРИРОДНОГО ПРАВА В СТАРОДАВНІЙ ГРЕЦІЇ І СТАРОДАВНЬОМУ РИМІ

Анотація. *У статті аналізується становлення ідеї природного права, що має важливе теоретичне й прикладне значення, оскільки дає можливість краще збагнути сутність права, його зв'язок з егалітаристськими та гуманістичними ученнями. Дослідження ґрунтується на сучасних філософських світоглядних підходах, використовуються такі загальнонаукові методи дослідження як аксіологічний, антропологічний, феноменологічний, порівняльно-історичний, порівняльно-правовий, системно-структурний, герменевтичний, функціональний, інституційний, а також формально-юридичний метод. Досліджено роботи представників Мілетської школи, заснованої Фалесом у першій половині VI століття до н.е., аналіз якими людської свідомості, людської здатності до творчості, перетворення світу, формулювання ідей і їхнього втілення привели до ідеї універсального Логосу, всесвітнього божественного Розуму, Закону Природи. Розкрито внесок у розвиток ідеї природного права софістів, які обґрунтовували відмінності між природним і людським законом, обстоювали ідею рівності усіх людей, закликали не дискримінувати громадян, залежно від їхнього походження, заперечували рабство. Висвітлено роль в обґрунтуванні ідеї природного права представників школи стоїцизму на основі усвідомлення принципової відмінності між природою людини і природою, обґрунтуванні існування незмінного закону природи (lex naturale) у формі здорового глузду, рівності усіх людей, визнання рабства таким, що суперечить людській природі, потреби визнання законом прав людини для збереження людської гідності. Досліджено вплив ідей філософів Стародавньої Греції на розвиток римського права, роль у цьому впливі Сципіонового гурту та суть тогочасного раціонального розуміння природного права як істинного закону, а саме – здорового глузду, який у відповідності з природою стосується всіх людей, є незмінним і вічним*

Ключові слова: *давньогрецька філософія права, давньоримська філософія права, природний закон, природне право, природно-правова теорія, права людини, сутність держави*

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FORMATION OF THE IDEA OF NATURAL LAW IN ANCIENT GREECE AND ANCIENT ROME

Abstract. *The article analyzes the formation of the idea of natural law, which has an important theoretical and applied significance, as it makes it possible to better understand the essence of law, its connection with egalitarian and humanistic teachings. The research is based on modern philosophical worldview approaches, such general scientific research methods as axiological, anthropological, phenomenological, comparative-historical, comparative-legal, system-structural, hermeneutical, functional, institutional, as well as formal-legal method are used. The article examines the works of representatives of the Milesian school founded by Thales in the first half of the 6th century BC, whose analysis of human consciousness, human ability to create, transform the world, formulate ideas and implement them led to the idea of a universal Logos, a universal divine Mind, and the Law of Nature. The article reveals the contribution of sophists to the development of the idea of the natural law who justified the differences between natural and human law, defended the idea of equality of all people, called for not discriminating against citizens, depending on their origin, and denied slavery. The role of representatives of the stoicism school in substantiating the idea of natural law based on awareness of the fundamental difference between human nature and nature, justifying the existence of the unchangeable law of nature (lex naturale) in the form of common sense, equality of all people, recognition of slavery contrary to human nature, the need for recognition of human rights by law to preserve human dignity is highlighted. The article examines the influence of the ideas of the philosophers of Ancient Greece on the development of Roman law, the role of the Scipio group in this influence, and the essence of the then rational understanding of natural law as a true law, namely, common sense, which, in accordance with nature, concerns all people, is unchangeable and eternal*

Keywords: *ancient Greek philosophy of law, ancient Roman philosophy of law, lex naturale, natural law, natural law theory, human rights, the essence of the state*

INTRODUCTION

The origin of philosophy as a science is associated with ancient Greece. As Bertrand Russell noted, although Egypt and Babylon "had some knowledge that the Greeks later adopted from them", however, no other country "developed science or philosophy" [1, p. 31]. It was philosophy that gave an impetus to the development of political and legal science. Perhaps the most significant result of political and legal science was the emergence of the idea of natural law. This idea radically changed the understanding of the essence of law, contributed to the formation of the doctrine of natural law and natural human rights, and the progressive reform of European legal systems based on human-centrism in the future. An outstanding contribution to the emergence and formation of the idea of natural law in Ancient Greece, which was later perceived by ancient Rome, belongs to a whole galaxy of philosophers of the pre-Socratic period, namely Thales [2, p. 268-269; 3; 4, p. 15-19], Anaximander [2, p. 270-273; 3, p. 11-14; 4, p. 19-24], Anaximenes [2, p. 273-274; 3, p. 15-20; 4, p. 24-25], Xenophanes [2, p. 292-293; 4, p. 46-49], Heraclitus [4, p. 26-31; 5, p. 5-18], Anaxagoras [2, p. 308-315; 3, p. 61-73; 4, p. 69-76]), sophist philosophers (Protagoras [2, p. 316-318; 4, p. 157-160], Gorgias [2, p. 318-319; 4, p. 160], Antiphon [2, p. 320-321; 4, p. 163-165; 6], Hippias [4, p. 162-163; 7, p. 281-417], Lycophron [8, p. 12-80]), Democritus [9], Socrates [10], Plato [7; 11; 12], Aristotle [7; 13], Stoic philosophers: Zeno [2, p. 296-299; 4, p. 54-57], Chrysippus [3, p. 299-306], Panaetius of Rhodes [3, p. 284]), Polybius [14], Seneca [15], and Cicero [16].

The paper attempts to show the complex and contradictory process of the emergence of the idea of natural law, as it was not perceived equally by all philosophers. In addition, this idea was formed and paved the way not only in the conditions of the birth of science as such and the formation of the philosophical foundations of the process of cognition of social phenomena, but also in difficult socio-economic conditions, bearing the imprint of the concrete historical nature of the era under consideration, as well as the features in the

then Greek and Roman States of the forms of government through which these states passed. It is also worth considering the living conditions and influence of the environment on the historical figures who represented this idea. The idea of natural law, in particular, sharply contrasted with the existence of slavery, periods of authoritarianism and despotic rule, the class nature of society and differences in the status of many segments of the population. Nevertheless, its significance as a civilizational asset, the highest achievement of philosophical and legal thought at that time, went far beyond ancient Rome and Ancient Greece.

The development of the idea of natural law by the philosophers of Ancient Greece and Ancient Rome created the basis for the further formation in the Middle Ages and in modern times of an integral doctrine of natural law by prominent philosophers H. Grotius [17], J. Locke [18, p. 327-351], Ch. Montesquieu [18, p. 387-443], J.J. Rousseau [18, p. 363-385], S. Pufendorf [18, p. 353-359] and many other thinkers. Among the Ukrainian pre-revolutionary researchers of natural law issues, it is worth mentioning M. Drahomanov [18, p. 901-902], B. Kistyakivsky [18, p. 839-895], S. Dnistrianskyi [19], M. Palienko [20], among the pre-revolutionary and post-revolutionary Russian scientists – P. Novgorodtsev [21; 22], F. Taranovsky [23, p. 78-93], V. Chetvernin [24], among Russian contemporaries – V. Nersesyants [25], among the newest Ukrainian scientists – M. Kozyubra [26, p. 12-42], O. Kostenko [26, p. 115-138], S. Maksymov [26, p. 43-65], K. Krasovsky [27], and among foreign researchers – works of such authors as B. Bix [28], R. Dworkin [29; 30], D. Llojd [31], K. Popper [32], L. Fuller [33] and many others.

At many stages of historical development, the idea of natural law opposed the historical school of law [34], legal positivism, normativism and its extreme expressions – Marxist-Leninist understanding of law and proletarian law [25; 33; 35], focusing on the value and humanistic aspects of human relations, human dignity, thereby helping to resist the arbitrariness of the state [36]. This idea helped fight authoritarian regimes, inspired the protection of human rights, returned moral values to the sphere of state power, formed a belief in the ability to limit state power to human rights and put it under the control of society, and was eventually crowned with the recognition of universal natural human rights and their consolidation in the Universal Declaration of Human Rights of 1948 [37], which opened a new era in the possibilities of protecting human rights. After the Second World War, in almost all the constitutions of democratic states, the concept of natural law and natural human rights was reflected in one form or another, becoming the protection of human rights and serving as a real lever for limiting the arbitrariness of state power.

At the present stage of development of legal science, despite fundamental changes in the understanding of natural law, comparing with the period of antiquity, the origins of the idea of natural law, its various aspects continue to attract the attention of philosophers, historians, sociologists, lawyers. Among the research topics of foreign researchers of the last few years in this field, it is worth mentioning the study of the primary sources of natural law [38-40], the concept of law in the context of a better understanding of the phenomenon of law [41; 42], the role of the rule of law as a measure of political legitimacy in Greek city-states [43], the study of the relationship of natural law with ethics and ethical ideals [44], the relationship with state political regimes, the study of historical personalities-carriers of these ideas [45].

Such attention to the study of the primary foundations of the idea of natural law, everything connected with it, is not accidental at all, since the results of the study of the historical conditions of the emergence of the idea of natural law, the study of the relationship between law and natural law in the conditions of Ancient Greece and Ancient Rome and the corresponding conclusions help to better understand the deep essence of modern law, natural human rights, their relationship with forms of government, political regime, more deeply understand the differences and common in the main doctrines of legal understanding. And this, for its part, also contributes to a better understanding of the tasks facing modern science and legal practice, leads to the formation of modern ideas about the purpose of law and the limits of its interference in the public and private spheres.

The purpose of the research is to analyse the origins of natural law ideas in the works of ancient Greek and Roman philosophers, in particular the works of representatives of Natural Philosophy (Philosophy of nature) of the Milesian school, Socrates, Plato, Aristotle, representatives of the school of stoicism, Cicero, revealing and evaluating the ideological foundations of the idea of natural law, tracing the naturalistic, cosmological, theological and rational worldview and its influence on the knowledge of legal phenomena.

The practical value of this work lies in the fact that through the disclosure of the process of the origin of the idea of natural law and the personal contribution of ancient Greek and ancient Roman philosophers to this achievement, it provides an opportunity to better understand the doctrine of natural law, which underlies the modern concept of human rights.

1. MATERIALS AND METHODS

The proposed research is based on modern philosophical worldview approaches to understanding law and its role in modern society, correlation with the state based on the use of ontology, epistemology, axiology, praxeology, anthropology, dialectics (including logic), ethics (morality) as the core of the methodology of law in their interdependence and interrelation. This made it possible to trace, explain and correctly assess the ideological foundations of the idea of natural law, which grew up on a naturalistic, cosmological, theological, and rational worldview. This also made it possible to assess the advantages and disadvantages of such a philosophical and theoretical understanding and knowledge of law by ancient Greek and Roman philosophers. Rational worldview allowed ancient Greek and Roman scientists to go beyond the existing orders in understanding a just society and explain the nature of man, the relationship of people on civilizational and humanistic principles. Rationalism, as a method of cognition of legal phenomena, has become a powerful methodological tool for evaluating a number of other ideological ideas that have influenced, taking into account the principles of methodological pluralism, the development of law, in particular utilitarianism, positivism, normativism, existentialism and many others.

The authors rethink the existing ideas about the triune understanding of dialectics as a universal method of philosophical consciousness, the theory of development and the method of cognition of the world. Meanwhile, dialectics in the work is considered as one of the general scientific methods of cognition, which helped to consider the studied issues of the formation of the idea of natural law from the point of view of its objectivity, comprehensiveness, concreteness, consistency and historicism. The paper also uses such general scientific research methods as axiological, anthropological, phenomenological, comparative-historical, comparative-legal, system-structural, hermeneutical, functional, institutional, as well as formal-legal method. A special role was assigned to the axiological method, the application in the process of research of the formation of the idea of natural law of the modern vision of the value aspect of law, since values, namely freedom, justice, equality, dignity, honour of a person, their life, health determine the deep essence of the concept of law, form an idea of the social purpose and hierarchy of goals of law and the role of the state in ensuring them, serve as a criterion for the acceptability of certain means of implementing legal norms and methods of legal regulation.

At the same time, it was also important to apply the anthropological method, which leads to the consideration of all legal phenomena through the prism of the individual, his needs, values and interests (hence the famous Protagoras' statement that man is the measure of all things, the criterion for all actions and deeds). Anthropology is the core of the rationalization of law. Therefore, it was important to evaluate the views of ancient Greek and Roman scientists from the point of view of the modern understanding of human centeredness, human rights and, above all, natural human rights as conditions of human existence and interaction for the sake of preserving one's existence and as conditions for survival, human dignity, equality (in particular gender), justice. The anthropological method also serves to confirm the need for legal regulation itself to normalize human relations, to assess the legitimacy of power, since the absence of enslavement relations, democratic power, and its responsibility to citizens for its activities correspond to human nature. Conversely, human nature is contradicted by the lack of law and legal nihilism, the ethical-instrumental vision of law and its identification with the state and state power and the police state, the lack of guarantees of human rights, the illegal retention of power, as well as the overregulation of public relations, ignoring the biological needs and interests of people, the low level or lack of social standards, social stratification and its consolidation in legislation.

The significance of the phenomenological method, which served as an additional means of substantiating the idea of natural law, is particularly important from the point of view of recognizing the super-individual, self-sufficient, transcendental phenomenological existence of the phenomenon of equality, justice, and the unified nature of people underlying the idea of natural law. Comparative-historical and comparative-legal methods were used to assess the idea of natural law, the views of scientists from the point of view of modern understanding and purpose of law, human rights, the purpose of the state and its role in ensuring human life, its interests. The system-structural method was used taking into account the understanding of law as an integral phenomenon that has a complex structure, each element of which is in interaction with other elements. The hermeneutical method and its tools made it possible to reveal the essence of the idea of natural law, consider them taking into account specific historical conditions, and interpret legal concepts from the point of view of their correspondence to the point of view of their authors. Functional, institutional, and formal legal methods contributed to a more accurate analysis of the institutions and institutions available in Ancient Greece, as well as the phenomena of legal reality.

2. RESULTS AND DISCUSSION

2.1. Milesian School, Philosophy of Nature

Ancient Greek philosophy as a science originates from the Natural Philosophy (Philosophy of nature) of the Milesian school, founded in the first half of the 6th century BC. Its representatives Thales, Anaximander, Anaximenes, and later Heraclitus, Anaxagoras, sophists, Democritus justified the cosmological model of the universe, its development according to its own laws, necessity (Fate) and its close connection with logos (law), knowledge through the mind, the "naturalness" of the human being, the inseparability of its knowledge from the knowledge of nature, the changeability of man according to the changeability of nature, and justice – as an expression of equal retribution according to talion principle

Thales was the first to talk about nature; like the earliest philosophers, he adhered to the material principle (he considered water to be such a principle), recognized the unity of the cosmos, the immortality of the soul [46, p. 5-9]. Anaximander, a disciple of Thales, considered the principle and element of existence to be the One Infinite, which is in constant motion. From the boundless nature, all things arise and are destroyed not because of the isolation of opposites and the qualitative change of the elements, but because of eternal movement. He also believed that man comes from the animal world [46, p. 11-14]. The unity and boundlessness of nature, the changeability of the world was also recognized by Anaximenes, a disciple of Anaximander [46, p. 15-20]. The analysis of human consciousness, human ability to create, transform the world, formulate ideas and implement them led the Greek philosophers of the pre-Socratic period to the idea of a universal Logos, a universal divine Mind, and the Law of Nature.

Logos (Greek: λόγος) – comes from the word λέγειν (Greek) – to speak, originally meant a word or language, later the very idea that is expressed in the language. In the epic of Homer, it meant μύθος (myth) or επος (epic), and later, through the efforts of philosophers, first Xenophanes, who believed that the eternal God, who does not have a human or animal form, directs with the help of Reason, turns into a "reasonable word", "discretion" [2, p. 292-293]. The content of the Logos becomes the essence of all things, the structure of the world, its laws. Heraclitus continued his research on the laws of the development of the world, who formulates this law of nature (logos) as follows: "1. This logos holds always but humans always prove unable to ever understand it, both before hearing it and when they have first heard it. For though all things come to be in accordance with this logos, humans are like the inexperienced when they experience such words and deeds as I set out, distinguishing each in accordance with its nature and saying how it is. But other people fail to notice what they do when awake, just as they forget what they do while asleep. 2. For this reason it is necessary to follow what is common. But although the logos is common, most people live as if they had their own private understanding" [5, p. 2]. Purely materialistic is Heraclitus ' understanding of the cosmos: "This world, which is the same for all, no one of gods or men has made. But it always was and will be: an ever-living fire, with measures of it kindling, and measures going out", "Listening not to me but to the logos, it is wise to agree that all things are one") [5, p. 3]. This law of nature is characterized by a measure ("The sun will not overstep measures, otherwise, the Erinyes, Justice's helpers, will find it out" [5, p. 5]. It is interesting to compare this with the expression in Parmenides' poem "On Nature": You will know now... The sky from where it has gone, all that surrounds it, – how immutable, it by force of Ananka, holds the boundaries of the luminaries..." [46, p. 52]).

Important for further understanding of the idea of natural law is Heraclitus' assessment of the human mind and thinking, his recognition of the human ability to know. If the mind "is the one that controls everything with the help of everything" [5, p. 2], the thinking that is inherent in all – "great dignity, and wisdom consists in saying the true and listening to nature, acting according to it" [5, p. 6], and therefore "[in] God everything is wonderful, and everything is good, and just, but people consider one thing unfair, the other just" [46, p. 5].

So, initially, Greek philosophers mostly did not see the difference between natural laws and the laws of the social environment, extending the effect of natural laws on society itself. This period, as defined by K. Popper can be called the stage of biological naturalism, which, in turn, is the first stage of the transition of society in views on the relationship between natural and normative laws from naive or magical monism to critical dualism [32, p. 84]. According to biological naturalism, there are certain eternal unchangeable laws of nature, from which moral and state laws are derived. Biological naturalism has served to justify diametrically opposed ethical views, both for egalitarianism (a society with equal opportunities) and for a society dominated by the right of the strong. In the form of ius naturale, biological naturalism is still quite popular among jurists [47]. To a large extent, the signs of biological naturalism are absorbed by the anthropological approach in law, which considers man in the unity of biological, moral, religious and other components and synthesizes a scientific and value vision of the human phenomenon.

Anaxagoras, who was called "Mind" for his wisdom, was the first to recognise reason and matter rather than fate (necessity) as the cause of the world order. According to Aristotle, Anaxagoras should be understood

in such a way that everything arises from the existing, but from the existing in possibility, but in reality it does not exist, that is, that he, if he developed this idea, would form a new teaching, recognizing as principles the one (since it is simple and not mixed) and another, which can be called indefinite before taking certain forms [46, p. 67]. As a nature explorer, Anaxagoras was thrown into prison, from where he was not easily released by Pericles.

Democritus' materialist teaching was based on Protagoras' rational doctrine of perception. Admitting the relativity of sensory perception "a person should cognise based on the rule that he is far from reality"), he proved the possibility of knowing absolute reality, which has space and geometric shapes (through "true knowledge"). Democritus denied the role of the supernatural, the divine, believing that everything has its own reasons, develops due to necessity [9, p. 213]. It is knowledge that turns randomness into necessity (knowledge by thought gives reliability in the judgment of truth [9, p. 226]. Thus, for example, the ancients came to the conclusion that there is a God, "while in fact there is no other god besides them who would have an immortal nature" only because idols of "gigantic size" approached people, "foreshadowing the future for people with their appearance and sounds" [9, p. 323], moreover, the human race itself is almost the only one, among the animals known to us, "most involved in the divine principle.... due to the divinity of its nature and essence...the property of the most divine – to think and reason" [9, p. 355].

In contrast to natural phenomena, that is, what exists "in truth", "by nature", in Democritus society, the polis, the system of government and laws are the result of natural development. The law is "a bad invention", because "what contradicts the truth is unfair" and therefore "a sage should not obey the laws, but live freely" [9, p. 371]. These social phenomena have emerged in the process of evolution and therefore can and should be improved in accordance with the requirements of justice, the interests of the state, the needs of people, etc. [46, p. 93-110]. Democritus founded a secular system of morality and ethics, which before him was completely religious. What is unfair is what is contrary to nature. All moral requirements are motivated not by external religious influences, but by internal motives of a person (Democritus first introduced the concept of conscience – "people have on their conscience the bad deeds they have committed" [9, p. 358], "the ability to be ashamed is the greatest virtue" [9, p. 368]). According to Democritus, all people are equal by nature, although it is impossible not to note his negative attitude towards women, their role in society, and the peculiarities of relationships with men, characteristic of Greece at that time [9, p. 369-370]. The Democrat condemned the wealth acquired by "bad ways", supported the democratic structure of the state as opposed to the monarchy, because even "poverty in a democratic state should be preferred to what is called a happy life in the monarchy, as freedom is better than slavery". However, Democritus believed that "it is not proper for a ruler to be responsible to anyone other than himself" [46, p. 93-110], although, on the other hand, "it must be arranged so that if he has not committed any injustice, and even severely punished those who have done it, he will not be subjected to their power in the future; it is necessary that the law or other establishment should stand in defence of him who does the work of justice" [9, p. 362].

In the middle of the fifth century BC, in Ancient Greece, there was a tendency to study the humanities and study the essence of man and distinguish it from nature, which was greatly facilitated by the views of sophists. Protagoras' famous: "man is the measure of all things, what is and what is not" became a reflection of the search for the principles of human relations, human nature, and criteria of justice. The contribution to the development of the ideas of natural law also belongs to other sophists, among whom it is worth mentioning Gorgias of Leontini, Antiphon, Hippias of Elis, Lycophron. Sophists argued for the distinction between natural and human law, which may be contrary to nature. Thus, Antiphon argued: "By nature, we are all arranged in the same way in everything – both Barbarians and Hellenes...we all breathe air through our noses and eat with our hands" [9, p. 63]. Hippias believed that it is not necessary to distinguish between citizens of different polises and discriminate them according to their origin, arguing that all relatives and fellow citizens "by nature and not by law: because such a family is similar in nature, the law – a tyrant over people, forces many things that are contrary to nature" [7, p. 337]. In this respect, Hippias should be considered one of the exponents of the idea of egalitarianism.

2.2. Socrates' Idea of Man as a Moral Being and Plato's Biological Naturalism

The teachings of Socrates (469-399 BC), one of the most famous philosophers of Ancient Greece, have not come down to us in the form of his works and have been preserved only in the works of Xenophon, Plato and Aristotle. Starting as a sophist, Socrates considered man as a moral being and studied not nature, but exclusively ethical issues from humanistic and anthropological positions: the reason-based morality of human behavior, the existence of objective truth, the absoluteness of the difference between good and evil, the meaning of human conscience, human virtues (justice, courage, prudence, beauty, etc.). By singling out such

forms of state as monarchy, tyranny, aristocracy, plutocracy, and democracy, Socrates preferred the aristocracy, which was favorably appreciated by Plato. Democracy was criticized by him because of the need to choose not by lot, but only according to the abilities and knowledge of a person [10].

Since the end of the 5th century, as noted by G.H. Sebain and Thomas L. Thorson, two ideas of the opposite between nature and convention are being developed:

1) nature as a law of justice and law, organically inherent in people and the surrounding world, so the order is reasonable and beneficial, moralistic or at least religious, which could allow criticism of abuse;

2) nature is independent of morality, manifests itself as self-affirmation or selfishness, the desire for pleasure or power (it could be developed as the Nietzsche doctrine of self-expression either in varieties of utilitarianism or in forms of anti-social orientation) [48, p. 59].

On the basis of these two ideas, the formation of two basic concepts of human rights began, which had a key impact on the perception and understanding of human rights and on human destinies. On the basis of the first idea, the idea of natural human rights was formed. The second idea served as the basis for positivism, the formal rule of law, and the justification of the right of force. During the entire subsequent period of the existence of civilization, there is a rivalry, opposition, and in some periods – a fierce struggle of these two ideas based on different approaches to understanding the origin of law, its sources, connection with the individual, relationship with the state and role in regulating public relations. With the change of cosmological views, knowledge about what is proper changes. Justice is made dependent on the actions of specific individuals and knowledge of the forms of social life and professional, rather than generic, differentiation of society. Political discourse arises as a conversation of equal people about equality [48, p. 10]. The natural law teaching of this period has an individualistic, atomistic and mechanistic character. According to Professor Palienko, a person in such a natural-legal philosophy "is considered in itself as an abstract individual, an isolated person, without any influence of the environment and historical conditions" [20, p. 32]. This is how the state was imagined – a mechanical union of individuals, and the individual and their mind, natural properties and rights were considered the basis of the state.

The teachings of Plato (427-347 BC) on man, society, law, politics and the state, which he substantiated in his works, deserve special consideration. In his view of these phenomena, he generally tends towards a religious worldview based on the idea of order and harmony. Observing the terrible destruction caused by the Peloponnesian War of Athens against Sparta and the subsequent power of Thirty Tyrants, Plato became disillusioned with the existing state system, believing that the fluidity and cyclicity inherent in society, like all nature, inevitably leads from birth to decay and decline in order to be reborn in a new round of development. Plato distinguished five successive state structures [11, 543a-594e]: aristocracy (the rule of the best), timocracy or timarchy (based on ambition), oligarchy (the power of the rich), democracy (the power of all), tyranny, each of which corresponded to five different structures of the human soul [11, 545a-546]. The aristocracy leads to timocracy by virtue of discord in the power elite, which arises due to the degeneration of the aristocratic family and the emergence of successors who will no longer have natural inclinations and after appointment will neglect their duties, in which a tendency to rivalry and rage will reign. In a timocracy, charity is less respected, profit and wealth are more valued, and therefore people begin to admire the rich and appoint them to public positions. There are qualifications. The oligarchy is increasingly based on power or intimidation. There are practically two states: the poor and the rich. In such a state, many criminals appear, and the state itself becomes weak and cannot defend itself from external attacks, because the oligarchs are afraid to put weapons in the hands of the poor, so that they are not turned against themselves. The greed, selfishness, and shamelessness of the oligarchs in enrichment, the weakness of the spoiled and lazy oligarchic youth, on the one hand, and the hatred of the poor for those who own their property, on the other, are preparing for the defeat of the oligarchic state. The victory of the poor leads to the elimination of oligarchs, the equalization of all in civil rights and the state of freedom, that is, "the ability to do what one wants", which Plato defines as an essential feature of democracy. And just as the insatiable desire for wealth destroys the oligarchy, so the "insatiable" desire for freedom in a democracy, according to Plato, prepares the need for tyranny. How does this aspiration manifest itself? According to Plato, from the art of music began the general wisdom and lawlessness, followed by freedom, which gave rise to fearlessness and shamelessness, followed by "unwillingness to obey the rulers", unwillingness to obey father and mother, elders and their admonitions [11, 545a-546]. Parents get used to liking their children and being afraid of their sons, immigrants are equalized with natives, schoolchildren do not respect their teachers, but extreme freedom is in equalizing the rights of free and slaves, women and men, which ends with the fact that they "stop considering even laws – written or unwritten" [11, 562a-563d]. Therefore, "excessive freedom, obviously for both the individual and the state, turns into nothing more than extreme slavery" [11, 564a], hence the conclusion that "complete freedom and independence from any government is much worse than moderate submission to other people", and that complete freedom from any

government is much worse than moderate power restricted by other institutions [12, 698b].

As can be seen, freedom is interpreted by Plato very arbitrarily. In a Democratic state, as Plato understood it, "there is no need to participate in governance", "it is not necessary to obey", "if any law prohibits you from governing or judging, you can still govern and judge", and a person is "given respect for his attachment to the crowd". This is a system that "does not have proper management" [11, 557e-558a]. The democratic system in its pure form, with all its shortcomings, like all other types of state structure, cannot exist for a long time without degenerating and experiencing decline. Therefore, the only way out for Plato is to create an ideal state. The model of Plato's ideal state, a stable state that has stopped, is described, in particular, in the works "Republic" [11, p. 79-420], "Laws" [12, p. 71-459] and "Politician" [12, p. 3-70], is an attempt to reverse the negative course of events and offer the foundations of an ideal state, devoid of existing shortcomings in the real state, including those inherent in the democratic system.

Plato's ideal state is a state in which everyone would have to live according to the laws of nature, where the body would be given a certain natural structure, one part of the body would rule over another, and accordingly, in the soul this would generate justice [12, 698b]. An ideal state has four main virtues: 1) wisdom, 2) courage, 3) prudence, and 4) justice [11, 427e-439]. In an ideal state, women should be common, like children, their upbringing should be common, military and peaceful activities should be common, and philosophers should rule such states, because "until philosophers reign in states, or the present kings and rulers philosophize nobly and thoroughly and it does not merge together, the state will not be free from evils and the ideal structure of the state will not see the sunlight" [11, 473d-473e].

Plato is not a supporter of excessive democracy and therefore an ideal state cannot be built solely on the foundation of such democracy, because "to achieve freedom and friendship combined with reasonableness, one must be due to both types of state structure from which all other types were born, namely, monarchical and democratic [12, 693d]. The ideal of a ruler for Plato is clearly traced in the question to the legislator in what state he needs to give the state so that he can arrange it himself. The legislator replies: "Give me a state with a tyrannical structure. Let the tyrant be young, memorable, capable of learning, courageous, and naturally generous; let the soul of this tyrant also have the qualities that accompany each of the parts of charity, as we said earlier. Only then will his other properties be useful" [12, 709d]. This position of Plato becomes clear in the totality of his assessments of the main state-legal phenomena. Plato argues, in particular, that a state must have rulers and subalterns, the noble ones must rule the non-noble, slaves must obey their rulers (slaves should be punished fairly and not pampered like free people with exhortations, they should not joke with slaves – neither women nor men), the strong must rule over the weak [12, 689e-690b, 777c]. As can be seen, Plato is a supporter of socio-political aristocracy, a closed caste society, and social inequality. However, nature corresponds not to the nonviolent power of the law, but to voluntary submission to it, and the rulers must also obey the law [12, 690b-c]. The latter assertion is one of the fundamental statements that formed the basis of the concepts of the rule of law, however, in a certain formal form.

Plato's idea of the natural is based on the concept of biological naturalism, which recognizes the existence of the laws of nature, which should also underlie the laws of the state. Plato talks a lot about the natural and its significance for the state and society. The legislator must raise his voice, "come to the aid of law and art itself and show that they are both creations of nature or not below nature, at least because they are products of reason" [12, 890d]. Relationships between people are of natural character. However, as it was rightly pointed out by K. Popper, with the help of biological naturalism, Plato defends not an egalitarian, humanistic version of it, as the sophists, Hippias of Elis, Euripides, Elkidam or Lycophron did, arguing that the human natural law is the equality of all and that no one is a slave by nature, but sanctifies his elite version, namely, that by nature there is a biological and moral inequality of man [32, p. 86]. Plato took a step back in his perception of the ideas that formed the basis for understanding natural law, namely, the idea of human nature, the principles of human relations, comparing them with sophists.

Trying to construct a model of an ideal state, Plato passes through the prism of such a state all the key ethical concepts: freedom, justice, happiness, truth, harmony, beauty, virtue, the highest good, the categories of true and eternal. How should a person live to achieve happiness? The answer lies in the understanding of measure: anyone who wants to be happy must have a sense of measure, which is mainly God, and follow the law that God holds the beginning, middle, and end of all things, according to nature. Justice takes revenge on those who deviate from the divine law, and those who deviate from this law destroy themselves, their home and their state [12, 716a-b].

This understanding of measure in Protagoras, Plato and other philosophers should be considered the cornerstone in the formation of rules of due, rules of human behavior, although with different assessments of this measure. From the ethical requirements regarding the attitude to wealth, honors, attitude to rulers, to other people, an understanding of good and bad actions is derived, and from here – the direction of people

to the desired actions through the appropriate rules of human behavior. Plato's examples of good behavior include serving god, sacrificing to the gods, honoring sacred rites, paying a debt to our parents, hospitality, and following virtues.

Next in importance to the gods, Plato places the soul, since it is closest to man, and only after it – the body. And who does not want to refrain from what the legislator decided to consider shameful – "extremely dishonestly and abominably treats the most divine – his soul" [12, 728a]. At the head of all the benefits for people, Plato put the truth. The truth becomes a means of preventing injustice on the part of other people, because "there is only one way to avoid serious, incorrigible and even completely incorrigible injustices on the part of other people – this is to fight them, fight them off, win them over and steadily punish them" [12, 731b]. The truth also serves Plato's purpose of building an ideal state. To live truthfully is not to lie, to live honestly, sensibly, intelligently, to promote the growth of the state, to strive for charity, the greatest submission. To live truthfully is also not to commit injustice. Justice consists in giving everyone their due, but at the same time everyone should do their own thing [11, 432b-433B], poverty and wealth boundaries should be set [12, 744d-e], equality should be observed in the state, which consists in what is given to everyone in proportion to their nature, "especially to virtuous people". Realizing that the majority will be dissatisfied with such equality, Plato suggests applying equality by drawing lots, and praying "to God and a good fate" that "they will arrange the draw according to the highest justice" [12, 757e-758a].

In the "Definitions", justice is formulated as "the appeasement of the soul in itself and of the parts of the soul as one in relation to the other and as a whole; a resolution giving to each their own merit; an ability whereby one who possesses it preferentially chooses what seems just to them; the ability to obey the law in life; equality in cohabitation; the ability to obey the right laws" [12, 411d-e]. Plato's justice, despite the fact that it contains separate humanistic ideas (setting the line of poverty and wealth, calling for charity), is generally based on anti-humanistic principles, in particular the justification of slavery, the differentiation of classes and the strict maintenance of each person in his class, the imposition of responsibility for the fate of the state exclusively on the ruling class, the justification of actual inequality and the justification of natural privileges, the superiority of collectivism over individualism, the humiliation of women. The ethical assessment of a person's attitude to moral actions turns into criteria that determine the degree of severity of these actions and punishment for them, retribution, suffering that accompanies injustice (for example, Plato distinguishes cases when a person becomes unfair by their own or not by their own will, when a person can be corrected or not). Depending on this attitude, Plato also suggests appropriate "purification", in other words, punishment. When issuing appropriate laws, Plato emphasized, the legislator should use conviction and force to achieve their goal [12, 722c].

Plato's legislation totally interferes in all relations, leaving nothing private. These include the state decreeing marriage and the communion of wives and children, the abolition of private property, the introduction of caesura, and strict regulation of the arts. The law is elevated to the absolute and becomes a means of eradicating all the imperfection of human essence, the measure of human pleasure and suffering for the sake of building an ideal state. Realizing that in many cases it will be difficult for the legislator to regulate such relations, he still encourages the legislator to show skill and not stop and look for adequate legislative means to regulate them. This desire for an ideal state becomes so dominant, absolute, that for its sake Plato declares the need for heavy punishments, up to death, to all "ungodly" who "deny the existence of the gods", the sanctity of sacrifices, sophists. For the most serious crimes of incorrigible criminals – death or exile, for speaking out against the haves – expulsion or resettlement [12, 735e]. It is difficult to call the justification for this rigid approach the fact that Plato's attitude to the role of the state, as well as the law in society, to the assessment of slavery, the attitude towards women also lies in the plane of the foundations that prevailed in Greece at that time. Numerous external threats and wars, in which Ancient Greece was forced to get involved, predetermined the needs of national cohesion and therefore everything that did not work for these needs, and this undoubtedly belonged to the occupation of rhetoric, philosophy, ethics, quite often caused irritation among the Athenian slave authorities and the conservative part of society and accusations of freethinking. There are known cases of strict liability for disbelief or disrespect for the gods recognized by the state, which occurred with Protagoras, Anaxagoras and Diagoras of Melos, Socrates was even executed for educating young people in the spirit of "disrespect for tradition" and existing rules of conduct, and Seneca – forced to suicide.

2.3. Aristotle's Teaching and His Idea of Natural Law

The idea of natural law is also given a certain place in the works of Aristotle (384-322 BC), who was a disciple of Plato. Considering the concept of justice, Aristotle distinguishes between natural and legalized law: "State justice is partly natural..., and partly legalized .... It is natural if it has the same power everywhere and does not depend on recognition or non-recognition". [49, 1134b, 18-35, 1135, 1-7]. These arguments of Aristotle gave reason to some scientists to believe that for him there is no natural law, since immutability disappears as a criterion of naturalness. Thus, when Aristotle answers the question of "whether it is harmful or useful for the state to change the ancestral laws, even when some law turns out to be better," he argues that "people do not strive for what is sanctified by ancestral traditions, but for what is happiness in itself". Therefore, "written laws should not be left unchanged. Both in the rest of the arts and in the state system, it is impossible to present everything perfectly. It is necessary to present the laws in a general form, but human actions bear the imprint of the individual. It follows that some laws have to be changed from time to time". However, for Aristotle, natural, human customs are important, which have the form of parental attitudes (*patrioi nomoi*), unwritten laws (*agraphos nomos*), *unwritten laws*, and their meaning lies in the fact that "the law will not have any weight if it does not force obedience to existing customs", and therefore the matter of changing the laws "should be decided with the greatest care" [8, 1269a], for "when changing the law leads to a slight improvement or, conversely, when it is already easy to violate the existing law, causing harm, then, of course, it is better to endure certain mistakes of legislators or officials, for there will be not so much benefit when the law is amended as harm from a learned habit of disobeying the existing authorities" [8, 1269a]. From these fragments, it may seem that Aristotle speaks only of the natural in the sense of ancestral customs, which should be respected, treated with caution, but which can change if necessary. A deeper analysis of his positions shows that progressive ideas of equality were shared to a certain extent by Aristotle.

For Aristotle, law is something that serves the common good. Joining the opinion of all, Aristotle argues that law is a certain equality (and, according to Democrats, is identical to equality), that "concerns the individual" and that "equals should have equally" [8, 1282b]. Personal differences (physical data, skin color, etc.) do not play any role, although the "measure in claims (for a larger or smaller share of political rights)" should be those components without which the state cannot exist. However, equality in Aristotle is not for everyone, and above all, not for slaves, because slavery was common at that time in Ancient Greece. It would seem that he departs from Plato's position in this respect, arguing that 'the very power of the master over the slave is unnatural; for by nature there is no distinction, only by law one is a slave, the other is free. Therefore, the power of the master over the slave, based on arbitrariness, is unfair" [8, 1253a]. After all, who "naturally does not belong to himself, but to another person – he, although a person, is by nature a slave". But in the end, Aristotle justifies the existing state of slavery, since "domination and subordination are not only necessary, but also useful, and from birth some beings have differences: some are intended for domination, others for submission" [8, 1254a**]**. Therefore, "one by nature should rule, the other – to obey, and it is to those who are endowed by nature with power – are destined to be masters" [8, 1255c]. Therefore, even virtues such as modesty, bravery, or justice are necessary for a slave only to the extent that "their arbitrariness or lethargy does not manifest itself in the work they perform" [8, 1259b].

Aristotle analyzed monarchy, oligarchy and democracy as possible forms of polity in terms of which state is suitable for which form of polity and how they should be arranged, without determining which is best. At the same time, he pointed out the need to take measures to preserve the existing structure, "to try to protect the state, protecting, on the one hand, from those factors that destroy it, and on the other – to issue such laws, written and unwritten, that would contain orders that especially contribute to the preservation of the state structure" which can ensure the state's longest existence". Equality, according to Aristotle, finds a specific manifestation in democratic states, where there is the supreme power of the decisions of the people, and where the main basis of the democratic system is freedom, which is based on the principles of equality. In a democracy there must be "first of all the free status of slaves, women and children – to the extent, of course, that it is not considered harmful as well as giving everyone the freedom to live as he pleases and without fear" [8, 1319c].

However, despite the fact that democracy, according to Aristotle, had many vices, including the threat of demagoguery, the misinterpretation of freedom as the right to do what one wants and the desire not to obey anyone, his attitude to democracy looks more positive, comparing with Plato's, where "tyranny arises from no other structure, but only from democracy, in other words, from extreme freedom arises the greatest and wildest captivity" [11, vol. 3, 564a], for although "in a democratic state the common idea is that freedom is above all, and that only in such a state is it appropriate for a person to live free by nature", but "the insatiable aspiration of one and contempt for all others distorts this system and prepares the need for tyranny" [11, 562c] and "when a tyrant appears, he grows out of this root – that is, from the position of a people's deputy" [11, 365d].

Philosophical ideas of equality, human nature, its role and place in nature prepared the ground for the justification of the idea of natural law by the stoicism school (ca. 300 BC). The law of nature was conceived by the Stoics as independent of positive law, and nature itself as a psychophysical or only physical structure of man. It was the Stoics who formulated several different concepts of natural law, including naturalistic – cosmological, theological and rational [50, p. 10-11]. The idea of natural law has long developed in the form of absolute natural law, based on the belief in the existence of general and unchangeable laws of world life and human relations. It was believed that every living being has natural properties that inevitably manifest themselves in their behavior, and the natural law is an unchangeable and universal ethical or legal norm of human behavior. Absolute natural law got its ideas from the metaphysical perception of world life, the atomism of Democritus, and the absolute justice of Aristotle. It was based on relativism, sensualism, practicality, and anthropology. The natural law teaching of this period has an individualistic, atomistic and mechanistic character.

However, even in the time of Chrysippus, the idea of a fundamental difference between human nature and nature as such, the existence of an immutable law of nature (Lex Naturale) in the form of common sense, equality of all people regardless of wealth and slavery as contrary to human nature, the need to recognize human rights law to preserve human dignity.

2.4. The Influence of the Natural Law Ideas of Ancient Greece on the Development of Roman Law

The natural law ideas of the philosophers of Ancient Greece, not being implemented in practice in Greece, had a huge impact on the development of Roman law after the absorption of all state entities that emerged from the Empire of Alexander the Great by the Roman state from the middle of the second century BC. A significant role in the reception of the doctrine of natural law was played by the Scipio group, which included the Greeks Panaetius of Rhodes, Polybius and Roman aristocrats led by Scipio Aemilianus. Being somewhat modified by Panethius, the doctrine of Stoicism on natural law was inculcated on Roman soil, based on reason as the law for all people, their equality, albeit a certain inevitable difference in states, ranks and natural abilities, the recognition of a certain minimum of rights for people as a condition of preserving human dignity [32, p. 158-159]. This is clearly traced in the works of Seneca (4-65 ad), one of the most prominent representatives of late Roman stoicism, an exponent of the spirit of the New Stoic (Empire), who saw the main purpose of the Stoics, who "were removed from public affairs... to improve one's life and create legal bases for the human race" [15, p. 71]. Seneca emphasized the equality of the nature of all people "a slave is a person equal in nature to other people; the soul of a slave contains the same principles of pride, honor, courage, generosity that are given to other human beings, whatever their social position" [4, p. 737], the unity of human nature. Defining the essence of human duty, Seneca emphasized: "Nature brought us into the world related to each other, because from the same principles it created us, for the same purpose it appointed us. She put mutual love into us, encouraged us to communicate. She determined what is right and just; by her command, the one who does evil is more unhappy than the one who suffers evil; by her command, a person is ready to lend a helping hand to another person. Let this verse be in our hearts and on our lips: nothing human is alien to me, to man" [15, p. 408-409].

Polybius, for his part, supplemented the teachings of the Stoics with the idea of the essence of the state, which should be based on justice, a mixed form of government with monarchical, aristocratic and democratic factors based on the principles of stable balance and mutual restraint (the right of veto) [14, p. 159]. The introduction of the ideas of stoicism into Roman law led to them being distinguished along with **FAS** – God-given, original law and such types of law as **JUS GENTIUM** (right for all the peoples known to Rome), **JUS CIVILE** (from civitas – city), **JUS PUBLICUM** (law in relation to management that was religious in nature), **JUS PRIVATUM** (law in relation to property and family relations), as well as **JUS NATURALE** – natural law. Moreover, such a right was considered a directly valid right.

Cicero in his work "Republic" concentrated on the essence of the then understanding of natural law, first defining this concept: "In fact, there is one true law, namely – common sense, which in accordance with nature applies to all people, is unchanging and eternal (from A.Z). By its commands, this law encourages people to fulfill their duties, and by its prohibitions, it keeps them from doing evil. His commands and prohibitions always have an impact on good people, but they have no power over evil ones. The deprivation of this law by human legislation is certainly, from the moral side, erroneous, the restriction of its operation is unacceptable, and the complete abolition is impossible" [16, p. 270].

In real life, human rights in Roman law are considered as privileges associated with rank, which are not personal, but collective in nature, designed to ensure the proper performance of functions that are assigned to the individual by society. Human rights are inseparable from responsibilities or services, and responsibilities are not imposed by the state, but help people realize their potential. The duty of the state was not to ensure and protect individual rights, but to assist in meeting life needs, providing certain services to members of society

[50, p. 75, 80]. There was no concept of legal capacity for voluntary action, human rights were not recognized as rights in the legal sense, which continued until the end of the Middle Ages [51, p. 34]. The perception of man as an inviolable bearer of inalienable and sacred rights in ancient times has not yet occurred [52, p. 59-60].

CONCLUSIONS

The crystallization of natural law ideas in Ancient Greece and Ancient Rome had several stages. Important achievements of Greek philosophers of the pre-Socratic period was the development of the foundations of the theory of knowledge, which was used to explain the cosmological model of the universe, substantiating the idea of the existence of a universal logos, the law of nature, uniform for the natural and social environment, where man, as a "natural" being, was not known separately from nature. The eternal Natural law was not established by people, because it was based on the divine mind and its power and was the law of justice and law inherent in nature and society. It was not evaluated as good or evil, due to its objective nature, and therefore its observance was considered true and wise.

The development of humanitarian knowledge, the formation of a secular system of morality and ethics, the study of the essence of man contributed to the distinction between human and natural law, the further development of ideas of natural law, namely recognition of the equality of all people, the prohibition of discrimination based on origin, the requirement of morality in human behaviour. Sophists were among the first on the basis of the distinction between natural and human law, which may contradict nature, began to recognize the equality of all in nature, denied slavery and traditional notions of the "naturalness" of nobility by origin. The main contribution to the understanding of natural law (jus naturale) was made by the Stoics, who proved that it is based on the fundamental difference between nature and human nature, on the understanding of the place and role of man in nature, on the existence of the unchangeable law of nature (lex naturale) in the form of the power of reason, common sense, which demand justice in the form of equality of people regardless of wealth, the recognition of slavery as contrary to human nature, the recognition by law of human rights to preserve human dignity. These humanistic and human-centered ideas were used to study the essence, nature and justice of the state at that time, to distinguish between the concepts of natural and legalized law and were also used as criteria for evaluating written laws.

Progressive natural and legal ideas of the philosophers of ancient Greece, not being implemented in the homeland, from the middle of the second century BC were adopted, developed jointly by Roman Greeks and philosophers and implemented in Roman law as directly applicable law (jus naturale), along with other types of Roman law, as a rational law of common sense, consistent with the moral principles of society, immutable and eternal natural law.

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Suggested Citation: Zaiets, A.P., & Pohoryelova, Z.O. (2021). Formation of the idea of natural law in Ancient Greece and Ancient Rome. *Journal of the National Academy of Legal Sciences of Ukraine,* 28(4), 15-28.

Submitted: 12.09.2021
Revised: 24.11.2021
Accepted: 15.12.2021

УДК 340.0(477)
DOI: 10.37635/jnalsu.28(4).2021.29-41

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УКРАЇНСЬКА ЦЕНТРАЛЬНА РАДА ЯК РЕВОЛЮЦІЙНИЙ ПАРЛАМЕНТ УКРАЇНИ

Анотація. *Яскравою сторінкою у багатовіковій історії українського державотворення є революція 1917–1921 рр. Особливе місце в ній належить Українській Центральній Раді (далі – УЦР), під проводом якої Україна пройшла складний шлях розбудови власної держави від автономії до проголошення Української Народної Республіки і врешті до її повної державної незалежності і суверенітету. При цьому УЦР намагалася запровадити демократичні інституції та парламентські форми правління. Актуальність дослідження обумовлена тим, що цей досвід залишив помітний слід у правосвідомості українців і спроба побудови парламентської моделі суттєво впливає на вирішення сучасних проблем державотворення. Метою статті є аналіз організації Української Центральної Ради як інституції парламентського типу в умовах революції. Ретроспективне дослідження досвіду УЦР віддзеркалює політичні інтереси різних груп суспільства, є корисним для розуміння сучасних проблем парламентаризму, взаємодії громадянського суспільства та держави. Методологічна база дослідження структури, складу УЦР, її правових форм діяльності ґрунтується на філософських, загальнонаукових та історико-правових методах наукового пізнання. Ці методи дозволили визначити головне завдання УЦР – державне відродження України. Зроблений висновок, що державне відродження як завдання установчого характеру могло бути здійснено лише представницьким органом, який би формувався на демократичних засадах, а його склад виражав волю народу, і за наявності у нього достатніх організаційних і правових ресурсів для втілення цього завдання у життя (сталої структури, організаційних та правових форм діяльності, дієвого допоміжного апарату, відповідного статусу депутатів, оптимального регламенту роботи)*

Ключові слова: *Українська Центральна Рада, Мала рада, представницький орган, виборча система, склад, сесії, , комісії, партійні фракції, статус членів*

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UKRAINIAN CENTRAL COUNCIL AS REVOLUTIONARY PARLIAMENT OF UKRAINE

Abstract. *The revolution of 1917-1921 is a bright page in the centuries-old history of the Ukrainian state. The special place in it belongs to Ukrainian Central Council (CCU), under the leadership of which Ukraine went through the difficult path of building its own state from autonomy to the proclamation of Ukrainian National Republic and its full state independence and sovereignty. Therewith, the CCU attempted to introduce democratic institutions and parliamentary forms of government. The relevance of the study is explained by the fact that this experience left a noticeable mark on the legal consciousness of Ukrainians and the attempt to build a parliamentary model has a considerable impact on the solution of modern problems of state creation. The purpose of the study is to analyse the organisation of Ukrainian Central Council as a parliamentary institution in the conditions of the revolution. A retrospective study of the CCU experience reflects the political interests of different groups of society, is useful for understanding modern problems of parliamentarism, the interaction of civil society and the state. The methodological basis for studying the structure, composition of the CCU, its legal forms of activity is based on philosophical, general scientific, and historical-legal methods of scientific knowledge. These methods allowed determining the main task of the CCU – the revival of Ukraine. It is concluded that state revival, as a constituent task which could be carried out only by a representative body that would be established on democratic principles, its composition would express the will of the people, and, if it had sufficient organisational and legal resources to fulfil this task (a stable structure, organisational and legal forms of activity, an effective auxiliary apparatus, the corresponding status of the deputies, the optimal work schedule)*

Keywords: *Central Council of Ukraine, Small Council, representative body, electoral system, composition, sessions, commissions, party factions, status of members*

INTRODUCTION

The February Revolution of 1917 led to the fall of Tsarism, the transformation of Russia into a republic, and the beginning of the national revival of its national outskirts. The Central Council of Ukraine (hereinafter referred to as the CCU) became the driving force of this process in Ukraine. It was established in the spring of 1917 as a socio-political centre and very soon transformed into a representative body – a kind of revolutionary parliament of Ukraine. The CCU identified the national and state revival of Ukraine as its main task. Its fulfilment is constituent and could be ensured, firstly, only by a representative body that would be established on a democratic basis and express the will of the people, secondly, if there were sufficient organisational and legal resources to implement: a stable structure, organisational and legal forms of activity, an effective auxiliary apparatus, optimal rules of work, the status of deputies. These issues are extremely important in the context of the development of the state and have not lost their relevance since the emergence of the first parliaments. Therefore, the idea of V. Tatsiy and S. Serohina is quite appropriate: "The problem of choosing the optimal structure of the parliament, in particular, the decision on the number of its chambers, the order of their development and competence, belongs to the category of those that accompany the theory and practice of state construction since the appearance of the first parliamentary institutions and the concept of representative government" [1, p. 102]. From the standpoint of the importance of the creation and

functioning of the CCU for the development of the paradigm of constitutionalism, this body had the importance of the first parliamentary-type body in Ukraine [2, p. 38]. The Central Council of Ukraine received broad popular support and became an inspiration for the development of the National Liberation Movement [3].

The main task of the CCU in creating a state was formulated by M. Hrushevsky at the beginning of its activity and consisted in an active struggle for the national and state revival of Ukraine in those conditions, for its autonomy as part of the Russian Federal Republic. The development of events led to the proclamation of the Ukrainian People's Republic (hereinafter – UPR), and later its state independence and sovereignty. Such huge constituent changes were made possible by the transformation of the CCU into an all-Ukrainian revolutionary parliament, which represented and expressed the interests of the Ukrainian people and had sufficient organisational and legal means to create a state.

The first important step towards transforming the CCU from a socio-political centre into a representative body of power was the convocation in April 1917. The Ukrainian National Congress (hereinafter – the Congress), which became a representative body, elected a new composition of the CCU and, thus, gave it its representative character. However, the CCU was not elected based on universal suffrage, which would have given it irrefutable legitimacy in solving key issues of state creation. Researchers see the reasons for replenishing the CCU through co-optation in the following: first, holding general elections at that time was a political and technical utopia [4, p. 95]; secondly, the Ukrainian socialist parties and factions from which the Central Council was recruited, anticipating the unfavourable consequences of the general election, postponed this important matter from day to day, and such elections did not take place [5, p. 76]. The latter can be explained by the fact that the majority of CCU members defended the federal principles of building a state.

In the future, the CCU was replenished by co-opting representatives from all-Ukrainian congresses of peasants, military, workers, and other public associations. Describing the professional composition of the CCU, V. Yermolaiev notes that the deputies were mostly: peasants, military personnel, representatives of workers' and cooperative organisations [6, p. 268]. This made its composition even more representative, but not typical of the parliament since also general elections did not take place. However, the social, national, and party composition of the CCU gives grounds to assert that the Council sufficiently reflected the structure of Ukrainian society at that time and reflected its needs and aspirations.

Along with this, the structures and organisational and legal forms of activity of the CCU as a parliament were established and improved: sessions as a collegial form of work, a Small Council as a permanent body, commissions, technical apparatus, party factions, rules of work, and the status of members. At the beginning of the activity of the CCU, the procedure for the work of its general meeting was established. It was built on the model of parliamentary session work. The CCU was divided into factions based on party characteristics, proposals were made on their behalf, various commissions were created and worked. With the expansion of the CCU, the efficiency of the general meeting has decreased, which has made it necessary to create a permanent authorised body in the period between its general meetings. Such a body was the Small Council (until July 1917 – the CCU Committee), which absorbed the organic attributes of a parliamentary institution. An important structural element subordinate to the Small Council was the permanent and temporary commissions and the office. All this gave the CCU clear signs of a parliamentary-type institution [7, p. 20] and ultimately became the key to successful state creation in Ukraine.

In a short, almost year-long period of time, Ukraine has come a long way from autonomy and laying the foundations of a parliamentary form of government to the proclamation of the Ukrainian People's Republic, its state independence and sovereignty, and the recognition of the UPR in the international arena. The study of this experience fills a certain gap in the history of national parliamentarism and will be useful for relevant issues of the parliamentary form of government in the country.

1. MATERIALS AND METHODS

To ensure a comprehensive, complete, and objective analysis, the study used a set of methodological tools, namely philosophical, general scientific and special legal research methods; the set of methodological tools was determined by the subject and scope of research. Philosophical scientific methods are universal and are widely used in the study of any historical phenomena and processes. The leading place among them belongs to the dialectical method, which provides for the recognition of the existence of objective state-legal laws and the possibility of their cognition. The use of the dialectical method allowed establishing the relationship between parliamentarism and such categories as: a form of government, popular representation, political regime of exercise of power. Upon using the historical and genetic method, the socio-legal prerequisites for the appearance of the Ukrainian parliament of the CCU era are discovered, and its state-legal essence is substantiated.

The narrative method is used to comprehensively describe the facts and events that accompanied and determined the emergence of the CCU, and the process of turning the latter into a parliamentary-type institution. This method established that to solve the key task – the development of the autonomy of Ukraine – the transformation of the CCU from a socio-political centre to a representative body – the Revolutionary Parliament of Ukraine-began; the method of such transformation was the convocation of the Ukrainian National Congress and the election of the CCU by it and the expansion of the composition of the CCU in the future by co-optation. The analogy showed that the choice of this particular method of replenishment of the CCU is not associated with the political and technical impossibility of holding elections. The formal-legal and interpretation methods were used to review individual legal regulations and clarify the content of their prescriptions.

The use of the comparative analysis contributed to the identification of the most considerable factors in the organisation of the CCU as a parliamentary-type institution. Indeed, the CCU had the forms of work and organisational structures inherent in the Parliament: sessions as a collegial form of work, the Council as a permanent body, commissions, technical apparatus, party factions, rules of work, and the status of members. The synthesis of different opinions and the identified principles of functioning of the CCU allowed offering its new understanding as the Revolutionary Parliament of Ukraine, since: firstly, the main task of the CCU was to determine the national-state revival of Ukraine, which is a constituent task; secondly, the CCU was established on a democratic basis and expressed the will of the people, although direct elections did not take place.

When disclosing the organisational and legal forms of the CCU's activities, a structural and functional method was used, which determined that the organisational form of the CCU's work was the general meeting, which was based on the model of parliamentary session work; the CCU was divided into factions that made proposals, created various commissions; between the sessions of the general meeting, there was a permanent authorised body – the CCU Committee (Small Council). The sociological approach helped to establish the dependence of the CCU structure on the social conditionality of political, economic, and social phenomena that influenced the development and expansion of the Revolutionary Parliament. The statistical method contributed to the collection of materials on the representativeness of the national, social, and party composition of the CCU.

The content analysis of the main sources of research allowed giving a balanced assessment of various documents and studies, considering their appearance and writing in the difficult political situation in Ukraine in 1917-1921. The pluralism of scientific knowledge and an interdisciplinary approach to the study of the problem of giving the CCU a more representative character allowed identifying contradictory views, divergent ideas about the form of building a state, the structure of a representative body, its social orientation and development prospects. The theoretical basis of the research is official documents, regulations, considerable conceptual sources on the research subject, achievements of national historical and legal thought, in particular, on the problems of the history of the organisation and activities of the CCU, materials of representative sociological research.

2. RESULTS AND DISCUSSION

The development of statehood is a complex and lengthy process associated with the need to address important issues, in particular the establishment of state institutions. Therewith, parliaments are in the centre of public life. The parliament embodies the forum of public opinion, where a consensus decision can be made that suits all parties to the political process [8, p. 84, 85]. The complex process of creating a representative body discovers the features of the historical moment, social and state existence of each particular country, national traditions, legal culture, and political will of the people. This is evidenced by the history of the struggle for the national and state revival of Ukraine in 1917-1921 [9].

The CCU, which was established as a Ukrainian socio-political centre, was gradually transformed into a representative body – a kind of revolutionary Parliament of Ukraine. “The starting point of the beginning of the era of revolutionary constitutionalism in Ukraine, – rightly notes O. Myronenko, – can be considered, perhaps, the moment of creation of the Central Council” [10, p. 23]. The implementation of the idea of the national revival of Ukraine was a problem of constituent importance and could be solved by a representative body that expressed the will of the people and had sufficient organisational and legal resources for this. Only under such conditions was it possible to respond to the challenges that arose on the way to the national revival of Ukraine.

The main task of the CCU in the field of state creation was formulated by M. Hrushevsky at the beginning of its activity. He spoke not in favour of passively waiting for concessions for Ukraine from the Russian Provisional Government, but for an active struggle for its autonomy as part of the Russian Federal

Republic. Organically, this task required changing the status of the CCU, namely, transforming it from a Kyiv city socio-political organisation into an all-Ukrainian socio-political body that would represent and express the interests of the Ukrainian people, primarily in the issue of state creation.

The convening of the Ukrainian National Congress in early April 1917 was an organizational means of transforming the CCU from an organisational and political centre into a representative body. "To give the Central Council the character of a true representation of the entire Ukrainian population, it was decided to convene a Congress of representatives of the organised Ukrainian population of the whole of Ukraine as soon as possible" [11, p. 7]. When establishing the Congress, deputies were elected from ethnic Ukrainian provinces. Territorial representation was supplemented by representation from various segments of the population, political parties, and public organisations, which made the Congress a representative body.

The central issue on the agenda of the Congress was the granting of a new, legitimate, indirect representative status to the CCU by electing a new Congress. Almost half (60 seats) of its members were to be elected on a territorial basis from the provinces, 20 seats were assigned to public, military, professional, scientific-educational, and cooperative organisations. Party representation was determined in 1-5 seats. The number of members of the CCU elected at the Congress is 118 people [12, p. 63-65].

The election of a new composition of the CCU by the Congress shows that the first step in the revival of Ukrainian statehood was taken: the CCU from a small group of Ukrainian intellectuals became a representative body, a kind of revolutionary parliament, which, reflecting the mood of much of Ukraine's population, demanded autonomy. In the memoirs, V. Vynnychenko wrote: "The Congress was the first step in the revival of the nation on the path of statehood. Being strong organising and campaigning tool, it became the first, preparatory stage in the creation of both the idea of Ukrainian statehood and in its partial implementation. Namely: the Congress, as a full-fledged body of national will, officially transferred all its full power to its chosen body: the new Central Council. From that moment, the Central Council became a truly representative, legitimate (according to the laws of the revolutionary time) body of all Ukrainian democracy" [13, p. 93-94].

Congress granted the CCU the right to co-opt new members, which continued the process of forming the composition of the CCU as a representative body. This right was detailed in the "Order of the Central Council of Ukraine" (hereinafter referred to as the Order), approved on April 23, 1917 [12, p. 71-73]. CCU used it extensively. During May-July 1917, the All-Ukrainian peasant, two military, and workers' congresses were held. They elected the All-Ukrainian Councils of the military, peasant, and workers' deputies, which like the CCU and the All-Ukrainian General Military Committee, co-opted its composition. These additions expanded the composition of the CCU to 588 people [12, p. 138-142]. After the agreements between the Provisional Government and the CCU, enshrined in Second Universal, representatives of national minorities were granted the right to elect 202 full members of the CCU and 51 candidates [12, p. 207, 208]. This action transformed the CCU from a national body to a temporary regional revolutionary parliament [11, p. 29].

According to the mandate Commission of the sixth session, the CCU had 798 mandates. From that moment, the main representation in the CCU was considered to be the councils of peasant (212 people), military (132 people), and workers' (100 people) deputies, and the General Military Committee (27 people). The territorial representation remained unchanged and amounted to 81 mandates, the rest was distributed among political parties and public organisations. Yet not all of these mandates were used. The mandate Commission of the sixth session registered 639 full members and 4 candidates [12, p. 233-241]. All these measures gave the CCU a more representative character, but it should be stated that it was never elected based on universal suffrage, which could only confirm its absolute legitimacy in solving such important constituent issues as changing the form of the state structure of Russia, declaring the autonomy of Ukraine, and determining the form of its government. Its leaders were well aware of this. In the summer of 1917, the CCU began work on holding a territorial congress, but it did not take place, as the idea of holding an All-Ukrainian Constituent Assembly arose in the fall. The fact that the CCU was not elected by the general will of the Ukrainian people, M. Hrushevsky saw its weakness. In his memoirs, he complained that he was not destined to "become a representative elected by universal suffrage" [14, p. 123]. And this failure to hold general elections was the "Achilles' heel" of the CCU in the revival of Ukrainian statehood [5, p. 76].

Today, it is difficult to determine why the CCU chose the option of replenishing its composition by co-opting and did not follow the path of holding general elections. As noted above, the researchers point to two reasons: first: the holding of general elections at that time was a political and technical utopia; second: the Ukrainian socialist parties postponed the holding of general elections for fear of adverse consequences for them. Recognising the right to exist behind such considerations, it is difficult to agree with them. Firstly, the allegations about the impossibility of holding elections in the summer of 1917 seem unconvincing, as elections to the All-Russian Constituent Assembly took place in the autumn of 1917, when decay and anarchy deepened, secondly, the CCU never rejected the idea of convening the Ukrainian Constituent Assembly based on

universal and equal suffrage; thirdly, in the spring and summer of 1917 it reached the apogee of its authority and it can be assumed that the vast majority of its members would receive convincing support from voters. The point was different: the overwhelming majority of CCU members defended the federal principles of building a state. Since the idea of federalism was very popular in the second half of the 19th – early 20th centuries, in this form of state-building, figures of the Brotherhood of Saints Cyril and Methodius, led by M. Kostomarov, leading public and political figures and lawyers of the time: M. Drahomanov, S. Podolynskyi, I. Franko saw the possibility of national development. The ideas of the federation were leading in the programme documents of Ukrainian political parties at the turn of the 19th-20th centuries. This idea was professed by the direct participants of the revolutionary events of 1917-1921, M. Hrushevskyi, S. Shelukhin, O. Eikhelman, et al [15, p. 333]. L. Kamarovskyi considered the federal principle "a further step in the development of the principle of nationality", "without destroying the independence of states, it connects them into new political groups with certain goals and bodies" [16, p. 44]. Thus, being supporters of the idea of federalism, members of the CCU recognised the right of the All-Russian Constituent Assembly "to establish an autonomous system in national territories and a federal structure in the Russian republic, and this republic itself" [11, p. 100]. Therefore, holding elections to one's own supreme state body would run counter to this provision. The proof can be the CCU's defence of the idea of a federation in its first three universals. Even the Third Universal, together with the proclamation of the UPR, fixed the preservation of the federation with the Russian Republic. After the Bolsheviks seized power, the Russian People's Commissar began peace talks in Brest with the central powers, and the CCU was forced by the Fourth Universal to declare the independence of the UPR to consolidate its status as a subject of international law.

The above is the reasoning of today, yet in the context of the Congress and the election of a new composition of the CCU, it meant that the organisational period of the Ukrainian national-state revival was over: the struggle for its implementation was beginning. It was the CCU, having become a representative body, that took over the implementation of constituent functions in the field of Ukrainian state creation. The next question is whether the national, social, and party composition of the CCU was representative of the will of the Ukrainian people. According to incomplete data, it is known that 75% of the mandates belonged to Ukrainians, the rest – to national minorities. Yet it is more difficult to determine the distribution of mandates between Russians, Poles, and Jews since representation in the CCU was provided not based on nationality, but through quotas of the party and public organisations. As a result, Russians had 14% of places, Jews – 6%, Poles – 2.5% [12, p. 12].

The expansion of the CCU by representatives of various social and national groups continued. This was due to the division of representatives of national minorities into full members and candidates. The latter were part of the CCU with an advisory vote and established a reserve from which representatives of national minorities were selected. Thus, the mandate Commission proposed to introduce one representative from Belarusians and Czechoslovaks into the CCU at the seventh session. At the same session, the Maritime General Council of 20 members was included in the CCU and won one seat in the Small Council on November 21, 1917. On December 12, 1917, the Kyiv United Council of Workers' and Soldiers' Deputies delegated 4 representatives to the CCU. The CCU added members with an advisory vote, elected deputies of the All-Russian Constituent Assembly in Ukraine.

Regarding the social status of CCU members, it is worth highlighting the following. Of the original composition – 118 people elected by the Congress, at least 100 were representatives of the intelligentsia. After the development of the CCU, 471 seats (out of 798) belonged to the All-Ukrainian Council of Military, Peasant, and Workers' Deputies. However, it is difficult to understand which representatives of social groups really stood for these mandates. The All-Ukrainian Council of Peasant Deputies was the first to join the CCU. They held 212 seats, but only 134 deputies were elected at the All-Ukrainian Peasants' Congress [17, p. 30-34]. It is likely that most of these members of the CCU represented the poorer peasantry, which constituted the social basis of the Peasant Union. Little is known about them personally, and they did not play a considerable role in the activities of the CCU. The All-Ukrainian Council of Peasants' Deputies was led by many well-known figures of the USDLP and the USRP (V. Vynnychenko, B. Martos, A. Levytskyi, M. Kovalevskyi, P. Khrystiuk, A. Stepanenko, M. Stasiuk, etc.). The peasants include a large number of delegates to the All-Ukrainian Military Council, at least soldiers, sailors, non-commissioned officers, and ensigns. Of the 132 elected members of the CCU, 60% were them. While the members of the Ukrainian General Military Committee were only two soldiers and one sailor, the rest were officers [18, p. 44]. In reality, only 100 members of the Council of Military Deputies took part in the work of the CCU, the rest returned to their units and lost contact with Kyiv.

As for the professional composition of the CCU, among the deputies, representatives of the intelligentsia constituted a small part of the CCU – 16 lawyers, 26 researchers, more than 30 publicists and journalists [6, p. 268]. The composition and activities of the All-Ukrainian Workers' Congress make it possible to characterize its representatives in the CCU only in fragments. The Congress was small in number, with 300 delegates representing about 40,000 workers, mostly the agricultural proletariat. Admittedly, this was a small part of the 3.5 million workers in Ukraine. During the election of the All-Ukrainian Council of Workers 'Deputies, controversy erupted, but a compromise was reached: out of 100 members of the All-Ukrainian Council of Workers' Deputies, 75 were elected on a territorial basis, 25 – personally, with 70 seats given to USDLP and 30 to USRP [19, p. 38].

The composition of the CCU did not always correspond with the composition of the Small Council. Thus, if there were several workers in the CCU, then in the Small Council their interests were represented, respectively, by a doctor, publisher, cooperative, and process engineer [19, p. 39]. Even one of the leaders of the USDLP, V. Vynnychenko recognised that the congresses were used by the Ukrainian party democracy to strengthen its position in the CCU [13, p. 218]. If there was a party representation in the CCU, party factions were created in their infancy, which indicates the attraction of the CCU to classical parliamentary forms of activity. Formally, the parties had relatively little representation. When forming the composition of the CCU by the Congress, the Union of Federalist Autonomists won 5 seats, the USDLP – 4, the USRP – 3, and Independents – 1. According to the resolution of the fifth session on the reorganisation of the CCU, party quotas have not changed: the USDLP had 5 seats, the USRP – 5, the UPSF – 5, the Trudoviks – 5. However, in reality, the first three parties had a much larger number of mandates due to their membership in the CCU through peasant, military, workers' congresses and territorial representation. In general, the "Ukrainian political parties, mostly socialist", determined the activities of the CCU [13, p. 79].

The minutes of the CCU general meetings give an idea of the fierce party struggle in which they took place. Thus, O. Holdenveizer once wrote: "Ukrainian deputies were divided into three main factions: Ukrainian SRs, Ukrainian Social Democrats, and Socialist Federalists. The Ukrainian SRs were the strongest party in the Council; M. Hrushevsky, who remained non-partisan for a long time, joined them at the end. Therewith, this faction was the poorest for people; even for the prime minister, it could not nominate anyone but Holubovych. The Ukrainian Social Democrats, to which Vynnychenko, Petliura, Tkachenko, Porsh, etc., belonged, were small in number, but the incomparably greater personal composition of this faction somewhat smoothed out the quantitative advantage of the SRs. Finally, the Federalist Socialists represented the most prominent and cultured element of the Ukrainian public. The leader of this party was the respected writer S. Yefremov, whose newspaper (Nova Rada) was edited by A. Nikovskyi. As the most prominent nationalist group, the Federalist Socialists lived relatively in harmony with the representatives of "minorities". The most socially hostile to the Ukrainians, the opposition party, were the Russian Socialist-Revolutionaries, represented in the Council by the energetic and capable O. Zarubin. The Mensheviks, led by M. Balabanov, were independent and sometimes courageous. Rafes, who represented the Bund, spoke and acted the most; he was at this time in opposition to the Ukrainians, who were quite afraid of his sharp tongue. Other Jewish parties were rather poorly represented" [20, p. 31].

Therefore, the largest representation in the CCU was held by the factions of the parties of the Ukrainian SRs and Social Democrats. Throughout its existence, they set its activities, controlled all structures, starting from the Presidium, the Small Council, the General Secretariat and ending with individual commissions. The political experience of the leaders of the Ukrainian Social Democrats allowed them to play a major role in the SR-Esdek tandem during 1917. M. Porsh is in talks with J. Stalin in November 1917 called himself a representative of the "party that occupies a governing position in the Council" [12, p. 455-459]. Having more or less agreed on positions in relations with the Provisional Government regarding the autonomy of Ukraine, these parties had quite serious differences in their views on socio-economic policy. Eventually, the Ukrainian SRs, using their numerical advantage in the CCU, took over the leadership of the UPR government in January 1918, and they succeeded in reorganising the Smal Council, where they won an overwhelming majority. On this occasion, V. Vynnychenko recalled: "It was all the easier for the factions to fulfil my wish to leave the government, and at the same time the SR faction of the Central Council began to show a strong desire to take the leadership of all politics into its own hands. It had a formal right to do this every now and then because it covered all other factions with the number of its votes" [13, p. 224].

The transformation of the CCU into the Revolutionary Parliament of Ukraine in those conditions, in addition to the expansion of its composition, which made it a representative body of the Ukrainian people, an expression of their will, took place by the Central Council acquiring the features of a parliamentary institution through improving its structure, organisational and legal forms of activity, clear regulation of work, determining the status of members.

The development of organisational structures of the CCU in the area of acquiring parliamentary characteristics began from the first days of its existence. The report on the creation of the CCU referred to its structural divisions: Presidium (chairman of the Council, two deputies, scribe, and treasurer) and nine commissions [21]. On the day of the CCU's election as Congress, April 8, 1917, its first general meeting was held, which became the highest body and leading organisational form, which ensures collegial, democratic work. The order of work of the general meeting of the CCU was established in the first months of its activity and was based on the model of parliamentary session work. The CCU was divided into factions based on party characteristics, and if necessary, the factions were blocked. Proposals were made on their behalf, various commissions were created and worked. Decisions were made, as a rule, by a simple majority of votes [22, p. 299]. The meeting was convened both on a regular and extraordinary basis. They began with the approval of the minutes of the previous meeting, which allowed for mistakes and falsifications. Then, the general meeting proceeded to consider the issues on the agenda. The documents adopted by the Assembly were called universals, declarations, resolutions, decisions [23, p. 373]. At first, the laws had no names, although many of the documents adopted by the General Assembly were laws in their content and meaning and later acquired such force.

These developments in the work of the general meeting were included in the regulations of the CCU – Order [12, p. 71-72]. It noted that the general meetings "determine the area and character of all work" of the CCU. General meetings could be regular or emergency. The next meeting was to be called once a month. CCU members were invited to the general meeting by agenda and through advertisements in Ukrainian newspapers. Therewith, the agenda of the meeting was submitted. Emergency meetings were called by the Committee "out of urgent need". The order did not establish a quorum for the competence of the next meeting, probably due to the uncertainty at that time of the final composition of the CCU. Emergency meetings were considered "valid for any number of people present". During the existence of the CCU, nine general meetings (sessions) were held. Their competence was not defined but was established in the course of practical activities. It shows that the competence of the CCU as a parliament covered the most important issues of the state-legal, socio-economic, and cultural life of Ukraine, its actions in the international arena. The list of specific issues that were resolved at the general meeting proved their importance, and therefore a considerable contribution to the process of state creation in Ukraine.

The first general meeting (April 8, 1917) approved the list of members of the CCU and elected its executive body – the Committee [12, p. 65].

The second general meeting (April 22-23, 1917) considered the issue of the Ukrainisation of the army and adopted the regulations [12, p. 71-72].

The focus of the third general meeting (May 7-9, 1917) was on sending a delegation to Petrograd to negotiate on Ukrainian national-territorial autonomy [12, p. 82-84].

The fourth general meeting (June 1-3, 1917) heard V. Vynnychenko's report on the CCU delegation's visit to Petrograd and decided to appeal to the Ukrainian people to "immediately lay the foundations of autonomy in Ukraine", which was done by the First Universal [12, p. 101]. After four general meetings of the CCU, they became known as sessions [24, p. 27, 28].

The fifth session of the CCU (June 20, 1917) approved the new composition of the government, supplemented its composition with representatives of national minorities, proposed to hold a congress of the peoples of Russia, expanded the rights of the Committee, and approved the Second Universal [12, p. 106-156].

The sixth session (August 5-9, 1917) discussed the situation that arose after the refusal of the Provisional Government to approve the "Statute of the Supreme Government of Ukraine" and raised the issue of convening the Ukrainian Constituent Assembly [12, p. 220-254].

The seventh session (October 29 – November 2, 1917) discussed the situation after the fall of the Provisional Government [12, p. 370-383].

The eighth session (December 12-17, 1917) discussed the issue of peace and land and the progress of preparations for the elections of the Ukrainian Constituent Assembly [25, p. 16-38].

The ninth session (January 15-25, 1918) approved the laws on land and the 8-hour working day, amended the law on elections to the Ukrainian Constituent Assembly, discussed the progress of peace negotiations in Brest, the situation due to the Bolshevik offensive, approved the reorganisation of the Small Council, approved V. Holubovych as the head of government, adopted the Fourth Universal [25, p. 108-125].

Despite the fact that the general meetings had broad powers, they were not always an effective structure of the CCU. Political emotions, demagoguery, and populism sometimes prevailed over constructive work. Individual meetings had a rally character, turned into verbal battles between representatives of numerous party factions, and sometimes almost reached the point of resolving cases with fists. The protocol presents the discussion of the Second Universal at the fifth session of the CCU in the following way: "After Kovalevskyi's

speech, there was an incident, the mood of those present was very nervous and elevated. Speaker Khrystiuk begins to talk about not holding any negotiations; proposes that the resolution be passed in the sense that the talks are considered suspended. The commotion in the Social Democrats' sector started. Exclamations are heard: "Enough! Don't! Get out!". M. Avdienko runs to the rostrum with clenched fists. Others are holding him up. The commotion continues. The head is spinning for a long time" [12, p. 151]. P. Khrystiuk recalled that when discussing the interim instructions for the General Secretariat at the sixth session, "an unprecedented heated and passionate debate took place" [24, p. 116]. A sharp political confrontation arose between the Ukrainian Social Democrats and the SRs during the discussion of the agrarian bill at the eighth session. S. Petliura gave a rather accurate general description of the meetings, congresses, and other forums that took place in Ukraine during the revolutionary events. It may well be attributed to the sessions of the CCU. In a letter to M. Udovychenko, he wrote that these forums "were for me not an indicator of the strength (real and organised) of our people, but a demonstration of national emotions, which millions of masses still had to realise and which must be transformed into certain volitional movements of the Ukrainian nation, in certain acts of struggle for their national-state competitions. At first, I had the illusion that these congresses could be used to organise a national force. But I quickly became convinced that it is necessary to look for those who are able to create certain real values through rough state work" [26, p. 222]. Further, S. Petliura wrote about the "blindness of parties and circles", which became an obstacle to state-building activities. The minutes of the general meeting (sessions) of the CCU provide many examples of this. The low efficiency of the sessions of the CCU became obvious to its leaders, and in the summer of 1917, the Presidium of the CCU, referring to the formal reason – lack of money, did not convene a regular session for two and a half months, although this was contrary to the rules of procedure, which provided for calling sessions on a monthly basis. Closing the eighth session, M. Hrushevsky believed that it would be the last, as January 9, 1918, was scheduled to open the Ukrainian Constituent Assembly. However, it happened that the elections to the Constituent Assembly were disrupted on January 11, 1918. The Small Council of the Fourth Universal declared the independence of the UPR, and to approve this historical act, the next ninth session of the CCU was convened. It was the last one. In February-April 1918, the activities of the Ukrainian revolutionary Parliament were provided by the Small Council.

The efficiency of the general meeting (sessions) decreased as the composition of the CCU expanded due to the low manageability of their work. Consequently, there was a need to create a permanent authorised body in the period between its general meetings. Such a body was the CCU Committee, which was its executive body and performed work between general meetings (sessions). The Committee quickly became the CCU's governing body, formulating initiatives on the agenda of the general meeting, drafting major political decisions, and even, as was the case with First Universal, adopting and proclaiming them on behalf of the CCU. The Committee's finances were concentrated in Committee, all current work was controlled and directed by it, communication with places was carried out [22, p. 300]. The initial composition of the Committee (20 people) was elected by the first general meeting of the CCU on April 8, 1917. It consisted of the Presidium of the Council (the chairman and two deputies) and 17 members. According to the order, the composition of the Committee was expanded to 33 people: the Presidium of the CCU – the chairman and two deputies; 17 members elected by the general meeting; 8 chairmen of commissions. The committee was granted the right to co-opt 5 more members.

The functions of the Committee, according to the order, were related to the organisational support of the activities of the general meeting of the CCU, in particular, the convocation of general meetings, the preparation of reports and materials to them, the management of the work of commissions and the office, and bringing documents adopted at the general meeting to the attention of provincial and county councils. In the period between general meetings, the committee also assumed certain powers of the CCU – it made changes to the composition of the General Secretariat, resolved issues of political and economic life in Ukraine, reporting on them at the next general meeting. The Committee met once a week. It was considered competent if there were 2/3 of the Committee members if regulations were considered, and at least half when considering other issues.

The development in June 1917 the General Secretariat was not excluded from the political life of the CCU Committee. Informing the fifth session on the establishment of the General Secretariat, M. Hrushevsky noted that the creation of a new executive body does not eliminate the Committee, which should be "Small Central Council, performing legislative functions between the two sessions" [12, p. 116]. At one of the next meetings, M. Shrag took the initiative to provide the Committee with "all functions belonging to the Central Council" between sessions. The initiative was supported on June 29, 1917, by the decision of the fifth session, the Committee acquired the right to decide "all the most important immediate cases that arise between sessions of the Central Council", namely: to convene regular and extraordinary sessions; prepare materials for them; renew the Secretariat-General between sessions; to resolve all immediate cases that fall within the competence of the CCU [12, p. 143-144]. By the same decree, its composition was expanded to 40 people. At the beginning

of July, the committee was replenished by another 30% (18 people) with political figures representing national minorities [12, p. 171]. In 2018, the committee became known as the Small Council.

Further organisation and activities of the Small Council took place on August 1, 1917, when the rules of procedure for the work of the Small Council and its commissions were approved [12, p. 208-210]. Its content indicates an even wider introduction of parliamentary forms of work in the activities of the Small Council. In addition to the existing provisions, mainly procedural issues were determined, in particular, during the meeting none of the members of the Small Council could speak in one case more than twice: the first time – 15 minutes, the second – 5. The speaker was not limited in time and was given up to 20 minutes for the final speech. During the discussion, the speaker had the right to submit remarks after each speech, no more than 5 minutes. The Secretaries-General could always take the floor out of turn, but not for debate. At the request of any member of the Small Council, one or another moment of the meeting was recorded in the minutes. Applications on the agenda were given 3 minutes. The meeting was led by the chairman, yet they had no right to speak out of turn when discussing the issue. The debate was suspended at the request of 5 or more people after voting. Proposals to resolutions were submitted in writing. When discussing them, the speakers had 2 minutes each. If the question was asked from the audience, it should be formulated in such a way that only "yes" or "no" could be said in response. If a discussion began about amendments or additions to resolutions, then the floor was given in turn: to the one who is "for", to the one who is "against". No one had the right to vote for the absent members of the Small Council. Closed voting was held at the request of at least 5 members of the Small Council, roll-call – 10. Decisions were made by a simple majority, and when the number of pros and cons was the same, the issue was removed from consideration. Amendments to the transcript of the previous meeting could be made within one day after they were submitted.

The regulations defined the powers of the head of the CCU. The head called and led the meeting, proposed the agenda, led the discussion, summarised its results, established the procedure for voting on proposals received from factions [12, p. 208-209]. The incumbent chairman of the CCU and the Minor Council, M. Hrushevsky, managed to keep the Council under his control and lead it in the chosen course. He was an effective chairman, a sophisticated politician, who, if necessary, was able to give the meetings of the Small Council "some parliamentary character" [20, p. 30]. Defending his views, M. Hrushevsky did not stop at the prospect of resigning. The regulations bypassed the issue of accountability of the Small Council. Although the reports of the Small Council were heard at 6-9 sessions, they were more informative than accountable. In fact, the Small Council played a leading role in the activities of the CCU. "The Council, only it mattered, since the CCU plenum met every few months and, reproducing the same balance of power on an expanded scale, did not introduce anything new" [20, p. 120]. Such detail is also interesting: when at the seventh session the Bundist Zolotarov submitted a proposal to confirm the decision of the Small Council on the riot in Petrograd, Chairman M. Hrushevsky, without proposing a vote, limited himself to saying: "Resolutions of the Small Council have the same force as the full Council". The explanation was accepted without objections [12, p. 374-377].

The composition of the Small Council was established based on proportionality between the factions that constituted the CCU. The non-partisan Chairman of the Council had deputies from four Ukrainian parties, two executive secretaries of the Presidium belonged to the USRP, and two to the USDLP. In August 1917, out of 65 members of the Small Council, 35 belonged to Ukrainian parties, 15 to Jewish parties, 10 to Russian parties, and 4 to Polish parties [27, p. 44]. Most of the seats in the Small Council – 14 – were held by the USDLP and USRP. Quantitative parity in the Small Council between these parties was maintained until the beginning of 1918. On behalf of the faction of Ukrainian socialists-revolutionaries, Shrag proposed "re-electing the Small Council in proportion to the composition of the Central Council at the next plenary session" [25, p. 105]. This reorganisation took place at the ninth session. Commenting on this event, the newspaper Narodna volia reported on January 24, 1918: "In the reorganized Small Council, the factions of the Socialist Independents, the People's Socialists, and the Moldovans (Romanians) are given one seat each. The rest of these seats are given in the Small Council to the Socialist-Revolutionary Faction. In total, the Small Council should have 82 members in accordance with the factional composition of the large council". Thus, at the beginning of 1918, the Ukrainian SRs doubled their representation in the Small Council, the leadership of the CCU was in their hands, and they headed the Council of People's Ministers.

The Small Council absorbed the organic features of a parliamentary institution, but its meetings were more productive than the general meeting (sessions). Most of the most important political decisions of the CCU were made by the Small Council. Only after the proclamation of the Third Universal, the Small Council adopted laws: on the establishment of a court in Ukraine on behalf of the UPR, on elections to the Constituent Assembly of the UPR, on amnesty, on the exclusive right of the CCU to issue legislation, on the establishment of the General Court, on the Ukrainian Academy of Arts, on UPR state funds, on the Ukrainian State Bank, etc. Legislative work was further developed after the declaration of independence of the UPR by the Fourth

Universal. The Small Council passed laws on the ratification of the Brest Peace Treaty, the UPR State Flag, the UPR Citizenship, the issuance of State Treasury insignia, the election of judges, the UPR administrative-territorial structure, the Gregorian calendar, and Central European Time. The quintessence of the legislative activity of the Small Council was the approval of the Constitution of the UPR (Statute on the state system, rights, and freedoms of the UPR) on April 29, 1918.

A sign of the CCU's attraction to parliamentary forms of the organisation was the status of deputies – members of the CCU. Firstly, the CCU was maintained at the expense of the UPR. Members of the CCU were not subject to responsibility for voting, for opinions expressed, or in general for activities related to the performance of the duties of CCU members both in and out of the parliament itself. Members of the CCU had immunity against arrest, prosecution, and trial without the permission of the CCU. In many ways, the effectiveness of the legislative body depends on its powerful internal system [28]. An important structural element subordinate to the Small Council was the permanent and temporary commissions of the CCU. They were established at the first meeting of the CCU: financial, legal, school, propaganda, editorial, printing, demonstration, and information bureaus [11]. At that time, the functions of the commissions were not defined, and only their heads were approved. The legal status of the commissions was outlined in the order. Commissions were established by the Small Council as needed to conduct and resolve specific cases and to prepare various issues for committee meetings and sessions of the CCU. They were under the guidance and supervision of the Small Council. Members of the commissions, their chairmen, may not have been members of the CCU [12, p. 72].

The organisational bases of the commissions' work were also improved. They were created if necessary in a composition that was determined separately each time. Depending on the importance and complexity of the problem, the main task of the commissions was to prepare decisions for the sessions of the CCU and meetings of the Small Council. Drafts of relevant decisions were distributed in advance to the members of the CCU. The first meeting of the newly established commission was convened by the Presidium of the Small Council. It elected the chairman and the scribe. The commissions were given the right, if necessary, to co-opt other members with an advisory vote. At the end of the work, a rapporteur was elected from the commission. The particular issue was considered at the session of the CCU or Small Council only after the report of the relevant commission. The commission meetings were open. If there was a need for closed meetings, the issue was decided by a two-thirds majority of votes. Only members of the Small Council, its deputies, secretaries-general, and individual specially invited persons could attend the closed meetings.

On August 9, 1917, the rules of procedure of the Small Council and its commissions were approved at the fourth session of the CCU. It absorbed all the previous practice of organising and operating the Small Council and commissions, contained two innovations regarding the technical aspects of the rules of procedure: first, speeches were not limited in time; secondly, it was established that the next session of the CCU is convened no later than one month after the previous one. The agenda is sent out in two weeks, in a shorter time it was reported by telegraph. Employees of the CCU were united in an office headed by the director and their assistant. The office was divided into 6 departments: general, codification, publishing, accounting, library, and economic. In turn, the general department consisted of 6 subdivisions (office, stenography, personnel, address, information, and expedition), economic – of 3 subdivisions (garage, printing house, commandant's office), and the publishing house had the editorial board of the newspaper “Visti Ukrainskoi Tsentralnoi Rady”. The office of the CCU operated based on the Statute [29, p. 30-31], according to which all its employees were members of the general meeting of the office headed by the staff committee. Such meetings were supposed to be convened annually, only they made changes to the Statute, removed employees from their posts, established monetary funds from employees' contributions, monitored working conditions, etc.

CONCLUSIONS

The creation of the CCU marked the beginning of the era of revolutionary parliamentarism in Ukraine. The first effective steps on the path of state creation were the transformation of the CCU from a socio-political centre into a representative body. This transformation occurred as a result of the convocation in April 1917. The Ukrainian National Congress, which elected the CCU and granted the right to co-opt new members, continued the process of establishing the CCU as a representative body. In general, the CCU was established on general democratic principles, based on the specific historical conditions of the time, since its composition provided territorial representation, representation of political parties and socio-political movements, which made it a representative body, although it was never elected based on universal suffrage, which would give it indisputable legitimacy. However, this procedure for establishing the CCU made it a body that represented the will of the Ukrainian people, and therefore allowed solving constituent problems, such as the issue of changing

the state structure of Russia, declaring the autonomy of Ukraine, subsequently the UPR, determining the form of government, declaring its independence and sovereignty, adopting regulations of international importance.

The transformation of the CCU into the Revolutionary Parliament of Ukraine in those conditions, in addition to a kind of expansion of its composition, which made it a representative body of the Ukrainian people, an expression of their will, took place by the Central Council acquiring the features of a parliamentary institution through improving its structure, organisational and legal forms of activity, clear regulation of work, determining the status of members. The competence of the CCU as a parliament covered the most important issues of the state-legal, socio-economic, and cultural life of Ukraine, its actions in the international arena. The form of work of the CCU was the general meeting, and in the period between them – the Committee (Small Council). Thus, the Small Council adopted laws on ratification of the Brest Peace Treaty, on the State Flag of the UPR, on the citizenship of the UPR, on the issuance of State Treasury insignia, on the election of judges, on the administrative-territorial structure of the UPR. The quintessence of the legislative activity of the Small Council was the approval of the Constitution of the UPR (Statute on the state system, rights, and freedoms of the UPR) on April 29, 1918. Thus, the foundation of the Central Council of Ukraine, the difficult path to its transformation into a representative body – a kind of revolutionary parliament – ensured the development of state processes and contributed to the establishment of an independent Ukrainian state during the Ukrainian revolution of 1917-1921.

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Suggested Citation: Rumiantsev, V.O., Lisohorova, K.M., & Sivash, O.M. (2021). Ukrainian Central Council as revolutionary parliament of Ukraine. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(4), 29-41.

Submitted: 25.08.2021
Revised: 10.10.2021
Accepted: 03.12.2021

УДК 341.231.14; 340.12
DOI: 10.37635/jnalsu.28(4).2021.42-50

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КОМПРЕХЕНДНИЙ ПІДХІД ДО ПЕРЦЕПЦІЇ ПРАВА В КОНТЕКСТІ ДОКТРИНАЛЬНИХ ПОГЛЯДІВ

Анотація. *Метою статті є теоретико-правовий аналіз питання про компрехендний підхід до перцепції права в контексті доктринальних поглядів, його обґрунтування та порівняння з компрехендною теорією. Новизна статті полягає в обґрунтуванні компрехендного підходу, який полягає в строго об'єктивному, реальному, не ідеалізованому, деідеологізованому пізнанні права. Запропоновано нові ідеї, пов'язані з перцепцією права через об'єктивне й всестороннє оцінювання та моніторинг. З'ясовано у чому полягає подібність і відмінність між компрехендним підходом і компрехендною теорією. Підхід – це своєрідний інструмент для формування теорії. У результаті аналізу доктринальних поглядів щодо компрехендного підходу до перцепції права та узагальнення різних позицій сформовано дефініцію досліджуваного поняття. Висновки: методологічна цінність компрехендного підходу як своєрідного інструменту для формування теорії, полягає в об'єктивному, реальному, не ідеалізованому та деідеологізованому пізнанні права. При цьому неприпустимо визнавати превалювання певної концепції чи теорії. Конструкція права у спосіб поєднання інтегральної теорії права й теорії природного та позитивного права неповна й некоректна. Адже, право – це не тільки ці дві теорії. Але така перцепція права одностороння, а значить необ'єктивна. Наведено аргументи стосовно практичної цінності компрехендного підходу в юридичній техніці, коли оцінювання права здійснюється в залежності від повноти його реалізації та в процесі досягнення юридичної визначеності. Чим об'єктивніше оцінюється право, якість та ефективність його норм, тим швидше воно сприймається (пізнається). Доцільно пізнавати право з оцінюванням також його негативних рис*

Ключові слова: *компрехенсія, пізнання права, філософія права, юридична техніка, норма права, юридична визначеність*

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COMPREHENSIVE APPROACH TO PERCEPTION OF LAW IN THE CONTEXT OF DOCTRINAL VIEWS

Abstract. *The purpose of the study is a theoretical and legal analysis of the compressive approach to the perception of the law in the context of doctrinal views, its substantiation and comparison with the comprehend theory. The originality of the study lies in the substantiation of the theory of the comprehensive approach, which consists in a strictly objective, real, non-idealised, deideologised cognition of the law. New ideas related to the perception of law through an objective and comprehensive assessment and monitoring are proposed. The similarities and differences between the comprehensive approach and the comprehend theory are clarified. The approach is a kind of tool for the development of theory. As a result of the analysis of doctrinal views on the comprehensive approach to the perception of law and the generalisation of different positions, the definition of the studied concept is developed. Conclusions: the methodological value of the comprehensive approach as a kind of tool for the development of the theory lies in the objective, real, non-idealised, and deideologised cognition of the law. Therewith, it is inadmissible to recognise the prevalence of a certain concept or theory. The construction of law in the way of combining the integrated theory of law and the theory of natural and positive law is incomplete and incorrect. Since law is not limited to these two theories. Thus, this perception of law is one-sided and biased. Arguments are given regarding the practical value of the comprehensive approach in legal technique when the assessment of the law is conducted depending on the completeness of its implementation and in achieving legal certainty. The more objectively the law, the quality and effectiveness of its rules are assessed, the faster it is perceived (recognised). It is advisable to comprehend the law with the assessment of its negative features*

Keywords: *comprehension, cognition of law, philosophy of law, legal technique, rule of law, legal certainty*

INTRODUCTION

At this stage, the general theory of law is lacking essential characteristics and fundamental principles of reality and cognition, human existence, fundamental characteristics of human attitude to nature, society, and spiritual life in all its main manifestations. Since insufficient attention to the philosophy and philosophy of law in Soviet times and after them, admittedly, negatively affected the completeness and depth of cognition of the law. The comprehensive approach is the basis of the comprehend theory, the purpose of which is characterised not by the imposition or substantiation of any one theory of law, but by a comprehensive study of law, considering all available theories. From the standpoint of the system of views and ideas about comprehensive cognition of law, certain positive and negative facets are distinguished. It is not advisable to argue about this matter since the law is a complex, multifaceted social phenomenon. Law should be viewed philosophically, stating the various properties of the object, its manifestations and differences. Oddly enough, many researchers lack a philosophical attitude to law [1, p. 5]. The law detects both positive and negative aspects. The law in some countries allows and regulates prostitution, drug trafficking, bio-experiments on a person and one's psyche, the development and distribution of weapons, toxic substances, etc. In some countries, the law regulated same-sex marriage, incest, and the possibility of adoption of children by such subjects. For that reason, an objective, versatile, and principled approach to law is necessary [2, p. 7].

The question of the interrelationships and relationships between the philosophy of law and the general theory of state and law is of considerable theoretical, methodological, and practical value. Modern science is characterised by the strengthening of interrelations between various industries, integrative trends in their development. The central problem of integrating sciences and synthesising knowledge is their correlation, establishing and strengthening relationships between them. The core of integrative-general scientific forms of perception (cognition) is philosophy, which through ideological, methodological functions, universal categorical apparatus influences the convergence of sciences [3, p. 56].

In general interpretation, compensation refers to extracting meaning from receptor visual and/or oral stimuli. Although there are certain modality-specific mechanisms during cognition, there are also many common mechanisms underlying the perception of almost all stimuli [4]. Some commonly used mechanisms of comprehension include developing local and global perceptions of the psyche (also known as the situational model), inference, and generating mental images. Notably, perception contains three consecutive lexical mechanisms: auditory, phonetic, and phonological. Listeners first recognise the physical properties of sounds, such as their "frequency" and "time attributes," without assigning them values and picturing them on word information. Phonological elements, such as stress and speed, are also important for the perception of continuous speech and situational context in the perception of isolated words, but when the context is not provided, speech usually becomes incomprehensible [5, p. 6].

The meaningful concretisation of the comprehensive approach to the perception of the law becomes relevant in the view of the development of theoretical and applied issues of legal technology, legal monitoring, theory and practice of legal reservations. Compensation becomes a tool for understanding the relationship between the rational and irrational components of scientific knowledge. In modern science, the antagonism between rational and irrational approaches in cognitive activity is removed, irrational aspects are considered as implicit foundations of scientific knowledge [3-4; 6]. In this regard, the comprehensive approach to the perception of law is one of the ways to understand the irrational components of the scientific method. Some aspects of the comprehend theory of law were covered in the publications of V.D. Babkin [3], R. Zwaan, J. Miller, J. Magliano [4], V. Aryadoust [5], A. Medova [6], A. Ovchinnikov [7], J. Rodríguez, S. Orunesu [8], H. Berman [9], S. Zakhartsev, V. Salnikov [1; 2; 10; 11], S. Symeonides [12], I. Shutak [13], G. Cervetti, P. Pearson [14], E. Kessler [15], V. Rotan, I. Samsin, A. Yarema [16], S.I. Onyshchuk [17; 18], T. Kissel, S. Shapiro [19], O. Leist [20], V. Lazarev [21], S. Pohribnyi [22], O. Kot [22; 23], N. Kuznetsova [23] et al.

The problem of a comprehensive approach to the perception of law is among the understudied, as evidenced by the insufficient number of special monographic studies that would fully and objectively cover it. At this stage, there are attempts to combine the integral theory of law with the theory of natural and positive law. However, the law is not limited to these two theories. This means that the design is incorrect in this perspective. Combining only these theories will be incomplete. Such perception of law is one-sided, and therefore biased. So far, neither theorists nor philosophers of law have conducted a special purposeful and systematic study of the comprehensive approach to the perception of the law.

The purpose of the study is a theoretical and legal analysis of a comprehensive approach to the perception of the law in the context of doctrinal views, its substantiation and comparison with a comprehend theory. Achieving this purpose involves: establishing the methodological value of a comprehensive approach in the objective, comprehensive cognition of law and legal relations; showing that one-sided and uncritical cognition of law contradicts the very essence of science and inevitably leads to its erroneous interpretation.

1. MATERIALS AND METHODS

In addition to the comprehensive approach, the methodology of its study also generates scientific interest. To rethink the unique combination of different approaches to the cognition of the law, a number of research methods were used. The research methodology includes such general scientific tools as analysis and synthesis, induction and deduction, analogy, comparison, which are developed by logic and used to solve clearly defined epistemological problems. To clarify the content of certain scientific concepts of the comprehensive approach to the cognition of law, a formal logical method is used. It is based on the concepts, categories, rules, and laws of formal logic. In this situation, researchers abstract from the problems of subjective knowledge and understanding of the law.

The methodological basis of the study of a comprehensive approach to the perception of law was the method of legal science as a system of means of cognition of law, which consists of the following subsystems: philosophical means; general scientific means; special legal means; methods and techniques of research. Upon using the philosophical and legal reflection, ways of constructing models of legal reality are considered. It is based on the ability of the subject of legal consciousness to philosophical introspection, to study their relations with legal reality. Upon using philosophical and legal reflection, the specific features of the content of law and cognitive processes are disclosed.

The method of practical study, separated from philosophical foundations, allows presenting an object in immediate reality. The complexity of the objectivity of this method lies in the fact that the one-sided orientation of the analysis narrows the researcher's horizons and suggests important aspects. The scientific approach ensures the implementation of such requirements as objectivity, evidence, accuracy, integrity, criticality, focus on adequate legal monitoring and asessment of legal provisions, etc. If ordinary knowledge is mainly

a statement of phenomena, external relations, and relationships, scientific is focused on the study of patterns, on the search for new, hence its high explanatory and predictive abilities, its systematic organisation of one of the innovative fundamental approaches – system, and its method of systems analysis, which is considered as an effective method of studying legal objects and processes.

Conventional analysis as a form of research practice is applicable to the comprehensive approach. Much depends on the general epistemological foundations and ontological representations that accompany the study. Recognising the ontological connection between the comprehensive approach and the cognition of law, it is appropriate to conduct research in this area. By means of the principles of complexity and interdisciplinarity, the comprehension and the functional relationship of the gnoseological process and penetration into the essence of law are considered. The positivist approach to this study is aimed at substantiating the comprehensive approach from a legal standpoint and ensuring its rational explanation. Such an approach made an attempt to establish causal relationships and relationships between various elements of the subject of research (establishing the relationship between a good law and a shaky, unsecured, and therefore bad right, which cannot be exercised due to the lack of a legislative definition of the procedure for it).

The research methodology also uses a phenomenological approach. This is a research approach from the standpoint that the perception of law is not as easy to measure as a phenomenon in the natural sciences. A person's motivation for the perception of law is developed by means of factors that are not always noticeable, internal thought processes. Furthermore, people give their own meanings, which do not always coincide with the way others interpret. The use of the dialectical method is productive since it allows identifying new problems that are important for research, thus providing a perspective for the development of the scientific subject. Identifying the character of the relationship between compensation and perception of law arises another problem – the ontology of law, a change in the interpretation of which is initiated by describing the phenomenon of a systematic relationship between the cognition of law and all available theories and approaches.

2. RESULTS AND DISCUSSION

2.1. Correlation of the comprehensive approach and the comprehend theory of cognition of law

From the standpoint of the comprehensive approach, the legal reality is the same as ideas about legal reality. In this aspect of its existence and expression, the legal reality is primarily an imaginary or symbolic reality. The evolution of law and ideas about law occurs along with the development of symbolic communication processes and has replaced the normative language of natural, biological communication with the normative language of social culture. The law is defined not only by its subject matter but also by how it is formalised by its subject matter. Therefore, the law is a symbiosis of provisions and values, rules and worldviews, etc.

Cognitive and methodological problems are solved by the epistemology of law. Legal epistemology is a branch of the philosophy of law that examines the methodology of cognition of law, the specific features of legal knowledge and cognition, its structure and dynamics. Epistemology of law or legal epistemology contains various paradigms of legal thinking, studies legal thinking, based on the structure of legal knowledge, studies the theory of law, and is a metatheory of law. Since it exists not only as a result of cognition of law but also as an element of the inner world of a person, as legal consciousness, legal archetype, legal intuition, etc. [7, p.65]. It is advisable to identify the similarities and differences between the comprehensive approach and the comprehend theory of cognition of law. Since commonly the approach, as a complex of paradigmatic, syntagmatic, and pragmatic structures and mechanisms of cognition, is identified with theory, that is, a system of scientific ideas, principles, conclusions, etc. In other words, the approach is a kind of tool for developing a theory.

Comprehend theory – a philosophical theory of cognition of law *(from Latin comprehendo – comprehensive)*. This theory aroused great interest among both philosophers and lawyers. The subject of the theory of the comprehensive study of law is the law itself as a complex, contradictory, multidimensional, dynamically changing social phenomenon, assessed without the dominance of any legal concept. The subject of the theory of the comprehensive study of law covers regularities of dialectical essential differences in law and legal existence; regularities of influence on an adequate and objective assessment of law and legal reality of extraneous factors (such factors include economics, politics, ideology, the role of the head of state, etc.); prospects for the development of law in the context of legal reality [2, p. 11-12].

A comprehensive *(complex; inclusive)* approach to the cognition of law is a methodological technique according to which all co-existing *(comprehendo)* types of understanding of law have the same value, and none of them can be recognised as the only correct or dominant one, their integration is also fundamentally impossible since in this situation they lose their identity. One of the most pressing problems of the philosophy of law and the theory of state and law is solving the issues of gradually overcoming the considerable gap

between theory and practice, between the declarative provisions of laws and their real implementation. Sometimes the philosophy of law is considered exclusively as a branch of knowledge that has no direct access to legal practice. It is worth recalling that Kant, when defining law as the result of the work of "pure reason", did not deny that the "law" is aimed at practice [3, p. 59].

To cover the comprehensive approach, it is necessary to conduct a rational reconstruction, which has certain stages. First, it is an informal clarification of the approach, which seeks to clarify it as accurately as possible, that is, to explain the content, referring to the practice of using it in different contexts. The second is to develop a more accurate system of views than the previous one to formulate the largest number of universal statements. The new understanding should be similar to the previous one in the sense that it can be applied in most situations in which explanations are used, and be as simple as possible [8, p. 7].

It is worth noting that the comprehend theory is not an integral theory of law. As is known, the term "integral jurisprudence" originated in the United States. The founders of the integral theory of law are famous American researchers Harold Berman, Jerome Hall, and Ronald Dworkin. Thus, H. Berman asserted that integral jurisprudence should unite three classical schools: legal positivism, the theory of natural law, and the historical school. Integral theory "is based on the belief that each of these three competitive schools has identified one of the important dimensions of law, excluding others, and that the displacement of several dimensions in one focus is, firstly, possible and, secondly, important" [9, p. 340].

Approaches to the law are not limited to legal positivism, the theory of natural law, and the historical school. This means that the construction in this form is doomed to failure: combining only these theories will be incomplete. Although H. Berman called his integral theory philosophy, it was legal theories that he tried to combine. It is not surprising that lawyers began to develop an integral theory of law mainly within the framework of the general theory of law. The integral theory of law unwittingly became a legal and limited framework of the general theory of law. Philosophy, on the other hand, does not tolerate restrictions in views and concepts. There is no reason to agree with the proposal to combine the "best" of the available theories into an integral theory [1, p. 8].

Based on abstract considerations that contrast always good law with often bad law, it is difficult to formulate any specific recommendations for a modern legislator who fundamentally recognises the ideas of freedom, equality, and justice but does not in all cases know how to implement them in legal regulations. Furthermore, from the standpoint of the proponents of this concept, the opposite ratio has completely befallen – a good law and a shaky, unsecured, and therefore bad right. An example of such a correlation is the inability to exercise this right due to the lack of a legislative definition of the procedure for it [10, p. 9].

2.2. Practice of applying a comprehensive approach in legal technique

Commonly, the comprehensive approach is used in legal technique. The unity of form and content in law gives grounds to assert that legal technique in a certain way affects not only the wording but also the search for its legal content. The sphere of legal technique is law-making and legal proceedings, where the provisions developed by science have their own interpretation and application. Comprehension in legal technique is associated with the logical systematisation of legal provisions, which is conducted by joint efforts of doctrine and judicial practice. A comprehensive approach, according to S. Simeonid, does not affect the result but affects the arguments of the parties and the analysis of the court. These results should be inherently reasoned or, if this is not the case, they are still barometers of what the courts will do in future cases [12, p. 188].

Without a comprehensive approach, a comprehensive legal monitoring activity aimed at observation, analysis, assessment of the current legislation and the practice of its application to improve the effectiveness of legislation and its further forecasting will also be unthinkable. Legal monitoring is a dynamic organisational and legal institution of an information and assessment character that operates at all stages of management and governance which manifests itself at all stages of the emergence and operation of law [13, p. 88]. Important in the context of the study of the comprehensive approach to the perception of law are the developments in the field of psychology of P. Pearson and G. Cervetti. According to the researchers, text perception during reading and memorisation are the main basis for comprehension. While the essence of perception is a comprehensive understanding of the relationship between the text, its structure, and ideas. Therefore, only a comprehensive approach allows understanding the meaning of what is written [14, p. 4]. Furthermore, as noted by E. Kessler, an individual characteristic such as epistemic beliefs (prior knowledge), affects the metacognitive processes associated with understanding multiple texts, considering previous knowledge [15, p. 6]. Based on the subject of this research, some practical issues related to the need to apply a comprehensive approach and updated by the recodification of the civil legislation of Ukraine, initiated by the government back in 2019 are considered. It seems that the poor placement of words in sentences of the text of legal regulations has become a daily

occurrence. Even in codified laws, such shortcomings are common. There are even more of them in other laws and bylaws. Each time such shortcomings are identified, it becomes necessary to use adequate means of interpretation to ensure the relevant provision of the legal regulation reasonable content. In the Civil Code of Ukraine [24], an error in the placement of words in a sentence was already made in part one of Article 1: "Civil legislation regulates personal non-property and property relations (civil relations) based on legal equality, free expression of will, and property independence of their participants".

Syntactic interpretation of the above legislative provision gives grounds to conclude that all personal non-property and property relations are civil, yet civil legislation regulates solely such relations that are based on legal equality, free expression of will, and property independence of their participants. This contradicts the classical ideas about civil relations, which are recognised all over the world, and leads to uncertainty in Article 2 of the Civil Code, which establishes the circle of participants in civil relations. Only a systematic interpretation of Article 2 of the Civil Code, its comparison with the provisions of the Civil Code that define the civil legal personality of individuals and legal entities, the state, the Autonomous Republic of Crimea, and territorial communities gives grounds for concluding that the persons listed are participants in those civil relations that are regulated by civil legislation [16].

The rule of law is fundamental to citizens' participation in governance. Government structures initiate the process of solving public problems and act as an intermediary, giving society the opportunity to act independently. Thus, the state only sets limits of responsibility for all its citizens and promotes the development of civil and business activities. The German model of reforms can be called conservative, since it is based on an awareness of the identity of the national administrative culture, qualified as a "culture of statehood", as opposed to the "culture of civil society" characteristic of Great Britain. Germany seeks to preserve the Weber tradition of rational management as the rationality of laws, plans, and instructions, while reformers gradually introduce elements of new management concepts [17, p. 564].

2.3. The achievement of legal certainty through comprehension

The presence of contradictions is quite natural due to the fact that the legislation consists of a huge number of legal regulations of various subjects over a long period of time. Frequently, experience is at odds with logic. Notably, despite modern foreign research, logical positivism substantiates, as noted by T. Kissel and S. Shapiro, the existence of pluralism of different logics [19]. Evidently, according to this pluralistic approach, an integrative definition of law is impossible. It is advisable to agree with the statement of Oliver Holmes, a man who had a unique experience of scientific and judicial work: "The life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed". In an effort to coordinate the judicial practice of Ukraine with European standards, it is impossible to ignore the specific conditions that exist in Ukraine, and which are emphasised [16].

For example, paragraphs 47 and 48 of Opinion No. 11 (2008) [25] of the Consultative Council of European Judges to the attention of the Committee of Ministers of the Council of Europe on the quality of judicial decisions recognise the right of judges to interpret the law using the principles of interpretation adopted in national and international law. However, it is noteworthy that this is contrasted with the requirement for courts to promote legal certainty. Therefore, to ensure legal certainty, it is recommended to focus on judicial precedent *(in common law countries)* or to court practice *(in continental law countries)*. The reference point for interpretation is judicial practice.

Proponents of the distinction between law and legislation did not consider that law differs from the legislation by its ability to be exercised in specific legal relations, in the rights and obligations of members of society, and therefore the law cannot embody excessively general formulations (good in design) of the legislation, do not have a developed mechanism for translating them into specific legal relations. In addition, the implementation of one or the other has also completely disappeared from the field of view of proponents of the distinction between law and legislation, because, in their opinion, the law is the ideas of freedom, equality, and justice, and legislation is texts that may contradict these ideas [20, p. 307-308].

It is advisable to recall the Constitution of the USSR of 1936, which declared such constitutional values as freedom, equality, and justice to disguise disenfranchisement and terror. The creation of legal provisions is of a legal character, which determines the need for the legal regulation of its mechanisms. Law-making without such mechanisms seems impossible. The most effective indicators of legal regulations of the Cabinet of Ministers of Ukraine are quality; availability of a really certain volume and sources of material and financial support, a real mechanism of legal support for the implementation of regulations in everyday practice; the

quality of law enforcement and the legality of the behaviour of direct participants in regulated social relations; a high level of legal culture of citizens and society in general [18, p. 443].

Dogmatic legal knowledge is not derived from reality, but formats reality based on an ideologically defined idea of its place and role in the practice of legal organisation of public relations. The "reasonable" law of subsequent epochs was not so definite in likening man to cattle and did everything to obscure the exploitative essence of the existing legal relations, to perceive formal equality for equality in general, etc. From the standpoint of the ruling elites (classes), this was reasonable, and this "reasonableness" was fully consistent with the uncertainty of legal regulation. Uncertainty, in this case, can be presented as a positive phenomenon, which would be strongly opposed, but the characterisation of law in the categories of will and interest, service and benefit organically implies the need in fundamental cases to conceal the true content of provisions and, as a result, to maintain uncertainty. Only an openly dictatorial, tyrannical regime can reject guile and understatement [21, p. 44-45].

It is necessary to review the mechanism for ensuring the status of the Civil Code of Ukraine as the main regulation of civil legislation of Ukraine. Obviously, the mechanism set out in Part 2 of Article 4 of the Civil Code of Ukraine [22] was ineffective: the text of the Civil Code of Ukraine was amended without considering the specific features of the mechanism of civil law regulation of such relations in Ukraine. This may be necessary to implement the idea of dividing laws into ordinary and constitutional ones, to refer to the codes as the main regulations of various branches of legislation to constitutional laws. However, without appropriate amendments to the Constitution, such an idea is impossible to implement [23, p. 110].

Considering the commitments made by Ukraine under the Association Agreement with the European Union in the field of legislation on the establishment and operation of companies, corporate governance, to create a fully functioning market economy and stimulate trade, Ukraine and the EU agreed to cooperate, in particular, to protect the rights of shareholders, creditors, and other interested parties in accordance with EU requirements. Therewith, the regulation of the activities of legal entities (the so-called "business entities" in the Commercial Code of Ukraine do not correspond to any of the concepts of legal entities depicted in the Civil Code of Ukraine and generally accepted practice and EU standards in this area. In such circumstances, it is advisable to harmonise the legislation of Ukraine in this regard with European approaches to regulating the institution of a legal entity [24, p. 108].

The one-sidedness and inaccuracy of the approach to the law are also characterised by the "connotation of a good phenomenon in relation to a bad law" [11, p. 80]. Thus, according to the Constitution of Ukraine, a person, one's life and health, honour and dignity, inviolability and security are recognised in Ukraine as the highest social value. The establishment and enforcement of human rights and freedoms is the main responsibility of the state. Indeed, there are no complaints about the laws, all of them comply with the Constitution of Ukraine, fulfil its idea of the highest value of human rights.

Thus, if a right that everyone should strive for is created, it is still wrong to reduce it to such a form as freedom, equality, and justice. Moreover, their exact definition is an overly complex philosophical question. Without a doubt, the law is an important and necessary phenomenon of public life. Yet other phenomena are also equally important – spirituality, culture, economy, digitalisation, etc.

CONCLUSIONS

Thus, the purpose that was set at the beginning of the study has been achieved, and the task has been completed. As a result of the analysis of doctrinal views on the comprehensive approach to the perception of law and the generalisation of various positions, the following definition of the concept under study is developed: "The comprehensive approach to the perception of law is a set of principles, methods, and methodological techniques that are focused on the organic unity of ideal and material factors, rational and irrational factors, subjective and objective components of comprehensive cognition of law".

It is shown that the methodological value of the comprehensive approach as a kind of tool for the development of theory consists in the objective, real, non-idealised, and de-ideologised cognition of the law. Therewith, it is unacceptable to recognise the predominance of a certain concept or theory. The construction of law by combining the integral theory of law and the theory of natural and positive law is incomplete and incorrect. Since law is not limited to these two theories. Such perception of law is one-sided, and therefore biased. The more objectively the law is assessed, the quality and effectiveness of its provisions, the faster it is perceived (becomes known). To achieve objectivity and completeness, it is advisable to study the law with an asessment of its negative features. Arguments are given regarding the practical value of the comprehensive approach in legal technique when the law is assessed depending on the completeness of its implementation and during the achievement of legal certainty. The legal level in various legal systems is different. Proper law

mainly exceeds the mechanical totality of the legislator's will, natural law, ideal provisions, social facts, psychological phenomena, etc. Thus, it is incorrect to formulate a definition of the general concept of law solely on the principle of will, freedom, restriction, or prohibition.

It is proved that one-sided and uncritical cognition of law contradicts the very essence of science and inevitably leads to its erroneous interpretation. There is a lot of idealism in the proposed modern concepts (natural, liberal, integral, etc). However, humanity has not yet succeeded and will undoubtedly not succeed in creating an ideal society soon, even absolutely just. Outside the ideal society, models of idealised law are not fully implemented. European and national theories can develop based on a monistic understanding of the law, in the aspect of a synthetic approach, considering the fact that monistic theories offer a one-sided cognition of the state and law. Attempts to study law from a monistic perspective do not give complete results. This study does not allow covering all aspects of the comprehensive approach to the perception of the law. Notably, the comprehensive approach recognises the existence of different centres of legal experience. The starting point of the research perspective on the stated subject is the question of applying a comprehensive approach in legal monitoring of law-making and law enforcement.

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Suggested Citation: Shutak, I.D., & Onyshchuk, I.I. (2021). Comprehensive approach to perception of law in the context of doctrinal views. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(4), 42-50.

Submitted: 25.08.2021
Revised: 14.10.2021
Accepted: 28.11.2021

УДК 323.1(477)
DOI: 10.37635/jnalsu.28(4).2021.51-61

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СТРАТЕГІЧНІ ОРІЄНТИРИ ЕТНОНАЦІОНАЛЬНОЇ ПОЛІТИКИ УКРАЇНИ: ПОЛІТИКО-ПРАВОВІ АСПЕКТИ

Анотація. *Показано проблеми і невирішені питання у сфері забезпечення консолідації української політичної нації та прав національних меншин. Аналізуються нормативно-правові акти, що регулюють етнонаціональні відносини в Україні. Доведено необхідність реформування етнонаціонального законодавства, усунення декларативних, суперечливих та конфліктогенних норм. Показано загрози, спричинені сепаратистськими проявами. Визначено основні цінності, орієнтири та напрями розвитку етнонаціональної політики Української держави. Створення законодавчої бази етнокультурної автономії в Україні сприятиме формуванню ефективної системи захисту прав громадян, що належать до національних меншин в Україні, яка відповідатиме міжнародним стандартам у сфері захисту національних меншин, що означатиме виконання зобов'язань України згідно з актами міжнародного права, ратифікованими Верховною Радою України, та дасть змогу наблизити законодавство України у сфері захисту прав національних меншин до права ЄС. Кожна національна меншина отримає право створити власну етнокультурну (екстериторіальну) автономію з метою вирішення питань збереження та розвитку етнокультурної самобутності без вимог і претензій до держави та держбюджету. Це усуне декларативність відповідних норм законодавства, підвищить рівень самоорганізації національних меншин, дозволить переспрямувати етнотериторіальні вимоги в етнокультурні, сприятиме гармонізації етнонаціональних відносин та міжетнічній злагоді в Україні, консолідації українського суспільства в політичну націю на основі спільного громадянства*

Ключові слова: *етнонаціональна політика, українська нація, національні меншини, законодавство, етнокультурна автономія*

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STRATEGIC GUIDELINES OF ETHNO-NATIONAL POLICY OF UKRAINE: POLITICAL AND LEGAL ASPECTS

Abstract. *Problems and unresolved issues in the field of the Ukrainian political nation consolidation and national minorities rights protection are analysed. The normative legal acts regulating ethno-national relations in Ukraine are analysed. The necessity of reforming the ethno-national legislation, elimination of declarative, contradictory and conflicting norms is proved. Threats caused by separatist manifestations are shown. The main values, guidelines and directions of the Ukrainian state ethno-national policy development are determined. The creation of a legal framework for ethnocultural autonomy in Ukraine will contribute to the formation of an effective system of protection of the rights of citizens belonging to national minorities in Ukraine, which will meet international standards in the field of protection of national minorities. , and will allow to approximate the legislation of Ukraine in the field of protection of the rights of national minorities to the EU law. Each national minority will have the right to create its own ethnocultural (extraterritorial) autonomy in order to address the issues of preservation and development of ethnocultural identity without requirements and claims to the state and the state budget. This will eliminate the declarativeness of the relevant legislation, increase the level of self-organization of national minorities, redirect ethno-territorial requirements to ethnocultural, promote harmonization of ethno-national relations and interethnic harmony in Ukraine, consolidation of Ukrainian society into a political nation based on common citizenship*

Keywords: *ethno-national policy, Ukrainian nation, national minorities, legislation, ethno-cultural autonomy*

INTRODUCTION

Increasing foreign policy threats to the national security and territorial integrity of Ukraine caused by the processes of politicisation of the ethnicity of certain communities, attempts at their sovereignisation, manifestations of separatism, vague ethno-national policy of the state, actualises the problem of scientific substantiation of those strategic guidelines that would determine our consistent course towards a stable and strong, united and democratic state, active and responsible civil society [1-3]. Such guidelines should be ethnopolitical security and stability, national consolidation and integration based on the principles of justice and tolerance, non-discrimination and respect for ethno-cultural diversity, human and civil rights and freedoms. These guidelines are actually the urgent tasks of both politics – active, purposeful, effective, and science, which should give politics a clear and unambiguous theoretical and praxeological basis. First of all,

it is about the ethno-national policy of Ukraine, which must get out of the state of self-soothing anabiosis and catch-up legislative blunder [4].

The main problem of the ethno-national legislation of Ukraine is that the basic normative legal acts have not been updated and improved for many years in a row, do not meet modern realities and ethno-political challenges, and therefore cannot be an effective, modern legislative framework for meeting the interests and needs of national minorities of Ukraine as a state that has declared its intention to join the EU [5; 6]. Ukraine is one of the multi-ethnic states with a complex historical heritage and significant regional, cultural, linguistic, and ethnic differences that have failed to be resolved within ethno-national policy and that have provided a breeding ground for separatist tendencies among some national minorities. The reintegration of the annexed territories has added to the challenges facing Ukraine's ethno-ethnic policy, which includes, inter alia, solving problems of national consolidation, inter-ethnic relations, establishing ethno-cultural tolerance and a culture of ethno-national relations [7; 8]. However, the ethno-national policy of Ukraine remains unsystematic and inconsistent and does not yet provide a timely response to the challenges of the sphere of ethno-national relations, timely satisfaction of the rights and needs of ethno-communities that form a multi-ethnic Ukrainian nation, primarily because it does not rely on proper legislative support [9].

Here, it is important to highlight the main strategic guidelines for the political and legal development of the Ukrainian state and, accordingly, urgent problems that require priority solutions in the context of amendments to the legislation of Ukraine.

1. MATERIALS AND METHODS

Ethno-political issues are the subject of research by many researchers, in particular S. Aslanov, O. Bykov, Yu. Voloshin, V. Divak, V. Evtukha, I. Zvarych, O. Kartunov, V. Kotygorenko, S. Koch, L. Loiko, O. Mayboroda, O. Marukhovska, M. Obushny, O. Rafalsky, O. Stoiko, V. Yavir et al. [4; 9-16]. Modern trends in the development of ethnic policy require a deep scientific understanding and development of objective, consistently state positions.

Changing the paradigm of Ukraine's ethno-national policy has long been emphasised by Ukrainian scholars – jurists and ethno-political scientists, as evidenced by numerous scientific papers, scientific notes for public authorities, legislative proposals, expert opinions on individual bills and initiatives, speeches at scientific forums and media [4; 9-12]. This article focuses on the analysis of Ukrainian legislation, which should ensure its harmonisation with European and international law, ethno-national policy – with the European integration vector of Ukraine.

The Law of Ukraine “On National Minorities in Ukraine” of 1992 [13] at the time of adoption was recognised as the most progressive and democratic among all similar legislative acts of the post-Soviet space. However, currently, some of its provisions do not meet European standards for the protection of national minorities, some of them are declarative (without a legislative implementation procedure cannot be used to meet the needs of ethnocultural development of national minorities, which accumulates discontent, encourages politicisation of relevant issues and lobbying for the adoption of decisions “necessary” for them).

The creation of a legislative framework for ethnic and cultural autonomy in Ukraine will contribute to the formation of an effective system for the protection of the rights of citizens belonging to national minorities in Ukraine, which will meet international standards in the field of protection of national minorities, which will mean the fulfilment of Ukraine's obligations under acts of international law ratified by the Verkhovna Rada of Ukraine, and will bring the legislation of Ukraine in the field of protection of the rights of national minorities closer to EU law. Each national minority will have the right to create its own ethno-cultural (extraterritorial) autonomy in order to resolve issues of preserving and developing ethno-cultural identity without demands and claims against the state and the state budget [17]. This will eliminate the declarative nature of the relevant legislation, increase the level of self-organisation of national minorities, allow redirecting ethno-territorial requirements into ethno-cultural ones, promote the harmonisation of ethno-national relations and interethnic harmony in Ukraine, and consolidate Ukrainian society into a political nation based on common citizenship.

2. RESULTS AND DISCUSSION

There is no register of national minorities in Ukraine, no normative act establishes their official list, and this Law provides a very general definition of a national minority (groups of Ukrainian citizens who are not Ukrainians by nationality and display a sense of national identity and community among themselves). Based on this definition, all 130 “nationalities” that were recorded during the All-Ukrainian Population Census 2001 can be classified as national minorities. No regulatory legal act provides an answer to the key question: which

ethnic communities are considered national minorities in Ukraine. The basic Law only guarantees national minorities the protection of their languages and obliges the state to promote their ethnic, cultural, linguistic, and religious identity. According to Article 1 of the Law "On national minorities in Ukraine" [13], Ukraine supports the development of national identity and self-expression of citizens.

Formally, any ethnic group can declare itself a national minority based on a sense of national identity and community among themselves. However, the very existence of such a group does not automatically extend to it the national legislation and acts of European law on the protection of the rights of national minorities. Attempts to introduce a procedure for obtaining the status of a national minority in Ukraine (in the draft concept of the ethno-national policy of Ukraine) were not implemented. Therefore, there is an identification of the category's "nationality", "national minority" and "indigenous people"; attempts to raise the status of one ethnic group in a separate legislative order, which means discrimination against other ethnic communities.

The Law of Ukraine "On National Minorities in Ukraine" [13] lacks specific, effective mechanisms for protecting the rights of national minorities. For example, it establishes the right to ethnocultural (national-cultural, not national-territorial!) autonomy, Article 6 states that the state guarantees all national minorities the right to national and cultural autonomy: the use and study of their native language or the study of their native language in state educational institutions or through national cultural societies, the development of national cultural traditions, the use of national symbols, the celebration of national holidays, the practice of their religion, the satisfaction of needs for literature, art, mass media, the creation of national cultural and educational institutions and any other activity that does not contradict the law. However, this article interprets national-cultural (in fact, correctly – ethno-cultural) autonomy in a very simplified way. A definition of national and cultural autonomy as an organisational structure, an institution for the protection of the rights of national minorities, disclosure of its content, and features of the formation of powers cannot be found in a normative legal act - all these provisions need to be detailed. The introduction of ethno-cultural autonomy can take place through the adoption of the Law of Ukraine "On Ethno-Cultural Autonomy in Ukraine" (the draft of which was developed by scientists of the V.M. Koretsky Institute of State and Law of National Academy of Sciences of Ukraine [14]), or a new version of the Law of Ukraine "On National Minorities in Ukraine", or amendments to it. The uncertainty of the institution of ethno-cultural autonomy is an additional source of ethno-political threats: individual national minorities under the guise of ethno-cultural autonomy are trying to justify the need to introduce national-territorial autonomy within a unitary Ukraine, which in modern conditions is a manifestation of separatism and a violation of the territorial integrity of our state.

First, article 10 of the Constitution of Ukraine establishes guarantees for the free development, use and protection of the Russian language, according to which the special position of the Russian language among other languages of national minorities is established. This, in a sense, contradicts Article 24 of the Constitution of Ukraine, according to which "Citizens have equal constitutional rights and freedoms and are equal before the law. There shall be no privileges or restrictions based on race, colour of skin, political, religious, and other beliefs, sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics. Article 1 of the Law of Ukraine "On National Minorities in Ukraine" [13] guarantees citizens equal political, social, economic and cultural rights and freedoms, supports the development of national consciousness and self-expression, regardless of their ethnic origin. Ensuring the development, use and protection of the Russian language at a higher level than the languages of other national minorities leads to their discrimination, which provokes processes of ethnic discontent and language tension and can become a source of conflicts involving the language factor [15; 18].

Secondly, regarding the concept of "indigenous people". In the preamble, Article 11 and other articles of the Constitution of Ukraine, the concept of "nation" is used alongside and identical in social coverage with the concept of "Ukrainian people" – in the sense of a civil, political community, as the totality of all citizens of Ukraine, regardless of ethnic origin. According to the Constitution of Ukraine and international law, in Ukraine, as in a democratic state, can only be one nation. The characteristics of indigenous peoples (indigenous population), unequivocally recognised in universal and regional international law, are: 1) they have a continuous genetic connection with pre-colonial societies; 2) historically and now they are relatively integral and ethnically homogeneous societies in certain territories, separated from the rest of the state's population; 3) they have a status that is different (non-dominant and generally lower) from the rest of the state's population; 4) they have fully or partially preserved the customary regulation of their social, economic, cultural and other relations, which is carried out by their own and the same customary institutions; 5) they conduct traditional extensive (mainly natural) and nature-dependent economy; 6) have a communal way of life, which implies exclusively or mainly collective ownership or use of territories, lands, resources; 7) identify themselves as indigenous peoples separated from the national society [16].

The existence of the term "indigenous peoples" in the Constitution of Ukraine does not mean that it is necessary to grant a legal status corresponding to and different from the status of a national minority to any of the ethnic communities living in Ukraine. It should be understood as a synonym for the concept of a national minority. The demands of the elites of some national minorities to grant the legal status of an indigenous people are groundless and are conditioned by the desire to obtain a number of socio-economic and political rights and prerogatives provided for by international law for such peoples, including the right to collective ownership of land. But in Ukraine, land and its mineral resources are objects of property rights of the Ukrainian people, and not of individual ethnic communities (Article 13 of the Constitution of Ukraine).

Ukraine has ratified the European Framework Convention for the Protection of National Minorities of 1995 and is guided by this document in matters of legal regulation of ethno-national relations. In the acts of the Council of Europe bodies, all ethnic communities of Ukraine are defined exclusively as national minorities. Also, the Venice Commission has repeatedly and at various times emphasised in its conclusions: the proposed criteria for recognising individual ethnic communities in Ukraine as indigenous peoples (number, share in the population, absence of an ethnically identical or related state outside of Ukraine, historical harassment, guidelines for the state's foreign policy and circumstances of occupation) are unfounded. Ukrainian ethnic communities do not meet the criteria of indigenous peoples recognised in international law, belong to national minorities and have no grounds to enjoy the rights of indigenous peoples. The Venice Commission unequivocally and sharply condemned Ukraine's attempts to define any special status and rights of indigenous peoples as establishing inequality and even hierarchy among national minorities, leading to discrimination against them and violation of the state's obligations to comply with international law. This body consistently suggests that Ukraine address the issues of affected, vulnerable and small national minorities not by granting special rights and preferences, but through temporary, reasonable and limited special protective and supportive measures.

Despite the fact that the Universal Declaration of Human Rights recognises a limited list of rights of the indigenous population, and other international legal acts have either a narrow and regional distribution and a soft implementation regime, or are advisory in nature and are accompanied by a number of reservations on the part of states, there is every reason to consider this problem, on the one hand, in the context of protecting the rights of these social groups, on the other - ensuring political unity and territorial integrity of states and international security. Despite the proclamation of the indigenous population as rightful peoples in the recommendation acts of international organisations, the lists of recognised or proclaimed rights of indigenous peoples and nations are different [19; 20]. Some rights coincide to a certain extent, although they can be formulated differently and have different contexts and meanings: the right to development; to preserve and develop one's culture, respect for it, including its identity; to live in decent conditions, in conditions of freedom and enjoyment of the fruits of social progress. Some rights common to both categories have different scope, in particular: self-determination; equality of peoples; international legal personality; respect for the integrity of the national territory of the people; disposal of natural resources; peace. Some of the rights of peoples are not mentioned in the context of the rights of indigenous peoples but may relate to other proclaimed rights – in particular, to popular sovereignty. Instead, there are numerous rights of indigenous peoples that are not inherent in nations but are close to the rights of minorities.

Yet indigenous peoples in international law are a social phenomenon close to the nation. This objectively causes competition and conflicts of rights between these two forms of social integration, which can significantly affect the political stability of societies and cause processes of fragmentation of states – despite the reservations of all acts on exclusively internal self-determination of indigenous peoples. Therefore, the reservation expressed in the doctrine, and later in the American Declaration on the Rights of Indigenous Peoples of 2016, regarding the restriction of the exercise of the rights of indigenous peoples is extremely important – it should not lead to discrimination or violation of the rights of the rest of the population and should comply with the legislation of states and the needs of democratic development. The concept of "people" in international law is based on "demos", not "ethnos", and democracy should not turn into an ethnocracy.

Despite the claims of some scholars about the impossibility of a universal definition of indigenous peoples and the opposition to such a definition by organisations of social groups claiming such status, clear and unambiguous universal criteria in this area are urgently needed. They should coordinate the concepts of "people" and "indigenous people", clearly distinguish the latter from people leading a tribal or semi-tribal way of life, national or ethnic, racial, religious, linguistic minorities, other groups, and provide for pluralism of institutionalisation of the indigenous population in the form of people, communities, etc. In particular, the identification of a group of oneself as an indigenous people can be considered as a truly specific criterion, and not just a declaration, only if it is implemented in the form of the traditional economy, living in communities

and relatively separate from the rest of national society, the presence of traditional institutions that regulate the main relations within such a community.

The historical and modern constitution of such a community of a separate society, distinct and relatively ethnically homogeneous, clearly separates it from the rest of the national society and indicates its approximation or coincidence with the concept of a people of the non-sovereign territory. In this case, both the status of the people and their right to self-determination are fully justified. Different status from the rest of the population of the state cannot be considered as an independent criterion and can be reduced only to cases of segregation and discrimination but must also be considered in the context of traditional economy, community structure, customary institutions and customary regulation of public relations, which together provide for special status, rights and special protective measures on the part of the state.

Continuous genetic connection with pre-colonial societies can be considered as an unconditional criterion only for communities that historically did not have their own statehood or reached the proto-state stage of development (chiefdom, tribal way of life). After all, historically, states have never been ethnically homogeneous, any state creation was accompanied by internal or external colonialism. All the criteria for determining the indigenous population and indigenous peoples, recognised, or proclaimed in universal and regional international law, are reduced to a very long historical, defined geographically, determined socially, economically, culturally, previously recognised in national law the existence of a separate society within the state, which does not want and cannot be integrated into the national society on a general basis without losing its identity. And it is precisely the complex of these features in their connection with each other, and not the arbitrary choice of one of them, that can become the basis for recognition of a certain social community by both the people and the indigenous people, clearly separate it from minorities, and contribute to the harmonisation of its collective rights with human rights. An integrated approach should protect the political unity and territorial integrity of states from attempts to unjustifiably create new indigenous peoples in conditions of attractiveness and profitability of this status for solving various temporary or situational problems by groups fully integrated into national society [21]. Criteria for defining indigenous peoples as people should also be defined in some cases and communes or other communities in others. For example, these can be indicators of the size, compactness or dispersion of settlement, uniformity of the population of a certain territory, etc.

In this regard, questions arise about how justified the desire of individual ethnic communities in Ukraine to obtain special status and rights of indigenous peoples is, and how much this corresponds to national and international law. The relevant requirements, formulated as norms in the Law of Ukraine "On Indigenous Peoples of Ukraine" (No. 1616-IX of July 1, 2021) [22], are based on: identification of the rights of peoples established in the UN Charter, international covenants of 1966 and other key international legal acts, with the rights of indigenous peoples; tendentious interpretations that do not correspond to the content of acts on the rights of indigenous peoples; attribution individual ethnic communities in Ukraine characteristics that are not inherent to them. According to the UN Charter, the right to self-determination belongs to peoples, nations (in the social, civic-political sense), not indigenous peoples. In Article 2 of the law "On indigenous peoples of Ukraine" [22] there is a norm on the right of indigenous peoples of Ukraine to self-determination, they "establish their political status within the framework of the Constitution". The Constitution of Ukraine does not provide for the right to self-determination of indigenous peoples and to establish their special political and legal status. This right is exercised by the entire Ukrainian people.

In the concept of the indigenous people of Ukraine (Part 1 of Article 1 of the mentioned law) among the characteristics of indigenous peoples, some are generally far-fetched and inconsistent with international law (autochthonous ethnic community that was formed on the territory of Ukraine; is an ethnic minority in the population; self-recognises itself as an indigenous people; does not have its own state education outside of Ukraine, has traditional, social, cultural or representative bodies). Of particular concern is the legislative consolidation of the right of indigenous peoples to establish representative bodies, the financial support of which is provided at the expense of the state budget of Ukraine (Article 9), their own special political and legal institutions, as well as the norm on state assistance to the representation of indigenous peoples of Ukraine in the Verkhovna Rada of Ukraine, the Verkhovna Rada of the ARC and local self-government bodies (Article 2). In our opinion, attempts to legally consolidate the status of indigenous peoples in Ukrainian law, which differs from the corresponding status in international law, are unconstructive and can lead to significant conflicts and ethnic and social conflicts caused by them.

Arguments about the need to recognise the special legal status and rights of peoples in certain ethnic communities of Ukraine are not legal, but political in nature, are aimed at achieving certain extremely important goals, but do not take into account possible violations of the constitutional order, do not consider

comprehensively the further development of the legal system of the state, neglect the rights and legitimate interests of other citizens and ethnic communities.

The Constitution and legislation of Ukraine on the issue of indigenous peoples have long been consistent in recognising only one Ukrainian people on the territory of the state, consisting of citizens of all nationalities who have equal constitutional rights and freedoms. Indigenous peoples and national minorities are equal ethnic communities, and ethno-cultural programmes can be implemented to maintain their identity and culture. Such a pluralistic ethno-national policy is aimed at consolidating the Ukrainian people and at the same time preserving and developing the cultural identity of all ethnic communities. The idea of recognising certain ethnic communities of Ukraine as indigenous peoples in order to support the process of de-occupation of Crimea does not justify itself. The deliberate legal construction of de jure absent indigenous peoples in Ukraine violates national and international law, the integrity of the political and legal system and its democratic foundations. This leads to a deterioration of the international image of Ukraine and the emergence of conflicts with other states due to violations of the rights of national minorities. And playing with the rights and feelings of ethnic communities leads to their unjustified expectations and political radicalisation, threatens the political unity and territorial integrity of the state.

The priority task of the state ethno-national policy of Ukraine at this stage of development is to develop an adequate legal framework, which, on the one hand, will correspond to the realities of ethno-national relations, and on the other, will bring Ukraine closer to the implementation of ratified international legal instruments, in particular The European Framework Convention for the Protection of National Minorities. For this purpose, first of all, it is necessary to adopt a political and legal document that will fix the democratic foundations of state ethno-national policy: to define the goals, objectives, achievements and mechanism of implementation of this policy, namely the Concept of State Ethno-national Policy of Ukraine [23; 24]. However, after the adoption of the Law of Ukraine "On National Minorities in Ukraine", the legislation regulating the specifics of ensuring the rights of national minorities was improved mainly through the implementation of international legal acts. These are the European Framework Convention for the Protection of National Minorities, the European Charter for Regional or Minority Languages, etc.

Bringing the legislative framework of ethno-national policy in line with trends in the sphere of ethno-national relations through the adoption of relevant laws is hindered by the lack of a conceptual, basic political and legal document that should become the basis for its further development. As a result, most of the problems of the ethno-national sphere remain unresolved. Since the mid-1990s, many drafts of the concept of state ethno-national policy have been developed in Ukraine, but none has been adopted. Various subjects of legislative initiative offer their own, sometimes contradictory versions of the fundamental document, which hinders both its adoption and the development of the entire legislative framework of ethno-national policy. Most of the draft laws contain provisions that are unacceptable from the point of view of scientific validity, lobby for the solution of certain issues in favour of certain national minorities and are marked by ideological bias.

Separatism as a political phenomenon manifests itself in various destructive forms and manifestations. In Ukraine, it has become a serious challenge to Ukrainian statehood, the constitutional order and state structure, a threat to sovereignty, territorial integrity and national security. The subjects that objectively contribute to the "feeding" of separatist sentiments and manifestations by their political activities are both certain internal (leaders of certain ethnic groups) and external actors. This is evidenced by permanent attempts to provoke conflict situations both within the country and in interstate relations. The system of countering separatism requires both scientifically balanced positions (based on modern achievements of constitutional law, comparative law, ethnopolitics and conflictology), and the development and improvement of political and legal mechanisms (including international legal ones).

The problems of countering separatism and its manifestations have been the subject of scientific research by a number of Ukrainian scientists [25-27]. Important results of these studies were legislative proposals, in particular on amendments to the laws on the fundamentals of national security of Ukraine, on the fundamentals of domestic and foreign policy, etc. However, all these scientific conclusions and proposals have not been developed in legislative and law enforcement activities. As a result, Ukrainian society was unprepared for an adequate response to the threats of separatism. One of them is attempts to create national-territorial autonomies in the regions of compact residence of some national minorities, in particular the Hungarian one in Transcarpathia.

Of concern are attempts to institutionalise the Hungarian national minority, namely the draft administrative structure of the Transcarpathian region proposed by the Ministry of development of communities and territories of Ukraine, which provided for the creation of a new, larger than the current, Beregivsky district as part of separate territories of 6 modern districts of Transcarpathia – Uzhgorod, Beregivsky, Mukachevo, Vinogradovsky, Khust and Tyachevsky, which would allow uniting all the territories

of residence of the Hungarian national minority in Transcarpathia. The idea of such consolidation had to be abandoned due to pressure from civil society. The need for a separate administrative unit that would unite the majority of Transcarpathian Hungarians has been insisted upon for years, raising fears of further autonomy and then even secession from Ukraine.

Ukrainian scientists criticise the idea and principles of territorial autonomy of Hungarians in Transcarpathia, as they believe that it aims to consolidate the regional dominance of Hungary through such mechanisms as state financial support for foreign Hungarians, granting dual citizenship and representation of Hungarians at all levels of government in the countries of residence. According to S. Vednyansky, the Hungarian community in Ukraine has broad rights, which are exemplary for other states and guaranteed by Ukraine, while the main problem remains the full integration of Hungarians into Ukrainian society [28]. Since Ukraine does not take significant steps in this direction, Ukrainian Hungarians are becoming the object of increased attention from the political forces of its ethnic homeland.

In 2011, Hungary officially recommended that the Ukrainian authorities create a single Pritisyansky electoral district in Transcarpathia with the centre in Berehove in order to provide Ukrainian Hungarians with the opportunity to also participate in the Hungarian parliamentary elections and choose their representative deputy in the Verkhovna Rada elections, but this initiative was evaluated ambiguously [29]. During the presidential and parliamentary election campaign of 2019, the head of the Society of Hungarian culture of Transcarpathia V. Brenzovich tried to appeal in court the refusal of the Central Election Commission of Ukraine to create a majoritarian Pritisyansky constituency [30]. The electoral legislation provided for the possibility of uniting the district on an ethnic basis. According to the specifics of the territorial organisation of elections defined by the Law of Ukraine "On Elections of People's Deputies of Ukraine" [31], administrative-territorial units on the territory of which individual national minorities live compactly and which border each other should have been part of the same electoral district. If in adjacent administrative-territorial units the number of voters belonging to a national minority was greater than necessary for the formation of one electoral district, the districts were formed in such a way that in one of them the voters belonging to a national minority made up the majority of the number of voters (Article 18). It follows that the requirements of the Society of Hungarian culture of Transcarpathia were quite reasonable and were based on the electoral legislation of Ukraine. The Central Election Commission (CEC) formed single-member districts and changed their borders, and they operated on a permanent basis.

Hungarian organisations have repeatedly appealed to the CEC to create an electoral district taking into account the compact residence of the Hungarian national minority. However, the CEC refused, referring to the fact that for various reasons they cannot find out exactly where Hungarians live in Transcarpathia, and therefore cannot form a separate Hungarian electoral district. Since then, during the Electoral Reform, Ukraine abandoned the majority component of the electoral system in parliamentary elections, the Electoral Code was adopted, which incorporated the provisions of the main legislative acts related to the electoral process: "On the Election of the President of Ukraine", "On the Election of People's Deputies of Ukraine", "On Local Elections". Currently, the regulatory legal act does not contain any requirements for the formation of territorial electoral districts, taking into account the compact residence of national minorities. According to Article 27 of the Code, the borders of territorial districts are determined taking into account only the borders of administrative-territorial units. It is not allowed to form a territorial district from territories that do not border each other. Thus, there are no legal grounds for forming a Hungarian electoral district based on an ethnic criterion on the territory of Transcarpathia in the areas of residence of the Hungarian national minority. Having lost the grounds for creating a Hungarian electoral district, representatives of the Hungarian minority decided to use the opportunities provided by the reform of local self-government and territorial organisation of government. Within the framework of compact residence, they form new united territorial communities, which is the basis for creating new electoral districts. The result of the creation of united territorial associations with Hungarian dominance was a high-profile project of the administrative structure of the Transcarpathian region, which includes the enlarged Berehove district.

So, Hungarian organisations in Ukraine, with the support of Hungary, have changed the strategy and tactics of forming autonomy in Ukraine. They have not abandoned the ethno-territorial principle, but have changed their approach - from radical statements and destructive steps (blocking Ukraine's Euro-Atlantic integration) to dialogue and the use of all possible democratic mechanisms provided for by Ukrainian legislation that can be used for gradual autonomy (the creation of a Hungarian electoral district, changes in the administrative structure of the Transcarpathian region with the formation of a Hungarian district based on amalgamated territorial community with a compact residence of a national minority).

CONCLUSIONS

The rights of indigenous peoples in international law are designed to protect communities that have been creating their own societies for centuries, relatively isolated from national ones, living according to customs and traditions that differ from the legal systems of states, etc. This set of mostly advisory norms is extremely attractive for ethnic communities that are fully integrated into national societies, and the goal here is to obtain very significant political and economic preferences. Therefore, this complex cannot be used arbitrarily, it does not concern every community and state, and certainly has nothing to do with Ukrainian realities. On the other hand, an effective state policy of protection and support should be implemented in relation to vulnerable ethnic communities of Ukraine, without violating the rights of other citizens and communities.

Since the adoption of many specialised laws on the protection of the rights of national minorities was blocked due to the lack of a concept of the state ethno-national policy of Ukraine, the Verkhovna Rada Committee on Human Rights, De-occupation and Reintegration of Temporarily Occupied Territories in Donetsk, Luhansk Regions and Autonomous Republic of Crimea, the City of Sevastopol, National Minorities and Interethnic Relations should return to solving this problem and initiate the development of a draft concept of the state ethno-national policy of Ukraine in an impartial and unbiased scientific environment, which stands on the protection of national interests and state positions of Ukraine.

Thus, the strategic guidelines and directions of the state ethno-national policy outlined by us require significant adjustments in the legislation regulating public relations in this area, and the implementation of the achievements of Ukrainian legal and political science in the legislative process.

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Suggested Citation: Dudchenko, V.V., Tsurkan-Saifulina, Yu.V., Vitman, K.M., Kresina, I.O., & Kresin, O.V. (2021). Strategic guidelines of ethno-national policy of Ukraine: Political and legal aspects. *Journal of the National Academy of Legal Sciences of Ukraine,* 28(4), 51-61.

Submitted: 02.09.2021
Revised: 08.11.2021
Accepted: 16.12.2021

УДК 94:327
DOI: 10.37635/jnalsu.28(4).2021.62-71

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ІСТОРІЯ ПАРТНЕРСТВА МІЖ РЕСПУБЛІКОЮ КАЗАХСТАН ТА НАРАДОЮ З ПИТАНЬ ВЗАЄМОДІЇ ТА ЗАХОДІВ ЗМІЦНЕННЯ ДОВІРИ В АЗІЇ (1992–2014)

Анотація. *Країни та народи світу висловлюють стурбованість геополітичною ситуацією в Азії з кінця XX століття та напруженою ситуацією в ній. У кількох країнах континенту з'явилася ядерна зброя. Територіальні суперечки в ряді країн переросли у збройний конфлікт. Були й інші суперечки, які було важко вирішити. Водночас розпад Радянського Союзу, який вважався військовою та економічною державою на континенті, певним чином вплинув на стабільність у регіоні, ще більше ускладнивши політичну ситуацію тут. На пострадянському просторі утворилися незалежні держави. На порядку денному постало питання безпеки кордонів держав. У той час Перший Президент Республіки Казахстан Н.А. Назарбаєв, виступаючи з трибуни 47-ї сесії Генеральної Асамблеї ООН 5 жовтня 1992 року ініціював створення національної ради з питань взаємодії та заходів зміцнення довіри в Азії. Відповідно до сучасних вимог цю пропозицію підтримали та створили раду. До членів було прийнято кілька штатів. Сьогодні Конференція з питань взаємодії та заходів зміцнення довіри в Азії продовжує свою роботу на регулярній основі. Діяльність цієї політичної структури набула міжнародного значення. У головному розділі автори розкажуть про його формування та функції*

Ключові слова: *дипломатія, економіка, тероризм, екстремізм, безпека*

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HISTORY OF PARTNERSHIP BETWEEN THE REPUBLIC OF KAZAKHSTAN AND THE CONFERENCE ON INTERACTION AND CONFIDENCE BUILDING MEASURES IN ASIA (1992-2014)

Abstract. *Countries and peoples of the world have expressed concern about the geopolitical situation in Asia since the end XX century and the tense situation there. Nuclear weapons have appeared in several countries of the continent. Territorial disputes in a number of countries have escalated into armed conflict. There were other disputes, which were difficult to resolve. At the same time, the collapse of the Soviet Union, which was considered a military and economic power on the continent had a certain impact on stability in the region complicating the political situation further here. Independent states were formed in the post-Soviet region. The issue of border security of the states was on the agenda. At that time, the First President of the Republic of Kazakhstan N.A. Nazarbayev speaking from the rostrum of the 47th session of the United Nations General Assembly on October 5, 1992, initiated the establishment of the Conference on Interaction and Confidence Building Measures in Asia. In accordance with modern requirements, this proposal was supported and a council was established. Several states were accepted as members. Today, the Conference on Interaction and Confidence Building Measures in Asia continues its work on a regular basis. The activity of this political structure has gained international significance. In the main section authors will talk about its formation and function*

Keywords: *diplomacy, economy, terrorism, extremism, security*

INTRODUCTION

From the first days of independence, the main directions of the foreign policy of the Republic of Kazakhstan were tensions between the states and peoples of the Asian continent at that time, inter-religious tensions, rising international drug trafficking, increasing domestic and international terrorism, the threat of uncontrolled nuclear proliferation was an active intervention in the solution of the problem of obstruction and other issues of concern to all mankind. It was clear that such a situation in the region would go beyond the region and threaten the future of the world.

At the same time, the conflict was exacerbated by other unresolved issues in the region through peace agreements between individual states. For these reasons, not to mention the region, the desire of the world community to realize the slowdown between the states and peoples of Asia, to ensure peace and mutual understanding has increased. However, it has become more difficult to identify ways to achieve this goal. There were many reasons for this. "The issue of peace is especially important for Asia. 3.5 billion people in Asia today is still plagued by many conflicts and tensions. It is clear that the proliferation and development

of nuclear weapons pose a serious threat. The current problems are also of concern – illegal resettlement, environmental catastrophe, religious and ethnic intolerance, the threat of international drug trafficking" the President of the Republic of Kazakhstan N.A. Nazarbayev said analyzing the deteriorating political situation on the Asian continent in the late XX century [1].

For the first time, the First President of the Republic of Kazakhstan N.A. Nazarbayev announced the establishment of the Conference on Interaction and Confidence Building Measures in Asia (CICA). N.A. Nazarbayev took the initiative in a speech to the United Nations General Assembly (UNGA) in October 1992. His proposal was supported, and the world-class international council has been working since then to maintain security and global peace in Asia. The First President of the Republic of Kazakhstan N.A. Nazarbayev in his book "Era of Independence" wrote that "The anniversary meeting dedicated to the 20th anniversary of the CICA process was held in September 2012 in Astana. Addressing the ministers and participants, I noted that the CICA had the opportunity to establish a dialogue of Pan-Asian cultures, civilizations, models of development. A new, much deeper format was needed to address specific issues in Asia" [2]. Organization for Security and Co-operation in Europe (OSCE) Secretary General M.P. de Brichambaut speaking about the first President of the Republic of Kazakhstan N.A. Nazarbayev and his global initiatives, said at a briefing of the Summit in Washington in 2010: "The President of Kazakhstan has played a key role in ensuring stability in Central Asia and contributing to global security. Thanks to his wise policy, Kazakhstan has become a new honorary member of the world community. Today, the achievements of Kazakhstan are exemplary" [3].

1. MATERIALS AND METHODS

New data from the archives of the President of the Republic of Kazakhstan (AP RK), the archives of the Library of the First President of the Republic of Kazakhstan and the archives of Foreign Policy of the Russian Federation (AFP RF) were used to write the research article. In addition, Kazakh research papers and research papers from other country on diplomacy and international relations were analyzed and referenced. It is obvious that the history of partnership relations of the Conference on Interaction and Confidence Building Measures in Asia (CICA), which authors are studying, is the relationship of states at the international level. It is known that the relations between the countries of the world are multi-vector. For example, it consists of special areas such as military alliances, economic, political and cultural ties. The methods of historiography, objectivity, historical comparative analysis and historical sequence were mainly used in the theory and methodology of scientific research. Each topic has its own research methodology. The topic of research is of global significance. This is due to the fact that in the global situation, which worries mankind in the world, there are issues such as terrorism and extremism, as well as the prevention of the spread of dangerous weapons.

Russian scientist P.A. Tsygankov's book "Theory of International Relations" contains a number of information on the study of problems in the history of international relations. For example, it explains facts, phenomena and processes as an object of science, attracts the attention of scientists, attempts to identify stable and recurring relationships in their development, trends, prospects and opportunities for influence, economic, social, political and other military goals. One of the main tasks of science is to determine the application, to play an analytical role, to study the concepts and interstate relations in it [4].

K.-Zh.K. Tokayev, a well-known Kazakh politician, diplomat and public figure (now the President of Kazakhstan), wrote in his book "Belasu" that "This direction of Kazakhstan's diplomacy in the new geopolitical situation has become much more important. The First President of Kazakhstan N.A. Nazarbayev's initiative from the United Nations in 1992 became popular, first of all, as a result of the world community's understanding of the need to mobilize efforts to ensure peace and stability in a complex region such as Asia" [5]. It is known that the main focus should be on the theoretical and methodological issues of the historical study of the relationship between the Organization of the Conference on Interaction and Confidence Building Measures in Asia (CICA). To do this, it is important to consider the documents of the time of multi-vector negotiations, to analyze them in terms of historical research and to study the relationship of states on theoretical and methodological principles, citing the works of experts and scholars on interstate relations.

2. RESULT AND DISCUSSION

Indeed, if observe this complex situation between the states in the region at that time, the most important of them was the long-running territorial dispute between the nuclear powers such as India and Pakistan. The growing complexity of the case has led to large-scale massacres, economic collapse, environmental and natural disasters, large-scale clandestine drug trafficking involving many Asian countries, and unregulated, already difficult demographic situation. It is well-known that economic conflicts and disagreements, resulting

in economic crises and economic decline, slowdown in social development in many countries, frequent droughts, and etc. have become a situation [6; 7]. And it was already clear what the end result of such tense situations would be. The impossibility of solving these difficult problems by one or more states has become an inescapable fact. Mankind is concerned that the current situation is becoming more and more complicated, and it is becoming a continental and global problem.

The President of the Republic of Kazakhstan, N.A. Nazarbayev, addressed the roundtable of the United Nations (UN) Millennium Summit in New York on September 7, 2000, entitled "Issues of Peace, Security and Disarmament" wrote that "In this regard, it looks disappointing that a number of countries, including states in Asia, have not joined the main international agreements in the field of disarmament – the Treaty on the Non-Proliferation of Nuclear Weapons, the Comprehensive Nuclear Test Prohibition Treaty, and the Chemical Weapons Convention". The problem of destabilizing the accumulation of light types of weapons is of great concern [8; 9]. It has become one of the key issues of security and stability in a number of regions of the world, including Central Asia, taking into account the conflict in Afghanistan [10]. Shooting weapons are actively used by criminal and terrorist groups as the main means of carrying out violence in internal conflicts and exporting the idea of "Islamic purity" to Central Asia [11]. This problem is a significant measure of the ongoing war in Afghanistan. At the expense of the supply of armies in this region in the extension of the twelfth year with an extra year Afghanistan became one of the largest centers of concentration of unexplored weapons, which is illegally transferred to the Central Asia [12; 13].

In other words, over time, the need for joint action by all continental states to find a way out of such a precarious situation in Asia, which was deeply rooted in the late XX and early XXI centuries. It is because there was no joint international organization to ensure peace, stability, and stability on the continent. At the same time, it became necessary to establish such an authoritative international organization, which would cover most of the Asian countries. Increased competition in various areas between the developed countries of science and technology, the diversity of economic development, and other related negative phenomena are creating difficulties in the political and social spheres of the continent [14-17]. Here are some of them: N.A. Nazarbayev: "Military conflicts on our continent could kill tens of millions of people. We are all concerned about the conflict between India and Pakistan. We urge our neighbors to find a peaceful solution. It is also important for the region to resolve the Middle East conflict" [18].

If look at the real situation at the time, in fact: "The beginning of the XXI century has brought some changes in world politics to the issue of disarmament. It is clear that the testing of nuclear weapons by India and Pakistan in the late 1990s of XX century and their transformation into a nuclear-weapon state, and the pursuit of nuclear weapons by Iran and North Korea in the early 21st century, are disturbing. At the same time, the main threat today is the threat of these catastrophic weapons falling into the hands of terrorists" [19]. In addition, the President of the Republic of Kazakhstan N.A. Nazarbayev at the VIII Summit of Turkic-speaking countries on April 26, 2001, in his speech said: "Certainly, special concern for all of us is the Afghan problem. Regardless of the strength of the world community and the international group in Afghanistan according to the formula "6+2", the military-political crisis continues in this country" [20] and showed the scale of the situation on the continent.

His statement that emphasized the importance of resolving the situation quickly "But it would be politically naive to consider that the problem of security, as in Afghanistan itself, and in the Central Asian region is fully resolved. Here, unfortunately, there are more questions, but no answers. For example, the problem of drug distribution hasn't been solved, the largest world base of distribution remained in Afghanistan. The volume of drug trafficking did not decrease, and on the contrary, increased. This is a serious security challenge for the entire Asian continent. It is the subject of special attention to our states. Moreover, we do not have to close our eyes to the fact that on the Asian continent the scale of illegal trade is constantly increasing. Another dangerous consequence is the instability of the situation, especially in Afghanistan, the manifestation of new threats in our region has become such a phenomenon as illegal migration. Its growing scale is caused by its growing scale, its confrontation with such negative phenomena as drug trafficking, extremism, illegal arms trafficking" [20].

However, it has become clear that the only way to solve the problem, which is beyond the scope of the continent and is of global concern, is to establish an international structure such as the OSCE, which is part of Asia. That is why, from the first days of independence, the President of the Republic of Kazakhstan N.A. Nazarbayev has begun to announce at the global level ways to resolve this complex conflict peacefully. The President of Kazakhstan announced his important initiative to this end – the creation of an influential international organization that would include all the countries of the continent and call it the WIPO. The following is the purpose of the initiative that "The initiative of the Council for Mutual Assistance and Measures of Confidence in Asia was first announced by President N.A. Nazarbayev at a Summit in Helsinki (the meeting

of the heads of state-participants of the Commission on Security and Cooperation in Europe (CSCE) in 1992). In Ashgabat (August 1992), the President addressed this issue again in his speech at the 47th session of the UNGA (October 1992) and in a speech before the representatives of the member countries of the North Atlantic Council (February 1993)" [21].

Speaking at the Civil Reception of the Islamic Republic of Pakistan in Lahore on February 26, 1992, the Kazakh leader said: "We support the development of friendly relations with all countries, regardless of their socio-economic approach, ideological orientation and religion. The basis of interaction with other states is the observance of the rights and freedoms of citizens, peoples and states. Kazakhstan has an important geopolitical position. As a bridge between Asia and Europe, the republic seeks to do everything possible to bring the peoples of the two continents closer. There are all the conditions to solve this problem. As for our policy in the Asian region, we will focus on economic cooperation, peace and stability, and ultimately the resolution of national conflicts in dangerous areas of the Asian continent. We cannot afford not to address other large-scale issues of concern to the rapidly developing world. This is the formation of new economic development, integration of the national economy, the development of science, the use of nuclear energy for peaceful purposes" [22]. Thus, it defined the role of Kazakhstan in the implementation of peaceful relations, understanding and economic cooperation between the countries of Central Asia and analyzes Kazakhstan's aspirations to maintain stability in the region [23; 24].

In his speech at the 47th session of the UNGA on October 5, 1992, N.A. Nazarbayev said that "The second area I would like to focus on is the situation of peace and security in our Asia, and more broadly, on the Eurasian continent. The issue is the proposal of the Republic of Kazakhstan to hold the Conference on Interaction and Confidence Building Measures in Asia (CICA). The establishment of a structure for security and cooperation in Asia, such as the CSCE in Europe, has long been mentioned on our continent, but is not widely supported yet" [25], thus he officially announced the concrete initiative of the Republic of Kazakhstan in this direction. "This proposal made by the Republic of Kazakhstan was supported not only by the UN – it was also supported by influential international organizations, such as the OSCE and the League of Arab States, which clarify the political situation on the continent" [24]. He initiated this "in a speech before the representatives of the member countries of the North Atlantic Cooperation Council (Brussels, February 1993, February 1993)" [27].

N.A. Nazarbayev said at the OSCE Summit that "We support the Eurasian step in our efforts to strengthen peace. It is based on the signs of civilized development. The implementation of these requirements will help to slow down the cold-blooded actions in some areas, which are approaching the outbreak of war. It is based on the developing civilizations of the states. Implementation of this requirement will actively work to reduce the risk of explosive situations in some areas. That is why we should not support the establishment of barriers between the OSCE and other structures in other regions in accordance with the requirements of common security. I believe that the tasks of the OSCE in the field of security will become more important not only in Europe, but also in the implementation of relations with regional organizations. This is very important for our country. That is why Kazakhstan is the initiator of the Conference on Interaction and Confidence Building Measures in Asia (CICA)" [28]. The need for such an intergovernmental organization was reiterated. "As the Russian foreign policy media, which often monitors the development of world international politics, writes: Interaction in international politics and a sincere desire for mutual understanding, the President of the Republic of Kazakhstan N.A. Nazarbayev made a recent speech in Geneva. In particular, it is dedicated to the interests and aspirations of world politics in the XXI century" [29].

After the preliminary preparations and the implemented agreements: In accordance with the decrees of the President, the Ministry of Foreign Affairs failed in March 1993 the 1st meeting of experts of the Ministry of Foreign Affairs. Representatives of 10 countries (Azerbaizhan, India, Iran, China, North Korea, Kyrgyzstan, Pakistan, Russia, Tajikistan, Turkey) and two international organizations – the UN and the *World Trade Organization* (WTO) – took part in the meeting. Diplomats from Japan, Indonesia and Thailand attended the meeting as observers. The work of the first meeting of experts was marked by the high activity of the participants, the judges who have unofficial statements, in accordance with the instructions of their leadership on the support of the initiative of the President of Kazakhstan. N.A. Nazarbayev noted the need for a general dialogue between the countries of Asia and the necessary conditions for a balanced and constructive approach to the problems of the region. August 30 – September 1, 1993 the 2nd meeting of the Ministry of Foreign Affairs was attended by representatives of 17 countries (Afghanistan, Azerbaijan, Vietnam, India, Iran, Israel, China, North Korea, Kyrgyzstan, Mongolia, Palestine, Pakistan, Russia, Syria, Tazhikistan, Turkey and Uzbekistan) and 4 international organizations (UN, CSCE, League of Arab States and Organization of the Islamic Conference). Australia, Cambodia, South Korea, Indonesia, Thailand, Turkmenistan and Japan attended the meeting as observers.

The main result of the 2nd meeting was a decision on the need to create a special working group (SWG) in preparation for the meeting of the Council of Ministers of Foreign Affairs. Analyzing the results of the two previous meetings of experts and the whole idea of CICA, one can make the following conclusions and remarks: Kazakhstan's initiatives to create an Asian security system are timely and provide support to a number of Asian states and international organizations (UN, CSCE, North Atlantic Treaty Organization (NATO), League of Arab States (LAS), etc.). China wholeheartedly supports the idea of CICA, which expressed its participation in the work of the SWG. Together with that, the Chinese side considers that the process is an initiative of Kazakhstan and the establishment of a complete security system in Asia will be long-term, because between Asian states there are differences in the field of politics, economic development and so on. A long period is required for the development of common approaches in the country of Asia in this issue at different levels. The creation of the SWG is already making great progress, so at the present stage, the Chinese note that it is necessary to carry out constructive work within the SWG. The final statement of the participants of the meeting, in which the agreed position is expressed in relation to the main goals and practical steps in preparation for the formation of the CICA at the level of foreign ministers (as a result of the second meeting on August 17, 1993) [30].

In his interview to the editor-in-chief of the 1993 newspaper "Kazakhstan Diplomacy" U. Esdaulet, N.A. Nazarbayev said that "It is worth noting that the number of participants in the second meeting of experts has increased. 25 countries and 4 international organizations took part. The first March meeting was attended by 14 countries and 2 international organizations. The participants of the meeting adopted a report on the preparations for the forthcoming meeting of the Council for Cooperation and Cooperation Measures in Asia at the level of the Ministry of Foreign Affairs. As the main directions of the Council of Asia are to maintain security, stability and peace in the region, to establish economic and environmental cooperation, to jointly protect and develop the great cultural heritage and traditions of ancient times, each member state caresses each other's sovereignty, violence and threats. refuses to interfere in each other's internal affairs" [31].

In general, "the establishment of the CICA required long diplomatic training. For ten years, the flow of necessary documents, the positions of the states wishing to participate have been determined. During these years, the special working group held nine meetings and prepared the main documents "Rules of Procedure of CICA", "Declaration of the Principles of Relations of Member States of CICA", "Structures and institutions of CICA" [19]. Many countries of the Asian continent have expressed their desire for the establishment and functioning of the CICA and began to take an active part in its meetings. For example, a statement was issued stating that China actively supports the convening of the Conference on Interaction and Confidence Building Measures in Asia (CICA). Our side expressed satisfaction with the decision of the People's Republic of China to declare a moratorium on nuclear tests" [32].

However, some countries on the continent have developed their own views on the work of the CICA. For example: "China wholeheartedly supports the idea of CICA, which was expressed in its participation in the work of the Special Work Group (SWG). Together with that, the Chinese side considers that the process is an initiative of Kazakhstan the establishment of a complete security system in Asia will be long-term, because between Asian states there are differences in the field of politics, economic development and so on. A long period is required for the development of common approaches in the country of Asia in this issue at different levels. The creation of the SWG is already making great progress, so at the present stage; the Chinese note that it is necessary to carry out constructive work within the framework of the SWG" [33]. The official data show that the creation of CICA was not easy.

And the next largest country in Asia supported the birth of a new political organization on the continent. In particular, in the official publication of that time, "The Indian side supports the initiative of President Nursultan Nazarbayev on the establishment of the Council for Mutual Assistance and Cooperation Measures in Asia (CICA) and participated in all its meetings" [34]. Among such states, "Japan's participation in the preparation process for the establishment of the Commonwealth of Independent States (CIS) is an important factor in the implementation of the initiative of President Nursultan Nazarbayev to create an effective system of interaction in Asia. At the present time, the Japanese side confirms its support of Kazakhstan and takes part in the work of CICA as an observer. Turkey was one of the first countries that unequivocally supported the initiative of Kazakhstan on the establishment of the Council for Mutual Assistance and Cooperation Measures in Asia (CICA). It fully relates to the aspirations of Kazakhstan to create structures in the Eurasian space that provide additional security and a level of confidence for all participants in the process" [35].

At the same time, other continental countries began to pay attention to the work of CICA. For example, Ukraine is interested in the work of this political organization. In particular, "the next practical result of active cooperation between the foreign ministries of the two countries was the decision of Ukraine to participate in the activities of the CICA as an observer and expand bilateral ties at various levels of culture and education,

military training" [36]. About the first concrete steps of the Kazakh leader in the implementation of peace and understanding in Asia, the Russian state official publication said that "In one of his post-Lisbon interviews, N.A. Nazarbayev stated that "Every second speaker at the summit spoke about Eurasia. It is known that if we talk about security from Vancouver to the East, we are talking about all of Europe and all of Asia. My initiative was successfully accepted by everyone" [37].

During this period, the CICA began to hold meetings and consultations at various levels to ensure the implementation of lasting peaceful relations and mutual understanding between the states and peoples of the Asian continent. For example, in 1999, at a meeting of the CICA with the participation of foreign ministers, the President of the Republic of Kazakhstan N.A. Nazarbayev said that "To date, there have been long discussions to compare opinions and come to an agreement. The decision of the experts of our countries was not immediately implemented. There were deep disagreements, especially over disarmament and arms control, non-interference in internal affairs, and moral standards. It is impossible to immediately identify such complex issues and find a quick solution. It is known that the results of the work on the establishment of CICA depend on the successful work from simple to complex. We must first focus on issues that are important to all of us, and then move on to controversial issues. The Declaration you are about to sign is the result of the continuous work of diplomats from many countries. These are the agreed proposals of the Asian states to realize the need for our countries and peoples to build a safer world. This meeting of the heads of the foreign ministries of the CICA member states and the preparation of the Declaration is, I believe, a milestone in the foreign policy of independent Kazakhstan. This forum is a bold aspiration and good initiative of Asian countries. I am confident that we will successfully go through this difficult path of building a future Asia on the path to stability, security and prosperity" thus he analyzed and emphasized its importance [38].

With the beginning of the XXI century, there is a growing need to strengthen the stability and understanding between Asian nations and peoples around the world. It is known that the contradictions in economic development, the rise of international terrorism to a new level, the intensification of destructive activities, and so on. In his speech at the round table "Questions of Peace, Security and Disarmament" organized by the President of Kazakhstan on September 7, 2000 in New York within the framework of the UN Millennium Summit, he said that "In this connection there is a disturbing fact that a number of countries, including untilnow, they have not joined the main international agreements in the field of disarmament – the Treaty on the Non-Proliferation of Nuclear Weapons, the Treaty on the Universal Prohibition of Nuclear Testing, the Convention on Nuclear Testing. The problem of destabilizing the accumulation of light types of weapons is of great concern. It has become one of the key issues of security and stability in a number of regions of the world, including Central Asia, taking into account the conflict in Afghanistan and the process of post-conflict rehabilitation in the Republic of Tazhikistan" [39], thus passed the importance of future work in this direction. And in his speech at the I Summit of the CICA on June 4, 2002 he said that "Developing at a rapid pace and the economy of the state, participating in the work of this meeting. Our state demonstrates a high level of investment from other country. China alone could attract more than $ 450 billion in investment from other country by the year of reform. Good investment opportunities demonstrate the Russian and Indian markets, other states in the region. Kazakhstan has impeccable position. We call on all participants in the CICA process to show restraint and responsibility in mutual relations to avoid large-scale conflicts, escalation of tensions in Asia. Military conflicts on our continent are fraught with tens of millions of human casualties. We are all concerned about the conflict between India and Pakistan. We want our neighbors to find a peaceful solution to the problem. It is important for the region and the resolution of the Middle East settlement" [18].

At the III Meeting of the Ministers of Foreign Affairs of the CICA member states, held on August 25, 2008 in Almaty, the President of Kazakhstan said that "Presently, all major states are aware of the need to unite their forces with their neighbors in the region. Conscious collective responsibility for development, we call on our partners to work together in the framework of the "Cooperative Approach" in economic measurement. Important directions within the framework of CICA are the development and strengthening of cooperation in the field of culture, interethnic and interfaith interaction" [18], – commented. Along with this, N.A. Nazarbayev in his report at the morning session of the Nuclear Security Summit in Washington on April 13, 2010, "National measures to reduce the threat of nuclear terrorism and ensure the safety of nuclear material" said that "We consider it necessary to adopt international legal norms for nuclear-free zones. We support the formation of new nuclear-free zones, including in the Middle East. Kazakhstan has initiated the development of a regional action plan to strengthen nuclear safety, prevent the proliferation of nuclear materials and combat nuclear terrorism within the Central Asian zone. It would be purposeful to disseminate this experience and to other regions of the world" [40], and published its proposals against nuclear weapons in the Asian region.

And in his next speech at the OSCE Summit in Astana on December 1, 2010, he marked that "Currently we need an honest and open inter-religious dialogue" [41]. Attention was drawn to the need to resolve the

difficult situation in this area on the Asian continent. On May 20-21, 2014, the 4th Summit of the WTO was held in Shanghai, People's Republic of China. The presidency of the Council passed from Turkey to China. Qatar and Bangladesh have joined CICA. The final document adopted at the summit – the Declaration "Strengthening Dialogue, Confidence and Coordination of Stability and Cooperation in the New Asia" clearly showed that the work under the Chinese chairmanship is aimed at enhancing mutual trust and respect [26].

President of the Republic of Kazakhstan N.A. Nazarbayev speaking at a joint press conference after the Summit on May 21, said that "The next summit under the chairmanship of the People's Republic of China has once again demonstrated the unity of our goals. He showed the commitment of the member states of the CICA to further deepen the dialogue. The borders of our Forum cover a large part of the territory of the Asian continent and its population. He is sure that the Forum space will be and continue to expand at the expense of the entry of new members who wish to contribute to ensuring safety and stability. In particular, active and productive work in military-political, economic-ecological and human measurements are being held. Currently they signed a Memorandum of Understanding between CICA and Shanghai Cooperation Organisation (SCO). In this connection, I call on the leaders of states-members of our Forum – not to postpone the creation of a tool for collective response to regional and global challenges once again. This will be a historic step towards the sustainable development of our country and the prosperity of their peoples" he informed [42].

Nowadays, the organization is a platform for effective communication and decision-making. In particular, from 1999 to 2016, five meetings of the Ministers of Foreign Affairs of the member states were held and relevant decisions were made in connection with the work of the organization. From 2002 to 2014, four CICA Summits were organized with the participation of heads of state, where joint proposals for the preservation and establishment of peace in the region and the world in the XXI century were made, and ways to implement them were discussed. Currently, this Asian political organization includes 27 countries; eight of them participate as observers on a regular basis. In September 2020, Kazakhstan took over the chairmanship of CICA.

CONCLUSIONS

In conclusion, as can be seen from the above analysis, this political organization, which has been involved in the work of most Asian countries since its inception, contributes to the settlement of tensions in the region through mutual understanding, understanding and peace. This underscores the need to continue to implement the decisions of the CICA. Presently, the whole world knows that the Republic of Kazakhstan and its first president initiated the creation and functioning of such a political organization on the Asian continent, which is guided by the requirements of mutual cooperation in the development of economic, cultural and other areas, the resolution of conflict and conflict situations between the world and regional states through peaceful agreements on the basis of mutually intelligible discussions.

Analyzing the purpose of the CICA and the importance of its work, the following recommendations can be made to increase its effectiveness:

– to achieve the main focus of the member states on the implementation of the recommendations and decisions of the meetings of the CICA in various contexts;

– to establish a special executive body to address the organization of financial, medical and social assistance to prevent the consequences of terrorism, armed conflict, environmental and other consequences of the Council member states in some countries of the Asian continent;

– to provide the measures to promote and implement cooperation in the field of education, science, culture and economic development systematically;

– to carry out joint actions to address the issue of internal and external migration between the countries of the continent;

When such other important measures are systematically included in the activities of the CICA, it can be assumed that the real influence of this international organization in ensuring peace and prosperity on the continent will increase and its future will be further defined.

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Suggested Citation: Karassayev, G., Shurshitbay, B., Naimanbayev, B., Ilyassova, K., & Ospanova, B. (2021). History of partnership between the Republic of Kazakhstan and the Conference on Interaction and Confidence Building Measures in Asia (1992-2014). *Journal of the National Academy of Legal Sciences of Ukraine*, 28(4), 62-71.

Submitted: 10.08.2021
Revised: 15.10.2021
Accepted: 01.12.2021

УДК 34:341
DOI: 10.37635/jnalsu.28(4).2021.72-81

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З ІСТОРІЇ ВЗАЄМНОГО СПІВРОБІТНИЦТВА РЕСПУБЛІКИ КАЗАХСТАН З ДЕРЖАВАМИ ЦЕНТРАЛЬНОЇ АЗІЇ (1991–2000)

Анотація. *У цій дослідницькій статті йдеться про прийняті та реалізовані угоди держав Центральної Азії після розпаду Радянського Союзу: Казахстану, Киргизстану, Таджикистану, Узбекистану та Туркменістану у сфері політичного та економічного співробітництва, оборони, культури, соціальної та гуманітарної політики. Відносини держав Центральної Азії є об'єктом дослідження і розглядаються як політико-історичний аспект. Ці середньоазіатські держави мають свою історію розвитку, яка сформувалася в пострадянський період. Тому наукова література та архівні документи були доведені до наукового аналізу з метою вивчення їх ініціатив та домовленостей про співпрацю між собою на міжнародному рівні з наукової точки зору в галузі історичної науки та розгляду їх в історико-політичному аспекті. З теоретичної, методологічної точки зору однією з найважливіших проблем є вивчення політичного, економічного, соціально-культурного розвитку держав Центральної Азії в історико-політичному аспекті, а також у системі міжнародних відносин. Тому необхідно узагальнити та проаналізувати наукову літературу, архівні дані та відомості, що містяться у збірнику документів, які стосуються даної тематики з наукової точки зору. У результаті також були вивчені взаємні домовленості, дружба та співробітництво між державами Центральної Азії, стратегічне партнерство у сферах розвитку, проведено аналіз їх минулого та майбутнього*

Ключові слова: *міжнародні відносини, географічне положення, культура, економіка, політика, дипломатія*

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FROM THE HISTORY OF MUTUAL COOPERATION OF THE REPUBLIC OF KAZAKHSTAN WITH THE STATES OF CENTRAL ASIA (1991-2000)

Abstract. *This research article deals with the accepted and implemented agreements of the Central Asian states after after the fall of the Soviet Union: Kazakhstan, Kyrgyzstan, Tajikistan, Uzbekistan, and Turkmenistan in the field of political and economic cooperation, defense, cultural, social and humanitarian spheres. The relations of the Central Asian states are the object of this research and are considered as a political and historical aspect. These Central Asian states have their own history of development, which was formed in the post-Soviet period. Therefore, scientific literature and archival documents were brought to scientific analysis in order to study their initiatives and agreements on cooperation with each other at the international level from a scientific point of view in the field of historical science and consider them in the historical and political aspect. From the theory methodological point studying the political, economic, socio-cultural development of the states of Central Asia in the historical and political aspect, as well as in the system of international relations is one of the most important problems. Therefore, it is necessary to summarize and analyze scientific literature, archival data and information contained in the collection of documents related to this topic from a scientific point of view. As a result, mutual agreements, friendship and cooperation between the states of Central Asia, strategic partnership in the areas of development were also studied, and an analysis of their past and future was carried out*

Keywords: *international relations, geographical location, culture, economy, politics, diplomacy*

INTRODUCTION

It is obvious that being in the Soviet Union at the end of 1991 posed a serious problem to the union republics that were part of it. This situation caused difficulties, especially for the newly independent central Asian countries – Kazakhstan, Kyrgyzstan, Uzbekistan, Turkmenistan and Tajikistan, whose entire economy is based mainly on the production of agricultural raw materials, whose planning system is subordinated to the Union Administration, and whose experience in relations with foreign countries is completely absent [1]. The most significant of these is that heavy and light factories that only manufacture raw materials and operate under the Soviet state plan have begun to cease operations due to a lack of orders. Agricultural activity in socialist countries was still at a standstill. Under their influence, the activities of education, science, culture, health, and other social spheres in the Republic also entered a crisis period. Unemployment has risen to an alarming level. The rate of irregular internal and external migration has increased significantly [2; 3]. The negative

environmental impact on the Aral Sea, which was formed during the Soviet Union and included the territories of Kazakhstan, Kyrgyzstan, and Uzbekistan, whose harmful effects increased, was also destructive. It is for these reasons that the political and economic backwardness in the states is rapidly deepening. This negative situation has led to the transition from these countries, first of all, to focus the economy on the requirements of the world market, to make deep political and social changes within the country, and the most important of which is close economic cooperation between these countries [4-6]. And the validity of these requirements became more and more obvious over time.

Residents of the countries of the region, politicians, public activists, and heads of state understood this. Among them, Kazakhstan, which has a large, multi-ethnic territory, especially the nuclear test site and the abundance of atomic weapons, the territory of which has been severely damaged by an environmental disaster due to the drying up of the Aral Sea, and an extensive raw material economy that has not met the requirements of the time, needed to take an active part in solving these problems [7-12]. As is known, the history of inter-state relations in various directions is now becoming the object of studying international relations. That is, "a number of sciences, including not only historical sciences, but also political history and the history of diplomacy in international relations, international law, the world economy, military strategy or sociology of international relations, are also engaged in this issue. The theory of international relations, as well as its role and functions, is closely related to other disciplines that study the same subject. In other words, the study of this topic in theoretical and practical terms is related to the system of International Relations [13-15]. Therefore, the relations of the Central Asian states, which is the object of this research, are distinguished by the fact that they are considered as a political and historical aspect.

1. MATERIALS AND METHODS

To write this research article, new data from the funds of the Archive of the President of the Republic of Kazakhstan (AP RK), the State Archive of South Kazakhstan region (SASKR) and the Archive of Foreign Policy of the Russian Federation (AFP of the Russian Federation) were used. The analysis of other research papers related to diplomacy and international relations was also carried out, and references to them were made. British public figure, writer Jonathan Aitken in his work "Kazakhstan. Surprises and Stereotypes describing Kazakhstan's position in the international situation wrote that "Central Asia is a dangerous place and an important geopolitical crossroads. Kazakhstan is located in its heart. In addition to borders with Europe in the West, Russia in the North, and China in the East, the state has a large oil – rich share of the Caspian Sea and is adjacent to Asian states" [10].

The Kazakh diplomat K.K. Tokayev [11] (present President of the Republic of Kazakhstan) in his work "Belasu", wrote: "I think that the failure of the Soviet proposal to create collective security in Asia was legitimate from the very beginning. At the same time, the confrontation between the blocs and the struggle of the two ideological systems reached its climax. The potential for distrust and suspicion of Moscow was too great, and it was condemned not only in Asia, but also around the world for its aggressive aspirations. India was economically and politically dependent on the Soviet Union, and therefore could not hope to occupy a significant place in the international community in order to actively assist in the implementation of this initiative. It was unlikely to foresee any assistance in this regard from other major Asian nations, such as China and Japan. It's easy to see what chances N.A. Nazarbayev took as he agreed to submit a new plan on the creation of Asian confidence-building initiatives. The leader of Kazakhstan is determined to appeal to the world community, calling for unity in ensuring security on the Asian continent" [11]. In other words, the development of the Central Asian countries is very difficult. From the theory methodological point studying the political, economic, socio-cultural development of the states of Central Asia in the historical and political aspect, as well as in the system of international relations is one of the most important problems. Therefore, it is necessary to summarize and analyze scientific literature, archival data and information contained in the collection of documents related to this topic from a scientific point of view.

2. RESULTS AND DISCUSSION

Considering the real historical events that have taken place, the first measures aimed at jointly overcoming the deep political, economic and other stagnation that has occurred in the Central Asian countries since the beginning of the collapse of the Soviet Union began to be implemented. In particular "taking into account these conditions in 1990, the foundations of multi-ethnic and bilateral relations of the Middle East Republic began to be formed, at the initiative of Kazakhstan in Almaty, the leaders of Kazakhstan, Uzbekistan, Kyrgyzstan, Tajikistan and Turkmenistan met and signed an agreement on economic, scientific-technical and cultural

cooperation" [12]. However, these agreements did not achieve their goals due to the lack of full support from the Center. At the same time, the agreement did not consider the transition of the republics to market relations and the ways to establish direct economic international relations were not specified. That is, the main content of the agreement could not go further than relations within the Union. With these words, "the emergence of territorial issues in relations with neighboring states (Uzbekistan, Kyrgyzstan) could also pose a threat to the territorial integrity of the Republic in certain circumstances" [16]. Therefore, the first step in solving the problems facing the states of the region was to establish bilateral relations with each of them. For this purpose, bilateral relations between the Republic of Kazakhstan and neighboring Central Asian fraternal states have been established and implemented since the beginning of 1992. In addition, diplomatic relations between the republics of Kazakhstan and Uzbekistan were established in 1992. On June 24, 1992, an agreement on Friendship, Cooperation and Mutual assistance was signed between the two republics.

Special attention was paid to the development of economic cooperation. For this purpose, the two countries committed to create more favorable conditions for each other in trade, as well as to promote the development of mutually beneficial economic and trade relations at all levels, improve the climate for direct investment, and create joint ventures. The treaty also states that political issues, in particular, the territorial integrity and inviolability of the existing borders of Kazakhstan and Uzbekistan, are recognized and respected, and any encroachment on these borders is denied. The treaty also provides for ensuring economic security. Taking into account the global nature of the environmental disaster in the Aral Sea and the Aral region, the parties agreed to take the necessary measures to prevent environmental pollution, as well as to combine and coordinate efforts to restore the Aral Sea ecological system [14]. Special attention was paid to relations between the Republic of Kazakhstan and the Kyrgyz Republic, which became an independent country in a short time. It is because "Kazakhstan and Kyrgyzstan are natural strategic partner countries with common historical destinies, geographical neighbors, similar cultures and languages, with different socio-political directions" [17]. In particular, "Diplomatic relations between Kazakhstan and the Kyrgyz Republic were established on October 15, 1992. Geographical proximity, deep historical roots, common language, culture, and traditions are a reliable basis for a new effective cooperation between Kazakhstan and the Kyrgyz Republic. Bilateral relations are built in accordance with the provisions of the Treaty on Friendship, Cooperation and mutual assistance concluded in 1993. In the treaty, each of the parties guarantees generally recognized civil, social, economic and cultural rights and freedoms to citizens of the other party residing in its territory. The document pays special attention to the expansion of trade, economic, cultural, scientific and technical and other ties, ensuring environmental safety' [14].

Agreements and cooperation in various directions in the light of such mutual benefit "To deepen political relations between Kyrgyzstan and Kazakhstan, the economy, science and technology reflected in the agreements, intensive deepening of bilateral relations, the formation of relations in accordance with the new geopolitical reality established in Central Asia, the settlement of the remaining issues of bilateral cooperation meets the vital interests of both states and the entire Central Asian Region" [18]. "The importance of multi-vector development was the cooperation of Kazakhstan and Kyrgyzstan in the framework of the Civil Aviation Authority (CAA (CAC)), the Commonwealth of Independent States (CIS), the Customs Union (CU (TC)), and the Turkish summit, which determined the large-scale aspects of their positions on international issues. During the working meetings and discussions, joint steps of the parties to cooperate in the CIS, the Central Asian region, the military and political situation in Tajikistan, the situation in Afghanistan, and the expansion of the North Atlantic Treaty Organization (NATO) framework were justified. Close political interaction between the two countries determines specific joint steps within the framework of the United Nations (UN), NATO, the CIS, and Tajikistan ... It also led to the foundation of the peace Battalion "Centrazbat" in Tajikistan" [17].

At the same time, relations of the Republic of Kazakhstan with neighboring countries were also established. For example, diplomatic relations between Kazakhstan and Tajikistan were established in 1993. In the same year, President of Tajikistan E. Rakhmonov paid an official visit to Kazakhstan, as a result an agreement on basic relations between Kazakhstan and Tajikistan was signed. Priority areas of cooperation between the two countries are mining, non-ferrous metallurgy, mechanical engineering, agro-industrial complex, energy, light industry, transport and communications [19]. The establishment of relations between Kazakhstan and Turkmenistan in the early 90s of the XX century was also important. It is because "Turkmenistan has a very favorable geopolitical situation and land rich in natural energy resources. Favorable investment climate with rich oil and gas, cotton growing, main oil and gas pipelines, transport communications has raised the country to the level of strategic partnership with Kazakhstan. In general, "The legal framework of Kazakh-Turkmen relations consists of more than 45 documents. Among them, the Treaty on friendly relations and cooperation of May 19, 1993 and the Declaration on further development of cooperation of February 27, 1997 have been fundamental documents" [20]. The first official meeting of the two heads

of state at the highest level revealed the importance of cooperation. For example, "In May 1993, during the official visit of the president of Kazakhstan N.A. Nazarbayev to this country, the foundations of bilateral relations were laid. The practical transit potential of Turkmenistan is of great importance for Kazakhstan. This state is a natural partner of Kazakhstan, as it is one of the coastal countries of the Caspian Sea. Moreover, the two countries have a common border of 426 kilometers on the coast" [21].

Thus, the Republic of Kazakhstan established bilateral multilateral relations with neighboring and historically rooted Central Asian states, which gained independence in the late 90s of the XX century. However, it became clear that it is necessary to jointly solve large-scale and serious problems facing these states at the regional and global levels. For example, they include joint regional coordinated economic cooperation, coordinated trade relations, joint recovery of the damaged environmental situation, external migration, border issues, cultural ties, joint defense policy, the fight against terrorism,drug trafficking, and others. That is why the president of the Republic of Kazakhstan N.A. Nazarbayev, having announced his proposals in this direction from the first period of independence of the country, took an active part in its practical implementation. The head of state noted the importance of this initiative at the global and regional levels, having put the initiative in the discussions of the states of the region. The head of State announced for the first time about the cooperation of the Central Asian states, its importance and implementation plans during his official visit to the Islamic Republic of Pakistan in February 1992. For example, at the civic reception in Lahore on February 26 this year, he stated that "If we focus on our policy in the Asian region, we will focus on economic cooperation, the preservation of peace and stability, as well as the cessation of interethnic conflicts in all the tensest regions of the Asian continent. We cannot stay away from other issues that concern the rapidly developing people of the East. These are the formation of a new economic requirement, the problem of cooperation between the people's economy, the work on the development of Science, the use of nuclear energy for peaceful purposes" [22]. Thus, he outlined the upcoming tasks in this direction.

During this period, the head of Kazakhstan drew the attention of the world community, declaring the need for a joint solution of particularly complex problems at the continental and world levels facing the new sovereign states of Central Asia. For example, in his speech at the 47th Session of the UN General Assembly on October 5, 1992, he said that "Among the most difficult issues of present is the water problem in the Central Asian region, which is formed in the middle of the ancient continent, which will eventually become the beginning of a dangerous conflict". N.A. Nazarbayev stated that "I am already drawing the attention of the UN to the need to implement projects aimed at promptly providing Central Asia with water resources" [21]. With this statement he called on the world states to jointly resolve this situation. The head of state raised the issue of restoring the Aral Sea, which, first of all, due to the Soviet method of extensive farming, whose water was reduced and created at an unprecedented level, provided the agriculture of Kazakhstan, Uzbekistan, Kyrgyzstan in the region with water through large and small rivers, which occupies an important place in the energy system of the region, which by draining became an ecological zone at the regional and even continental level. On March 26, 1993, at a meeting of the Presidents of Kazakhstan, Kyrgyzstan, Uzbekistan, Tajikistan and Turkmenistan in Kyzylorda, the International Fund for saving the Aral Sea was established. N.A. Nazarbayev was elected its President.

At this meeting, its participants made a statement and outlined work plans for solving complex environmental problems in the Aral Sea and its surroundings. Since its foundation, the joint work of members of the International Fund has begun and has become more productive. A special appeal was adopted to the world's international organizations to carry out joint work to prevent and restore the situation of this environmental disaster, which is growing. For example, on June 28, 1993, the President of the International Fund for saving the Aral Sea N.A. Nazarbayev, addressed to the president of the Republic of Turkey Suleiman Demirel, and said "Due to the huge shortage of water reserves of the largest closed reservoirs on the planet, a very dangerous environmental situation has developed, which affects many states of the continent. Large amounts of salt and dust formed from the bottom of the receding sea spread over large areas, disrupting the ecological situation in the region. It is becoming more and more realistic to undergo profound changes in the conditions of nature, the plant and animal world. Realizing our responsibility to ourselves and neighboring peoples and the world community for preserving the natural environment, the state is trying to counter the threat posed by the International Fund for saving the Aral Sea. Since the Aral crisis affects the interests of all mankind, our young states take into account the support of the world community. The International Fund for saving the Aral Sea, to which they give appropriate powers, is open to broad cooperation in all areas of the elimination of the Aral crisis" [24]. It was noted that the improvement of the ecological situation of the island and its region is on a global level. In a short time, many international organizations of the world paid attention to the problem of the Aral Sea and began to provide specific assistance. In particular, in addition to Turkey, the leaders of other countries, such as the United States, Great Britain, Germany, England, France, etc., have

approved ways to solve this problem. The activities of this fund have been supported by the UN, the European Union, the Organization for Security and Co-operation in Europe (OSCE), and the Conference on Interaction and Confidence-Building Measures in Asia (CICA). Some world financial centers have begun to provide monetary assistance.

The head of the Republic of Kazakhstan, the president of the fund N.A. Nazarbayev gave a positive assessment of the work done in the short period of time at the world level in his speech at the Council of heads of State of Central Asia in Dashkhovuz on March 3, 1995 "In terms of time, first of all in terms of the organization of the activities of the structures we have created, on the effectiveness of which the fate of decisions on the Aral Sea largely depends. In this regard, I would like to emphasize the important role played by the Interstate Council on the Problems of the Aral Sea Basin and its Executive Committee. Based on the fact that each of us has all the information on this topic and we constantly exchange it in a working order, I would like to express in my introduction, including as president of the International Fund for Saving the Aral Sea, I hope, the general opinion that, in general, the foundation for the active work of the fund is laid" [25]. In the context of independence, one or two years have shown that the need for close cooperation between the states of the region in order to adequately respond to the growing demands of the market, global, regional political and socially complex challenges and events have become increasingly clear. the president of the Republic of Kazakhstan N.A. Nazarbayev became at the beginning of the justification of such an alliance again.

The first initiative of such an association of the states of the region was a joint statement signed by the Presidents of Kazakhstan, Kyrgyzstan and Uzbekistan, who took part in the days of memory of the outstanding statesmen of the XIII century Tole bi, Kazybek bi, Aiteke bi in Ordabasy mountain of the Republic of Kazakhstan from May 27 to 29, 1993. "Noting the scale of interethnic harmony, which became particularly important during this event and expressed commitment to the common historical foundations and traditions, the Presidents of the Republic of Uzbekistan, the Kyrgyz Republic and the Republic of Kazakhstan expressed their desire to work in close cooperation in solving the problems of preserving the spiritual heritage of each nation in the name of market relations, fundamental state independence and sovereignty. The heads of the Central Asian states expressed their readiness to continue the coordinated efforts to ensure security and strengthen confidence-building measures in Asia. The heads of state expressed their desire to continue holding meetings on significant events related to our common history" [26]. Thus, this statement became the beginning of the formation of a close alliance between the newly independent states of Central Asia, which were part of the former Soviet Union. After a comprehensive discussion, "On April 30, 1994, the Presidents of Kazakhstan, Kyrgyzstan and Uzbekistan signed an agreement on the creation of a single economic space (Central Asian Union) between the three countries, as if this project (the Eurasian Union) had become practical. The heads of the Central Asian states established the Interstate Council, and founded the Council of prime ministers, world and defense ministers, as well as the Bank for cooperation and development. Among the most important common tasks, the supporters attributed the solution of the Aral Sea problem" [12]. Since its foundation, this new regional economic cooperation has begun to establish contacts with World Economic organizations. For example, "The European Expert Union (EES), the European Union (EU), the German Fund for International Development (DS), the American Agency for International Development (USA-ID). Contacts with specialized UN organizations have been established in Almaty, Bishkek and Tashkent" [12].

K.K. Tokayev spoke about the necessity and history of the existence of the Central Asian Union, which was founded by these three countries "Since the first days of independence (along with the implementation of joint activities in the CIS), the head of Kazakhstan N.A. Nazarbayev has attached special importance to relations with neighboring countries in Central Asia. After all, this factor was of great importance in ensuring the security and territorial integrity of the Republic. For this purpose, at the initiative of N.A. Nazarbayev, an agreement on the establishment of a single economic space was signed between Kazakhstan and Uzbekistan on January 10, 1994, Kyrgyzstan's accession to the Treaty on January 16 gave the treaty the character of a tripartite document, and a separate tripartite agreement was signed on April 30 of the same year [19]. N.A. Nazarbayev wrote that "On April 13, 1994 a month after I spoke on the Eurasian initiative in Sholpon-Ata, we signed an agreement on the creation of a single economic space with the leaders of Uzbekistan and Kyrgyzstan. Thus, future Central Asian Economic Cooperation has acquired a legal basis" [27]. "On July 8, 1994, during the meeting of the presidents of these three countries in Almaty, it was agreed to establish their Interstate Council and its permanent organization-the Executive Committee. In the same year, these three republics established the Central Asian Bank of solidarity and development. The program of economic integration until 2000 was also adopted [19].

The initiative of the Republic of Kazakhstan at the end of the XX century in the direction of regional economic integration between the states, mutual consent for political purposes has been appreciated by the

world community and states. According to the official representative of the Russian Embassy in Kazakhstan, "The main direction of Kazakhstan's foreign policy is the further development and strengthening of relations with the Central Asian states. The July meeting of the three states of the region in Almaty is a prime example of this" [28]. Deputy Prime Minister of the Russian Federation A. Shokhin addressed to President B. Yeltsin "Recently, President of Kazakhstan N.A. Nazarbayev has made a number of proposals aimed at strengthening integration phenomena in the CIS. In April, he made a proposal to create the Eurasian Union. In July, at the meeting of the Presidents of Kazakhstan, Uzbekistan and Kyrgyzstan in Almaty, a decision was made to establish the Central Asian Union. In August, the president of Kazakhstan made a statement at the Council of heads of state that he would raise new integration issues within and outside the Commonwealth" [29]. The historical significance and necessity of the proposals of the head of Kazakhstan in these areas were noted. Thus, in the XX century, "a special relationship was formed with the Central Asian Union, which connected the three fraternal peoples" [30].

Such initiatives and proposals of the Republic of Kazakhstan in order to form mutual cooperation between the Central Asian states in joint resolution of existing problems were supported by the world community and their correctness was noted. The official publication of the Ministry of Foreign Affairs of Russia in this content was the recent report of the president of the Republic of Kazakhstan N.A. Nazarbayev in Geneva "A sincere desire for mutual cooperation and mutual understanding in international politics. In particular, its content became the basis of politics in the world of the XX century. It was devoted to the interests and aspirations of Kazakhstan in foreign policy in the Asian region. The president of Kazakhstan outlined the main directions of the state's foreign policy. Firstly, the integration policy in Central Asia (Kazakhstan, Kyrgyzstan, Uzbekistan), the service for maintaining peace and stability in this difficult region" [31], – prepared a statement and assessed the activities of the head of Kazakhstan in the formation of political stability, economic prosperity, understanding and cooperation between the states and peoples of Central Asia. The emergence of such a close Central Asian Union between Kazakhstan, Kyrgyzstan and Uzbekistan received positive support from well-known political figures, public activists and ordinary residents of the region, who considered this event a key to the successful development of the neighboring countries of the region. For example: "the famous Kyrgyz writer Sh. Aitmatov agreed that "The initiative of the president of the Republic of Kazakhstan N.A. Nazarbayev on Central Asian integration is a strategic path for us. This is a unique, unprecedented offer that unites our region. Each of us should support this initiative in our environment, this is our future" [30]. As the public figure and politician of the Kyrgyz Republic Zh. Saadanbekov wrote that "The initiative of President Nursultan Nazarbayev implements the creation of a new type of cooperation of Central Asian states, which has never been seen before in the history of Central Asia" [33].

The creation of this close Union of the three Central Asian republics created favorable conditions for the implementation of external migration between the states on a systematic basis, on an agreed basis, and the return of Kazakhs to their historical homeland in the Kyrgyz Republic and Uzbekistan. At the same time, under the conditions of mutual agreement, a certain group of Kazakhs from Tajikistan and Turkmenistan began to voluntarily return to their native countries. As a result, according to the results of 1997: "87% of immigrants arrived from the neighboring region, Uzbekistan – 11%, Kyrgyzstan – 6%, Turkmenistan – 3%, Tajikistan – 2%". In Uzbekistan, there are up to 1.5 million Kazakhs, who mostly live in the areas of ecological disaster of the Aral Sea region and the Kzyl-Kum desert. According to the Embassy of the Republic of Kazakhstan in Tashkent, about 500 thousand people have expressed a desire to move to their historical homeland. About 70 thousand ethnic Kazakhs live in Turkmenistan. The Kazakh diaspora in Kyrgyzstan is about 48 thousand people." 5 thousand Kazakhs live in Tajikistan" [34]. Considering the historical events of the past, even in the period before the collapse of the Soviet Union, the desire of compatriots in these republics to return to their native countries began. For example, the following, on March 15, 1991, the president of the Kazakh Soviet Socialist Republic (SSR) N.A.Nazarbayev presented representatives of the Kazakh population living in Bostandyk District of the Uzbek SSR. In their appeal to Nazarbayev, "losing their native language, the number of Kazakh intelligence and national specialists are decreasing, there are cases of uzbekization, traditional forms of economic management are being disrupted, social problems are not being solved, and the area, which was once the only picturesque region of Kazakhstan, is becoming a treasure trove of industrial waste. The restoration of historical justice and the return of Bostandyk district to Kazakhstan by the people" [35]. From the letter asking for influence (you can find out the real situation of the local Kazakh population in this country at that time. In their appeals, the Kazakh residents of the district asked for systematic communication with their historical homeland. As you know, the situation has been settled after the organized measures taken under the control of the presidents of the two states and the mutual understanding.

After this request, the ambassador of Kazakhstan to Uzbekistan held two meetings with Kazakhs of Bostandyk District of Tashkent region. The official report on the course of the meetings was "On the eve

of the Republic Day of our sovereign country, two meetings were held with our compatriots in Uzbekistan. The first was organized on October 22 of this year together with the Republican international Kazakh Cultural Center with representatives of the Kazakh diaspora living in the city of Tashkent and its surrounding districts. On October 23, I visited Bostandyk District of Tashkent region and met with representatives of the Kazakh diaspora. There are 21 Kazakh schools in the district. Population: 46% – Uzbeks, 26% – Kazakhs. He got acquainted with two Kazakh schools, met with their collectives and Kazakh brothers from the collective farm "Zhana auyl". Despite the fact that schools are full of attention, there are almost no textbooks in the Kazakh language, no special methodological publications" [36], – and suggested ways to fix the existing gaps. In accordance with such mutually implemented bilateral agreements, as well as the agreements of the Union of Central Asian states, economic,cultural and educational cooperation between the regions of its member states began to be established. This is an example of the relationship between the cities of South Kazakhstan region and Tashkent region, Shymkent-Tashkent. For example, in the official data of the South Kazakhstan region: "With the population of the neighboring Tashkent region and the city of Tashkent, the people of our South Kazakhstan region have long maintained relations. Currently, customs posts between the two regions have been removed, and economic relations between the two countries have been significantly simplified. Market relations are growing. The heads of two districts and cities of the region met with the heads of districts of the Tashkent region and Tashkent,and signed a mutual agreement.

And now this is the eve of the days of Kazakhstan in Uzbekistan. It will be held from May 23 to May 27. Let us assume that this great event between the two peoples will mobilize for the further strengthening of friendship, market relations" [37] It is written that the importance of mutual cooperation in this direction is clearly emphasized. In accordance with the terms of bilateral and multilateral agreements between the two states, the Republic of Kazakhstan established and developed contacts on a permanent basis with representatives of the Kazakh nationality living in the Central Asian countries. Among them, their education in their native language, referral to higher educational institutions in Kazakhstan, holding days of culture of Kazakhstan in related republics are included in the systematic work plans. For example, in the archive fund it was written "Over quota, according to the agreement with the Ministry of Education of Karakalpakia in Nukus, a travel Commission Mokiz was headed, which conducted entrance examinations in universities of Kazakhstan and took 70 people. In 1998, 85.4 thousand people were sent to Uzbekistan. examinations of textbooks, teaching aids and methodological literature 28 names for 5113.5 thousand. tenge, in Turkmenistan-5.9 thousand tenge. 40 allowances for 122.6 thousand tenge. In 1998, the day of culture of Kazakhstan and the Jubilee events dedicated to the 175th anniversary of Kurmangazy Sagyrbaev, passed in Turkmenistan, the Kyrgyz Republic" [38] and the official data seems to confirm this.

CONCLUSIONS

The positive results of bilateral and multilateral cooperation between the countries of Central Asia with common historical roots (Kazakhstan, Kyrgyzstan, Uzbekistan, Turkmenistan and Tajikistan), which gained their sovereignty after the collapse of the Soviet Union, have been noted since the beginning of their independence. In particular:

– close economic cooperation between the states based on market requirements has been established;

– joint steps of the states in the implementation of a multilateral foreign policy in the region have been implemented and have been distinguished by their effectiveness;

– joint measures have been implemented to provide the region with water through the restoration of the Aral Sea, which has become important at the world level, and to positively regulate the damaged environmental situation;

– the solution of socially unfavorable situations of national diasporas in each Republic, the acquisition of education in their native languages, the settlement of various relations with their historical homeland began to be carried out in a consensual manner;

– the foundation of direct multilateral relations between regions and cities of the republics has been laid and further expanded;

– in a short period of time, the issue of the territory of the Republic of Kazakhstan with its direct border neighbors Kyrgyzstan,Uzbekistan, Turkmenistan has been fully resolved in the interests of the supporters and approved in accordance with the requirements of international law. The state border with these countries has become the center of multifaceted peaceful relations, joint practical exchange in this matter.

Such fruitful and positive inter-state relations have determined the need to further strengthen the close Union of Central Asian states. The Central Asian countries are in a very favorable position in terms of their geographical location on the world map. In particular, Kazakhstan is a Eurasian state. After all, it is clear that

it is a country like the Golden Bridge that connects east and west. The main transit corridors on the Eurasian continent pass through this Kazakhstan. Therefore, the need to improve political, diplomatic, economic and cultural ties between Kazakhstan and the Central Asian states, as well as the countries of Europe, East, South Asia, and the Middle East, which indicates the need for these Central Asian states to join close global multilateral relations. At the same time, it is known that the effectiveness of mutual regional cooperation between these republics is a prerequisite for the further development of this cooperation. In addition, each of the Central Asian countries has its own ancient cities and cultural heritage. In the future, the authors believe that the conclusion of large-scale and interstate agreements on the development of tourism in these countries is dictated by today's requirements.

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Suggested Citation: Karassayev, G., Yensenov, K., Naimanbayev, B., Bakirova, Z., & Kabdrakhmanova, F. (2021). From the history of mutual cooperation of the Republic of Kazakhstan with the states of Central Asia (1991-2000). *Journal of the National Academy of Legal Sciences of Ukraine*, 28(4), 72-81.

Submitted**:** 23.07.2021
Revised: 17.09.2021
Accepted: 26.11.2021

УДК 34:34.05
DOI: 10.37635/jnalsu.28(4).2021.82-92

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ІБН ТАЙМІЯ ТА ЙОГО ФЕТВИ З ЗАБОРОНЕНИХ (ХАРАМ) ТА ДОЗВОЛЕНИХ (ХАЛАЛ) ПИТАННЯХ

Анотація. *Останнім часом дослідження спадщини середньовічного релігієзнавця Ібн Таймії, який жив у Сирії наприкінці 14 ст., набуває особливої актуальності у зв'язку зі зростанням активності різних радикальних груп. Примітно, що деякі частини його вчення стали основою ідеології різних сучасних екстремістських сект, таких як ваххабізм. Однак його відповіді на релігійні питання щодо забороненого (харам) і дозволеного (халяль) залишаються недостатньо вивченими. Ідеї Ібн Таймії суперечать одностайному висновку ісламських теологів з більш ніж 60 питань. Його думка з окремих питань викликала жваві дискусії, що навіть забороняло йому робити висновки з окремих релігійних питань. Крім того, сумнівна його приналежність до мазхабу Ханбалі в ісламі. Іншою проблемою дослідження є його суперечність традиційній ісламській концепції Бога. Основна мета дослідження – дослідити ідеї Ібн Таймії щодо деяких питань ісламської юриспруденції (фікху), порівняти його погляди з думками ісламських теологів та визначити помилкові уявлення про юриспруденцію. У цьому дослідженні основним підходом було вивчення праць Ібн Таймії та порівняння їх з працями ісламських богословів, представників різних мазхабів. Було виявлено, що певна кількість релігійно-правових думок цього релігієзнавця з питань халяль і харам суперечить правовим нормам переважної більшості мусульман. Це дослідження доводить, що вчення Ібн Таймії суперечить ісламській концепції Бога та релігійно-правовій практиці*

Ключові слова: *ісламське право, іслам, фікх, мазхаб, фетва, іджма, іджтіхад*

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IBN TAYMIYYAH AND HIS FATWAS ON FORBIDDEN (HARAM) AND PERMISSIBLE (HALAL) ISSUES

Abstract. *Recently, the study of the legacy of a medieval religious scholar Ibn Taymiyyah, who lived in Syria at the turn of 14th century, has become particularly relevant due to the growing activity of various radical groups. Notably, some parts of his teachings became the foundation of the ideology of various modern extremist sects such as Wahhabism. However, his answers to religious questions regarding the forbidden (haram) and the permitted (halal) remain understudied. Ibn Taymiyyah's ideas contradicts the unanimous conclusion of Islamic theologians on more than 60 issues. His opinion on certain issues provoked lively discussions to the point of even forbidding him to make conclusions on certain religious issues. In addition, his belonging to the Hanbali madhhab in Islam is questionable. Another problem of the study is its contradiction to the traditional Islamic concept of God. The main purpose of the study is to investigate the ideas of Ibn Taymiyyah on some issues of Islamic jurisprudence (fiqh), to compare his views with the opinions of Islamic theologians and to define erroneous ideas about jurisprudence. In this study, the main approach was to study the works of Ibn Taymiyyah and compare them with the works of Islamic theologians, representatives of different madhhabs. It was found that a certain number of religious and legal opinions of this religious scholar in matters of halal and haram contradict the legal norms of the vast majority of Muslims. This study proves that the teachings of Ibn Taymiyyah contradict the Islamic concept of God and religious and legal practice*

Keywords: *Islamic law, Islam, fiqh, madhhab, fatwa, ijma, ijtihad*

INTRODUCTION

A Middle Eastern religious scholar of the 13th-14th centuries Ibn Taymiyyah is a rather controversial figure in the history of Islam. Therefore, many scholars have dedicated their studies to his biography and heritage. At the same time, many aspects of his activities have not been considered. His teaching interest scholars from different countries, who discuss various aspects of his teaching. At the same time, they present completely opposite opinions about this historical figure. While some scholars consider him to be an outstanding Islamic theologian, a fighter for justice and one of the reformers of Islam, others define him as the inspirers of modern extremism. They emphasise that his religious conclusions became the foundation of Wahhabism in the 18th century, and the extremist group ISIS, which emerged at the turn of the 20th-21st centuries and referred to his teachings. The ideologists of extremism constantly refer to its fatwas, giving them a more radical interpretation in some cases.

Despite scholars being heavily invested in studying the legacy of Ibn Taymiyyah, there is a small number of works dedicated to his religious and legal conclusions, some of which are still unexplored. Therefore, the study discusses some of his fatwas, which relate to the topic of haram and halal in the first place. K. Bori [1], I. Dayeh [2], F. Griffel [3], D. Hoover [4; 5], M. Kylych [6], K. Khan [7] are among the most famous scholars of Ibn Taymiyyah's legacy. The theoretical significance of the work is in a more detailed study of the conclusions of Ibn Tayimiyyah, which are still the subject of discussion in the Islamic world, and in assessing the correspondence of his innovative ideas to the opinion of most Islamic theologians. The study reveals the contradictions on the matters of faith and generally accepted religious practice among Muslims. The results of the study of the religious conclusions of Ibn Taymiyyah can be used both in the secular science for compiling courses in various disciplines, and in Islamic theology for conducting a comparative analysis and assessing their compliance with the Islamic faith.

A. Laust [8] was one of the founders of the study of the heritage of Ibn Taymiyyah in Western countries. K. Zagar [9; 10] studied his role in the emergence of Wahhabism and analysed some of his religious conclusions. Ya. Maihula analysed his anti-Mongol fatwas [11]. Ya. Friedman translated some of his works into English and analysed his attitude towards the Alawites and the religious conclusions against this religious group [12]. Makari discussed the principles of social ethics followed by Ibn Taymiyah [13]. A. Al-Matrudi studied the role of Ibn Taymiyyah in the development of the Hanbali madhhab and attempted to analyse

whether he was a follower of this religious and legal school [14]. D. Shestopalets analysed legal opinions against Christians [15]. The studies of Ya. Mishot, who dedicated a number of his works to the personality and teachings of Ibn Taymiyyah, are worth of special notice. However, these studies are not sufficiently objective due to the fact that the author sympathises with some of the ideas of this religious scholar [16]. He also studied the features of the religious conclusion of Ibn Taymiyyah "Marda Fatwa", as well as the conclusions on the status of monks [17; 18] and his criticism of the imamate doctrine in Shiism [19].

1. MATERIALS AND METHODS

Methodology is the core of any academic research [20-24]. Using a particular method of study allows revealing all the facets of the subject matter to the fullest. The choice of research method depends primarily on the scientific field of the study. At the same time, it is of great importance to combine the methodological principles of various sciences and to obtain new syncretic research methods.

In this study, general scientific and general philosophical research methods, and the methodology of religious studies and Islamic in particular studies were used. A new area for the research should be the search for theological methods that can be applied in religious studies in general and in Islamic studies in particular, and the development of new scientific methods that can be used in the study of Islamic theology. Notably, the Islamic studies possess versatility which includes a considerable number of research techniques adopted in various humanities, ranging from philology to sociology and psychology. This feature allows studying comprehensively studying religion and all aspects of Islamic civilisation comprehensively, which in the modern world is not limited to any region but has acquired a global comprehensive character. Along with the general philosophical methods, comparative analysis was used to compare the ideas of Ibn Taymiyyah to the opinions of Islamic theologians.

The specifics of the study provide for some methods that are usually used by Islamic theologians such as qiyas (analogy). The main research method was the study of the original texts of Ibn Taymiyyah's works and the comparison of his religious conclusions with the opinions of Islamic theologians. This method allowed establishing that the legal conclusions of Ibn Taymiyyah contradict the opinion of the scholars of the Hanbali madhhab. Therefore, this religious scholar became the founder of his madhhab and most often relied on his opinion and the opinion of early anthropomorphists who considered themselves to be Hanbalites.

2. RESULTS AND DISCUSSION

2.1. The main theses of the teachings of Ibn Taymiyyah

Ibn Taymiyah contradicts the unanimous position of Islamic scholars (ijma) in 60, and some say even 100 questions on religious and legal matters. Scholars note that Ibn Taymiyyah's ideas were not popular among the intelligentsia and his supporters were always in the minority, both in his time and in following centuries. K. Bori believes that despite the apparent popularity of Ibn Taymiyyah's ideas among the masses, they were not recognised by Islamic theologians and were considered contradictory to religion.

His religious conclusions are analysed and examples of some issues where his conclusion contradict Sharia Law are presented. Notably, he considered the argument and not the opinion of scholars of any madhhab to be the main aspect when making legal decisions. This suggests that the unanimous opinion of Islamic scholars is not an authoritative source for him. In his opinion, the argument is only the information of a religious nature, which was given by the Prophet Muhammad. People who do not seek an argument lost the true path [25]. Ibn Taymiyyah believed that the best role models were Muslims from the first three generations [26]. This idea provided for him making some legal decisions that are not typical for well-known law schools. At the same time, he allegedly appealed to the opinion of the Salafs, which is the name of the Muslims of the first generations. Some religious conclusions are purely his personal opinion and are not found in works of other theologians.

At the same time, the contemporary religious scholar Muhammad Yasser al-Hanafi claims that Ibn Taymiyyah respected the opinion of the scholars of the four most famous schools of Sunnism, and said that following each of these madhhabs is Islam [27]. At the same time, his statement that it is not obligatory to follow any madhhab was discovered. In the "Jamiul Masail", he forbids to accuse a person of disbelief if one follows only the Koran and the Sunnah, while not adhering to any of the four schools [28]. He stressed that the issue of following a particular madhhab provoked disputes and contradictions that were not resolved during his lifetime. Notably, this issue is the subject of disputes and disagreements up to the present day.

The study examined Ibn Taymiyyah's ideas about the concepts of "halal" and "haram" and what he meant by these terms. He emphasised that only what is permitted under the Sharia law should be considered permissible and mandatory, only what is prohibited by the Sharia law should be considered forbidden.

Y. Kardavi quotes him saying that the jurists of the early period of Islam said the word "haram" only when they found a specific indication of the prohibition of something [29]. In his opinion, Islamic theologians are the ones who should give a correct explanation of religious issues, since they have a deeper knowledge than ordinary believers and are the leaders on the true path for them [30]. At the same time, scholars may differ in the level of knowledge and understanding of a particular religious issue.

His fatwas on forbidden and permitted meat products were examined. Particularly, in the volume 35 of "Majmua al-Fatawa", he discusses the rules for slaughtering livestock. In volume 22 of the same book [31], he mentions the rules related to the use of forbidden foods in case of unbearable hunger and lack of other products. He said that if a person is forced to eat the meat of a dead animal, etc., then it is obligatory to eat considering the opinions held by the scholars in the four madhhabs. When analysing his fatwas on this topic, it was found that they generally correspond to the opinion of most Islamic theologians.

In his work "Permissible and Forbidden in Islam", a modern religious activist and a follower of the ideas of Ibn Taymiyyah Yu. Qaradawi notes that the mentioned prohibitions on the use of forbidden things are relevant only for those situations when a person has a choice. In the case of hunger and the inability to find the permitted products, a different rule applies. The concept of "necessity" refers to the satisfaction of hunger with forbidden food in critical situations. Some people think that they should go a day without food. In this case, one can eat just as much as one needs to survive [29]. It also allows using tanned dog and pig skin [29]. Notably, Yu. Qardawi allows to consume meat from strangled or electrocuted chickens if the People of the Scriptures consider this method of slaughtering cattle acceptable to them and prohibits the use of meat imported from communist countries [29].

He notes that the opinions of legal experts have diverged regarding the use of medicines that contain prohibited ingredients. And if some of them believe that they should not be consumed, others argue that the need for medicine is similar to the case with food since both are necessary for survival. Based on personal observations and the opinions of experienced doctors, Yu. Qardawi concluded that there is no medical necessity that forces to take medicines that contain prohibited substances. In addition, there are certain religious conclusions by Ibn Taymiyyah regarding the economic sphere. A. Maulidizen analyses his religious conclusions about economic relations. Explanations on this issue are in the many volumes of "Majmua al-Fatawa", as well as in separate books on the political and economic system of the state, including "Kitab al-Siyasa", "Al-Hizba fi al-Islam", etc. and it shows that this religious scholar considered what is permissible and forbidden in economic relations [32].

As for the interpretation of the divorce by Ibn Taymiyyah, Abdullah al-Harariy in the work "Makalat Sunniyah fi dolyalat Ibn Taymiyah" [33] quotes the words of the famous historian al-Hafiz Shamsuddin Ibn Tulun from the book "Zahair al-Qasr" listed issues where his opinion contradicts the Islamic faith and the generally accepted opinion of Islamic theologians. He also mentioned some issues that contradict the most authoritative opinions in the madhhabs. He mentioned the oath of divorce and cited the statement of Ibn Taymiyyah, who believed that this vow did not count as a divorce but that atonement should be made. No one had suggested this opinion before. Afterwards some people held a similar opinion on this issue for a long time.

One of the most controversial and discussed fatwas of Ibn Taymiyyah is his religious conclusion about a triple divorce. He addresses this issue in Volume 33 of "Majmua al-Fatawa". When discussing his idea, it was found out that one of the inconsistencies in Islamic legal practice is the decision on a triple divorce. This fatwa has always been controversial and became the reason for his imprisonment and the ban on issuing fatwas on this issue. This religious incarceration became the controversy and is still discussed in the Islamic world. Some scholars disagree with his opinion, while others are guided by his religious conclusions.

In addition, Ibn Taymiyyah proposed an original idea that during menstruation (al-Haid) divorce is not valid. He also said that a triple divorce is considered a one-time divorce, but in another book, he agreed with the unanimous opinion of Islamic theologians that a triple divorce is considered a triple divorce. Then he wrote that anyone who disagrees with it is not a Muslim. After a while, he the conclusion about a triple divorce being considered as one. There is mutually exclusive idea on this issue, which is common for the works of this religious scholar. These mutually exclusive ideas on various issues are frequently mentioned in his works. As a result, he accused himself of unbelief.

Many people began to adhere to the idea of Ibn Taymiyyah, which is an illegal innovation. Ahmad Al-Shuwaiki (d. 1599) allowed a woman to return to her husband after a triple divorce secretly. Islamic theologian Najm al-Din Al-Gazzi publicly expressed his disagreement with this opinion and criticised it of being inconsistent with Islam. This case indicates that people who agreed with some of Ibn Taymiyyah's views were under great pressure and followed his ideas secretly. Many scholars believe that Ibn Taymiyyah was one of the first to claim that the trip to the grave of the Prophet Muhammad (ziyarat) is one of forbidden innovations. However, there is historical evidence that in Baghdad during the rule of the Shiite Buid dynasty (945-1061), there

was an armed confrontation between the pseudo-Khanbalites, who managed to organise paramilitary groups, and the Shiites, who were supported by the government. In 1089, they managed to organise an uprising against the administration of Baghdad, and the Shiites who lived in the Karkh area. The Caliph brought troops under the command of Sayf al-Dawla into the city, and the pseudo-Khanbalites suffered a crushing defeat [34]. During the confrontation there was the destruction by the pseudo-Khanbalites of the Quraysh cemetery, where the descendants of Imam Ali were buried. This event occurred in 1051 [34]. I.B. Mikhailova finds the connection between the destruction of the cemetery with the Shiite flags used by pilgrims, where the name of Imam Ali was written that irritated their opponents.

This raises the question about what caused the destruction of this cemetery: either banal hatred of Shiites, or the emerging trends of denial of ziyarat, or that its denial originates in the rejection of Shiite rituals on the Day of Ashura. There are possibly several reasons, and the denial of ziyarat by some pseudo-Khanbalites originates in the rejection of Shiite ritual practices, which they eventually transferred to the Sufis who visited the graves of their sheikhs. A few centuries later, Ibn Taymiyyah declared that it is forbidden to travel to visit the grave of the Prophet Muhammad. Therefore, the tendencies of rejection by the pseudo-Khanbalites of ziyarat developed in several centuries before the birth of Ibn Taymiyyah and he cannot be considered to be the first to oppose this Islamic ritual.

Graves of famous people were also visited by Sunnis during that historical period, and one of these graves belong to Musab ibn al-Zubayr, the brother and companion of the Prophet Muhammad – Abdullah ibn Zubayr. Grave of this particular person were most likely visited by Sunnis in contrast to the religious practice of Shiites, who did not like him and visited the graves of other people. At the same time, the ceremonies of visiting cemeteries were quite similar [34]. Notably, when visiting the graves, the warring parties were forced to cross each other's areas of residence, which led to violent clashes at least twice a year. Supporting his opinion on the prohibition of ziyaratah, Ibn Taymiyah refers to Imam An-Nawawiyah, who said that opinions of the scholars differed regarding the trip to other places besides the three mosques [35]. However, he did not deny ziyarat but only mentioned that the opinions of scholars differed on the issue of going to other mosques except for the mosques in Mecca, Medina and Jerusalem. It means that the full dignity is gained only through the trip to these three mosques.

2.2. Inconsistency in ibn Taymiyyah's views

Ibn Taymiyah argued with the saying of the Prophet Muhammad, who said that whoever visits his grave is worthy of his intercession. This saying was transmitted by Ad-Dar Kutniyah and confirmed by the well-known Islamic theologian As-Subki. Notably, Ibn Taymiyah believed that the dead have knowledge of the living. For example, in the book “Majmua al-Fatawa” [31], when answering the question whether the dead have knowledge that they are visited by the living, and also whether they know that one of their relatives is dying, he said that there are many sayings by the prophet about their meetings, conversations and that the dead see the deeds of the living. It is also said that the dead recognise the living who visit them.

Shiite sources indicate that Ibn Taymiyyah claimed that there are no reliable sayings that would allow for a trip to visit the grave of the Prophet Muhammad and the Prophet Ibrahim. They also quote him saying that most of the hadiths about the visit to the Prophet's grave are fake, and that the authoritative imams do not convey the Prophet's sayings on this matter. At the same time, they noted a contradiction in the views of Ibn Taymiyyah, who quotes the words from a hadith of Ibn Maji and Al-Darakutni, where the prophet said: that any person who visits his grave after death paid him a visit as if during his lifetime. When commenting this saying, Ibn Taymiyah expressed doubt about its authenticity, and said that the experts of the hadiths do not mention anything about visiting the graves [36]. Ibn Taymiyyah's ideas about ziyaratah influenced the Wahhabis' attitude towards this Islamic tradition.

In addition, Ibn Taymiyyah was opposed to the construction of mausoleums for the graves of famous people, which was widely practiced in the Islamic world. In his most famous work “Majmua al-Fatawa” [31], he states that scholars are unanimous regarding the idea that a mosque should not be built over a grave. He claimed that in the blessed times of the Salafs no mausoleums or monuments were built over the graves. He believes that monuments and domes were built in the country of the Fatimids (in Egypt during the reign of the Shiite Fatimid dynasty) for the first time [31]. At the same time, the emergence and spread of the practice of building domes and mausoleums is referred to the period of weakening of power in the Abbasid state by Ibn Taymiyah [31]. Then he claims that building a mosque over a grave or lighting a lamp over it is a disobedience to Allah Almighty and the instructions of the Prophet Muhammad.

The contradictory views of Ibn Taymiyyah most clearly demonstrate his attitude to tawassul, which is a prayer addressed to the Almighty for the sake of (through) the prophets and saints. This practice is mostly

used by the supporters of Sufism. If in some books he allows tawassul, in others he denies such a practice radically. For example, in "Mediation" [37], he wrote that there is a forbidden tawassul and gives such examples as: 1. Approaching the Almighty by mentioning in the supplication a high position held by someone with Allah such as mentioning the Prophet. 2. An attempt to obtain the mercy of the Almighty through the supplication of a dead person, that is, a living person turns to a dead person and asks to pray for them. 3. Approaching God by appealing to someone's personality, such as someone who says, "O Allah! I ask you for the sake of your prophet" [37]. He believes that these types of at-tawassul include features of innovation (bid'a) and elements of shirk at the same time [37].

Islamic theologians believe that Ibn Taymiyyah was the first to prohibit tawassul, and that no one before him had prohibited these actions. At the same time, some tendencies towards the future denial of tawassul were discovered in the early period of the history of Hanbalism. When discussing the biography of Ibn Taymiyyah, Mahdi Istanbuli quotes him: it is unacceptable to ask for help from the dead without considering Allah, even if it is a prophet, it is also unacceptable to ask the dead for a request, or for Allah to fulfil the prayers for the sake of the dead, to ask God to fulfil the requests for the sake of the high position of someone before him. He considered this to be paganism in the worship of the Almighty [38].

In the book "Talhis al-istigasa" [39], Ibn Taymiyyah said that one of the greatest types of hostility towards Allah, humiliation and baseness is making a request (du'a) not to Allah. He considered this to be a form of polytheism, and in "Majmua al-Fatawa" [31] he stated that anyone who calls (with a request) not to Allah is a polytheist. In the same collection of fatwas [31], he cited a saying that the request for the help of the created one from the creation (Allah) is like the request of the drowning one from the one who is drowning. In the book "Ar-Radd ala al-Ikhnai" [40], Ibn Taymiyyah said that from some of the later (scholars) began innovations on this matter, which was not considered desirable by any of the four imams. It was similar to asking the prophet for forgiveness while standing at his grave.

He also disapproves of asking for help from other living people and says that asking for something from people is forbidden but has become allowed because of the universal need for people to do it. However, it is preferable to leave it by trusting in Allah. He went on to say that asking people for something results in a number of bad consequences [41]. However, in other books, he allowed performing of tawassul, and in a book called "Kalimut-toyib" he said that there is a hadith recorded by Al-Bukhari in the book "Al-adab al-mufrad" [42] from Ibn Umar that, one day, his leg was very sore and he said: "O Muhammad!". This hadith was also narrated by Ibn as-Sunniyah in "Amal al-yaum wa laylah" and by An-Nawawiyah in "Al-Azkar", by Shamsuddin al-Jazariyah in "Al-Husun al-Hasyin" and "Muhtasar al-husun al-Hasyin". In his book "Al-Qalamut-toyib", Ibn Taymiyyah reported from Al-Haysam ibn Hanash that one day when they were visiting Abdullah ibn Umar, he had a severe pain in his leg. One person said to him: "Tell me the name of the person you love most". He said: "O Muhammad!", and the pain immediately subsided.

In the book "Ayan al-asr wa awan an-nasr" [43], As-Safadiy tells the story that Ibn Taymiyyah narrated when he listed in his work the books written by this author, he confirms that the prophet can hear everyone after death, and respond to the greeting of any person [44]. He admits that the Salafis turned to God for the sake of the prophet and called out "Ya Muhammad!", and in the first volume of the "Majmua al-Fatawa" [31], he writes that this man used the well-known formula of tawassul [44] when appealing to the Almighty. In addition, he reported that Ahmad ibn Hanbal performed tawassul in the name of the prophet [45]. As a result, Ibn Taymiyyah contradicted himself in his attitude to tawassul. This ambiguous idea has developed most likely due to external pressure on Ibn Taymiyyah, and he, depending on the situation, denied or confirmed the permissibility of these practices.

Contrary to the opinion of the scholars of the Hanbali madhhab such as Ibn Qudamah al-Maqdisi, Ibn Taymiyyah believed that the dead do not receive a reward for reading the Qur'an for them. In general, he had an ambiguous attitude towards Sufism and devoted the 11th volume of his fatwa collection "Majmua al-Fatawa" to this issue. One of rather controversial decisions of Ibn Taymiyyah was the declaration of jihad to be the duty of every person (fard-ain). At the same time, it is generally accepted that jihad belongs to the category of fard-kifaya. He also denies the saying of the Prophet Muhammad about big and small jihad and recognised only the military form of jihad. When referring to Ibn Taymiyah, Ibn Nahhas (d. 1411) believes that in the works of the scholars of the past jihad only means battle. If they believed that the word "jihad" includes other meanings, it would be reflected in their books.

In the study by L.B. Mayevskaya, Ibn Taymiyyah's statement regarding the battle for the sake of protecting religion is quoted. Considering the unanimity of scholars, this is necessary. After believing in God, there is nothing more important than to fight an enemy that destroys religion and earthly life and does not mention the conditions for doing so. They must defend as much as they can [46]. He also cites the dictum that guarding the sea border at night is better than a man working for his family for a thousand years, and believes

that jihad has an advantage over other forms of worship. He also believes that a Muslim's stay on the border guard is better than staying in Mecca, Medina, or in the Holy Mosque (Al-Aqsa) of Jerusalem [31]. Ibn Taymiyyah considered jihad to be the reason for guidance on the true path and says that jihad was the reason for guidance on the straight path, which is surrounded by the doors of knowledge.

In his opinion, the rejection of jihad deprives a Muslim of happiness in both worlds fully or partially. He believed that the most important type of obligatory jihad is the fight against non-believers and that defensive jihad is mandatory for every Muslim (fard ain), and that it is forbidden to retreat even if the enemies outnumber the Muslims more than twice. This is due to the fact that this type of battle is a duty, and not a personal choice. The Muslims fought on the day of the battle of Uhud, as well as when the Tatars captured Damascus. At the same time, he recommends leaving jihad together with unjust rulers [31] and proposes the original condition for jihad, which is the presence of force. In the book "As-Saarim al-Maslyul", Ibn Taymiyyah says that the verses, where there is a call to lead jihad, are used only when Muslims have power and a leader. If there is no power and no leader, then Muslims should be guided by the verses that command patience.

2.3. Innovations in religion as a negative phenomenon

In the works of Ibn Taymiyyah, a negative attitude to innovationsis significant, especially regarding his most famous volumes of the book "Majmua al-Fatawa". In one of his books, he said that there are two types of innovation: through words and beliefs and through deeds and worship. The second type includes the first one, and the first calls for the second [31]. In Al-Istiqama [47], he said that innovation is related to schism in the same way that the Sunnah is related to unity. In another volume of "Majmua al-Fatawa" [31], Ibn Taymiyyah states that the main proponents of innovation usually do more harm to the Muslim community than people who just commit sins. He believes that it is the reason why the Prophet Muhammad considered it necessary to kill the Kharijites and forbade fighting with the unjust rulers of the Muslims at the same time. Ibn Taymiyyah believed that one of the reasons for delusion is innovation in religion, and debauchery in everyday life [31].

In his work "Majmua al-Fatawa" [30], he states that Christians are happy with the customs of the innovators from among the Muslims when they do what is appropriate to Christianity, and become similar to them. In the book "Al-Iktida" [44], Ibn Taymiyyah said that one of the main reasons for the loss of the religion of Allah and his laws is following the traditions of non-believers. He believed that innovation spreads gradually and at first it is only a span. Then, the number of its adherents increases gradually until it turns into a larger community [31]. Therefore, he believed that the explanation of the idea of the innovation followers and a warning against them is mandatory [31]. Ibn Taymiyyah even equated people who refuted the beliefs of the adherents of innovations with the participants of jihad [31]. He has repeatedly pointed out [31] that Islam is based on two principles: no one should be worshipped except the one God, and the Almighty should be worshipped only as he commanded it to be done through his messenger, and not through innovations. Ibn Taymiyyah believed [31] that the adherents of innovations are worse than those who commit sins by following their passions. This is evidenced by the Sunnah and the unanimous opinion of the scholars.

Ibn Taymiyyah considers Mawlid to be one of the innovations (bidah) and treats it negatively. In the book of "Iktida" [44], he says that as for the glorification of the birthday of the Prophet and the celebration of this day, some people do it, and they might be given a great reward for this act because they have a good intention and the glorification of the Messenger of Allah. Somewhat earlier, he says that the first generations of Muslims did not celebrate Mawlid [44]. In this study, it was found that many of the students of Ibn Taymiyyah treated Mawlid positively, and modern adherents of his ideology treated it negatively, considering holding events in honour of the Prophet Muhammad worse than drug use. This religious scholar urged not to perform collective and Friday prayers for those who, in his opinion, adhere to any innovations and commit unholy acts. He also urges not to accept the opinion and testimony of any scholar who could be adhering to an innovation secretly. In his opinion, this is a manifestation of God-fearing [31]. Notably, these practices can contribute to disagreements and shatter the community, provoke confrontation and even armed conflict. In his volumes of religious conclusions "Majmua al-Fatawa" [31], he says that a person is allowed to perform the five daily prayers, which are the Friday prayer, and others for any person who is not known to him as a supporter of innovation or impiety. This is the unanimous opinion of the imams of the four madhhabs and other Muslim scholars. It is not necessary to find out the imam's beliefs and examine him to pray for the imam. He prays for someone whose status is unknown to him. At the same time, he declares the handshake after prayer to be an innovation [31].

It is a curious fact that he denied the practice of praying on a mat, which is well known among Muslims. Ibn Taymiyah claimed that making prostrations on the prayer mat is a forbidden innovation and claims that the companions of the prophet and representatives of the first generation of Muslims did not pray on the mats [31]. He believed that laying carpets in the mosque is an innovation, even if they are laid in the mosque of the prophet [31]. Notably, the Wahhabis did not accept this view of Ibn Taymiyyah and use carpets and rugs during namaz. The radical Wahhabi sect of the Hajurites, who live mainly in Yemen (Damaaj), do not use mats, do not decorate mosques, do not build minarets and mihrabs, considering it all to be innovations.

In addition, it is necessary to consider the original idea of Ibn Taymiyyah regarding the Muslim reading of the dhikr "Allah". In the book "Ar-Ra'ad ala al-Mantyqiyn" [48], he said that there is no benefit from pronouncing this word either on earth or in heaven. Thus, reading such a dhikr is considered an illegal innovation. At the same time, the categorical denial of all innovations contradicts the sayings of the Prophet Muhammad, who said that acts that do not correspond to religion will be rejected and his followers will not unite to spread misconceptions and the opinion of Islamic scholars, who divided innovations into those allowed by religion and prohibited by Sharia. Notably, this medieval religious scholar opposed radically to the use of any musical instruments, considering that they are prohibited and that this is the opinion of the imams of the four madhhabs [31]. At the same time, in different madhhabs, the prohibition of musical instruments is interpreted somewhat differently, and the use of percussion (drums, tambourines) is allowed. He considered any music to be the wine for the soul [31]. He goes on to say [31] that singing and beating tambourines and clapping hands are the acts of women, and those men who did such things were called effeminate men ("muhannas"). They also considered singers to be effeminate men.

Similar to the early pseudo-Khanbalites, who advocated for a strict separation of men and women, Ibn Taymiyyah forbade young women to attend weddings and funerals [49]. He believed that when men and women mix, it is similar to a mix of fire and wood [47]. The Prophet Muhammad did not demand such a thing, and women who were not related to him communicated with him, asking him religious questions personally. Modern Wahhabis mainly in Saudi Arabia engage in this practice. Notably, there has been a tendency to weaken the ban on mixing men and women recently. Among his erroneous opinions, there is an idea regarding marriage with a woman who does not perform prayer. He considered marrying her to be worse than marrying an adulteress, a thief, and a drinker. This idea of Ibn Taymiyyah is related to the fact that he believed that friendship, entering into kinship relations (through marriage) and brotherhood are all forbidden, except with people who obey the Almighty Allah, and do it exactly as Allah himself wills [31]. However, it is known that a Muslim man is allowed to marry Jewish and Christian women, who are among the people of the Book and, thus, do not perform the fivefold prayer. The teachings of Ibn Taymiyyah and the beliefs of the Kharijites mention the concept of "Al-wa'al al-ba'ar", popular among modern Wahhabis, that is, the "Concept of sympathy and antipathy", which implies that Muslims are exclusively adherents of Muhammad ibn Abd al-Wahhab, and all others are infidels.

2.4. The influence of ibn Taymiyyah's views on the Islamic world and the relations of Muslims with representatives of other faiths

Here, some of his especially radical religious conclusions are presented. They are directed against both Muslims and representatives of other faiths. In his book "Majmua al-Fatawa" [31], Ibn Taymiyyah wrote that any person who claims that it is necessary to adhere to the opinion of one particular imam should be killed if he does not change his opinion and does not repent. Thus, according to Ibn Taymiyyah, it is necessary to kill the Wahhabis, whose teachings are mainly based on his teachings. He also argued in "Majmua al-Fatawa" that a person who believes that a traveller is obliged to perform four rakyat prayers and perform a fast in the month of Ramadan contradicts the unanimous opinion of Muslims and is lost. If he does not change his mind and repent, then he must be killed. As a result, according to Ibn Taymiyyah, many Muslims should be killed.

When referring to Ibn Khuzayma, Ibn Taymiyyah called for the killing of anyone who disagreed with his anthropomorphistic interpretation of the faith. He accuses them of disbelief and demands that they be put to death. In the "Majmua al-Fatawa" [31], it is written that Imam Ibn Khuzayma said that anyone who does not believe that God is on his Throne above the seven heavens is an infidel (kafir), and it is permissible to shed his blood. This person is given some time to perform penance, and if one does not repent, then one's head should be cut off and thrown in the trash. As a result, according to Ibn Taymiyyah, all Muslims should be killed, since in Islam the traditional faith is considered akida tanzih, that is, belief in a God who has no likeness, and he adhered to the tashbih faith and likened God to his creations, which is borrowed from the teachings of other faiths, and in Islam, it is considered as disbelief.

In addition, Ibn Taymiyah accused [31] any person who claims that Allah cannot be seen in the future world of disbelief. He believes that this person is an unbeliever who rejects the Qur'an and does not believe in Allah. In his opinion, this person must repent, or otherwise one must be killed. Thus, this fatwa is primarily against the Jahmites and Mu'tazilites, who deny the possibility of seeing the Almighty. In addition, in the "Majmua al-Fatawa" [31], there is a case about Ibn Taymiyah being asked whether the person who claims that Allah did not speak to the prophet Musa with his voice was right. Ibn Taymiyah replied that this person is wrong and is an infidel, and should repent. If one does not repent, then one must be killed. In addition, in Majmua al-Fatawah, [31] he refers to the scholars of the first generations of Muslims and says that any person who claims that the Qur'an was created must repent, otherwise one should be killed. This fatwa is primarily against the Mu'tazilites. In "Majmua al-Fatawa" [31], Ibn Taymiyyah declares non-compliance with the basic precepts of Islam to be disbelief. Notably, the fatwas of Ibn Taymiyyah do not promote interfaith dialogue. He has proposed a number of religious ideas targeting Alawites, Druze, Shiites, Mu'tazilites, Jahmites, and Christians. He is the only author of fatwas against the Alawites, which are now used against them by extremists in Syria.

Yu. Qardavi [29] quotes "Iktida as-Siratul-Mustakim" by Ibn Taymiyyah on keeping the difference between Muslims and non-Muslims in everything because this leads to committing unworthy deeds and even imitating their religious traditions. He also believed that a person follows the same religion that his close friend follows. Therefore, he believes that it is impossible to be friends with non-Muslims [31]. Therefore, Ibn Taymiyyah believed that it is forbidden to attend the holidays of Jews and Christians, and to sell them goods for the holiday [30] He argued that if the Muslims sell to the infidels on their holidays something that they can use for the event: food, clothing, incense, etc., or give them this, then they assist in organising the forbidden holiday [44]. Nowadays, these religious conclusions are very popular among representatives of the Wahhabi movement, who spread them through various social networks. He considered complete assimilation to non-Muslims to be a sign of disbelief [44]. He prescribed different vicious qualities to Jews and Christians [31].

Whether or not Ibn Taymiyyah belonged to the Hanbali madhhab is discussed. Sharif believes that he belongs to the Hanbali madhhab, but his influence is not limited to only one school [50], other scholars believe that he belonged to the Hanbali. However, after analysing his religious conclusions on many religious issues, it can be stated that they contradict the opinion of Islamic theologians who belong to this religious school, and this contradiction is vivid most clearly in the fact that Ibn Taymiyyah and the Hanbali scholars have an opposite idea about concept of God. This also applies to other religious conclusions.

As for his legal conclusions, in one of his works, I. Dayeh states that the intellectual heritage of Ibn Taymiyyah became the subject of lively academic disputes after his death. Most scholars believed that Ibn Taymiyyah's views had no influence on the Islamic world after his death and until the 19th century, especially outside the followers of the Hanbali madhhab [2]. He believes that it is impossible to deny the influence of Ibn Taymiyyah on religious and philosophical thought before the 19th century. He influenced the writings of Abu Ishaq al-Shatibi Al-Gharnati (d. 1388), who is one of the representatives of the Malikite madhhab. At the same time, E. Bazzano points out that the borrowing of the ideas of Ibn Taymiyyah was often selective in following centuries [51]. The spread of Ibn Taymiyyah's contradictory ideas created tension in the main centers of Islamic knowledge [52].

At the same time, K. Bori cites the opinion of Khaled Ruayhab, who believes that Ibn Taymiyyah did not actually have a significant influence on the development of the history of Sunni Islam from the 14th to the 17th centuries [52]. He believes that his books were not popular among Sunnis and were not usually studied in religious educational institutions. The supreme judges of the four madhhabs examined Ibn Taymiyyah's views in detail and unanimously condemned his teachings [53].

CONCLUSIONS

When studying the religious conclusions of Ibn Taymiyyah on the issues of "halal" and "haram", the authors came to the conclusion that, contrary to the opinion of many scholars, he does not belong to the Hanbali madhhab since his many ideas contradict the position of scholars of this religious and legal school. If some scholars consider him to be a representative of this school, others hold the opposite opinion, believing that he founded his special school, which teachings were borrowed by Muhammad ibn Abd al-Wahhab several centuries later and on which became the foundation of the Wahhabism movement. After studying the religious conclusions of Ibn Taymiyyah, it can be concluded that many of them contradict the position of the Islamic theologians of the four madhhabs. This is demonstrated through his concept of God and the religious and legal conclusion on a triple divorce, which provoked disputes that last to this day. As a result, it can beargued that

the popularisation of the teachings of Ibn Taymiyyah does not contribute to the establishment of inter-religious dialogue and the harmonisation of inter-confessional relations.

In the future, it is advisable to conduct an in-depth study of individual fatwas of this thinker to establish their compliance or non-compliance with Islam. The results of the work can be used by Islamic theologians, as well as specialists of secular academic disciplines: Islamic scholars, religious scholars, jurists, historians and philosophers when preparing practical courses for these disciplines.

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Suggested Citation: Maevskaya, L.B., & Aga, Kh.M. (2021). Ibn Taymiyyah and his fatwas on forbidden (haram) and permissible (halal) issues. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(4), 82-92.

Submitted: 27.07.2021
Revised: 19.10.2021
Accepted: 02.12.2021

УДК 342.34
DOI: 10.37635/jnalsu.28(4).2021.93-103

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МЕТОДОЛОГІЯ ДОСЛІДЖЕННЯ КОНСТИТУЦІЙНО-ПРАВОВОГО СТАТУСУ УКРАЇНСЬКОГО НАРОДУ

Анотація. *Актуальність теми «Конституційно-правового статусу Українського народу» вбачається, насамперед, у тому, що розуміння Українським народом своєї сутності, свого політико-правового становища, у контексті усвідомлення власної правосуб'єктності, принципів, повноважень, гарантій, тобто певних елементів, що включаються у зміст конституційно-правового статусу на сучасному етапі розвитку та розбудови України, як демократичної, соціальної та правової країни, є дуже важливим, доцільним та, для політичної, правової та інших систем будь-якої країни, системоутворюючим. Також варто зазначити, що означена проблема, незважаючи на її фундаментальність, основоположність, наукову перспективність, недостатньо доктринально опрацьована українськими науковцями. Це зумовлюється багатьма детермінантами, з яких найбільш наочними є два чинники. По-перше, домінуванням в українській юридичній науці доктринальних підходів, за яких не визнавалось існування конституційно-правового статусу Українського народу загалом. Вважалось, що правовим статусом можуть наділятися виключно тільки фізичні та юридичні особи. По-друге, українські вчені, традиційно, перевагу надавали дослідженню усталених інститутів, насамперед безпосередньої демократії, що прямо регламентовані у Розділ ІІІ Конституції України, тобто виборам і референдумам. Метою є з'ясування методологічної бази щодо вивчення конституційно-правового статусу Українського народу. На основі отриманих висновків та узагальнень розроблено методологічну основу для вивчення конституційно-правового статусу Українського народу*

Ключові слова: *методологічний комплексний підхід, загальнонаукові методи, спеціальні методи, власно-правові методи*

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METHODOLOGY OF RESEARCH OF THE CONSTITUTIONAL AND LEGAL STATUS OF THE UKRAINIAN PEOPLE

Abstract. *The relevance of the topic "constitutional and legal status of the Ukrainian people" is seen, first of all, in the fact that the understanding of the Ukrainian people of their essence, their political and legal status, in the context of awareness of their own legal personality, principles, powers, guarantees, that is, certain elements included in the content of the constitutional and legal status at the present stage of development and development of Ukraine as a democratic, social and Legal country, is very important, appropriate and, for the political, legal and other systems of any country, system-forming. It should also be noted that this issue, despite its fundamentality and scientific prospects, is not sufficiently doctrinairely studied by Ukrainian scientists. This is due to many determinants, of which two factors are the most obvious. First, the dominance of doctrinal approaches in Ukrainian legal science, which did not recognise the existence of the constitutional and legal status of the Ukrainian people as a whole. It was considered that only individuals and legal entities can be granted legal status. Secondly, Ukrainian scientists have traditionally preferred to study established institutions, primarily direct democracy, which are directly regulated in Chapter III of the Constitution of Ukraine, that is, elections and referendums. The aim is to clarify the methodological basis for studying the constitutional and legal status of the Ukrainian people. Based on the obtained conclusions and generalisations, a methodological basis for studying the constitutional and legal status of the Ukrainian people has been developed*

Keywords: *methodological integrated approach, general scientific methods, special methods, legal methods*

INTRODUCTION

There is no doubt that in order to obtain objective knowledge about the constitutional and legal status of the Ukrainian people, the optimal choice and application of an effective theory of knowledge is crucial. The system-forming element of this theory is methodology. First of all, it should be recognised that the problem of methodology is extremely complex, ambiguous and insufficiently studied, and therefore modern scientific sources define and interpret this phenomenon in different ways. However, summarising various points of view, it can be concluded that in the Ukrainian doctrine, methodology is mainly considered as a teaching about the methods of scientific research, and the methods themselves are considered as a set of certain cognitive foundations, techniques, and means by which this research is carried out. In particular, in support of the above, it is stated that "methodology is the study of the rules of thinking in the process of creating science, conducting scientific research. The methodology of science is mainly understood as the doctrine of the scientific method of cognition or the system of scientific principles on the basis of which research is based and the choice of means, techniques and methods of cognition is made. 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 knowledge, for example, management methodology, pricing methodology, etc., but in this case it is more

appropriate to talk about the methodology of knowledge and actions" [1, p. 14].

The analysis of the above gives grounds to assert that methodology in the broadest sense is the doctrine of scientific foundations, approaches, principles and methods, as well as the doctrine of how to think when writing scientific research, and in a narrow sense it is a theoretical basis that is used or can be used in the process of scientific knowledge. In support of this, it makes sense to emphasise that in general, "methodology of science (from method and Greek λόγος – teaching) is a term that, depending on the context, can be perceived in different meanings: either as a set of research techniques used in a particular science, or as a teaching on methods of cognition and transformation of reality". Or note the term "methodology" literally means the teaching of the methods of cognition (from the Greek моδολογία) - the teaching of the methods, techniques and means of cognition. A methodology is a scheme, a plan for solving a research problem" [2, p. 71].

I.B. Fedyshyn notes that: "the concept of *"methodology"* has two main meanings: first, it is a system of certain rules, principles and operations applied in a particular field of activity (in science, politics, art, etc.); secondly, it is the doctrine of this system, the general theory of the method" [3, p. 21]. Understanding these definitions also convinces that methodology is not only the teaching of research methods of a certain science, but also how to implement ideas, goals, tasks, theoretically based conclusions, suggestions, recommendations, general knowledge in social life, because reality includes material and ideal, rational and irrational, positive and negative, progressive and regressive, which are reflected in the results of human activity – in the final definitions, classifications, generalisations, institutions, materials and products of the world of technology, politics, economics, spirituality, society, state, law, and so on. It must also be agreed that methodology is first and foremost the teaching of the scientific method of knowledge. Given this, it is advisable to analyse the concept of scientific research methods. Therefore, it should be noted that "method" (from the Greek methodos "method", "way", "path") – in the most general case, means a way to achieve a goal, a certain way of orderly activity.

The scientific method is a way of knowing the phenomena of reality, their interrelation and development. "Thus, according to this definition, it can be argued that a method is a way to achieve a certain goal, or a certain tool, a means by which one can know reality, its relationship and development, or "method" "way of research or cognition", "theory", "doctrine") – a way of organising the practical and theoretical development of reality, due to the laws of the object. With the development of science, there is a development and differentiation of methods, which leads to the emergence of the theory of methods – methodology" [4, p. 78].

Summarising the above, it can be argued that methodology is the study of scientific and cognitive foundations, approaches, principles, methods, as well as how to think in the process of writing scientific research, on the basis of which it is based and its transformation into reality occurs, by implementing ideas, goals, tasks, theoretically based conclusions, suggestions, recommendations, general knowledge in social life. And the method is a way of knowing the phenomena of reality, their interrelation and development. With the development of science, there is a development and differentiation of methods, which leads to the emergence of the theory of methods – methodology. "Methodology, developing a strategy of cognitive and practical activity, performs the following main functions: it directs scientific research in an optimal way in order to acquire new true knowledge; regulates the use of methods, techniques, tools in the process of knowledge and practice; generalises the results of scientific knowledge in various forms of knowledge; forms general principles and methods of scientific research" [5, p. 144].

The scientific basis of this article was the works of such scientists: I.M. Rassokha "Methodology and Organisation of Scientific Research" [1], I.B. Fedyshyn "Methodology and Organisation of Scientific Research" [3], V.I. Korbutyak "Methodology of a Systematic Approach and Scientific Research" [4], M.S. Kelman "Methodology of modern Jurisprudence [6], S.D. Gusarev "Legal Deontology (Fundamentals of Legal Activity)" [7], A.V. Minchenko "General Theoretical and Methodological Foundations Systems of Legal and Linguistic Knowledge" [8], I.S. Krivtsova "Methodological Role of Synergetics in Comparative Legal Cognition" [9], O.D. Tikhomirov "Comparativism as the Basis of the Philosophy of Law in the Post-postmodern Context" [10], etc.

Considering the above *the purpose of the study* is the identification and use of the most optimal and effective methodological basis suitable for understanding, interpreting the current state and predicting the further development of the constitutional and legal status of the Ukrainian people.

1. MATERIALS AND METHODS

The constitutional and legal status of the Ukrainian people can be understood using a comprehensive approach, involving a combination of a number of approaches: 1) philosophical principles: sovereignty; the rule of popular sovereignty; the primacy of popular sovereignty; the naturalness of popular sovereignty; the right

of people to self-determination, and the like; 2) philosophical approaches: methodological – for the study of self-concept, content, structure of research; integrated together with the previous one are fundamental and will determine the choice and use of all other approaches, principles and methods; culturological – gives the opportunity to explore the status of cultural heritage, to develop its general social and cultural safeguards; anthropological – on the basis of which will be developed by the entity status; phenomenological – will be introduced in the process of structuring element status and especially the allocation, realisation and interpretation of authority; the axiological (value) – will be useful in the process of consideration of the nature and principles as elements of the status; civilization – will provide clarification and substantiation of general civilizational function of status; systemic (system-structural and systemic-functional) will include consideration of the status, as a phenomenon that consists of parts (elements), connections between which form a relatively rigid structure and ensure its integrity; active – will be implemented in the development of general social and special legal guarantees of status; 3) methodological principles: scientific – will be used in the process of understanding the concept and structure of the elements that make up the status; historicism - will be implemented in the process of learning about the state of scientific research on the legal status of peoples; comprehensiveness, which will be based on knowledge of the essence, legal personality and principles of status; objectivity, which will be realised in the process of knowledge of powers; specificity – will determine a comprehensive and detailed analysis of the state scientific research, regulation of the legal status of peoples, the design of the study methodology, the concept of elements and entity status; pluralism – will ensure freedom of cognitive search, the ability to freely choose a research methodology; 4) general scientific methods: dialectical, which will lead to a comprehensive study of the status; the metaphysical, which will be used during the study of the existence of the constitutional, legal and actual status; hermeneutical, which is useful for study on the state of the research and regulation of the status; historical, as well as the methodological principle of historicism, will be aimed at understanding the state of research on the legal status of peoples; functional, will be implemented in the process of learning functions; synergetic, which will give the opportunity to understand and demonstrate the final uncertainty, complexity and objectivity applied to the elements of status, relatively weak determinism of legal personality; analysis that will take place in the process of finding common, most frequently used, signs of the people and their characteristics; synthesis, which will be introduced in the process of forming a holistic and common definition of the people; induction, with its help the introduction, results, and general conclusions to the specified scientific work will be prepared; deduction, on the basis of which the understanding of status will be formulated; abstraction, which will be used in the learning the legal capacity of the Ukrainian people; generalisation will be applied in the process of forming definitions, conclusions, proposals and recommendations; comparison will be realised in the process of comparing the powers of the Ukrainian people with those of similar other nations; 5) special methods: sociological, will include the need for research and the use of the judicial practice of the Constitutional Court of Ukraine; modelling, with the help of which the structure of the status of the Ukrainian people will be constructed; idealisation, as the status of the Ukrainian people, its legal personality, principles and guarantees are idealized objects; forecasting, will be used in the process of forming the results and general conclusions for this scientific work; 6) legal methods: historical-legal, together with the principle of historicism and the historical method, will contribute to understanding the state of scientific research on the status of peoples and the status of the Ukrainian people; comparative-legal, together with the method of comparison, will be implemented in the process of comparing the texts of various regulations; formal-legal, will allow identifying the characteristics and features of legal phenomena, processes and elements that will be known, to determine their common and distinctive features, to work out their understanding, to formulate definitions.

2. RESULTS AND DISCUSSION

The above gives grounds to formulate the conclusion that for the full study of the constitutional and legal status of the Ukrainian people a comprehensive approach is necessary, which means the application of the entire arsenal of principles, approaches, concepts and methods. Deepening the presentation of the methodology for studying the constitutional and legal status of the Ukrainian people, it is necessary, first of all, to mention the most significant ideological and philosophical foundations and approaches. At the same time, it should be agreed on that ideological and philosophical foundations and approaches are the most conceptual concepts, ideas, notions, doctrines, theories and actually philosophical (methodological) approaches that determine the focus, boundaries, directions, content, essence of all scientific research in a certain field of science, for the corresponding period of time, in a specifically defined society and state. In support of this, it is advisable to cite the opinion of M.S. Kelman, who suggests "...to define approach as a complex algorithm of comprehension of reality arising from the combination of "fundamental ideas" and certain methods, that is, as a specific unity

of ideological, theoretical and methodological knowledge, in which the main thing is the order of combining theory and method determined by the subject of knowledge" [6, p. 14]. And during the above, M.S. Kelman adds "in the structure of the approach there are three levels: a) instrumental, which covers certain standard procedures and methods for obtaining scientific knowledge; B) theoretical and conceptual, on which basic ontological postulates about the objects of legal research, rules for their description or explanation are formulated in the form of categorical and conceptual constructions; C) ideological, which contains philosophical and general ideological foundations of research" [6, p. 15]. There is no doubt that ideological and philosophical foundations and approaches determine the existence of methodological approaches, principles and methods that correspond to them, potentially possible or directly implemented.

The next component of the methodology, in particular philosophical approaches, are based on the achievements of ontology, epistemology, axiology, anthropology, philosophy and philosophy of law, history, sociology, political science, psychology, cybernetics, systems theory and management theory, and so on. There are quite a lot of them in modern science, about which M.S. Kelman rightly notes: "If during the formation of the "classical" legal science of modern times (17-18 centuries) only two approaches were used (in addition to dogmatic) – comparative-historical and axiological, then in modern law, in addition to them, there are also historical, comparative, activity, sociological, informational, systemic, anthropological, semiotic, cybernetic, synergetic, communicative, organizational, institutional and some others" [6, p. 15]. Therefore, it would be reasonable to characterise the appropriate approaches. This is, first of all, a methodological approach, the essence of which, in the logical association and appropriate use of a set of interdependent and interrelated various methods, among which one or more are the main, and all others are subordinate to them and have auxiliary significance [11, p. 66], can be used to work out its own concept, content, structure, logic of presentation of sections, subsections, other structural parts of scientific research. It is with the help of this fundamental approach that knowledge about the state of the subject, methods and the most effective process of studying the constitutional and legal status of the Ukrainian people was accumulated, and, therefore, it can be argued that the methodological, in interrelation and interaction, with an integrated approach, are fundamental and determine the choice and use of all other approaches, principles and methods.

There is every reason to single out the culturological approach, which allows to study the constitutional and legal status of the Ukrainian people as a cultural heritage, a special cultural and legal phenomenon [12, p. 307]. Within the framework of the cultural approach, general social cultural guarantees of the constitutional and legal status of the Ukrainian people can be worked out especially intensively, which can include the development of national culture and culture of indigenous peoples and national minorities, the protection of cultural heritage, the development and functioning of the Ukrainian language. The anthropological approach, the essence of which is the interpretation of the nature and properties of law depending on the existence of a person, its essence and activity [13, p. 460], determines the choice of the research topic, because the Ukrainian people are a single community of citizens of Ukraine of all nationalities, and therefore the constitutional and legal status of the Ukrainian people is primarily the sum of the constitutional and legal statuses of citizens of Ukraine of all nationalities. It is on the basis of an anthropological approach that the essence of the constitutional and legal status of the Ukrainian people can be worked out and general civilizational, society-forming, state-forming, socio-regulatory-protective and other functions can be distinguished.

The application of a phenomenological approach, in the study of the constitutional and legal status of the Ukrainian people, which considers law in the context of legal reality, which the subject is forced to enter in the process of communication with other participants in legal life [14, p. 54], will take place, first of all, in the process of elementary structuring of the constitutional and legal status of the Ukrainian people and especially the allocation, awareness and interpretation of the constituent, organisational and legitimation, law-making, judicial, control and supervisory and property powers of the Ukrainian people. After all, these powers are not officially provided for or grouped at the level of normative legal acts, but they exist as a legal reality. Moreover, these powers are sometimes even prohibited by them. However, it is generally accepted that they are based on the natural right of the people to independently decide and exercise their powers by all permissible means, even if this is not regulated by anything.

The axiological (value) approach is extremely relevant. The latter is based on the axiology of law, and therefore, "the axiology of law (from the Greek aksia – value, and logos – word, teaching) is a system of theoretical concepts, conclusions, concepts regarding the value of law. The value of law is its positive significance (role) in meeting the needs of participants in public life. It is formed in relation to each person (personal value), social communities and associations (group value) and, finally, society as a whole (general social value)" [15, p. 74]. And the law "… is valuable because it is able due to its substantive and formal properties to meet needs, be an instrument of realisation and coordination of interests, etc." [16, p. 159]. That is, comprehension, full understanding and ability to realise the constitutional and legal status of the Ukrainian

people is valuable because: first, it satisfies the interests of the citizens of Ukraine, which make up the Ukrainian people; secondly, it is decisive for the formation of "subsidiaries" statuses of other social communities and associations, including the status of national minorities, indigenous peoples, etc. and, thirdly, the constitutional and legal status of the Ukrainian people is the basis of a similar status Ukrainian society and the domestic state.

Given the above, it can be argued that the constitutional and legal status of the Ukrainian people will be understood taking into account the fact that it is a defining, fundamental, primary status, on the basis of which all other social statuses are formed and determined, the possibility of the existence and functioning of all other social institutions, the implementation of the most important national and local functions is ensured. However, the axiological (value) approach will be especially clearly manifested when considering the essence and principles as elements of the constitutional and legal status of the Ukrainian people. Relevant to the study of the constitutional and legal status of the Ukrainian people is the civilisational approach, which involves taking into account and using the achievements of different civilizations, the rights of many legal families, states characterised by belonging to different types and forms, in different time limits [17, p. 154]. The civilizational approach will be particularly useful in clarifying the genesis of the constitutional and legal status of the Ukrainian people and justifying its civilizational function.

The systemic approach is "... the direction of research methodology, which consists in the study of an object as an integral set of elements in a set of relations and connections between them, that is, the consideration of an object as a system" [18, p. 15]. Therefore, this approach provides for the consideration of the constitutional and legal status of the Ukrainian people as a complex, multi-element, structured, multi-level, interrelated and interacting with others, a phenomenon consisting of parts (elements), the connections between which form a relatively unchanged structure and ensure its integrity [7, p. 78]. The systemic approach determines the introduction of system-structural and system-functional methods into scientific search. Based on this approach and these methods, a provision will be proposed and justified, according to which it is reasonable to consider legal personality, principles, powers, that is, rights and obligations, guarantees (general social and special legal) of status as elements of the constitutional and legal status of the Ukrainian people.

The next methodological approach to the study of the constitutional and legal status of the Ukrainian people should be recognised as activity-based, which involves clarifying and explaining state-legal phenomena in an indissoluble unity with human activity, recognising the fact that all social phenomena are related to human activity [19, p. 29]. Given this, the activity approach will be particularly intensive in the development of general social and special legal guarantees of the constitutional and legal status of the Ukrainian people, in terms of ensuring the effectiveness of their implementation, the availability of political, economic, cultural, legal and other mechanisms of actual reality and the effectiveness of the constitutional and legal status of the Ukrainian people. It was previously noted that to ensure a full-fledged study of the constitutional and legal status of the Ukrainian people, an integrated approach is necessary, which means applying not only ideological foundations and philosophical approaches, but also methodological principles and, directly, the methods themselves [20, p. 36]. Methodological principles [21, p. 3] that will contribute to understanding the constitutional and legal status of the Ukrainian people include:

1) the principle of scientificity – means the need to obtain objective scientific knowledge about the subject under study, and especially understanding the concept and structure of the elements that constitute the constitutional and legal status of the Ukrainian people;

2) the principle of historicism – provides for the consideration of the constitutional and legal status of the Ukrainian people from the point of view of the past, present and future, in its development and historical relationship with the statuses of other social institutions [22, p. 17]. Taking this into account, the principle of historicism, first of all, will be implemented in the process of understanding the state of scientific research of the legal statuses of peoples and the constitutional and legal status of the Ukrainian people;

3) the principle of comprehensiveness – requires clarification of the maximum possible number of features, characteristics, properties of the state-legal phenomenon under study, identification and qualitative justification of its concept, features, essence, structure, elements, relationships and interaction with other social and legal realities. That is why this principle will be the basis for understanding all aspects of the constitutional and legal status of the Ukrainian people and especially the essence, legal personality and principles of the constitutional and legal status of the Ukrainian people;

4) the principle of objectivity – in the process of cognition of legal phenomena obliges to reflect the true state of the constitutional and legal status of the Ukrainian people in scientific research, to reproduce it as it is in reality and in fact [8, p. 36]. This principle will be especially intensively implemented in the process of learning the constituent, organisational and legitimation, law-making, judicial, control, supervisory and property powers of the Ukrainian people;

5) the principle of concreteness – determines a comprehensive and detailed analysis of the state of scientific research, regulation of the legal status of peoples, the development of the research methodology, the concept, elements, essence of the constitutional and legal status of the Ukrainian people, the essential characteristics of each of the listed elements, the identification of the main, essential features, connections and trends in their development, that is, it will find its dominant application in finding out the elements of the constitutional and legal status of the Ukrainian people;

6) the principle of pluralism – will provide freedom of cognitive search, in general, and, above all, the ability to freely choose the research methodology, independently determine the ideological foundations, philosophical approaches, principles and methods of understanding and presenting the constitutional and legal status of the Ukrainian people.

The next component of the methodology for understanding the constitutional and legal status of the Ukrainian people is the methods of studying the subject of research. However, before characterising them, it is worth reminding that method is a way of understanding the phenomena of reality, their interrelationship and development. The method, in contrast to the subject of research, which answers the question of what particular science studies, demonstrates exactly how, by what methods, means and techniques this happens [23, p. 10].

Without going into a rather long-standing, and still clearly unresolved, dispute over the system of methods of legal science, in general, it is believed that for a full study of the constitutional and legal status of the Ukrainian people, their structured system, including such subsystems, is the most optimal.

1. General scientific methods, which, first of all, should include philosophical ones, namely dialectical, metaphysical, hermeneutical, and the like. Thus, the dialectical method, or, more correctly, the dialectical methodology based on the laws of dialectics (the law of transition of quantitative changes into qualitative ones, the law of unity and struggle of opposites, the law of negation of the negation) [24, p. 5; 25], leads to a comprehensive study of the constitutional and legal status of the Ukrainian people, which covers its various signs, properties, elements. In addition, its dynamics and constant updating, interaction with other social systems – politics, economy, culture will be taken into account. It is in connection with the latter that the constituent, organisational, legitimation, and property powers of the Ukrainian people will be distinguished, and among the general social guarantees, political, economic, and cultural ones will be considered, that is, those that exist in the most significant spheres of life of the Ukrainian people.

The study of the constitutional and legal status of the Ukrainian people will also be carried out taking into account such categories of dialectics as essence and phenomenon, form and content, possibility and reality [26, p. 60]. For example, when covering the state of scientific research and regulating the legal status of peoples, mainly, the legal status of peoples will be studied as a phenomenon and form, and when working out the concept and elements, the essence of the constitutional and legal status of the Ukrainian people, it will be considered as the essence and content. The use of the metaphysical method, which is based on static, unchangeable and independent of other phenomena, understanding of objects, will be used to justify the existence of the constitutional, legal and actual status of the Ukrainian people. After all, the constitutional and legal status of the Ukrainian people is relatively stable, internally coordinated and systematic. Relative stability gives grounds to assert a certain static constitutional and legal status of the Ukrainian people.

The hermeneutical method, about which, first of all, it is worth noting that "Western legal hermeneutics is an application of phenomenological-existential hermeneutics in the field of law. Hermeneutics (from the Greek hermeneutihos – interpretation) – the art of understanding, comprehension. (Hermes in Greek mythology was an intermediary between gods and people)" [27, p. 60]. That is, the essence of this method is the interpretation of texts, and, therefore, it will be used to study the state of scientific research and regulate the legal status of peoples. It will make it possible to clarify the content and essence of normative legal acts or provisions set forth in scientific texts, to reveal the content of legal norms and relevant scientific provisions, based on the peculiarities of normative legal and scientific language.

The historical method, which requires the study of state-legal phenomena in the sequence in which they arose, developed and changed [28, p. 43], as well as the methodological principle of historicism, will be aimed at understanding the state of scientific research on the legal statuses of peoples and the constitutional and legal status of the Ukrainian people. The functional method, which consists in identifying the functions of individual elements of a certain social education, institution, system, status [29, p. 19] will be implemented in the process of cognition of the general civilizational, society-forming, state-forming, socio-regulatory-protective and other functions of the Ukrainian people.

The synergetic method, as the doctrine of complex, multi-level social systems, self-organising, self-regulating, self-developing, relatively weakly deterministic, allow randomness, instability and unpredictability [9, p. 20], will help understand and demonstrate the final indecision, complexity and objectivity of highlighting the concept and elements of the constitutional and legal status of the Ukrainian people, relatively weak

determinism of such an element as the legal personality of the Ukrainian people. General scientific methods that will be used also include logical ones, these are, first of all, analysis and synthesis, induction and deduction, abstraction, generalisation, comparison, and so on. Analysis, which is understood as the separation of constituent parts from the whole of the phenomenon under study and the study of their essence separately [30, p. 257], will take place, for example, in the process of finding common, most frequently used features of the people and their characteristics, while synthesis, which is the way of creating a common understanding of the phenomenon [31, p. 257], will be introduced in the process of forming a holistic and universal definition of the people.

The method of abstraction "– one of the means of cognition and theoretical representation of reality in knowledge, is to identify and consider some (or even one) features and characteristics of the subject so as not to dwell on the secondary, to focus on what is most important, given the movement towards the goals set. In a broad sense, abstraction is a distraction from the individual, random, insignificant and highlighting the general, necessary, essential in order to simplify the path to scientifically objective knowledge" [32, p. 3]. Based on the above, it is safe to say that the method of abstraction will be used in learning about the legal capacity of the Ukrainian people, on the basis of which the definition of the legal personality of the Ukrainian people will be formulated, the main regulatory and organisational and legal special legal guarantees of the constitutional and legal status of the Ukrainian people will be highlighted.

The generalisation method is a means of cognition that is implemented by combining specific features, characteristics, conclusions, classifications into a single whole, in order to study the regularities of this whole. So, this method will be especially intensively used in the process of forming definitions, conclusions, proposals and recommendations, for example, whether the Ukrainian people have the right to: self-determination; protesting, uprisings, resistance movements, civil disobedience movements, people's veche, revolutions, civil wars, national liberation movements; adoption, introduction of amendments and additions, repeal of the constitution, certain constitutional provisions; holding all-Ukrainian and local referendums, as well as the obligation to abide by the Constitution of Ukraine, will allow asserting the reality of the existence of its constituent powers. The method of comparison, the essence of which is finding the common, similar, different, opposite, separate and special in the state-legal phenomena [33, p. 426], will be implemented by comparing the enshrining of constituent, organisational-legitimational, law-making, judicial, control and supervisory, property powers of Ukrainian people in the Constitution of Ukraine with the similar powers of other nations in the constitutions of foreign countries.

2. From the system of special methods that will be implemented, it is worth highlighting: a sociological method that provides for the need to study and use the judicial practice of the Constitutional Court of Ukraine, in particular, regarding the regulation of the legal status of peoples; a modelling method that will provide indirect knowledge of the object of research by creating its analog [34, p. 101], because the construction of the structure of the constitutional-legal status of the Ukrainian people will be carried out according to the rules of building an ideal model, based on the existing structural analogues of the constitutional-legal statuses of civil society, state, national minorities, person and citizen; during and on the development of the previous, an idealization method that requires conscious-volitional creation objects that do not exist in reality, but there are their real signs in social life, since the constitutional and legal status of the Ukrainian people, their legal personality, principles and guarantees of status are idealized objects; a method of forecasting, the main feature of which is the accumulation of knowledge about the current state of the constitutional and legal status of the Ukrainian people and justification of promising directions for its further development.

3. From the system of legal methods, it is worth mentioning: the historical and legal method [35, p. 179], which, together with the principle of historicism and the historical method, will contribute to understanding the state of scientific research on the legal statuses of peoples and the constitutional and legal status of the Ukrainian people. This method will make it possible to identify and use the positive experience of the past to improve it at the present stage of its development. It makes sense to emphasise the exceptional importance of using this method today, since until recently the constitutional and legal status of the Ukrainian people was not discussed at all, it was only about its individual features and elements.

The comparative legal method, together with the method of comparison [10, p. 11], will be implemented in the process of understanding existing studies of the legal or constitutional-legal status of the Ukrainian people, the laws of its legal regulation, the comparison of texts of various normative legal acts, especially at the constitutional level, in order to consolidate the constitutional-legal status of the Ukrainian people and peoples in foreign countries. The formal and legal method will provide an opportunity to identify the characteristics and features of the people, the Ukrainian people, the regulation of the legal status of peoples, the constitutional and legal status of the Ukrainian people, the essence, functions, legal personality, the principles of the constitutional and legal status of the Ukrainian people and many other phenomena, processes

and elements that will be studied, determine their common and distinctive features, work out their comprehension, formulate definitions, and so on.

CONCLUSIONS

Taking into account all the above, it can be argued that in order to learn the constitutional and legal status of the Ukrainian people, it is advisable to use an integrated approach, which involves a combination of a number of factors:

1) worldview principles: sovereignty; supremacy of people's sovereignty; primacy of people's sovereignty; naturalness of people's sovereignty; national sovereignty; state sovereignty; the right of the people to self-determination, etc.;

2) philosophical approaches:

– methodological for elaboration of own concept, content, structure of research;

– an integrated approach will determine the choice and use of all other approaches, principles and methods;

– culturological, which makes it possible to study the status as a cultural asset, work out its general social-cultural guarantees;

– anthropological will be useful for elaborating the essence of status;

– phenomenological introduced in the process of elementary structuring of status and especially the allocation, recognition and interpretation of powers;

– axiological (value) will be useful when considering the essence and principles as elements of status;

– civilizational will provide clarification and justification of the general civilizational function of the status;

– systemic will involve considering the status as a phenomenon consisting of parts (elements), the connections between which form a relatively unchanging structure and ensure its integrity;

– active will be implemented in the development of general social and special legal guarantees of status;

– methodological principles:

– scientific will be used in the process of understanding the concept and structure of the elements that make up the status;

– historicism will be implemented in the process of learning the state of scientific research the legal status of peoples;

– comprehensiveness will be the basis for understanding the essence, legal personality and principles of status;

– objectivity will be realised in the process of learning authority;

– specificity will determine a comprehensive and detailed analysis of the state of scientific research, regulation of the legal status of peoples, elaboration of the research methodology, concept, elements and essence of status;

– pluralism will ensure the freedom of cognitive search, the ability to freely choose the research methodology;

3) general scientific methods:

– dialectical will determine a comprehensive study of the status;

– metaphysical will be used to justify the existence of constitutional, legal and factual status;

– hermeneutical is useful for study on the state of the research and regulation of the status;

– historical will be aimed at understanding the state of research on the legal status of peoples;

– functional will be implemented in the process of learning functions;

– synergetic, which will give the opportunity to understand and demonstrate the final uncertainty, complexity and objectivity applied to the elements of status, relatively weak determinism of legal personality;

– logical: analysis will take place in the process of finding common, most frequently used, characteristics of the people and their characteristics; synthesis will be implemented in the process of forming an integral and common definition of the people; induction will be used to prepare general conclusions of this scientific research; deduction, on the basis of which the understanding of status will be formulated; abstraction, which will be used in the learning the legal capacity of the Ukrainian people; generalisation will be applied in the process of forming definitions, conclusions, proposals and recommendations; comparison will be realised in the process of comparing the powers of the Ukrainian people with those of similar other nations;

4) special methods:

– sociological will provide for the need to study and use the judicial practice of the Constitutional Court of Ukraine;

– modelling which will be used to construct the structure of the status of the Ukrainian people;

– idealization is necessary because the very status of the Ukrainian people, their legal personality, principles and guarantees are idealized objects;

– forecasting will be used in the process of forming the results obtained and general conclusions for this scientific work;

– legal methods:

– historical-legal will contribute to understanding the state of scientific research of the statuses of peoples and the status of the Ukrainian people;

– comparative-legal will be implemented in the process of comparing the texts of various normative legal acts;

– formal-legal will allow identifying the characteristics and features of legal phenomena, processes and elements that will be known, to determine their common and distinctive features, to work out their understanding, to formulate definitions.

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Suggested Citation: Kolodiy, A.M., Kolodiy, O.A., & Petryshyna, M.O. (2021). Methodology of research of the constitutional and legal status of the Ukrainian people. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(4), 93-103.

Submitted: 16.08.2021
Revised: 22.10.2021
Accepted: 28.11.2021

УДК 342.565.2
DOI: 10.37635/jnalsu.28(4).2021.104-112

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ЗМІЦНЕННЯ ІНСТИТУЦІЙНОЇ СПРОМОЖНОСТІ КОНСТИТУЦІЙНОГО СУДУ УКРАЇНИ В УМОВАХ СУЧАСНОГО СУСПІЛЬСТВА ЯК НАУКОВО-ПРАКТИЧНА ПРОБЛЕМА

Анотація. *Сучасне наукове дослідження проблем конституційної юрисдикції в Україні зумовлене не тільки усталеним теоретико-практичним їх значенням для правової доктрини та правозастосування. В умовах сучасних світових викликів і загроз, які неминуче відбиваються на внутрішньому правопорядку України, зважаючи на національні проблеми у сфері дотримання прав і свобод людини, взаємодії держави та суспільства, законотворчості, правозастосування і відправлення правосуддя тощо, потреба у зміцненні інституційної спроможності Конституційного Суду України виступає важливим науково-практичним завданням. Воно спрямоване на посилення стабільності функціонування інституту конституційної юрисдикції за складних суспільно-політичних ситуацій, відновлення суспільної довіри до Конституційного Суду і держави загалом, підвищення ефективності правової охорони Конституції України та забезпечення її верховенства, відродження поваги до Основного Закону і верховенства права, наближення роботи Конституційного Суду до кращих міжнародних стандартів конституційної юрисдикції. Метою статті виступає обґрунтування дослідження проблеми зміцнення інституційної спроможності Конституційного Суду України як комплексної науково-прикладної, що передбачає її розв'язання на міждисциплінарному науковому просторі. Використовуються загальнонаукові методи дослідження, соціологічний метод, структурно-функціональний, а також міждисциплінарний підходи. Інституційна спроможність Конституційного Суду України розглядається як інституційна властивість органу конституційної юрисдикції, що відображає його організаційно-функціональну здатність забезпечувати за визначених умов і ресурсів реалізацію своїх завдань, функцій і повноважень. Показниками інституційної спроможності Конституційного Суду виступають ефективність, стабільність та його адаптованість до змін. Зміцнення інституційної спроможності Конституційного Суду має відбуватися шляхом правового забезпечення посилення його незалежності від політичного впливу, удосконалення механізмів відбору кандидатур на посади суддів, модернізації процедур конституційного провадження, розвитку механізму взаємодії Суду із громадськістю тощо. Визначаються основні напрями дослідження інституційної спроможності Конституційного Суду*

Ключові слова: *громадянське суспільство, верховенство права, конституційна юрисдикція, комплексна проблема, міждисциплінарний підхід*

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STRENGTHENING OF THE INSTITUTIONAL CAPACITY OF THE CONSTITUTIONAL COURT OF UKRAINE IN THE CONDITIONS OF MODERN SOCIETY AS A SCIENTIFIC AND PRACTICAL PROBLEM

Abstract. *Modern scientific research of the problems of constitutional jurisdiction in Ukraine is conditioned not only by their established theoretical and practical significance for legal doctrine and law enforcement. In the context of modern global challenges and threats that inevitably affect the domestic legal order of Ukraine, taking into consideration the national problems in the field of human rights and freedoms, interaction between state and society, lawmaking, law enforcement and administration of justice, etc., the need to strengthen the institutional capacity of the Constitutional Court is an important scientific and practical task. It is aimed at strengthening the stability of the institution of constitutional jurisdiction in difficult sociopolitical situations, restoring public confidence in the Constitutional Court and the state in general, improving the legal protection of the Constitution of Ukraine and ensuring its supremacy, reviving respect for the Basic Law and the rule of law, accommodating the functioning of the Constitutional Court to the best international standards of constitutional jurisdiction. The purpose of the article is to substantiate the study of the problem of strengthening the institutional capacity of the Constitutional Court of Ukraine as a complex scientific and applied issue, which provides for its solution in the interdisciplinary scientific space. General scientific research methods, sociological method, structural-functional, as well as interdisciplinary approaches, are used. The institutional capacity of the Constitutional Court of Ukraine is considered as an institutional property of a body of constitutional jurisdiction, which reflects its organisational and functional ability to ensure the implementation of its tasks, functions, and powers under certain conditions and resources. Indicators of the institutional capacity of the Constitutional Court are efficiency, stability, and adaptability to changes. Strengthening the institutional capacity of the Constitutional Court should take place through legal support for strengthening its independence from political influence, improving mechanisms for selecting candidates for judges, modernising constitutional proceedings, developing a mechanism for the Court's interaction with the public, and so on. The main directions of the study of the institutional capacity of the Constitutional Court are determined*

Keywords: *civil society, rule of law, constitutional jurisdiction, complex problem, interdisciplinary approach*

INTRODUCTION

The institution of constitutional jurisdiction is an integral feature of the democratic, social, legal state that Ukraine has proclaimed itself to be. The body of constitutional jurisdiction is called to protect the Constitution and constitutional values – man, his life and health, honor, dignity, inviolability, security, his decent living conditions, rule of law, freedom, equality, justice, the sovereign will of the people, democracy and other ideals of civil society. Therefore, since the founding of the institute of constitutional jurisdiction, then still in the Ukrainian SSR, the study of theoretical problems, and with the beginning of the actual activity of the Constitutional Court of Ukraine (1996) – and practical, play a priority significance in domestic legal science.

In addition, the need for modern scientific understanding of the problems of constitutional jurisdiction is caused not only by their established theoretical and practical significance. Scientific approaches to the problems of the Constitutional Court of Ukraine (hereinafter – the Constitutional Court, the Court) must be adjusted under the influence of dynamic changes in society because "social structures are partly sources of influence on the restriction or formation of power relations, determine power relations" [1]. Therefore, based on a solid theoretical basis and the methodological basis laid down in scientific works, further scientific research on ways to solve the problems of constitutional jurisdiction in Ukraine should consider modern global challenges and threats, as well as the conditions of modern Ukrainian society.

The negative tendencies of violation of human and civil rights and freedoms are deepening in Ukraine. In particular, according to the VRU Commissioner for Human Rights, the number of reports of violations

received by the Ombudsman during 2020 increased by 40% compared to last year [2]. The situation with human rights violations against human rights defenders, journalists, volunteers, and other representatives of civil society has also worsened [3]. Vulnerability to human rights contributes to developmental delays, and efforts to restore stability can create the conditions in which social and economic recovery and development can begin or resume [4]. Objectively, this highlights the problem of strengthening absolutely all elements of the human rights mechanism of the state, including the Constitutional Court as one of its key elements.

Therefore, effective constitutional and jurisdictional protection of rights and freedoms is the cornerstone of today. It should be noted that the quantitative annual figures for appeals to the Court with constitutional complaints traditionally exceed similar data for other forms of constitutional appeals. However, against the background of the need to increase the role of the body of constitutional jurisdiction in the system of protection of human rights and constitutional values of civil society, the Court at the end of 2020 gained a high level of public distrust (69% [5]).

It should be borne in mind that in pursuing the European course, the irreversibility of which is enshrined at the constitutional level, Ukraine must maintain the stability of the institution that ensures the rule of law, at the appropriate level in terms of EU membership. After all, in the framework of cooperation between Ukraine and the EU in the field of justice, freedom, and security, special importance is attached to strengthening the rule of law and strengthening institutions at all levels in the field of governance in general and the judiciary in particular. Cooperation is aimed at strengthening the judiciary, increasing its efficiency, guaranteeing its independence and impartiality, and combating corruption, and should be based on the principle of respect for human rights and fundamental freedoms.

In addition, the new legal conditions for the functioning of the Constitutional Court should be considered. The constitutional reform of 2016 in the field of justice was the starting point for the next stage in the history of the formation and development of the institution of constitutional jurisdiction in Ukraine and gave additional impetus to the study of the organisation and operation of the Court. But socially useful, at first glance, legislative innovations in the institution of constitutional jurisdiction potentially carry risks of inefficiency and need to be tested over time. In addition, any legislative transformations in the status, organization, and functions of the authority objectively affect the state of its institutional capacity. In particular, the 2017 year of the Court's work was significant, during which the Court (including due to the inability to elect the President of the Court) considered only 3 cases, compared to the usual statistics: on average about 10-13 cases per year.

Thus, in modern society, the need to strengthen the institutional capacity of the Constitutional Court of Ukraine is an important scientific and practical task aimed at restoring public confidence in the Court, reviving respect for the Constitution of Ukraine and the rule of law, strengthening the stability of constitutional jurisdiction in complex sociopolitical situations, bringing the work of the Constitutional Court closer to the best international standards of constitutional jurisdiction.

The purpose of the article is to substantiate the study of the need to strengthen the institutional capacity of the Constitutional Court of Ukraine as an important complex scientific and applied problem and the prospects for its solution using interdisciplinary methodological tools.

1. MATERIALS AND METHODS

During the writing of the article, general scientific research methods (analysis, synthesis, analogy, generalisation) were used, which were the theoretical basis for forming the concept of institutional capacity of the Constitutional Court of Ukraine and determining its key parameters. In particular, in the course of scientific research using the methods of analysis and generalisation, the basic characteristics of institutional capacity extrapolated to the sphere of constitutional jurisdiction were identified. Scientific research of the problem of institutional capacity of the Constitutional Court involves the application of the structural and functional approach, which allows to analysing the problem through the prism of the general features of the Constitutional Court as a body of state power and its features as a body of constitutional jurisdiction with assigned tasks, functions, powers, personnel composition, organisational structure, administrative procedures, constitutional proceedings, namely as a state institution.

The analysis of the problem of strengthening the institutional capacity of the Constitutional Court of Ukraine is based on the provisions of the Constitution of Ukraine, the Law of Ukraine "On the Constitutional Court of Ukraine", the Rules of Procedure of the Constitutional Court of Ukraine, the Communication Strategy of the Constitutional Court of Ukraine for 2019-2021, project on Strategy for the Development of Justice and Constitutional Judiciary for 2021-2023, bills on the constitutional jurisdiction reform. In the process of developing a theoretical model for a comprehensive study of this problem, the authors considered the results

of research conducted over almost a quarter of a century of the existence of the institute of constitutional jurisdiction in Ukraine.

At the same time, from the published scientific sources on the problems of organisation and activity of the Constitutional Court of Ukraine, the new resource of scientific knowledge is largely concentrated in dissertations. Their systematised data (search, selection, and systematisation of data is the result of analysis of bibliographic records of scientific works contained in the system of electronic and traditional catalogs and files of the Vernadsky National Library of Ukraine and the National Library of Ukraine named after Yaroslav the Wise) showed that the priority role in solving the problems of constitutional jurisdiction belongs to the theory of constitutional law. Each of the dissertations contains adequate proposals for improving the organisation and activities of the Court, increasing the efficiency of its work.

However, through the prism of the category of institutional capacity of the body of constitutional jurisdiction, basic research has not been conducted, which, among other reasons, attracted the attention of the authors to explore the scientific perspectives of this topic.

2. RESULTS AND DISCUSSION

2.1. A systematic view of the category of institutional capacity in modern society

A complex scientific problem is a system of various theoretical and practical tasks that belong to the subject field of research and are united by its common goal. Objectively speaking, almost all the problems that modern social development poses to science are complex, systemic in nature. Their solutions require the joint efforts of representatives of different fields of knowledge and/or scientific specialties of one field. The application of an integrated approach is traditionally used by modern legal science in the study of the phenomena of state and legal reality. Thus, complexity is an important component of modern scientific thinking. This category means taking into account the relationships and integrity of social life, the deep internal connection of its various spheres.

The problem of strengthening the institutional capacity of the Constitutional Court in modern society is no exception. The complex nature of this problem is due to the multifactorial dependence of the institutional capacity of the Constitutional Court, as well as the specifics of the concept of "institutional capacity" itself as one of the essentials in the study. As shown further, it is multidimensional and requires a systematic approach. Using the categories of terminology, the authors characterise the combination of terms "institutional capacity" as a multicomponent, formed by two tokens: "institutional" and "capacity". In this case, the adjective "institutional" refers to "institution" (meaning agency, establishment) and is derived from it [6]. In English, a society, organisation, institution is translated as "institution" [7].

The noun "capacity" means a property in the sense of capable, namely having the ability to perform, to act, to do something; who can, has the ability to do anything; the ability to do something; the presence of conditions conducive to something, circumstances that help something; possibility [7]. The English translation of the word "capacity" is also multivariate: capacity, capability, volume; ability, readiness, competence, opportunity, designation, position, legal capacity [7]. At the international level, institutional capacity is treated in the context of the national development of states. The publication of the United Nations Development Program (UNDP, UNDP, the Agency for Assistance to Countries in Achieving Sustainable Development Goals), "Measuring Capacity" offers a general understanding and structure for measuring institutional capacity.

UNDP defines capacity as the ability of individuals, institutions, and societies to perform functions, solve problems and set and achieve goals on a sustainable basis. Capacity (or potential) development, according to the UNDP approach, means "how" to make development work better. In other words, it is about making institutions more capable (effective) of providing and promoting human development. UNDP notes that the strength of national institutions (formal, informal, public, private) is crucial to achieving national development goals, the progress, and achievement of which is due, inter alia, to changes in the efficiency, stability, and adaptability of institutions. Hence, the key to achieving the goals of national development is the constant improvement of the efficiency, stability, and adaptability of national institutions. **Efficiency** is seen by UNDP as the ability of an institution to turn invested resources into productive use, **stability** means to seek solutions to problems and remove barriers, **adaptability** means to adapt to changing realities [8]. UNDP calls efficiency, stability, and adaptability the institutional qualities to be demonstrated by key government systems, especially in crisis situations [9].

2.2. Essence of institutional capacity in the context of national development

Analysing theories of social development, Stanford University professor Stephen D. Krasner concludes that the theory of institutional capacity in strengthening the state plays an important role in the state apparatus, which is able to concentrate and effectively develop power for social purposes, and be able to establish order and rule law [10]. Without effective institutions, chaos can appear and sustained economic growth will not be possible [10]. The stance of the capacity of state and public institutions has a direct impact on the stance of state institutional capacity ("state capacity"). In this context, Hanna Klipkova develops the concept of the capacity of state institutions as a tool for studying the institutional quality of the state. The use of the category of the capacity of state institutions, as the researcher notes, allows studying the real capabilities of the state, to find out who actually manages them, using power mechanisms to achieve private goals. The capacity of the state-institutional system is a key factor for the possibility of reforming, developing, and eventually the existence of a society with the current form of the political system. This category determines the level of viability of the state [11]. In the context of the institutional capacity of the state, Hanna Bäck (University of Mannheim) and Axel Hadenius (Lund University) use the term "functioning state", referring to its first feature – statehood (the ability of public authorities to maintain monopolistic control in the military, legal and financial terms) [12].

In turn, Kateryna Zarembo also identifies the concept of "institutional capacity" with the concept of "statehood", and considers institutional failure as a key factor in the weakness of the state [13]. Oleksiy Valevsky attributes institutional capacity to a high level of institutionalisation (the process of forming stable models of social interaction), which ensures the proper performance of its functions by the authority. In contrast to institutional capacity, a low level of institutionalisation (institutional failure) indicates a weak impact of the institution on the social situation. Therefore, institutional capacity ensures the implementation of effective policies, and institutional failure always produces conflicting and ineffective policies [14].

According to Mykhailo Savchyn, the institutional capacity of the state is declared in Article 3 of the Constitution of Ukraine. Based on this, the meaning of the functioning of the Ukrainian state is to provide conditions for the free development of the individual. This fundamental postulate establishes requirements for the state to act in accordance with stable and predictable rules of the game, which determine the legal certainty and validity of government decisions [15]. That is, human rights themselves determine the requirements for the quality of organisation and operation of public institutions [16]. Thus, the ability to consistently enforce power decisions focused on human rights indicates the institutional capacity of the state [15]. The general concept of institutional capacity is given by the authors of the scientific-analytical report "Institutionalisation of public administration" (2019): institutional capacity is organisational and functional ability of the institution to implement its objectives and achieve the goals of activity [16].

Hence, the essence of institutional capacity is revealed through the categories of quality, efficiency, productivity (resultativity), firmness, sustainability, stability, etc., which reflect a certain state of public or private institutions. This concept is multidimensional, through which it is possible to systematically approach the study of institutional problems of the state in the context of the relevant goals of national development, to consider these problems in the context of the "concept of stabilisation". Foreign analysts Steven A. Zyck and Robert Muggah have noted that stabilisation requires a combination of tools and approaches, and should be understood as the result of a combined multi-component strategy [4].

2.3. The concept of the institutional capacity of the Constitutional Court of Ukraine

In relation to a public authority, institutional capacity can be considered as:

a) its institutional property;
b) institutional capacity (reserve);
c) the total indicator of efficiency, stability, adaptability;
d) the institutional component of the mechanism of the state;
e) the parameter of its institutional capacity;
f) the condition of national development;
g) the factor of formation of institutional trust.

Extrapolating the characteristics of institutional capacity to the sphere of constitutional jurisdiction, it can be noted that **the institutional capacity of the Constitutional Court is an institutional property of a body of constitutional jurisdiction, which reflects its organisational and functional ability to ensure the implementation of its tasks, functions, and powers.**

Based on the scheme of measuring the level of institutional capacity proposed by the UN Development Program, the key components of the theoretical model of the institutional capacity of the Constitutional Court

are efficiency, stability, adaptability. The methodological way of theoretical development of the problem and formation of the doctrinal model of strengthening the institutional capacity of the Constitutional Court is the structural-functional approach. Organisational and functional aspects of this approach are complementary (cumulative): organisational reflects the conditionally static form of the institutional characteristics of the Court; functional reflects the dynamic side (activity).

The structural-functional approach is based on the analysis of the Court through the prism of its general features as a body of state power and special characteristics as a body of constitutional jurisdiction with assigned tasks, functions, powers, formation, staffing, organisational structure, administrative procedures, constitutional proceedings, that is, as a state institution. This approach allows identifying the following key areas of research on strengthening the institutional capacity of the Constitutional Court at the present stage:

1) The state of legal support of the organisation and activity of the Constitutional Court and ways of its improvement;

2) the mechanism for selecting candidates for the positions of judges of the Constitutional Court;

3) the effectiveness of the structure of the Constitutional Court and the implementation of its functions;

4) efficiency of execution of acts of the Constitutional Court;

5) the mechanism of interaction between the Court and civil society.

The state of the institutional capacity of the Constitutional Court plays an important role in the development of the statehood and legal system of Ukraine. M. Savchyn puts the ability of the Constitutional Court to make decisions based on constitutional values and principles as the first parameter of the institutional capacity of the state [15]. Therefore, since the Constitutional Court is the last legal "bastion" in the mechanism of national remedies, in the context of the implementation of the constitutional duty of the state (Article 3 of the Constitution of Ukraine), the higher the level of institutional capacity of the Court, the better the stance of the protection of rights and freedoms of human and citizen and other subjects of civil society, the higher the degree of respect for the Constitution and constitutional values, as well as the degree of institutional trust in the Court, stronger its authority and stronger the state itself.

2.4. The role of the institutional capacity of the Constitutional Court of Ukraine for national development

The appropriate level of institutional capacity of constitutional courts is especially important in unstable and contradictory sociopolitical conditions, conflicts, crises, and other turning points for the state. The Court of constitutional jurisdiction in its activities, notes V. Kovalchuk, constantly balances between law and policy, which significantly distinguishes it from the courts of general jurisdiction. Being, essentially, a non-political institution, by virtue of its powers, the constitutional court is forced to make decisions that have essential political significance. This is especially relating to the constitutional justice in developed democracies, where courts base their decisions not only on positive constitutional norms but also on unwritten constitutional norms and principles, and also carry out "creative", namely expanded interpretation of the constitution, which may arouse "suspicion" regarding their impartiality and political neutrality [17].

As explained by Nathan J. Brown, Julian G. Waller, in cases of constitutional vacuum, including when the political system operates outside the constitutional field, constitutional courts seem to cease to play their primary role (explain the content and spirit of the constitution). However, as per the fact that courts play a role in resolving fundamental issues, they and their judges can go beyond a strictly formalised decision framework. In such cases, constitutional courts often serve as the ultimate symbols of the permanence and legitimacy of the state, which is above the vicissitudes of politics [18]. Therefore, in the context of democratic transit, notes S. Gardbaum (University of California), constitutional courts need a careful balance between constitutional scrutiny and political provocations. Constitutional courts may entrust this balance to the law, taking a wise and cautious political decision [19].

In this context, the **state of the institutional capacity of the Constitutional Court largely depends on the state of its institutional independence**. In general, the independence of the judiciary from the direct political domination of another branch of government is a critical and traditional source of the judiciary [20]. The institutional independence of the judiciary is a complex and multifaceted phenomenon, as it should be seen as preventing any undue outside influence on the judiciary, its full autonomy from other branches of government, which means non-interference in the judiciary, and presupposes judicial independence in all its aspects, manifestations, guarantees of independence and inviolability of judges in full. Such independence is universal in the constitutional and legal dimension, given its importance as an essential requirement of the principle of separation of powers, the rule of law, and the right to judicial protection [21-23].

As convincing analysis of recent trends in the practice of the Constitutional Court to protect judicial independence, there is not only a violation of the individual guarantees of judicial independence but also an

intervention in the institutional independence of the judiciary in Ukraine as an independent arbitrator from among the other branches of government through the introduction of aggregate legislative changes in the national judicial system, which encroached on its constitutionally defined structure and key guarantees of the independence of judges (the principle of immutability of judges, their proper material maintenance, ensuring the independence of judicial self-government) [24-26]. This indicates the presence of signs of crisis in the relationship between the legislative and judicial branches of government, which undermines public confidence in the latter, contradicts the constitutional principles of separation of powers, the rule of law, eliminates the right to judicial protection, and weakens the constitutional order in general.

It is important to note that in the context of modern judicial reform in Ukraine, the strengthening of the institutional capacity of the Constitutional Court should be carried out considering the current demands of society for the integrity of government. The Constitution of Ukraine [27] and the Law of Ukraine "On the Constitutional Court of Ukraine" [28] stipulate that judges of the Constitutional Court must have high moral qualities and be lawyers with a recognised level of competence. It is clear that every candidate for the position of a judge of the Constitutional Court deserves such characteristics due to his/her efforts and achievements in the scientific and/or practical field. At the same time, for the objectivity of the selection, it would be expedient to focus on a scientifically sound list of moral qualities and, perhaps, business abilities required to hold the position of a judge of the Constitutional Court, the methodology of their evaluation, using the Standards of Professional Ethics to be established by the Court. These legislative requirements should be supported by the principle of the integrity of judges of the Court.

CONCLUSIONS

External threats and internal challenges are a powerful stimulus to strengthen the potential of the Ukrainian state and its key institutions. One of the most important factors in establishing a developed civil society in Ukraine according to the best European standards is the stable and effective operation of the Constitutional Court of Ukraine. The establishment of the Constitutional Court in Ukraine was the most significant step towards the development of our state as a legal state and of Ukrainian society as a civil society. The Constitutional Court of Ukraine ensures the rule of law, the rule of the Constitution and is the only body of the state that by exercising its functions and powers provides legal protection of constitutional values and ideals of civil society: man, his life and health, honor, dignity, inviolability, security, its decent living conditions, freedom, equality, justice, the sovereign will of the people.

The multidimensionality of the phenomenon of constitutional jurisdiction and, accordingly, the multifaceted nature of its research in the field of domestic science is demonstrated by the scientific works of theorists of common law doctrine, constitutionalists, and other scientific specialties. In the field of legal science in times of independence of Ukraine, a huge amount of scientific work on development issues of constitutional jurisdiction was held. At the same time, in the context of world trends in global development and national conditions for the formation of the rule of law and civil society, increasing the institutional capacity of the Constitutional Court of Ukraine is a significant scientific and practical problem. It is comprehensive and requires an interdisciplinary approach.

The institutional capacity of the Constitutional Court is a parameter of the institutional capacity of the state itself and, at the same time, is a factor in the formation of institutional trust. It is largely through the "channel" of constitutional jurisdiction that the Constitution of Ukraine exerts a reciprocal influence on society, strengthening its position in relations with the state. Hence, against the background of general trends in modern jurisprudence and its branches, improving the institution of constitutional jurisdiction in Ukraine means not so much and not primarily point changes in the mechanism of its functioning, but a systematic update of this mechanism by strengthening the institutional capacity of the Constitutional Court.

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Suggested Citation: Skrypniuk, O.V., & Tomkina, O.O. (2021). Strengthening of the institutional capacity of the Constitutional Court of Ukraine in the conditions of modern society as a scientific and practical problem. *Journal of the National Academy of Legal Sciences of Ukraine,* 28(4), 104-112.

Submitted: 02.09.2021
Revised: 18.11.2021
Accepted: 05.12.2021

УДК 34:340.1
DOI: 10.37635/jnalsu.28(4).2021.113-121

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ТЕОРЕТИЧНІ ОСНОВИ КОНСТИТУЦІЙНОГО ЗАКРІПЛЕННЯ ПРИНЦИПІВ СОЦІАЛЬНОЇ ДЕРЖАВИ І ПРАВА

Анотація. *У статті проаналізовано доктринальні положення, а також українську конституційно-правову практику. Досліджено соціальну складову системи функцій сучасної держави. У цій статті аналізується діяльність держав, де здійснено інтелектуальний, політичний та практичний прорив у вирішенні проблеми функцій держави в контексті соціально-економічних реформ. Звертається увага на специфіку здійснення суспільної діяльності Української держави. Методологічна база даного дослідження включає основні загальнонаукові методи, а саме соціально-економічні методи та прийоми емпіричного рівня пізнання, метод систематичного аналізу численних теоретичних положень з позитивного права, історико-статистичні методи, метод порівнянь та аналогії, методи узагальнення, аналітичний огляд наявних наукових публікацій з досліджуваної тематики. Крім того, застосовувалися наукові методи в галузі юридичної науки, такі як нормативно-логічний, порівняльно-правовий, історико-правовий. Зроблено висновок, що соціальна держава – це держава, політика якої має пріоритетну соціальну спрямованість, що виражається у належному служінні державою громадянському суспільству, створенню необхідних і достатніх умов для реалізації економічної, соціальної та культурної діяльності людини. права, гарантії його соціального захисту та соціального забезпечення, що ґрунтується на соціально-економічних можливостях держави на засадах справедливості, пропорційності та гармонійного поєднання (збалансованості) суспільних і людських інтересів*

Ключові слова: *соціальна держава, конституційні принципи, соціально-економічні права, позитивне право, природне право, соціальний захист*

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THEORETICAL FOUNDATIONS OF CONSTITUTIONAL CONSOLIDATION OF THE PRINCIPLES OF SOCIAL STATE AND LAW

Abstract. *The authors of this article analysed doctrinal provisions, as well as Ukrainian constitutional legal practice. The social component of the system of functions of the modern state was studied. The present article analyses the activities of states where an intellectual, political, and practical breakthrough was made in solving the problem of state functions in the context of socio-economic reform. Attention is drawn to the specifics of the implementation of social activities of the Ukrainian state. The methodological framework of this study includes the main general scientific methods, namely socio-economic methods and techniques of the empirical level of cognition, the method of systematic analysis of numerous theoretical provisions on positive law, historical and statistical methods, the method of comparisons and analogies, generalisation methods, an analytical review of the available scientific publications on the subject under study. Furthermore, scientific methods in the field of legal science were also employed, such as normative-logical, comparative legal, historical legal. It was concluded that a social state is a state whose policy has a priority social orientation, which is expressed in the appropriate service of civil society by the state, the creation of necessary and sufficient conditions for the realisation of economic, social, and cultural human rights, the guarantee of its social protection and social security, based on the socio-economic capabilities of the state based on the principles of justice, proportionality, and a harmonious combination (balance) of public and human interests*

Keywords: *social state, constitutional principles, socio-economic rights, positive law, natural law, social protection*

INTRODUCTION

The current stage of development of the theory and practice of domestic constitutionalism is described by recognition, development, and legal support for the implementation of the fundamental principles of the social rule-of-law state, functionally aimed at the democratic development of all socio-political institutions and the development of a market economy. Therewith, the main purpose of the constitutional construction strategy is to coordinate and direct all actions of subjects of public relations to achieve political, legal, economic, and social goals and values enshrined in the Constitution of Ukraine. At present, law is considered exclusively as an institution of justice, the truth of reflecting various interests of social communities, including as a factor of partnership or confrontation between the state and civil society. It is designed to contain a reasonable balance, that is, a reasonable ratio of state will and the will of citizens who make up the population of the corresponding state, and such a balance can be achieved only in the context of the socio-cultural dimension of positive law [1; 2].

In this context, the study of the principles, role, content of the main areas and forms of regulatory influence of the Constitution of Ukraine as a regulation of the highest legal force in the sphere of establishment, development and reform of the most important public relations, including in the socio-economic sphere, is of particular importance. This is explained by the fact that the development and activity of all institutions of a democratic, legal, and social state is directly dependent on the content of the provisions of the Constitution of Ukraine and the effectiveness of their implementation. According to the Constitution of Ukraine, the people exercise their power directly, as well as through state authorities and local self-government bodies. However, in the context of radical socio-economic and political changes, ideologies, life styles, prestigious assessments are transformed, relations in the coordinate system "state – law – economy" are complicated and change the format; ultimately, there is a change in socio-cultural systems that serve as a formula for legitimising the available socio-economic order and determine the real perception of the activities and effectiveness of implementing the principles of the state by citizens of Ukraine [3-5].

Especially illustrative in this context is the experience of the so-called new industrial countries, where the transition to a market economy and its rapid development took place with the most active participation and support of the state [6]. Fundamental changes in the economic legal sphere of modern states clearly raise the question of the need for a radical revision of the role and place of state authorities at various levels in the life support system of society. The relevance for a modern democratic society of the problem of strengthening the socio-economic role of the state is conditioned by the need for the country to get out of the internal social crisis, which has become particularly acute under the influence of global crisis processes, and the importance of transition to sustainable economic development, which ensures the construction of a social state and civil society. The issue of strengthening the social role of the state is primarily related to the implementation of its social and economic interests, its role, and its place in socio-economic development.

In Ukraine, as a result of the reform at the turn of the 20th-21st centuries of public relations based on the principles of a market economy and, above all, the social orientation of state structures, considerable changes have occurred in the socio-economic conditions of functioning and development of subjects of political, economic, and social systems of society, which is to a certain extent explained by the development of new socio-economic interests of the state. The transition to a market economy based on the principles of pluralism of forms and types of ownership, a variety of forms of economic activity, the broad development of large businesses and small businesses should substantially correct not only the system of interests of the state, introduce numerous fundamentally new points, but also sets new social tasks for the state, the implementation of which is possible only in the conditions of systematic reform of the economy and socio-cultural sphere.

1. LITERATURE REVIEW

A social state is "a concept of government where the state plays a key role in protecting and promoting the economic and social welfare of its citizens". The concept of a social state is based on the principles of equal opportunities, fair distribution of wealth and public responsibility for those who cannot enjoy the minimum conditions for a good life. Researchers adhere to the assumption that the idea of a social state occurred in the late 19th – early 20th century, as a result of socio-economic processes in society. In the middle of the 19th century, a powerful wave of revolutions and crises took place on the territory of many countries. The attitudes of individual freedom and non-interference of the state in the economy ceased to work, which threatened the collapse of the then-existing political regimes. In such a political situation, when there was a danger of a social explosion, the ruling elite had no choice but to make concessions and proclaim a new mission of the state. The term "social state" was coined by the German economist Lorenz von Stein (1815-1890) in 1850. The social state, according to Lorenz von Stein, should consciously serve the interests of its citizens [7].

The ideal social democratic state is based on the principle of universalism, providing access to goods and services based on citizenship. Such a social state provides a relatively high degree of autonomy, limiting dependence on the family and the market. In this context, social policy is perceived as "anti-market policy". Esping-Andersen in The Three Worlds of Welfare Capitalism [8] presents a typology of 18 welfare states of the Organisation for Economic Cooperation and Development (OECD) based on three principles: decomodification (the degree of dependence of human welfare on the market), social stratification (the role of the welfare state in maintaining or ending social stratification) and a combination of private and public (the relative role of the state, the family, the voluntary sector and the market in ensuring welfare).

The author focuses on the way ideas and beliefs about welfare and the role of the state in meeting economic needs have created a form of ensuring welfare. He identifies three main types of social state regime: liberal, conservative, and social-democratic [8]. However, the concept of Esping-Andersen regimes generalises all forms of ensuring the social state, which has led some researchers to doubt the validity of the concept

of regimes itself. Such concept implies that most of the key areas of social policy under the welfare regime will reflect a similar approach to welfare in all respects. In addition, each type of regime itself reflects "a set of principles or values that ensure consistency in the social security package of each country: [9]. Subsequently, a deeper historical and political analysis led to the development of a four-type political typology of social states [10]. The modern state can make numerous social decisions to achieve many goals. However, none of these options is without contradictions. According to the concept of power by Robert A. Dahl, there is a lot of controversy about public choice. There is socialism, capitalism, planning, non-interference, etc. [11].

Any system or public choice will bring good results if the ways of their implementation are seriously and carefully worked out. The basic and key democratic principles are law, freedom, and equality, and every democratic government takes complex administrative and other measures to implement them. There is no disagreement as to their importance. Human rights are one of the most important principles of social justice and comprise the main part of the concept of social security. Social security should be provided to those who need it. Groups of people in need of social security should be identified by each particular state. Social justice is based on the concept that a state is responsible to its citizens and can finance its responsibilities by levying taxes at a level acceptable to members of that society, which, again, varies from country to country.

The ideas of social justice are aimed at meeting the interests of the community in general and the interests of social cohesion. These ideas are also the basis of social policy (the establishment of the level of social justice, the rules of legal justice do not occur "naturally", but are established within the framework of the political order). The theory of social policy includes the application of the principles of justice to the main political institutions, as well as the constitutional order of society. Critics of social justice argue that it frequently operates at the expense of individual rights, and it is necessary to curtail certain individual freedoms to achieve a certain model of results [12].

Summarising the existing opinions of researchers and generalising the experience of implementing the principles of sociality of public administration, it can be stated that a social state is a legal democratic state, the highest value of which is a person. A state that creates and guarantees the necessary conditions for a decent life and free development of a person, comprehensive self-fulfilment of everyone's creative potential. Researchers contemplate not only the attributes, but also the criteria of the social state. As a rule, the level of guarantee of social human rights and freedoms is represented as such criteria.

Economic and social rights are human rights to a full life in society, including the right to employment, social security, healthcare and education, as well as the right to fair pay; the right to adequate protection of income in case of unemployment, illness, or old age; and the right to an adequate standard of living. The fundamental document defining the fundamental rights of everyone is the Universal Declaration of Human Rights. The document was adopted by the General Assembly of the United Nations (UN) on December 10, 1949. In 1966, the UN adopted two pacts: the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) [13].

Social law (social security law) is often referred to as "positive law". Unlike natural law, which is given to a person from birth, regardless of their will, positive law is established by state institutions of legislative power through regulations. The protection of human rights is ensured not only by state measures, but also by the individual capabilities of each citizen, who has the right to protect their rights and freedoms in all ways not prohibited by law (the right to self-defence - Part 5, Article 55 of the Constitution of Ukraine [14]). Civil society institutions, including human rights associations, play an important role in protecting human rights and legitimate interests.

International mechanisms for the protection of human rights form special bodies that exercise international control over the activities of states in the field of ensuring and protecting human rights. Such control is implemented at two levels: within the UN framework (the so-called universal level) and at the regional level, for example, within the framework of the Council of Europe. The UN has a Human Rights Commission that considers any humanitarian issues. The Human Rights Centre has been established as part of the UN Secretariat, and the post of UN High Commissioner for Human Rights was established in 1993. Decisions of international bodies are not binding on a state whose actions violate human rights, but create a negative public opinion of the world community around it [15]. As the analysis of constitutional support and the real functioning of the modern social state demonstrates, it is determined not only by the existence of a corresponding principle in the Constitution, a well-thought-out strategy of social policy and considerable achievements in its implementation, but also by numerous other constitutional provisions that elaborate on the principles of the social state and ensure their implementation, as well as special features of both social and all other spheres of public life.

The fundamental scientific substantiation of the theoretical foundations of the constitutional consolidation of the social state and law in different periods of society's development is described in the studies

of W. Beveridge [16], D. Bell [17], E. Giddens [18], L. Erhard [19], G. Myrdal [20], N.M. Onishchenko, R.P. Lutskyi [21] J. Rawls [22], R. Titmuss [23], F.A. Hayek [24], J. Strasser [25] and other authors. Modern foreign researchers of the social state, in particular G. Esping-Andersen [8], P. Pierson [26], G. Bonoli [27], P. Koslowski [28], M. Castells [29], identify the main models of the social state that represent different ideological trends, but each of these models is based on the ideas of social and political justice, combining the institution of the state and civil society.

In Ukrainian academia, this issue is considered in an evolutionary perspective with the coverage of economic aspects of the social state establishment in the context of economic reform, globalisation and the development of civil society [30-32], the analysis of implementation mechanisms for its main provisions and functions [33; 34]; the investigation of the main contradictions of the social policy development and coverage of the methodology for choosing priorities and prerequisites for the development of a new model of social policy [35-37], as well as the establishment and development of modern models of social state [38-40]; the features of foreign models of social state with an emphasis on their modernisation processes are given, the typologisation of modern models of social state in the context of globalisation challenges [5]; examination of the features of the establishment and development of social protection systems, the nature of relations between the social state and civil society, the specifics of public legal awareness, national and cultural differences in modern European social states [41]; a comparative analysis of the available economic models of the social state, coverage of the institutional prerequisites for their implementation and highlights of socio-economic factors that complicate the application of these models in Ukraine [42]; substantiation of the development features of Ukraine, which prevent a positive perception of the ideas of a social state [33]; coverage of the vision of the future of the social state in the implementation of measures for the accumulation and use of human capital as the key to successful use of social factors of economic growth [43; 44].

2. MATERIALS AND METHODS

To analyse doctrinal approaches to the functions of the modern state, several search strategies were used. The first step was to investigate articles relating to the subject under study. The following studies are analysed in this paper: A. Lutskyi, M. Lutskyi, R. Lutskyi [2]; A.O. Silenko [3]; V. Shapoval [1]. The selected articles were carefully reviewed and analysed. The second step was to search for studies relating to the subject area of the papers reviewed. To get the most recent publications, the strategy was to find reviews that cited any of the three articles. The third step was to search for keywords in English and was based on the fact that the reviews were published no earlier than 2000. The initial search was performed by looking at the headings, after which excerpts from the relevant articles were studied. The first line of the search combined terms related to the welfare regime (social state, social society, social system) and resulted in 182 citations. The second line of the search combined terms relating to human rights (socio-economic rights, positive law) – 48 citations. After studying the relevant passages, several studies were reviewed. The third line of the search was based on words in Ukrainian and combined terms relating to the constitutional provision (Constitution of Ukraine, constitutional principles). Thus, some other studies were found and selected for consideration.

The fourth and final step was to investigate the lists of references in the papers selected. The papers selected for this review were supposed to be empirical studies published in English in international journals. The study should concern the doctrinal provisions of the social component of the system of functions of the modern state. Studies containing a comparative analysis of data on the activities of states were considered, where an intellectual, political, and practical breakthrough was made towards solving the issue of state functions in the context of socio-economic reform.

The methodological framework of this study includes the main general scientific methods, namely socio-economic methods and techniques of the empirical level of cognition, the method of systematic analysis of numerous theoretical provisions on positive law, historical and statistical methods, the method of comparisons and analogies, generalisation methods, an analytical review of the available scientific publications on the subject under study. Furthermore, scientific methods in the field of legal science were also employed, such as normative-logical, comparative legal, historical legal.

The theoretical framework of the present study included the articles of Ukrainian and foreign researchers and practitioners, scientific articles, reviews and publications on the Internet (see References below). Most analyses of welfare state models require high-quality data for interethnic and historical perspectives. However, such analysis is often complicated due to insufficient qualitative data of a particular society. It is essential to use a detailed comparative interethnic analysis, which contains standardised data for countries and time periods. As a rule, qualitative research does not go beyond defining the concept of the welfare state and applying it to several cases simultaneously, which does not allow directing the study towards comparable

systematic data gathering. Thus, this study is no exception, with the subject under study requiring additional, more thorough analysis.

3. RESULTS AND DISCUSSION

The social component of the entire system of functions of the modern state is designed to ensure the social security of the individual, normal living conditions for all members of society, regardless of their personal participation in the production of goods. In the activities of the state, the implementation of social policy occupies one of the leading places. With its help, firstly, decent living conditions are created for each person, and social harmony is ensured; secondly, social protection of the unemployed, elderly, disabled, large families, orphans, children in single-parent families, and in conditions of interethnic conflicts-refugees and internally displaced persons; thirdly, social justice and solidarity in society are strengthened, as well as the democratic system that protects the individual. Successful activity of the state in the social sphere is one of the conditions for the effective implementation of economic, political, and other state functions. Social activity of the state is its activity in the field of ensuring decent living conditions for each person, creating equal and just opportunities for personal development. The content of state functions in the context of socio-economic reform is determined by the new tasks of the modern state in the social sphere, which are conditioned by the proclamation of a social state.

One of the first countries to make an intellectual, political, and practical breakthrough in solving this problem was post-war Germany. It was here that the term "social market economy" was first introduced into wide circulation in 1949. A thorough analysis of the conceptual provisions in the opinions of A. Müller-Armack, W. Euken, L. Erhard on the nature of the social market economy, according to which the pragmatic core of the philosophy of this management model lies in the interaction of the market mechanism and the socially concerned state based on combining the principle of market freedom with social balance, where freedom is correlated with the opposite principle – public duty, which allows some researchers to draw certain conclusions.

1) the philosophy of social market economy testifies to its indissoluble connection with the concept of liberalism, since it proceeds from the need to observe such a fundamental principle of coordination of economic processes as competition;

2) the economic policy of the "competitive order" in the conditions of a social market economy allows rationally combining the components of economic progress into a single whole under the conditions of free activity of market entities, while limiting only one type of freedom: the freedom to arbitrarily determine the rules of the game;

3) the free activity of one individual is limited to the sphere of freedom of another, as a result of which the spheres of freedom of people are brought into a state of equilibrium;

4) the adoption of a general decision relating to the implementation of economic policy should consider the historically determined situation of the country and precede the implementation of individual political and economic measures;

5) the essence and purpose of a social market economy, which is only an organisational principle open to various changes, and not some final form, is to combine a society built on competition, private initiative, with social progress provided precisely by the productivity of a market economy.

The national policy of social welfare in the 1950-1960s included programmes to achieve a high standard of living of the population through the creation of a state system of education, healthcare, housing construction, as well as social security programmes, regulation of the minimum wage. Later they were supplemented with demographic and environmental programmes for the protection of national culture, etc. It was after the Second World War that the term "social state" appeared in the programme documents of many political parties, as well as in the constitutions of three Western European states (in the Fundamental Law for the Federal Republic of Germany [45], Constitution of the Fifth Republic [46] and Spanish Constitution [47]). Definitively, the term "social state" was introduced into scientific discourse by L. von Stein in 1850, but active theoretical development of this problem began in the first half of the 20th century. The ideological basis of the "social state" comprised the opinions of the English economist J. Keynes, who justified the need for state intervention in the socio-economic sphere to prevent economic crises, unemployment, and improve the welfare of the population through the redistribution of income between different social groups [26].

From a present-day standpoint, the term "social state" means that a state that has declared itself as such in the Constitution considers improving the welfare of all its citizens as the main and priority objective. The establishment and development of social states in these and other democratic countries has led to a considerable expansion of constitutional regulation of the fundamental principles of social life and social

policy. Thus, most modern democratic constitutions establish the right to social security and to provide assistance and protection to weak social groups. Thus, the Constitution of the Italian Republic [48] states that the Republic protects health as a fundamental right of the individual and the main public interest and guarantees free treatment for the poor (Article 32).

The Constitution of Ukraine, proclaiming Ukraine a social state, establishes that everyone has the right to an adequate standard of living for themselves and their families, including adequate food, clothing, and housing. Everyone has the right to healthcare, medical assistance, and health insurance. The state creates conditions for effective and accessible medical care for all citizens. The state promotes the development of medical institutions of all forms of ownership (Articles 48-49 of the Constitution of Ukraine). In the social state, the material goods are also distributed outside the free equivalent exchange between producers and consumers. The social policy of the rule of law makes provision for the division of social benefits regardless of labour contribution, so as to ensure a decent standard of living for everyone. The state allocates the necessary funds for healthcare, cultural recreation, education, housing construction, and clear operation of transport and communications. This ensures the proper implementation of social rights, which should be enjoyed to the maximum extent by all citizens of the state.

One can also distinguish another area of implementation of social activities of the state, the development of which has become a certain reflection on the negative consequences of technological advance, especially in such new areas as genetics and medical biology. In fact, a new scientific area is being formed – bioethics, which is associated with human organ transplantation, sex reassignment, artificial insemination, problems of abortion and euthanasia. These phenomena cannot remain aloof from controlling and regulating (including at the constitutional level) state intervention in this area. This leads to a radical revision of the very concept of relations between the state and the individual, since instead of prioritising public and state interests over private ones, they are based on the concept of priority of the interests of the individual, their mutual responsibility. The constitutional practice of most post-Soviet states at the present stage has largely removed the opposition of natural-legal and positivist approaches to human rights based on the constitutional consolidation of fundamental rights and freedoms, which excludes oppression and violence of the state against the individual, defending its autonomy and the priority of human rights relating to the state.

CONCLUSIONS

Thus, a modern democratic state cannot fail to perform a social mission (in all aspects and types of social activities), and this is associated with such actions that are inherently paternalistic. In this sense, sociality or a kind of civilised and balanced paternalism is essentially an integral feature of a developed social state. The existence of a state only makes sense when it contributes to the achievement of those goals that individuals cannot or are unable to achieve for reasons beyond their control. World experience shows that a social state is a feature of a modern state, in the sense of which state activities should pursue real standards of material welfare, education, healthcare, etc. and ensuring such standards for all citizens (individuals), as well as minimising actual social inequality with its economic consequences and creating a system of social support (protection) for those in need. Thus, the concept of a social state is combined with the corresponding interpreted ideas of social justice and social protection.

The social state in most developed countries became possible not only due to the changes that occurred in the system of its internal functions and the nature of material production in the era of transition from industrial to post-industrial society and which were primarily associated with the change in the role of the personal (human) factor in modern production. The social state also became possible due to the idiosyncratic balance of power of various social groups represented in society, which was established in the middle of the 20th century, which, using forms of representative democracy, acquired the opportunity to put forward and defend their interests.

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Suggested Citation: Lutskyi, R.P., Zvarych, R.V., Skoromovskiy, V.B., Korytko, L.Y., & Oliynyk, O.B. (2021). Theoretical foundations of constitutional consolidation of the principles of social state and law. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(4), 113-121.

Submitted: 01.09.2021
Revised: 10.11.2021
Accepted: 02.12.2021

УДК 34:342
DOI: 10.37635/jnalsu.28(4).2021.122-132

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ПРАВОВІ МЕХАНІЗМИ ДЕРЖАВНОГО УПРАВЛІННЯ В УКРАЇНІ

Анотація. *Розглядаються питання щодо аналізу поточних та можливих майбутніх змін у конституційному статусі органів державної влади в Україні та правових механізмах державного управління в країні. Суттєвою особливістю державних органів є те, що лише вони наділені державними повноваженнями. Вони виконують свої функції від імені держави у чітко визначених формах. Зроблено спробу проаналізувати законодавчо визначену організаційну структуру правових механізмів державного управління в державі. Основною метою дослідження є проведення теоретичного аналізу та системного підходу до правових механізмів державного управління в Україні та конституційних відносин гілок влади в державі, розкриття особливостей складових елементів системи конституційного управління. відносини державної влади в Україні. У конституційній державі першочерговим актом постанови державної влади завжди має бути закон, а єдиним джерелом утвердження державної влади має бути народ. Найосвіченіші правителі, в руках яких були зосереджені всі мережі влади, рано чи пізно ставали норовливими тиранами, які визнавали лише свою владу, що нехтували свободою і не вважали невідчужуваними права людини. Тому подальша передача повноважень державного управління від місцевих органів державної влади до органів місцевого самоврядування має стати предметом подальших досліджень у цьому напрямі*

Ключові слова: *політика, інститут, система, реформування, соціально-правова держава, конституційні відносини*

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LEGAL MECHANISMS OF PUBLIC ADMINISTRATION IN UKRAINE

Abstract. *Issues related to the analysis of the current and possible future changes in the constitutional status of public authorities in Ukraine and the legal mechanisms of public administration in the country are considered. An essential feature of state bodies is that only they are endowed with state powers. They perform their functions on behalf of the state in clearly defined forms. An attempt is made to analyze the legally defined organizational structure of legal mechanisms of public administration in the state. The main purpose of a research consists in carrying out the theoretical analysis and system approach to legal mechanisms of public administration in Ukraine and the constitutional relations of branches of the power in the state, disclosure of features of the constituent elements of a system of the constitutional relations of the state power in Ukraine. In the constitutional state the law always must be the primary act of a statement of the state power, and people have to be the only source of a statement of the state power. The most enlightened rulers, in whose hands unlimited all webs of power were concentrated, sooner or later became wayward tyrants who recognized only their authority, that they neglected freedom and, did not consider inalienable human rights. Therefore, further transfer of powers of public administration from local public authorities to local self-government bodies should be the subject of further research in this direction*

Keywords: *policy, institute, system, reforming, social and legal state, constitutional relations*

INTRODUCTION

Issues of state power have always been one of the most important components of constitutional law. However, the very concept of the constitutional and legal institution of state power, unfortunately, did not receive an appropriate theoretical development. New conceptual approaches to understanding state power in Ukraine require filling this gap since the study of this phenomenon is not only purely theoretical but also practical in the difficult period of development of Ukraine. The need to devise ways of overcoming the problems of state power at the present stage of the establishment of the state relating to the consolidation, organization and functioning of state power is of particular importance. Therefore, a study of the category of state power as a constitutional and legal institution is relevant, which makes it possible to analyze the constitutional foundations of the organization and implementation of state power in Ukraine and the legal mechanisms of public administration in the state [1-5].

Analysis of recent research and publications. This question was studied by scientists such as N. Shuklina [6], and others. Aristotle, Plato, T. Hobbes, Locke's [7] certain social and philosophical ideas, J.J. Rousseau, Che. Montesquieu, J. Bentham, J. Mill, Kant, and Hegel [7] allowed deepening understanding of the essence of the state power. The main purpose of a research consists in carrying out the theoretical analysis and system

approach to legal mechanisms of public administration in Ukraine and the constitutional relations of branches of the power in the state, disclosure of features of the constituent elements of a system of the constitutional relations of the state power in Ukraine.

In democratic countries, to which, according to Article 1 of the Constitution of Ukraine [8], also Ukraine belongs, the state power has to be legitimate. Therefore in the constitutional state the law always must be the primary act of a statement of the state power, and people have to be the only source of a statement of the state power. Concerning a form of the legal act of approval of the will of the people, it is the Fundamental law of the state – the Constitution of Ukraine. An intrinsic sign of the modern period of development of Ukraine is its transformation from the part of a former great state which was depending on the center and owned only nominal attributes of statehood, in the independent state, a full subject of the international community [9-12].

1. MATERIALS AND METHODS

The Ukrainian society departs from the totalitarian model of development and moves in the direction of democracy promotion in all spheres of life as the unitary state (Fig. 1) which model of management significantly differs from federal structure (Fig. 2). The question of power, the search for an effective, optimal form of its organization is constantly somehow accompanied by the development of society during its world history. The system of power is extremely complex. It is formed with an extensive network of political, economic, military, diplomatic, bureaucratic, financial, and legal institutions [13; 14]. The subjects of the exercise of power include individuals, social communities, organizations, and movements. At the institutional macrosystem level subjects of the power can include the structured government branches, institute of the ombudsman, the head of state, political parties, political opposition, etc. [15-18].

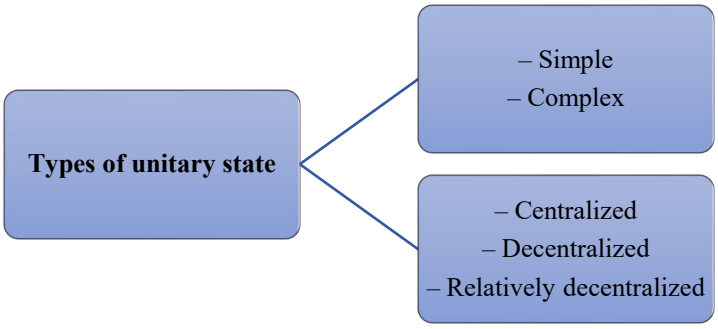

Figure 1. Types of unitary state

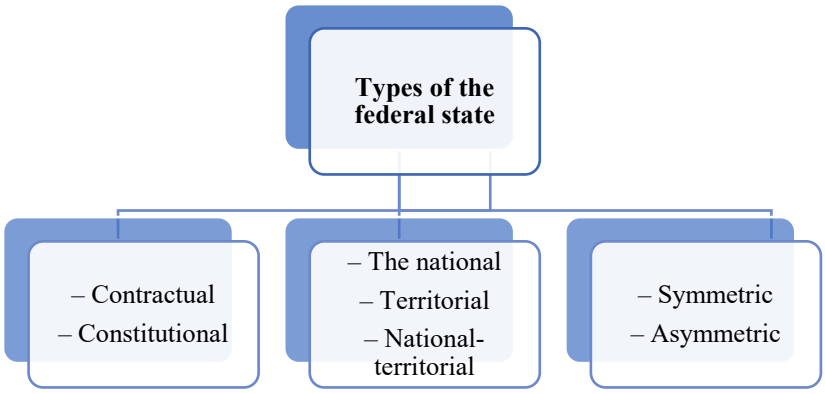

Figure 2. Types of federal state

The social system of the power as integrity contains a number of subsystems – legal, administrative and managerial, military, teasing and educational, etc. where the relations, characteristic of each of the subsystems are established horizontally, as well as vertically [19]. Power is a primary condition of realization of the right which is a cornerstone of the existence of the state. At the same time, it submits to the right which is designed to define accurately imperious prerogatives and functions of the state. Basic social functions of the authorities in the political system:

– integrative, that is, the unification of all social forces, political, material, and intellectual resources and their subordination to political, socially important goals;

– motivational – formation of motives of political activity, subordination to them of other motives and interests;

– social control – ensuring proper control in order to maintain the legitimacy of the state;

– regulatory – directing the will of subjects of political relations to create political mechanisms for regulating the life of society;

– unification (consolidating) – political and legal provision of participation in the formation and functioning of bodies of all institutions of the political system;

– repressive – maintenance of the existing rule of law and political order, compliance with political and legal norms;

– stabilizing – promoting the sustainable development of society and all structures of its political system [20].

Stability of the power means strengthening and development of political and legal systems, free and effective development of an economic system, continuous democratic updating of social and economic and political life of society, improvement of democratic political structures, effective protection of the rights and freedoms of the person and citizen (Fig. 3).

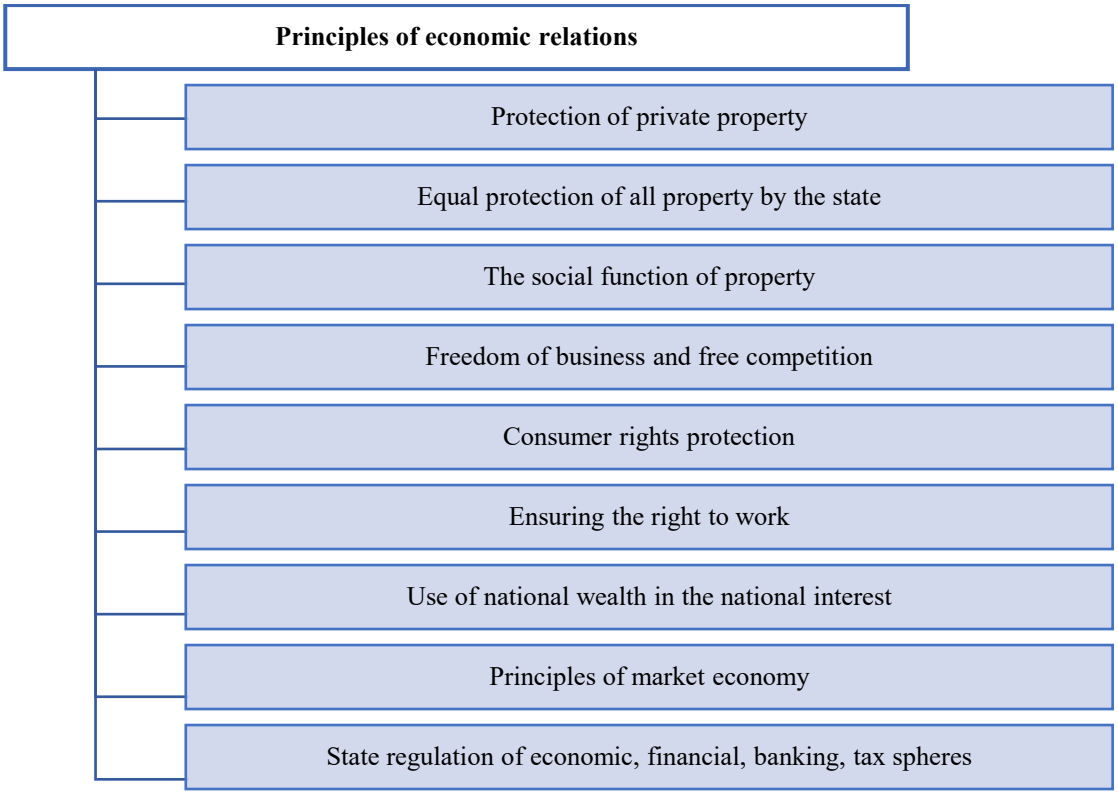

Figure 3. Principles of economic relations

2. RESULTS AND DISCUSSION

Developed state power is possible only if there is a powerful state mechanism. It provides for the legal consolidation of the powers of each state body, its functions, rights and duties, the delineation of these powers, the distribution of power functions, the presence of a developed right as a lever in the streamlining of state power, etc. All this applies to the political regime (Fig. 4). Restrictions on the power by law in practice means, in particular, the prevention of its sole concentration, the distribution of its functions among various authorities. Such a mechanism, as the experience of most of the world's leading countries shows, makes it possible to avoid abuse of power, since its branchesact relative to each other as a counterweight and controllers in this case [21]. Such a fuse in the state mechanism seems very appropriate.

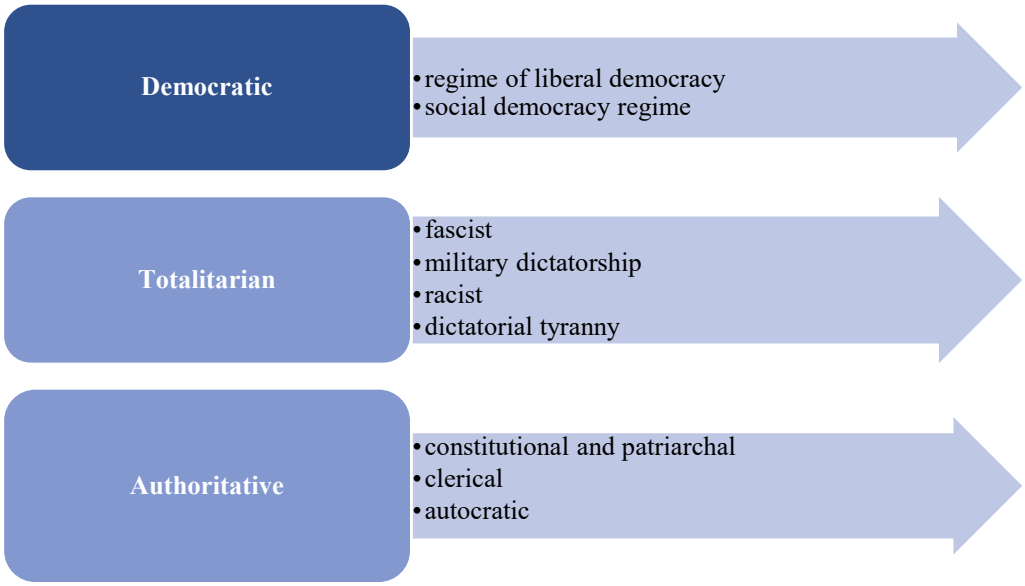

Figure 4. Political regime

The term "separation of powers" (from the English separation of powers) has now become traditional and common in political science, although, perhaps, it does not accurately reflect the essence of this concept. First of all, we are talking about the distribution of powers or the separation of functions of a single (actually indivisible by definition) state power between its various bodies. Prominent legal scholars, political scientists, and philosophers have repeatedly drawn attention to this fact. Modern scientists note the need to consider state power as a holistic phenomenon, divided and simultaneously interconnected in structural and functional terms by the organizational and legal mechanism of checks and balances. In the science of constitutional law, there is no unified approach both to the classification of legal institutions of the branch of constitutional law in general and to the attribution of the institution of state power to a certain type of constitutional legal institutions; it is only the recognition of the critical importance of this institution that is common. Not all scientists even use the concept of "constitutional and legal institution of state power." So, for example, V.M. Shapoval [22] identifies in general three groups of constitutional legal institutions:

1) general complex normative formations, most often complex content;
2) the main ones, which are usually included in the general;
3) initial, which, as a rule, includes several legal norms.

At the same time, as the institution of the beginning of the organization and activities of the state mechanism calls it, and also the constitutional and legal institution of the territorial organization of the state refers to it as general (Fig. 5). In terms of its content, the two main institutions can be considered as the institution of state power. It should be noted immediately that there are no autonomous entities for comparison in Ukraine (Fig. 6).

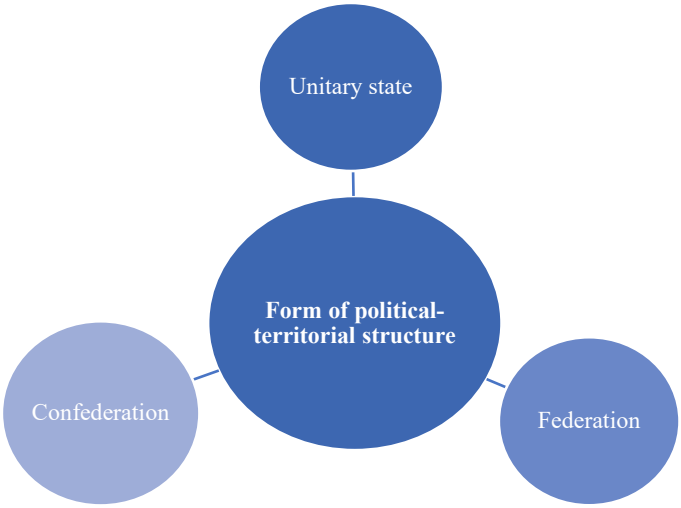

Figure 5. Form of political-territorial structure

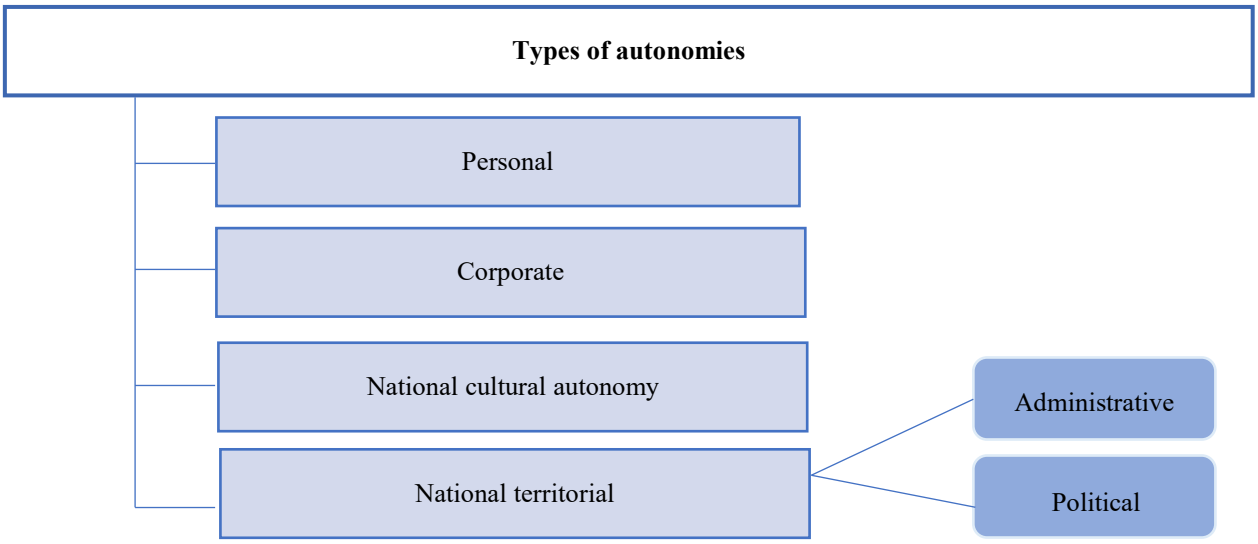

Figure 6. Types of autonomy

V.F. Melashchenko [23] classified constitutional and legal institutions depending on their content, structure, methods, and tasks of legal regulation. The institution of state power also belongs to the superinstituts of constitutional law, along with the institutions of people's power, state sovereignty. From the references of the theory of law, it could be provided the following classification of constitutional legal institutions:

1) general, the content of which is normative provisions related to the entire branch of constitutional law;

2) material and regulatory constitutional and legal institutions that make up a system of norms, the purpose of which is to directly regulate the behavior of subjects of public relations of a certain type;

3) protective constitutional and legal institutions consisting of protective norms;

4) process and procedure institutions containing constitutional rules of a process, procedural nature (for example, the constitutional and legal institution of the legislative process) [23].

According to this classification, it would seem a good idea to attribute the institution of state power to general constitutional and legal institutions. M. Povaliaeva [24] identifies general constitutional and legal institutions that cover a significant range of public relations and include smaller structural elements. The author refers to the general institutions the constitutional and legal institutions of the foundations of the constitutional system, the constitutional and legal status of the individual and citizen, and state power. Thus, state power as an institution of constitutional law is a system of constitutional legal institutions and norms, which is relatively separate within the branch of constitutional law, which regulates public relations regarding the organization and implementation of state power. As can be seen from this definition, the constitutional and legal institution of state power has a complex structure: being in its content a superinstitut, it has peculiarities characteristic of this type of legal institution – it is composed of basic institutions as less complex systems and separate constitutional legal norms; all these elements interacting with each other, form a wide variety of connections and relationships, make this constitutional and legal institution complex and multilevel.

The dominant position in the science of constitutional law is that the constitutional and legal institution of state power consists exclusively of the norms of the Constitution of Ukraine: “The latter, of course, is considered as an organizationally integral division of the normative and legal content of not all norms of constitutional law, but only the Constitution, whose norms regulate the corresponding type of related political and legal social relations, imbued with a certain unity and allocated to a separate complex” [25]. It is the state power, through its formal acts in the conditions of civilization, that provides the norms and principles of positive law with the characteristics of general obligation, the possibility of strict legal certainty of the content of the regulation, and it is the state power that gives the necessary powers and appropriate means of influence to law enforcement agencies, jurisdiction, justice authorities, determines the grounds and procedure for their activities, which guarantees in a certain way the implementation of legal regulations. The constitutional and legal institution of state power is a complex system that is formed from many interacting parts and elements that characterize the internal structure of the institution of state power and distinguish it from other state institutions. The structure of the system of the institution of state power is due to the systemic relations between its constituent elements (institutions), which are in corresponding subordination to each other. Each of these

elements of the constitutional and legal institution of state power is inherent in internal unity, which, in turn, distinguishes them from other institutions.

The system of the institution of state power consists of the most important institutions, which primarily include institutions: the legislative branch, the presidency, the executive branch, the judiciary, and the institution of the prosecutor's office. The relationship between these institutions and their interaction is based on the real relationship and interaction of those areas of public relations that are the subject of constitutional regulation. Regulations for the operation of one institution create the necessary prerequisites for the operation of another or several institutions, determine their content and orientation. The Constitution of Ukraine defines the structure, status, competence of the executive branch, decides on the relationship between the head of State and the Government, the Government and the highest representative body of the legislative branch, and answers questions related to the constitutional responsibility of the executive branch and the exercise of parliamentary control over the activities of the executive branch. The Constitution of Ukraine answers questions related to the status of the judiciary: establishes fundamental provisions regarding the judicial system, determines the types of the jurisdiction of the courts, answers questions related to the subordination of the courts, the activities of the prosecutor's office, the bar, bodies that enforce judicial decisions.

The question of the status of the president as head of state is separate and very difficult. The “Head of State” formula of the Constitution of Ukraine is aimed at emphasizing in the status of the President his leading role precisely in the organization of state power, the formation of the state, ensuring unity in the actions of the entire state apparatus, the removal, and resolution of certain misunderstandings in the system of the state mechanism, on combining the efforts of state and self-government structures in order to implement state policy most effectively. On the basis of the Constitution, it is the state that determines the system of the institution of state power. Therefore, a state body is a certain state organization, which is founded by the state, is formed by it in the established order, and acts on its instructions. State bodies of Ukraine are characterized by certain basic features. Any such body represents Ukraine as a state both domestically and externally. The state body acts on the instructions of the state, which determines the legal status of each of these bodies by law. The body of the Ukrainian State is a relatively independent part of the unified system of state bodies of Ukraine, which is based on the principle of separation of powers. It is acting on behalf of the state and at the same time on its own behalf and occupies a well-defined place in the state apparatus. The state body shall be formed in accordance with the procedure established by the Constitution and the relevant laws.

In particular, the Verkhovna Rada of Ukraine and the President of Ukraine are elected by general elections, the Cabinet of Ministers is formed by the President of Ukraine. Depending on their own legal status, each of the public authorities carries out its inherent tasks and functions of the state. Thus, the only legislative body in Ukraine is the Parliament – the Verkhovna Rada of Ukraine. The head of the Ukrainian State, the President of Ukraine, is the guarantor of state sovereignty, territorial integrity of Ukraine, respect for the Constitution of Ukraine, human and civil rights and freedoms. The Cabinet of Ministers of Ukraine exercises executive power. Justice in Ukraine is administered exclusively by the courts. Within the framework of the status, the state body acts on behalf of the state and, under its authority, is its official representative. In order to carry out its own tasks and functions, the state gives public authority to the state bodies, which is enshrined in a separate normative legal act and allows the exercise of state power in its three forms: legislative, executive and judicial. These powers define the specific rights and obligations of state bodies, within which they have the right to exercise the rights granted to them, to adopt relevant acts binding on subordinate bodies, officials and citizens, and to monitor their implementation.

At the same time, it must be taken into account that the state power delegated to the body absorbs the provision that it acts on behalf of the state since it is clear that the body cannot exercise its powers other than on behalf of the Ukrainian state. Government functions of public administration in each country are carried out by an multiple system of bodies. Among them are higher – the parliament, the government, and the head of state, higher judicial bodies. It is these bodies that exercise the main powers in the legislative and executive power, and their activities are of political importance. A separate role in author`s opinion belongs to the government as the highest body in the system of executive power in the country. The varieties and powers of the government are presented in Figure 7 and Figure 8. The highest courts of general and special competence – the Supreme Court, the Constitutional Court, the Supreme Administrative Court, and the like – are also assigned to the highest bodies. However, the judiciary is formally excluded from the exercise of functions of a political nature (the exception is only the activities of the Constitutional Court, although it is generally considered a “non-political” body).

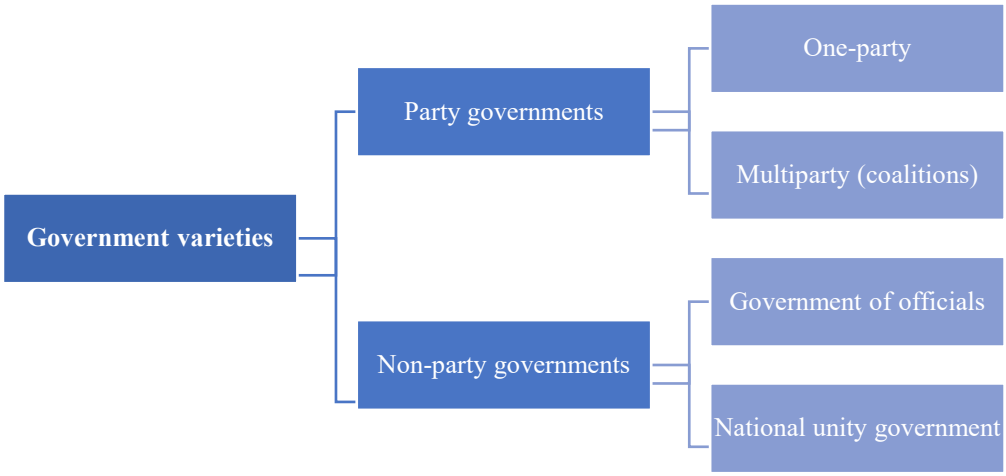

Figure 7. Government varieties

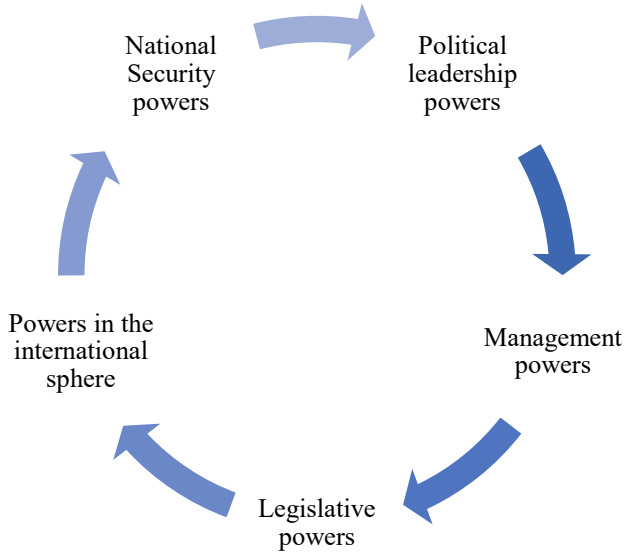

Figure 8. Powers of the Government

The Constitution of Ukraine of 1996 enshrined a qualitatively new organization of state power. By abandoning the hierarchical, vertical system of the organization of state power that has existed in Ukraine for several decades, it has adopted the universally recognized principle of the organization of state power – the principle of dividing it into legislative, executive, and judicial. The state authorities of Ukraine have become equal and independent of each other. At the same time, the Verkhovna Rada of Ukraine under the Constitution finally lost its former status as the highest body of state power, but for the first time acquired all the main features of the status of the Parliament of Ukraine – a single national, representative, collegial, elected, unicameral, the permanent legislative body of Ukraine [9].

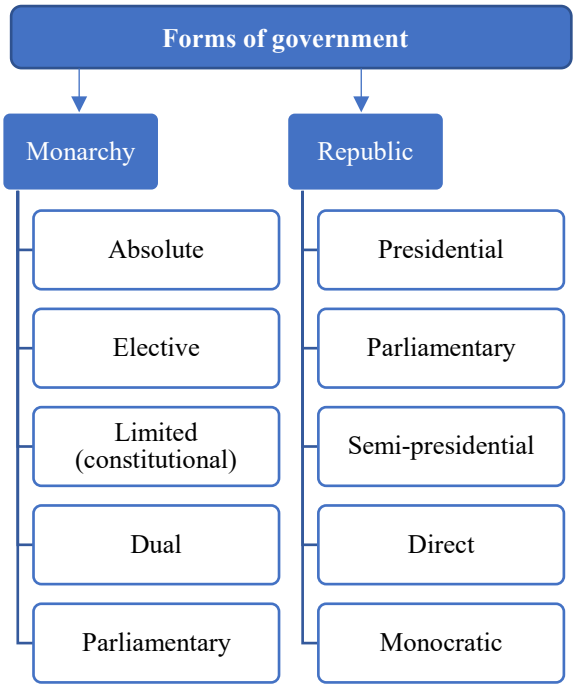

Figure 9. Form of government

To characterize the status of each of the highest authorities of the modern state, the concepts of the form of government are decisive. A form of government is a way of organizing power, conditioned on the principles of the relationship of higher bodies. Figure 9. At the same time, the relationship between parliament, the government, and the head of state is the starting point. The content of their relationship reflects, to one degree or another, the ideas of separation of powers. These ideas, known from an early time, in the clearest statement were formulated by the French enlightener and legal scholar of the XVIII century, Charles Montesquieu.His teaching played a significant role in the formation of modern political and legal thought and significantly influenced the development of state institutions in a new period of world history. Montesquieu distinguished the three powers – legislative, executive, judicial – and argued that in conditions of freedom, an unacceptable combination of these authorities and their exercise by one person or one body. This combination, in his opinion, led to arbitrariness. Therefore, Montesquieu considered it necessary that these three authorities be carried out by different bodies. At the same time, he recognized the distributed authorities as in principle equivalent and did not single out among them anyone that would be endowed with the quality of the rule in relation to other authorities. Developing his doctrine of separation of powers, Montesquieu put forward a provision on the need for their interaction and mutual balance. He wrote about such interaction of the authorities, in which the latter restrain each other and consistently move towards a common goal.

At the same time, Montesquieu pointed out the impossibility of practical delineation of them so that this completely excluded the interference of one government in the activities of another. The doctrine of separation of powers formulated by Montesquieu laid the foundations of the constitutional principle, which was recognized in the state-legal theory and practice of a number of countries at the end of the XVIII century. The Constitution of Ukraine of 1996 takes a differentiated approach to the problem of legislative consolidation, and then the organization and functioning of state power in the country. General issues of the consolidation and organization of this authority are reflected in section I “General provisions”. Concerning the definition in the Constitution of specific issues of the consolidation, organization, and exercise of state power, they are reflected in separate sections on both the principle of popular sovereignty and the organization and functioning of individual branches of state power. This approach is consistent with the legislative practice of modern constitutionalism.

In the context of the establishment of Ukraine as a democratic, legal and social state, the role of the judiciary is significantly increasing. The function of the administration of justice under the Constitution of Ukraine (Article 6) grants to the courts, which act independently of the legislative branch. No public authority other than the courts has the right to assume the function and authority to administer justice. Only the courts have the right to declare a person guilty of a crime and to subject it to criminal punishment. The courts protect the rights and freedoms guaranteed by the Constitution to everyone (Article 55). The provision, firstly enshrined in the Constitution that the competence of the court extends to all legal relations arising in the state,

is aimed at enhancing the role of the courts. The judiciary, like other branches of the state power, exercises its powers within the limits established by the Constitution and in accordance with the laws of Ukraine. The purpose of justice is to protect the constitutional order, the rights and freedoms of citizens, the rights and legitimate interests of enterprises, institutions, and organizations, regardless of forms of ownership.

CONCLUSIONS

Perhaps people are trying to solve the problem of the rational structure of state power and its bodies as long as the state exists as a form of organization of society. The constitutional and legal institution of state power is a complex system that is formed from many interacting parts and elements that characterize the internal structure of the institution of state power and distinguish it from other state institutions. The structure of the system of the institution of state power is due to the systemic relations between its constituent elements (institutions), which are in corresponding subordination to each other. Each of these elements of the constitutional and legal institution of state power is inherent in internal unity, which, in turn, distinguishes them from other institutions. A state body is a certain state organization, which is founded by the state, is formed by it in the established order, and acts on its instructions.

The most enlightened rulers, in whose hands unlimited all webs of power were concentrated, sooner or later became wayward tyrants who recognized only their authority, that they neglected freedom and, did not consider inalienable human rights. However, power is a primary condition of realization of the right which is a cornerstone of the existence of the state. At the same time, it submits to the right which is designed to define accurately imperious prerogatives and functions of the state. Therefore, further transfer of powers of public administration from local public authorities to local self-government bodies should be the subject of further research in this direction.

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Suggested Citation: Stepanenko, S.V., Filippova, V.D., Boniak, V.O., Malakhova, T.V., & Kravchenko, O.V. (2021). Legal mechanisms of public administration in Ukraine. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(4), 122-132.

Submitted**:** 19.08.2021
Revised**:** 26.10.2021
Accepted: 28.11.2021

УДК 354-027.21/.22:005.21/.22(477)
DOI: 10.37635/jnalsu.28(4).2021.133-146

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НАПРЯМИ МОДЕРНІЗАЦІЇ СИСТЕМИ ДЕРЖАВНОГО СТРАТЕГІЧНОГО ПЛАНУВАННЯ В УКРАЇНІ

Анотація. *Системно організоване державне стратегічне планування є вирішальним чинником ефективного державного управління. Проте основними проблемами такого планування в Україні можна назвати відсутність системного прогнозування та довгострокового стратегічного планування, невизначеність зв'язків та механізмів узгодження між стратегічними документами, відсутність чітких та уніфікованих стандартів, процедур та розподілу функцій між суб'єктами процес планування. Тому метою даного дослідження є визначення напрямів модернізації державного стратегічного планування в Україні шляхом формування інтегрованої системи планування. У цьому дослідженні пропонується визначення поняття «державне стратегічне планування» з використанням порівняльного аналізу різних підходів і точок зору щодо стратегічного управління та стратегічного планування. Запропоноване визначення та проблемний аналіз існуючих організаційних структур і процедур планування в Україні покладено за основу рекомендованих напрямів модернізації для формування Системи державного стратегічного планування в Україні. Запропоновано відповідну систему документів стратегічного планування в Україні на національному, регіональному та галузевому рівнях з використанням ієрархічного аналізу на цих рівнях та аналізу поточного набору затверджених українськими документів у відповідній сфері. Особлива увага приділяється національному рівню, оскільки національні стратегічні напрями та цілі становлять загальну основу для стратегічних документів інших рівнів. У дослідженні узагальнено методологічні засади, розроблено інституційний механізм формування та реалізації згаданої Стратегії, запропоновано розподіл функцій між державними та іншими акторами, задіяними в цьому механізмі*

Ключові слова: *довгострокова стратегія розвитку України, розподіл функцій*

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DIRECTIONS Of MODERNIZATION OF THE SYSTEM OF STATE STRATEGIC PLANNING IN UKRAINE

Abstract. *The systematically organized state strategic planning is the crucial factor of effective public governance. However, main problems of such planning in Ukraine may be noted as absence of the systematic forecasting and long-term strategic planning, undetermined links and mechanisms of coordination between strategic documents, lack of clear and unified standards, procedures and functions' distribution between actors in planning process. Therefore, the aim of this study consists in determination of modernization directions of the state strategic planning in Ukraine by means of the integrated planning system formation. The definition of 'state strategic planning' is proposed in this study with using comparative analysis of various approaches and viewpoints concerning strategic management and strategic planning. The proposed definition and problem analysis of current organization structures and procedures of planning in Ukraine assume as a basis of recommended modernization directions to form the System of State Strategic Planning in Ukraine. The appropriate system of strategic planning documents in Ukraine at national, regional and sectoral levels is suggested with using hierarchy analysis across these levels and analysis of the current set of Ukrainian approved documents in proper field. Special attention is given to national level because national strategic directions and goals constitute general framework for strategic documents at other levels. The 10-years Development Strategy of Ukraine is proposed as the main strategic document of national level. The study generalizes methodological principles, and develops institutional mechanism for making and executing mentioned Strategy, proposes the functions' distribution between governmental and other actors involved in this mechanism*

Keywords: *the long-term Development Strategy of Ukraine, functions' distribution*

INTRODUCTION

Today, no country can do without strategic planning. Modern world trends of the society development influenced by the processes of transformation in Ukraine. Having set itself the ambitious task of being a member of the world community with high standards of living, Ukraine must solve a large number of problems through the implementation of public administration reform [1]. The state strategic planning is the crucial factor of effective public governance for society. The progressive socio-economic development of Ukraine and the achievement of a high standard of living for its citizens depends on its quality [2]. In today's society, saturated with fast-moving changes, state strategic planning is an effective means of forecasting future problems and opportunities, which ensures the creation of a long-term strategic plan, the unity of strategic goals at the state, regional and sectoral levels, and the basis for making policy decisions. The state strategic planning should be carried out constantly to provide a reliable basis for the implementation of other types of management activities. Particularly important is long-term strategic planning, which outlines the general

vectors and priorities of the country's development for a long period and in general determines its historical perspective [3; 4].

In Ukraine, it was not possible to build a functionally effective and structurally coordinated system of public governance, the reason for which is the lack of holistic strategic planning at the state level. At present, separate elements of the state strategic planning are existing, in particular, at sectoral, regional and local levels. Among strategic documents, there are the Development Strategy "Ukraine 2020" (optionally adopted without official legal procedure), the Activity Program of the Cabinet of Ministers of Ukraine, the State Strategy of Regional Development, state and regional strategies and programs for separate branches of society. These separate elements are not enough to ensure effective social and economic development of the country. As a result, taking into consideration the influence of external factors, the system of Ukrainian public administration is to perform tasks non-defined fully and sometimes – unrealizable goals formulated by politicians [5].

During the independence of Ukraine, many strategies and government programs aimed at stimulating economic growth and improving the social status of citizens approved. However, most of the stated goals in these programs and strategies not achieved. The reason for this consists in a number of problems in the state strategic planning. The main ones are:

– the long-term strategic planning of the country's development is not institutionalized;
– the systematic forecasting of economic and social development is absent;
– the legislation does not determine links and mechanisms of coordination between strategic documents at national, regional and sectoral levels;
– there are no clear and unified standards and procedures for making, implementation and results evaluation of strategic documents;
– the distribution of functions between actors (governmental, other public, non-governmental) in the state strategic planning process is not clear.

In this regard at the current stage of development of Ukraine, issues of conceptual vision and practical ways regarding the modernization of the state strategic planning in Ukraine are of particular relevance [6].

Therefore, *the aim of this study* consists in determination of modernization directions of the state strategic planning in Ukraine by means of the integrated planning system formation. A coherent, systematic process of state strategic planning facilitates the efficient use of resources, and promotes economic and social development of the country. We choose the national level as the main subject of analysis because it is most important in mentioned system. At the national level, an interrelated and coordinated set of strategic directions and goals is to be elaborated, covering all spheres of society. This is to be the ground and benchmark for developing strategies at the regional, sectoral and local levels [7-9].

For achieving the aim of this study, the rest of this paper is organized to perform following *tasks*:

• generalization of the approaches, principles, methods and domestic legal-normative base (empirical ground) for studying current conditions of the state strategic planning in Ukraine and determining its modernization directions (the section "Materials and Methods");

• collection the literature about general understanding the modernization and the strategic planning (the section "Literature Review");

• suggestion the definition of 'state strategic planning' for using it to recommend modernization directions of such planning in Ukraine (the section "The Concept of State Strategic Planning");

• determination of these modernization directions to form the System of State Strategic Planning in Ukraine and appropriate system of strategic planning documents at national, regional and sectoral levels with emphasis on making and executing the long-term Development Strategy of Ukraine (the section "Modernization of the State Strategic Planning in Ukraine: The Main Directions and the Legal Base");

• short presentation of the main results and recommendations of the study (the section "Conclusions").

1. LITERATURE REVIEW

In this article, the concept of modernization of the state strategic planning based on the views of the classics [10-13], modern scholars [14-17] and other. P. Shtompka [10] understands the idea of modernization as a synonym for virtually all progressive social changes. In another sense, the notion of "modernization" means the identical movement to "modernity". In addition, the term "modernization" refers to reforms carried out in underdeveloped or underdeveloped societies in order to catch up with advanced, developed countries. Summarizing approaches to the concept of modernization, O. Danyl'yan [11] believes that the paradigm of modernization based on such important statements: 1) country with a high level of industrialization and informatization, sustainable economic development, high level and quality of life of the population can considered a modern or developed country; 2) society or a country that does not meet these conditions, are

either traditional or transitional; 3) standards of development, "modernization" are Western countries, so the theory of modernization is often referred to as the theory of "westernization"; 4) "modernization", "development", "modernity" is a complex phenomenon that has technological, economic, political, social and psychological dimensions; 5) the processes of modernization are global, progressive and irreversible, since in the end, painful innovations inevitably lead to improvements both in the material and in the socio-cultural side of human existence.

Modern scholar N. Obushna [15] understood "Modernization" as a systemic process of various kinds of shifts and transformations of specific institutional areas of society, which ensures the transition of the social order from one conditions of development to another in the direction of its modernization and constant quality improvement. "Modernization is change for progress. This is a special aspect of development of society, which is continuously creative and yet remains stable. It also means a socially differentiated and functionally equipped and industrialized society. Thus, modernization simply connotes creativity, stability, differentiation and industrialization". In modern conditions, modernization considered as a conscious effort of the state to carry out qualitative transformations in society taking into account the experience of advanced countries in order to modernize the operating system [18-20]. Modernization of the state is most appropriate in such areas as political system, politics, state administration, state ideology and values [14]. Yu. Surmin [21] considers among main directions of modernization of the state forming the system of strategic planning, which envisages the formulation of goals and building programs for the development of society. Given the above, modernization of the state strategic planning in Ukraine is expedient to understand as its qualitative transformation into an effective system of long- and medium-term strategic planning at state, regional and sectoral levels, which can provide a clear vision of Ukraine's future and ways to achieve it. This system has to include the set of institutional, procedural and value components, in particular:

– subjects of state strategic planning;
– officially approved mutually agreed strategic documents;
– the value of the development of these documents;
– normative legal acts and normative-methodical documents, which regulates activities related to state strategic planning.

A. Johnsen [22] explores development strategic management from 1960s, when its academic conception become a diverse field spanning business, non-profit as well as public sector strategy. By the early 1980s, public sector organizations also started to use strategic management concepts and techniques. The author points to policy formulation, planning and budgeting have for a long time been important activities in the public sector. For our study is important about that "Today, strategic management is common in the public sector in many countries and across different tiers of government".

B. Schultz [23] talks about strategic planning in the federal government. It was mandated with passage of the Government Performance Results Act (GPRA) of 1993. GPRA requires agencies to develop strategic plans, performance plans and conduct gap analyses of projects. Federal agencies also are required to conduct performance management tasks such as setting objectives, measuring results against the objectives, and reporting progress against the overall strategic plan. According to J.M. Bryson, L.H. Edwards [24], strategic planning can be applied to organizations, collaborations, functions (e.g., transportation or health), and to places ranging from local to national to transnational. Effective strategic planning needs to be harmonization with the political level and the public [25].

In developing the directions of modernization, it is important to study effective experience of strategic planning. On the practice in Singapore study the collective formulation of strategic plans for the nation is made possible by concerted yet flexible implementation mechanisms as well as established consultation networks among different stakeholders over the years. Concept plans are implemented through the Master Plan, which is updated every five years by planners, their counterparts in different parts of the government and an engaged public, involving again a lot of negotiations, arguments, compromises and coordination [26].

Useful for our study is an analysis of public management in Norway realized by Age Johnsen. "All central governmental organizations are required by regulation to formulate goals, measure performance, evaluate their outcomes and secure that their decision-making is based on sound evidence. Local authorities are annually required by regulation to report accounts, activities and performance to central government in a mandatory performance management system. There is no formal requirement for local authorities to use management by objectives and benchmarking, but most do" [27-29].

Researchers define the role and place of values in strategic management processes. "Cultural values and beliefs (religious, traditional and rational) are operative at all levels of the strategic decision-making process and thus, they have a strong and deep meaning in strategic management processes as core competences" [30]. Ch. S. Jung, G. Lee [31] characterize the purposeful process of strategic planning: "Goal-setting theory and

the planning-performance model provide important theoretical backgrounds for the improvement of organizational performance in government agencies".

V. Ramanujam, N. Venkatraman, J. Camillus [32] proves influences on effectiveness seem to vary depending on the criterion of effectiveness used, overall, the most important dimensions were system capability, or a system's orientation toward creativity and control; resources provided for planning; and functional coverage. The system of key performance indicators determines strategic efficiency. Key performance indicators, when designed properly, can often still provide management at various levels of the organization with effective feedback and insights to gauge the overall health of the enterprise [26].

2. MATERIALS AND METHODS

Achievement the aim of this study is based, first, on conceptual approaches to the modernization process in modern society and state. These approaches allow general understanding the modernization of state strategic planning in Ukraine. Comparative analysis of various approaches (decision-making, process, activity, target) and viewpoints concerning strategic management and strategic planning, including in public governance, and logical generalization of appropriate concepts are used for suggestion the definition of 'state strategic planning'.

System approach to the state strategic planning, its suggested definition, and problem analysis of current organization structures and procedures of planning in Ukraine assume as a basis of recommended modernization directions to form the System of State Strategic Planning in Ukraine. Existing elements of the state strategic planning in Ukraine are summarized from the Ukrainian Laws "On State Forecasting and Making Programs of Economic and Social Development of Ukraine" [33], "On Principles of Domestic and Foreign Policy" [34], "On Principles of State Regional Policy" [35], "On State Target Programs" [36]; Activity Rules on the Verkhovna Rada of Ukraine and on the Cabinet of Ministers of Ukraine; Typical Activity Rules on the Local State Administration; etc.

The suggested system of documents of the state strategic planning in Ukraine is made with using hierarchy analysis in accordance with governance levels in Ukraine and analysis of the current set of Ukrainian approved documents in proper field, namely, the Development Strategy "Ukraine 2020" [37]; the Activity Program of the Cabinet of Ministers of Ukraine; the State Strategy of Regional Development of Ukraine [38]; state strategies for the development of certain spheres and sectors of society; state target programs; regional strategies and development programs for separate branches of society.

The structure and content of the long-term Development Strategy of Ukraine is proposed to elaborate in line with such methodological principles as orientation to quality of citizens' life, interconnections between development directions, their axiological and functional significance, convergence from abstract to concrete, forecasting, composing the image of country's future. Process approach to the state strategic planning, modelling method and structural-functional analysis are the methodological foundations for appointing all state bodies and other public actors consisting the institutional mechanism of preparation, approval, implementation, and results evaluation of the Development Strategy of Ukraine, and for proposing distribution of functions between these actors. The main legal grounds for suggested institutional composition and actors' functions are the Constitution of Ukraine [39] (articles 85, 106, 116, 119, 143); the Ukrainian Laws "On the Cabinet of Ministers of Ukraine" [40], "On Central Executive Bodies" [41], "On Local State Administrations" [42], "On Local Self-Government" [43]; Resolution of the Cabinet on Ministers of Ukraine "On the Ministry of Economic Development, Trade and Agriculture" [44].

Recommendations on including in procedures of making, realizing and results evaluating strategic documents the modern mechanisms of consultation, partnership, and citizens' control are developed with help of analysis of Ukrainian legal-normative base concerning interaction between the public and authorities, and with considering appropriate foreign experience. The analyzed Ukrainian legal-normative base consists of the Ukrainian Law "On Appeals of Citizens" [45]; Resolution of the Cabinet of Ministers of Ukraine "On ensuring public participation in the formation and implementation of state policy" [46]; Resolution of the Cabinet of Ministers of Ukraine "On Approval of the Procedure for Facilitating Public Examination of the Activities of Executive Bodies" [47]; the set of draft laws in this field etc.

3. RESULTS AND DISCUSSION

3.1. The concept of state strategic planning

Theoretical analysis of modernization directions of the state strategic planning in Ukraine must be based, first of all, on clear definition of the "state strategic planning" concept. This one originates from the general concept of "strategic planning" as foundation of purposeful organization activity. There are many definitions of strategic planning which mark out different aspects of this very complex and important activity. J.M. Bryson,

B.C. Crosby, J.K. Bryson [48] outline this complexity when consider effective strategic planning as "a complex cognitive, behavioral, social and political practice in which thinking, acting, learning, and knowing matter". Therefore, strategic planning in technological dimension "is not any one thing, but is instead an adaptable set of concepts, procedures, tools, and practices" "that must be applied sensitively and contingently in specific situations" [49].

Some authors understand the essence of strategic planning in short as forming of the organization's future, e.g., "determination of firm's future status depending on external conditions" [50], "formal consideration of an organization's future course" [51], "designing of probable or logical future – generalized scenario – and desired future conditions" [6]. Such future forming requires a set of fundamental and vital decisions aimed at effective organization's functioning in long-term perspective [52]. Thus, it may be marked out the decision-making approach to strategic planning. According to [53], strategic planning is "a deliberative, disciplined effort to produce decisions and actions that shape and guide what an organization or other entity is, what it does, and why it does it". In other interpretation, strategic planning provides for fundamental choices about an organization's existence (mission, vision, values, resources, target audience etc.) [54].

Making a set of mentioned decisions requires a special sequence of actions therefore the process approach to strategic planning is used in many scientific publications. As shown in [55], strategic planning is a process consisting in determination of long-term organization's perspective, formulation of specific objectives of activity, development of strategy to achieve assigned objectives in given internal and external conditions. Ch.S. Jung and G. Lee [31] consider strategic planning as "analytical, logical, and systematic processes through which organizations develop policy options and specific goals which differ from the status quo through analyzing and assessing the internal and external environment". According to this approach, strategic planning integrates several kinds of managerial activity, namely, situational analysis, setting goals and objectives, forecasting, estimation and distribution of organizational resources, adaptation to external environment, strategy development, internal coordination, strategy implementation planning etc. [56]. In detail, scientists include to strategic planning process such main activities [53; 57-61]:

- stakeholder analysis;
- determining main elements and timeline of the strategic planning process;
- clarifying organizational legal statutes or mandates;
- establishing or updating mission, vision, and values;
- diagnosing the current situation by assessing external and internal environment;
- identifying strategic issues;
- creating possible strategic alternatives and selecting optimal alternative;
- developing and agreeing strategy;
- elaborating implementation plan.

Forming a system of strategic goals and derived objectives is central point among these activities. For instance, in the Encyclopedia of Public Administration strategic planning is considered as long-term planning on basis of intermediate objectives determined by main purpose and strategic goals. Scholars also emphasize a crucial need of integral vision as basis of strategy development. As B. Schultz [23] claims, all variations and approaches to the strategic planning process should start with the desired end state that all stakeholders share. In A.W. Steiss [52] view, a vision statement is a guiding image of organization's success expressed in terms of social utility in appropriation to mission and consistency with values. Compelling vision is very important because it clearly articulates the future end state and motivates the organization personnel to joint efforts [23; 52].

In public governance, strategic planning is considered as necessary tool that allows governing institutions and territorial communities to effectively use public resources, respond to changes in society and achieve the significant social goals [53]. Various definitions of this strategic planning adapt mentioned general viewpoints and approaches. First, strategic planning in public governance intends to form the future of some social system. V. Bakumenko, P. Nadolishniy, M. Izha and G. Arabadzhy [56] characterize it as scientific supposition of the condition of governed entity, e.g., country, in certain time. In V. Malynovskyi' [62] definition, strategic planning is "a systematic process by means of which state governing bodies forecast and plan their activity on the future". From decision-making approach, J.M. Bryson [53] considers strategic planning as "a disciplined effort to produce fundamental decisions and actions shaping the nature and direction of an organization's (or other entity's) activities within legal bounds".

However, scholars mainly use the process approach noting in definitions specific kinds of public bodies' planning activity, such as determining strategic goals and objectives in some social sphere, identification of public stakeholders and theirs demands, analysis of public environment, deciding on acquisition and allocation of public resources, social issues management, creating and selecting policy alternatives of social system development etc. [22; 52]. The Encyclopedia of Public Administration marks out especially goals

determination among mentioned activities considering strategic planning in public governance as planning goals of the state development and optimal set of appropriate trajectories with real resource constraints [63]. Moreover, characteristic feature of such strategic planning is operating with large-scale problems [56]. Therefore, it should produce "the big picture" (comprehensive model), i.e., vision of some territorial unit, sphere, region, country at whole [22; 64]. The Draft Law of Ukraine "On State Strategic Planning" [65] defines vision as "intelligent logical design of desired future image, and its forming starts the strategic planning process and gives a possible way to achieve selected alternative of postponed perspective". In public governance, compelling vision is needed especially since it provides for the only reliable foundation of consolidated activity of all society sectors aimed at accomplishment of great national programs.

Some definitions are concerned just the state strategic planning. According to F.V. Saganyuk, M.M. Lobko, O.V. Ustymenko, A.K. Pavlikovskyi [66], it means determination of purpose, objectives, priorities, and measures package within the state policy directed to socio-economic development of the state. The Draft Law of Ukraine "On State Strategic Planning" [65] gives detailed definition of appropriate notion as a function of the state government bodies and other state agencies consisting in determination and achievement of goals, evaluation of alternative models and development directions, selection of priorities with recourse limits, elaboration and execution of related tasks and measures oriented to results attaining, assessment of effectiveness and analysis of differences between goals and results, decision making on review of state policies. Cited definitions are reflect poorly the specificity of strategic planning at the state level, its orientation to the public good and prosperity of society, and crucial need of future vision. Taking into account all observed approaches and viewpoints, we suggest the following definition.

State strategic planning is a sequence of fundamental long-term decisions at the state level with participation of wide range of governmental and non-governmental stakeholders that creates the compelling vision of country's future according to mission of the state and national values, forms the system of national goals, priorities and derived objectives, and elaborates the state strategy, appropriate set of policies and programs for integrated development of country, its regions, spheres of society, and territorial units [67;68].

3.2. Modernization of the state strategic planning in Ukraine: The main directions and the legal base

Based on formulated definition of the state strategic planning, the main modernization directions of such planning in Ukraine should be aimed at form the integrated and effective System of State Strategic Planning. These directions may be recommended as follows:

1. Approval of the institutional foundations of long-term strategic planning, including:
   – adoption of the Law of Ukraine "On State Strategic Planning";
   – approval of the long-term Development Strategy of Ukraine;
   – legislative consolidation of the development of the Forecast of Economic and Social Development of Ukraine for the long-term period;
   – legislative consolidation of the list of basic values that cover the functioning and development of society, satisfaction of material and spiritual needs of people;
   – providing participants with state-level strategic planning of long-term forecasting and planning functions, consolidation of control functions for execution of strategic documents and resource provision;
   – strengthening the interconnection of strategic planning and state forecasting;
   – monitoring and evaluating strategy implementation.
2. Coordination in the System of State Strategic Planning through establishment the suggested system of documents, namely:
   – formation a system of mutually agreed on content and time limits of long-term (10 years) and mid-term (5 years) strategic documents at national, regional and sectoral levels as presented in the Table 1;
   – legislative definition of links and mechanisms of coordination between these strategic documents;
   – application of the project approach in order to increase concentration of efforts to achieve strategic goals, provide organizational, resource and public support for the implementation of the state strategic documents (Table 1).

Table 1. The suggested system of documents of the state strategic planning in Ukraine

Level of planning	Planning period	
	Long-term (10 years)	**Mid-term (5 years)**
National	1. Forecast of Economic and Social Development of Ukraine 2. Development Strategy of Ukraine	1. Forecast of Economic and Social Development of Ukraine 2. Activity Program of the Cabinet of Ministers of Ukraine

Regional	1. State Strategy of Regional Development of Ukraine	1. Plans of economic and social development of regions 2. Regional strategies and development programs for separate branches of society
Sectoral		1. Forecasts of development of separate branches of society 2. State strategies for the development of certain spheres and sectors of society 3. Nation-wide and other state target programs for spheres and sectors society development

***Source**: compiled by the authors*

3. Determination of unified standards, procedures and actors' functions in the state strategic planning process, which provides for definition:

– normative requirements to the form and structure of all strategic documents, first, the Development Strategy of Ukraine and the Activity Program of the Cabinet of Ministers of Ukraine;
– unified system of target indicators of state strategic planning;
– unified criteria for assessing the implementation of strategic documents;
– regulatory requirements for the development of strategic documents, procedures for reporting on implementation of strategies;
– clear delineation and consolidation of the functions of participants in state strategic planning;
– approval of the procedure for preparation and approval of strategic documents.

4. Scientific support of the state strategic planning, namely:

– research of external and internal tendencies of the country's development;
– preparation of conceptual basis on the elaboration of Ukraine's development strategy and medium-term strategies.

The main legal document for state strategic planning should be the Law of Ukraine "On State Strategic Planning". It must determine the legal, economic and organizational principles for the formation of a comprehensive System of State Strategic Planning of the country's development, and it has to establish the general procedure for the development, approval, implementation, monitoring, evaluation, control of documents of state strategic planning, as well as the powers of participants in such planning. The purpose of the Law is to provide the legal basis for clear and coordinated strategic planning across the national, regional and sectoral levels of public governance in Ukraine with linkage to available resources.

The main long-term document should be the Development Strategy of Ukraine developed for a 10-years period. It has to be based on following scientific principles [69]. The principle of interconnections between development directions (it will allow to consider the systemic influence of individual components of the strategy on the achievement of the ultimate goals). The principle of convergence from abstract to concrete (it contributes to the definition of tactics for achieving a strategic goal). The principles of axiological and functional significance (by which the role and place of certain directions in the common strategy will be determined). While forming the Strategy, a systematic approach, a situational approach, methods of system-structural and comparative analysis, methods of functional analysis, economic and statistical methods should be used [70]. It is crucial that the Strategy must be elaborated proceeding from results of the long-term Forecast of Economic and Social Development of Ukraine. O. Kendyukhov [70] proposes also the very ambitious goal of Strategy as to form one of the world's fastest post-industrial economies in Ukraine with a standard of living, higher than the average in ten leading countries of the world. Key strategic components offered by him are:

– new innovative science and technology policy;
– new education policy;
– new small business policy;
– new monetary policy;
– agricultural innovation policy;
– reform of public administration and lawmaking;
– judicial reform;
– reform of the electoral system;
– new foreign economic policy;
– reform of health care system;
– ensuring a fair distribution of national income between society and the state;
– elimination of corruption

It is worth to mention that existing of the Development Strategy of Ukraine in itself will increase a public confidence in state authorities and government's ability to implement successfully its functions in the problem solving for society development. The objectives of the Strategy are suggested to be specified in detail in the Activity Program of the Cabinet of Ministers of Ukraine, and the latter has to be grounded also on the Forecast of Economic and Social Development of Ukraine developed for the mid-term. The Activity Program should include the directions of the state policy at the sectoral level within five years. For implement the Activity Program, strategies for the development of certain spheres and sectors of society are to be developed. These documents specify the strategic tasks and policies in each area of government activity at the sectoral level. The forecasts of development of separate branches of society have to constitute also the basis of the sectoral strategies. Implementation of these strategies is proposed by means of the mechanism of elaborating and realizing the set of nation-wide and other state target programs for spheres and sectors society development (economic, social, cultural, ecological, scientific etc.).

At the regional level, the State Strategy of Regional Development of Ukraine for 10-years period has to be developed. It should be based also on the Forecast of Economic and Social Development of Ukraine in regional dimension, and in line with objectives of the Development Strategy of Ukraine. According to mentioned Regional Strategy, the plans of economic and social development of regions, regional strategies and development programs for separate branches of society are supposed to elaborate and implement on the mid-term. In general, the logic of strategic planning is considered as a dynamic set of interdependent management processes: characteristic of the initial conditions, the definition of goals, the identification of possible resources, the development of methods for achieving goals, formation of a mechanism for implementation.

The process of strategic planning involves the presence of risks. The main risks of strategic planning are determined by A. Semenchenko [71] as follows:

- replacement of its content by form, bureaucracy of procedures;
- delay in the development of strategic plans that no longer correspond to the changed environment;
- not the application of a systematic approach to strategic activities.

Development and realization the system of strategic documents presented in the Table 1 must include institutional mechanisms for the preparation, approval, implementation, monitoring, and performance evaluation of appropriate documents. First, the clear mechanism is needed for making and executing the Development Strategy of Ukraine. All state and other public actors must participate in this process through performing certain functions. Appropriate propositions are summarized in the Table 2.

Table 2. Proposed distribution of functions between actors for making and executing the Development Strategy of Ukraine

Public authorities	Functions
President of Ukraine	Initiating the definition of long-term strategic priorities for country's development, approval the Development Strategy of Ukraine, political advancing its implementation (popularization, motivation, ideological inspiration etc.)
Verkhovna Rada of Ukraine	Approval necessary legislation
Cabinet of Ministers of Ukraine (this body is also named as the Government)	Organization of elaboration and approval forecasts of economic and social development of Ukraine for the long-term and mid-term periods Organization of preparation of the Draft Strategy of development of Ukraine, advancing its public discussion and completing the final document for the President of Ukraine Publication of the approved Strategy in the official media resources (newspapers, web-sites) Organization of preparation and public discussion of the Draft Activity Program of the Cabinet of Ministers of Ukraine, adoption final Activity Program Overall organization of implementation the Development Strategy of Ukraine, and the Activity Program of the Government, adjusting if needed, general evaluation of results and its influence on society
Ministry of Economic Development and Trade	Practical coordination of elaboration long-term and medium-term forecasts of economic and social development of Ukraine, completing the final documents for the Government Practical coordination of preparation of the Development Strategy of Ukraine and the Activity Program of the Cabinet of Ministers of Ukraine across central and local public authorities Analysis of implementation process of the Strategy and the Activity Program, forming periodical reports on intermediate results of the Strategy based on the reports or materials from other authorities, scientific and other public institutions, making recommendations on adjusting implementation process or the Strategy itself if needed Preparation of the general report on final results of the Development Strategy of Ukraine for the Government

Ministries, other central state executive bodies, regional state administrations, and local public authorities	Development of certain sections of long-term and medium-term forecasts of economic and social development of Ukraine Preparation proposals to certain sections of the Draft Development Strategy of Ukraine (in appropriate society areas and at different levels – national, regional, local) Implementation of the Strategy in certain society areas, at national, regional, and local levels Monitoring and preparation of reports on implementation process and intermediate results of the Strategy, making recommendation on adjusting of goals, plans, mechanisms etc. if needed
Scientific and other public institutions (research organizations, non-governmental institutions, etc.)	Studying the society conditions in different spheres and forecasting their tendencies, problems identification on this basis Preparation recommendations to certain sections of the Draft Development Strategy of Ukraine, organization wide public discussion of this Draft, and lobbying interests of mail social groups and stratums through consultation and partnership mechanisms Control of implementation process and intermediate results of the Strategy (public expertise, public monitoring, and public audit), preparation appropriate reports, discussion papers etc. General evaluation of the final Strategy results concerning society effectiveness

***Source**: compiled by the authors*

Thus, functions of the President of Ukraine must be initiating the definition and approval of long-term strategic priorities in the form of Development Strategy of Ukraine, and political advancing its implementation. The Verkhovna Rada of Ukraine is proposed to perform function on adoption the basic Law on State Strategic Planning and adjusting it timely if needed, and on approval the additional legislation for effective making and executing the Development Strategy of Ukraine. The Cabinet of Ministers of Ukraine should carry out overall organization functions concerning preparation and implementation the Development Strategy of Ukraine, and elaboration and approval forecasts of economic and social development of Ukraine for the long-term and mid-term periods, and adoption the Activity Program of the Cabinet of Ministers of Ukraine as concretization the Development Strategy directions on mid-term period.

The Ministry of Economic Development and Trade is a key central state executive body responsible for formation and implementation of general state policy for country's economic and social development [72]. The main functions of this Ministry are necessary to cover activities on practical coordinating long-term and medium-term forecasts of country's economic and social development, and on coordinating preparation, implementation and results evaluation of the Development Strategy of Ukraine across central and local public authorities. Ministries, other central state executive bodies, regional state administrations, and local public authorities are suggested to take part in development of the forecasts of economic and social development of Ukraine (long-term and mid-term), to participate in elaboration of the Draft Development Strategy of Ukraine, to implement appropriate sections of this Strategy, and to report on their results.

Scientific and other public institutions are expedient to develop proposition to the Draft Development Strategy of Ukraine, to organize wide public discussion of this Draft for achievement consensus in society about strategic directions, goals and main ways of implementation, to monitor the Strategy implementation, and to evaluate its results concerning society effectiveness. State and non-governmental research organizations may also play a significant role in problem identification of society and forecasting their development. In general, an important element of the state strategic planning is the availability of public participation [73]. The effectiveness of this planning process should ensure the public and authorities interaction. Active participation of the wide public in the formation of state strategy involves the joint development of fundamental decisions by public authorities, local self-government bodies, non-governmental institutions and citizens. Responsibility for these decisions remains with the authorities. This trend is currently underdeveloped in Ukraine but other countries use widely methods of interaction between the public and authorities [74]. Therefore, it is very useful to include in procedures of state strategic planning in Ukraine, especially of the Development Strategy of Ukraine, following mechanisms of interaction between the public and authorities:

– consultation mechanisms such as citizens' panel, online consultations through e-petitions, discussion forums, blogs, and social networks;
– partnership mechanisms, e.g., citizens' jury, dialogue process etc.;
– mechanisms of citizens' control, in particular, public expertise, public monitoring, and public audit.

CONCLUSIONS

In this research, the modernization directions of the state strategic planning in Ukraine are proposed. In whole, these directions mean formation of the integrated planning system. For the theoretical viewpoint, development of such system is based on the concept of state strategic planning, and this concept is proposed in this article. At present, separate elements of the state strategic planning are existing, but appropriate effective system is

absent. Accordingly, main problems may be noted in this field as absence of the systematic forecasting and long-term strategic planning of the country's development, undetermined links and mechanisms of coordination between strategic documents, lack of clear and unified standards, procedures and distribution of functions between governmental and other actors in the state strategic planning process. Taking mentioned into account, we recommend the following directions to form the integrated and effective System of State Strategic Planning in Ukraine:

– approval of the institutional foundations of long-term strategic planning;
– coordination in the System of State Strategic Planning through establishment the system of documents suggested in this article;
– determination of unified standards, procedures and actors' functions in the state strategic planning process;
– scientific support of the state strategic planning.

The peculiarity of the proposed system is that the forecasting and planning of the socio-economic development of the state for the long-term period should carried out, as well as harmonization of strategic documents across national, regional and sectoral levels should achieve. Among mentioned modernization directions, we choose the national level as the main subject of analysis because national strategic directions and goals constitute general framework for strategic documents at regional and sectoral levels and influence crucially on effectiveness of governance results for society. In this relation, the main document of national level should be the long-term Development Strategy of Ukraine developed for a 10-years period. This will allow to define the main goals and priorities of Ukraine's development over the long-term, and, in general, to compose the image of country's future. Such image is very important for citizens, especially, for the young people to plan their life in Ukraine. Concretization of the Strategy directions is suggested in the Activity Program of the Cabinet of Ministers of Ukraine for 5 year. It is crucial that the Strategy and the Activity Program must be elaborated, accordingly, proceeding from results of the long-term and the mid-term Forecasts of Economic and Social Development of Ukraine.

Effective preparation, approval, implementation, and results evaluation of the Development Strategy of Ukraine requires clear institutional mechanism in which all state bodies and other public actors must participate. There are the President of Ukraine, the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, ministries, other central state executive bodies, regional state administrations, local public authorities, research organizations, non-governmental institutions, etc. Each of these institutions has to perform certain functions, and proposed functions' distribution is shown in the article. Effectiveness of the state strategic planning is impossible without interaction between the public and authorities. This trend is currently underdeveloped in Ukraine therefore it may be strongly recommended to include in procedures of making, realizing and results evaluating strategic documents modern mechanisms of consultation, partnership, and citizens' control.

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Suggested Citation: Kravchenko, S.O., Yevmieshkina, O.L., Hornyk, V.I., Karlova, V.V., & Velykykh, K.O. (2021). Directions of modernization of the system of state strategic planning in Ukraine. *Journal of the National Academy of Legal Sciences of Ukraine,* 28(4), 137-146.

Submitted: 04.09.2021
Revised: 20.11.2021
Accepted: 17.12.2021

УДК 342.9.08:35.083
DOI: 10.37635/jnalsu.28(4).2021.147-156

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АДМІНІСТРАТИВНО-ПРАВОВІ ОСНОВИ ФУНКЦІОНУВАННЯ ДЕРЖАВНОЇ СЛУЖБИ: ПОРІВНЯЛЬНО-ПРАВОВИЙ АСПЕКТ

Анотація. *Актуальність даної статті зумовлена тим, що державна служба є особливим елементом державної системи кожної держави, ефективне функціонування якої забезпечує дотримання конституційних прав і свобод громадян, послідовний і сталий розвиток країни. Метою статті є проведення наукових досліджень щодо функціонування та загального реформування державного контролю та державної служби в Україні та розвинених країнах світу. Провідними методами дослідження є загальнонаукові та специфічні методи дослідження, у тому числі методи логіки, аналізу, порівняння тощо. Результатами даного дослідження є порівняльно-правовий аналіз побудови інститутів державної служби в розвинених країнах світу, визначення основних проблеми та наслідки реформування цієї сфери в Україні. Важливість отриманих результатів виражається в тому, що дане дослідження може стати основою для окреслення майбутніх змін до чинного законодавства України щодо функціонування державної служби та захисту прав і законних інтересів державних службовців*

Ключові слова: *державна служба, державний контроль, моделі державної служби, реформа державної служби*

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ADMINISTRATIVE-LEGAL BASES OF FUNCTIONING OF THE CIVIL SERVICE: COMPARATIVE-LEGAL ASPECT

Abstract. *The topicality of this article is due to the fact that the civil service is a special element of the governmental system of each state, the effective functioning of which provides the observance of constitutional rights and freedoms of citizens, consistent and sustainable development of the country. The purpose of the article is to conduct scientific research on the functioning and overall reform of government control and civil service in Ukraine and in developed countries of the world. The leading research methods are general scientific and specific research methods, including methods of logic, analysis, comparison etc. The results of this study are a comparative and legal analysis of the civil service institute construction in developed countries of the world, the identification of basic problems and consequences of reforming this field in Ukraine. The significance of the obtained results is reflected in the fact that this study may serve as a basis for outlining future changes to the current legislation of Ukraine on the functioning of the civil service and the protection of the rights and legitimate interests of civil servants*

Keywords: *civil service, government control, models of civil service, reform of civil service*

INTRODUCTION

Civil service has emerged and exists where a state exists. It is the basis of state power and a legal mechanism for managing society. In many developed countries of the world, civil service is one of the key elements of the system of public administration, the effective functioning of which provides the observance of the constitutional rights and freedoms of citizens, consistent and sustainable development of the country. It is the source of regulation of most social problems and it varies depending on the social and economic level of each country, their regime and forms of government. Without the civil service, it is impossible to realize the various tasks and functions that are entrusted to the state, developed countries will simply lose the legal mechanisms for managing it and will not be able to exist in a stable way [1].

Creating an effective and efficient government control mechanism is a priority task for any country in the world. Thus, in 1991, after Ukraine's independence was proclaimed, our society also raised the question of finding the optimal political, legal and managerial model of state building. The Ukrainians demanded from the state makers to abandon the totalitarian Soviet model of government and began building a new democratic mechanism of government. The main issue that needed a conceptual solution was the demand of society for the reorientation of the state apparatus. Thus, the public service should become not only a structural mechanism that implements the state will, but also turn into an effective mechanism for managing society for which the care of its citizens, safeguarding their constitutional rights and creating appropriate socio-economic conditions

for their comfortable living in their country will be of paramount importance [2; 3]. It must be consistent with the generally recognized value system and be oriented towards social fixation on the formation of civil society. That is why the already initiated structural changes require a revision of socio-political priorities, which, in its turn, leads to new forms of interaction between the legal space, the state power and the institutions of civil society and requires improvement of the mechanisms of the system of public needs and interests' realization [4].

The civil service is one of many professions that require professional skills and knowledge, beliefs and compulsory special education for employees. The fulfillment of the tasks and functions of the state by the civil servants on a professional basis should be accompanied by the stability of the civil service relations, the impeccability and efficiency of the administrative activity, its independence from possible political changes [5]. After the declaration of Ukraine's independence, the modernization of the entire public administration system and the renewal of the civil service institute has begun [6; 7]. The government system in Ukraine for a long time was built on the model of the Soviet times, did not meet the requirements of the times and needed change. The Law of Ukraine "On Civil Service" (2015) [8] was adopted, which redefined the designation of the state and the civil service as a whole, its content defining the general principles of activity and the status of civil servants working in state bodies and their apparatus. In our opinion, public administration reform should be one of the main ones, especially for countries with emerging economies, since the level of citizens' lives the quality of business operations, the level of GDP and other economic indicators directly depend on the effective functioning of the government [9].

The formation of state policy will be possible only in the presence of a professional, efficient, effective and accountable society of the state power system. An effective system of government is also one of the basic prerequisites for democratic governance, based on the rule of law. That is why for young and independent Ukraine the creation of an effective civil service as a mechanism for governing the country is a paramount issue [10; 11]. The permanent change of the Governments of Ukraine (which changed 19 times over the past 29 years, that, in fact, means that every half a year a new CM of Ukraine is appointed), indicates the absence of an effective state mechanism for governing the country. The adoption of the Law of Ukraine "On Amendments to Some Laws of Ukraine on Restarting Power" [12] by the Verkhovna Rada of Ukraine in the autumn of 2019 proves that the civil service in our country is ineffective and needs major changes. Given the new public administration reforms, it is important that the rights of civil servants in public service are not violated when conducting new systemic reforms. This is the problem that our study addresses, in which we compare the mechanisms of protection of civil servants in Ukraine and developed European countries, and try to offer an effective administrative and legal mechanism for the protection of civil servants [13].

1. MATERIALS AND METHODS

The following methods were used during the research: general theoretical (analysis, synthesis, concretization, generalization, analogy method, modeling); empirical methods (research of functioning of the civil service institute experience in Ukraine and abroad, research of normative-legal and scientific-methodical literature on the subject, scientific researches and conclusions).

The legal basis for the emergence and functioning of the civil service institute in Ukraine is the Constitution of Ukraine [14] and the special Law of Ukraine "On Civil Service" [8]. Article 1 of this law defines that public service is a public, professional, and politically impartial activity in the practical fulfillment of the tasks and functions of the state. Section 2 of Article 38 of the Basic Law guarantees all citizens the right of access to public service, as well as to the service in bodies of local self-government, and item 12 of part 1 of article 92 provides for a legal norm about exclusive regulation by laws of questions of organization and activity of bodies of executive power and bases of public service. But according to the law, only a citizen of Ukraine, who is fluent in the state language, has a proper education and has passed a competition for the position, can enter the civil service. According to the national legislation, civil servants as representatives of the state are responsible for the practical implementation of civil policy in the relevant field or sphere of public relations such as economy, education, medicine, social protection, public finances, etc. Civil servants working in the respective state bodies, in accordance with their competence, ensure the implementation of the statutory national programs defined by the CM of Ukraine and the sectoral programs defined by the respective ministries [15]. In addition to the implementation of national and sectoral programs, civil servants of local state bodies also ensure the implementation of regional programs approved by local executive authorities together with the relevant local self-government bodies.

In the modern world, many different models of public service are being implemented, depending on the form of government in the country. In our opinion, for a meaningful and comprehensive study of these issues, studying basic civil service models can be very useful. That is why in our research we analyze the classical ways of organizing civil service in countries such as France, Germany and the United Kingdom.

The Republic of France is a unitary state. The form of state system is presidential-parliamentary republic. The executive power in the country is exercised by the President of France and the Council of Ministers (Government). In France the process of centralization was completed earlier than in other Western European countries, there was a separation of state apparatus from civil society, and a professional bureaucracy based on the specification of functions, division of labor and differentiation of roles originated there. It is in this country that a specific kind of public service system has emerged [16]. The legal basis of the civil service in France is the Constitution of France [17], the Law of France dated 13 July, 1983 "On the Rights and Obligations of Servants" [18], the Law of France dated 11 January, 1984, which contains the "Statute of the General Statute of the Central Civil Service" [19] and the Law of France dated 26 January, 1984 "On Local Public Service" [20].

The French law contains a term such as "official", which applies exclusively to civil servants. A key element of a bureaucratic career in France is the guarantee of gradual promotion over the years of service or seniority in government. Public service promotions are reflected in increased salary depending on the official's length of service and the assessments he/she has received. Promotion can be done in two ways. Firstly, by entering the officials in the annual list of promotions, which is made after the decision of the administrative parity commission on the basis of the annual estimates received by the official, taking into account the years of service. Secondly, based on professional selection, which is done with the help of a special exam [21]. In France, officials are completely under the control of the Head of State and Government. The current legislation enshrines a clear hierarchy for the positions and ranks of civil servants, as well as the principle of their subordination to bodies of political power. In general, the system is focused on the fact that when the person, who enters the civil service, stays there throughout his/her working life, gradually progressing through career paths. Therefore, public service in France is an exemplary model of government for unitary centralized states.

Among the European countries with a federal type of administrative and public control, Germany is the most influential. First of all, it should be noted that this is a parliamentary federal republic in which the power of the President is limited and most of the powers vested in the Chancellor. Thus, historically the first in Europe professional civil service was in Germany. It was built on the principles of dedication, legality, unity, professionalism and stability. The German civil service is governed by the provisions of the Basic Law of Germany – the Constitution of Germany dated 23 May, 1949 [22]. Part 2 of Article 33 of this Law establishes equal access of citizens to all state bodies: "every German has equal access to any state position in accordance with his or her abilities and professional qualifications", and part 3 of Article 33 of the Basic Law of Germany establishes the principle of equality in the civil service, and that no one can be restricted in their rights by virtue of their religion or outlook [22]. The basic principles of the civil service, the legal status of the civil servant and the promotion of the civil service are set out in more detail at the level of federal laws, namely, the General Law "On the Legal Status of Civil Servants", the Law "On the Official", and the Law "On Federal Civil Servants". According to them, a characteristic feature of civil service management in Germany is the close interaction between the political and administrative spheres. Thus, under German law, civil servants have the right to participate in political party activities and pursue a political career [23]. It should be noted that in Germany there is no concept of "civil service" (Staatdienst), which after the Second World War was superseded by the concept of "public service" (offentliches Dienst), which is firmly embedded in the theory and practice of social life. Nowadays, "public service" in the functional plan is understood as an activity for the purpose of fulfilling national tasks of management. In institutional terms it means a certain number of persons and positions whose performance of public functions is the content of their activity [23].

It is in the Basic Law of Germany that the basic principles of public service are laid down [22]. The main ones include: the principle of equal access of citizens to each state position in accordance with his / her qualification, professional training, abilities and business qualities; the principle of loyalty to the state and the principle of political neutrality of officials; protection by the state of the legal position of officials in the event of causing harm to them; social security at the expense of the state and payment of financial security corresponding to the position occupied; freedom of thought and freedom to form public associations.

According to the Law "On the Official" [24], as amended in 1985, public service in Germany covers the legal regulation of special public-law relations, which are divided into two main groups: relations with officials and relations with employees – public servants and employees of public institutions. According to this Law, the category of "official" includes not only civil servants who work in the state apparatus but also judges, teachers of schools and institutions of higher education, servicemen, postmen, employees of railways and state banks. At the same time, the legal form of employer organization is decisive for the concept of "civil service". Public service is only an activity in the service of a legal person governed by public law. Thus, under the civil service in Germany the activities of federal and land authorities are considered. The very model of civil service management in Germany is the oldest in Europe.

The United Kingdom is one of the most developed countries in the world, which is a state with a constitutional monarchy. There is no presidential institution in this state, and the Queen, Her Majesty Elizabeth II, is the Head of State. In this country, civil service is referred to in the regulations as "civic service" [25]. In this country, there is no single constitution in the form of a single document, and traditions, Parliament's legislative acts and judicial precedents have a constitutional significance for legislation. In the UK legislation is a non-systematic and very peculiar set of rules, consisting of a series of parliamentary charters and acts, Queen's decrees in Parliament, various decrees, instructions from individual ministries. Therefore, there is no single consolidating civil service law yet, as only some of the most important aspects set out in the Civil Service Code [26] are regulated. In the United Kingdom, the public service management model consists of three autonomous entities: Her Majesty's Civil Service, Northern Ireland's Civil Service and Her Majesty's Diplomatic Service. Unlike in France, in the UK there is still local self-government within a unitary state. All counties and cities elect their own councils, which form permanent administrative committees, each responsible for a specific area of government: police, health care, education, social affairs [5]. In Britain, as noted by D. Harper: "civil servants are obliged to maintain loyalty to a government in power and to serve faithfully the government that adheres to opposing political beliefs" [25].

2. RESULTS AND DISCUSSION

By examining three different systems of government, we can conclude that there are no ideal models of public service management in any country in the world, since it is very difficult to satisfy the interests of all citizens without exception and to combine them with public interests. But in every country there is a public (state) power which is directed to and subordinates to the society which exists in a certain (subordinate) territory. Public power is exercised by employees (the apparatus of power), a special layer of people appointed or elected by the people for the professional and effective management of society, which can be called the apparatus of government (state apparatus) [27]. This apparatus subordinates all sections of society, social groups to its will, controls on the basis of organized coercion down to the possibility of physical violence against social groups and individuals. The apparatus of public authority exists and operates at the expense of taxes on the population and is intended to act in the public interest. This apparatus, and above all its leadership, reflects the interests of most social groups in society as they understand them.

Building a national model of civil service is an important task for establishing Ukraine as a rule of law, social and democratic state. At the same time, priority is given to the formation of a proper legal framework for the functioning of the public service in Ukraine, ensuring the fundamental rights of citizens associated with the public service. Building Ukraine as a democratic rule of law in line with European standards places considerable expectations on the civil service as an effective administrative mechanism for governing the state [6]. It is the civil servants, on the European integration path of Ukraine, that should be the basis of all new transformational administrative and legal transformations. They should become state guarantors of priority of human interests in the country, improvement of relations between the state and the citizen and free participation of civil society in the management of their state. After all, civil servants are professional workers whom the people of Ukraine hired to work for the purpose of quality and effective management of the country aimed at improving the life of society.

Part 2 of Article 1 of the Law of Ukraine "On Civil Service" [8] clearly states that a civil servant is a citizen of Ukraine, who holds a civil service position in a public authority, another public authority, its apparatus (secretariat), receives a salary at the expense of the state budget and exercises the powers assigned to him/her for that position, directly related to the performance of the tasks and functions of such public authority, and adheres to the principles of public service. Only citizens of Ukraine who are 18 years of age, fluent in Ukrainian and have a bachelor's degree in higher education are eligible to become civil servants.

Traditionally, disclosure of the issue of the status of civil servants involves the presence of such elements as rights, obligations, restrictions, guarantees, encouragement, responsibility. Thanks to these elements, the activity of a civil servant, its functioning in the civil service system, professional and personal development, disclosure of professional, creative and personal potential is ensured. Service activity assumes that the officials who commit it are not only empowered by the service, but they also perform certain duties. According to the Law of Ukraine "On Civil Service" [8], duties are a set of duties of a civil servant, the rules of internal official regulations of the respective state body, authority of the Autonomous Republic of Crimea or their apparatus and their duties. The main duties of civil servants are defined in Art. 8, and the rights of public servants – in Art. 7 of this Law. However, specific responsibilities and rights for civil servants in accordance with their positions and qualifications are set out in the standard in the official instructions and regulations on the state body, which are approved by the heads of the relevant state institutions within their competence and in accordance with the current legislation. However, the legislation of Ukraine stipulates that a civil servant

is obliged to execute orders (decrees), instructions of a supervisor issued within the limits of his/her powers, except when the civil servant has doubts about the legality of such an order.

Public service positions in public bodies are divided into categories (A, B, C) and subcategories, depending on the order of appointment, nature and scope of authority, the content of the work and its impact on the final decision, the degree of official responsibility, the required level of qualification and professional competencies of civil servants. Ukrainian law provides for career advancement for civil servants. Thus, the passing of a civil service is a set of legal facts related to the emergence, change and termination of public service relations, namely, the acceptance of a public office, career and termination of service. This process is ongoing and has a stage character [28]. In our opinion, it includes three main stages: acceptance into service, promotion and termination of service. This is the simplest way of classifying the stages of civil servant passing the civil service. In the legal literature, there are also optional (nonbinding) stages – transfer to another position, prosecution, extraordinary assignment of rank, etc.

It is during the civil service that the relationship between: a civil servant and the state; the state (represented by a civil servant) and citizens; civil servants working in state bodies of different levels and branches of government; civil servants (state bodies) and structures of civil society self-organization occurs [29]. Essentially, a career is a judgment of an employee about his or her future, expected ways of self-expression and job satisfaction; gradual promotion of career ladders within the organizational hierarchy, changes in skills, abilities, qualifications, and rewards associated with employee activity. Recruitment to the civil service, promotion of civil servants, and other issues related to the service are carried out taking into account the categories of public service positions and the ranks of civil servants assigned to them. The ranks of civil servants are a type of special ranks. Nine ranks of civil servants are established. Ranks are assigned to civil servants by the subject of appointment, except in cases provided for by law.

According to the results of the evaluation, Ukraine received even higher scores than the average Western Balkan states in the areas of civil service and human resources management and organization of the system of central executive bodies [30].

According to the SIGMA proposals, the main priorities for reforming the civil service for the next period are: introduction of a transparent and targeted classification of civil service posts and the salary system in public administration; improving accountability of the various central executive bodies and ensuring effective organization of ministries; adoption and implementation of the Law on General Administrative Procedure, etc. [31; 32]. Civil service is the basis of public administration, which is why the modernization of the civil service and human resources management, creation of a professional civil service is of extreme importance for our country at the present stage of development. It should be noted that the need for reform and modernization of the civil service and human resources management was caused by its insufficient ability to effectively fulfill its obligations to society, citizens of Ukraine, poor quality of both the civil service and quality of public services rendered to the citizens of Ukraine. Thus, according to the indexes of the Global Competitiveness Index 2019, Ukraine ranks 85th among 141 countries and 132nd according to the indicator "public institutions". Ukraine's low position in world competitiveness ratings is related to the current situation in the management of the state apparatus, which leads to insufficient management of human resources in the public service [31].

In foreign countries there are two main models within which the management of career advancement of civil servants is carried out: closed and open. Each of the systems has both advantages and disadvantages, as it differently considers the types of personnel work, such as the selection of staff, its adaptation, training and development, career growth and innovation. The closed model of the civil service is characterized by an elitist approach to the selection and appointment of civil servants who have received special education. This approach is more typical for Germany and France [32]. In a closed model, a civil servant spends his/her professional life in a hierarchical structure with high job security guarantees. The closed model is sometimes called a career model. In this model, career ladder promotion is of a smooth, somewhat automatic nature, and implicitly gives benefits to its "insiders". One of the main criteria for a civil servant's value in a closed system is years of service [33]. An open civil service model is characterized by the free selection and appointment of staff to any position. The main conditions for career advancement are the suitability of existing knowledge, skills and abilities to a specific position. This model is widely used in the UK. An open model of public service is called by some researchers as official or positional. Its main feature is the presence of public positions with clearly defined duties and conditions of their employment, opportunities for career advancement, and the main criterion for promotion of career ladder – the availability of specialized knowledge and professional achievements. Career management features of civil servants in Germany, France and the UK are best exemplified by the given models [34]. According to the legislation of Germany, the official is called "one who is in public-office relations on the basis of the oath of allegiance with a legal entity of public administration and performs on behalf of the latter public and legal functions on a permanent basis" [33]. Unlike in other

countries, a public servant's career is not an alternative to a political career, but on the contrary, it is often a prerequisite for successful political activity. German law specifies that civil service relations are public-law relations, with one official acting on one side and federal, land-based authorities and other public bodies on the other.

The main normative act governing the legal status of bureaucracy is the Federal Law on officials, adopted in 1953 and still in force as amended in 1985. This law gives a general definition of the legal status of officials, it defines the principles of their appointment, promotion, defines the rights and obligations, conditions that an official must meet, and defines the special qualities that allow to claim the title of civil servant. In particular, it is stated that a person applying for a civil servant position must provide guarantees of his / her political credibility and possess the necessary level of professional training, which is determined according to the level of the official hierarchy [34; 35]. The German legislation provides four categories of positions of officials (lower, medium, higher, high) and 16 grades, which are replaced by competitive selection after passing the probationary period. In France, civil servants include all employees of the state – its legislative, executive, judicial bodies. In addition to the civil service, the 1984 law also introduced public service to local communities [33]. The term "civil service" broadly means in France "the pursuit of a professional activity in the service of the state, the territorial community, a public institution and, in general, any administration". In the narrow sense of the term "civil servant" excludes the categories of military, judges and applies only to those who are employed in a permanent position in the public administration and are included in the state, that is, have permanent positions. The legal status of these employees is governed by the General Statute of the servants of the state and local communities [36].

All civil servants, according to the hierarchical system of positions, are divided into central and local ones. Employees of the central level are all employees of the peripheral bodies, which are subordinate to the central authorities and are members of their state, and local – those who are members of the state institutions, organizations and institutions of local subordination. Depending on the importance and complexity of the work, all civil servants are also divided into four classes (Table 1).

Table 1. Classes of civil servants in France

No.	Name of civil servant class	The powers of a civil servant
1.	A	Making management decisions
2.	B	Implementation of these management decisions
3.	C	Fulfillment of powers of specialists
4.	D	Fulfillment of the powers of support staff

***Source**: compiled by the authors*

In France, there is a concept of "corps" of employees. It brings together employees who perform the same job and occupy the same positions (for example, the control corps brings together all inspectors). In addition to classes and corps, there are grades that are assigned to a civil servant as a result of competitive examinations. UK regulations do not have a well-defined concept of "civil servant". However, based on documentary sources, researchers attach broad and narrow meanings to this notion. Civil servants in a broad sense include all public sector employees – employees of state ministries and agencies, the armed forces, the police, as well as public corporations, local authorities, the health care system, school education, etc. [37; 38]. In a narrow sense, civil servants are considered as persons who work in the administrative bodies of public administration and receive wages at the expense of funds allocated by parliament.

We believe that one of the elements of government is the public service itself as a channel of direct communication with the citizen. The civil service in Ukraine is one of the key institutions in the formation and development of statehood, which depends on the functioning of the whole socio-political system, the solution of various tasks and functions of the modern state [39; 40]. It is the basis of modern state building and it exerts its influence on all major constitutional and legal formations. As an integral part of public administration, public service is aimed at meeting the needs of society, ensuring the protection of fundamental rights and freedoms of man and citizen, the consistent and sustainable development of the country and its gradual accession to the European community. Obviously, public service is an essential prerequisite for a strong democracy, an important tool for ensuring the rights and needs, freedoms, interests of the individual and the citizen, shaping and implementing public policy. It is the basis for the country's consistent and sustainable development, its competitiveness on the international market and its gradual entry into the European community.

CONCLUSIONS

Public administration and civil service reform is one of the most important horizontal reforms, as it is a prerequisite for the implementation of effective industrial and sectoral policies and a basis for the implementation of legislation approximating to EU law. The reform of public administration and public service must respond to the need of society for effective, responsible and open government, and thus for good governance, efficient and quality processes and services. The key tasks of reforming the public administration system in Ukraine at the present stage are to improve the quality of the civil service and service in the bodies of local self-government, to optimize the functions of government institutions, to ensure the effective distribution of powers and areas of responsibility between them, to identify and strengthen the overall managerial and administrative capacity of the state apparatus the principles of good governance and the best experience of EU member states, making it an effective tool for continuous and sustainable development of Ukraine. In 2018, according to the SIGMA program, an assessment of the state of affairs in the public administration system of Ukraine was carried out, which resulted in appropriate recommendations for improving the system in the report of experts. According to the results of the OECD / SIGMA program, the state of affairs in the public administration, Ukraine has made significant progress in reforming the civil service in recent years.

Summarizing the results of the study, we believe that in order to create a new model of civil service of the European model, the following questions need to be addressed:

1. Streamlining public competences and functions, administrative procedures in decision-making and providing public services.

2. Consolidation of indicators of institutional, social, economic, marketing effectiveness of public authorities' activity evaluation.

3. Ensuring the maximum respect for European standards of work with the civil service personnel in the field of regular training, use of training products aimed at improving skills and improving core competences.

4. Application of anti-corruption mechanisms, tools of conflict of interest management for overcoming personnel deformations in public authorities in accordance with the requirements of Article 7, paragraph 4 of the UN Convention against Corruption.

5. Use of technologies of managerial leadership, reputation management, strategic partnership.

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Suggested Citation: Horban, O., Bass, V., Drozd, O., Kalatur, M., & Shkarupa, K. (2021). Administrative-legal bases of functioning of the civil service: Comparative-legal aspect. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(4), 147-156.

Submitted: 12.08.2021
Revised: 24.10.2021
Accepted: 27.11.2021

УДК 338.240:339.97
DOI: 10.37635/jnalsu.28(4).2021.157-168

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СИСТЕМА ЗАБЕЗПЕЧЕННЯ ЕКОНОМІЧНОЇ БЕЗПЕКИ ДЕРЖАВИ: СВІТОВИЙ ДОСВІД ТА ШЛЯХИ ЇЇ РЕФОРМУВАННЯ В УКРАЇНІ

Анотація. *Актуальність дослідження: Актуальність даної статті обумовлена тим, що забезпечення економічної безпеки є запорукою стабільного зростання держави та підвищення добробуту населення. Мета дослідження: Метою статті є проведення дослідження правових засад функціонування економічної безпеки держави та діяльності правоохоронних органів у сфері економічної безпеки. Методи дослідження: Провідними методами дослідження є загальнонаукові та спеціальні методи дослідження, у тому числі методи логіки, аналізу, порівняння тощо. Результати дослідження: Результатами даного дослідження є порівняльно-правовий аналіз та визначення пропозиції щодо реалізації позитивного досвід країн ЄС у сфері забезпечення економічної безпеки України. Практична значимість дослідження: Значущість отриманих результатів виражається в тому, що дане дослідження може послужити основою для окреслення майбутніх змін до чинного законодавства України щодо ефективної економічної безпеки України*

Ключові слова: *економічна безпека, система економічної безпеки країни, правоохоронні органи, впровадження світового досвіду*

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SYSTEM OF ENSURING THE ECONOMIC SECURITY OF THE STATE: WORLD EXPERIENCE AND WAYS OF ITS REFORM IN UKRAINE

Abstract. *The relevance of the study: The relevance of this article is due to the fact that ensuring economic security is a guarantee of stable growth of the state and improving the welfare of the population. The purpose of the study: The purpose of the article is to conduct research on the legal basis for the functioning of economic security of the state and the activities of law enforcement agencies in the field of economic security. Research methods: Leading research methods are general scientific and special research methods, including methods of logic, analysis, comparison, etc. The results of the study: The results of this study are a comparative legal analysis and determination of a proposal to implement the positive experience of EU countries in the field of ensuring the economic security of Ukraine. Practical significance of the study: The significance of the obtained results is reflected in the fact that this study can serve as a basis for outlining future changes to the current legislation of Ukraine on effective economic security of Ukraine*

Keywords: *economic security, the system of economic security of the country, law enforcement agencies, the introduction of world experience*

INTRODUCTION

It is worth agreeing with the majority of scholars that economic security is the basis for the functioning of a state where the latter is aimed at ensuring the protection of national interests, both internally and externally, directly in the economic sphere. And the ability to maintain resistance to external and internal threats is the so-called economic security criterion, which will ensure economic stability and independence, as well as economic growth. On this basis, we can define the main functional purpose of economic security as maintaining economic independence and increasing competitiveness in the sphere of economy, which, as a consequence, gives impetus for the future development of the country as a whole. In this regard, economic security should be considered not only as a state of protection of national interests, but also as the availability and ability to use tools to influence economic processes to ensure prosperity in the long term [1]. This strategic approach is a must, since only government action on long-term security can guarantee it [2].

The problem of effective security of economic security of the country arose in the early XVIII century, during the birth of capitalist relations and related to the security of economic entities. J. Rousseau wrote in the treatise "On the Social Contract" that the concern for self-preservation and security is the most important of all the state's concerns. At that time, security was understood as the state, the situation of rest arising from the absence of real danger, and the presence of a material organizational structure that contributes to the creation and maintenance of this situation [3; 4]. There is no need to prove that economic security is a component of the national security of the state, but nevertheless it has its structure with its own constituent elements. The question of such constituent elements is somewhat controversial, since some elements of the national security structure belong to the structural elements of economic security, thus creating a basis for scientific understanding of this issue.

Until recently such a concept as "economic security" was practically not used in legal and economic sciences and, moreover, did not attract enough attention from domestic scholars. However, the rapid development

of liberalization and integration processes has led to the development of national security concepts in many countries around the world, the basic element of which its economic component [5; 6; 7].

Some scholars believe that the term "national security" was first used by the President of the United States T. Roosevelt in 1904 [8], when he justified the military action in the area of the future Panama Canal by the interests of national security, and for the second time it was used in 1934 [9]. After these speeches the world science began to actively study the national security of the country and its components. Scholars in the early XX century proved that one of the main elements of "national security" is the economic security of the state. However, the term "economic security" gained official status only in 1985, when the 40th session of the UN General Assembly adopted a resolution "International Economic Security" [10], and the emergence of a new science – economic security – H. Pasternak-Taranushenko [11] connects with the energy crises of 1973 and 1979.

That means, that the problems of ensuring economic security in the world as a whole, and in Ukraine in particular, became the subject of research only at the end of the XX century. However, successful policy in the financial and economic sphere directly affects the economy, political and social stability of Ukraine [12-14]. Therefore, ensuring the economic security of the state is one of the urgent problems of our time.

1. MATERIALS AND METHODS

In the process of studying the system of economic security of the state, the following methods were used: general theoretical (analysis, synthesis, specification, generalization, method of analogy, modelling); empirical methods (study of the experience of law enforcement agencies to ensure financial and economic security in Ukraine and the world, study of legal-regulatory and scientific-methodological literature on this issue, scientific research and conclusions). The following scientific methods also became the methodological bases of this research: formal-dogmatic method by means of which the concept of the maintenance of state's economic safety system is outlined and features of its functioning are defined; system-structural method, which was the basis for building such a system of economic security; comparative-legal method was used in the process of studying the foreign experience of the functioning of state bodies of economic security of the world's leading countries.

In conditions of financial and economic instability in Ukraine, there are significant obstacles to the realization of economic interests in the implementation of European standards. Today, the domestic economy has not yet managed to create an effective national economic system that could ensure the progressive development of the state and strengthen the levers of foreign and domestic policy in our country. Unfortunately, national economic priorities have not yet been clearly defined, without the implementation of which it is impossible to create a European-integrated society. A thorough analysis of the European experience of forming and ensuring the economic security of the state unequivocally testifies to the need to improve the domestic mechanism for ensuring the economic security of Ukraine, in particular by introducing the positive features of globalization for the purposes of social development of the state and paying special attention to ensuring the realization of national economic interests in the process of forming the main priorities of foreign and domestic policy.

The involvement of European experience in supporting the financial and economic security of Ukraine is quite relevant in our country, because it affects all sectors of the national economy, business, all segments of the population, society and the state as a whole. Given it into account, in our research we focused primarily on the study of economic and legal mechanisms for ensuring the economic security in developed countries, because the economic security of the country in the face of globalization and global integration processes should be considered at the national and world economies. But at the same time, we should not forget about security at the level of enterprises and industries, because without the financial security of individual enterprises and industries it is impossible to guarantee the financial and economic security of the country [15; 16]. The generalization of foreign experience shows that ensuring economic security in the national economy significantly affects the international prestige of the country. In this regard, the application of the positive experience of foreign countries to ensure it should be one of the most important directions in the strategy of long-term development of the national economy of any country.

2. RESULTS AND DISCUSSION

Ukraine is a relatively young independent state, as quite a little time has passed since its independence. During this period the state has undergone significant transformations, in particular, abandoned the planned economy with its command-and-control methods and created its own national economic system on a market basis, in addition, formed the basic foundations (on which, in fact, independence and sovereignty of the state rely) of the

national policy in all the most important spheres of public life. It is also impossible to avoid the fact that during the years of independence Ukraine has gained international recognition as a full-fledged subject of the world community and has significantly established itself in this status. This, in its turn, had a significant positive impact on the level of its independence, sovereignty and national security, including economic security as one of its main components [17].

In connection with the change in the principles of functioning of the country's economy and the movement of financial flows, the issue of creating and functioning of an effective system of economic protection of Ukraine in the state has become extremely important. Studies of leading systems of economic protection do not give a specific answer which of them is suitable for our state. The Ukrainian mentality, the Soviet past and the constant change of Ukraine's political course prove that it is necessary to build its own national and unique system of protection of the country's economy. In our opinion, this should be the only central executive body that will be fully responsible for ensuring the economic security of Ukraine and the state of economic crime. It should include both a supervisory (fiscal) function and law enforcement, and its activities should be based on in-depth economic and criminal analysis of the activities of economic relations.

The establishment, main activities and delineation of the role and place of such a new law enforcement body are provided by the Memorandum on Economic and Financial Policy, approved by the IMF Board of Directors on December 18, 2018 [18]. After all, it is planned that this entity will be endowed with a wide range of powers, including ensuring the economic security of the state. It should also be noted that Ukrainian society and the international community expect from this law enforcement agency the effective results in counteracting many threats to the country's economy.

In the context of reforming the sphere of financial and economic security of the state, scientists have developed a concept of reforming government agencies to ensure effective protection of Ukraine's economy. It was developed within the framework of the project of the Ministry of Education and Science of Ukraine "Concept of a New Innovative Model of Public Administration of the Financial System of Ukraine" No. 0118U003582 (55.16-01.18/20.ZP). The concept lays the foundations for creating a clear responsibility for ensuring Ukraine's economic security and combating economic crime, as well as making it possible to significantly reduce the manifestations of corruption in law enforcement and regulatory agencies. The proposed Concept provides for the optimization of the structure of law enforcement and regulatory agencies by: reforming the structural units of law enforcement agencies with a clear definition of tasks and functions to ensure economic security; elimination of duplication and parallelism in the activities of individual law enforcement agencies, as well as the involvement of employees to perform functions not inherent to them; optimization of the number of controlling bodies that carry out documentary inspections of business entities; creation of a single state service of economic security of Ukraine with the definition of optimal and reasonable staffing and structure.

The functioning of a single law enforcement agency that will ensure financial and economic security in the country is extremely relevant and controversial. Neither in scientific doctrine nor in the practical sphere has a unified vision of the administrative and legal nature of such a body been developed. In particular, V.S. Chuban and K.M. Pasynchuk emphasize that the task of the new law enforcement agency should be identification and elimination of the systemic threats in the field of public finances and preventing their occurrence in the future. Such a body should act as a single analytical centre for analysis and concentration of information on the general state of functioning of the financial system of the state. In addition, scientists point out that the key task in the work of the body should be to build a basis for the transition of state regulatory authorities from supervisory and punitive model of work and performance of powers to the preventive and service one [19].

I.B. Bezzub generally compares the functioning of the future body with the "intellectual centre, whose work will be based on the use of modern risk-oriented methods of criminal analysis" [20]. In addition, the work of this body should be based on the OLAF methodology – the latest law enforcement methodology, which is guided by analytics, which involves collecting information from clearly identified sources, its accumulation in the risk management system and further analysis to fully identify risks and threats to Ukraine's financial security [19].

O.P. Riabchenko, VY. Matsyuk, G.V. Solomenko in their research predict that the new law enforcement agency, whose activities will be aimed at ensuring the financial security of Ukraine, will be of European standard and will act as a guarantor of such security, will combat financial crimes, will ensure the return of shadow financial resources to the legal channel, will take measures to de-shadow the economy. The basic tasks should be: prevention of fraud in the field of public finance, the formation of legal awareness and legal culture of citizens on the voluntary payment of taxes and fees, namely taxation should become a custom, and not to be carried out under the influence of harsh coercion [21]. However, there is a question about the legal support

of this body, its place in the system of economic security of the country and in the system of state bodies in general. If this body is established, the existing model of economic security in Ukraine will completely change. That is why the experience of the world's leading countries in legally ensuring the functioning of various models of economic protection of the country is extremely important.

Revealing the experience of the European Union in general, it should be noted that the creation of an effective system of economic security has a decisive influence on the assigning a clear place for a particular European country in the global world, which would correspond to its geostrategic significance and potential. That is why today the implementation of the positive experience of EU countries in building and functioning of an effective economic security system 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. The European Union was created half a century ago as a union of states capable of ensuring the economic security of Western Europeans after the Second World War. It is thanks to its "social core" and well-thought-out strategy in the field of socio-economic policy that the EU has managed to achieve internal stability and deepen integration, including economic integration among the member states of the union. Its progressive expansion is not directed against any states, but is a sensible way to achieve security through cooperation. It is also linked by various treaties with many countries [22]. In this context, the intention set by the European Council in the Green Book to create a "dynamic and efficient European security market" based on progressive business circles and companies "with a strong social and environmental base" aware of their social responsibility is quite significant [8]. Indeed, supporting such zones leads to the formation of common living standards, strengthens mutual trust and allows the EU to be seen as a prototype of the security community.

International organizations created after the Second World War, such as the United Nations, the Council of Europe, NATO, and WTO, presented themselves to the people of their member states as certain guarantors of security. Thus, on the European continent, the basis for the formation of a homogeneous social space capable of becoming a guarantor of stability as the only pan European security organization was the Organization for Security and Cooperation in Europe (OSCE). Given the existing capacity to maintain stability in Europe and the world, the OSCE acts as a legitimate guarantor of European security. Most EU countries define the strengthening of the European stability area through the development of European integration and an active neighborhood policy of the European Union with the countries of Eastern Europe, the South Caucasus, Central Asia and the Mediterranean region as the main task of security policy in national doctrines. However, in our view, the concept of economic security of the European Community must be considered to a large extent in the context of the economic security of each individual state, national doctrines, programs and concepts of national security.

Thus, Germany sees ensuring its economic security in support of economic and social progress, democratization in Europe and around the world, protection from economic blackmail, ensuring freedom of trade and access to raw materials and markets within a fair world economic system. Under domestic economic plans, the goal is to guarantee the healthy economic development of the country, material and social well-being of the population. In foreign economic terms, the main emphasis, given the export orientation of the economy, is on the stability and improvement of markets. It should be noted that in Germany there is no separate law on the concept of economic security. The state philosophy of economic security in practice is implemented mainly through laws that regulate the most important areas of market activity and give the state significant control functions [23]. To protect the financial and economic interests of the country and the fight against economic crime, the German tax authorities have created a specialized unit to combat economic crime – the tax investigation service "Steufa", which reports to the Ministry of Finance. This unit was formed in Germany in 1934. Employees of the tax investigation service "Steufa" have a special legal status, which allows them to perform the main tasks of protecting the financial and economic security of Germany, namely:

- determination of the tax base in the detection of tax crimes;
- investigation of tax crimes;
- detection and investigation of tax crimes where the identity of the offender is not established.

To perform these tasks, employees of the tax investigation service "Steufa", being on duty in the financial authorities, are also freelance employees of the prosecutor's office, which allows them to conduct appropriate investigative actions. However, the main methods of ensuring the safe development of the economy in Germany are actions to maintain the civilized nature of market relations, creating equal conditions for competition, preventing monopolization in certain industries and maintaining the stability of the national currency. Financial and economic security policy in the UK is closely linked to defence policy: both are based on assessments of national interests and are implemented through their protection. Under the "national

interests" in the economic sphere are understood the economic interests of society as a whole, which have priority over other forms of public interest [12].

Thus, threats to national economic security are divided into external and internal and are ranked according to the degree of importance and probability of occurrence, which allows concentrating efforts on forecasting and preventing the most dangerous, in terms of national economic security, risks. According to the British political elite, the external threats to national security include: international terrorism in all its manifestations; cyberattacks; production of weapons of mass destruction (nuclear, chemical, biological) and means of delivery; man-made disasters and emergencies; natural disasters and natural disasters of various kinds. The list of internal threats includes: location and degree of tension between the main political forces; the orientation and nature of the activities of nationalist and separatist groups; political and religious extremism; criminalization of public relations. These may also include the state of affairs in science, economics, social sphere, energetics, climate change, globalization of migration, urbanization and a number of other factors [24].

It should be noted that in the field of preventing economic threats the government traditionally rely on private business, providing it with maximum support. In addition, the country has an extensive network of institutions that ensures effective interaction between parliament, government and big business in the development and implementation of decisions related to national economic security [25]. It includes, in particular, organizations such as Confederation of British Industry, East European Trade Council and a number of more specialized organizations representing the interests of industrialists and entrepreneurs. There is no special legal framework for ensuring financial and economic security, and some of its provisions, as noted above, are contained in regulations in the field of defence policy. Methods for ensuring the financial and economic security of the United Kingdom are primarily related to forecasting and preventing the most dangerous external and internal risks.

The UK has an effective system of economic security based on an extensive network of institutions that ensure the interaction of parliament, government and business in the development and implementation of decisions in the field of national economic security. Such influential institutions include Confederation of British Industry, East European Trade Council, and other more specialized organizations representing entrepreneurs [26]. The initiative of the British government to establish a National Crime Agency is of particular note (The National Crime Agency). It consists of a number of commands, one of which will deal with economic crime. The National Criminal Agency is not the UK's new separate law enforcement agency. It acts as a managerial and operational unit within the Ministry of the Interior. The purpose of its activities is to integrate the efforts of existing law enforcement agencies in the performance of specific functions, in particular to combat national economic crime, and to supplement these forces with new critical tools such as intelligence and specially trained operatives [27].

In its turn, in France the main state document, in which certain provisions of economic security are affected, is the Law "On National Security" dated 1964 [28]. The concept of national economic security in France is interpreted as the creation of favourable internal and external conditions to increase national welfare and strengthen the country's economic potential. Economic security in the broadest sense is provided by the whole set of tools of economic regulation. For this purpose, in France in the process of making and adoption of economic decisions, criteria related to reducing the vulnerability of the economic system and preservation of the economic foundation of an independent foreign policy are used. Such criteria include: elimination of serious disparities in the level of economic development of economic entities; prevention of excessive external dependence in the most important sectors of the economy: minimizing the risks associated with dependence on the outside world [25].

In France, tax investigations are carried out by the police, the tax service carries out only administration, the customs service has its own law enforcement powers, and financial intelligence is the responsibility of the Ministry of Finance [27]. The long-term process of finding effective ways to reliably protect national economic interests in the United States has created an effective and efficient regulatory framework for economic security [29; 30]. US economic security, as a separate and holistic issue, is not formulated in conceptual and strategic documents, as well as in laws and regulations. It is considered only as an integral and most important of the structural components of the national security of the United States in the National Security Strategy and is presented as separate aspects of its provision in the laws [31].

The principles of ensuring the country's security are enshrined in the official act of the United States – the National Security Strategy. According to this document, the national interests of the United States are classified according to the level of importance for the country into three categories: the first group is vital interests; the second group – important interests; the third group – humanitarian and other interests. Economic interests are part of the first category of importance of the national interests of the United States, the provision of which is

an unconditional priority of the national security policy of the United States, for the protection of which the US government must do everything possible even through unilateral use of force. These include: the economic well-being of society and the protection of vital public infrastructures, including energetics, banks, finance, public communications, etc. [32]. The main directions of US national security policy are presented in the National Security Strategy in three main areas: the formation of a secure international environment in America, ensuring an adequate response to threats and crises, proper preparedness of American society for unpredictable tendencies and phenomena in the future. Every area provides measures to address economic security issues [17].

In the United States tax crime is controlled by the Internal Revenue Service, which is part of the Department of the Treasury. Internal revenues include the investigative department, which is responsible for investigating tax offenses and crimes, as well as all violations of the law on banking secrecy [33]. The Italian Republic has a powerful paramilitary law enforcement agency specializing in all types of economic crimes [27]. The state is characterized not only by strict centralization of law enforcement activities, but also by the traditional use of the national police and gendarmerie.

The functioning of a single law enforcement agency that ensures the financial and economic security of the state for foreign countries is not a novelty. In particular, the Financial Guard of Italy is the oldest military police corps in Italy, which existed in the XVIII century under the Kingdom of Sardinia, and its predecessor can be considered the "Legion of Light Troops". The Financial Guard (Guardia di Finanza) of Italy is administratively subordinated to the Ministry of Economy and Finance. The financial intelligence body is subordinated to the same ministry, but it is not part of the structure of the Financial Guard. This model has more than a century of history. It reflects the Italian experience of state building and the peculiarities of the geographical location of the country [27].

The scope of the Financial Guard application is quite wide – it is the protection of national and European financial interests, the cessation of tax crimes, the fight against organized crime, smuggling, counterfeiting of goods and banknotes, illegal building activity, drug trafficking and money laundering, combating illegal immigration, termination of Internet fraud, gambling control, taxation of individuals and legal entities. The Financial Guard of Italy thus performs the functions of the tax police, the tax inspectorate, the customs and the border authorities at the same time. The Italian Financial Guard is not authorized to apply punitive measures on its own. If a crime is detected, an investigation is conducted and its materials are passed to the prosecutor's office. Tax violations that do not fall under the category of crimes are transferred to the tax service, and it accordingly applies administrative penalties, such as fines [20].

The model of activity of the Financial Guard of Italy, which centrally counteracts financial and economic offenses, is also followed by Romania and Macedonia. In particular, in Romania the Financial Guard of Romania, which reports to the Ministry of Economy and Finance, is responsible for monitoring compliance with tax laws, preventing, detecting and investigating tax evasion and tax fraud. The Financial Guard of Romania is headed by the Commissioner General, who carries out financial control and inspections of compliance with regulations in order to prevent, detect and stop actions prohibited by law, trade rules to prevent, detect and eliminate illegal trade, production, storage, movement and sales of goods in the state.

In Macedonia, the Bureau for the Investigation of Financial Crimes, which protects the financial and economic interests of the state from unlawful encroachments, is also subordinate to the Ministry of Finance. This law enforcement body is responsible for performing such functions as: ensuring financial control, control over the application of tax, customs and other rules in the field of finance; detection and documentation of criminal cases in the field of combating organized financial crime; carrying out preliminary investigative actions to detect and ensure the recording of traces of the crime, etc. [34]. The Financial Police also operates in Croatia, but structurally it is part of the Ministry of Finance and is headed by a Chief Inspector, who is appointed by the government on the recommendation of the Minister of Finance. The Austrian Financial Police is a special unit of the Austrian police to combat tax fraud related to the concealment of tax revenues and social security contributions. To identify the facts of tax evasion, social security contributions, the facts of the shadow economy, the Austrian Financial Police has the right to conduct targeted inspections [35].

In Spain, a Tax Agency has been established on the basis of the Ministry of Economy and Finance, the main task of which is to plan the activities of tax authorities, to carry out national measures to control the legislation in the field of taxation, etc. In its structure, the units for combating tax fraud (most often related to value added tax) have been formed [17]. The Norwegian National Office for the investigation and prosecution of economic and environmental crimes has a dual legal nature and functions both as a central body for economic and environmental investigation and prosecution and as a special department of the police and prosecutor's office. In fact, this body is subordinated to the Police Directorate and the Prosecutor's Office Directorate [35].

The models that can be proposed based on the results of studying the experience of the European Union, can be effective in Ukraine not only theoretically but also practically. The implementation of the experience of the European Union in the context of the transformation of the world economy today is the most pressing issue of cooperation in the framework of the Ukraine-EU partnership program. Based on the experience of European countries, including the new member states of the European Union, Ukraine must form a new ideology of security, the core of which is the achievement of the sustainable economic development by performing certain tasks and obtaining concrete results based on efficient use of resources, compliance with legislation and current developed legal documents [36].

Obviously, the implementation of the "best" models must be timely and carefully calculated. As the analysis of the experience of the new EU member states shows, that it is very important to avoid mechanical copying of the practices of other countries, which could lead to a reduction in the capabilities of national security structures. Ultimately, the successful provision of national economic security by the countries of the European Union depends on the stability and strength of their national economies. Only a strong economy can successfully protect national interests in conditions of increased global competition and growing global economic imbalances [37]. Highlighting the proposals to implement the positive experience of EU countries in ensuring the financial and economic security of Ukraine, it should be mentioned that the EU dictates the importance of European integration to achieve a high level of competitiveness in the context of globalization. The ultimate goal of the EU is to ensure economic security and the formation of a fully integrated Europe with the same standard of living in all member states [38].

Having studied the models and experience of the world's leading countries in creating an effective system of economic security, we can note their diversity both in terms of legal support and in terms of the organization of the structure itself. The experience of forming the economic security of the United States of America attracts our attention. Thus, the national interests of the United States are defined by the National Security Strategy, which is classified according to the level of importance for the country into three categories: vital interests; important interests and humanitarian and other interests. Economic interests are part of the first category of importance of the US national interests, the provision of which is an unconditional priority of the national security policy of the United States, for the protection of which the US government must do everything possible, even through the unilateral use of force. These include the economic well-being of society and the protection of vital public infrastructures, including energetics, finance and public communications [39]. The main directions of the US national security policy are determined by the National Security Strategy in three main areas: 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 phenomena in the future.

In the United Kingdom the security policy is also closely linked to defence policy, based on assessments of national interests and is implemented through their protection. Under the national interests in the field of economy the economic interests of society as a whole are understood, which have priority over other forms of public interests [29]. In the United Kingdom, threats to economic security are also divided into external and internal, according to the degree of importance and probability of occurrence, which makes it possible to distribute efforts and prevent the most dangerous of them in terms of national economic security. In this area, the government has traditionally relied on private business for maximum support, and the country has a well-developed system of institutions that ensures effective interaction between parliament, government and big business in the development and implementation of decisions related to national economic security [25].

On the contrary, in Germany there is no separate law on the concept of economic security. The state philosophy of economic security in practice is implemented mainly through laws that regulate the most important areas of market activity and give the state significant control functions, and the main interests of the state in national security, including its economic component, presented in the form of an official directive of the German Ministry of Defence [23]. In fact, economic security is based on economic and social progress, protection from economic blackmail, ensuring freedom of trade and access to raw materials and markets within a fair world economic system. The main methods of ensuring stable and safe development of the economy in foreign economic terms are the actions of government agencies and businesses to improve markets and focus on the export economy [17]. That means, that economic security in a broad sense is provided by the whole set of tools of economic regulation. In the process of developing and making economic decisions, criteria related to reducing the vulnerability of the economic system and preserving the economic foundation of an independent foreign policy are used. Such criteria include: elimination of serious disparities at the level of economic development of economic entities; prevention of excessive external dependence in the most important sectors of the economy; minimizing the risks associated with dependence on the outside world [40].

The analysis of the experience in ensuring the economic security of Western European countries such as the Netherlands, Belgium, Denmark, Luxembourg, Switzerland, shows that their main strategic goal to protect national economic interests is to ensure sustainable economic growth and economic modernization depending on competition in the world market [38]. Taking into account the national definitions of "economic security" and definitions in the legal systems of the above countries, we can conclude that the economic security of the state is the main component of national security, which contributes to the protection of national and state interests in the economy, the main criterion of which is the ability the country's economy to contain internal and external threats [41]. It is necessary to note that in France the main state document, which affects certain provisions of economic security, is the National Security Act of 1964. The concept of national economic security is considered by this law as the creation of favourable internal and external conditions for increasing and developing national welfare and strengthening the economic potential of the country [28].

In the Czech Republic the main officially recognized conceptual document on the national security policy is the Security Strategy of the Czech Republic, which identifies national interests, threats and dangers to national security and formulates the state's long-term intentions and measures to ensure peaceful development and economic prosperity. The security strategy identifies six main areas of national security: civil, public, political-military, economic, environmental, as well as the area of criminal elements and organized crime. The areas of economic policy of national security are: ensuring economic growth, economic development and international cooperation; support of internal and external stability; reduction of inflationary pressure; maintaining a positive foreign trade balance; effective market regulation in the economic and financial spheres; fight against crime [25].

In Romania the National Security Strategy was approved in 1999 at a meeting of the Supreme Council of State Security. This most important document for the country is aimed at ensuring democracy and stability in the development of the state and integration processes. The main areas of ensuring the economic security are: implementation of effective measures of macroeconomic stabilization, acceleration of structural reforms in the economy, creation of the private sector, attraction of foreign investments and support of small and medium business; harmonization of financial and economic legislation, financial, economic and customs policy with European legislation, requirements and directives of the European Union [28].

In June 2000, the Government of the Republic of Poland adopted a conceptual document on national security "The Security Strategy of the Republic of Poland". The strategic goal of the state national security policy in Poland, in accordance with the Security Strategy, is to guarantee the independence and sovereignty, the territorial integrity of the state; creating conditions for development; preservation of national heritage and development of national dignity of Poles [42]. The main threats to the economic security of the Republic of Poland, according to this document, include threatening economic instability in neighboring countries and the negative impact on the Polish economy, significant external dependence of the state on energy supplies from abroad, non-diversification of these sources; uncontrolled migration processes that can damage the socio-economic stability and financial-economic capabilities of the state.

The concept of economic security is considered in Spain largely in the context of the economic security of the entire European Union. At the same time, an effective system of ensuring national interests in the economic sphere has been created. It is based on: flexible legal and regulatory framework; clear division of competence of ministries, departments and organizations in the implementation of regulations related to economic development; the presence of a legally approved program of economic priorities at each stage of development, which should exclude the possibility of targeted privileges; availability of special state control services.

Officially recognized political views on the protection of citizens, society and the state from the impact of external and internal threats to national security in the Republic of Bulgaria are enshrined in the 1998 National Security Concept. The national economic interests of the Republic of Bulgaria are the following: improving the quality and standard of living of the population, the efficiency of social and medical services in the country; ensuring state sovereignty, economic independence; achieving financial stability, a high level of economic and social development; improving the effectiveness of domestic and foreign economic policy. The threats to the economic security of the Republic of Bulgaria are: significant economic and social differentiation of countries on the continent, which threatens regional socio-political and socio-economic stability and has unpredictable consequences; the spread of international financial and economic crime, smuggling of goods; application of trade, economic and financial sanctions against neighbouring states; social instability in the state, the crisis of the national economy; lowering of living standards of the population; demographic crisis, migration processes [43].

As we can see, the policy of economic security of the Czech Republic, Poland, Slovakia and the Baltic States is based on the convergence of national interests with pan European interests, as well as political,

economic and institutional transformation in accordance with Western European standards. In the early 1990s, these countries chose a similar model of ensuring the economic security, which included: assessing the geopolitical situation in the region; definition of development vector and strategy; construction and implementation of a model of behaviour, including in the field of economics, in accordance with the dominant trends of regional and global evolutionary process; the ratio of basic quantitative indicators of development with world and regional standards; correction of the course of economic reforms [40]. Comparing the interpretation of the concept of "economic security" in Ukraine and certain countries of the European Union, we can state that economic security is generally seen as part of national security, which aims to eliminate and prevent internal and external threats to ensure a sufficient standard of living, creating interaction between public authorities and private entities.

CONCLUSIONS

Foreign experience in solving problems of financial and economic security convincingly demonstrates the need to improve the conceptual support of economic security in the foreign economic sphere of Ukraine, the use of positive signs of globalization for the purposes of social development of the state and prioritize the ensuring of the national economic interests in the process of foreign and domestic policy formation. The analysis of approaches to ensuring economic security by the countries of the European Union shows that this level of security is quite high and depends on various factors. If Ukraine seeks to preserve its domestic market and independent economic future during the EU integration, it must go a long way in overcoming the economic crisis. In order to achieve it, it is important to understand the concept of the essence of economic security and authorized state bodies and structures should take clear and coordinated actions to bring the level of Ukraine's economic security system closer to the European one.

The models of economic security in foreign countries, which were discussed above, can be an effective practical example for the formation of a new ideology of national security in Ukraine, based on economic development and protection from external and internal threats, efficient use of resources and ensuring the socio-economic requirements of the population. The state should not only develop a national concept of security based on world experience, but, above all, to reform economic domestic and foreign policy in order to protect all economic entities. The results of this study can be used by scientists and practitioners for further more thorough study of the financial and economic security of the state, models of such a system and the development of innovative and strategic areas of a single law enforcement agency that ensures financial and economic security.

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Suggested Citation: Cherniavskyi, S., Dzhuzha, O., Babanina, V., & Harust, Yu. (2021). System of ensuring the economic security of the state: World experience and ways of its reform in Ukraine. *Journal of the National Academy of Legal Sciences of Ukraine,* 28(4), 157-168.

Submitted: 30.08.2021
Revised: 13.10.2021
Accepted: 01.12.2021

УДК 342.722
DOI: 10.37635/jnalsu.28(4).2021.169-180

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УКРАЇНСЬКА МОДЕЛЬ ЛЮСТРАЦІЇ: ПРАВОВІ ОСОБЛИВОСТІ ТА СОЦІАЛЬНІ НАСЛІДКИ

Анотація. *Метою даної статті є системний аналіз правових особливостей і соціальних наслідків української моделі люстрації. Спираючись на формально-юридичний метод та метод правової інтерпретації, автори досліджують понад 20 міжнародних та національних «люстраційних» актів, що регулюють різні аспекти очищення влади. За результатами правового аналізу автори розробляють власну періодизацію етапів правового регулювання очищення влади в Україні. В роботі запропоновано вважати початком люстрації в Україні не традиційно визначене встановлення правових заборон щодо обіймання державних посад, а відновлення парламентсько-президентської республіки, здійснення деконцентрації та децентралізації влади. Послуговуючись методом правового моделювання, автори обґрунтовують доцільність концептуалізації люстрації у вузькому та широкому розумінні. Це актуалізує дослідження люстрації як правового феномену не лише з позицій персонального оновлення влади, а як законодавчого посилення демократичних засад публічного управління. Автори підкреслюють необхідність осучаснення міжнародних нормативно-правових актів, що закріплюють стандарти люстрації. На підставі вторинного аналізу даних соціологічних досліджень у роботі визначено такі негативні соціальні наслідки люстрації в українському суспільстві, як стигматизація «люстрованих» державних службовців, депрофесіоналізація інституту державної служби та послаблення соціальної згуртованості в Україні. Дана робота представляє практичну цінність для країн демократичного транзиту, що мають можливість забезпечити діалектичний баланс між дотриманням прав людини та захистом демократії, спираючись на особливості українського досвіду*

Ключові слова: *очищення влади, люстраційне законодавство, узурпація влади, публічне управління, стигматизація, соціальна згуртованість*

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UKRAINIAN MODEL OF LUSTRATION: LEGAL SPECIFICITIES AND SOCIAL CONSEQUENCES

Abstract. *The purpose of this article is a systematic analysis of the legal specificities and social consequences of the Ukrainian model of lustration. Based on the formal-legal method and the method of legal interpretation, the authors study more than 20 international and national "lustration" acts that regulate various aspects of government cleansing. Relying on the results of the legal analysis, the authors develop their periodisation of the stages of government cleansing of legal regulation in Ukraine. The obtained results allow considering the beginning of lustration in Ukraine not as traditionally defined legal prohibitions on holding public service by certain categories of civil servants; but restoration of parliamentary-presidential republic model in Ukraine, power deconcentration, and decentralisation. Using the method of legal modeling, the authors substantiate the feasibility of providing the entire theoretical approach to lustration in a narrow and broad sense. This actualises the study of lustration as a legal phenomenon not only from the standpoint of personal renewal of power, but as a legislative strengthening of democratic principles of public service. The authors emphasise the need to modernise international regulations establishing lustration standards. Based on the sociological research secondary data analysis, the paper identifies such negative social consequences of lustration in the Ukrainian society as the stigmatisation of "lustrated" civil servants, public service deprofessionalisation, and weakening of social cohesion in Ukraine. This work is of practical value for countries in democratic transit, which have the opportunity to ensure a dialectical balance between respect for human rights and the protection of democracy, relying on the peculiarities of the Ukrainian experience*

Keywords: *government cleansing; lustration legislation; power usurpation; public service; stigmatisation; social cohesion*

INTRODUCTION

The Ukrainian model of lustration differs significantly from lustration practices of Central and Eastern European countries in time-lapse, socio-political conditions of origins, and chosen lustration criteria. Lustration legislation in Germany, the Czech Republic, Poland, Bulgaria, Hungary was introduced in the 1990s to overcome the negative effects of the communist political system on the way to the establishment of young democracies and had a role of "transitional justice" institution. Both Polish laws of 1997 [1] and 2006 [2] were aimed at restoring the truth and historical justice as a basis to build a new democratic state [3]. Somewhat later, lustration started in Serbia (2003), Macedonia (2008), and Georgia (2004) [4]. In Ukraine, however, this mean of government cleansing was implemented on the 24th year of independence of a young democratic state which had already had a democratic constitution and established democratic values.

The Ukrainian researchers traditionally link the beginning of lustration in Ukraine with the adoption of two lustration laws – "On the Restoration of Trust in the Judiciary in Ukraine" No. 1188-VII from April 8, 2014, and "On Government Cleansing" No. 1682-VII from September 16, 2014 [5; 6]. These laws have appeared to be the state response to the request of civil society after the events of the Revolution of Dignity in 2013-2014.

In contrast to the other European countries which have applied lustration legislation to overcome the negative effects of the communist regime, the Ukrainian model of lustration provides government cleansing on three criteria simultaneously. In particular, it implies restricted access to the public service for:

1) involvement in power usurpation at times of President V. Yanukovych ("lustration for V. Yanukovych regime" – the authors' nomination); 2) holding office on leading positions in the Communist Party system or holding office in the Communist Party as full-time employees or undercover KGB agents ("lustration for the communist past"); 3) misstatement on property availability or inconsistency of property value indicated in declarations with the income received legally during this period ("lustration for corruption"). The purpose of government cleansing (lustration) is declared as "non-admission to the management of state affairs for people who carried out measures by their decisions, actions, or omissions aimed at power usurpation by President V. Yanukovych, undermining the national security and defense of Ukraine or violation of human rights and freedoms" (Paragraph 2 Art. 1, Law of Ukraine "On Government Cleansing" [7]).

The experience of some European countries shows that lustration is a non-linear and dynamic process that may occur in several waves, clearing its direction and scope. Such an example is Polish and Romanian experiences – they renewed the existing lustration programs in the mid-2000s. Analysing them, C.M. Horne sums up that the policy of late lustration was aimed at embracing "positions of public trust" and was used as a mean of promoting democratic changes by eradicating corruption, mistrust, and inequality in society [8]. She emphasises that new lustration laws in these countries have been restructured and merged with other reform programs, including anti-corruption programs [8]. In contrast, the European countries followed the path of renewing lustration legislation due to fulfillment of its primary goals while the significant difference of the Ukrainian law "On Government Cleansing" [7] is the absence of possibility for such transition and simultaneously involvement of lustration criteria with different legal nature. These criteria have formed three types of lustrations – "lustration for the regime of V. Yanukovych", "lustration for the communist past" and "lustration for corruption". In fact, lustration criteria formed by the Law of Ukraine "On Government Cleansing" [7] testify hybrid nature of the Ukrainian lustration model due to the combination of heterogeneous legal relations.

Evaluation of the Ukrainian lustration process inefficiency is a common position among national scientists. Having reflected lustration "failure" in the national legal practice, Yu. Zadorojniy explains it both by objective (conflict of lustration legislation norms and constitutional norms, a low level of lustration legislative technique) and subjective (lustration delaying, actual lack of political will for conducting lustration, corruption, corporate unity of state power representatives, etc.) factors [5]. V. Kravchuk emphasises the inefficiency of civil society institutions being integrated into the lustration process in Ukraine [9].

The recent decision of the European Court of Human Rights in the case Polyakh and Others v. Ukraine [10] is a no less meaningful event that provides legal law assessment and significantly determines the future of lustration in Ukraine. According to the document, the Court found the violation of Paragraph 1 Art. 6 and Art. 8 of the European Convention on Human Rights [11], underlining that the Ukrainian authorities did not provide convincing grounds for justification of the lustration of people who had simply held certain Communist Party positions until 1991. The Court acknowledged the disproportionate nature of the lustration measure, emphasising that interference with any applicants was not necessary for the democratic society, and ordered the respondent State (Ukraine) to compensate the applicants' non-pecuniary damage. Considering that the decision of the European Court of Human Rights is a source of law in Ukraine, the analysed document questioned one of the lustration criteria – person's "communist past" (holding leadership positions in the CPSU, working full-time or being an undercover agent in the KGB of the USSR).

The above testifies the necessity to analyse legal specificities and social consequences of the Ukrainian model of lustration that forms the *aim of this paper*.

1. LITERATURE REVIEW

The existed lustration studies are not based on the single fundamental theory of lustration as a legal phenomenon. Studying foreign and domestic researches of lustration allows to defining some theoretical approaches to its analysis:

1) lustration consideration in dialectical relationships with human rights [12];
2) lustration study within the concept of transitional justice and transitological paradigm [13-15];
3) determination of lustration essential features through legislation analysis (degree of lustration measures rigidity, legal shortcomings, etc.). To specify the analysis of each of these approaches, we turn to the context of defining the Ukrainian model of lustration.

Lustration review in dialectical relationships with human rights highlights the necessity to consider legal safeguards and protect against possible power abuses. Bearing in mind the experience of Central and Eastern European countries, the lustration process has a dialectical nature: acting as an institution of "transitional justice" aimed at overcoming negative consequences of the communist political system and protection of democratic norms and values [14], lustration might become a tool of political struggle and possibility of power

abuse, it leads to real threats to democratic transformations and reconstruction of the totalitarian regime [15]. This dialectic is represented by the approach of the European Court of Human Rights in cases involving lustration. The need to strike a balance between the concept of "democracy capable of defending itself" and the principle of respect for human rights and freedoms guaranteed by the European Convention on Human Rights [11] is stressed. The former provides the principle of political loyalty for civil servants ("a democratic state has the right to demand from civil servants loyalty to constitutional principles on which it is based" [16]).

The review of comments to the Law of Ukraine "On Government Cleansing" in the final opinion of the European Commission for Democracy through Law [17] it is stated that Ukraine has failed to provide legal safeguards for human rights effectively in the main lustration law. In the final opinion, Venice Commission emphasised violation of the principles of individual responsibility and presumption of innocence; personal application of the law is too wide; absence of a specially created independent commission to administer lustration process; violation of the requirements of the 1996 Lustration Guidelines [18] for 5-year removal from office; law inconsistency with traditional approaches to lustration and legal relations mixed of different legal nature (in particular, regarding the anti-corruption component and lustration of judges), etc. These comments have not been "addressed" at the national level by making appropriate legislative changes. The Ukrainian researchers – [5; 6; 9] – agree that the further application of the current version of the Law of Ukraine "On Government Cleansing" under Venice Commission recognition of its non-compliance with international standards will mean significant violation of the constitutional rights and freedoms of the Ukrainian citizens. Moreover, it will require state reimbursement of court costs and wages during the forced absence of illegally fired [6].

Within the concept of transitional justice, lustration is shown as a personnel policy for key individuals of the "ancient regime". While in the transitological paradigm, it is defined as a tool and part of the democratisation process. The common is to determine the purpose of lustration – protection of the newly established democracy from the negative impact of the past [13]. The Law "On Government Cleansing" [7] might be considered from the standpoint of transitional justice concept while the "ancient regime" concept refers to the times of power usurpation by President V. Yanukovych that is captured in this legislative act. At the same time, this law simultaneously involves three lustration criteria: "lustration for the Yanukovych regime", "lustration for the communist past" and "lustration for corruption". The transitological paradigm is heuristic at explaining the strategic goal of the law aimed at strengthening democracy. However, means chosen by the legislator to ensure this goal are quite debatable.

In the theoretical studying of lustration measures, content researchers usually distinguish two models of lustration – "rigid" and "soft". The "rigid" model of lustration is based on the traditional approach to lustration providing removal of individuals from politics or legal punishment for past actions during the previous regime [13]. Actually, this model is laid down in Art. 1 of the Law "On Government Cleansing", which defines lustration as "established by law or court decision prohibition for certain individuals to hold definite positions (being on service) (except elective positions) in public authorities and local governments" [7].

The degree of lustration measures "rigidity" provides a misconception about its direct impact on democratisation results. Comparing Spain's and Portugal's democratic transitions after the fall of authoritarian regimes, Omar Encarnación concluded that democracy nature and transition effectiveness are influenced not by the level of repressions but by the country's political development at the stage of late authoritarianism [19]. In Portugal, for example, a policy of cleansing aimed at liberating the state and society from the authoritarian past has nearly thwarted a democratic transition which has become a real "witch hunt". In Spain, as O. Encarnación highlights, abandonment of the past based on compromise and consensus, the politics of oblivion and the movement further turned into the basis of democratic consolidation [19]. It is worth considering that among the Ukrainian scholars there is no unity of positions about a successful and adequate choice of the Ukrainian model of lustration. M. Kutepov and S. Levitsky consider the Polish ("soft") model of lustration laws to be more acceptable for Ukraine, opposing the implemented "rigid" model [20].

The key focus of legal lustration research in Ukraine is aimed at analysing compliance of the Law of Ukraine "On Government Cleansing" with lustration international legal standards [7]. However, such a strategy in the legal field is, in the authors' opinion, limited, as it ignores other legal acts forming an array of lustration legislation. It affects the fact that in most scientific papers on lustration studying the latter is considered in the sense enshrined in the Law of Ukraine "On Government Cleansing" as "established by this Law or court decision prohibition for certain individuals to hold definite positions on public service (except elective positions) in public authorities and local governments" [7]. This legislative definition enshrines a narrow understanding of lustration which by essence and content does not cover all the legislation adopted for its implementation, according to which the cleansing of power in Ukraine was conducted.

It is proposed to consider lustration in a broad sense, based on the purpose of its application, defined in Art. 1 of the Law as "prevention of person's participation in the public affairs management carrying out activities aimed at power usurpation of President of Ukraine V. Yanukovych" [7]. This goal is realised not only by the Law "On Government Cleansing", but also by numerous legislative acts, which are traditionally not considered as "lustration". To show up lustration in a broad sense, let us turn to the analysis of the legal acts contributed to power usurpation by President of Ukraine V. Yanukovych as a key legal basis for the adoption of lustration legislation.

2. MATERIALS AND METHODS

To carry out the study, a system of scientific methods was used. Among general methods that were applied are the following: analysis, synthesis, typologisation, and periodization. Among special legal methods that were implemented are a formal-legal method and legal interpretation referring to laws studying, decisions of the Constitutional Court of Ukraine, Presidential decrees, and other legislative acts regarding lustration regulation that in some cases were not defined as "lustration" acts. The stated methods were used both for the complex studying of the lustration phenomenon and defining stages of government cleansing of legal regulation in Ukraine. Methods of legal comparative studies and modeling also were underpinned in the paper by the development of the authors' proposals to define lustration narrow and broad understanding and highlighting legal specificities of the Ukrainian model of governmental cleansing.

The research's empirical basis consisted of the following legal acts: laws of Ukraine "On Government Cleansing" No. 1682-VII September 16, 2014 [7], "On the Restoration of Trust in the Judiciary in Ukraine" No. 1188-VII April 8, 2014 [21], "On the Cabinet of Ministers of Ukraine" No. 2591-VI October 7, 2010 [22], "On Central Executive Bodies" No. 3166-VI March 17, 2011 [23], "On Act Restoration of Certain Provisions of the Constitution of Ukraine" No. 742-VII February 21, 2014 [24]; the Presidential Decree "On measures to Ensure the Enforcement of Executive Power by Local State Administrations on the Relevant Territory" No. 307/2013 May 24, 2013 [25]; the Decision of the Constitutional Court of Ukraine No. 20-RP/2010 in case No. 1-45/2010 September 30, 2010 [26]; the Cabinet of Ministers Resolution "About Adoption of the Procedure for Powers Transfer to Local State Administrations of the Highest Level Executive Bodies and their Return" No. 740 October 09, 2013 [27]; Order of the Cabinet of Ministers "Issue of concluding the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part" No. 905-r November 21, 2013 [28]; Amendments to the Law of Ukraine "On the Regulation of the Verkhovna Rada" March 27, 2014 [29]; the Final Opinion on The Law "On Government Cleansing" of Ukraine, adopted by Venice Commission at its 103rd Plenary Session (Venice, 19-20 June 2015) [17]; Decision of the European Court of Human Rights in the Case Polyakh and Others v. Ukraine (Application No. 58812/15 and 4 other applications) 24.02.2020 [10].

Additionally analysed were the Verkhovna Rada Resolution "On Response to Violations of Judges' Oath by Judges of the Constitutional Court of Ukraine" No. 775-VII February 27, 2014 [30]; Regulation of the Uniform Register of Person Subject to Lustration approved by the order of the Ministry of Justice of Ukraine No. 1704/5 October 16, 2014 [31]; Regulation of the Lustration Community Council in the Ministry of Justice of Ukraine approved by the Order of the Ministry of Justice of Ukraine No. 1884/5 November 04, 2014 [32] to define stages of government cleansing of legal regulation in Ukraine.

The secondary analysis of the sociological research results and the sociological modeling method were used to identify the social consequences of lustration for Ukrainian society.

3. RESULTS AND DISCUSSION

The main reason for the events defined in Ukraine as Revolution of Dignity 2013-2014 has become factual power usurpation made by President of Ukraine V.F. Yanukovych and his entourage during 2010-2013. As a matter of law, this was achieved by gradual power concentration, strengthening the presidential vertical and weakening the governmental role in state administration; the President's intervention in the judiciary and legislative power branches; transformation of the regional government system with shifting priorities between the executive power and local self-government in the direction of executive power strengthening. In this regard, the Decision of the Constitutional Court of Ukraine No. 20-RP/2010 in case No. 1-45/2010 [22] is denotative. It has declared the Law of Ukraine "On Amendments to the Constitution of Ukraine" (Law on Political Reform) No. 2222-IV [33] unconstitutional and reactionary [34]. This model empowered the President to nominate the Prime Minister and exert leverage on the formation of the Cabinet of Ministers. It restored the Presidential right to regulate legal relations by own decrees without regulating laws; appoint heads of other central executive bodies as well as heads of local state administrations; terminate their powers; create and

liquidate ministries and other central executive bodies. The Parliament was relieved of its obligation to form a coalition and nominate the Head of Government. These changes marked the transformation of Ukraine from the parliamentary-presidential republic to the presidential-parliamentary one.

The Law of Ukraine "On the Cabinet of Ministers of Ukraine" No. 2591-VI [22] became the next step towards strengthening the presidential power vertical. According to the latter, the Cabinet of Ministers of Ukraine (hereinafter – CMU) as the highest executive body was appointed responsible to President of Ukraine. The President got the decisive authority to form the Government, while the CMU's program of actions had to be based on the President's election program. Such changes contributed to the transformation of the Cabinet of Ministers into a dependent body. The President himself actually acquired the status of executive power branch head of the state.

To confirm the concentration of presidential power, it is worth mentioning the Law of Ukraine "On Central Executive Bodies" No. 3166-VI [23]. According to this legal act, ministries, and other central executive bodies except for the Constitution of Ukraine [34] and current legislation had to be guided by the acts and instructions of the President. This law provided by ministries to ensure the formation and implementation of state policy in one or more areas determined by the President has established the President's authority to approve provisions of ministries. It has deepened his powers to establish, reorganise and liquidate ministries and other central executive bodies. Adoption of the Presidential Decree "On measures to Ensure the Enforcement of Executive Power by Local State Administrations on the Relevant Territory" No. 307/2013 [25] is considered an important step to strengthen the presidential power vertical. It provided the heads of local state administrations (hereinafter – LSA) power to approve the appointment and dismissal of territorial executive power bodies leaders and the heads of enterprises, institutions, and organisations belonging to the ministries' sphere of management and other central executive bodies. This decree obliged the heads of central executive bodies to determine priorities of territorial bodies by the prior agreement with heads of the LSA to ensure implementation of their orders by relevant territorial bodies.

Implementing the aforementioned Presidential Decree, the Cabinet of Ministers of Ukraine by Resolution No. 740 [27] the Procedure of power transfer of higher-level executive authorities to the LSA and their return was approved. According to it, the right to initiate the power transfer to ministries and other central executive bodies, local state administrations of the highest level (regional relatively district (rayon)) was granted to regional state administrations and Kyiv and Sevastopol city administrations with the further decision on transfer or return of CMU powers. In fact, these state administrations were equated with ministries and other central executive bodies in such a way.

This transformation of the constitutional order towards strengthening the presidential power vertical was "ensured" by the support of the parliamentary majority of the pro-presidential political force – the Party of Regions deputy's fraction. Realising its competence to enact laws, the Parliament thus led to and promoted power usurpation of President V. Yanukovych. The coordinated and purposeful activity of the President, the Parliament, and the Government was carried out "undercover" in an attempt to substantiate conceptually the amendment of the Constitution of Ukraine [34] to implement democracy principles developed by the Constitutional Assembly. However, the changes achieved by the scientists of the Constitutional Assembly have not been implemented in the current legislation of Ukraine. Meanwhile, the above analysed legal acts determined the maximum power concentration of the President of Ukraine. The reaction of civil society to numerous cases of power usurpation turned growing dissatisfaction of the pro-presidential team politics and the denial of trust to this political force. Thus, according to the annual monitoring of the National Science Academy of Ukraine Institute of Sociology, the number of Ukrainians who do not trust the President increased from 31% in 2012 to 39% in 2013; the courts – from 32% to 45% consequently; the Verkhovna Rada – from 36% to 44%; the Government – from 34% to 42%. Since 1994 (the year of the beginning of the annual monitoring), this was the highest level of distrust to all the above state institutions [35].

In autumn 2013, the reason for the civil protest was the adoption of the order "Issue of concluding the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part" No. 905-r [28] by the M. Azarov's Government. According to this legal act preparation for conclusion initiated on 12.03.2012 by the parties, the Association Agreement between Ukraine and the EU was suspended. As the order states, several measures were envisaged to restore trade and economic relations with the Russian Federation in favor of Ukraine's national security. Furthermore, Russia's involvement in Ukraine's negotiations with the EU in the form of a tripartite commission was included. This Government decision was accepted extremely critically in Ukraine, as it testified to the change of the state's foreign policy course from the European integration to rapprochement to the Russian Federation. On November 24, 2013, peaceful protests against the Government's policy to refuse European integration began in Kyiv; on November 30, 2013, Special Forces of the Ministry of Internal Affairs

of Ukraine violently dispersed the participants of peaceful rallies. Such power actions led to resistance increasing, prolonging the political crisis and, unfortunately, human casualties. This caused the protesters' demand for the removal of the president and his entourage from power.

After V. Yanukovych's escape at the end of February 2014 power reformatting began in Ukraine: a new majority was formed in the Parliament; a new speaker, Oleksandr Turchynov, was elected to serve as a current head of the state. On February 21, 2014, full re-election of the Government took place. During February-April 2014 the heads of LSAs and territorial branches of central executive bodies were dismissed while opposition politicians and public figures were appointed to these positions. Extraordinary presidential elections were scheduled on May 25, 2014; parliamentary elections – on October 31, 2014.

The new power formed from opposition to V. Yanukovych's part of politicum received civil society's credibility: they had to satisfy its request not only for personal renewal but also for changing the model of public administration. It involved issues of parliamentary-presidential republic restoration, the establishment of the constitutional system based on the rule of law, overcoming consequences of president V. Yanukovych's state management by power deconcentration, decentralisation, and cleansing of all branches. Moreover, it led to defining the appropriate areas of legislative activity. ***Therefore, it might be useful to deal with lustration in Ukraine in a broad sense, as a state-building process of changing the public administration model, accompanied by the formation of personnel capable to ensure its implementation and functioning on a democratic basis.***

For further comprehensive research of the Ukrainian model of lustration, it is essential to analyse the key legislative acts that led to the restoration of the parliamentary-presidential republic, power deconcentration, decentralisation, and cleansing of all branches (i.e., the legislation we offer to define as lustration legislation). It corresponds to the concept "lustration" in the proposed broad sense. Following this approach, lustration legislation means not only traditionally stated laws "On Government Cleansing" and "On the Restoration of Trust in the Judiciary in Ukraine", but also other legislative acts aimed at overcoming consequences of V. Yanukovych's power usurpation. Adoption time of lustration legislative acts, analysis of their intention and content allows us to define three stages of government cleansing of legal regulation in Ukraine (see table 1). In the framework of this paper, the authors will analyse in detail the lustration legislation features of the first stage of government cleansing of legal regulation in Ukraine:

Table 1. Stages of government cleansing of legal regulation in Ukraine

Name of stage	Period	Aim	Core legislative acts
The first stage of government cleansing (broad sense of lustration)	21.02.2014-08.04.2014	Overcoming consequences of V. Yanukovych's power usurpation at the level of changing the public administration model	Law of Ukraine "On Act Restoration of Certain Provisions of the Constitution of Ukraine" No. 742-VII [24]; New version of the Law of Ukraine "On the Cabinet of Ministers of Ukraine" No. 794-VII [36]; Amendments to the Law of Ukraine "On the Regulation of the Verkhovna Rada" [29]; Law of Ukraine "On Recognition as Having Lost Force of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning Their Bringing into Compliance with the Constitution of Ukraine" No. 763-VII [37]; Resolution of the Verkhovna Rada of Ukraine "On Response to Violations of the Judge's Oath by Judges of the Constitutional Court of Ukraine" No. 775-VII [30]
The second stage of government cleansing (narrow sense of lustration)	08.04.2014-16.10.2014	Increasing the judiciary power and trust of citizens to it; restoring the rule of law and justice	Law of Ukraine "On the Restoration of Trust in the Judiciary in Ukraine" No. 1188-VII [21]
The third stage of government cleansing (narrow sense of lustration)	16.10.2014-up to present	Non-admission to management of state affairs for people carrying out measures by their decisions, actions or omissions aimed at power usurpation by President V. Yanukovych	Law of Ukraine "On Government Cleansing" [7]; Regulation of the Uniform Register of Persons Subject to Lustration, approved by the order of the Ministry of Justice of Ukraine No. 1704/5 [31]; Regulation of the Lustration Community Council in the Ministry of Justice of Ukraine, approved by the Order of the Ministry of Justice of Ukraine No. 1884/5 [32]

Source: *made up by authors*

The first stage is related to power usurpation by President V. Yanukovych, consequences overcoming on the level of changing the public administration model. The key legislative act of this stage is the Law of Ukraine "On Act Restoration of Certain Provisions of the Constitution of Ukraine" No. 742-VII [24]. This Law restored the constitutional status of the Verkhovna Rada of Ukraine (hereinafter – the VRU) as a body of parliamentary control of the state and regulated its functioning. The activity of the Parliament became open and public which was ensured by the adoption of amendments to the Law of Ukraine "On the Regulation of the Verkhovna Rada" [29]. Amending Art. 83 of the Constitution of Ukraine [34], the coalition status of parliamentary fractions was restored. Henceforth, the coalition had to submit proposals to the President of Ukraine on the candidacy of the Prime Minister and candidates to the CMU. The law updated the provisions of Art. 85 on the appointment of the Prime Minister, the Minister of Defense, the Minister for Foreign Affairs, the appointment of other members of the Cabinet of Ministers, their dismissal, resolution of the Prime Minister's resignation issue, appointment and dismissal of members of the Cabinet of Ministers due to proposal of the President of Ukraine and the Head of the Security Service.

The Law [24] restored the provisions of Art. 90 of the Constitution [34] by limiting the President's right to terminate powers of the Verkhovna Rada. The strengthening of parliamentarism was guaranteed by changes to Art. 94 established its immediate official publication in case the President does not sign the law adopted by the Verkhovna Rada by at least two-thirds of its constitutional composition during reconsideration. The role of the Cabinet of Ministers in the executive system has been strengthened. According to Art. 113 of the Constitution [34], the Government became accountable to the President of Ukraine and the Verkhovna Rada. It was to be guided in its activity, considering parliamentary resolutions. Art. 113 was also brought in line with Art. 85 and 106 of the Constitution [34] on the appointment of the Prime Minister by the Verkhovna Rada on the proposal of the President of Ukraine on the proposal of a coalition of parliamentary fractions. Art. 115 built on the constitutional responsibility of the Government by its resignation due to the adoption of a resolution of no confidence in the Cabinet of Ministers by the Verkhovna Rada. The law restored resignation provisions before the Verkhovna Rada was newly elected, while the President of Ukraine did not, as in the case of 2010-2013.

Art. 116 of the Constitution of Ukraine [34] amended by Law No. 742-VII [24] gave the Cabinet of Ministers constitutional authority to form, reorganise and liquidate ministries and other central executive bodies, as well as to appoint and dismiss heads of central executive bodies upon the Prime Minister's request which are not part of the CMU. As for the mentioned constitutional changes, the Verkhovna Rada adopted the Law of Ukraine "On the Cabinet of Ministers of Ukraine" from February 27, 2014 [36] in the new wording. These changes contributed to the redistribution of constitutional powers in favor of the Parliament and Government to achieve a power balance between the executive, legislative branches, and the President of Ukraine. The analysed law which became one of the defining acts of lustration legislation restored the model of the parliamentary-presidential republic in Ukraine, overcoming the consequences of power usurpation by the previous president. Such constitutional changes have formed institutional protection to ensure the "government cleansing" further by minimising the risks of re-usurpation. At the same time, these changes have not provided the lustration safeguards against the activity of People's Deputies (the parliamentary activity of people's deputies during V. Yanukovych's presidency contributed to power usurpation in the state). Such a proposal does not contradict Lustration Guidelines requirements regarding lustration non-proliferation on the elective positions – it should provide the establishment of legal mechanisms that would minimise risks of constitutional changes recurrence towards power usurpation by any of its branches.

Researchers of the Sociology of Law note that draft laws should go through sociological expertise. It determines "draft law compliance with social needs and legal awareness conditions, meaning assessment of the possibility of its adequate perception and implementation" [38, p. 136]. The statutory prohibitions on holding public office positions have led to different social consequences of lustration legislation implementation for the society and separate socio-professional groups. From the standpoint of E. Goffman's concept of stigma [39], this law establishes a stigma relating to a certain socio-professional group – civil servants – by ascriptive principle. On the one hand, this stigma is socially "invisible", but it is "set up" into the actor's life experience and actualised during appealing to his biographical project – during employment, public and political activities, etc. "Life experience" space formed by certain categories of civil servants holding senior positions during the regime of President V. Yanukovych is becoming a criterion of their social discrimination on professional, moral, and value grounds. It is facilitated by the presumption of guilt and absence of individualisation of punishment in lustration legislation.

In addition, the lustration procedure enshrined in the lustration legislation is the basis for constant reproduction of prior social distrust to the professional community – civil servants. Such stigmatisation at the group level forms additional social divisions, intensifying social disintegration. The authors find consistent conclusions in the works of the American researcher Cynthia N. Horne, who sums up that lustration procedures

may increase trust in targeted social institutions, but have a negative impact on interpersonal trust in transitional societies [14]. Such state of affairs is a risky zone for the social cohesion in decentralised Ukraine, as far as interpersonal trust [40] and the absence of intergroup cleavages [41] are recognised as the most important components of social cohesion [42]. In this regard, actors of stigma reproduction are the media, through which political opponents use "lustration discrediting" against people with "political past" ensuring fixation and reproduction of civil servants of V. Yanukovych's regime social stigma. In turn, it provides a space for additional opportunities for the political advancement of new political elites, competition elimination between "predecessors" and "new faces" in the political field and civil service. Thus, the Law of Ukraine "On Government Cleansing" established a new criterion of social inequality providing a downward direction of professional mobility to a certain socio-professional group and at the same time creating conditions for socio-professional advancement and growth of all 'illustrated' (not lustrated) [7].

Such stigmatisation at the value level has formed and adapted the Ukrainians' perception to an obvious idea that the civil service or policy experience are signs of officials' corruption, perceived as prior and a factor of professional discredit. In contrast, the absence of civil service experience and participation in politics has become one of the most powerful grounds for sociopolitical advancement and led to the emergence of the phenomenon of "new faces" as was evidenced by the results of both Ukrainian presidential and parliamentary elections in 2019. Thus, many representatives of different professions have entered the Verhovna Rada [43]. The adoption of lustration legislation and further civil service reform in Ukraine has significantly changed the socio-professional landscape of the civil service institute. Lustration principles of multiplicity and widespread law individual application have led to excessive coverage of public positions that fall under lustration prohibitions. On the one hand, the implementation of lustration bans has led to the dismissal of thousands of civil servants at all levels of public administration. On the other hand, the new version of the Law of Ukraine "On Civil Service" from 2015 [44] significantly simplified requirements for people applying for admission to the civil service. Weakening of educational and professional requirements both contributed to deprofessionalisation of civil service institutions, filled by representatives of other professional activity branches and young people without experience in public office. It has become another practical consequence of lustration stigma and the manifestation of demand for "new faces" in Ukrainian politics.

CONCLUSIONS

Legal analysis of the Ukrainian model of lustration has allowed us to look at the lustration phenomenon in a broad and narrow sense. The basis to distinguish a broad lustration understanding is the analysis of the purpose of the Law of Ukraine "On Government Cleansing" that defines power usurpation by President V. Yanukovych as a key legal problem. Legal analysis has shown that the beginning of lustration in Ukraine and lustration legislation adoption as a legal basis for overcoming consequences of power usurpation by President V. Yanukovych should not be associated with the establishment of legal prohibitions on holding public office, but with the restoration of the parliamentary-presidential republic model, implementation of power deconcentration and decentralisation. In these terms, the "lustration legislation" is not only traditionally defined Laws of Ukraine "On Government Cleansing" and "On the Restoration of Trust in the Judiciary in Ukraine" but also aimed at overcoming the power usurpation made by the former president systematically.

On the one hand, the goal of government cleansing in a broad sense was achieved by establishing a balance between various branches of power and Ukraine's return to the parliamentary-presidential republic model reflected in the Law of Ukraine "On Act Restoration of Certain Provisions of the Constitution of Ukraine". On the other hand, a narrow interpretation of the lustration purpose as non-admission to the management of state affairs was implemented by the Laws of Ukraine "On Government Cleansing" and "On the Restoration of Trust in the Judiciary in Ukraine" only partially. This outcome is explained by the fact that the system of bans on holding public office has been implemented and continues to act in Ukraine. Still, it did not affect a key social entity that contributed directly to power usurpation by President V. Yanukovych (People's Deputies). For this reason, we consider it appropriate to raise the issue of revising the Lustration Guidelines at the level of international law aimed at updating the lustration challenges of transitional democracies accordingly.

Our study has shown the existence of three stages of government cleansing of legal regulation in Ukraine; distinguished dependence on time of lustration legislation acts adoption, their direction, content, and decisions taken to implement it. We link the first stage with legislative acts array adopted at the end of February 2014 and aimed at overcoming the consequences of power usurpation by President V. Yanukovych on the level of changing the public administration model. The second stage covers legal acts on "judicial lustration" aimed at increasing the authority of the judiciary of Ukraine and restoring public confidence in the

judicial branch of power that took place in spring 2014. The third legislative stage of government cleansing in Ukraine deals with the Law of Ukraine "On Government Cleansing" and other acts adopted for its implementation. The third stage that began on October 16, 2014, continues up until now due to the ongoing updating of procedural acts and the prospect of basic lustration law changing in the near future.

Analysis of provisions of the Law of Ukraine "On Government Cleansing" and Venice Commission remarks from the standpoint of Sociology of Law has shown social discrimination phenomenon of civil servants of certain categories holding senior positions during V. Yanukovych's presidency on professional, moral, and value grounds. The acting of the law has led to further deprofessionalisation of the civil service in Ukraine and risks of social cohesion weakening.

The Ukrainian experience will be beneficial for all countries during government changes to their protection from the prospect of applying legal prohibitions named lustration, but, in fact, more inclined to political revenge instruments.

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Suggested Citation: Harashchuk, V.M., Georgiievskyi, I.V., & Deineko, O.O. (2021). Ukrainian model of lustration: Legal specificities and social consequences. *Journal of the National Academy of Legal Sciences of Ukraine,* 28(4), 169-180.

Submitted: 17.09.2021
Revised: 24.11.2021
Accepted: 19.12.2021

УДК 340.15:34:61]-055.62
DOI: 10.37635/jnalsu.28(4).2021.181-189

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РОЗВИТОК МЕДИЧНИХ ПРАВ ДІТЕЙ В УКРАЇНІ (1919 р. – початок XXI ст.)

Анотація. *Медичні права дітей активно розвивалися у XX столітті після Першої світової війни. Це була подія глобального масштабу, яка спричинила законодавчі зміни у національних законодавствах країн світу, в тому числі й в Україні. Досвід України в галузі охорони здоров'я дітей багатий на приклади як успішних реформ у цій галузі, так і не дуже успішних. Розвиток медичних прав дітей в Україні пройшов різні етапи свого розвитку. Для розв'язання цього питання був взятий період з 1919 року до початку 21 століття. Вибір цього історичного періоду обґрунтовується наявністю різних етапів державно-правового розвитку України, і, як наслідок, розвитком медичних прав дітей. Це пов'язано з тим, що розвиток прав дітей нерозривно пов'язаний з розвитком державної політики у сфері захисту дітей. При дослідженні питання розвитку медичних прав дітей були використані відповідні правова, теоретична та методологічна бази. Метою цього дослідження є аналіз розвитку медичних прав дітей на прикладі України. Для досягнення цієї мети були проаналізовані міжнародно-правові документи, законодавство України, а також праці вчених з різних країн. Під час вивчення цього питання використовувались різноманітні наукові методи, з-поміж яких: діалектичний, історичний метод, метод аналізу та синтезу, метод аналогії та метод тлумачення правових норм. Основними результатами є: аналіз історії розвитку медичних прав дітей в Україні та вплив Всесвітньої організації охорони здоров'я та Конвенції про права дитини (1989) на цей розвиток. Цінність цієї статті полягає в отриманні практичних рекомендацій щодо прав дітей загалом та медичних прав дітей зокрема*

Ключові слова: *медична допомога дітям, здоров'я дітей, право на охорону здоров'я, право на життя, захист дітей, Конвенція про права дитини*

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THE DEVELOPMENT OF CHILDREN'S MEDICAL RIGHTS IN UKRAINE (1919 – BEGINNING OF THE XXI CENTURY)

Abstract. *Children's medical rights were actively developed in the twentieth century after the First World War. It was an event of a global scale that prompted legislative changes in national legislations, including Ukraine. Ukraine's experience in children's health care is rich in examples of both successful reforms in this field, and also not that successful ones. The development of children's medical rights in Ukraine had passed different stages of its development. The period from 1919 to the beginning of the 21st century was taken to resolve this issue. The choice of this historical period is justified by the presence of different stages of state and legal development of Ukraine, and, as a consequence, the development of children's medical rights. This is because the development of children's rights is inextricably linked with the development of state policy in the field of child protection. The aim of this research is to analyse the development of children's medical rights on the example of Ukraine. To achieve this goal, international legal documents, legislation of Ukraine, and works of scholars from various countries were analysed. During the study of this issue, a variety of scientific methods were used. Among them are the dialectical, historical method, method of analysis and synthesis, method of analogy and method of interpretation of legal norms. The main results obtained are: analysis of the history of the development of children's medical rights in Ukraine and influence of the World Health Organisation and the Convention on the Rights of the Child (1989) on this development. The value of this paper lies in obtaining practical recommendations regarding children's rights in general and the medical rights of children in particular*

Keywords: *medical care for children, children's health, the right to health protection, the right to life, protection of children, the Convention on the Rights of the Child*

INTRODUCTION

Due to certain events (increased cases of domestic violence, hostilities, terrorist attacks, children's suicide, etc.), scientists, state, and public figures are increasingly focusing on problems such as the perception of the child as the subject of law, observance of their rights and freedoms, equalisation of children's rights regardless of gender, understanding of the need for a special attitude towards childhood, the formation of juvenile courts, etc. [1, p. 54]. Among all these issues, we can also single out the issue of the development of children's medical rights. In the last 100 years, there have been significant changes in the world in the protection of children's rights, including medical rights. The first international legal instrument on the legal protection of the rights of the child was the Convention on the Custody of Minors of June 3, 1902, prepared at the 3rd session of The Hague Conference on International Law. The Convention expired almost 100 years later, pursuant to Article 51 of the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement, and Cooperation on Parental Responsibility and Child Protection Measures of October 19, 1996 (entered into force on January 1, 2002).

In 1919, the British Eglantyne Jebb and her sister Dorothy Buxton founded the non-governmental organisation "Save the Children" in London to help German and Austrian children affected by the First World War. Later, "Save the Children" began to open offices in other countries and in 1920, with the support of the International Committee of the Red Cross, acquired the status of an international foundation. It was Eglantyne Jebb who drafted the Declaration of the Rights of the Child, which was approved by the Save the Children International Foundation on February 23, 1923 and submitted to the League of Nations on 28 February 1924.

Based on the Eglantine Jebb project, the General Assembly of the League of Nations adopted the Geneva Declaration of the Rights of the Child on September 26, 1924, which is called the Geneva Declaration. Structurally, the Declaration of 1924 is a fairly compact document, consisting of only five main program items:

1. The child must be given the means requisite for its normal development, both materially and spiritually;

2. The child that is hungry must be fed; the child that is sick must be nursed; the child that is backward must be helped; the delinquent child must be reclaimed; and the orphan and the waif must be sheltered and succored;

3. The child must be the first to receive relief in times of distress;

4. The child must be put in a position to earn a livelihood, and must be protected against every form of exploitation;

5. The child must be brought up in the consciousness that its talents must be devoted to the service of fellow men.

So, in these paragraphs, the Declaration enshrined children's rights for health and normal physical development. In fact, this international document was a starting point of recognition of children's rights, including medical rights, at the global level. This five-point declaration – which was promulgated by the League of Nations in 1924 – has later been canonised as the first international declaration, not only on children's rights but on human rights more broadly [2, p. 290].

Generally, the concern about the health of children was caused by the need to overcome the consequences of the First World War, the fight against hunger, the epidemic of typhus, and the Spanish flu. Ukraine was not an exception. That is why the origins of juvenile law in Ukraine, including the consolidation and regulation of children's medical rights, began to take shape in these times. The need to consider the development of children's medical rights in Ukraine is explained primarily by the fact that in recent years in Ukraine there is an active reform of the field of medicine, including medical care for children. As it is known, when starting any transformations or changes, it is important to carefully study previous experience because it enables defining what exactly needs to be improved.

The general issue of juvenile law and the rights of minors have been studied by many well-known scholars from various areas of law, such as O.I. Anatolieva [2], L. Lindkvist [3], E. Agnew [4], S.M.F. Arend [5], E.A. Faulkner, C. Nyamutata [6], N.M. Krestovska [7], O.V. Kaplina, O.P. Kuchynska, O.M. Krukevych [8], S.V. Nesinova [9], O.V. Temchenko [10], O.I. Vinglovska [11] and others. The issue of children's medical rights has been investigated by such scientists as R. Adami, K. Dineen [12], P. Alderson [13], K.E.Ó. Cathaoir [14], T. Dare [15], K.H. Federle [16], Fedotova [17], U. Kilkelly [18], N. Lynch, U. Kilkelly [19], F. Kokabisaghi [20], Melnychuk [21], S. Minson, C. Flynn [22], A. Olefir and V. Pashkov [23], V.M. Pashkov, M.V. Trotska, O.S. Soloviov [24], O.V. Petryshyn, M.I. Liubchenko, O.O. Liubchenko [25], Yu.S. Razmetaeva and O.O. Sydorenko [26] and others.

However, a holistic theoretical legal study on the development of children's medical rights in Ukraine had not been carried out. Thus, the main purpose of this article is to analyse the process of development of children's medical rights in Ukraine.

1. MATERIALS AND METHODS

The regulatory framework for this study includes international legal documents and legislation of Ukraine. Among these documents are international declarations and conventions, constitutions, collection of laws, etc. Examining international documents gives us an opportunity to understand the global development of the issue of children's medical rights. At the same time, Ukrainian legislation shows us an influence of changes on the international stage on the development of children's medical rights in our state.

The theoretical framework of the study comprises scientific works of mentioned above scholars exploring the general issue of children's rights and medical rights in particular. Undoubtedly, the opinion of these leading experts became an important source of information for this study. To conduct this research, a system of methods of scientific cognition was applied. The methodological framework of this study is represented primarily by the philosophical method. The general philosophical method of cognition was applied at all stages of the cognitive process.

Secondly, the general scientific methods, specifically dialectical and historical methods, method of analysis and synthesis were used. Using the historical method, the authors researched the issue in chronological order. Using the method of analysis, the study identified the specific of children's medical rights, moreover, this method made it possible to engage reverse engineering of the concept, in particular, to distinguish a stage of development of these rights and investigate it as a separate part of the whole. The method of analysis also contributed to the identification of the inherent features of children's medical rights, made it

possible to identify similarities and distinguish them with other undeniable children's rights, correlate the universal catalog of human rights with the rights that started developing under processes of the recognition of the child as a subject of law. The method of synthesis gave the authors an opportunity to study children's medical rights in their entirety, in single and interconnected parts. In the process of the scientific research, synthesis is associated with analysis, that is what allowed the authors to combine stages of the process of the development of the children's medical rights, highlight the basic elements of these rights in the process of analysis, to establish their relationship and to investigate the development of children's medical rights as a whole.

Thirdly, special legal methods like formal-legal, comparative-legal, system-structural methods, and method of interpretation of legal norms were used. Formal-legal and system-structural methods were used in the development and research of the terminology of this paper, namely, in clarifying the content of the categories "children's rights", "children's medical rights", as well as upon formulating the definition of the specified legal categories. The most popular special legal method is the method of interpretation of legal norms. In this study, this method was used to analyse the formation and development of the issue of children's medical rights on the international stage and, primarily, in Ukraine. Generally, explanations through the law are the most fundamental type of historical explanation. The genetic explanation is used when the task is to reveal the essence of historical and legal phenomena and processes in their specific temporal expression [27, p. 71].

2. RESULTS AND DISCUSSION

2.1. Children's medical rights in Ukraine during Soviet period

As in many countries around the world, in Ukraine after the First World War and after the change of government (Ukraine became the Soviet Republic), the question of revising the legislation for improvement and bringing it into line with the requirements of the time arose. One of the main tasks of the Soviet government during this period was to ensure the health of the population in general and children as the future of the state in particular. On June 29, 1920, in accordance with the resolution of the Council of People's Commissars of the USSR the Council for the Protection of Children began its work, whose competence included the settlement of the issue of food supply, sanitation, and public education of children of the urban poor. Subsequently, provincial councils for the protection of children were established under the leadership of the chairmen of provincial executive committees, among whose tasks according to the statute "On Provincial Councils for the Protection of Children" was the implementation of the largest possible number of measures for health, nutrition, supply, and education of children.

At that time, the state paid special attention to disease prevention. Thus, programs of physical education classes were developed in all children's institutions, which were held under appropriate medical supervision. Moreover, these measures were included in the operational plan of the People's Commissariat of Health for 1923-1924 [17, p. 28]. We should not overlook the fact that during this period there were special institutions for children with vision and hearing disorders and for mentally-retarded children and children with disabilities, which, in the authors' opinion, is quite justified and logical because these categories need special medical supervision and living conditions. Undoubtedly, this was a big step forward because until that time such institutions did not exist in Ukraine.

It should be noted that on November 19, 1924, the Council of People's Commissars and the All-Ukrainian Central Executive Committee of the USSR adopted a resolution "On the state organisation of children's health and the rights and responsibilities of children's health doctors". The document provided that, in addition to the position of a child health doctor, the positions of medical support staff (nurses) for child health care would also be introduced in places that serve all types of children's institutions. Article 3 of the considered document contained the list of measures of sanitary-prophylactic, treatment-prophylactic, and medical-pedagogical nature the application of which was entrusted to health care bodies. Among them: 1) supervision over the sanitary condition of children's institutions; 2) sanitary care for children's nutrition; 3) application of personal and public prevention measures to children; 4) control of infectious diseases in children's institutions; 5) supervision over the psychophysical development of children; 6) dissemination among children, as well as teachers and parents of the necessary sanitary and hygienic information and habits (sanitary education), etc. Moreover, Art. 9 of the above mentioned Resolution provided that the children's health doctor monitored the sanitary condition of children's institutions, monitored compliance with certain sanitary and hygienic standards, including the announcement of quarantine in closed children's institutions and temporary closure of open children's institutions in case of acute infectious diseases or a mass epidemic among children or staff with the consent of the health inspector and the consent of the Inspectorate of the People's Commissariat of Education.

Thus, it could be stated that this Resolution was revolutionary, as it clearly indicated the health care bodies for children, outlined the scope of their powers, enshrined the legal status of a child health doctor (now known as a pediatrician), and so on. As for children's institutions, their network consisted of institutions of open (consultations, nurseries, "milk drops", kindergartens, etc.) and closed (mother and child homes, shelters, etc.) type [21, p. 127].

During the Second World War, one of the main problems was the demographic crisis, due to which the health authorities had to increase the birth rate in Ukraine, to take care of the health of children. That is why in 1943 in the USSR the creation of sanatorium kindergartens began, where children with impaired health were provided with the necessary nutrition and constant medical care. Children could stay in such institutions from 3 to 6 months within 24 hours. Moreover, they were provided with enhanced nutrition and constant medical care. Pedagogical work in sanatorium kindergartens was carried out, considering the state of health of children. Additionally, the health of newborns should be considered. First of all, it should be pointed out that in the postwar period, this area had certain negative features and shortcomings. The unsatisfactory state of hospital life in many maternity hospitals and other hospitals led to a reduction in the length of stay of women in bed in several areas. It should not be forgotten that in those days there was no proper connection with pediatric counseling, and therefore, under such conditions, early discharge of children, including premature babies, was a threat to their health and life. Considering this, not only increased the number of deaths of newborns in the hospital, but also increased the mortality of newborns after their early discharge from the hospital [28, p. 55].

The end of the 1960s in the field of health care was marked by the adoption in the USSR of the Law "On Approval of the Fundamentals of the Legislation of the USSR and the Union Republics on Health Care" of December 19, 1969. It was the first law (a kind of code) in the USSR that comprehensively regulated the issue of health care. According to this Law, on July 15, 1971, the Law of the Ukrainian SSR "On Health Care" was adopted in the USSR, in the introductory part of which it was stated that special attention of socialist society is paid to the health of mother and child. A separate section of the above law was devoted to the protection of motherhood and childhood. Article 65 of this Law enshrined the right of a mother and her newborn child to receive medical care (inpatient care during childbirth, medical and preventive care, etc.). The law also provided the provision of medical care to children and adolescents in treatment and prevention and health care facilities: children's clinics, dispensaries, hospitals, sanatoriums, and other health care facilities.

At the constitutional level, the right of citizens to health care was first enshrined in the Constitution of the USSR in 1977 and, of course, in the Constitution of the Ukrainian SSR in 1978. In Art. 40 of the Basic Law of the Ukrainian SSR, it was noted that the state took special care of the health of the younger generation, which, in particular, provided for the prohibition of child labor not related to education and labor education. There have been significant changes at the international level regarding children's rights, including medical rights. These changes had a great impact on the development of medical rights in Ukraine. In 1978, the UN General Assembly in its resolution noted that the International Year of the Child provides a unique opportunity for all countries to undertake an in-depth review and evaluation of their policies for children and to establish programs of action to be undertaken, and for the world community to renew and to reaffirm its determination to meet children's needs and to secure their fundamental rights. Moreover, at this 33 session of the UN General Assembly, a resolution about the necessity of adoption of the convention on rights of the child was adopted. In support of the decision of the UN General Assembly, on March 15, 1979, the Verkhovna Rada of the Ukrainian SSR adopted a resolution "On holding the International Year of the Child in the Ukrainian SSR". This resolution envisaged directing efforts of the state and public organisations to ensure a stable improvement of the well-being of children, namely the development of a network of children's hospitals, polyclinics, sanatoriums, and preschool institutions, expanding the range and improving the quality of goods for children, improving public catering for children and more.

The most significant world event of the twentieth century in the field of children's rights, including medical rights, was the adoption by the UN General Assembly of the Convention on the Rights of the Child in 1989, which the Ukrainian SSR ratified in 1991. The Convention on the Rights of the Child is regarded as successful by practitioners pursuing a career in the field of Public International Law because, in addition to having been ratified over the decades by more than 190 countries (even under several reservation clauses), the socio-legal view of this legislation has been gradually adopted by the populations of countries located in various continents of the globe [5, p. 606]. The idea of universal acceptance of childhood finds justification in the swift ratification of the UNCRC, a document that has enshrined Euro-American ideals and notions of children, childhood, and the politics of protection [6, p. 69-70]. According to this Convention, states parties recognise that every child has the inherent right to life, and they shall ensure to the maximum extent possible the survival and development of the child (Art. 6), enshrine the rights of the mentally and physically disabled child (Art. 23), recognise the right of the child to the enjoyment of the highest attainable standard of health

and to facilities for the treatment of illness and rehabilitation of health (Art. 24), recognise the right of a child who has been placed by the competent authorities for the purposes of care, protection, or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement (Art. 25). The Convention had a significant impact on the legislation of all states, including the Ukrainian SSR, on their attitude to the rights of the most vulnerable age group, as well as the recognition of the need to ensure the rights of children at the legislative level. However, there is a huge gap in the Convention. We share U. Kilkelly's opinion, that at the same time, the CRC says remarkably little about the scope of the child's right to health and how to ensure that children's healthcare is delivered in a rights-compliant manner. Nor does the CRC directly states the many sensitive and controversial issues in children's health, including consent to medical treatment, involvement in medical trials, and the impact of poverty on child's health [18, p. 217].

2.2. Children's medical rights in Ukraine after proclamation of independence

The current Constitution of Ukraine, adopted in 1996, stipulates, that citizens have the right to social protection, including the right to be provided in the case of full, partial, or temporary disability, loss of a breadwinner, unemployment due to circumstances beyond their control, and in old age and in other cases provided by law (Art. 46). It is this article that guarantees social protection to children with disabilities by the state and on its basis, other legal acts are adopted in the field of providing state assistance to children with disabilities (for example, the Law of Ukraine "On Fundamentals of Social Protection of Persons with Disabilities in Ukraine" of March 21, 1991, No 875-XII). Article 48 of the Constitution of Ukraine stipulates that everyone has the right to an adequate standard of living for himself and his family, which includes adequate food, clothing, and housing.

The main article of the Constitution, which is the basis of children's medical rights in Ukraine, is Article 49, according to which everyone has the right to health protection, medical care, and medical insurance. Medical care is provided free of charge in state and municipal health care facilities. In Ukraine, as well as in most countries, parents make all decisions about the medical care of their children. The authors strongly agree with T. Dare that in fact there is a presumption in favor of parental rights. Such rights are normally rebuttable: they can be set aside by courts where parents' decisions pose a significant risk to the life or well-being of the child [15, p. 947].

In accordance with the ongoing medical reform in Ukraine, changes have been made to the responsibilities of the pediatrician. Thus, according to the order of the Ministry of Health "Procedure for providing primary care" of March 19, 2018, No. 504 pediatrician is obliged to provide the following services free of charge:

– to provide primary care to patients;

– to form and control the implementation of the plan of examinations and treatment, analyse the results of research, prescribe drugs and other treatment measures;

– to provide medical care to patients in an emergency;

– to refer, in accordance with the medical indications of a patient who does not need emergency medical care, to provide him with secondary (specialised) or tertiary (highly specialised) medical care;

– to coordinate work with other parts of medical care;

– to manage patients suffering from socially dangerous infectious diseases in accordance with the legislation;

– to carry out immunoprophylaxis in accordance with current legislation;

– to advise on a healthy lifestyle;

– to carry out measures of mass and individual prevention of infectious diseases;

– to assess individual disease risks and advise on prevention. Develop individual health examination and monitoring programs;

– to inform the patient about national screening programs and perform other functions in accordance with the law or the program;

– to provide medical care for a healthy child;

– to prescribe medicines with the registration of documents according to the legislation;

– to draw up medical notes, forms, sickness certificates.

The Constitution also enshrines the protection of childhood by the state (Art. 51), which indicates a special attitude of the state to this vulnerable part of the population. In execution of this provision of the Constitution, in 2001 the Law of Ukraine "On Childhood Protection" was adopted. This law provides a definition of the terms child, childhood, child with a disability, etc., as well as a list of children's rights. One

of them is the right to life and health care (Art. 6). This right means that every child has the right to life from the moment he or she is determined live-born and viable of the criteria of the World Health Organisation. The state also guarantees to the child the right to health care, free qualified medical care in state and municipal health care facilities, promotes the creation of safe living conditions and healthy development of the child, nutrition, and the formation of healthy lifestyle skills. In order to achieve all of the above, the state takes measures:

–to reduce infant mortality;

–to ensure the provision of necessary medical care to all children;

–to combat disease and malnutrition, including by providing children with access to sufficient quality food and clean drinking water;

–to create safe and healthy working conditions;

–to provide mothers with appropriate health care services in the prenatal and postpartum periods;

–to provide all segments of society, including parents and children, with information on the health and nutrition of children, the benefits of breastfeeding, hygiene, sanitation of children, and the prevention of accidents;

–to develop educational work, services in the field of family planning and reproductive health;

–to provide children with preferential medicines and food in the order established by the legislation.

Therefore, studying the issue of development of children's medical rights it should be noted that the rights of children in health care can be classified into two main groups: – universal, which are inherent both for children and adults; – specific, which belong only to children, besides they are reinforced with guarantees of their legal status. The first group include the right to life and development, the right to the highest level of health as possible and access to health services, to receive treatment based on clinical need, respect for privacy and dignity, etc. The second group include the following: the right of disabled children to special care, the right of children placed in the care of the State to periodic review of treatment, the right to protection from the use of narcotic and psychotropic drugs, etc. [23, p. 1123].

As for the right to life, there are still fierce disputes among scholars. Some scientists note that the unresolved issue is the balance of human rights, first of all, the balance between the protection of the fetus and the respect for a pregnant woman's rights [26, p. 135]. The resolution of the issues and forming of a reasonable legal position in Ukraine require comparative legal research of the experience of other countries. One of the important decisions of the essential question of constitutional guarantees for the life of a child during the prenatal period in the event of a conflict of interests was made by the Constitutional Tribunal of the Republic of Poland [29]. In the Tribunal's view, termination of pregnancy even where, "based on prenatal tests and/or on other medical grounds, there is a high probability of the fetus's severe and irreversible impairment or of the fetus's life-threatening incurable illness" is inconsistent with the Constitution of the Republic of Poland. It held that an unborn child – as a human being, entitled to the inherent and inalienable dignity of the person – is recognised under law as a subject of rights and obligations who enjoys the right to life. Moreover, the experience of non-west legal systems, for example, Islamic law where there are specific approaches to children's rights protection, is interesting for research [30].

So, nowadays, children's medical rights and children's health care are still developing. For example, there are studies about human digital rights [31], children's right to freedom from obesity [14], and human rights in conditions of the COVID-19 pandemic fight [32]. So, as we can see, at the beginning of the XXI century there were considerable changes in children's health care. The development of children's medical rights has been continuing up to nowadays.

CONCLUSIONS

Thus, it could be concluded that children's medical rights were actively developed in the twentieth century after the First World War. It was an event of a global scale that prompted legislative changes in national legislations, including Ukraine. Ukraine's experience in children's health care is rich in examples of both successful reforms in the field of children's health care, and not so successful. A new system of public health was built, much was done to ensure the smooth realisation of children's right to health care, which was most needed during World War II, to overcome its consequences such as demographic crisis, exacerbation of children's health problems, settlement issues of their rehabilitation, both physiological and psychological, etc. Furthermore, intense activity in the provision of quality medical services to children was developed, the rights of children at the highest constitutional level were enshrined. Moreover, Ukraine acceded to the Convention on the Rights of the Child, which also contained articles on children's medical rights. So, Ukraine's accession to international conventions is an indicator of the direction of Ukrainian legislation in line with the

consolidation of children's medical rights according to international standards. The modern Constitution of Ukraine contains articles on children's health. Moreover, Ukraine has adopted a separate law "On the protection of childhood". The modern Ukrainian legislation about children's medical rights has been improving, new medical reform has been carried out, which also provides changes in children's health care. Nowadays, the issue about children's medical rights among Ukrainian and foreign scholars still have been developing. That is an indication of further development of children's medical rights both on an international stage and in Ukraine. That is why the conclusion can be drawn, that development of children's medical rights in Ukraine had reached the level when it is necessary to create a juvenile code with a separate section on children's medical rights.

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Suggested Citation: Yermolaiev, V.M., Omarova, A.A., & Ponomarova, H.P. (2021). The development of children's medical rights in Ukraine (1919 – beginning of the XXI century). *Journal of the National Academy of Legal Sciences of Ukraine*, 28(4), 181-189.

Submitted: 24.08.2021
Revised: 10.10.2021
Accepted: 26.11.2021

УДК 340.13:347:340.5
DOI: 10.37635/jnalsu.28(4).2021.190-199

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РЕКОДИФІКАЦІЯ ЦК УКРАЇНИ ТА МОДЕРНІЗАЦІЯ ЦК РЕСПУБЛІКИ КАЗАХСТАН: ПОРІВНЯЛЬНИЙ АНАЛІЗ ОСНОВНИХ ІДЕЙ

Анотація. *Системне оновлення цивільного законодавства України, як і модернізація цивільного законодавства Республіки Казахстан, є потребою часу, про що свідчить аналіз змін, які були внесені у цивільні кодекси України і Республіки Казахстан, та їх правозастосовна практика. Робота з оновлення цивільного законодавства потребує оцінки поточного стану та перспектив соціально-економічного розвитку українського суспільства і держави, зокрема розвитку такого важливого компонента, як національна правова система, що представлено в Концепції оновлення Цивільного кодексу України. Надзвичайно важливо, що основні напрями Концепції орієнтують розвиток цивільного права України з урахуванням сучасного досвіду рекодифікації цивільних кодексів інших держав у межах континентальної правової сім'ї. З огляду на те, що в Республіці Казахстан також проводиться модернізація цивільного законодавства, метою цієї статті є порівняльний аналіз основних ідей рекодифікації Цивільного кодексу України та модернізації Цивільного кодексу Республіки Казахстан задля напрацювання системного підходу та єдиної концепції розвитку цивільного права й формування чіткого орієнтиру розвитку цивільного законодавства. У статті на підставі як загальних (історичного, порівняльного, системного аналізу), так і спеціальних (конкретно-соціологічного, формально-юридичного, юридико-технічного тощо) методів аналізуються напрями оновлення цивільного законодавства України та Республіки Казахстан. Одним із найбільш обґрунтованих з боку забезпечення наступності правового регулювання цивільних відносин та забезпечення модернізації правової основи для розвитку сфери соціально-правових відносин на довгострокову перспективу є підхід, за яким мають бути збережені всі досягнення чинних цивільних кодексів з урахуванням сучасних європейських підходів та специфіки цивільного і ділового обороту*

Ключові слова: *оновлення цивільного законодавства, Концепція оновлення Цивільного кодексу України, зміна Цивільного кодексу України, реформа цивільного законодавства, скасування Господарського кодексу України*

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RECODIFICATION OF THE CIVIL CODE OF UKRAINE AND MODERNISATION OF THE CIVIL CODE OF THE REPUBLIC OF KAZAKHSTAN: A COMPARATIVE ANALYSIS OF THE MAIN IDEAS

Abstract. *Systematic updating of the civil legislation of Ukraine and modernisation of the civil legislation of the Republic of Kazakhstan are time-consuming tasks as evidenced by the analysis of changes that were made to the civil codes of Ukraine and the Republic of Kazakhstan and their law enforcement practice. Work on updating civil legislation requires an assessment of the current state and prospects of socio-economic development of Ukrainian society and the state, in particular the development of such an important component as the national legal system, which is presented in the concept of updating the Civil Code of Ukraine. It is crucial that the main areas of the concept orient the development of civil law in Ukraine, considering the current experience of recodification of civil codes of other states within the continental legal family. Considering that civil legislation is also being modernised in the Republic of Kazakhstan, the purpose of this study is to compare the main ideas of recodification of the Civil Code of Ukraine and modernisation of the Civil Code of the Republic of Kazakhstan to establish a systematic approach and a unified concept for the development of civil law and form a clear guideline for the improvement of civil legislation. The study analyses the areas of updating the civil legislation of Ukraine and the Republic of Kazakhstan based on both general (historical, comparative, system analysis) and special (specific-sociological, formal legal, legal-technical, etc.) methods. One of the most reasonable ways to ensure continuity of legal regulation of civil relations and ensure the modernisation of the legal basis for the development of the sphere of social and legal relations in the long term is the approach that should preserve all the achievements of existing civil codes, considering modern European approaches and the specific features of civil and business turnover*

Keywords: *updating of civil legislation, the concept of updating the Civil Code of Ukraine, amendment of the Civil Code of Ukraine, reform of civil legislation, abolition of the commercial code of Ukraine*

INTRODUCTION

Since the adoption and entry into force of the Civil Code of Ukraine (hereinafter referred to as the CC of Ukraine), considerable changes have taken place both in the development of public relations and in their legal regulation. Recodification of the civil legislation of Ukraine and modernisation of the Civil Code of Kazakhstan are aimed at systematically updating the relevant legal array. The work on updating civil legislation is aimed at developing such an important component as the national legal system, as stated in the concept of updating the CC of Ukraine (hereinafter referred to as the concept of updating the CCU) [1]. It is worth emphasising the conditionality of *"European integration orientation of all components of society"* which allowed the authors of the concept of updating the CCU to adhere to the unambiguous logic of the proposed legal reform (considering the logic of transformation of the entire society) and to determine reasonable and clear guidelines and methods of reform [1].

The concept of updating the CCU is characterised by validity, deep content, and logical construction. Its main areas outline the development of civil law in Ukraine within the continental legal system, that is, as a system of the Civil Code, considering the modern experience of recodification of the civil codes of France and Germany. European models of legal regulation of private law relations are also considered, including the "principles, definitions, and model rules of European private law" Draft Common Frame of Reference (DCFR), Lando principles – Principles of European Contract Law (PECL), Principles of European Tort Law (PETL), etc. This approach allows preserving the integrity of the national legal system and ensuring the validity and prospects of further development of legal culture in accordance with the cultural and legal development of Western European states.

The prepared concept of updating the CCU and the format of recodification of civil law are based on a comprehensive analysis of the experience of the CC of Ukraine, the results of judicial and business practice,

civil doctrine, and the approaches developed by private law are the main factors and prerequisites for recoding. The concept of updating the CCU is based on the audit of all civil legislation, studying the experience of codification of continental law countries. The Republic of Kazakhstan is also conducting an audit of civil legislation. This process is called "modernisation of the Civil Code of the Republic of Kazakhstan" or "main areas of development of civil legislation". Proposals for improving the civil legislation of the Republic of Kazakhstan were developed as part of the preparation of the draft concept of legal policy of the Republic of Kazakhstan for the period 2021-2030. This draft concept of legal policy was developed by the Institute of legislation of the Republic of Kazakhstan. The section "Civil Law" was prepared jointly with the Research Institute of Private Law [2].

The development and improvement of the CC of the Republic of Kazakhstan (hereinafter referred to as the CC of the Republic of Kazakhstan) is an urgent task. Therewith, the factors and prerequisites for such modernisation, in general, are the same circumstances present in the concept of updating the CCU, called prerequisites for recodification of the CC of Ukraine. As a task of modernising Ukrainian civil law, it is advisable to specifically emphasise the need for: (i) a final rejection of certain legal structures and approaches inherited from the Soviet legal system and still available in Ukrainian civil legislation, and (ii) rapprochement with the legislation of developed legal orders in continental Europe. Firstly, it is worth emphasising once again that there is no need to adopt a new CC of the Republic of Kazakhstan or considerably redraw the current one. The current CC of the Republic of Kazakhstan over the past 25 years has proved its effectiveness in regulating civil law relations, withstood numerous attacks on it (one of the recent unsuccessful provocations is covered in: [3]).

For example, such an attempt was the presentation in 2020 by a group of young people "the new CC of the Republic of Kazakhstan" to the leadership of the Ministry of Justice. However, all this was quite reasonably described as *"a pacifier wrapped in a beautiful packaging"* [3], *"shameless actions of beginners and, frankly, unsuccessful scientific and pedagogical workers of KAZGUU" and "unsuccessful circus performance"* [4]. Given that both Ukraine and the Republic of Kazakhstan have a lot in common in their public and legal spheres, conducting a parallel comparative analysis of updating civil legislation is extremely relevant and timely. A considerable number of changes and additions were made to the CC of the Republic of Kazakhstan, which can be characterised in different ways in the context of their validity and quality of processing. Attempts were repeatedly made to improve the CC of the Republic of Kazakhstan on a more or less large scale, but not all of them were completed successfully. Not well-thought-out and reasonable additions and changes are made to the CC of the Republic of Kazakhstan to this day.

Moreover, there is no systematic modernisation of the Kazakhstan CC, which was proposed by the collective body of the Institute of Private Law [2]. The main factors of such an unfavourable situation (which distinguish the situation in the development of Kazakhstan's civil legislation from the process of recodification of the CC of Ukraine) are the following interrelated and interdependent circumstances: (i) lack of a systematic approach; (ii) lack of a unified concept for the development of civil law; (iii) lack of clear guidance in the development of civil legislation; (iv) lack of support for state institutions in performing work on the modernisation of Kazakhstan's legislation on a systematic basis, including using the scientific potential of national private law science.

The purpose of this study is a comparative analysis of the main ideas of recodification of the CC of Ukraine and modernisation of the CC of the Republic of Kazakhstan to develop a systematic approach and unified concept of civil law development and the establishment of a clear guideline for the improvement of civil legislation.

1. MATERIALS AND METHODS

The essence of the studied phenomena and processes determines the choice of principles, techniques, means, and methods of research activity. During the comparative analysis of the main ideas for recodification of the CC of Ukraine and modernisation of the CC of the Republic of Kazakhstan, a set of general scientific, special methods and techniques of research were used. To ensure the comprehensiveness, completeness, and objectivity of research, correctness and consistency of conclusions, these methods were used in interrelation.

In conducting this study, the main methodological tool was the comparative analysis, which was used to study the legal systems of Ukraine and the Republic of Kazakhstan by comparing the relevant legal provision, institutions, principles, etc. and the practice of their application. Upon using the logical method of comparison, the similarity and difference between updating the civil legislation of these states are covered, their similar stages and connection with other phenomena are determined, the general and special in their development. It is the opportunity to identify common features and features that are manifested in updating civil legislation in Ukraine and in the Republic of Kazakhstan that is quite an effective tool for solving complex

problems of improving legal mechanisms for regulating civil relations. The study also applies system analysis, the methodological basis of which is dialectics. The purpose of this method is to systematically study the civil legislation of Ukraine and the Republic of Kazakhstan, provided that the system of legislation is considered in general, considering its purposes and functions, structure, and all external and internal relations. This method was used in the study of individual institutions of civil law, in particular the law of rights and obligations, institutions of the general part (objects, transactions, the statute of limitations, representation, etc.) that require systematic updating. The method of system analysis allowed determining the interrelationships between individual legal constructions in the legislation of Ukraine and the Republic of Kazakhstan and the interdependence of their influence. The historical method allowed studying the features of legal regulation of private law relations in Ukraine and the Republic of Kazakhstan, identifying the prerequisites, and establishing the factors of updating the Civil Code of Ukraine and modernising the Civil Code of the Republic of Kazakhstan.

A certain place in the study of legal phenomena is occupied by special methods: specific-sociological, formal-legal, legal-technical etc. The specific-sociological method, which is expressed in considering the state and law not at the level of abstract concepts, but based on actual social facts, rules established in society, was used to identify contradictions between the current civil legislation and the needs of social development. Such techniques as the analysis of the Civil Code of Ukraine and the Civil Code of the Republic of Kazakhstan, the concept of updating the Civil Code of Ukraine allowed concluding that the ideas of modernisation of the Civil Code of Ukraine, which are presented in the concept, facilitate adapting it to the present realities, in particular dictated by modern European approaches and the level of civil and business turnover. The formal legal method was used to analyse the legal provision of relevant legal regulations that define certain concepts that are given in the civil legislation of Ukraine and the Republic of Kazakhstan, provide a list of principles of civil legislation, determine the list of organisational and legal forms of legal entities, etc. Upon using the legal and technical method, external, obvious aspects of legal phenomena, in particular objects of civil rights, the statute of limitations, etc. were identified to formulate their definition in a concise form and indicate the signs of these phenomena.

2. RESULTS AND DISCUSSION

An important condition for the systematic updating of the civil legislation of Ukraine (not only the CC) is the complete abolition of the commercial code of Ukraine; this thesis is clearly substantiated in the concept of updating the CCU [1]. In 2015, the Republic of Kazakhstan adopted the Commercial code. This code, being compiled from dozens of different special laws that were in force even before its adoption, which affected the validity or integrity of the legal regulation of certain aspects, in reality, causes confusion, creating difficulties for entrepreneurs and the state (state bodies and courts), for example, when applying the rules prohibiting a dominant position in the market.

In this regard, in a monographic publication *"Legal regulation of entrepreneurial activity in the post-Soviet period"* Ukrainian and Kazakh specialists in civil law analysed in detail the texts of the commercial code of Ukraine and the Republic of Kazakhstan and clearly showed all the harmfulness and danger to the economic turnover of parallel regulation by two codes, one of which is based on an erroneous methodological reference [5]. Therefore, the abolition of the commercial code in Kazakhstan will contribute to a more effective and reasonable modernisation of the private law system.

A positive conclusion, which is substantiated in the concept of updating the CCU, is the provision on the need to clarify the range of relations regulated by civil legislation and ***recognition of the sphere of corporate relations*** as one of the *"spheres of social reality in which private law relations are located, regulated by civil legislation"* [6, p. 41]. It is fundamentally important to indicate in the CC of the Republic of Kazakhstan that corporate relations are regulated by civil legislation and no other. This should be enshrined in Article 1 of the CC of the Republic of Kazakhstan. Therewith, it is necessary to determine with a proper level of unambiguity that corporate relations are those related to the establishment of corporations, participation in corporations and their management.

As a rule, corporations are established by the free expression of the will of private entities (including in cases where they are established by the state and public legal entities to take part in civil and commercial turnover) for independent performance of commercial or other activities that are not prohibited by law. In this regard, corporations with independent legal capacity are also private entities that take part in civil turnover. Accordingly, disputes between participants in corporate relations (corporate disputes) can only be resolved in civil proceedings or through alternative dispute resolution.

Therewith, it is important to have a clear understanding of who can be recognised as a subject of corporate relations. These include the corporation itself, its members, and officials. Only they can act as

parties to a corporate dispute, can be subject to criminal and administrative-legal prosecution measures provided for in the law for socially dangerous acts committed in the course of corporate governance. Attribution of a person to participants in corporate relations is based on the legal definition of corporate relations, as proposed above. The legal definition of subjects of corporate relations is impractical from the standpoint of generally recognised legal techniques. However, the development of a unified position is possible (and even appropriate) in judicial practice and/or based on the results of its generalisation. The above position is reflected in the recommendations for improving the corporate legislation of the Republic of Kazakhstan and *"aimed at improving the legal regulation of corporate legal relations, corporate governance, activities of corporate groups and the legal status of holding companies"* [7].

The approach reflected in the CCU update concept deserves support, according to which ***the principles of civil law*** enshrined in the CC should cover not only the law but also "*the functioning of the entire private law system or its defining parts".* Therewith, the concept of updating the CCU suggests that ***list of basic principles*** of civil legislation was not finalised [1]. Both proposals are explained by the fact that this approach will increase the legal tools for judicial practice. If the validity of the definition of general principles of private law is not in doubt, then giving the courts the opportunity to define new principles of private law (and even the assumption that such principles are established by legal acts other than the CC) seems inappropriate in view of the fact that objectivity in determining other general principles of the private law system will not be respected. An interesting and rather promising proposal is that the current principle of freedom of contract should be formulated as a broader one – ***the principle of freedom of agreement*** [1]. Therewith, it is proposed to consider further expanding the content of this principle in such a way as to generally declare freedom to enter civil law relations (admittedly, while meeting the requirements for reasonable and fair behaviour of the subjects of legal relations). The proposal to include ***"conscious and responsible human interaction with autonomous robots and artificial intelligence"*** among the principles important for modern civil society also attracted attention [1].

However, it is worth remembering that only persons and subjects of law can interact with each other. The above should be considered when consolidating this principle to prevent the recognition of civil legal personality for robots and artificial intelligence [8]. This can have far-reaching and not always favourable consequences for humanity. Neither robots nor artificial intelligence should be recognised as subjects of law. At the level of the Civil Code, it is advisable to fix their legal regime as a separate category of objects of civil rights, exclude human interaction with them, allowing only human influence on them. Regarding individuals as subjects of law, it is crucial to include general provisions in the CC of Ukraine ***on legal entities under public law*** and recognise them as participants in civil legal relations. The thesis that in this case *"there is no need to preserve the vast majority of provisions of the current chapters of the CC of Ukraine on the legal forms of their* [i.e., state, Autonomous Republic of Crimea, and territorial communities] *participation in civil relations, including their responsibilities according to obligations"* [1].

The construction of legal entities under public law deserves to be included in the CC of the Republic of Kazakhstan. Moreover, it is advisable to characterise such novelties as a special component of the proposed reform of the system of legal entities [9]. In this way, considering the experience of Germany, other developed countries (including those that are members of the OECD) and a number of countries of the former USSR, the Civil Code of the Republic of Uzbekistan is currently being reformed, and such development [10]. It is worth noting that even the concept of legal policy of the Republic of Kazakhstan for the period from 2010 to 2020 raises the issue of the possibility of *"resolution of the issue of dividing public and private law into legal entities"* [11]. In this regard, the study conducted in the Republic of Kazakhstan on the legal status and activities of legal entities under public law in foreign legal orders is of interest. A report on this work was prepared in 2018 [12]. An important area of recodification of civil legislation is the updating of real law regulations. In this context, the proposal contained in the CCU update concept to provide the CC of Ukraine with ***provisions on the social function of property should be supported***: *"Property obliges, and the owner is obliged to exercise due regard for common interests, and individual interests"* [1].

In general, the recognition of the existence of the common good and/or public interest, the possibility for everyone to enjoy the objects of the common good, and for the relevant entities – the opportunity and/or obligation to act for the purpose of fulfilling the public interest is a condition for the creation and operation of legal entities under public law. In turn, compliance with the general (public) interest is a condition and limit for performing certain legal actions in relation to property that is in public or private ownership or conducting activities by a subject of public interest.

Very important points of the CCU renewal concept are the ***"abandonment of archaic constructions of legal entities*** (*primarily enterprises*)" and the "***abandonment of the right of economic management and the right of operational management and their replacement by market constructions***" [1]. The need for

a considerable revision of these two institutions – a legal entity and property rights – is the main reason and area of the processes of modernisation of civil legislation in all post-Soviet republics. The initial focus on the development of a new civil law in accordance with the European tradition allowed from the very beginning abandoning the mentioned legacy of Soviet law and adopting generally recognised (substantiated and promising) institutions of modern law and order or take time to move to the use of appropriate models for regulating civil law relations. However, the position formulated by Professor O.L. Makovsky on the tasks to be solved by the modernisation of the Civil Code of the Russian Federation is subject to approval: "*the two main and most difficult tasks in all respects ...– development in the national civil legislation based on the supplemented and changed provisions of the CC of two full-fledged branches – corporate and property law*". [13].

The focus on solving these problems was formulated during the preparation of the concept for the development of civil legislation of the Russian Federation in 2009 [13]. It is also clearly manifested both in the draft updated CC of Uzbekistan 2020 [10] and in the concept of updating the CCU discussed in this study. The same two most important tasks are also relevant for Kazakh law. It is necessary to agree with the characteristic contained in the concept of updating the CCU, according to which state-owned enterprises, which are characterised in the concept of updating the CCU as "*Soviet framework*", "*in the interests of economic growth, they should be replaced by market instruments in the form of organisational and legal forms of joint-stock and other companies*" [1]. Equally substantiated is the position formulated in the concept of updating the CCU that the right of economic management and the right of operational management are "*relics of the socialist past, artificially created for the needs of the state economy, limited real rights that have no analogues in developed legal systems and do not correspond to the concept of real law*" [1].

The proposal for a complete rejection of these legal frameworks is an organic and necessary element of a comprehensive perception of the concept of updating the CCU of the entity subject to public law, including the regulation of transparent mechanisms for monitoring the activities of the entity subject to public law, and will also eliminate ambiguous practices in the activities of state bodies for managing state assets. Returning to the main ideas regarding the institution of persons in civil law, it is advisable to express full support for the proposal contained in the concept of updating the CCU that the CC of Ukraine should define as ***an exhaustive list of organisational and legal forms of legal entities*** [1]**.** Determining the list of such forms, at least for commercial organisations, based on the numerus clausus principle is the standard of modern legal regulation. This is not a task for Kazakh law, since the list of acceptable organisational and legal forms for commercial organisations enshrined in civil code is finalised.

Therewith, the establishment of not only an exhaustive but also a reasonably defined list of organisational and legal forms of non-profit organisations seems to be an urgent problem for Kazakhstan's civil law. In general, the modernisation of Kazakhstan's corporate law, the reform of legislation on non-profit organisations, including the revision of the criteria for distinguishing these two types of legal entities, seem to be important components of the proposed general reform of the institution of subjects of civil law relations and the system of legal entities [2; 9]. The proposal to ***critically revise the provisions of the Law of Ukraine "On Business Associations"*** [1] is reasonable. As already noted, the same task of modernising corporate legislation is relevant for Kazakh law. An important place in the concept of updating the CCU is occupied by provisions on objects of civil rights.

Regarding objects of civil rights, the concept of updating the CCU suggests:

"§1.12. Expanding the list of objects of civil rights. The regulation of the CC on objects of civil rights is proposed to be expanded considering the development of civil turnover and the appearance of objects unknown at the time of the creation of the CC. Firstly, it refers to the following objects: information products, information resources, information systems, etc.; objects of rights that are created and located on the Internet; cryptocurrencies; personal data, personal information, autonomous robots, artificial intelligence, digital content, etc. It is advisable to expand the list of objects of civil rights to include corporate rights, which in practice have long become a turnover object of civil turnover, and objects of personal non-property rights, which, having been embodied in an objectified form, have acquired signs of turnover, and are used in commercial activities (see §2.7). It is also worth analysing the expediency of including in the list of objects of civil rights a number of objects, the appearance of which is due to the development of medicine (in particular, biological material)" [1].

Therewith, the position regarding objects should be reasonable. In the proposals of the Research Institute of Private Law, the idea of ordering a disorderly set of objects of civil rights is given, as is now in Article 115 of the CC of the Republic of Kazakhstan [2]. A conceptual revision of the issues of determining the legal nature and classification of objects of civil rights and clarifying their legal regime is required, determining the place in this classification of such objects as rights of claim and objects of intellectual property rights. In the proceedings on the claims of the Paul brothers [14] against the Republic of Kazakhstan, there were attempts

to foreclose on the Kazakhstan National Fund. The main argument that allowed rejecting these claims was the proof that there is no right of ownership at the expense of the National Fund, but there is a right of claim. Therewith, during the procedures, the theoretical study of the right of claim as an object of civil rights happened to be insufficient [14].

As a general rule, all objects of civil rights should be subject to the rules on the turnover of things. However, it is necessary to clearly distinguish between the legal regimes of different types of objects, having a turnover within the same market with a similar purpose, but in different forms (for example, in the areas of circulation of securities, financial instruments, making payments). To simplify the turnover of various types of property and recognise rights to them, it is necessary to introduce the concept of a single object, not only for land plots and other objects related to them functionally and (or) physically but also for other objects of civil rights. It is necessary to distinguish the "land" as an object of real law of the state from the public law concept "territory", a sphere of the sovereignty of the Republic of Kazakhstan.

As already noted, the concept of updating the CCU proposes to expand ***the list of objects of civil rights***, providing (among other things) cryptocurrency, personal data, "digital content", and corporate rights in the CC of Ukraine. These proposals correspond to the relevant problems [1].

Therewith, the question ***of the recognition of cryptocurrencies as an independent type of object of civil rights*** is quite ambiguous and quite controversial. Such recognition will require an unambiguous legal qualification of the cryptocurrency as a special object of civil rights, the inclusion in the CC of a legal definition that allows identifying special qualification features of such a cryptocurrency, and the establishment of a legal regime of the cryptocurrency (just as the provision of the CC reflect the legal regime of money, securities, real estate, and other property goods). This is hardly reasonable at the moment. If cryptocurrency is defined as a form or digital form of money, or the concept of digital currency and/or a separate form of money, that is, the national currency is extended to cryptocurrency (similar to the declared approaches of the Central Bank of Russia [15] and the National Bank of Kazakhstan [16]), it is advisable to include the corresponding warnings in the article devoted to money as objects of civil rights. In this case, a special definition of cryptocurrencies as a separate type of civil rights object seems impractical.

It is not considered reasonable to define ***personal data as a special type of object of civil rights.*** Personal data cannot be the object of trade or the subject of civil transactions. On the contrary, personal data is subject to legal protection, and the rights to personal data are an object of special use and special legal protection. In general, this approach is quite reasonably reflected in the concept of updating the CCU, according to which it is reasonably recommended in the provision of the CC to ensure civil protection of personal data rights and strengthen privacy rights [1]. The proposal requires additional substantiation ***on the definition of digital content as a separate type of civil rights object***. Perhaps the groundlessness of such a proposal is due to difficulties in understanding what this definition means in the concept of updating the CCU. The question of what should be updated legislation in the field of regulating relations related to the right to information, in the context of the development of virtual systems and networks, is now quite actively studied by researchers [17].

The concept of content (i.e., certain content or information) refers to a certain entity that can undoubtedly be recognised as an object of civil rights. Such an entity can have various forms, including paper, electronic, digital, etc. If the content is considered a separate object of civil rights as a certain set of information that has a market or other value, the recognition of content in general (regardless of its objectified forms) as a separate type of civil rights seems substantiated. If digital content is only one of the forms of existence of a special object of civil rights and this form does not entail the establishment of a separate legal regime for it of a specific type of objects of civil rights, the recognition of digital content as a special object of civil rights (as opposed to any other content or content available in any other form) seems unsubstantiated. A separate legal regime should be established in relation to the essence, that is, the object of civil rights, and not the form of existence of such an object.

The influence of European law was reflected in the sections of the concept of updating the CCU ***on contractual obligations***. Proposals for recoding these sections are based entirely on European documents (mainly DCFR, and PECL, GISG), which have their own theoretical basis [18]. Therewith, the UNIDROIT principles were almost not used. It is advisable for the Republic of Kazakhstan to accept such examples of the implementation of European treaty law. Although, in the draft of the new concept of legal policy [19] and in the proposals of the Research Institute of Private Law [2], only fragmentary proposals were used (on the purchase and sale of real estate, on concessions, on insurance, on framework and subscription contracts, on the purchase and sale of securities, etc.). Changes in the statute of limitations proposed in the concept of updating the CCU seem promising. Especially important is the actual need to correct the ***concept of a statute of limitations***, which is contained in the CC of Ukraine. It should be agreed that the definition of the statute of limitations as the period within which a person can apply to the court with a claim to protect their civil right

or interest is erroneous. The expiration of the statute of limitations may not be an obstacle to applying to the court for protection of the violated right. It is more correct to consider the statute of limitations the period during which a claim that has arisen due to violations of a person's right or a legally protected interest can be satisfied, while the claim for the protection of the violated right should be accepted for consideration by the court regardless of the expiration of the statute of limitations.

The proposal contained in the CCU renewal concept on *"**The definition of prolonged statutes of limitations** for especially valuable for the whole society environmental objects – valuable lands, natural monuments, natural parks, water and forest lands, etc." is also worthy of support* [1]. This recommendation is also relevant for Kazakh law. Notably, it may be possible to set longer statutes of limitations for certain requirements in legal regulations than their general term of three years. Moreover, there may even be claims that are not covered by the statute of limitations. Therewith, civil codes may not directly indicate an increase in the statute of limitations in connection with the protection of objects of public interest or other objects that constitute the so-called "common good".

However, the establishment of longer limitation periods for the protection of a public (that is to say, a general) interest appears important because of at least two circumstances: (i) the need for a comprehensive and most complete perception by the national legal system of the concept of a legal entity under public law, and (ii) the expediency of creating additional barriers to corrupt activities and other abuses by public authorities and officials in managing state property and objects of national or other public importance, misappropriation of objects of public importance, and the development of more favourable legal conditions for the return of objects of public importance under public and state control. Ideas on contract and inheritance law, personal non-property rights of subjects of civil law, regulation of the results of creative activity, civil liability, the theoretical substantiation of which is given in a number of modern publications [20-22], are also fixed in the concept of updating the CCU [1].

CONCLUSIONS

The CCU updating contains a huge number of ideas and suggestions for the development and improvement of the CC and civil legislation of Ukraine. This study provides a comparative analysis of only a small part of these ideas and offers the way they can be used in modernising Kazakhstan's civil law. It is impossible to analyse the entire content of the concept of updating the CCU (or thoroughly react to all the ideas proposed in it) in one study.

It is advisable to draw attention to a very important point reflected in the entire content of the concept of updating the CCU and which was consolidated in its section on the expected results of modernisation: the implementation of the proposed concept will allow, on the one hand, preserving all the achievements of the current CC of Ukraine, and on the other - adapting it to the present realities, including dictated by modern European approaches and the level of civil and business turnover. This approach, as the most reasonable, can also be applied in modernising the Civil Code of the Republic of Kazakhstan. It seems to be one of the most reasonable from the standpoint, on the one hand, of ensuring continuity of legal regulation of civil relations, on the other hand, of ensuring the modernisation of the legal basis for the development of the sphere of social and legal relations in the long term.

The above does not refer to a complete rejection of the current CC of Ukraine, on the contrary – each of its provisions is subjected to deep analysis and assessment of its relevance in the context of the purposes that are set regarding the reform and its content. Considering the commonality of factors and prerequisites, including the tasks of modernising the civil legislation of Ukraine and the Republic of Kazakhstan, it is essential to note that a radical restructuring of the Civil Code of the Republic of Kazakhstan and the Civil Code of Ukraine are not required, while their modernisation should consist in clarifying the current provisions and clearly fixing the provision that reflect new phenomena for civil law and socio-economic realities and changes in public relations regulated by this code. For that purpose, firstly, it is necessary to conduct an audit of the entire Civil Code of the Republic of Kazakhstan, as is happening in Ukraine, and eliminate inaccuracies and factual errors that still occur.

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Suggested Citation: Kuznietsova, N.S., Suleimenov, M.K., & Karagusov, F.S. (2021). Recodification of the Civil Code of Ukraine and modernisation of the Civil Code of the Republic of Kazakhstan: A comparative analysis of the main ideas. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(4), 190-199.

Submitted: 20.08.2021
Revised: 16.10.2021
Accepted: 25.11.2021

УДК 342.9/351:664
DOI: 10.37635/jnalsu.28(4).2021.200-209

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ВДОСКОНАЛЕННЯ ДЕРЖАВНОГО КОНТРОЛЮ БЕЗПЕЧНОСТІ ХАРЧОВИХ ПРОДУКТІВ З УРАХУВАННЯМ ВИМОГ ЗАКОНОДАВСТВА ЄВРОПЕЙСЬКОГО СОЮЗУ

Анотація. *Стаття присвячена проблемам вдосконалення правових засад державного контролю безпечності харчових продуктів в контексті гармонізації національного законодавства України з відповідним законодавством Європейського Союзу. Актуальність дослідження обумовлена необхідністю підвищення ефективності державного контролю безпечності харчових продуктів для гарантування європейських стандартів захисту здоров'я людини. Мета дослідження полягає у з'ясуванні структурних особливостей законодавства, що стосуються державного контролю безпечності харчових продуктів, виявленні практичних проблем правового регулювання державного контролю безпечності харчових продуктів та напрацюванні шляхів їх вирішення. Методологічну основу дослідження становлять порівняльно-правовий метод, історико-правовий та діалектичний методи, методи аналізу та синтезу, системно-структурний та формально-юридичний методи. З'ясовано, що харчове законодавство та законодавство про корми мають загальну мету правового регулювання – захист здоров'я людини, хоча з формальної точки зору це різні галузі законодавства. Недостатня правова визначеність такої підстави позапланових інспектувань як обгрунтована підозра щодо невідповідності вимогам законодавства обумовлена різними підходами до формулювання повноважень контролюючих органів в Україні та Європейському Союзі. Для уникнення корупційних чинників під час державного контролю безпечності харчових продуктів краще впроваджувати інформаційно-комунікаційні технології, а не вдаватися до неповної гармонізації законодавства України із законодавством Європейського Союзу. Впровадження в Україні європейської концепції харчового шахрайства вимагає її узгодження з кримінальним та адміністративним законодавством, а також створення необхідних організаційно-правових умов для виявлення відповідних правопорушень під час державного контролю безпечності харчових продуктів*

Ключові слова: *інспектування, харчове законодавство, гармонізація із законодавством ЄС, санітарні та фітосанітарні заходи, євроінтеграція*

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IMPROVEMENT OF STATE CONTROL OF FOOD SAFETY TAKING INTO ACCOUNT THE REQUIREMENTS OF THE LEGISLATION OF THE EUROPEAN UNION

Abstract. *The article is devoted to the issues of improving the legal basis of state control of food safety in the context of harmonisation of national legislation of Ukraine with the relevant legislation of the European Union. The relevance of the study is due to the need to improve the effectiveness of state control of food safety to guarantee European standards for the protection of human health. The purpose of the study is to clarify the structural features of legislation related to state control of food safety, identify practical issues of legal regulation of state control of food safety and develop ways to solve them. The methodological basis of the research consists of the comparative legal method, historical-legal and dialectical methods, methods of analysis and synthesis, system-structural and formal-legal methods. It was found that food legislation and feed legislation have a common goal of legal regulation – the protection of human health, although from a formal point of view they are different areas of law. Insufficient legal certainty of such grounds for unscheduled inspections as reasonable suspicion of non-compliance with legal requirements is due to different approaches to the formulation of powers of regulatory authorities in Ukraine and the European Union. In order to avoid corruption factors during state control of food safety, it is better to introduce information and communication technologies, and not resort to incomplete harmonisation of the legislation of Ukraine with the legislation of the European Union. The introduction of the European concept of food fraud in Ukraine requires its coordination with criminal and administrative legislation, as well as the creation of the necessary organisational and legal conditions for identifying relevant offenses during state control of food safety*

Keywords: *inspection, food legislation, harmonisation with EU legislation, sanitary and phytosanitary measures, European integration*

INTRODUCTION

Ukraine's European integration efforts are historically driven by various factors. However, the main role among them is played by the desire to get closer to the high standards of living characteristic of most countries of the European Union. These standards are primarily based on respect for human rights, among which the protection of human life and health occupies a prominent place. In this regard, food safety issues play a very important role in the policy of the European Union, which is reflected in the acquis communautaire, because food products directly affect human life and health. As Markus Lipp, a representative of the Aood and Agriculture Organisation of the United Nations (FAO), rightly points out, food safety is everyone's business: farmers, food industry workers, retailers, and consumers [1].

The signing of the association agreement between Ukraine and the European Union, the European Atomic Energy Community and their member states has become a powerful impetus for the development of many areas of Ukrainian legislation [2]. One of these areas is food legislation. Thus, in 2014 a revised Law of Ukraine "On Basic Principles and Requirements for Food Safety and Quality" [3] was adopted, which implements the requirements of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002, that lays down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety [4]. It was this law that

defined the fundamental requirements for ensuring food safety at all stages of their production and circulation, which formed the basis of the latest food legislation of Ukraine, based on modern European standards.

Although the main goal of harmonising the legislation of Ukraine on food products with the legislation of the European Union is to protect human health, this is not its only task. An equally important expected result of this process is the expansion of opportunities for exporting domestic food products to European and global markets. The logic here is simple – if a Ukrainian manufacturer adheres to the same requirements for food safety during their production as in the European Union, and if the system of state control of food safety in Ukraine works according to European principles, such products inspire confidence, and therefore it is easier to promote them on foreign markets.

The procedural requirements for state control over compliance with food legislation remained insufficiently developed. In order to harmonise the relevant procedural norms of the national legislation of Ukraine with the legislation of the European Union, another important law was adopted in May 2017, namely Law of Ukraine "On State Control Over Compliance with Legislation on Food Products, Feed, Animal By-Products, Animal Health and Welfare" [5]. This law reflects the relevant norms of Regulation (EC) 882/2004 of the European Parliament and the Council of 29 April 2009 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules [6].

The adoption of the Law of Ukraine "On State Control Over Compliance with Legislation on Food Products, Feed, Animal By-Products, Animal Health and Welfare" [5] was logical, although certainly not the last step towards the practical implementation of the European concept of food safety, based on the principle of "from farm to fork". As noted by H. Schebesta and J.J.L. Candel, the EU's "from farm to fork" strategy aims to ensure the fair provision of healthy and environmentally friendly products [7]. According to this concept, state control should cover all stages of food production and turnover, starting from the moment of production of raw materials and ending with the control of food safety on store shelves and in the network of public catering establishments [8]. State control of food safety should begin at the stage of growing plants and animals, products from which subsequently enter the agro-food chain. It is this approach that has received the widest possible expression in the new Regulation (EC) No. 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products [9].

Considering the complex nature of the concept of "from farm to fork", the control of food safety intended for human consumption should include, among other things, control over the production and turnover of feed intended for productive animals, because through the food products of animal origin produced from them or with their help, there is an indirect impact of feed on human health. In this regard, it is worth noting that for the consistent implementation of this concept, another important European integration law was adopted in December 2017, namely the Law of Ukraine "On Feed Safety and Hygiene" [10]. This law establishes legal norms based on the requirements of Regulation (EC) No. 183/2005 of the European Parliament and of the Council of 12 January 2005 laying down requirements for feed hygiene [11], Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition [12] and Regulation (EC) No. 767/2009 of the European Parliament and of the Council of 13 July 2009 on the placing on the market and use of feed [13]. Consequently, Ukraine, at least at the level of primary legislation, has established a certain legal and regulatory framework for further implementation of European food safety standards.

At the same time, the development of modern national legislation on state control of food safety raises a number of issues of both theoretical and practical nature that require scientific understanding. Thus, the first obvious question that arises in this context against the background of approximation of the legislation of Ukraine in the field of sanitary and phytosanitary measures to the relevant legislation of the European Union is the ratio of food legislation and feed legislation. The relevance of this issue is since the state control of food safety covers not only the safety of food products themselves, but also includes the control of feed, which, although indirectly through food products of animal origin, still affect human health. The answer to this question is important primarily because it allows a better understanding of the structural features and internal relationships of the legislation of Ukraine and the European Union.

At the same time, quite practical issues deserve attention regarding the grounds for carrying out unscheduled measures of state control of food market operators, the introduction of information and communication technologies into the system of state control of food safety to prevent corruption, organise counteraction to food fraud, etc. For example, organisational issues related to combating food fraud are given a lot of attention at the international level, as evidenced by relevant publications in scientific sources of such authors as J. Spink, D. Moyer [14], E. Casadei, E. Valli, P. Panni, J. Donarski [15], H. Kendall et al. [16], S. Meulen et al. [17].

Given the above, *the purpose of the study* is to highlight the structural features of legislation related to state control of food safety, as well as to identify ways to improve the relevant legislation for more effective organisation of food safety inspections, prevention of corruption and counteraction to food fraud.

1. MATERIALS AND METHODS

The study of legal issues of improving state control of food safety in the context of harmonisation of the relevant legislation of Ukraine with the legislation of the European Union requires a comparative analysis of a number of acts of national legislation of Ukraine and the legislation of the European Union. In this regard, among the acts of national legislation of Ukraine, it is worth taking into account the Law of Ukraine "On Basic Principles and Requirements for Food Safety and Quality" [3], the Law of Ukraine "On State Control Over Compliance with Legislation on Food, Feed, Animal By-Products, Animal Health and Welfare" [5] and the Law of Ukraine "On Feed Safety and Hygiene" [10]. At the same time, among the acts of European Union legislation, attention should be paid primarily to Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 [4], that lays down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, Regulation (EC) No. 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules, regulation (EU) No. 2017/625 of the European Parliament and of the council of 15 March 2017 [9] on measures of official control and other official activities carried out in order to ensure the application of food and feed legislation, regulations on animal health and welfare, plant health and plant protection products, regulation (EU) No. 183/2005 of the European Parliament and of the council of 12 January 2005 [11] laying down requirements for feed hygiene, Regulation (EU) No. 1831/2003 of the European of the parliament and of the council of 22 September 2003 [12] on additives for use in animal nutrition, as well as Regulation (EC) No. 767/2009 of the European Parliament and of the Council of 13 July 2009 [13] on the placing on the market and use of feed. To carry out a comparative analysis of these and other legislative acts, this study uses the comparative legal method of cognition.

Since the regulatory framework of state control of food safety is developing quite quickly and dynamically both in Ukraine and in the European Union, historical, legal and dialectical methods of scientific knowledge were used in its research. This allows better understanding of the general logic of building and developing relevant legislation, its impact on public relations in the field of state control of food safety. In addition, the use of these methods of cognition makes it possible to predict the prospects for further development of the relevant legislation. This study raises questions about the correlation of various structural components of legislation, the purpose of which is to ensure food safety, and therefore protect human health, since the relevant legislation, in turn, is an integral part of legislation in the field of sanitary and phytosanitary measures. In this regard, such general scientific methods of cognition as analysis and synthesis, as well as the system-structural method, are used to cover these issues. Their application gives the opportunity to look at the legislation on food products and feed legislation as an integral system, each of the elements of which performs its own function to achieve a single ultimate goal – the protection of human health. The method of analysis is also used to study the grounds for conducting unscheduled inspections during the state control of food safety, the powers of the chief state inspectors (chief state veterinary inspectors) to temporarily stop the production and/or turnover of food products and feed, as well as the modern European concept of food fraud. Based on the relevant analysis, a number of proposals for improving state control of food safety were synthesised. To clarify the content of legal norms regulating public relations in the field of state control of food safety, a formal legal method was used.

2. RESULTS AND DISCUSSION

2.1. Correlation between food legislation and feed legislation

Having committed itself to bringing its national legislation in the field of sanitary and phytosanitary measures as close as possible to the relevant legislation of the European Union [2], Ukraine has made a lot of efforts and made significant progress in this direction. At the same time, such an approximation of the legislation cannot be considered absolutely complete. Therefore, it is necessary to first look at the issue raised from the point of view of European Union law. In accordance with the provisions of Regulation (EC) No. 178/2002 laying down the general principles and requirements of food law [4], this legislation includes laws, regulations (rules) and administrative provisions regulating public relations with respect to food products in general, in particular in terms of their safety, both at the level of the European Union and at the national level of member states, and applies to the production, processing and turnover of food products, as well as feed produced or fed to

productive animals. So, judging by this definition, EU food legislation includes, among other things, regulations related to feed. From the point of view of food safety for humans, this approach has its own obvious logic, because it is impossible to ensure the safety of food products of animal origin without ensuring the safety of feed for productive animals, given the structure of the agro-food chain (feed – productive animals – animal products – human) [9].

However, the thesis that food legislation includes, in particular, feed legislation is not always consistent with the provisions of other acts of European Union legislation, in which the terms "food legislation" and "feed legislation" are used in parallel with each other, and therefore are considered different branches, which can be seen even in the title of the already mentioned Regulation (EC) No. 882/2004 [6] and Regulation (EC) No. 2017/625 [9]. It is worth noting that in Ukraine, during the adoption of new legislative acts in the field of sanitary and phytosanitary measures, it was possible to avoid this terminological inconsistency existing in the European Union. Thus, in Law of Ukraine "On State Control Over Compliance with Legislation on Food Products, Feed, Animal By-Products, Animal Health and Welfare" [5] the terms "food legislation" and "feed legislation" have separate definitions and are used simultaneously in the text, and therefore can be considered separate branches of national legislation. Although from an essential point of view, this approach cannot be considered perfect, because the ultimate goal of regulatory and legal regulation of public relations both in relation to food products and feed is human health, and therefore it should be a single area of law, from a practical point of view in the Ukrainian reality, the distinction between food legislation and feed legislation is appropriate. The fact is that in Ukraine, a literal interpretation of the law prevails, and therefore, when it comes, for example, to bringing to justice for violating a particular legislation, it would be difficult to prove that the legislation on food products actually also applies to feed.

2.2. Basic principles of state control of food safety

Along with the concept of "from farm to fork" [7], one of the cornerstone principles of the European and now Ukrainian food safety control system is a risk-based approach to organising state control measures at all stages of food production and turnover. The fact is that it is almost impossible to ensure continuous state control of all food products for purely economic reasons, because such control will require too many human, technical and financial resources, and therefore is impractical. Therefore, state control based on a risk-based approach is more rational. The essence of the risk-based approach is that the frequency of state control measures and their nature should depend on the degree of risk associated with the production or turnover of a particular food product. Thus, in particular, food products of animal origin (meat, milk, eggs, etc.) pose an increased risk to human life and health, since a number of infections (diseases) can be transmitted from animal to human through such products, for example, salmonellosis. Therefore, state control measures in enterprises producing or marketing such products should be carried out more frequently than in enterprises producing or marketing non-animal foodstuffs (bread, biscuits, etc.). Therefore, correct risk assessment is critical for the successful organisation of state control measures [18].

Another important component of the food safety control system is traceability. At the moment, the requirements for ensuring traceability are enshrined in the Law of Ukraine "On Basic Principles and Requirements for Food Safety and Quality" [3], according to which traceability is the ability to identify the market operator, time, place, subject and other conditions of supply (sale or transfer) sufficient to establish the origin of food products, animals intended for the manufacture of food products, materials in contact with food products, or substances intended for inclusion, or expected to be included in food products, at all stages of production, processing and circulation. According to Article 22 of this law [3], market operators must be able to identify other market operators who supply them with food products on the "step back" principle and are able to identify other market operators to whom they supply food products on the "step forward" principle. Traceability information shall be available to the competent authority which is authorised to carry out national food safety control. Traceability is important because it allows identifying unsuitable food products and withdraw them from the market in the event of an outbreak of diseases or identify risk factors as a result of analysis, thus preventing further exposure to these factors [18].

With the adoption of the Law of Ukraine "On State Control Over Compliance with the Legislation on Food Products, Feed, Animal By-Products, Animal Health and Welfare" [5]. Another important tool of the new system of state control is inspection without prior notice of the business entity. Without such unexpected inspections, it is impossible to ensure the effectiveness of state control of food safety, as evidenced not only by European, but also by our own Ukrainian experience [19].

An example of the inefficiency of state control in this area, which existed before the adoption of this law, was given by the chairman of the state service of Ukraine for food safety and consumer protection V.I. Lapa. According to him, in order for representatives of the specified competent authority to be able to go

out for inspection, the consumer must buy a doughnut or any other type of food product, make sure that it does not meet the requirements of the law and write a complaint to the relevant territorial body. The complaint is submitted for approval to the central office and then to the policy-making body. In case of food safety hazards, this is the Ministry of Agrarian Policy and Food of Ukraine. On average, the time between the complaint and the actual exit for verification is at least a month and a half, and it is clear that during this time there is already another doughnut or other type of product on the shelves [19].

Therefore, the rule on inspections without prior notice was extremely necessary. It cannot be said that such a legal norm is completely new for Ukrainian food legislation. The previous version of the Law of Ukraine "On Basic Principles and Requirements for Food Safety and Quality" [3] also contained a norm on inspections without prior notice. However, as correctly notes E.M. Horovets these provisions were dead and did not really work, because they contradicted the Law of Ukraine "On the Basic Principles of State Supervision (Control) in the Sphere of Economic Activity" [20], which provides for the obligation of the supervisory authority to warn the enterprise about the inspection 10 days before it starts. The corresponding conflict between the norms of the two laws is eliminated by the Law of Ukraine "On State Control Over Compliance with Legislation on Food Products, Feed, Animal By-Products, Animal Health and Welfare" [5], so businesses must be prepared for previously unannounced visits of state inspectors [21].

At the same time, taking into account European practice and the requirements of the relevant legislation of the European Union, the latest Ukrainian legislation on state control of food safety establishes a norm on mandatory prior notification in the case of such a specific form of control as an audit of permanent procedures based on the principles of HACCP (Hazard Analysis and Critical Control Points). In the case of an audit, such a notice, which should be carried out three working days before its start, is objectively necessary for the preparation of the necessary documentation concerning HACCP, without which it is impossible to effectively conduct an appropriate state control measure [21].

2.3. Reasonable suspicion as a new basis for inspections

Another important innovation of the Law of Ukraine "On State Control Over Compliance with Legislation on Food Products, Feed, Animal By-Products, Animal Health and Welfare" [5] is an expansion of the list of grounds for unscheduled inspections that can be carried out in relation to food industry enterprises. It concerns the norm of part four of Article 18 of this law [5], according to which state control measures can be carried out unscheduled in case of detection of non-compliance or the appearance of a reasonable suspicion of non-compliance. So, for example, if during a scheduled inspection of a supermarket, a state (veterinary) inspector recorded a violation of labelling requirements or other legal requirements that a food product must meet, this violation or even suspicion of commission may become the basis for further unscheduled inspection of another manufacturer of this product.

While the rule is generally justified as facilitating a rapid response to food law violations and enhancing the protection of public health, it also carries with it certain risks and the potential for arbitrary and manipulative interpretation. This is especially true of the term "reasonable suspicion of non-conformity". Thus, if everything is more or less clear about non-compliance as a basis for further holding an unscheduled state control event (first, a violation of the law is recorded, which later entails holding an unscheduled state control event), then such a basis as "reasonable suspicion of non-conformity" can be interpreted in different ways. In particular, it can be an application to the territorial body of the state service of Ukraine for food safety and consumer protection of one business entity for violation of food legislation by another business entity. It is one thing when such a claim is genuinely substantiated and has a factual basis. It is quite another matter when such an appeal for an offence is used by one business entity as a tool in the competitive struggle against another business entity.

In European practice, "reasonable suspicion of non-conformity" as the basis for unscheduled inspections is perceived normally, since in the EU regulatory authorities are traditionally given broad discretionary powers. For Ukraine, where the powers of state bodies are trying to write out as clearly as possible in order to avoid corruption factors, such a norm on reasonable suspicion is new, and only law enforcement practice can answer the question of how justified and effective it is. It is obvious that in the future, this norm will be clarified taking into account law enforcement practice, in particular during the development of an updated version of the Law of Ukraine "On State Control Over Compliance with Legislation on Food Products, Feed, Animal By-Products, Animal Health and Welfare" [5] based on Regulation (EC) No. 2017/625 of the European Parliament and of the Council of 15 March 2017 [9] on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products.

2.4. Prevention of corruption and introduction of information and communication technologies

It is worth noting that the question raised regarding the interpretation of the term "reasonable suspicion" is to a certain extent related to concerns about the growth of corruption factors, since officials of the relevant regulatory authorities can also resort to arbitrary interpretation of this term. At the same time, it would be impossible to fully implement the basic European principles of state control of food safety without such broad categories as reasonable suspicion. The fact is that in the European Union, the relevant competent authorities of the member states traditionally have very broad discretionary powers regarding state control of food safety. Thus, in accordance with Regulation (EC) No. 882/2004 [6] and later Regulation (EC) No. 2017/625 [9], the competent authorities responsible for food safety control are authorised to suspend operations or close food production and circulation facilities for any period of time necessary to eliminate detected violations.

Unlike the member states of the European Union in Ukraine, the competent authority that exercises state control over food safety does not have such unlimited powers to close down food production and processing facilities. According to Article 67 of the Law of Ukraine "On State Control Over Compliance with Legislation on Food Products, Feed, Animal By-Products, Animal Health and Welfare" [5] the chief state inspector (chief state veterinary inspector) is authorised to make decisions only on temporary termination of production and/or turnover of food products and/or feed, if such production and/or turnover poses a threat to the life and/or health of a person and/or animal for a period not exceeding 10 business days. If the elimination of the detected violation requires a longer period of time, the state inspector (state veterinary inspector) applies to the administrative court to stop the production and/or turnover of food products.

Granting powers to state inspectors (state veterinary inspectors) to suspend the operation of food production and circulation facilities only for a limited period of time does not fully comply with the European model of state control. However, this is due to Ukraine's desire to create preventive legal mechanisms to prevent corruption on the part of civil servants. Thus, this approach to determining the powers of state control can be considered a compromise, because it takes into account the provisions of EU legislation on the one hand, and the realities of Ukraine on the other.

However, in this regard, a natural question arises: can Ukraine fully adapt its national legislation to the relevant norms of the European Union and at the same time prevent the strengthening of corruption factors? This is quite possible if information and communication technologies are widely used to combat corruption. According to modern research, the use of computers, the Internet, and mobile phones to detect and report corruption offences contributes to the openness and transparency of public administration and allows curbing corruption in many countries of the world [22]. Therefore, instead of incomplete implementation of the requirements of the EU legislation on food safety control in the national legislation of Ukraine, it would be necessary to create appropriate organisational and legal conditions for the introduction of additional technical fuses of corruption based on information and communication technologies into the state food safety control system. So, for example, it would be possible to legally provide for mandatory video recording of state control measures by state inspectors and state veterinary inspectors of the State Service of Ukraine on Food Safety and Consumer Protection, because today video recording remains their right, not their duty. In addition, it would be possible to establish the obligation to publish the relevant videos on the official website of this body in case of appeal against the results of state control measures. This would ensure sufficient openness and transparency of the process of state control of food market operators and reduce the associated corruption factors.

2.5. Liability for violations of food legislation and food fraud

Although EU legislation does not contain sanctions for violating food safety requirements, it also requires EU member states to establish such sanctions in their national legislation and apply them based on the implementation of state control measures [6]. That is why the Law of Ukraine "On State Control Over Compliance with Legislation on Food Products, Feed, Animal By-Products, Animal Health and Welfare" [5] in addition to the actual procedural norms regarding state control, contains legal norms establishing liability for violation of legislation on food and feed. Thus, in particular, it provides for the liability of market operators for violation of hygienic requirements for the production and /or circulation of food or feed, for failure to comply with the obligation to implement permanent procedures based on the principles of the hazard analysis and control system at critical points (HACCP), for offering for sale or sale of unsuitable food or feed, offering for sale or sale of food or feed that is harmful to human or animal health, etc.

At the same time, the national legislation of Ukraine does not provide for such a characteristic offence for EU member states as "food fraud" [8; 14]. For Ukraine, it is traditional to understand fraud, first of all, as a crime (Article 190 of the Criminal Code of Ukraine) [23]. At the same time, it does not matter what material

values (property) this crime concerns – food, real estate, antiques or money. At the same time, in the European Union, food fraud tends to gravitate more towards our understanding of administrative offences. Although there is no harmonised definition of food fraud at the European or international level, foreign literature sources indicate that food fraud covers cases of deliberate violation of food legislation committed for the purpose of obtaining economic or financial benefits by deceiving consumers [15]. As a collective term, food fraud covers the replacement, addition, forgery or misrepresentation of food products, their ingredients, packaging, or incorrect or misleading statements about food products for the purpose of obtaining property or financial benefits [14]. This raises the question of how to integrate the European concept of food fraud into the legal field, coordinating it with other acts of national legislation, primarily with the legislation of Ukraine on criminal liability and the legislation of Ukraine on administrative offences.

An equally important task in combating food fraud is to create appropriate organisational prerequisites for identifying and clarifying the circumstances of relevant offences, in particular during the implementation of state control measures. In this regard, it is worth paying attention to the experience of the European Union, where the EU Food Fraud Network (FFN) and the Administrative Assistance and Cooperation System (AAC) have been created [15], which facilitate interaction between European countries in the fight against food fraud, which is transnational in nature. In this regard, the possibility of Ukraine joining these European initiatives should be considered.

The settlement of the issue of legal liability for food fraud, the creation of appropriate organisational and legal mechanisms to combat this type of offence would be appropriate during the development of an updated version of the Law of Ukraine "On State Control Over Compliance with LEGIslation on Food Products, Feed, Animal By-Products, Animal Health and Welfare" [5] on the basis of Regulation (EC) No. 2017/625 [9], because the current version of this law is based on the norms of Regulation (EC) No. 882/2004 [6], which has already lost its force.

CONCLUSIONS

In recent years, Ukraine has made significant efforts to bring national legislation on food products closer to the legislation of the European Union. A number of important legislative acts have been adopted that implement the requirements of the relevant EU legislation, such as the Law of Ukraine "On Basic Principles and Requirements for Food Safety and Quality", the Law of Ukraine "On State Control Over Compliance with Legislation on Food Products, Feed, Animal By-Products, Animal Health and Welfare" and the Law of Ukraine "On Feed Safety and Hygiene". From the point of view of the purpose of legal regulation, these laws form the basis of legislation on food products, the purpose of which is to ensure food safety, and therefore protect human health. At the same time, from a formal and legal point of view, there are grounds to distinguish between food legislation and feed legislation.

The current legislation of Ukraine on food products is not without drawbacks related to its approximation to the relevant legislation of the European Union. Some of these, such as the lack of legal certainty of individual grounds for unannounced inspections, namely "reasonable suspicion of non-conformity", are due to different approaches in defining the powers of competent authorities. In the European Union, there is a tendency to give regulatory authorities broad discretionary powers, while in Ukraine, they try to define the authorities as clearly as possible in order to minimise the conditions for corruption offences. Attempts to prevent corruption sometimes lead to incomplete adaptation of the legislation of Ukraine to the legislation of the European Union, as can be seen in the example of the powers of chief state inspectors (chief state veterinary inspectors) to temporarily stop the production and/or turnover of food products and/or feed. However, as the world experience shows, combating corruption in modern conditions could be more effective due to the introduction of modern information and communication technologies, and not by limiting the powers of regulatory authorities.

In addition, the European concept of food fraud needs to be deeply understood in order to introduce it into the national legislation of Ukraine. In this regard, it is important to harmonise modern European approaches to understanding the entire variety of offences covered by this concept with domestic criminal and administrative legislation, as well as to create appropriate organisational and legal prerequisites for combating the relevant offences.

RECOMMENDATIONS

It is necessary to adopt a law regulating the production, turnover and use of materials that come into contact with food, because they also affect the safety of what a person consumes. In addition, it should be taken into account that the safety of food products of animal origin is significantly affected by the health of productive

animals that are used for the production of such products. Therefore, the development of legislation on veterinary medicine also affects food safety and state control processes in this area. Since a new version of the Law of Ukraine "On Veterinary Medicine" was adopted in February 2021, today it is important to develop bylaws based on it, considering the relevant European requirements. Only then will the European model of state control of food safety be fully operational in Ukraine. Taking this into account, further scientific research should be focused on ensuring the development of the law on contact materials and bylaws in the field of veterinary medicine.

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Suggested Citation: Krupchan, O.D., Burylo, Yu.P., & Vasylieva, V.V. (2021). Improvement of state control of food safety taking into account the requirements of the legislation of the European Union. *Journal of the National Academy of Legal Sciences of Ukraine,* 28(4), 200-209.

Submitted: 24.08.2021
Revised: 08.10.2021
Accepted: 28.11.2021

УДК 346.9
DOI: 10.37635/jnalsu.28(4).2021.210-222

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ПОРЯДОК РЕАЛІЗАЦІЇ МАЙНА В ПРОЦЕДУРІ БАНКРУТСТВА (НЕПЛАТОСПРОМОЖНОСТІ) ВІДПОВІДНО ДО ЗАКОНОДАВСТВА УКРАЇНИ ТА НІМЕЧЧИНИ

Анотація. *Стаття являє собою порівняльно-правове дослідження особливостей порядку реалізації майна боржника в процедурі банкрутства за законодавством України та Німеччини, що здійснене шляхом застосування герменевтичного (в межах проведення сутнісного аналізу нормативно-правової бази та судової практики); аксіологічного (при визначенні ціннісної бази) поряд з феноменологічним (та природи досліджуваних явищ); системного (моделювання функціонуючих і перспективних систем) методологічного інструментарію. Автори підкреслюють ключовий характер існуючих правових норм, що регулюють продаж майна боржника, в силу природної близькості наведеної стадії конкурсного процесу до фінансової складової, яка, зі свого боку, неминуче пов'язана з численними можливостями щодо зловживань. Новелою для досліджуваної сфери суспільних відносин в Україні стало введення системи електронних торгів, на яку покладалося багато надій і сподівань. Однак, на думку авторів, наведена система не впоралася з поставленими завданнями, доповнивши існуючий перелік проблем та неоднозначностей новими пунктами. У статті обґрунтовується позиція, що наявність проблемних питань у процедурі реалізації майна банкрута підтверджується, зокрема, судовою практикою. Однак судова практика і сама часто стає джерелом нових проблем і викликів. Особлива увага в статті приділяється дослідженню німецького законодавства, яке встановлює кардинально протилежну українській модель реалізації майна в процедурі банкрутства. Авторами представлено обґрунтовану позицію щодо внесення суттєвих змін і поправок до українського законодавства шляхом імплементації позитивного досвіду Німеччини. В результаті порівняльно-правового аналізу законодавства України та Німеччини автори пропонують принципово нові шляхи вирішення піднятих у статті питань. Реалізація рекомендацій, представлених у рамках даного порівняльно-правового дослідження, має на меті підвищення якості здійснення процедур банкрутства, зменшення можливостей і випадків зловживань з боку арбітражних керуючих, а також забезпечення захисту прав і майнових інтересів кредиторів*

Ключові слова: *процедура банкрутства, змагальність процесу, недієздатність, комітет кредиторів, окремі кредитори, аукціон, арбітражний керуючий*

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THE ORDER OF PROPERTY REALISATION IN BANKRUPTCY (INSOLVENCY) PROCEDURE UNDER THE LAW OF UKRAINE AND GERMANY

Abstract. *The article represents a comparative legal study of the specifics of the order of debtor's property realisation in the bankruptcy procedure under the law of Ukraine and Germany through the application of hermeneutic (used in accessing the essence of the legal framework and judicial practice); axiological (in determining the evaluative base) along with phenomenological (and the nature of the phenomena); systematic (modeling of the functioning systems) methodological toolkit. The authors emphasise the importance of legal provisions governing the sale of the debtor's property, due to the natural proximity of this stage of the competitive process to the financial component, which, in turn, is inevitably associated with various abuses. An electronic trading system had been recently introduced in Ukraine, on which therefore many hopes and expectations were relied upon. However, the electronic trading system did not cope with tasks set, and many new problems were added to the old ones. The article states that the existence of problematic issues in the procedure of bankrupt property realisation is confirmed, in particular, by the court practice. However, judicial practice in itself often becomes a source of problems. The article pays special attention to the German legislation, which uses a radically opposite model of property sale in insolvency proceedings. The authors justifiably propose to make certain changes to the Ukrainian legislation, by using the positive experience of Germany. As a result of a comparative legal analysis of the legislation of Ukraine and Germany, the authors provide ways of solving the raised issues in the article. The implementation of the recommendations submitted within this comparative-legal study should improve the quality of bankruptcy proceedings, reduce the number of abuses by insolvency trustees, as well as protect the rights and property interests of competitive creditors and creditors with the right of separate satisfaction*

Keywords: *bankruptcy procedure, competitive process, incapacity, creditors' committee, creditors with right of separate satisfaction, auction, insolvency trustee*

INTRODUCTION

On October 21, 2019, the Code of Ukraine on Bankruptcy Procedures of October 18, 2018 No. 2597-VIII [1] was enacted. The main purpose of adopting this Code was to optimise and update the procedures established by the Law of Ukraine "On Reestablishing Debtor Solvency or Declaring Bankruptcy" [2] (replaced by the top-mentioned document). Clause 4 of the Final and Transitional Provisions of the Code established that "…from the date of entry into force of this Code further proceedings on bankruptcy cases are carried out in accordance with the provisions of the new Code, regardless of the date of opening of bankruptcy proceedings, except for bankruptcy cases, which at the date of entry into force of this Code are at the stage of rehabilitation, proceedings on which are continued in accordance with the Law of Ukraine "On Reestablishing Debtor Solvency or Declaring Bankruptcy" [1].

The entry into force of this codified act and its further amendments have generated increased scientific interest towards the specifics of its practical application, especially in the context of the launched program of Big Privatisation (concerning large state-owned enterprises). In essence, the stage of the sale of the debtor's property is the culmination of the competitive process, as it becomes clear whether there will be enough assets in the liquidation mass to meet the property claims of creditors. It is the onset of the stage of the sale of the debtor's property that creditors have been waiting for so long, gradually going through numerous and long stages of the competitive process. A prominent German lawyer and researcher of the competitive process of the XIX century, Wilhelm Endemann, noted that the distribution of the debtor's property is possible only after the indisputability and type of creditors' claims are finally approved [3, p. 425; 4, p. 543].

After all, the provisions of bankruptcy (insolvency) normative acts in both Ukraine and Germany, which regulate the procedure for selling the debtor's property, certainly arouse great interest. The latter is explained by the importance of this stage of the competitive process, in which property assets are converted into monetary assets, which later will be distributed among creditors. However, it is at this stage of the sale of the debtor's property that several abuses occur in practice. The famous French civilian of the XIX century. Edmond Eugène Thaller noted that "the mercantilism of bankruptcy trustees has always been considered by the governments of the Anglo-Saxon nations as a plague of bankruptcy proceedings, as well as an obstacle to the success of all

bankruptcy statutes" [5, p. 182]. Thus, we get an inseparable symbiosis, which becomes a kind of stumbling block in the field of the competition process.

A similar position in this regard is taken by the eminent jurist-scientist Gabriel Shershenevich, citing a brilliant comparison of the already mentioned Edmond Eugène Thaller: "As much as the amicable agreement represents a picture of peace, the distribution of property is similar to a war that devastates the country" [3, p. 428]. Indeed, sometimes the creditors together with the insolvency trustee, in the pursuit of the greatest possible satisfaction of their own monetary claims, ruthlessly devastate the entire property of the debtor. However, the conversion of the debtor's property assets into monetary equivalent is a necessary step because otherwise, the proportional satisfaction of creditors' claims in conditions of the absence of the debtor's assets will be almost impossible.

The theoretical basis of the article is the works of such prominent multinational scholars and lawyers as B. Polyakov [6], G. Shershenevich [3], V. Endemann [4], S. Greif [7], E. E. Taller [5], O. Titova [8], K. Kalachenkova [8], N. Haverkamp [9; 10], and other scientists. At the same time, in the context of the recent reformation of the bankruptcy procedure in Ukraine [11], a comparative legal analysis of the procedure and conditions of sale of the debtor's property under the law of Ukraine and Germany, highlighting problematic aspects of this stage of the bankruptcy process and finding their solutions are very actual.

Given the standardisation of economic activity within states to ensure the stability of the internal market of the European Union, foreign scholars have also developed various aspects related to certain phases of insolvency proceedings. Elements of their research published in highly reputable journals were also drawn into the study of German practices because of the standardised approaches to the above-mentioned problems (and their specific elements) [12-18].

The purpose of the study is to conduct a comprehensive comparative legal analysis of Ukrainian and German legislation in the field of regulating the realisation of debtor's property in bankruptcy (insolvency) proceedings, determining the powers of representative bodies of creditors and insolvency trustees at this stage, clarifying the legally established conditions of sale of debtor's property, and also finding the ways to improve the bankruptcy procedure in Ukraine with the possible usage of the German experience.

1. MATERIALS AND METHODS

By setting a wide range of relations that arise around the procedure of the realisation of debtor's property in the legal practice of Ukraine and Germany as the object of research, the subject of this article included its elements: bankruptcy procedure, the principle of competitiveness in the process, structural features and characteristics of creditors' committees, mechanics of auctions and guarantors of realisation. The defined object and subject of the study are substantiated not only by the existing problems in terms of their regulation in Ukraine but also by the need for the cautious and incremental introduction of foreign legal models and mechanisms into the legislation and legal practice of our country. Moreover, the comparative-legal orientation of this research in itself already provides value for the domestic legal science because besides the main purpose of scientific search it also enhances the methodological and material framework for further branch and inter-branch investigations for Ukrainian lawyers-theorists and practitioners.

Within the general methodological framework of the given research inevitably was the use of all general methods of scientific cognition used in general science: observation (in conjunction with the other methods), comparison (of the significant common and different features in order to form regularities), abstraction (in the process of capturing phenomena and relations of interest to the researchers). Specifically, when researching the above elements, a variety of special scientific methods were applied: phenomenological (to reveal the nature of the elements), hermeneutic (to discover the essential nature of the texts when working with the legislative framework and judicial practice of Germany and Ukraine), axiological (focused on determining the evaluative base of the phenomena) and systematic (as the foundation) to construct a scientocentric model of interaction of the elements. Furthermore, the prognostic method provided an opportunity to form a series of perspectives and proposals for the reforming of the procedures under study in the national law of Ukraine.

The comparative legal approach and the use of the corresponding method became pivotal for the article. Currently, the interest in comparative law in Ukraine is on the rise. It is necessary to note that having a rather robust methodological basis for comparative studies in the Soviet Union, modern Ukrainian legal science uses a different toolkit. Distinctive features of Soviet comparative legal science were the use of Marxist-Leninist methodology, increased interest in general methodological issues, sharp ideological and political orientation of works of Soviet scientists, who critically evaluated the so-called bourgeois concepts of comparative law. In modern Ukraine, the development of contemporary comparative law has been greatly influenced by using of foreign law in the creation of new national laws and the benchmarking of different legal systems for a more in-depth study of the phenomenon of law. Considering European and Euro-Atlantic courses embodied in the

Constitution of Ukraine, the improvement of legislation, and, accordingly, the introduction of fundamentally new practices and models is carried out considering the norms of foreign law.

The substantive basis of this paper constitutes classical European monographic studies, scientific articles with high credibility, codified legislation of Ukraine and Germany, as well as court practice materials.

2. RESULTS AND DISCUSSION

2.1. Domestic legislative innovations and court practice

Returning to the already mentioned statement of Edmond Eugène Thaller, the authors must state that, unfortunately, the "picture of peace" is not provided by the provisions of the Bankruptcy Procedure Code of Ukraine [1] (hereinafter – Bankruptcy Code), and therefore "devastating war" is an inevitable phenomenon, to which, actually, the section V of this codified act is devoted. However, in an incomprehensible way, Art. 63 with the name: "Sale of bankrupt property" appeared outside the mentioned section. In part 1 of Art. 63 of the Bankruptcy Code stipulates that the liquidator sells the bankrupt's property at auction. However, this method of property realisation is not always mandatory, as the legislator provides some exceptions. Thus, the liquidator has the ability to sell perishable goods at a reasonable price, and he is empowered to sell inventories and low-value items, provided that their market value is not more than one minimum wage.

The authors fully support giving to the liquidator the opportunity to sell the property without an auction in cases of its low value, as the public sale may be impractical. O. Titova and K. Kalachenkova take a somewhat similar position, noting that "… it is not very effective to sell low-value items, that do not belong to the category of perishable items, at auction. A possible option, in this case, could be to set a price limit for the property realisation outside the auction" [8]. One should consider that the formulation provided in the mentioned provisions of the Bankruptcy Code is too vague, as there is a possibility of abuse of that rule of law by dividing the property into small parts in order not to exceed the statutory value. This situation is most typical of insolvency proceedings against individuals.

Moreover, we cannot ignore the evaluation concept of "reasonable price". Of course, providing the opportunity to quickly sell perishable goods is vital, however, at this stage, the situation with a "reasonable price" is reminiscent to us the ancient Rome, where, as noted by K. Malyshev, it was impossible to value property at market value, as there wasn't an established price for certain goods [19]. Of course, immediately selling perishable goods at their market value is an extremely difficult and almost impossible task, but the state of affairs described above needs to change. In particular, the authors propose to establish by law a special procedure for the realisation of perishable goods by the liquidator, as well as to clarify what price can be considered "reasonable".

The provisions of part 3 of Art. 63 of the Bankruptcy Code [1] are quite ambiguous since they prohibit the provision of agreements to provide the buyer of the bankrupt's property in installments or deferral of payments. In accordance with part 1 of Art. 85 of the Bankruptcy Code, the buyer is indeed obliged to pay the price of the purchased goods within 10 working days from the date of publication in the electronic trading system (hereinafter – ETS) of the results of the auctions. However, surprisingly, in part 3 of the mentioned article, the legislator provides for the buyer to defer payment of the price for the goods for 10 calendar days if he pays more than 50% within the prescribed period. Thus, despite the prohibition to provide for deferrals at the contractual level, which, of course, is done both to expedite the bankruptcy proceedings and to obtain funds as soon as possible, the legislator decides to provide deferrals on the legal level.

The introduction of the sale of the debtor's property through ETS is one of the most important innovations in the bankruptcy procedure. A. Pidhoretska notes in this regard: "Regulations on the sale of all debtor's property exclusively at electronic auction at the highest price is a novelty of the Code, which aims to create competitive and favorable conditions for organising and conducting auctions for the realisation of debtors' property in bankruptcy cases, promoting expansion circle of potential buyers, increasing the level of repayment of creditors' claims" [20]. Therefore, Art. 68 of the Bankruptcy Code [1] stipulates that "… the sale of the debtor's property at auction takes place in ETS". The procedure for the functioning of the ETS was approved by the Resolution of the Cabinet of Ministers No. 865 of October 2, 2019 [21] (hereinafter – the Procedure). Here it is necessary to note the position of B. Polyakov, who pointed out that the Bankruptcy Code provides a different name of the act, which should regulate the functioning of the ETS [22]. Indeed, in some strange way, instead of the title "Procedure for the functioning of the electronic trading system", we received the "Procedure for organising and conducting auctions for the sale of debtors' property in bankruptcy (insolvency) cases". If at the legislative level there is confusion with the name of the normative act, then, most likely, its provisions will also be far from perfect. No wonder they say: "as you name a ship, so it will sail".

This Procedure clearly demonstrates the effectiveness of mentioned principle, and therefore the authors propose to consider some problematic issues.

In the analysis of the Procedure, the provisions of its paragraph 73, which allow holding an auction with only one buyer, are quite incomprehensible. Therefore, in the case of a bid, only one bidder is presumed to have submitted the highest bid. We fully share the opinion of B. Polyakov, who noted: "In the auction must always be at least 2 participants, otherwise there will be no competitive principle inherent". Complementing the above-mentioned position, the authors note that in this case, between the concepts of "auction" and "sales contract" will be a sign of equality. The completely opposite situation arises in the case of an auction for small-scale privatisation of state property. Clause 49 of the Procedure for Conducting Electronic Auctions for the Sale of Small-Scale Privatisation Objects and Determining Additional Terms of Sale, [23] stipulates that the system automatically detects an auction as "failed" if less than two applications for participation or two bids were received.

Thereby, the legislator differentiates depending on the auction customer. However, it is unclear why the protection of creditors' interests during bankruptcy proceedings is not as high-priority as the protection of state interests during small-scale privatisation. Moreover, it is common for privatisation to occur at a loss. In accordance with part 5 of Art. 12 of the Law of Ukraine "On Privatisation of State and Municipal Property" bankruptcy cases against debtors – state enterprises or business enterprises, more than 50% of the shares of which belong to the state, are not opened if such enterprises are privatised. Bankruptcy proceedings against such enterprises must be terminated, except for liquidation by the decision of the owner [24].

Therefore, the state has the opportunity to "pull" a certain category of debtors out from bankruptcy by "redirecting" them to privatisation and hold a real auction, rather than concluding a regular sales contract with any buyer without any competition. This state of affairs somewhat reminds us of the competitive process of Kievan Rus, where the Knyaz' (prince's) property interests were satisfied primarily. Similarly, the sale of certain state property can take place on the terms of a more secure auction. Moreover, problems with the realisation of the debtor's property do not end. Let's pay attention to paragraphs 75, 76, 78 of the Procedure [21], which provide the legal consequences if holding the auction without determining the winner. Thus, when holding repeated and second repeated auctions, the initial price of the first auction will be reduced by 20%, as well as the initial price of the first repeated auction will be reduced by 25%. Furthermore, there is a possibility of holding the first repeated auction with a price reduction with the consent of the secured creditor or the creditors' committee. At the second repeated auction such consent is not required (p. 3 of Art. 80 of the Bankruptcy Code, paragraph 76 of the Procedure). The authors have to admit that the situation with the procedure in case if the second repeated auction would fail is not regulated by law. Moreover, the law does not exclude such a course of events. In particular, in p. 3 of Art. 81 of the Bankruptcy Code enshrines the right of the secured creditor to apply to the bankruptcy trustee regarding the purchase of collateral property within 20 days from the date of the end of the second repeated auction.

The authors are convinced that the above-described problem is unacceptable because at the legislative level there are provisions that allow holding an auction at incredibly low prices. The Northern Economic Court of Appeal rightly stated in the resolution in case No. 925/1500/17: "The repeated and second repeated auction are provided in the Law to prevent situations when the property cannot be sold due to its inflated initial value" [24]. However, unfortunately, the provisions on repeated auctions are currently used by arbitration trustees to achieve the exact opposite goal. The mentioned decision concerned the fact that the bankruptcy trustee tried to sell the debtor's property (right of claim) at the second repeated auction with the initial price of 600,000 UAH, with the number of reduction steps reaching 99 and the size of 1 step – 1%. All this provided that the right of claim is 719,968.00 UAH.

B. Polyakov noted that "… during the sale of property assets of the debtor creditors receive 50 times less than their book value" [6, p. 382], and, as further substantiated by this study, nothing has changed significantly in 10 years. Regarding this, the authors firmly believe that this situation requires some changes, the justification of which will be given below. For now, it is worth paying attention to the cases when the auction ended without determining the winner. According to paragraph 75 of the Procedure [21], such cases are the absence of participants of an auction, non-receipt of the price offer from any participant of the auction, non-performance by any of the participants of the auction at any step of auction. If the auction ends without determining the winner, it is considered "failed". In addition, the auction is recognised as "failed", in case of refusal or delay by the winner to make payment for the full amount for the goods (paragraph 90 of the Procedure), as well as in case of failure to sign a protocol or act of acquisition at the auction.

It should be noted that under certain conditions, the legislator provides some negative consequences for the auction participants or the winner of the auction if the auction is recognised as "failed". Thus, in p. 3 of Art. 84 of the Bankruptcy Code [1] stated that guarantee fees are not refundable in case if the auction is

completed without determining the winner, as well as in case of non-payment or late payment by the winner of the auction of the appropriate amount for the property. This legal regulation can be explained by the fact that, first, the legislator encourages auction participants to submit price proposals because if none is received, all participants will lose their guarantee fee. Secondly, the legislator tries to prevent all kinds of illegal manipulations by auction participants, which are committed to purchasing property at the lowest possible price.

2.2. Procedural problems in the implementation of key innovative mechanisms

However, these measures are not enough because even if the guarantee fee is lost, the unscrupulous participant still gets the opportunity to buy property at a low price. To realise this possibility, it is necessary that the first and the repeated auctions would be recognised as not having taken place. And this can be achieved either by not submitting a price offer to any of the participants or, if one of the participants has submitted it, submitting a higher price offer. In both cases, the unscrupulous bidder loses the guarantee fee but later comes the long-awaited auction with a much lower starting price, and the possibility of its reduction. To prevent such situations, the authors propose the following changes.

Firstly, in addition to depriving participants of the guarantee fee in the cases provided for in Art. 84 of the Bankruptcy Code [1], it is also necessary to limit their right to participate in subsequently repeated auctions. This can be justified by the fact that the participant is aware of the price of the property when making a guarantee fee, since this is a mandatory condition of sale (Article 75 of the Bankruptcy Code), and such information must be contained in the auction announcement (Article 77 of the Bankruptcy Code). If it is an auction with a price reduction, the bidder knows that the price is reduced by a maximum of 99 steps (the exception is only when the creditors' committee or secured creditor set a minimum price, but in this case, it is necessary to legally establish the obligation of the organiser to inform participants about the number of steps). Thus, the person who becomes a participant in the auction is aware of the initial price of the product, which is the minimum, and in the case of an auction with the price reduction – provides a potentially minimum price, and therefore agrees to the conditions. Therefore, the only reason for not receiving a price offer from any participant is to commit illegal acts in order to seize property at a meager price. Secondly, the authors consider it is necessary to increase the guarantee fee by auction participants to 50%.

The essence of the auction is that the winner pays the necessary funds for the debtor's property as soon as possible to let the debtor repay his debts. Therefore, it is illogical to leave the obligation to pay the full proper amount by the winner, as well as to prevent the auction from being declared “failed”, in case of non-payment or incomplete payment by the winner. In this case, the payment of the proper amount by the winner possibly may be delayed, so, the bankruptcy procedure also will possibly be delayed. However, on the other hand, it is possible to ensure payment of at least a slightly larger part of the proper amount for the property by increasing the guarantee fee to 50%. At the same time, it will be at least unprofitable for the winner of the auction to refuse to fully pay the proper amount because a significant amount of money will be lost. Moreover, persons who do not intend or don’t have the opportunity to purchase property at public auction will not participate in them. The authors also note that the guaranty fee does not provide any obligations for participants on purchasing the goods, and in case of their proper action, that fee is totally refundable.

Without any doubt, with such provided changes, the number of potential participants of auctions will decrease but will decrease only due to the refusal of unscrupulous participants, while those with bona fide will remain. In addition to the above-mentioned, the situation with the recognition of a transaction, made at an auction, as invalid in case of violation of the established procedure for preparing or conducting an auction, which prevented or could prevent the sale of the property at the highest price, is quite problematic. Article 73 of the Bankruptcy Code is devoted to this situation. In analysing the regulations of Art. 73 of Bankruptcy Code, B. Polyakov made some following important conclusions:

– to appeal the result of the auction, it is necessary to prove the fact of violation, the fact of obstruction or potential obstruction of the property realisation at the highest price, as well as the causal relationship between them;

– “… The drafters of the code did not consider that any agreement must meet the requirements of the law. Therefore, the agreement concluded at the auction can be appealed not only on special grounds, which are provided for in Art. 73, and in Art. 42 of the Bankruptcy Code (as a loss-making agreement for creditors), as well as on the general grounds, which are provided in the Civil Code” [22].

The identical position can be seen in the Resolution of the Supreme Court in the Judicial Chamber for bankruptcy proceedings of the Economic Court of Cassation of October 2, 2019, in case No. 5006/5/396/2012, where it was stated that “… the legal nature of the property sale by auction gives grounds for recognising (if there are any grounds) the results of such auctions invalid under the rules of invalidation of transactions, and under the civil law regulations” [26].

It is also worth paying attention to the fact that under the p. 4 of Art. 656 of the Civil Code of Ukraine [27] to the contract of sale, which is concluded at auction, the general provisions of the contract of sale are applicable unless otherwise provided by law governing the procedure for concluding these contracts or does not follow from their essence. Consequently, the provisions of Art. 203 and 215 of the Civil Code of Ukraine are applicable. Therefore, it would seem, that a transaction entered into at an auction, which was held in violation of applicable law, should be declared invalid without the need to prove the fact of obstruction or potential obstruction to the sale of the property at the highest price and causal relationship between them. A somewhat similar position can be found in the Resolution of the Supreme Court of Ukraine of June 29, 2016, in the case No 6-370цс16, where it is stated that "… the legal nature of the sale of property by a public auction provides grounds, which are based on the norms of civil legislation (Articles 203, 215 of the Civil Code of Ukraine) on the invalidity of the transaction as not meeting the requirements of the law, in case of non-compliance with the procedure, bidding procedure provided by the Provisional Regulations on the procedure of public sale of seized property, approved by the order of the Ministry of Justice of Ukraine No. 68/5 of October 27, 1999…" [28].

However, the authors draw attention to the fact that since p. 4 of Art. 656 of the Civil Code of Ukraine [27] provides a certain exception and the provisions of Art. 73 of the Bankruptcy Code just fall under it, in which case it is necessary to apply a special rule of the Bankruptcy Code instead of the general rule of the Civil Code. Given the above-mentioned, it can be concluded that it is not necessary to recognise the transaction concluded at the auction as invalid in case of violation of the auction procedure if such violation did not affect the sale price. Moreover, confirmation of this position is found in Art. 74 of the Bankruptcy Code, which indicates the legal consequences in case of violation of the conditions of the auction, which prevented the person to participate in a public sale of the property. The authors note that among the specified legal consequences, the possibility of recognition of the transaction as invalid in this norm isn't provided. Probably, in this case, the legislator aimed to ensure the receipt of the funds in the maximum possible amount through the sale of the debtor's property, but at the same time in compliance with the condition of ephemeral bankruptcy proceedings.

However, despite all this, it must be stated that the fact that currently the provisions of the Bankruptcy Code do not sufficiently protect the inviolability of the agreement concluded at the auction. After all, as already noted, now there is an opportunity to recognise the transaction, made at auction, invalid also on the general basis which are provided in the Civil Code of Ukraine. Therefore, the authors consider it appropriate to introduce an additional article to the Bankruptcy Code, which would indicate an exhaustive list of subjects of appeal and the conditions under which the transaction made at auction for the sale of the debtor's property in bankruptcy proceedings may be declared invalid.

In addition, in this new article, it would be appropriate to provide a limited, non-renewable period for appeals by auction participants and participants in the bankruptcy procedure on the result of public auction. An example from the case law can serve as an illustration of the real need to introduce such novelty. As can be seen from the resolution of the Economic Court of Cassation in the Supreme Court of March 5, 2020, in case No. 14/325 "b", in 2013 an auction was held for the sale of the debtor's property, in its result, there also was a payment of the proper funds by the buyer and the conclusion of a contract of sale between the buyer and arbitration trustee. In 2014, the buyer alienated the property he had purchased at auction. In 2018, the arbitration trustee was replaced by a new one, who, in turn, 5 months later decided to apply to the court to declare the results of the auction as invalid [29].

The first thing that comes to mind is the general limitation period of actions, which is established by Art. 257 of the Civil Code of Ukraine and is three years. Indeed, three years have passed, and it appears that no delays in the bankruptcy proceedings are planned. Of course, this statement is correct, but as it is already known, the case reached the court of cassation, and only in March 2020, namely almost 7 years after the auction, should reach its logical end. However, it didn't. In the mentioned resolution the court concluded that the buyer's application for the limitation period was not sealed with an electronic digital signature, as a result of which the case was sent for a new trial to the first instance [29].

This approach cannot be considered successful, as 7 years have passed since the auction, and the issue of declaring its result invalid has not been resolved because the court of cassation "decided to put a comma instead of a dot". And most importantly: what exactly was the reason for sending the case for a retrial? Formality in the absence of an electronic digital signature in the application, the applicant of which does not challenge its validity. Maybe next time the court will remand the case for a retrial due to the absence of a punctuation mark or a spelling mistake in the application? However, the strangest thing in this situation is that the bankruptcy procedure was paralysed for such a long time due to only one proceeding.

To prevent such situations, the authors propose to set at the legislative level a monthly non-renewable period for appealing the results of the auction, given that:

– firstly, according to the Bankruptcy Code, the liquidation procedure itself should last no more than 12 months. Based on this, the one-month deadline for appeal is not so short. Moreover, in this case, there can be no question of the application of the general limitation period of three years;

– secondly, in the described dispute there is a limited subject composition. As the court noted in the above-mentioned resolution, "… the parties to the dispute over the recognition of the auction and its results as invalid are the seller, the winner of the auction and the organiser of this auction" [29]. Thus, it can be noted that, given the limited subject composition, the one-month time limit for appeal is sufficient. Furthermore, do not forget about such a possible course of events as the further alienation of the property by the winner of the auction. In the mentioned case, the bona fide purchaser was lucky that the winner of the auction announced the expiration of the limitation period, but what would have happened if he had not done so? Or, for example, let's simulate a situation where the property has been sold several times… Then what method of legal protection should the current owner of the property use, and how to further establish the whole "chain" of owners? Moreover, if the winner of the auction was liquidated, the bankruptcy trustee will be able to file a lawsuit in court without any restrictions on the limitation period. Do not forget that the application on the expiration of the limitation period is a right and not an obligation of the party. Considering the following circumstances, it can be said that the court of cassation has unreliably established the subjective composition of the parties to the dispute on the invalidation of the auction and its results. In the authors' opinion, in this case, the court must have also indicated the current owner of the property if the limitation period could be applied to such a dispute.

Therefore, the authors consider the establishment of a one-month non-renewable period for appealing the result of the auction in the bankruptcy procedure to be justified and necessary. The problematic issues related to the legal regulation of the sale of property in bankruptcy proceedings do not end there. Let's take a look at the situation with the realisation of the debtor's collateral property. Thus, from the system analysis of p. 6, 9 of Art. 41, p. 6 of Art. 64, p. 3-7 of Art. 75 and Art. 81 of the Bankruptcy Code, we can conclude that the sale of the collateral property is carried out by the bankruptcy trustee, and such property needs to be included in the liquidation estate. However, the creditor, whose claims were secured, will receive separate satisfaction at the expense of the realised collateral. In the second paragraph of p. 2 of Art. 45 of the Bankruptcy Code [1] it is stated that: "If the value of the collateral is insufficient to cover the entire claim, the creditor should be considered as secured only in part of the value of the collateral. The rest of the claims are considered unsecured". It would seem that this legal norm is clearly formulated and totally understandable, however, the Judicial Chamber for Bankruptcy Cases of the Economic Court of Cassation of the Supreme Court will disagree with this statement, which in its resolution of February 4, 2021, in the case No. 904/1360/19 [30] comes to a rather unexpected decision. In paragraph 85 of this resolution, the court provides three approaches to understanding the number of claims of creditors with the right of separate satisfaction:

– "Approach I – the creditor's claims, unless otherwise stipulated in the contract, are recognised as secured only in the amount of the value of the collateral (mortgage), determined between the creditor and the debtor (property guarantor who is not a debtor in the principal obligation) in the pledge agreement (mortgage), which subsequently in practice results in cases of re-application of the creditor to the court with a statement of recognition of his claims secured in case of sale of the collateral (mortgage) at a price higher than that agreed in the pledge agreement…;

– Approach II – the creditor's claims, unless otherwise stipulated in the contract, are recognised as secured only in the amount of the collateral (mortgage) agreed between the creditor and the debtor (property guarantor who is not a debtor in the principal obligation) in the pledge agreement (mortgage), and in the other part, the claims are unsecured and are repaid in the order determined by the Bankruptcy Code. In this case, the creditor will be both secured and competitive and will have not only the right to participate in the creditors' assembly with a casting vote but also to obtain satisfaction of other unsecured claims at the expense of other property of the debtor, which is not subject to security…;

– Approach III – the creditor's claims, unless otherwise provided by the contract, are recognised as secured in the amount of the total number of claims against the debtor (property guarantor who is not the debtor in the principal obligation)" [30].

In paragraphs 110 and 111 the court concludes that the first and second approaches are erroneous, moreover, in paragraph 112 stated that "… these approaches are inconsistent with the purpose and principles of the competitive process, which include, in particular, the prohibition of individual satisfaction of creditors' claims; satisfaction of creditors' claims in order of priority; satisfaction of requirements of each line after full satisfaction of requirements of creditors of the previous line; satisfaction of creditors' claims in case of insufficiency of the debtor's funds to satisfy creditors' claims of one line proportionally to the amounts of their claims. Observance of this order is aimed at preventing the overwhelming satisfaction of the claims of some creditors to the detriment of others" [30]. Based on the analysis of the above-provided paragraph of this

resolution, it appears that the court erroneously applies to secured creditors the principles of the competitive process, which apply only to competitive creditors. Currently, the current provisions of the Bankruptcy Code do not provide any order of priority of secured creditors' satisfaction. In addition, a separate and extraordinary satisfaction of the claims of secured creditors is clearly spelled out in p. 6 of Art. 64 of the Bankruptcy Code, and therefore, for a secured creditor, the privileged position compared to competitive creditors is established by law.

On the other hand, if the collateral is not enough to fully satisfy the claims of the secured creditor, the latter will be able to finally satisfy them in the status of a competitive creditor in the established order of priority. This position, in particular, is confirmed by the scientific opinion of the members of the Scientific Advisory Board of the Supreme Council Doctor of Law Professor. O. Belyanevych and Ph.D. in Law V. Belyanevych, who noted in it: "If the debtor is a mortgagor, the claim for the value of the collateral (mortgage) is considered secured, the rest of the claim must be entered in the register of creditors' claims as unsecured" [30]. However, in the end, the court concludes that the creditor is considered secured by the entire claim, regardless of the assessment of the collateral. Given the fact that the collateral property is sold by the bankruptcy trustee, the secured creditors are currently in a rather difficult situation. Previously, such creditors were not particularly interested in the amount of money that will be received from the sale of collateral because the difference with their claim will be included in the register of creditors' claims. At present, secured creditors have been deprived of such a prerogative.

If the amount of satisfaction of secured creditors' claims is directly proportional to the sale of the debtor's collateral property, would it not be appropriate for those creditors to sell this property on their own or to transfer it to their ownership immediately? Why then does the legislator provide for a special procedure for the sale of the property to a secured creditor? In the end, we have a question: if the collateral covers the entire monetary claim of the creditor, regardless of its value, then why do the parties provide for the value of the collateral (mortgaged property) in the contract? Overall, the conclusion is that the sale of the debtor's property under Ukrainian law is quite problematic, and ETS, which was designed to eliminate the problematic issues, instead creates new ones, which, of course, needs to be corrected.

2.3. Findings of a comparative review of German legislation on improving the situation in Ukraine

A completely different legal regulation of these issues can be seen in Germany. The authors propose to proceed to the analysis of German legislation. Thus, § 159 of Insolvenzordnung [31] (hereinafter – Statute) stipulates that the insolvency trustee must immediately liquidate the property constituting the bankruptcy estate after the report review meeting unless this is contrary to the decision of the creditors' assembly. We note that the German legislator does not stipulate the obligation of the insolvency trustee to sell the property from the bankruptcy estate through a public auction. It is also worth mentioning the position of D. Lasser, who noted that the insolvency trustee "has a choice between initiating an auction or selling property in a private way" [32]. Moreover, this lawyer argues that the sale of property through an auction is mostly inappropriate and unprofitable [32]. N. Haverkamp takes a similar position, noting that the auction for the sale of property "is a long-term bureaucratic process, which often results in a lower purchase price than when sold privately" [9].

§ 160 of the Statute is devoted to significant transactions, for which the insolvency trustee must obtain the consent of the creditors' committee, and in its absence, respectively – the assembly of creditors. Moreover, this rule provides for cases where the consent of the representative body of creditors is required, namely: 1) privately sale of the enterprise, plant, or part of real estate in, sale of the debtor's share in another enterprise if such shares are intended to create permanent ownership to the enterprise or obtaining the right to periodic profit; 2) if the transaction consists in concluding a loan agreement with a significant encumbrance for the insolvency property; 3) if the insolvency trustee intends to perform certain procedural actions relating to a lawsuit with a significant price (application, accession, refusal, or avoidance of such actions). Also, quite interesting are the provisions of this norm on the quorum of creditors' assembly. Thus, it is not required for a decision at a creditors' assembly, and creditors must be notified of this in the invitation to such a meeting of creditors' assembly. Therefore, we conclude that the provisions of the Statute are mostly aimed at the ephemerality of the insolvency procedure, rather than compliance with certain legislative formalities. Indeed, if the creditor is interested in voting against the transaction, he must be present, otherwise, it is presumed that there are no objections.

Approaching the question of the ephemerality of the insolvency procedure and the focus on any profit-making, the authors cannot mention the provisions of § 164 of the Statute. This norm indicates the validity of the transactions of the insolvency trustee if they are committed in violation of §§ 160-163 of the Statute. Of course, something similar can be seen in the Bankruptcy Code, in particular in Art. 73, the analysis of which was carried out above. But this similarity is very tiny since § 160 is devoted to significant transactions, § 161 – a

temporary prohibition of significant transactions, § 162 – the sale of the company to particularly interested persons, and § 163 – the alienation of the company at a reduced price. Thereby, these provisions of the Statute are aimed primarily at stimulating the ephemerality of the competition process, for which the German legislator is ready to make various sacrifices, even so-called "illegal law". After all, such provisions at least contradict the established practice of contractual relations, and at most – open the way to various kinds of abuse by the insolvency trustee. N. Haverkamp notes that the insolvency trustee often sells property at a below-market value because in this way he manages to reduce his time costs. However, in this case, he can be prosecuted [10].

The authors do not deny in any means the possibility of bringing the bankruptcy trustee to prosecution, but in authors' opinion, such a task is not easy, as it is necessary to prove in court the commission of illegal actions, the consequences of such actions, and the causation. In general, this state of affairs can be explained by the fact that, unlike Ukraine in Germany, the debtor is not released from its obligations if the size of the bankruptcy estate was not sufficient to cover all creditors' claims. Therefore, the question of the most efficient sale of the debtor's property should for the most part concern the debtor himself, when the creditors are concerned indirectly. In fact, it is precise because of this circumstance that issues related to the validity of the property sale agreement in Germany have a completely different substantive regulation, and for Ukraine, it is currently unattainable and, frankly, unlikely to be attractive.

As already was mentioned, § 161 of the Statute provides for the possibility of a temporary prohibition of the transaction. It stipulates the obligation of the insolvency trustee to notify the debtor of the decisions of creditors' self-government bodies relating to transactions falling under § 160. If the participants in the creditors' assembly do not give their consent, the court may, at the request of the debtor or the qualified majority of creditors provided for in paragraph 3, part 1 of § 75, temporarily prohibit the insolvency trustee from making transactions and convene creditors' assembly to resolve the issue. After all, the provisions of this rule of law indicate that the procedure for a transaction by an insolvency trustee is much simpler than postponing its commission. Therefore, by its essence, this norm is mostly declarative and almost does not create obstacles.

§ 162 of the Statute is devoted to the sale of the enterprise to particularly interested persons. Thus, for this transaction is obligatory the consent of the assembly of creditors, if the buyer of the enterprise or a person who owns 1/5 of the capital of the enterprise, are:

1) an interested person within the meaning of § 138, including a person who is an enterprise and has a share in the buyer's capital or is dependent on the buyer or a third party acting at the expense of the buyer or at the expense of the enterprise dependent on the buyer;

2) a non-competitive creditor or a competitive creditor with claims of not lower rank, whose rights to separate satisfaction, according to the court, are at least 1/5 of the sum of all claims with separate satisfaction and the number of claims of competitive creditors with claims of not lower level.

§ 163 is devoted to the sale of the debtor's enterprise at a lower price. This regulation allows the debtor or a qualified majority of creditors (paragraph 3, part 1, § 75) to apply to the court to state that there is another buyer and sale to him would be more profitable. In this case, the court may require the trustee to obtain the consent of the creditors' assembly.

Section 3 of the Statute is devoted to the sale of the property to which there is a right to separate satisfaction. Thus, § 165 of the Statute provides for the right of the insolvency trustee to hold an auction for the sale of real estate, in respect of which there is a right to separate satisfaction. Indeed, § 166 of the Statute is devoted to the sale of movable property. Accordingly, the insolvency trustee has the right to such realisation, if the property is at his disposal. At once there is a question with a way of sale in such case, after all unlike realisation of real estate the German legislator does not make a specification here. Therefore, it is worth paying attention to the provisions of § 1235 of the German Civil Code [33]. This regulation stipulates that the collateral must be sold at a public auction.

The provision of p. 1 of § 1238 of the German Civil Code [33] attracts attention in terms of improving Ukrainian legislation since it stipulates that the sale of a mortgaged property can take place only if the buyer pays the full amount for the goods in cash, otherwise his rights are lost. Of course, the Ukrainian legislation also states something similar, but we have already described that there is a statutory delay in the payment of the full proper amount for the purchased goods. In addition, the Statute states that the insolvency trustee must provide information to the creditor regarding the property in case of its sale in accordance with § 166. The authors emphasise the provision of § 168, which states that before the sale, the insolvency trustee warns the creditor about the sale of a property. A creditor has the right within a week to determine another method of sale that would be more profitable for him. Thus, the authors conclude that the sale of a property is possible in any way in consultation with a non-competitive creditor.

It should be noted that in case of non-application of § 166 in accordance with the provisions of § 173, the non-competitive creditor has the right to independently sell the property belonging to him. However, Part 2 of this rule provides for the right of the court to set time limits for a non-competitive creditor and, in case of non-compliance, to oblige the insolvency trustee to sell the property. The authors also agree with the position of S. Greif, who noted that: "A creditor who has the right to a separate satisfaction may declare that the object does not belong to the bankruptcy estate, and demand its return, referring to the right seen from the legislation provisions outside the Statute" [7]. Therefore, it can be assumed that despite the obligation imposed by the German legislature on the insolvency trustee to sell the property of creditors with the right to separate satisfaction, in the latter for the most part there is the possibility for those creditors to perform self-realisation.

Summarising all the above-mentioned, the authors conclude that in Germany, the insolvency trustee is endowed with greater discretion, which, in turn, leaves room for all sorts of abuses. In the authors' opinion, such an experience is inappropriate for Ukraine, as we currently tend for the legislator to try to restrict the bankruptcy trustee as much as possible in the freedom of choice. Moreover, despite such restrictions, abuses by bankruptcy trustees remain possible. Therefore, it is even scary to imagine the consequences of using similar procedures with the German competitive process. On the other hand, the provisions of German law, which provide for a greater role of creditors' representative bodies in the sale of the debtor's property, are noteworthy because in this way the powers of the insolvency trustee are reduced. Therefore, in addition to the above-provided proposals, the authors consider it is necessary to make the following changes in domestic legislation.

Firstly, there is a need to move away from selling property at an auction. No, of course, such a type of sale must exist, but it cannot be non-alternative. Therefore, the authors propose to provide an opportunity for the secured creditor to sell the mortgaged property of the debtor independently out of competition. Such innovation will be especially relevant given the existing case law. In turn, the creditors' committee or assembly must be authorised to sell the debtor's property privately. However, despite this, the authors believe that the bankruptcy trustee should continue to sell the property at public auction with the help of a modified ETS. The authors would like to highlight that this approach is not a novelty, since it existed in the days of the Russian Empire, which, in particular, was noted by G. Shershenevich, who pointed out that the law gives to creditors' assembly the right to choose the method of property realisation [3, p. 428]. Secondly, it is necessary to remove from the Ukrainian legislation the provisions on the second repeated auction because its existence only contributes to the sale of property for a pittance. Instead of a second repeated auction, a meeting of the creditors' assembly or committee should be initiated, at which creditors should decide whether to sell the property privately or to hold the auction again. However, the price and conditions of such an auction should be determined by creditors themselves.

Legislative provisions on the functioning of the ETS also need to be improved. First of all, it is necessary to recognise the need for participation in the bidding of at least two buyers because with the participation of only one such bidding cannot be considered public. In addition, it is necessary to remove Part 3 of Art. 85 of the Bankruptcy Code. The authors are confident that with the introduction of these changes in the procedure of the realisation of bankrupt property, the bankruptcy procedure in Ukraine will become much more productive.

CONCLUSIONS

In this research, a theoretical and practical generalisation was made and the ways of solving the mentioned problems of legal regulation of the order were proposed, as well as the method of sale of the debtor's property in the bankruptcy (insolvency) procedure under the law of Ukraine and Germany. As a result of the study, the authors came to the following conclusions:

1. The provisions of the Bankruptcy Code regulating the sale of bankrupt property contain many problematic issues that complicate the work of law enforcement agencies, and therefore need an immediate resolution.

2. Notwithstanding the high hopes and expectations placed on the ETS, currently the electronic trading system does not cope with the set task.

3. Unlike Ukraine, in Germany the sale of the debtor's property at auction is considered an unprofitable and unjustifiably long procedure.

4. In Germany, the insolvency trustee privately sells the debtor's property, according to which the discretion of his powers is much wider than his prototype in Ukraine, and therefore, the German insolvency trustee has room for various abuses.

5. For Ukraine, Germany's experience in the sale of the debtor's property is not entirely relevant. At the same time, there is a possibility of its partial borrowing.

6. Ukraine should move away from the mandatory sale of bankrupt property at auction and authorise the representative bodies of creditors to sell property privately.

7. It is argued that due to the existing case law, secured creditors in Ukraine are currently in a rather difficult situation, and therefore it is necessary to authorise them at the legislative level to independently sell the mortgaged property of the debtor.

8. It is proposed to increase the guarantee fees of auction participants to 50%, as well as in case of their illegal behavior to apply restrictions to such participants in the right to further participation in the repeated auction.

9. Legislation on the application of the second repeated auction should be removed, as its existence only facilitates the sale of property for a pittance.

10. It is stated that bidding cannot be considered public if there is only one participant, and therefore it is necessary to recognise the mandatory participation of at least two buyers.

11. It is noted about the urgency of providing in the Bankruptcy Code an exhaustive list of conditions under which the transaction made at the auction for the sale of the debtor's property in bankruptcy proceedings may be declared invalid. Furthermore, it will also be appropriate to indicate the list of subjects of appeal and set a one-month non-renewable period for appealing its results in order to ensure the transiency of the bankruptcy procedure, compliance with the deadlines for liquidation, and protect the rights of future bona fide owners of the property, which was sold at auction.

12. It is argued that p. 3 of Art. 85 of the Bankruptcy Code on deferral of payment by the buyer of the due second part for the goods must be removed in connection with the existence of a legal prohibition in establishing deferrals at the contractual level (p. 3 of Article 63 of the Bankruptcy Code).

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Suggested Citation: Sviatotskyi, O.D., & Poliakov, R.B. (2021). The order of property realisation in bankruptcy (insolvency) procedure under the law of Ukraine and Germany. *Journal of the National Academy of Legal Sciences of Ukraine,* 28(4), 210-222.

Submitted: 01.09.2021
Revised: 23.10.2021
Accepted: 05.12.2021

УДК 341
DOI: 10.37635/jnalsu.28(4).2021.223-231

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ПРАКТИКА ЗАСТОСУВАННЯ МІЖНАРОДНИХ ПРИНЦИПІВ У ПРИВАТНОПРАВОВИХ ВІДНОСИНАХ

Анотація. *Національні та міжнародні суди все частіше звертаються до загальновизнаних міжнародно-правових принципів для регулювання приватноправових відносин. Це зумовлено, зокрема, тим, що питання та спори, з якими сучасні учасники приватноправових відносин звертаються до суду, набувають все більшого поширення. Таким чином, практика міжнародного правосуддя та правосуддя в Україні демонструє, що у вирішенні спорів все частіше використовуються такі міжнародні принципи, як принцип справедливості, рівності, недискримінації, еволюційного тлумачення, пропорційності, правової визначеності, верховенства права. Це дослідження досліджувало застосування міжнародних принципів у приватноправових відносинах. На основі загальноправових методів дослідження проаналізовано природу міжнародно-правових принципів, розглянуто їх застосування у вищезгаданих українських судових справах до Європейського суду з прав людини, а також до Конституційного та Антикорупційного судів України. У дослідженні досліджувалася судова практика Європейського суду з прав людини, рішення якого порушують питання порушення прав і основних свобод, закріплених у Конвенції про захист прав людини і основоположних свобод, та недотримання основних міжнародно-правових принципів, о. а також висвітлено основні тенденції цих суперечок. За результатами аналізу дослідження виявило недостатній рівень конкретизації змісту щодо принципу верховенства права та його особливостей у чинному законодавстві України, якого мають належно дотримуватись як органи державної влади, так і громадяни України. На основі проведеного дослідження автори сформулювали свої наукові позиції та висновки, спрямовані на вдосконалення системи засад приватноправових відносин*

Ключові слова: *принципи міжнародного права, Європейський суд з прав людини, верховенство права, судова влада*

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PRACTICE OF APPLYING INTERNATIONAL PRINCIPLES IN PRIVATE LAW RELATIONS

Abstract. *National and international courts are increasingly turning to generally recognised international legal principles to regulate private law relations. This is necessitated, in particular, by the fact that the issues and disputes that modern participants in private law relations address to the courts are becoming more widespread. Thus, the practice of international justice and justice in Ukraine demonstrates that such international principles as the principle of justice, equality, non-discrimination, evolutionary interpretation, proportionality, legal certainty, and the rule of law are increasingly used in dispute resolution. This study investigated the application of international principles in private law relations. Based on the general legal research methods, the nature of international legal principles was analysed, the study considered their application in the above-mentioned Ukrainian court cases to the European Court of Human Rights, as well as the Constitutional and Anti-Corruption Courts of Ukraine. The study investigated the judicial practice of the European Court of Human Rights, whose decisions raise the issue of violation of rights and fundamental freedoms stipulated in the Convention for the Protection of Human Rights and Fundamental Freedoms and non-compliance with basic international legal principles, as well as highlighted the main trends of these disputes. Based on the results of the analysis, the study identified an insufficient level of the content specification regarding the principle of the rule of law and its features in the current legislation of Ukraine, which must be properly observed by both state authorities and citizens of Ukraine. Based on the conducted research, the authors formulated their scientific positions and conclusions aimed at improving the system of principles of private law relations*

Keywords: *principles of international law, the European Court of Human Rights, the rule of law, the judiciary*

INTRODUCTION

The expansion of the practice of applying international legal principles occurs by adapting them to the conditions of the international legal order. In all branches of private law, the tasks and functions of international legal principles are common. These include promoting the fundamental unity, internal integrity, and consistency of legal regulation, which form the basis for both law-making and law enforcement activities. While on the subject of the mechanism for implementing international legal principles, it should be noted that it manifests itself in two main aspects of influence: the first is that international principles can directly regulate particular relations of private law subjects, and the second is that they have an important influence in national and international law-making as a determining criterion of legality.

In the institutional mechanism for implementing the principles of private international law, the main role is played by the justice system. Therewith, this refers to the international and national justice. The practice of the European Court of Human Rights as an international court and the practice of the Supreme Court of

Ukraine as a national court demonstrates that increasingly and more decisions are made based on the principles of international law, as well as universal principles [1]. The system of sources and principles of the national legal system and the international legal system is changing under the influence of globalisation processes. The emergence of modern global issues requires joint efforts to solve them at the international level through legal integration, internationalisation or legal implementation [2].

An important aspect in globalisation is the role of general principles of international law as fundamental factors for the coexistence of national legal systems and the international legal order [3]. It is most clearly manifested in the aspect of general principles: the general principles of international law have become fundamental for all national legal systems of the world, and the general principles of law have become the legal basis for the international legal system [4], which also seeks a way to fill in the gaps in the general substantive and procedural principles of national legal systems. The principle of non-interference in internal affairs is becoming more open, and the principle of protecting human rights has ceased to be a purely internal matter of the state, provided that the principle of sovereignty and territorial integrity is respected.

The provisions of the international and national legal systems have different social and legal essence, so they cannot be hierarchically dependent on each other, they act in the legal system where they exist, and can closely interact between their elements. The general principles of international law have an impact on the international legal system and the national legal system, as they occupy a separate place in the international legal system and are important in the national legal system [5].

Thus, *the purpose of the study* was to investigate the application of international principles in private law relations.

1. MATERIALS AND METHODS

The mechanism for implementing international legal principles consists of three levels:

1. National level. This includes the interaction of international and national law, the recognition of the primacy of international law, international legal principles as the basis of the legal system, as well as the implementation and enforcement of international law. Their interaction is carried out by sending, reception and transformation. Referral is divided into general and special, and is used in a conflict, when the disposition does not contain a specific rule of conduct. At the reception, the international legal norm is literally reproduced in the act of national law. Reception is understood as the perception, recognition and approval by the national legal system of international legal norms and principles (consolidation of normative legal regulations on human rights and freedoms contained in the main international legal acts). Transformation is a way of exercising international rights and obligations through the issuance of legal acts in domestic law.

2. The supranational level is the process of implementing international legal principles within the framework of European Union law, in which they are recognized as the main sources of the legal system of the European Union.

3. The international level concentrates the mechanism of ensuring and implementing international legal principles in the international legal order.

Each level is characterized by legal, political and moral methods of implementing international legal principles. This is primarily due to internal needs and peculiarities of the legal system.

The legal method is characterized by the normative consolidation of international legal principles at all levels and ensuring their observance and implementation by all subjects of law. Political is characterized by the presence of various political acts at all levels. The moral and ethical method is characterized by the impact on the legal consciousness of legal entities at all levels, depending on the existing legal situations [6; 7].

In carrying out this study, the following scientific methods were used: dialectical – to establish the basic patterns and features inherent in international principles and their application in private law relations; system analysis – to determine the place of the principles of international law in judicial practice in resolving private law disputes; comparative analysis – to identify common and different features in the legal regulation; abstraction and generalization – to formulate a definition of the principles of private international law; method of historical analysis – to establish the evolution of the application of international principles in judicial practice, regulation of private law relations; formal-legal – to analyze the content of international legal principles.

2. RESULTS AND DISCUSSION

2.1. Impact of international legal provisions on the activities of justice bodies

The fundamental principle of international law that describes the pan-European legal culture is the principle of respect for human rights and freedoms. This principle is also guaranteed by numerous other principles. These include the principle of the rule of law and the principle of legality, the principle of justice and reasonableness, the principle of good faith, the principle of democracy, the principle of the rule of human rights, the principle of humanism, the principle of legal equality, the principle of responsibility [8; 9]. Civil procedure principles also play a particularly important role. These are, in particular, the right to a fair trial and the principle of transparency, which are stipulated in Articles 6 and 40 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms [10-12].

The principle of respect for human rights and freedoms, in particular, corresponds to other private law principles. In particular, Article 8 of the Convention stipulates that everyone has the right to respect for their private and family life, their home, and correspondence. Public authorities may not interfere in the exercise of this right unless the interference is in accordance with the law and is necessary in a democratic society in the interests of national and public security or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

When resolving the dispute concerning the loss of the right to use housing in case No.760/6998/19 of February 16, 2021, the Supreme Court of Ukraine was guided in its judgement, among other things, by international principles and noted that "the European Court of Human Rights in the ECHR Judgment of December 2, 2010 in the case "Krivitskaya and Krivitsky v. Ukraine", application No. 30856/03 indicated that "loss of housing is the most extreme form of interference with the right to respect for housing". State interference is in breach of Article 8 of the Convention if it does not pursue a legitimate purpose, one or more listed in Paragraph 2, Article 8, is not carried out "in accordance with the law" and cannot be considered as "necessary in a democratic society..." [13]. It is the judicial authorities that guarantee compliance with international legal principles. At the international level, these guarantors are the International Court of Justice and the European Court of Human Rights [14], which engage in their activities according to the principle of fairness [15]. In practice, they are guided by the facts of the case. Fairness is a necessary element of justice. In modern law, it is endowed with the following features:

a) acts as a supporting component of the principle of the rule of law, which determines the main role of law in public life;

b) acts as a principle of all judicial bodies, based on which the court's activities are performed, and legal cases are resolved;

c) procedural legislation aims to ensure that justice is fair;

d) a mandatory element of the content of a court decision, which reflects the result of the court's activities to protect and restore the violated right or interests of society from illegal encroachments;

d) an important criterion for evaluating the effectiveness and legitimacy of the judiciary [16; 17].

According to Paragraph 1, Article 6 of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, it is stated that anyone who resolves a dispute concerning their rights and obligations of a civil nature has the right to a fair and public hearing of their case within a reasonable time by an independent and impartial court established by law or to establish the validity of any criminal charge brought against them.

That is, the European Court of Human Rights has identified four mandatory components of a fair trial [18]. The first component is the right of citizens to judicial protection, access to justice and enforcement of decisions. The second component is described by the fact that each judicial body, as well as the judicial system in general, must be independent and impartial. Independence is manifested in the fact that other branches of government have no influence on the court in any way. The impartiality of the court means the absence of bias and prejudice. The third component is the fact that there is an adversarial nature of the process, which ensures the real participation of a person or participation through a representative in the consideration of a particular court case. And the fourth component is certain guarantees, which include, most importantly, the presumption of innocence, which is covered in Part 2, Article 6 of this Convention and the rights of the accused under Part 3 of the same Article.

The judiciary combines international legal provisions and international legal principles to deliver a fair judgement [19]. This principle is crucial in resolving private law disputes. Thus, when considering the claim for declaring illegal and cancelling the order for dismissal, reinstatement, and payment of average earnings for the period of forced absenteeism in case No. 372/4328/19 of February 15, 2021, the Supreme Court was guided

by the principle of fairness and practice of the European Court of Human Rights. In this decision, the Supreme Court noted: "The European Court of Human Rights (hereinafter referred to as "the ECHR") emphasises that the right of access to a court must be effective. By implementing Paragraph 1, Article 6 of the Convention, each Member State to the convention has the right to establish rules of judicial procedure, including procedural prohibitions and restrictions, the meaning of which is to prevent the trial from proceeding randomly.

Therewith, there should not be too formal an attitude towards the requirements stipulated by law, since access to justice should not only be factual, but also real (§ 59 of the ECHR Judgment in the case "De Geouffre de la Pradelle v. France" of December 16, 1992, application No.12964/87). In § 36 of the Judgment in the case of Bellet v. France" of December 4, 1955, application No. 23805/94, the ECHR noted that "Article 6 of the Convention contains guarantees of a fair trial, one of the aspects of which is access to a court. The level of access afforded by national law must be sufficient to ensure the individual's right to a court, considering the principle of the rule of law in a democratic society. For access to be effective, a person must have a clear practical opportunity to challenge actions that constitute interference with their rights" [20].

If past practice is any guide, it can be seen that international legal principles have a greater impact on a person's legal consciousness than international legal provisions. All actors of the international community, universally, are obliged to exercise their rights and obligations within the limits within which it is permissible, so as not to violate international peace and basic international legal principles in all areas of coexistence [21].

2.2. Legal analysis of court decisions on the application of international principles of private law

According to Article 17 of the Law of Ukraine "On the Enforcement of Decisions and Application of the Practice of the European Court of Human Rights", it is stated that courts consider the Convention for the Protection of Human Rights and Fundamental Freedoms and the practice of the ECHR as sources of law. And Article 18 of this Law defines the procedure for referring to this Convention and the practice of the Court [22; 23]. The practice of the Court, proceeding from Article 1 of this Law, refers to the practice of the European Court of Human Rights and the European Commission on Human Rights. Several decisions of the European Court of Human Rights concerning the rule of law should be considered. This principle concerns the requirements of the quality of the law and its legal certainty. It requires compliance with laws that relate to human rights and fundamental freedoms.

According to the case of "Mykhailiuk and Petrov v. Ukraine" [24] of 10 December 2009: citizens of Ukraine lodged an individual application with the court on 24 November 2001, guided by Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms, according to which the court may accept applications from any person, non-governmental organisation or group of persons who consider themselves victims of a violation of the rights set out in the Convention or its protocols committed by one of the High Contracting Parties. The High Contracting Parties undertake not to interfere in any way with the effective exercise of this right. Nevertheless, the court declared the application partly inadmissible and communicated it to the government. The applicants' complaint was based on the unlawful inspection of their correspondence by the state authorities. At the same time, the question of the admissibility and merits of the said application and fundamental rights and freedoms under the Convention arose. And following the referral of the application to the government, the applicants lodged another individual application with the Court, which was based on the unlawful release of one of the applicants, as well as on the persecution of the second applicant by the authorities while he was working in the Black Sea correctional colony. The court, after reviewing the application, concluded that the following application is not a clarification of the previous one, so they should not be considered separately.

The applicants complained about the exposure of their correspondence by public authorities, namely prison staff, which is a clear violation of Article 8 of this Convention, which states that everyone has the right to respect for their privacy and family life, for their home, and correspondence. And according to Part 2 of this Article, public authorities may not interfere in the exercise of this right unless the interference is in accordance with the law and is necessary in a democratic society in the interests of national and public security or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

The Court found that the opening of the letter alone was sufficient to establish an interference with the applicant's right to respect for correspondence. The national court also deduced this, but the court had to confirm whether such treatment by the applicants was in accordance with Article 8 of the Convention, whether it was "in accordance with the law", that is, whether the principle of the rule of law was in breach. Analysing the foregoing, the Court noted that the expression "in accordance with the law" primarily required that the impugned interference had a certain basis in national legislation. The corresponding legislative provision

should be accessible to the person concerned, who, furthermore, should foresee its consequences for themselves, and this legislation should also comply with the principle of supremacy.

The national courts, guided by Article 7 of the Law of Ukraine "On Pre-Trial Detention" of 1993, established the legality of the actions of employees of the colony because according to this Article, the inspection of the correspondence of a certain category of persons was provided for, namely regarding the persons taken into custody or persons serving sentences in institutions of the penitentiary system. However, the Court found that these persons did not serve their sentences in the colony, so they cannot be placed in the specified category of persons. Consequently, the application was declared admissible [24].

As an example of a violation of the principle of legal certainty and the principle of equality of arms, it is worth considering the case "Ustimenko v. Ukraine", the final decision on which was made on January 29, 2016. The applicant's claim referred to a violation of fundamental rights and freedoms guaranteed by the convention, namely, he had not been duly notified of the appeal proceedings in his case, and that the reinstatement of the time-limit for appeal and the cancellation of the final court order issued in his favour. Thus, the principle of legal certainty was violated.

The government argued that the applicant had been informed about the appeal proceedings by sending him summonses, but failed to provide evidence supporting the sending of these summonses, arguing that the storage period for registers of sent correspondence had expired. The prosecutor's office also found that the applicant had missed the time-limit for lodging an appeal, as he had received a copy of the decision with a certain delay, and therefore the court of appeal had good reasons to resume the time-limit for appealing. The prosecutor's office also established the presence in the case file of subpoenas addressed to the applicant with copies of the defendant's appeal. The national courts agreed with those findings of the prosecutor's office. Accordingly, the government pointed out that the national courts had carefully examined the applicant's complaint and found that the facts cited by the applicant were untrue and that the applicant's complaint was completely unfounded.

Having analysed all the circumstances of the case, the court concluded that if the usual time limit for appeal is resumed after a considerable period of time, then such a decision may violate the principle of legal certainty. The national courts were empowered to decide on the renewal of the time-limit for appeal, but they had to provide reasoning for such decisions by ascertaining whether the reasons for such renewal were consistent with the principle of the immutability of the judgement. The court of appeal found that the delay in obtaining a copy of the district court's decision was a valid reason. However, neither party to the dispute cited this fact as a reason for resuming the appeal period. Therefore, this reason has nothing to do with the decision to restore the missed deadline, since according to national legislation, the appeal period is counted from the moment when the person filing the complaint actually receives a copy of the decision. As a result of the administration of justice, the Court declared the applicant's complaint admissible and cancelled the decision to renew the term of appeal [25]. The Constitutional Court of Ukraine also acts as a guarantor of compliance with international legal principles in national law. It defines that the main area of ensuring the independence of the judiciary is the creation of special institutions to protect and strengthen the judiciary in relations with the executive and legislative authorities.

According to Paragraph 7 of the Preamble of the Recommendation of the Committee of Ministers of the Council of Europe of 17 November 2010, it is stated that the independence of the judiciary ensures everyone's right to a fair trial and is therefore not a privilege of judges, but a guarantee of respect for human rights and fundamental freedoms, which allows everyone to feel confidence in the judicial system [26]. Paragraph 4 of the Annex to this Recommendation establishes that the independence of judges is guaranteed by the independence of the judiciary in general. This is a fundamental principle of the rule of law. Thus, the independence of the judiciary is an important component of the rule of law and ensures everyone the right to a fair trial, emphasising respect for human rights and freedoms. External independence does not grant any privileges to satisfy the judges' interests. Judges operate only in the interests of the rule of law and those who await an impartial judgement to remedy their violated rights.

Paragraph 2.04 of the Montreal Universal Declaration on the Independence of Justice, adopted at the First World Conference on the Independence of Justice in Montreal in 1983, guarantees that the judiciary is independent of the executive and legislative branches of government [27]. All state institutions shall be obliged to respect such independence of the court, including not to allow any restrictions, any influence, pressure, threats, interference by any persons, regardless of the reason. Admittedly, there should be an anti-corruption policy that guarantees protection of individuals from violating the principle of independence of the judiciary and compliance with the principle of constitutionality [28]. It makes provision for the prosecution of judges with the expectation that the disciplinary authorities should be independent of the government, namely the proceedings for the recusal of a judge should be conducted in accordance with legislation and established

procedures [29]. Anti-corruption reform in Ukraine is a public requirement that guarantees the right to fair, transparent, and independent consideration of cases.

In its decisions, the European Court of Human Rights stressed the importance of the principle of independence of the court and non-interference of other branches of government in the affairs of the judicial branch, which ensures the impartiality of the court. These are, in particular, the decisions in Ringeisen v. Austria, Sasilor-Lormin v. France, Stafford v. the United Kingdom. Of particular importance was the decision of the European Court of Human Rights in the case "Volkova v. Ukraine" [30]. According to this case, the applicant was unlawfully dismissed from his position as a judge for breach of oath in the midst of a "judicial reform" that was taking place in June 2010. O. Volkov appealed against his dismissal to the Supreme Administrative Court of Ukraine, however, refused to satisfy the requirements to recognise and cancel the corresponding acts of the High Council of Justice and acts of the Verkhovna Rada of Ukraine. Therefore, he filed an application with the European Court of Human Rights, claiming that he was released in violation of the Convention for the Protection of Human Rights and Fundamental Freedoms, as well as the Constitution of Ukraine and laws of Ukraine.

In turn, the European Court of Human Rights ruled that Volkov's dismissal was illegal, ruling that the decision of the Ukrainian authorities to dismiss Volkov was in violation of such international legal principles as an independent and impartial trial, legal certainty, respect for privacy under Articles 6 and 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms. As a result of all these circumstances, the Court found that the domestic authorities had failed to ensure an independent and impartial hearing of the applicant's case and there had been a clear violation of the Convention for the Protection of Human Rights and Fundamental Freedoms, namely Paragraph 1, Article 6 of the Convention.

CONCLUSIONS

These examples of application of the principles of private international law demonstrate that the current legislation of Ukraine does not specify the content of the rule of law, which comprises many important components, and there is no clear specification of its features, which must be properly observed by both public authorities and citizens of Ukraine. Therefore, the authors of this study believe that other requirements for compliance with the rule of law should also be considered. It is necessary to refer to the practice of the European Court of Human Rights, which sets out such requirements to ensure equality of all legal subjects before the law.

Notably, the principles of international law function only in interaction, that is, they are complex in nature and interconditional, which is generally accepted. In their application, the principles of international law are described by different nature of binding, they can be both imperative and dispositive (by mutual consent, the possibility of deviation from the rule is allowed without abusing the mandatory principles and provisions of international law). But together they form an integral system that constitutes the foundation of all private international law.

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Suggested Citation: Tur, O.T., Kravchyk, M.B., Nastasiak, I.Yu., Sirant, M.M., Stetsyuk, N.V. (2021). Practice of applying international principles in private law relations. *Journal of the National Academy of Legal Sciences of Ukraine,* 28(4), 223-231.

Submitted: 28.08.2021
Revised: 03.11.2021
Accepted: 06.12.2021

УДК 34:347
DOI: 10.37635/jnalsu.28(4).2021.232-238

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АЛЬТЕРНАТИВНІ ШЛЯХИ ВИРІШЕННЯ ЮРИДИЧНИХ СПОРІВ ТА ЇХ ЗАСТОСУВАННЯ В УКРАЇНІ

Анотація. *Вирішення юридичних конфліктів – одне з головних завдань будь-якої держави. Ця функція в більшості випадків покладається на судову владу, але, як показує досвід, сам суд не може забезпечити ефективне функціонування системи вирішення правових спорів. Для кожної демократичної держави важлива наявність альтернативи, а суб'єкт права повинен мати можливість вибирати шляхи вирішення правових спорів. Сьогодні у світі існують такі альтернативні способи вирішення спорів, як: арбітраж, медіація, консультації, переговори, інтерсесія, примирна процедура та інші. Метою статті є виявлення переваг та недоліків альтернативних методів вирішення спорів. У статті проаналізовано літературу з даної тематики, а також представлені особливості альтернативних способів вирішення спорів, що дозволяє визначити їх переваги та недоліки як правової процедури. Існування в більшості країн світу альтернативного вирішення спорів є певною мірою позитивним для сторін конфлікту, оскільки вирішення спорів шляхом арбітражу, посередництва, переговорів, консультацій та інших альтернативних способів вирішення спорів дозволяє вирішити їх без втручання держави і вони можуть вирішуватись набагато швидше. Альтернативне вирішення спорів певною мірою може бути джерелом економії коштів для держави, оскільки вони існують самостійно і не вимагають коштів для їх надання від держави, тоді як в Україні система господарських судів щорічно вимагає досить великих витрат на утримання таких судів. суди. Вирішення суперечок альтернативними методами також прискорює їх вирішення, але в деяких випадках сам процес може бути дорожчим*

Ключові слова: *судова влада, цивільне право, арбітраж, вирішення конфліктів, державне законодавство*

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ALTERNATIVE WAYS OF RESOLVING LEGAL DISPUTES AND THEIR APPLICATION IN UKRAINE

Abstract. *Resolving legal conflicts is one of the main tasks of any state. This function is in most cases entrusted to the judiciary, but as experience shows, the court alone cannot ensure the effective functioning of the legal dispute resolution system. For every democratic state, the availability of an alternative is important, and the subject of law must be able to choose the ways of resolving legal disputes. Today in the world there are such alternative ways of resolving disputes as: arbitration, mediation, consultation, negotiations, intersession, conciliation procedure and others. The purpose of the article is to identify the advantages and disadvantages of alternative dispute resolution methods. The article analyzes the literature on this topic, and also presents the features of alternative ways of dispute resolution, which allows us to identify their advantages and disadvantages as a legal procedure. The existence in most countries of the world of alternative dispute resolution is to some extent positive for the parties to the conflict, because dispute resolution through arbitration, mediation, negotiation, consultation and other alternative dispute resolution allows to resolve it without state intervention and they can be solved much faster. Alternative dispute resolution can to some extent be a source of savings money for the state, as they exist independently and do not require funds to provide them from the state, while in Ukraine the system of commercial courts annually requires a fairly large cost of maintaining such courts. Resolving disputes through alternative methods also speeds up their resolution, but in some cases the process itself can be more expensive*

Keywords: *judiciary, civil law, arbitration, conflict resolution, state legislation*

INTRODUCTION

In the world today there is a large number of conflicts, the emergence and cessation of conflicts, most of which are transformed into conflicts of a legal nature. At the same time, the basis for all conflicts in most cases is the following reasons: restrictions in the field of rights, deprivation of certain rights or non-compliance with relevant legal norms. Resolving legal conflicts is one of the main tasks of any state. This function is in most cases entrusted to the judiciary, but as experience shows, the court alone cannot ensure the effective functioning of the legal dispute resolution system. For every democratic state, the availability of an alternative is important, and the subject of law must be able to choose the ways of resolving legal disputes. Today in the world there are such alternative ways of resolving disputes as: arbitration, mediation, consultation, negotiations, intersession, conciliation procedure and others [1; 2].

However, in the scientific literature in Ukraine there is also another approach, according to which the state judiciary and alternative dispute resolution are the only dispute resolution system used in the complex of the parties of the dispute. Following this approach, it is impossible to talk about alternatives, because together

the court and alternative dispute resolution are of a single entity [3; 4]. Thus, the definition of the method of resolving legal disputes not as an alternative, but as a state is debatable, because the system of alternative dispute resolution does not exclude the judicial order, but may precede it and supplement it [5]. State proceedings and alternative ways of resolving disputes differ significantly in their essence, features and principles of operation. An alternative way of resolving disputes cannot replace the judicial procedure for resolving legal disputes. Judiciary is the main institutional element of the system of state dispute resolution, so each state in its legislation determines which disputes can be resolved exclusively by courts, and which – using alternative dispute resolution.

In Ukraine there was an attempt to determine the ways of solving the disputes and a law on arbitration courts was adopted [6], but soon the situation changed and now we have only state economic courts to solve the disputes. The subjects of legal relations can use the methods of alternative dispute resolution as an additional option to protect their rights, to defend their interests. This possibility is particularly relevant due to the inefficiency of the judiciary, the growing number of cases in the courts, or the presence of other factors of an objective or subjective nature, which is to some extent observed in Ukraine. However, in Ukraine the issue of introduction of alternative dispute resolution methods, their proper legal regulation, expansion of the range of disputes that can be resolved using alternative dispute resolution methods is not on the agenda. As elements of the legal dispute resolution system, alternative dispute resolution and public justice are interdependent and competitive. Interdependence is that alternative dispute resolution may precede or supplement litigation (for example, negotiations between the parties) (for example, concluding a mediation agreement at the enforcement stage). At the same time, the practice of resolving legal disputes by the judiciary and the use of alternative dispute resolution methods indicates the existence of such competition. Legal dispute resolution is a kind of service, the customers of which are the parties to the dispute. Usually, those who provide a better service are approached. The purpose of the article is to identify the advantages and disadvantages of alternative dispute resolution methods.

1. MATERIALS AND METODS

The methodological approach to this research work is based on a combination of methods of system analysis of the currently existing methods for resolving legal conflicts with an analytical research of the possibilities of finding alternative methods for resolving them, with a consistent identification of their main advantages and disadvantages. This research presents an analysis of alternative methods for resolving legal issues, which gives grounds to assess their practical effectiveness in terms of shaping the perception of these methods exclusively as a legal procedure. This research work involves the creation of a high-quality theoretical base, which is an analysis of available scientific research devoted to examining various aspects of finding alternative ways to resolve legal issues and their application in the legal practice of a particular state. At the same time, specific alternative methods are indicated and an analysis of their effectiveness in resolving specific legal situations is carried out. This scientific research was carried out in three main stages.

At the first stage of this scientific research, a qualitative theoretical base is formed, which is the results of a study of literary sources available within the stated subject matter, with the identification and presentation of the main features of alternative options for resolving legal disputes, which makes it possible to determine their specific advantages and disadvantages as a legal procedure. In addition, at this stage of scientific research, a systematic analysis of the currently existing methods of resolving legal conflicts is carried out, taking into account the traditional methods of resolving them, as well as a number of alternative options.

At the second stage of this research work, an analytical study of the possibilities of finding alternative methods for their resolution is carried out, with a consistent identification of their main advantages and disadvantages. At this stage of the scientific research, a qualitative assessment is given to various aspects of the existence of alternative methods for resolving legal disputes in different countries, with an assessment of the degree of usefulness of such methods for the parties to the conflict, since such methods allow one to come to its resolution without the involvement of state authorities, which significantly speeds up the entire process and save its participants from significant additional waste of time and effort. Also, at this stage of scientific research, an assessment is made of the main features of legal dispute resolution and existing approaches to understanding the essence of alternative methods for resolving legal issues.

At the final stage of this scientific research, on the basis of the results obtained in the course of it, the final conclusions are formed, which are the final display of the sequence of scientific research performed and reflect the main advantages of alternative methods of resolving legal disputes in comparison with traditional methods. Also, the conclusions of this scientific study reflect the basic principles on which alternative methods of resolving legal disputes are based, as well as the conditions for the successful completion of alternative options for resolving legal conflicts and disputes, which, in general, determines the possibility of subsequent

practical application of the results and conclusions of this study as a reliable methodological basis for further scientific research on alternative ways of resolving legal disputes and their practical application as a procedure of a purely legal nature.

2. RESULTS AND DISCUSSION

Alternative dispute resolution can be used in different areas of law, depending on the purpose of the parties. Disputes that are resolved through alternative dispute resolution are impressive both in terms of subject composition and amount. Institutions that provide alternative dispute resolution services, interested in their own development, are concerned about their authority, and therefore are constantly improving the rules of procedure, recommendations on conflicts of interest, gathering evidence, reservations in the contract, precautionary measures. They care about their own reputation, as evidenced, for example, by the fact that during the entire period of the International Chamber of Commerce's arbitration, there have been no cases of arbitrators being accused of corruption scandals. Therefore, alternative dispute resolution and public litigation in a kind of competition must be constantly improved, which will benefit the subjects of law. In general, the use of alternative dispute resolution should help to improve the legal dispute resolution system in Ukraine [7; 8].

In the scientific literature there are various definitions of alternative dispute resolution [9]. Black's Law Dictionary [9] defines alternative dispute resolution as a procedure for resolving disputes in ways other than judicial, such as mediation and arbitration. The Swiss Arbitration Association's Dictionary defines alternative dispute resolution as:

1) optional amicable settlement of the dispute by a third party, not including arbitration (in Europe);

2) any settlement of a dispute involving a third party, with the exception of litigation, including arbitration (in the United States) [10; 11].

Another legal dictionary defines alternative dispute resolution as a unifying term that describes methods that parties can use other than litigation, including negotiation, mediation, and many types of arbitration. Some researchers identify alternative dispute resolution as a way to resolve a dispute without going to court. One of the reasons for the large number of approaches to understanding alternative dispute resolution is that scholars and practitioners include different dispute resolution methods. For example, some researchers do not consider arbitration as an alternative way of resolving disputes. After all, arbitration has certain responsibilities for the parties involved. Other researchers point out that negotiations are not an alternative way to resolve disputes because only the parties' lawyers are present during the negotiations and there is no third party. Lord Wolfe, the founder of the reform of the English civil process, identified arbitration, administrative tribunals, pseudo-judicial proceedings, ombudsman proceedings and mediation as the main forms of alternative dispute resolution. At the same time, many researchers do not refer to administrative tribunals and the ombudsman as a variety of alternative dispute resolution [12; 13].

Some scholars mistakenly call alternative dispute resolution pre-trial dispute resolution [14-15]. This approach is incorrect, as it provides for litigation as a mandatory part of resolving a dispute. However, in different countries, many disputes are not resolved at all in national courts due to the fact that the agreement concluded on the implementation of certain actions provides for the settlement of the dispute through negotiation, mediation or arbitration. Of particular importance are the issues of alternative dispute resolution in civil law [16-18]. It should be noted that alternative dispute resolution is not always less costly than litigation. In addition, they are used not only to resolve commercial disputes. Other types of disputes can be resolved through arbitration, mediation, and negotiations. Due to their universality, alternative dispute resolution allows for a wider range of disputes than national courts.

There is a point of view on the definition of alternative dispute resolution as “non-state procedures for the settlement of civil disputes”, the main feature of alternative dispute resolution is that they are not carried out by public authorities [19; 20]. In general, an alternative dispute resolution is the application (for example, by an arbitral tribunal) of legal norms and the adoption of a binding decision for the parties, based on legislation and other possible sources of law. The “dispute resolution” method is used when resorting to alternative dispute resolution methods such as arbitration and international commercial arbitration. When using the “dispute resolution” method, the problem is resolved in relation to the existing rights and obligations of the parties (legal relations of the parties), and in the case of “settlement of the conflict” the parties seek to reconcile their interests and achieve mutually acceptable termination of the conflict [21]. Thus, dispute resolution and conflict resolution are fundamentally different methods used in alternative dispute resolution.

According to research, there are the following signs of non-governmental procedures for settling civil disputes:

– no state intervention;

– recognition by public authorities;

– contractual nature of application;
– voluntary application of procedures;
– cooperation of the parties;
– confidentiality;
– relative formality;
– variability of procedures, their variety;
– participation of a third neutral participant, elected or appointed by mutual consent of the parties (this approach is generally correct, but some of these features are debatable).

In general, alternative dispute resolution in most cases has the following features:
– non-state character;
– contractual nature of application, based on mutually agreed definition of procedures and implementation of decisions;
– universality, the disputes can be resolved both between individuals and legal entities, as well as between international organizations, states, or unions of states;
– legal nature, the dispute resolution is based on certain legal norms;
– flexibility in resolving disputes, various methods, means, procedures are used, which are independently determined by the parties, as well as they determine the conditions and procedure for their implementation;
– confidentiality, only the parties to the proceedings and the invited persons take part in the alternative dispute resolution.

Comparing alternative dispute resolution and litigation, we can identify their commonalities and differences. The common ones include:

a) systematization – disputes are considered by the system of judicial authorities in accordance with the established jurisdiction, however, there is a system of alternative dispute resolution, as well as various institutions operating in this field and international organizations;

b) independence, the dispute is considered by an authorized person who is independent of the conflicting parties and acts impartially;

c) the plurality of parties;

d) the possibility of involving experts and specialists [22; 23].

However, there are differences between the resolution of disputes by public authorities and alternative dispute resolution methods mentioned earlier. Thus, we can say that alternative ways of resolving disputes exist in most countries abroad. In Ukraine, from the very beginning of independence, an attempt was made to introduce an arbitration system to resolve legal disputes [24]. In 1991, the Arbitration Court Act was passed, [6] which to some extent introduced one of the main types of alternative dispute resolution that exists around the world. However, 10 years later, in 2001, a new law was passed that abolished the existence of arbitration courts in Ukraine and introduced the so-called commercial courts, which are state-owned and resolve all disputes arising on behalf of the state [25].

In order to implement the issue of arbitration courts to some extent, the Law of Ukraine "On Arbitration Courts" [26] was adopted in 2004, which is in force, but it is practically ineffective, as the vast majority of legal disputes are resolved by commercial courts. These courts are determined as the most corrupt branch of the judiciary in Ukraine. Thus, the state deprived the business entities of the opportunity to resolve disputes to use alternative ways of its resolution. As for other alternative ways of resolving economic disputes, such as mediation, negotiations, and consultation, they are also used to a rather limited extent in Ukraine. Commercial courts have thus established a kind of memorandum that only they have the right to resolve commercial and other property disputes.

The new Code of Criminal Procedure in Ukraine has significantly expanded the scope of alternative dispute resolution, combining elements contained in continental systems (exemption from criminal liability) and Anglo-American systems (institution of agreements), which has led to the humanization of criminal law in Ukraine and protection of rights participants in criminal proceedings. In world practice are used a sufficient number of alternative methods of dispute resolution, including such procedures as: appointment of an expert, negotiations, negotiations with a mediator (facilitated negotiations or assistance), conciliation, mediation, litigation, mini-litigation, establishment facts, dispute commissions, private litigation, timely neutral assessment, multi-door court, pre-trial settlement conference, comprehensive jury trial, etc.

Alternative dispute resolution, which in its diversity represents a whole system of methods, means, methods of private settlement of relations between the parties. It should serve the purposes of justice, provide procedural guarantees for the protection of the rights and interests of the parties and improve the resolution of disputes. The urgent task of the modern judiciary of Ukraine is the effective and rapid resolution of conflicts.

The development and application of various methods of alternative dispute resolution will help solve this problem.

CONCLUSIONS

The existence in most countries of the world of alternative dispute resolution is to some extent positive for the parties to the conflict, because dispute resolution through arbitration, mediation, negotiation, consultation and other alternative dispute resolution allows to resolve it without state intervention and they can be solved much faster. Alternative dispute resolution can to some extent be a source of savings money for the state, as they exist independently and do not require funds to provide them from the state, while in Ukraine the system of commercial courts annually requires a fairly large cost of maintaining such courts. Resolving disputes through alternative methods also speeds up their resolution, but in some cases the process itself can be more expensive.

Alternative forms of dispute settlement should be based on the following international principles: the principle of cooperation, which is to identify the common interests of the parties and which is based on mutual concessions and the search for understanding; the principle of differentiation, in which the parties to a legal conflict may use alternative means individually, in combination or in a certain order; and the principle of confidentiality, which establishes the secrecy of each alternative procedure. Alternative resolution of legal disputes and conflicts can be successful only if there is constant and close cooperation with civil society institutions. Such interaction will create an active civil position, increase public confidence in alternative dispute resolution, conflict resolution and contribute to the normalization of relations in various spheres of public life.

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Suggested Citation:. Zarosylo V.O., Kaplya O.M., Muraviov K.V., Myniuk D.I., & Myniuk O.Yu. (2021). Alternative ways of resolving legal disputes and their application in Ukraine. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(4), 232-238.

Submitted**:** 20.08.2021
Revised: 16.10.2021
Accepted: 05.12.2021

УДК 34:347.64
DOI: 10.37635/jnalsu.28(4).2021.239-249

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СУТНІСТЬ ТА СОЦІАЛЬНЕ ЗНАЧЕННЯ ІНСТИТУТУ УСИНОВЛЕННЯ ДИТИНИ В РЕСПУБЛІЦІ УЗБЕКИСТАН

Анотація. *Відповідно до Цивільного процесуального кодексу Республіки Узбекистан усиновлення неповнолітніх дітей здійснюється лише судовим органом, який відповідає нормам Конституції Республіки Узбекистан, міжнародного права, а також міжнародних договорів Республіки Узбекистан. Узбекистан та світова практика усиновлення дітей, що відповідає інтересам дитини. Водночас зростає потреба у докорінному вдосконаленні інституційно-правової бази, що гарантує захист законних і законних інтересів дітей та захист їх прав. Метою статті є аналіз правових норм з питань усиновлення дітей. Наукове дослідження базується на сукупності таких приватних методів, як формально-логічний, системно-структурний, порівняльно-правовий, історичний тощо, що дозволило виявити та обґрунтувати поняття, сутність та соціальне значення інституту усиновлення дитини. в Республіці Узбекистан. У результаті дослідження встановлено, що в науці сімейного права усиновлення визначається у таких формах: як правовий акт; як виховання дітей в опікунах, що забезпечують умови проживання, прирівняні до умов проживання біологічних дітей; як пристрій для неповнолітніх, які залишилися без піклування батьків. У статті розглянуто поняття, сутність та соціальне значення усиновлення, особисті та майнові права усиновлених, інтереси дитини у здійсненні, процесуальні питання усиновлення*

Ключові слова: *неповнолітня дитина, батьки, сімейне право, суперечка, виховання*

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ESSENCE AND SOCIAL SIGNIFICANCE OF THE INSTITUTE FOR ADOPTION OF A CHILD IN THE REPUBLIC OF UZBEKISTAN

Abstract. *According to the Civil Procedure Code of the Republic of Uzbekistan, the adoption of minor children is carried out only by a judicial body that meets the norms of the Constitution of the Republic of Uzbekistan, international law, as well as international agreements of the Republic of Uzbekistan and world practice of adopting children, which is in the best interests of the child. At the same time, there is a growing need for a radical improvement of the institutional and legal framework that guarantees the protection of the legal and legitimate interests of children and the protection of their rights. The purpose of the article is to analyze the legal norms of issues on the adoption of children. Scientific research is based on a set of such private methods as formal-logical, system-structural, comparative-legal, historical, etc., which made it possible to identify and substantiate the concept, essence and social significance of the institution of child adoption in the Republic of Uzbekistan. As a result of the research, it was established that in the science of family law adoption is defined in the following forms: as a legal act; as the upbringing of children in an adoptive family, providing living conditions equivalent to the living conditions of biological children; as a device for minors left without parental care. The article discusses the concepts, essence and social significance of adoption, personal and property rights of adopted children, interests of the child in implementation, procedural issues of adoption*

Keywords: *minor child, parents, family law, dispute, upbringing*

INTRODUCTION

According to Art. 64 of the Constitution of the Republic of Uzbekistan [1], the country and the public guarantee to comprehensively provide maintenance, education for orphaned children, support charity for these children. As the President of the Republic of Uzbekistan Sh.M. Mirziyoyev [2] noted that one should always remember the wise sayings of great mentor Abdurauf Fitrat: “Will the people move towards a specific goal, prosper, will it be happy, respected and strong, or will it be weak, live in need, unhappiness, oblivion and submission? Others – it all depends on what kind of upbringing the children receive from their parents, in the family”. The family is the basic unit of society and has the right to be protected by society and the state [3]. Children are the mainstay of the family, the joy of parents, the successor of a generation, its upbringing is above all. Well-bred children in the families of country are a force that directly determines the future of the state. Thus, the full-fledged and harmonious upbringing of adult children has become one of the priorities of the state since the first days of independence [1]. Today's life appeal is this: “Our children should be stronger, smarter, wiser and, of course, happier than us!” [2].

For various reasons in Uzbekistan in recent years, many children have been left without parental care, but this phenomenon is not ignored by the state, and all minors, despite the circumstances, are obligatorily assigned to orphanages or adopted. The growth rate of cases related to the refusal to adopt a child (hereinafter referred to as “adoption”) proves that there are gaps in the pre-trial stage of adoption cases by the guardianship and guardianship authorities and obliges the legislator to develop effective legal measures in this area and the importance of adoption as a priority for children deprived of parental care. Adoption is the most preferable form of placement for children who have lost parental care, when a child is fully equal by law to his own children, acquires his own family in the person of adoptive parents, and a feeling of parental love arises from them.

In accordance with the Law of the Republic of Uzbekistan No. ZRU-352 "On amendments and additions to certain legislative acts of the Republic of Uzbekistan" [4] a judicial procedure was introduced for the consideration of applications for adoption by courts in civil cases. Previously, adoption was carried out on the basis of decisions of the khokims of cities (districts). According to the current Civil Procedure Code of the Republic of Uzbekistan [5], approved by the Law of the Republic of Uzbekistan No. ZRU-460 "On approval of the Civil Procedure Code of the Republic of Uzbekistan" [6] and which entered into force on April 1, 2018, the implementation of the adoption of minor children in court is established by Chapter 29 of the Civil Procedure Code of the Republic of Uzbekistan [5]. Currently, there is a procedure for the adoption of minors only by a judicial body that meets the norms of the Constitution of the Republic of Uzbekistan [2], international law, as well as international agreements of the Republic of Uzbekistan and world practice of adopting children, which is in the best interests of the child. This is a guarantee of respect for his rights and legitimate interests. The purpose of the article is to analyze the legal norms of issues on the adoption of children.

1. THEORETICAL OVERVIEW

There is a growing need for a radical improvement of the institutional and legal framework that guarantees the protection of the legal and legitimate interests of children and the protection of rights. In an effort to fully comply with the conditions of the Convention on the Rights of the Child [7], guaranteeing the legal interests of minors, as required by the Constitution of the Republic of Uzbekistan [3] and the laws of the Republic of Uzbekistan, raising a generation that is physiologically, mentally, morally and intellectually mature, in addition, in accordance with the problems predetermined in the conduct of influences. The Strategy of Action for five priority areas of development of the Republic of Uzbekistan in 2017-2021 [8] established that minor children left in the absence of parental care receive all types of social security services, regardless of their location [9].

In the period 2016-2019, the courts of the Republic of Uzbekistan considered more than 200 000 adoption cases, and 250 000 children were transferred for adoption based on a court decision [10]. This indicates that the legislation on adoption in the Republic of Uzbekistan is of particular social importance. In accordance with the Convention on the Rights of the Child [7], each country is obliged to guarantee children's rights to life and upbringing in a "healthy" family, especially at home in their homeland. According to the General Prosecutor's Office of the Republic of Uzbekistan [11], numerous violations of the law are committed when adopting children, and priority is not given to placing children in Uzbek families. The guardianship and trusteeship authorities, some according to the law, must organize the placement of minor children in Uzbek families, they are unattractive, they have many formalities, without justified rejections for citizens who want to adopt (adopt) a minor, and they were not informed about children who can be transferred to foster families.

In these conditions, the role of the court increases significantly when making a decision. It is the court that can block the path of illegal admission (adoption) in order to establish the ratio of adoption not only to legislation, but also to the wishes of a given minor. The judicial authority can reveal why the child, especially the small and literally healthy one, did not find a family in Uzbekistan, what specific steps were taken to find this family at the local, regional and republican degree. Careful consideration by the judicial authority of general factors, along with the medical adequacy of adoptive parents, in many cases predestines the future of a minor child. In addition, cases of adoption, by virtue of their specificity, are especially complex, require careful preparation and strict observance of the law at any stage of the proceedings in this category of cases, so that adoption issues are resolved in the public interest, as well as the orphans themselves. The questions formulated are an integral part of a huge and urgent problem that has state, public, and nationwide significance and therefore requires, in addition to a legal solution, also social and organized constant attention.

2. MATERIALS AND METHODS

In solving the set tasks, the author relied on various general scientific principles and methods. Among them: general scientific principles (systemic-structural, comparative-legal, formal-logical, analysis and synthesis, induction and deduction); special legal methods (method of legal modeling, historical and legal, legal and dogmatic methods). Scientific research is based on a set of such private methods as formal-logical, system-structural, comparative-legal, historical, etc., which made it possible to identify and substantiate the concept, essence and social significance of the institution of child adoption in the Republic of Uzbekistan. According to statistical data, in the Republic of Uzbekistan, adoption cases were considered in 2014 – 2576 cases, of which 2533 were satisfied, 43 were refused, in 2015 – 3663 cases, of which 3589 were satisfied, 74 were refused, in 2016 – 3846 cases, of which 3763 were satisfied, 83 were refused, in 2017 – 4130 cases, of which 4049 were satisfied, 81 were refused, in 2018 – 4195 cases, of which 4112 were satisfied, denied – 833 [12].

In the period 2017-2019, the majority of children in Uzbekistan who were classified among those without parental care are in the Samarkand region – 1172, in the Tashkent region – 979 children. The smallest number of minors who were left without parental care in Jizzakh region is 187 children and in Navoi region – 247 children.

Having analyzed the circumstances due to which minors are deprived of parental care, it should be noted that the most common reason for depriving minors of parental care is that "parents who are temporarily unable or physically unable to raise a child" – 31.9% and "other reasons" – 26.4%, "abandonment or abandonment of a child by parents" accounts for 15.8%, "orphans without parental care" – 15.5% and "deprivation of parental rights" – 10.4%. A more unpleasant situation is noted in the Bukhara region as "other reasons" – 89.3% and "parents who are temporarily unable or physically unable to raise a child" in the Kashkadarya region, as "other reasons" include not a small list of parents who leave for other countries and leave their children without proper care and attention from their grandparents, relatives and friends is – 82.2% [13]. Uzbek jurists I. Zokirov and M. Baratov [14], M. Baratov [15], R. Matkurbanov [16] studied the adoption of a child on a general basis from a civil legal point of view. In scientific research of civilists F. Otakhuzhaev [17], G.S. Inomzhanova [18], A.Yu. Azizova [19], Sh.R. Yuldasheva and F.M. Otaxujaev [20], N.A. Ashurova [21] highlights some aspects of the adoption of a child.

Zh.A. Dadaboeva [22] comprehensively studied the problematic issues of adoption from the point of view of family law and established the concept, the historical stages of adoption, the requirements of the adoptive parent, the procedure for registering the adoption, legal consequences, the rights and obligations of the adoptive parent, forms of responsibility, legal consequences of invalidating the adoption of a child. Z.N. Esanova [23] studied the procedural features of consideration of claims related to the upbringing of children and substantiated proposals for the consideration of cases on the adoption of a child in court. E. Trabing [24] in his dissertation explored the options for adopting a child between countries, as well as the prospects for political culture and noted that in the United States, adoption is carried out in the following forms. Firstly, this is the adoption of children from the state system of foster families, secondly, through private adoption agencies or independently of each other, and thirdly, the category of adoption of infants and children from other countries. Determined that states that had an individualistic political culture have different adoption outcomes and laws than those states that reported moralistic and traditionalist.

E. Turkheimer [25] explored adoption issues in Colorado and Texas and developed findings from classic adoption studies and genetically weighed findings on biological parenting relationships, the opposition between individual and group methodologies to compromise according to important genetic and environmental impacts. A.L. Fry, in her work, defined that adoption should be viewed as a lifelong event, and not just a legal proceeding, the implementation of the adoptees in relation to their adoption, the scope of socialization and evaluation, as well as the general concept of adopted [26].

3. RESULTS AND DISCUSSION

Over the years of independence, the Republic of Uzbekistan joined seventy basic documents on human rights and became part of six major international treaties adopted by the United Nations (UN), including the Convention on the Rights of the Child [7], which contributed to the formation of Uzbek states' policy in the field of protecting the legal interests of minors. The provisions of the Convention on the Rights of the Child [7] and other international documents in the field of protecting the legal interests of minors have been embodied in the norms of the Constitution of the Republic of Uzbekistan [3] and national legislation, Constitution of the Republic of Kazakhstan [27] and national legislation. More than 100 laws regulate the rights and freedoms of the child and ensure reliable protection of the rights of the child. In particular, the Civil Procedure Code of the Republic of Uzbekistan [5], in the Family Code of the Republic of Uzbekistan [28], in the Law of the Republic of Uzbekistan No. ZRU-139 "On guarantees of the rights of the child" [29], Law of the Republic of Uzbekistan No. ZRU-444 "On protection of children from information harmful to their health" [30], Law of the Republic of Uzbekistan No. ZRU-364 "On guardianship and trusteeship" [31], Law of the Republic of Uzbekistan No. ZRU-406 "On state youth policy" [32], Law of the Republic of Uzbekistan No. 265-I "On protecting the health of citizens" [33] and others.

Thanks to the large-scale implementation of public, state social programs, including "Mother and child" [34], "Year of health" [35], "Year of social protection" [36], "Year of youth" [37], "Year of a harmoniously developed generation" [38], "Year of the family" [39], "Year of a healthy child" [40], "Year of a healthy mother and child" [41], "Year of dialogue with the people and human interests" [42] all the necessary circumstances are created in the state in order to protect social, financial and human rights, and first of all for minor children, young people and their broad all-round development. In 800 years ago, in Movaraunnahr, great attention was paid to the rights and interests of the child. In particular, the work of Majuddin Ustrashani,

written on July 28, 625/1228, "Jami' ahkom as-sigar" is the first major source on the rights of the child. The collection of hadiths on the rights of the child is the work "Tuhfat al-mavdud bi ahkom al-mavdud" written by Shamsuddin Muhammad ibn Abi Bakr ibn l-Qayim al-Javzia (691-7511/1292-1350). These works discuss issues related to the fair solution of issues related to the rights of the child, protection of children's rights and immunity, fundamental rights in public life [43].

According to the President of the Republic of Uzbekistan Sh.M. Mirziyoyev [2], "Our children should be better, smarter, wiser and, of course, happier than us!" – these words of the First President of Uzbekistan are forever entrenched in the minds of all of us. He oversaw the work to improve and implement the latest educational structure, which radically changed the worldview of youth, which is becoming a key force in the country today and tomorrow. Adoption is the most appropriate form of upbringing in the interests of the child, left without parental care, therefore the Family Code of the Republic of Uzbekistan [28] and the Code of the Republic of Kazakhstan No. 518-IV "On marriage (matrimony) and family" [44] designates it as a priority form of the placement of children. According to B.A. Dzhandarbek [45], legal concepts are being created in the upbringing of minors in a family atmosphere, which include the transfer of minors to foster care, to educational institutions, and the exercise of custody of children. Of these, adoption is of primary importance and place, and in some cases it solves the problem of the non-existence of family upbringing. Adoption is fully consistent with the humanistic orientation of customary law, but modern reality requires careful legal regulation of adoption and ensuring the rights of children.

On the issue of the concept of adoption, there is no uniformity in legislative approaches to solving the problem. For example, the German Civil Code [46] does not define the concept of "adoption", it only says that adoption is allowed if it takes place in the interests of the minor, and it is expected that such a relationship will be established among the adoptive parent and the adopted child, who are among the parent and child. The Adoption (Scotland) Act [47] specifies adoption under adoption – the proper order of parental rights and responsibilities that establish the relationship between the adoptive parent and the child who create a family. As E.A. Tatarintseva [48] correctly points out adoption, as a complex social phenomenon, reflects generally recognized constitutional (general legal) principles, as well as sectoral principles [49] – the principles of family law of each of the states, with their inherent national characteristics. "Adoption" is used in legal science in several terms. Numerous researchers, in particular F. Otakhuzhaev [17], Sh.R. Yuldasheva and F.M. Otaxujaev [20]. It is fact that adoption is a form of arrangement for children who are left without parental care, as a legal act and a fact of legal significance. In this context, adoption is considered as a legal act with equal legal consequences in terms of the rights and obligations of relatives of origin. For many childless families or single citizens, adoption is the only opportunity to realize unspent parental feelings, to feel the happiness of motherhood and fatherhood [50]. This explains the peculiarity of adoption: unlike other forms of upbringing, the relationship of adoption does not end with the achievement adopted by the age of eighteen; it is like a lifelong legal relationship between the adopted child and the adoptive parent and his relatives [51].

As other authors argue, adoption is established among the adoptive parent and his relatives as well as the adopted child and his children, legal relations, such as personal and property, in a similar relationship among parents and blood children [45]. They also consider adoption as a form of placement for minors who are left without parental care, and as a fact of legal significance. According to Z.N. Esanova [52], with the adoption, the adopted child is equal in personal and property rights with the biological children of the adoptive parent. Children who are adopted and their biological parents to each other lose all personal and property rights and are also exempt from mutual obligations. In particular, their parents lose their right to inheritance, alimony and other rights. Even between adoptive parents and adopted children, de facto relationships of kinship arise. For example, in cases where inheritance under the law, the adopted child and his children and the adoptive parent and his relatives become equal to blood relatives [53]. In accordance with Art. 147 of the Family Code of the Republic of Uzbekistan [28], the payment of alimony for a child, which is collected through a judicial authority, stops with the adoption of a minor, alimony was paid for maintenance. At the same time, despite the fact that the relationship between them is not a biological, but a legal factor, in accordance with Art. 16 of the Family Code of the Republic of Uzbekistan [28], marriage between an adoptive parent and adopted children is not allowed [52].

Adoption is also understood as a social relationship, the essence of which is to adopt an outsider child into the family in order to support him and raise him as his own son or daughter [54]. According to B.A. Dzhandarbek [45], adoption means as a legal mechanism, which is a set of basic legal norms, the task of which is to ensure the formation of relations between the adoptive parent and the adopted child, which are almost identical to the relationship between parent and child, and with the actual (material) and legal (formal) parties ... These standards include those that establish the reasons and objectives of adoption, whose children

can be adopted, adoptive parents and the rights arising from adoption. The Family Code of the Republic of Uzbekistan [28], the Civil Procedure Code of the Republic of Uzbekistan [5], the Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan No. 21 "On the practice of the application of legislation in adoption cases by the courts" [55] does not provide a concept and explanation of what should be understood by "in the interests of the child". Joining with the opinions of F. Otakhuzhaev [17], Sh.R. Yuldasheva and F.M. Otaxujaev [20], B.A. Dzhandarbek [45] and Z.N. Esanova [23; 52] "the interests of the child" should be understood as the adoption of minor children for the purpose of accounting the possibility of ensuring full physical, mental, spiritual and moral development, as well as a legal agreement that adoption is allowed for children, the date of birth is registered in the manner specified in the Family Code of the Republic of Uzbekistan.

Taking into account the above, authors consider it expedient to amend Art. 151 of part one of the Family Code of the Republic of Uzbekistan [28] in the following edition: "Adoption is allowed in relation to minor children whose birth is registered in the manner prescribed by this Code, and only in the interests, taking into account the possibilities of ensuring full physical, mental, spiritual and moral development". Despite all the variety of definitions of adoption, D.M. Korakhodzheva, T.M. Kochergina, U.Sh. Shorakhmetova [56] admit that the concept of adoption should be considered as a legal act through which the adoptive parent and the child establish the same relationship that exists among parents and children of biological origin. At the same time, adopted children lose their legal relationship with their parents and gain them with strangers – adoptive parents, without differences in rights and obligations towards them from their own child [57]. Z.Z. Alieva [58] identified the following significant features of adoption: 1) adoption is a legal relationship; 2) the voluntary will of the adoptive parent and the desire of the adoptee (over 10 years old); 3) the relationship between the adoptive parent and the child is associated with the relationship between biological children and parents; 4) the emergence of legal relations under a judicial act. In accordance with Art. 164 of the Family Code of the Republic of Uzbekistan [28], all the necessary changes in the registration book of the date of birth of the adopted person must be made by the registry office. Despite the fact that in Art. 165 of the Family Code of the Republic of Uzbekistan [28], whose children have been adopted are equal in personal and property legal relations to the biological children of the adoptive parent, there are also some differences in the legal status of parents and adoptive parents.

Firstly, the reasons for deprivation of parental rights are specifically indicated in the legislation [28] and cannot be expanded. In case of cancellation of the adoption, the court has the right to cancel the adoption of the child not only for the reasons specified in the legislation [28], but also for other reasons based on the interests of the child, taking into account his opinion. Secondly, the court may cancel the deprivation and restriction of the parents' rights and their restoration if the parents changed their behavior, lifestyle and relationship to the child, but when canceled or invalidated, the rights and obligations of the adoptive parents cease and are no longer restored. Thirdly, the law does not provide any conditions for parents. Only the entry into legal marriage or the establishment of paternity between spouses creates legal obligations among parents and minors. As for adoptive parents and adopted children, the law contains several conditions (with some exceptions, such as the recommendation of the guardianship authority, the desire of the minor to be adopted, a medical certificate, etc.). Fourth, the relationship between parents and children is based on fertility (the biological unit of blood). The adoption is based on a court decision. Fifth, if the parents do not fulfill their parental rights and obligations in the proper order, then the deprivation of parental rights provided for by the Family Code of the Republic of Uzbekistan [28] is applied. If the adoptive parents do not fulfill their obligations, then, according to the legislation, the adoption is canceled or invalidated.

Legal doctrine also seeks to establish a unified concept of adoption. Therefore, from these positions it is proposed to understand how: all uniting legislative institution, which contains rules for various industry relations aimed at regulating the relationship of adoption and relationships among the adoptive parent, adopted child and other entities; a complex system of legal relations of various legal nature, in which the adoptive parent and the adopted child remain in legal relations with each other and with other entities [59]. According to Art. 151 of the Family Code of the Republic of Uzbekistan [28], Art. 298 of the Civil Procedure Code of the Republic of Uzbekistan [5] – adoption is carried out by a judicial authority in consequence of the filing of an application by persons claiming the role of adoptive parents. The study and consideration of issues on the adoption of children is carried out by the judicial authority in a special order in accordance with the rules provided for by the civil procedure law. The legislator classifies adoption cases as special proceedings, predetermining the need to study the possibility and expediency of such permission.

Researchers, in particular Sh.Sh. Shoraxmetov [60], D.Yu. Xabibullaev and M.M. Mamasiddikov [61], Z.N. Esanova and S.I. Sobirova [62], S.A. Maripova [63] defining the concept of special proceedings, emphasize that the parties do not participate in cases of special proceedings, since there are no legal disputes

in these cases, but the fact and legal conditions are determined as the subject of special proceedings, the indisputable nature of cases referred to special proceedings, protecting the legal interests citizens. But not all researchers, in particular E. Egamberdiev [64] shares this point of view as the application of adoption cases to the categories of special proceedings. According to B.A. Dzhandarbek [45], Z.Z. Alieva [58], E.E. Tereshchenko [65], V.V. Kustova [66] believe that in cases of adoption there is a claim in nature and is justified by the fact that not only the state of a legal fact is studied, but also in the context of cases of adoption, subjective rights and obligations are determined. The legal obligations of the adoptive parent are established by the judicial authority, sometimes, contrary to the wishes of the parents, their legal relationship to a minor child. In the context of the litigation, the further behavior of the adoptive parent and other subjects is determined. A similar action is characteristic of the plaintiff in the proceedings. In addition, it is assumed that a dispute about the right will arise when the relatives of a minor child enter the process, in cases where he is adopted by other people, and declare their objection to the upcoming adoption.

According to E.V. Buyanova [67], the legislator correctly considered the adoption cases as a special procedure, since this civil procedure was adapted at the national level for the maximum possible resolution of cases of adoption in the interests of a minor child. But, in some cases of adoption, a legal dispute arises when they are considered. These disputes include, as in which some relatives of the adopted child, applying for adoption themselves, cannot settle the issue with other relatives; when the child's parents shy away from upbringing, but also do not consent to adoption, etc. In such cases, a lawsuit seems to be more acceptable, in which the rules of competition and dispositions fully work, which guarantees more and more reliable compliance with the legal interests of the adoptee, parents and adoptive parents. G.I. Vershinina [68] thinks that, at the very beginning of the trial, one should not get involved with a legal dispute. This is due to the fact that any contradictory relationships and conflicts do not have the best effect on the mental and psycho-emotional state of a minor child, since the fate of the minor is being decided. With this in mind, it would be a good option not to create contradictions in these categories of cases. However, the words of G.I. Vershinina [68] on the position of family law, the conditions for the emergence of a legal conflict are balanced by various legal means, it is unlikely that it should be recognized as convincing. On the contrary, a lot of subjectivity in adoption cases, a difficult and lengthy stage of pre-trial preparation for adoption, is considered unique and requires special attention. For this reason, the legal circumstances are often insufficient to resolve the dispute or do not apply to all situations. Therefore, one cannot join with the opinions of G.I. Vershinina [68] that none of the participants in the adoption cases is involved in the disputed legal relationship, therefore, does not have a material interest in the outcome of the case and therefore is not considered a party. The above analysis of various conflict situations that arise and may arise in practice when considering such cases refutes this opinion.

Consequently, the opinion of G.I. Vershinina [68] on the non-manifestation of a different legal situation in the emergence of a dispute about the right in the considered adoption cases, then how should the norm of paragraph 7 of part 1 of Art. 122 of the Civil Procedure Code of the Republic of Uzbekistan [5], clause 13 of part 1 of Art. 279 of the Civil Procedure Code of the Republic of Kazakhstan [69], potentially allowing the emergence of a dispute about the right in special proceedings. It turns out that this rule does not apply in the case of adoption? It seems that in this case, the legislator would directly enshrine in the Civil Procedure Code of the Republic of Uzbekistan [5] and the Civil Procedure Code of the Republic of Kazakhstan [69] the rule that the provisions of clause 7, part 1, Art. 122 of the Civil Procedure Code of the Republic of Uzbekistan [5], clause 13, part 1, Art. 279 of the Civil Procedure Code of the Republic of Kazakhstan [69], and do not apply to adoption issues. However, such a clause does not appear in the Civil Procedure Code of the Republic of Uzbekistan [5] and, as the above study shows, a dispute may arise about the right in cases of adoption.

CONCLUSIONS

Having analyzed the practice and theory it should be concluded that in the science of family law, adoption is defined in the following forms: as a legal act; as raising children in the adoptive parent's family, providing living conditions that are equated with the living conditions of biological children; as devices for minors who are left without parental care. Chapter 33 “Proceedings on applications for the adoption of a child” of the Civil Procedure Code of the Republic of Kazakhstan specifies the procedural issues of adoption and adoption. Chapter 29 “Adoption of a child” of the Civil Procedure Code of the Republic of Uzbekistan provides for procedural rules for considering applications for adoption only. However, the Code of Civil Procedure of the Republic of Uzbekistan does not provide for the issue of adoption, since many articles of the Family Code of the Republic of Uzbekistan, in particular Art. 16, 147, 150 and others, provide for adoption, as well as Chapter 20 “Adoption” of the Family Code of the Republic Uzbekistan provides not only adoption, but the adoption of a child.

Based on the above and taking into account the current legislation, authors consider it expedient to make changes and additions to the Civil Procedure Code of the Republic of Uzbekistan and change the title of Chapter 29 in the following edition: Chapter 29 "Proceedings on applications for the adoption of a child". In addition, the author proposes to amend the Civil Procedure Code of the Republic of Uzbekistan to amend Art. 297^1 in the proposed edition: "Article 297^1. Adoption of a child. Adoption and adoption of a child (hereinafter referred to as adoption) is a legal act based on a court decision, by virtue of which the same rights and obligations arise between the adoptive parent and the adopted child as between parents and children and the form of raising children in the adoptive parent's family in which the child is provided with conditions that meet every day, psychological, spiritual closeness that exists in families of origin".

In order to resolve the dispute when considering cases on the adoption of a child, it is necessary to make additions to the Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan dated December 11, 2013 No. 21 "On the practice of applying legislation by courts in cases of adoption" with the following content: "Clause 61. In the event that a dispute about the right, subordinate to the courts, is established during the consideration of the case on adoption in the procedure of special proceedings, the court shall issue a ruling on leaving the application without consideration, in which it explains to the applicant and other interested parties their right to resolve the dispute in the manner of a claim production". An adoption in a litigation process should not get involved in legal disputes from the outset. In this regard, it is proposed to supplement Art. 302 of the Civil Procedure Code of the Republic of Uzbekistan with part four of the following content: "The court leaves the case on the adoption of a child without consideration if a dispute about the right arose during the proceedings". Proceeding from this, the legislation correctly defined the cases of the adoption of a child for special proceedings, since this type of civil proceedings is the most suitable for resolving the case of adoption in the best interests of a minor child.

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Suggested Citation: Ibratova, F., Esanova, Z., & Shorakhmetova, U. (2021). Essence and social significance of the institute for adoption of a child in the Republic of Uzbekistan. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(4), 239-249.

Submitted: 06.09.2021
Revised: 21.11.2021
Accepted: 17.12.2021

УДК 349.6:340.5
DOI: 10.37635/jnalsu.28(4).2021.250-261

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НАЦІОНАЛЬНІ СТРАТЕГІЇ РОЗВИТКУ З ПОЗИЦІЙ ЗАБЕЗПЕЧЕННЯ ЕКОЛОГІЧНИХ ПРАВ ТА ІНТЕРЕСІВ: КОМПАРАТИВІСТСЬКИЙ ПІДХІД

Анотація. *Стаття присвячена науково-теоретичному аналізу засад діяльності держави із формування національної політики в контексті забезпечення екологічних прав та інтересів людини, створення дієвих правових механізмів їх гарантування, реалізації та захисту, вирішення системних проблем в окресленій сфері. Мета дослідження полягає у всебічному, комплексному вивченні й аналізі норм законодавства з позицій екологізації внутрішньої і зовнішньої державної політики, національних стратегій розвитку. Методологічну основу статті становить комплекс загальнофілософських, загальнонаукових, спеціально-наукових і власне правових методів. Запропоновано екологізацію досліджувати як багатоаспектне явище. Державна екологічна політика розглядається як складова політики держави, в якій відображаються її стратегічні цілі й завдання, визначені на перспективу з урахуванням екологічних факторів. Доведено, що на законодавчому рівні мають бути передбачені чіткі механізми як правового забезпечення інтеграції екологічної політики в галузеві й секторальні, національні й регіональні стратегії, місцеві плани дій, так і взаємодії з інституціями громадянського суспільства, науковою спільнотою. Аргументовано, що сучасна державна екологічна політика й подальша систематизація екологічного законодавства мають проводитися, спираючись на положення еколого-правової доктрини, задля врахування сучасних підходів до врегулювання екологічних правовідносин, інтегрування екологічних вимог і приписів у документи державного планування, галузевого (секторального), регіонального й місцевого розвитку. Спираючись на власні висновки й узагальнення, надано пропозиції та рекомендації стосовно розробки єдиної концепції правової політики, зокрема, й еколого-правової як її складової, а також вдосконалення національної нормативної бази (а саме шляхом прийняття Концепції систематизації екологічного законодавства й модернізації сучасної стратегії державної екологічної політики)*

Ключові слова: *державна екологічна політика, еколого-правова політика, кліматичні права, еколого-правова доктрина, екологізація галузевих і регіональних політик*

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NATIONAL DEVELOPMENT STRATEGIES IN TERMS OF ENSURING ENVIRONMENTAL RIGHTS AND INTERESTS: COMPARATIVE APPROACH

Abstract. *The study is devoted to scientific and theoretical analysis of the principles of state activity in the development of national policy in the context of ensuring human's environmental rights and interests, the creation of effective legal mechanisms for their guarantee, exercise, and protection, solving systemic issues in this area. The purpose of the study is a comprehensive examination and analysis of legislation from the standpoint of greening national and foreign policy, national development strategies. The methodological basis of the study is a set of general philosophical, general scientific, special scientific, and legal methods. It is proposed to consider greening as a multifaceted phenomenon. In general, the state environmental policy is a component of state policy, which fixes its strategic goals and objectives, defined for the future, considering environmental factors. It is proved that at the legislative level there should be clear mechanisms for the legal support of integration of environmental policy into sectoral, national, and regional strategies, local action plans, and interaction with civil society institutions, the scientific community. It is argued that modern state environmental policy and further systematisation of environmental legislation should be based on the provisions of environmental law doctrine to consider modern approaches to environmental regulation, integration of environmental requirements and regulations to state planning, sectoral, regional, and local development. Based on conducted research and synthesis, proposals and recommendations for the development of a unified concept of legal policy, in particular, environmental legal policy as its component, also, for the improvement of national regulatory framework (namely by adopting the Concept of systematisation of environmental legislation and modernisation of the contemporary strategy of state environmental policy) are elaborated*

Keywords: *state environmental policy, environmental law policy, climate rights, environmental law doctrine, greening sectoral and regional policies*

INTRODUCTION

The desire of the authorities to develop a clear and balanced state environmental policy, extrapolating its key goals to industry strategies (primarily for their greening), indicates that those in power are aware of the existence of a global environmental crisis, its possible dangerous consequences, which is very important in modern conditions. Currently, the preservation of the environment, the protection of citizens' environmental rights, ensuring environmental security, etc. are integral components of the national and foreign policy of Ukraine and all states of the world. Moreover, the essence, content, scope, and degree of guaranteeing the environmental rights of citizens are constantly at the centre of attention when determining the strategic vectors of state development. However, their understanding (vision of the depth and urgency of the solution) and consolidation at the legislative level, unfortunately, did not guarantee their security and safety. The above repeatedly confirms that the exercise and protection of citizens 'environmental rights were and remain relevant, especially in the context of establishing environmental law and order, greening national legislation, state policies and strategies for national development, developing citizens' environmental legal awareness, etc. Based on the above, the strategic vectors of national policy (not only environmental policy) should be adjusted to meet the challenges of modern time. Furthermore, it is necessary to dispose of long-term goals, optimise tasks, and clearly define the stages and measures of implementing the state environmental policy (including environmental law as its component), especially considering the consensus on updating the association agreement on systematisation of environmental legislation.

All the above becomes vital due to the fact that, firstly, there are considerable differences between the theory and practice of protecting environmental rights, secondly, these rights are formally recognised and enshrined in legislation, but in fact, they cannot be fully exercised and protected, and thirdly, there is a spread

of environmental and legal nihilism. This is an additional confirmation of the existence of an imbalance, the lack of an effective legal mechanism and an appropriate system of measures to create conditions for the unhindered exercise or restoration of violated environmental rights and satisfaction of interests, their safety, protection, and the development of environmental consciousness and culture.

In view of the above, it seems appropriate to provide general statistical data. Thus, as of 20.03.2020., the European Court of Human Rights (hereinafter referred to as the ECHR, the court) adopted 1.434 decisions stating that Ukraine violated the provisions of the convention for the protection of human rights and fundamental freedoms and its protocols [1]. Notably, in 2019, Ukraine was among the top 3 countries in terms of the number of appeals to the ECHR and the top 5 states in terms of the number of court decisions made on violations of at least one article of the European Convention for the protection of human rights and fundamental freedoms by the country during its entire existence. Admittedly, Ukraine's systematic failure to comply with court decisions causes serious concern [2].

No less considerable is the fact that according to the Rule of Law Index "The World Justice Project: Rule of Law Index 2020", Ukraine ranks 72nd (index 0.51) [3]. In Ukraine, according to the index data, the key problems of ensuring the rule of law are systemic corruption, unfair legal proceedings, and weak law enforcement. According to the Environmental Performance Index in 2020. Ukraine ranked 60th out of 180. Ukraine has the worst indicators in the field of quality of life, conservation of biodiversity and ecosystems [4]. This situation is unfavourable since every human and civil right is valuable only if it receives proper security and protection, which should become the leading concept of national policy and its legal component. Based on this, it becomes clear that there is an urgent need for its improvement, modernisation, especially in the field of management and environmental protection, nature management, adaptation to climate change, and transition to the principles of a "green economy".

Legal aspects of the development of state environmental policy in the field of ensuring the exercise and protection of environmental rights and interests are considered in the studies of Ukrainian specialists – representatives of environmental, land and agrarian law, theory of law, and other branches of knowledge, namely O.S. Hyliaka [5], N.I. Karpachova [6], E.M. Kopytsya [7; 8], T.V. Kurman [9], O.V. Petryshyn [10], Y.V. Shchokin [11], O.V. Donets [12] et al. Notably, the authors of this study also repeatedly addressed the outlined issue, suggested possible ways to solve it, and expressed their own thoughts on this issue. Despite the presence of a considerable number of studies, unfortunately, no compromise has been reached so far, there is no unity of views of researchers, as a result, the mechanism for protecting environmental rights and interests at the legislative level remains imperfect, which complicates law enforcement activities.

Without detracting from the importance and scientific value of the publications of the above-mentioned authors, it is worth noting that in modern conditions, this problem requires further comprehensive study and cognition in the context of a systematic analysis of national sectoral and regional development strategies to improve the system of protecting environmental rights and interests, promoting their security. However, given the limited volume of the publication, it is worth focusing on the fundamental strategies of national policy, the features of greening sectoral strategies for the protection of environmental rights and interests, the subjects of which, along with the state, are public organisations (primarily environmental organisations), local self-government bodies, political parties, etc. (that is, there is a polysubjectivity).

1. MATERIALS AND METHODS

The methodological basis of the research consists of general scientific and special methods of cognition of legal phenomena: historical, dialectical, Aristotelian, system-structural, theoretical-predictive, historical-legal, comparative-legal, comparativist, formal-legal, interpretation of legal provisions etc.

Thus, the dialectical method allowed comprehensively considering and substantiating the natural process of greening national development strategies, creating environmental policy from the standpoint of ecological and legal doctrine and science, considering their dynamics, constant updating, and advancement, and other social factors. The historical method was useful in studying the genesis of state environmental policy strategies in the context of protecting environmental rights, in analysing problems, trends, and prospects for further systematisation of environmental legislation. The use of this method allowed proving that greening is considered, firstly, as a historically determined process, which facilitates achieving a safe state of the environment for human life and health, in particular, by introducing strategic narratives, secondly, as a component of the development of a modern legal space and law and order in the context of European integration.

The use of the system-structural method contributed to determining the place of environmental policy in the architectonics of the national policy system and the legal system; structural-functional – to studying the institutional foundations for ensuring national environmental policy, especially from the standpoint

of protecting environmental and climate rights. The theoretical and predictive method allowed choosing ways and areas for further improvement of the provisions of the national ecological and legal policy and environmental legislation. The comparative legal and comparative methods considered the legal regulation of environmental relations inherent in the legal systems of individual foreign states and investigated the mechanism for protecting environmental and climate rights and interests in the context of state environmental policy. Upon the formal-legal method, the content of individual prescriptions of international documents, the national environmental regulatory framework are covered, judicial practice is analysed, which allowed formulating the author's conclusions and proposals. Considering the fact that it is necessary to examine the established practice of EU countries and international environmental organisations, according to which every five to six years, based on the results of the analysis of the effectiveness of introduction, the strategic goals of environmental policies are reviewed (adjusted), the authors also applied certain methods of logic.

The features and chronology of the development of legislation, based on the prescriptions of which the foundations of the state's environmental policy are established in the context of ensuring environmental rights and interests, are clarified using the historical-legal method. Upon using the normative-analytical method, the interpretation of normative legal regulations and scientific views of specialists was conducted, which became the basis for the development of the conceptual and categorical research apparatus. The use of the Aristotelian (dogmatic) method contributed to the disclosure and improvement of many concepts, allowed defining such legal constructions as “state environmental policy”, “greening of national development strategies”, etc., identifying their inherent features, and provided a complete review of the theoretical and methodological foundations for the development of state environmental policy. The contextualisation allowed substantiating the position that the content and measures for greening national policy depend on historical, social, political, and ideological factors. The mental modelling was useful in designing and modernising legal provisions proposed for making changes to the current environmental legislation, statistical – in proving the negative impact of conflict, inconsistency of environmental legislation provisions on the mechanism of legal regulation of environmental relations in the field of national policy. These methods were used in a relationship, which ensured the completeness of the research and the validity of the formulated conclusions and proposals, allowed proving the need to develop a concept for systematisation of environmental legislation, without which it is impossible to clearly define the legal mechanisms for implementing state environmental policy, while all efforts will seem another attempt to branch out environmental legislation, which is already overloaded with legal regulations. Moreover, the issue of developing a unified concept of legal policy and its component of environmental and legal policy also remains urgent.

2. RESULTS AND DISCUSSION

It is well known that the purpose of any policy is to solve acute and urgent problems. Moreover, this is recognised as the most important and difficult matter in their development. Thus, regarding the development of sectoral development policies, specialists note that social needs are poorly structured, and they are also “not clearly delineated: it is unknown where one problem begins and another ends. They partially overlap, intersect, and collide with each other” [13, p. 89]. As a result, this hinders horizontal coordination in determining the areas and vectors of the relevant policy.

Furthermore, despite the urgency of this problem, since Ukraine gained independence, unfortunately, it has not been possible to find optimal ways to overcome it, although certain positive steps have been taken in this area. Thus, at the legislative level, *four* special legal regulations (*two* of which, based on the name, are strategies, although in content it is advisable to discuss three strategies for the development of state environmental policy), which establish strategic goals and objectives, conceptual foundations of state environmental policy were adopted, namely: the resolution of the Verkhovna Rada of Ukraine “On the Main Directions of the State Policy of Ukraine in the Field of Environmental Protection, Use of Natural Resources and Ensuring Environmental Safety” (1998) [14] (*first*), laws of Ukraine “On the Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the period up to 2020” (2010) [15] (*second*), “On the Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the period up to 2030” (2019) [16] (*third*), the decree of the Cabinet of Ministers of Ukraine “The Concept of the national ecological policy of Ukraine for the period till 2020”, dated 17.10.2007, No. 880-R [17] (which chronologically preceded the Law of Ukraine of 21.12.2010 No. 2818-VI) (*fourth*). Evidently, these documents mostly use the term “state environmental policy”. Notably, the policy is not a source of law, but it has a legal form. Considering this, it is not necessary to identify such legal categories as “national policy” and “legal policy” in the field of ecology, since the former is not always legal, and the latter, in turn, necessarily has its own legal mechanisms for ensuring.

It is also impossible to ignore the fact that before the above-mentioned regulations in the development and implementation of state environmental policy, the regulatory framework was the Law of Ukraine "On Environmental Protection", Section VII. "Environmental safety" of the Declaration on state sovereignty of Ukraine (1990), the resolution of the Supreme Soviet of the Ukrainian SSR "On Declaration of Independence of Ukraine" (1991) and, admittedly, the Constitution of Ukraine (1996), etc. Currently, the marker of changes in the vectors of state environmental policy strategies is precisely the goals and objectives of these regulations, among them: "raising the level of public environmental awareness" (Strategy 2020) and "developing environmental values and principles of sustainable consumption and production in society" (Strategy 2030). Such conclusion was drawn based on the comparative analysis of the provisions of two documents – the laws of Ukraine "On the basic principles (strategy) of the state environmental policy of Ukraine for the period up to 2020" (2010) and "On the basic principles (strategy) of the state environmental policy of Ukraine for the period up to 2030" (2019). In fact, the latter (regarding its goal) is quite controversial, although attractive. It is advisable to recognise it as progressive, but one that requires considerable improvement. Given this, the issue of monitoring the effectiveness and ability to achieve the goals, compliance with their achievement for timely adjustment, is now becoming particularly relevant.

Thus, when developing national development strategies, it is necessary to first focus on finding new approaches and rethinking the place in them of vital high social values, such as state and territorial sovereignty, protection of human rights, and the Rule of Law [7, p. 169; 13; 18], which have been mentioned in the study. This is also of particular importance due to the fact that reducing environmental risks and minimising their impact on ecosystems, socio-economic development, and public health; the establishment of environmental values and principles of sustainable consumption in society in the new strategy are proclaimed the strategic principles of state environmental policy. Notably, the problematic aspects of implementing the ecosystem approach as an element of the right to a safe environment for life and health were studied by Y.P. Suietnov [19].

Regarding the issue of greening national sectoral development strategies and ensuring the protection of environmental rights and interests of subjects, it seems appropriate to recall that a large number of strategies, concepts, doctrines, etc. have been developed and adopted in Ukraine over the past decades. This is what gives grounds to discuss a frenzied legislative boom, given that the tendency to "fetishise" laws has fully manifested itself in this area, and legal mechanisms are being replaced by law to a large extent to achieve certain political, but actually groundless, socially unmotivated, and often even purely private goals. Nevertheless, the study and analysis of their content allow asserting that now greening is considered as a area of national policy, its fundamental principle, and a method.

Thus, the radical reform of the system of environmental management of protection and use of natural resources and complexes declared within the framework of greening will contribute to the achievement of the SDG (namely, goal 16 to ensure access to justice for all and build effective, accountable, and inclusive institutions), guarantee citizens the constitutional right to a safe environment for life and health, and implement European standards, including access to justice on environmental issues. In fact, all this is reflected in the decree of the president of Ukraine "On the Goals of Sustainable Development of Ukraine for the period up to 2030" [20] of 30.09.2019, No. 722/2019, in the National Economic Strategy for the period up to 2030 [2], which proclaimed the interaction of society on the principles of environmental friendliness and gender equality for the dissemination and protection of generally recognised human values, and in the three-year strategy for the development of the justice system and constitutional court proceedings, approved by the decree of the president of Ukraine from 11.06.2021 No. 231/2021 [21], the purpose of which is to improve the activities of justice institutions, modernise the system for protecting the rights and interests of citizens, including environmental ones.

Furthermore, there are recently put into effect strategies (it refers to such as the development of the justice system and constitutional court, foreign policy activities, military security, in the field of human rights, national youth, national economic, digital transformation of the social sphere, national security of Ukraine, regional development, biological security and biological protection, the development of exports of agricultural products, food and processing industry, the development of innovation, assistance in attracting private investment in agriculture, irrigation and drainage in Ukraine for the period up to 2030, etc). In addition, many strategies and concepts of environmental orientation have been adopted (environmental safety and adaptation to climate change for the period up to 2030 (2021), implementation of national policy in the field of industrial pollution (2019), on combating land degradation and desertification (2014), implementation of national policy in the field of climate change for the period up to 2030 (2016), etc.), and the national target social programme "Drinking Water of Ukraine" for 2022-2026 (2021), national target technological space programme of Ukraine for 2021-2025 (2021), etc., which determine the vectors of the state's movement towards greening.

Continuing to consider the issue, the resolution of the Verkhovna Rada of Ukraine "On the Principles of State Policy of Ukraine in the Field of Human Rights" of 17.06.1999, No. 757-XIV [22], which, based on the provisions of the Constitution, the Universal Declaration of Human Rights (1948), the convention for the protection of human rights and fundamental freedoms (1950) and its protocols, ratified by Ukraine, for the first time enshrined the principles and main areas of national policy in the field of human rights. It is important that the resolution reflects that Ukraine seeks to ensure that human rights and freedoms, their guarantees determine the content and area of the state activity. Notably, in the National Strategy in the field of human rights, approved by the Decree of the President of Ukraine of 25.08.2015 № 501/2015 (Decree expired based on the Presidential Decree of 24.03.2021 № 119/2021), and in the Action Plan on the implementation of the National Strategy in the field of human rights for the period up to 2020 [23], approved by the order of the Cabinet of Ministers of Ukraine dated 23.11.2015 No. 1393-r. (which expired on December 31, 2020), environmental rights, unfortunately, have not been singled out as an independent category (unlike the current Strategy). Currently, there is a new national strategy in the field of human rights [24], which was developed to solve and respond in a timely manner to systemic problems in this area in the context of modern challenges facing society [25], including, as noted earlier, the climate crisis, the impoverishment of biological diversity. Based on this, it seems quite logical and reasonable that the 15th strategic area of this strategy is to ensure environmental rights. In addition, the separation of this area indicates that the legislator considered the requirements of Articles 16 and 50 of the Constitution of Ukraine and articles 9 and 10 of the Law of Ukraine "On Environmental Protection". Moreover, according to the strategy, the state plans to make every effort to solve (or rather eliminate) the following main problems: a) anthropogenic impact on the environment that threatens human health; b) low level of control over compliance with the legislation on environmental protection; c) ignorance of the population about environmental rights, mechanisms for their exercise and protection. Considering the globality and the importance of urgently correcting the situation, it is relevant to introduce a new environmental protection area of national policy, defining it at the national level as a priority in the field of guaranteeing and respecting human rights. However, the tasks that will contribute to the achievement of the purposes, unfortunately, require to be considerably improved, because they are written in a declarative, non-systematical manner and do not cover all existing levers of influence on the creation of an effective mechanism for the exercise, protection, legal protection of environmental rights, etc. Moreover, this also affects the expected results and key indicators.

Despite the existence of certain inconsistencies and shortcomings in fixing key goals and objectives, expected results and key indicators, their consolidation in the national human rights strategy should still be considered as a positive step in the development of the environmental rights system. In particular, from the standpoint of their official recognition (as an independent type/group) and their consideration as a strategic area of national policy, the desire to guarantee and hope for the possibility to protect them effectively. Otherwise, there is no point in waiting for the best because violations of environmental rights can cause consequences for the life and health of modern and future generations that are diverse in scale and prevalence, harm to the environment. An example of this is the Chernobyl disaster, which in the recent history of Ukraine for the first time raised the problem of environmental migration of affected citizens, due to which the development of a national mechanism for the legal regulation of internal forced environmental migration actually began.

It is worth giving another example. As is known, in the occupied territories of Crimea and eastern Ukraine there is a crisis environmental situation, since almost all components of the natural resource potential of Ukraine have been damaged. Many national and international institutions and organisations recognise that the armed conflict, which is still ongoing, has caused an environmental catastrophe, which is manifested in aggravation of the water crisis, the destruction of unique natural landscapes, recreational potential, etc. Under the influence of these negative phenomena, previously unknown categories are developed, namely the rights of environmental and climate refugees. It is worth emphasising that forced migration of the population is now a common problem for many countries (although the reasons may vary). Notably, the term "environmental refugees" was introduced into public discourse back in 1985 by a UNEP employee, El Hinnaoui, who suggested that this term should be understood as persons who are forced to temporarily or permanently leave their place of residence due to considerable environmental violations (natural or human-caused) that endanger their existence and seriously affect their quality of life. Through the use of this term and its expansion, "climate refugees", "climate migrants", "temperature refugees", "environmental migrants" etc. have emerged, which, although used depending on the context, are inherently identical and characterise an important trend in the movement of the world's population at the beginning of the third millennium.

It is noteworthy that at least during the discussion of the draft Presidential Decree already mentioned above "On the national strategy in the field of human rights", the Directorate of strategic planning and

European Integration of the Ministry of Justice of Ukraine held a meeting via videoconference on 19.05.2020, with the participation of representatives of the Ministry of Environmental Protection and Natural Resources of Ukraine, public and scientific environmental community to consider the issue of including environmental/climate rights of refugees in it. Special attention should also be paid to the fact that emphasis (considering new challenges) was placed on supplementing the area of "Ensuring the rights of refugees and persons in need of additional protection, including foreigners and stateless persons who are legally in Ukraine" with the rights of climate refugees, and the area "Protecting the rights of internally displaced persons" with the rights of internal climate refugees. Despite this, this issue is still open, because so far, the proposals submitted and discussed have not been legislatively consolidated in the current National Human Rights Strategy.

This suggests that climate rights should be considered as an institution (and not only in the context of the rights of migrants/refugees), which is at the stage of development. It is worth explaining the given position. First, the rights and regulatory framework for their provision are currently at the stage of development (it refers to the fact that legislation is being developed mainly in the field of adaptation to climate change and compliance with environmental safety requirements, prevention of environmental risks), secondly, it (the institute) is in close connection with the institute of environmental rights, moreover, climate rights correlate with environmental rights, which constitute a comprehensive intersectoral institute of environmental law and legislation. Based on this, the climate rights of not only a person/citizen but also the people/humanity can be discussed, which means that it should also be considered as a complex intersectoral institute in the future. Furthermore, as already mentioned above, these rights, and most importantly, their provision, are very important for all of humanity, especially from the standpoint of responsibility to future generations. The above is quite consistent with the sustainable development goals and is one of the fundamental concepts of the present time.

For the completeness of consideration of the issue of environmental/climate refugees, it should be noted that it has repeatedly been the object of research and discussed at scientific and practical conferences. It is impossible to ignore the fact that when analysing factors that potentially affect the development of international migration processes, in legal science, along with the reference to military-political instability (which is indirectly covered), population poverty, an increase in the unemployment rate in the world, etc., environmental problems and climate disasters are highlighted [26, p. 183]. Moreover, climatic and environmental conditions, as a rule, are attributed to internal factors according to the model of attraction/repulsion factors (E. Li) [27]. Given this, ecological migration in modern conditions is separated by many researchers into an independent group. In addition, researchers also analysed the impact of global environmental problems and environmental risks on "sustainable economic development" [28; 29], the state of introduction of its model in accordance with the Kyoto Protocol, and the prospects for introducing the Paris Agreement, which replaced it. Moreover, some aspects of ecological migration are covered in studies, monographs, and dissertation research conducted recently by the following authors: K.V. Shymanska [26], N.P. Pavlov-Samoil [30], M.M. Sirant [31], V.I. Olefir [32] et al.

It is worth returning to the essence and interpretation of the "environmental migrant", mentioned above. Firstly, it was used by the International Organisation for Migration, which proposed the following definition: "environmental emigrants are persons who, due to sudden or gradual changes in the environment that negatively affect their living and health conditions, are forced to leave their homes or plan such actions and temporarily or permanently seek shelter within their country or abroad. All persons who migrate for environmental reasons are protected by international human rights law" [33]. In fact, this means that all national development strategies, namely economic, environmental, security, migration etc, environmental policy, modern national policy in general, should be focused on the introduction of a system to protect the population from the potential consequences of environmental disasters to reduce the risks of factors that strengthen migration processes, etc.

Regarding this issue, it is crucial focus on the Inter-American Court of Human Rights, namely, complaints of individuals, groups of individuals, and organisations about violations of their rights guaranteed by the American Declaration of the Rights and Duties of Man (1948), the American Convention on Human Rights, and other Inter-American human rights treaties submitted to the Inter-American Commission on Human Rights. In addition, when creating an effective system for the protection of environmental and climate rights, an integral role was played by cases that were considered by the Commission in the context of the connection of human rights violations with climate change (the cases of Mayagna (Sumo) Awas Tingni v. Nicaragua [34], Athabasques v. Canada [35], Inuit v. The United States [36]).

There is also a practice of filing lawsuits in the EU countries. Thus, for many of them, a kind of signal should be the fact that Germany, France, Ukraine, and 29 other states will have to provide explanations to the European Court of Human Rights (ECHR) related to the claim of a group of young Portuguese people for

climate protection. It refers to the fact that on 30.11.2020, the ECHR accepted the specified climate claim for consideration. Judges in Strasbourg will consider the complaint of six young Portuguese people aged 8 to 21 on a priority basis. As it became known, the lawsuit, among other things, refers to the emissions of greenhouse gases by the respondent states that affect global climate change. The plaintiffs claim that the devastating forest fires in Portugal in 2019 were partly caused by the insufficient implementation of the Paris climate agreement in Europe. According to the plaintiffs, the governments of the accused countries were inactive (that is, they did not take appropriate and necessary measures) in the fight against climate change, in particular, severe droughts, because of which the agriculture of this state faced the problem of water shortage [37]. Legal support for the plaintiffs was provided by the British non-governmental organisation Legal Action Network. The claim of the Dutch Foundation Urgenda [38], which forced the government to reduce the number of coal-fired power plants, should be recognised as most successful and considerable. Thus, based on the above, it seems necessary to emphasise that according to the Sabin Centre for Climate Change Law and Arnold & Porter Kaye Scholer LLP, 1,444 such cases were registered in accordance with the climate change legislation as of January 2020 [39].

It is worth focusing on one more positive point. Thus, the German Constitutional Court granted the claim of eco-activists (including Fridays for Future, founded by Greta Thunberg), which demanded that the government tighten the requirements of the climate protection law adopted in 2019. As is known, on April 9, 2021, The German Constitutional Court ruled that the mentioned law is partially unconstitutional, in particular, it postpones the period of reduction of harmful emissions until 2030 without explanation and does not specify exactly how the state plans to achieve this. According to the court's decision, the German government was given time (more precisely, until the end of next year) to finalise the law and tighten its requirements [40]. Notably, the claim states that their "*fundamental right to a civilised future*" was violated due to the fact that the law provides for an insufficient number of measures to reduce greenhouse gas emissions and counteract climate change. Hopefully, similar actions and court decisions will appear in Ukraine, considering the fact that Articles 3, 16, and 50 of the Constitution are provisions of direct action.

This conclusion is made in view of the fact that today Ukraine has adopted many laws and strategies that provide for the implementation of projects to reduce carbon emissions, such as: Energy strategy for the period up to 2035, Strategy of the state environmental policy of Ukraine for the period up to 2030, Low-carbon development strategy, Action plan on energy efficiency and renewable energy sources, National plan to reduce emissions of pollutants from large combustion plants, Law on the basics of monitoring, reporting and verification of greenhouse gas emissions, etc. It is noteworthy that all these documents stipulate that Ukraine should start many important projects in the field of countering climate change. However, in practice, everything is not the same as on paper, the reason for which is the imperfection of tools for implementing strategies, and as a result, there is no real reduction in greenhouse gas emissions.

To summarise, certain steps have been taken in Ukraine to eliminate climate threats and ensure climate rights. Namely, on the one hand, the ratification by Ukraine of the Paris Agreement, the UN Framework Convention on Climate Change, the Association Agreement between, and the European Union, on the other hand, the European Atomic Energy Community and its member states, the adoption of the concept of implementing national policy in the field of climate change for the period up to 2030 [41], including the action plan for it (2017), the adoption of the long-awaited strategy for environmental security and climate adaptation (2021), etc., which lay the foundation for the development of a system for protecting climate rights, although mostly for the future. However, despite all these attempts to reintroduce an extensive regulatory framework, Ukraine continues to lose its position in the Climate Change Performance Index 2021 policy rating, currently being on the 20th place [42], and the reasons for this lie in the fact that, as already mentioned, at present, a comprehensive coordinated policy on adaptation to climate change in various sectors of the economy and public life has not been developed, while industry strategies, policies, and plans are not coordinated with climate planning documents, there are no plans for adaptation to climate change.

CONCLUSIONS

In view of the above considerations, the following conclusions and generalisations about the development of state environmental policy through the prism of ensuring environmental rights and interests can be proposed.

First, the extrapolation of the fundamental goals of state environmental policy into national development strategies, sectoral policies (their greening) should be scientifically based and have a reasonable methodological basis.

Secondly, strategic planning of the state environmental policy should become balanced, methodologically reasoned, with an outline of problems (especially those that may arise in the future) and ways to solve them, a long-term vision; it should set tasks and evaluate obstacles that hinder the implementation of development strategies, include the desire to coordinate development vectors and make

appropriate decisions, proper legal support. A special place should be given to monitoring the performance and evaluation of the results of the activities.

Third, there is a certain logic in the fact that in modern conditions in many strategies, concepts, and doctrines of the development of Ukraine, greening is considered as a multidimensional phenomenon, since it acts as: (1) the leading vector of national policy development strategies; (2) the fundamental principle and (3) the method of national policy; (4) a component of the development of a modern legal space in the context of European integration; (5) an element of modern law and order; (6) a component of modern legal awareness; (7) the constitutional obligation of the state; (8) a system of appropriate measures aimed at preserving and restoring the constancy of ecosystems, ensuring environmental safety requirements in the process of economic activity and production, security, and protection of environmental rights, interests, etc.; (9) a historically determined process, which allows achieving a safe state of the environment for human life and health, in particular, by introducing strategic narratives, namely, an ecosystem approach to all areas of socio-economic development of Ukraine and an environmentally balanced nature management, restoration and preservation of natural ecosystems, etc. Based on this, the object of further research, admittedly, should be the features of not only the greening of national policy but also the national legal system and legislation, legal relations.

Fourth, the disadvantage of strategies, principles, concepts, doctrines developed in Ukraine is the fact that they do not correlate with each other, do not have a clear definition of priority issues directly related to climate change, ensuring environmental safety of the population, protecting the environment, environmental rights and interests. In general, the state environmental policy is a component of the national policy, which fixes its strategic goals and objectives (that is, their legislative consolidation), defined for the future, considering the constancy of ecosystems, biological and landscape diversity, the level of public health, anthropogenic impact on the environment, environmental risks, etc. through the development and use of certain mechanisms, a set of means and measures, including legal ones.

RECOMMENDATIONS

Based on the results of the study, it is necessary to consider the established practice of EU countries and international environmental organisations, according to which every five to six years, based on the results of the analysis of the effectiveness of introduction, the strategic goals of environmental policies are reviewed (adjusted). In this regard, it is appropriate to review the modern strategy of state environmental policy, which primarily concerns changing the name (from the standpoint of the semantic approach to "fundamentals" and "strategies"), lexical and etymological interpretation of the term "environmental policy", the definition of its content component and internal differentiation, a clear definition at the legislative level of the procedure for developing, updating state environmental policy, and especially the coordination of strategic development vectors and corresponding tasks. In addition, legal liability for its improper performance should be indicated.

Furthermore, at the legislative level there should be clear mechanisms for legal support for the integration of environmental policy into sectoral, national, and regional strategies, local action plans; interaction with civil society institutions, the scientific community should be real, and not exist (prescribed) on paper, the expert activity of lawyers should be considered, especially when developing strategic vectors of state environmental policy. It is also necessary to develop a concept of systematisation of environmental legislation, without which it is impossible to clearly outline the legal mechanisms for implementing state environmental policy, otherwise all efforts will seem like an attempt to branch out environmental legislation, which is already overloaded with legal regulations. Furthermore, the issue of developing a unified concept of legal policy also remains urgent.

It is also necessary to identify the form of systematisation of environmental legislation. Recently, many approaches to it have been proposed and scientifically substantiated, such as: adoption of the Ecological Code of Ukraine, Fundamentals of Environmental Legislation of Ukraine, Code of Environmental Laws, Code of Laws of Ukraine on Safe Environment, etc. Considering the above, it is advisable to combine the efforts of the environmental community to coordinate and choose the form of its implementation and determine the principles of environmental and legal policy. Therewith, environmental rights, interests, and obligations should be considered as a system-developing factor, a value guide for the development of ecological and legal science, doctrine, policy, and legislation (especially during its systematisation).

When starting to codify environmental legislation, it is worth remembering that it is innovative, since it has not yet acquired a certainty and objective readiness in its content, although its implementation is already socially determined. The preparation of the codified act will be an attempt to solve a number of problems of legislative regulation of environmental relations, the rejection of fragmentary modernisation of environmental legislation and the transition to its systematic updating. The outlined points should become a strategic vector for modernising the tasks of modern environmental policy.

Therewith, an integrated approach to the development of state environmental policy should be maintained, based on systematic, continuous greening of national development strategies, integration of state environmental policy into others. However, it should be remembered that the main threat is the possibility of "blurring" it in the problems of other sectoral policies, therefore, the environmental component of national policy, development strategies should not remain only a declaration, a beautiful and bright slogan with a European connotation, but should perform its own functions, such as ideological, doctrinal, law-making, law-enforcing, right-exercising, etc., which is a crucial aspect. Environmental rights and interests should be ensured in the legal aspect and in the political, economic, social, and ideological aspects. Only under such conditions will their proper provision in national development strategies become an effective tool not only for their exercise but also for their protection. Thus, ensuring the security and protection of environmental rights of modern and future generations depends on how effective and balanced the modern state environmental policy will be and how perfect will the national legislation be.

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Suggested Citation: Getman, A.P., & Anisimova, H.V. (2021). National development strategies in terms of ensuring environmental rights and interests: Comparative approach. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(4), 250-261.

Submitted: 15.08.2021
Revised: 24.10.2021
Accepted: 30.11.2021

УДК 343.2
DOI: 10.37635/jnalsu.28(4).2021.262-269

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ОБ'ЄКТ КРИМІНАЛЬНОГО ПРАВОПОРУШЕННЯ: СУЧАСНІ ТРАКТУВАННЯ

Анотація. *Боротьба правоохоронних та судових органів сучасної правової держави, а також всього суспільства з проявами злочинності неодмінно пов'язана з необхідністю поглибленого дослідження злочинів (далі – кримінальних правопорушень), їх суті, структури складових системних елементів, форм зовнішнього прояву, що є обов'язковою умовою розробки новітніх ефективних засобів протидії кримінальним правопорушенням. Серед вказаних проблем особливе значення має об'єкт кримінального правопорушення, який суттєво впливає на визначення соціальних властивостей правопорушення, значною мірою обумовлює їх фактичні об'єктивні та суб'єктивні ознаки. Між тим серед науковців немає єдності у трактуванні об'єкта правопорушення. Тому ця проблема є ще недостатньо розробленою. Метою дослідження є науковий аналіз сучасних поглядів на об'єкт кримінального правопорушення та встановлення науково-обґрунтованого змісту і суті цього поняття. Задля досягнення поставленої мети були використанні такі методи: діалектичний, історико-правовий, догматичний, компаративний, системно-структурний, юридичної герменевтики. В статті було проаналізовано існуючі наукові підходи (позиції) щодо визначення об'єкту кримінального правопорушення, які були систематизовані та зведені до двох узагальнених груп: 1) онтологічна, до якої віднесені позиції, що визнають об'єкт злочину (кримінального правопорушення) як охоронювані кримінальним законом суспільні відносини у різних модифікаціях; 2) аксіологічна, до якої віднесені трактування об'єкта як цінності та споріднені визначення: благо, та інтереси людини. Автори зробили аргументований висновок, що об'єктом кримінального правопорушення виступають суспільні відносини, що виникають і існують у суспільстві з приводу його соціальних цінностей, які охороняються законом про кримінальну відповідальність*

Ключові слова: *об'єкт (предмет) суспільних відносин, кримінальне правопорушення, цінності, онтологія, аксіологія*

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OBJECT OF CRIMINAL OFFENCE: MODERN INTERPRETATIONS

Abstract. *The struggle of law enforcement and judicial bodies of the modern rule of law, as well as the entire society with the manifestations of crime is necessarily connected with the need for an in-depth study of crimes (hereinafter referred to as criminal offences), their essence, the structure of the constituent system elements, forms of external manifestation, which is a prerequisite for the development of the latest effective means of countering criminal offences. Among these issues, the object of a criminal offence is of particular importance, as it has a significant impact on the determination of the social characteristics of the offence and largely determines its actual objective and subjective characteristics. Meanwhile, there is no unity among scientists in the interpretation of the object of offence. The problem has therefore not yet been sufficiently studied. The purpose of the study is a scientific analysis of modern views on the object of a criminal offence and the establishment of a scientifically based content and essence of this concept. To achieve this goal, the following methods were used: dialectical, historical and legal, dogmatic, comparative, system-structural, legal hermeneutics. The article analysed the existing scientific approaches (positions) regarding the definition of the object of a criminal offense, which were systematised and reduced to two generalised groups: 1) ontological, which includes positions that recognise the object of a crime (criminal offence) as protected by criminal law public relations in various modifications; 2) axiological, which includes the interpretation of the object as values and related definitions: benefits, and individual interests. The authors made a reasoned conclusion that the object of a criminal offence is social relations that arise and exist in society about its social values, which are protected by the law on criminal liability*

Keywords: *object (subject) of public relations, criminal offence, values, ontology, axiology*

INTRODUCTION

The fight against crime requires an in-depth study of crimes (hereinafter referred to as criminal offences), establishing their essence, structure, constituent elements, forms of external manifestation, etc. [1, p. 1-11]. Among these issues, the object of a criminal offence (misconduct or crime) is of particular importance, which significantly affects the social properties of the offence (public danger), largely determines the actual objective and subjective signs [2, p. 166-183]. Meanwhile, there is no unity of views among scientists in the interpretation of the object, and therefore this issue should be recognised as insufficiently studied. The conducted in-depth analysis of the scientific positions expressed in the literature on the definition of the object of a criminal offence made it possible to systematise them into two groups: ontological and axiological, considered their correlation and reasonably formulated their own position.

A large group of specialists not only in the sciences of the criminal cycle, but also legal theorists, philosophers, representatives of legal logic, etc. was engaged in the development of the issue of the object of a criminal offence (crime) both at the general theoretical and pragmatic-applied levels. Among them, special attention should be paid to the works of S.S. Alekseev [3], V.N. Vinokurov [4], V.K. Glistin [5], Yu.A. Demidov [6], A.G. Zdravomyslov [7], E.I. Kairzhanov [8], N.I. Korzhansky [9], P.S. Matyshevsky [10], B.S. Nikiforov [11], V.Ya. Tatsiy [12], E.V. Fesenko [13], E.A. Frolov [14], T.D. Lysko [15], L.S. Yavich [16], O.G. Danilyan [17], A.P. Dzeban [17] and other scientists.

The content of the discussion on modern interpretations of the object of a criminal offence (misconduct or crime) indicates that there are a significant number of opposite views in the literature about the same object of knowledge – the object of a criminal offence (misconduct, crime). Thus, a fairly common and dominant position is that the object of a criminal offence (criminal misconduct or crime) is the social relations protected by criminal law against criminal infringements. In various interpretations, this approach is the basis for justifying the essence and socio-legal significance of an object, as well as its social properties and public danger. At the same time, the interpretation of an object as a good or social value or the interests of a person to whom a criminal offence causes or threatens to cause significant harm has become widespread and recognised. The authors of each of these points of view consider them as having the properties of fundamental and independent theories or concepts that differ significantly from others and reveal to a greater or lesser extent the content and essence of the object.

However, despite the differences in these scientific positions, all of them can generally be systematised and reduced to two generalised groups. The first group is ontological and includes positions that recognise the object of a criminal offence (misconduct or crime) as social relations protected by criminal law in various modifications. The second group is axiological and includes the interpretation of an object as a value and related definitions: benefits and interests of a person. However, these groups of positions defining the object of the criminal offence are not diametrically opposed and therefore can not be considered as having nothing in common and uniting them, because it is well known – ontological (phenomena of reality) can not be considered and known completely without analysis of the axiological (value) factor. It is necessary to consider these groups of scientific positions separately in order to establish the features by which these groups of positions differ and by which they are similar to each other or even coincidence in their individual features (attributes).

The essence of the first (ontological) group of scientific positions is that the object of a criminal offence is defined as social relations (in their various modifications) to which the offence causes significant harm or puts them at risk of causing such harm. Social relations are not a static unit, since they are always in a dynamic development with changes that occur in society due to various factors, and above all, scientific and technological progress.

The second (axiological) group of scientific positions on the definition of the object of a criminal offence defines it as "value" or related categories of "benefit", "interest". These categories are closely related to each other and are logically found in intersection relations. But the most extensive of them is the category of "value", which is widely used in philosophical, sociological and legal literature to determine the social, economic and cultural significance of certain phenomena or objects of reality. This is a specific social purpose of objects of real reality, in which their positive or negative significance for people and society (welfare, good, evil, beautiful or ugly) is revealed, which constitute the essence of objects and phenomena of social life.

The purpose of the study is to analyse modern scientific approaches to the interpretation of the object of a criminal offence and establish the actual content of this extremely important concept for the science of criminal law. The aim of the research is to develop the authors' own reasoned position on the concept and content of the object of criminal offence based on contemporary scientific knowledge, using general scientific methods of cognition of social and legal reality.

1. MATERIALS AND METHODS

To fulfil the research objectives and achieve this goal, the authors in the course of their work relied on general scientific and special methods of scientific knowledge used in legal science [18, p. 170-183]. Dialectical method is a system of rules (requirements) formulated on the basis of knowledge of the regularities of the studied areas of reality. The main principles of the dialectical method of cognition are the following: the principle of reflection and comprehensiveness, the principle of activity, the unity of induction and deduction, as the basis of the principle of convergence from the individual to the general and vice versa, the principle of interrelation of qualitative and quantitative characteristics, the principle of determinism, the principle of historicism, the principle of contradiction, the principle of dialectical negation, the principle of convergence from the abstract to the concrete, the principle of unity of historical and logical, the principle of unity of analysis and synthesis. This method made it possible to find the content and correlation of such system-forming categories as social relations, benefit and value, which are widely used in the study of the object of an offence. The legal-historical method of research is a fundamental tool for learning about public phenomena and actions. Its essence is to study all phenomena and processes in the dynamic development, formation and in connection with specific stages of the history of society. This allows to gain knowledge about events, phenomena, legislative resolutions, and legal practices that existed in different periods of the human community's life, and draw appropriate theoretical conclusions. An important technique of the historical method is a scientific (imaginary) reconstruction of past events in order to form the most complete picture of them in the specifics

of time and space. As a result, an information basis is created for conclusions about certain historical patterns (patterns in the origin and development of a particular object), which is already the subject of history. Using this method, the authors of the article traced the origin, development and transformation of the ideas of forensic scientists regarding one of the main elements of a criminal offense - its object in relation and relationship with other mandatory elements: the objective side, the subject, the subjective side. The formal-logical (dogmatic) method has a universal character and makes it possible to determine the compliance of the construction of criminal law norms with the laws and rules of formal logic. Logical techniques are directly related to legal sciences, because the knowledge of concepts and categories of jurisprudence is carried out through an appropriate thought process, in which logical methods, as separate techniques of human thinking, should always be used in the study of criminal law phenomena, despite the use of other scientific methods in the research process.

Through the use of the formal-logical (dogmatic) method, the content of a number of concepts (definitions) constituting the content of the doctrine of criminal offence in general and its object in particular was revealed. The comparative-legal (comparative) method became the basis for comparing two main and different conceptual approaches to the interpretation of the essence and content of the object of a criminal offence (crime). The method of system-structural analysis is carried out in order to study the statistical characteristics of the system by identifying subsystems and elements of different levels in it and determining the relationships and connection between them. The objects of research of system-structural analysis are various variants formed in the process of decomposition of a system of structures. The system-structural method of analysing the phenomena of reality was used to analyse the content of social relations as an integral, internally determined system object with a corresponding complex structure and the relationships between its mandatory (unchangeable) elements. The method of legal hermeneutics, along with the semantic method, was applied to provide optimal methods for presenting author's positions using language and sign units in accordance with the subject of research.

These methods were used in unity and interrelation with ontological and axiological approaches, which contributed to the completeness of scientific research and the validity of the formulated recommendations and conclusions.

2. RESULTS AND DISCUSSION

Representatives of the so-called ontological group (the doctrine of being, of essence) [19, p. 458] consider social relations as objectively existing and relatively stable various connections that arise and exist between social groups, classes, nations, peoples, states, as well as within them in the process of their economic, social, political and cultural life. They determine the characteristics of the relevant society, its qualitative characteristics and social essence [20, p. 143-149] the structural component of public relations always appears in the form of three mandatory elements: 1) subjects (carriers) of public relations; 2) the subject or phenomenon (material or ideal), about or due to which these relations arise, function and change; 3) social connection in a dynamic or static form between subjects with correlating mutual rights and obligations in relation to the subject as an element of the content of public relations. Dynamic connection is expressed in the corresponding activities of participants (subjects) of public relations. Static communication is characterised by a relatively stable position of subjects among themselves and in relation to the subject of the relationship. However, it is always the result of a preliminary, dynamic connection [17, p. 24-33; 21, p. 457-473]. And, if the first form of communication is always active behaviour of subjects of public relations, then the second is realised in passive behaviour, the content of which is manifested in preserving (providing) the opportunity to exercise rights and obligations in relation to the relevant subject of relations. Moreover, the structure of social relations is not just the sum of its constituent parts, but a system of interrelated and interacting elements that are in organic unity. Therefore, causing harm in the commission of a criminal offence to at least one of its elements means causing harm to public relations (object) as a whole [22, p. 27-60].

For a more in-depth clarification of the content of public relations as an object of a criminal offence the science of criminal law has developed a classification of objects, which is based on the ratio of the philosophical categories “general”, “special” and “individual”. On this basis, objects are divided into: a) general; B) generic; C) direct. The direct object, in addition, is arguably divided into direct main and direct additional objects, and the direct additional, in turn, into additional mandatory and additional optional. The developed classifications provide an opportunity to specify the object that is essential for its in-depth study, establishing the nature and degree of harm caused to legally protected public relations and, accordingly, correctly and with the necessary completeness assess and establish the nature and degree of public danger of the committed criminal-illegal act, which is the basis for solving extremely important problems of criminalisation and penalisation of socially dangerous acts in legislative activity. This classification is

of great importance for the construction of criminal law norms and the systematisation and classification of criminal offences. In particular, the basis for classifying the norms of the special part of Criminal Law is the generic object of criminal offences, and the systematisation of norms within the sections of the special part is carried out by the direct object [23, p. 124-140].

Thus, the interpretation of the object of a criminal offence as public relations protected by criminal law from socially dangerous encroachments provides an opportunity to establish its content and structure, the nature of the harm that a criminal-illegal act causes to these relations, ultimately - to a person (individual or legal), society, the state and thus determine the social danger of this offence. In turn, the analysis of the public danger of an act makes it possible to draw a conclusion about its orientation to a particular group of public relations, show their relationship, identify the mechanism of causing harm to the object, and thus reveal the essence and content of a criminal offence not only as a criminal-legal, but also as a socio-legal category [24, p. 131-140]. At the same time, it should be noted that the definition of the object of a criminal offence as public relations still has a rather abstract character, does not contain its specific characteristics and definitions from the point of view of an axiological (value) approach: what is the existence and functioning of public relations; does not provide a complete picture of the nature and essence of the harm caused to public relations, and therefore the content, nature and degree of public danger of criminal offences, especially at the level of individual criminal offences, including those that encroach on life, health, human honour and dignity [25, p. 2895-2902].

Scientists who are on the axiological position (the doctrine of value) [19, p. 763], when interpreting the object of a criminal offence, believe that social relations are too abstract a category and can not always be considered as an object. External values act as immanent properties of objects or phenomena, and are inherent in them (objects, phenomena) not only by nature and not only due to the structure of the object itself, but mainly because they are included in different spheres of human social existence, that is, different spheres of social relations. Values for a person serve as an object of their interests, in their consciousness they play the role of everyday guidelines in subject and social activities, designations of their various practical attitudes to surrounding objects and phenomena of reality. Both in terms of content and volume, the category of "value" largely determines the related categories of "benefit" and "interest".

Considering the benefit as an object of a criminal offence, scientists in general theoretical terms connect this concept to denote a positive value that has a material or non-material character and is able to meet the needs of subjects of public relations: people, society, and the state. Benefit is a metaphysical understanding of the value that expresses the state of fulfilled existence as the goal of human aspirations. In general, the concept of "benefit" is the most general, positive universality for denoting positive value, as well as certain objects, phenomena, entities that meet the needs, interests, goals and aspirations of people [19, p. 55].

Need is a state caused by dissatisfaction with the desires and requirements of the subject necessary for one's life, and is aimed at eliminating this dissatisfaction [19, p. 518-519]. The need can arise and exist in various spheres of human life: biological (food), social (self-expression through work, speeches at rallies [26, p. 3-24]), spiritual (love, friendship), etc. The richer, more diverse, more developed the life of a society, the richer, more diverse, more developed are the needs for certain values and benefits of its participants. Money, gold, and other means of payment as values and goods can meet the needs of people only in cases where there is an objective possibility for the latter to use them for their actual purpose, which is possible only in the system of certain relations [27, p. 13-19]. Therefore, benefit becomes a value for people only if this value meets the needs within the existing social relations.

Benefit as a value is not only a qualitative indicator, it is also characterised by a quantitative indicator. Thus, the category of "security", as a state of protection of public relations from various threats of causing harm to the individual, society, the state, and in some cases, even humanity, is undoubtedly a value and certainly benefit. However, national security, production security, nuclear or radiation safety differ from each other precisely in quantitative indicators. This quantitative indicator directly depends on the attitude of subjects of public relations to the benefit (value), which is the subject of relevant public relations and can be considered not by itself, but only in a set of mandatory structural elements of these relations.

Some objects, phenomena of objective reality, which are the subject of social relations can sometimes play a variety of value roles and act as a benefit (value) or as a negative phenomenon (as an anti-value), which depends on what qualities they possess and to the system of which social relations belong as elements of the structure of the latter, for example, weapons, explosives, narcotic drugs, pornographic products, etc. Therefore, along with the category "benefit" ("value", "good"), there is a paired antonymic category "evil", which means negative value (anti-value, anti-benefit) in respect of which there are corresponding social relations characterised by the presence of static connections between the subjects of these relations, which constitute their need and interest. The commission of active criminal-illegal actions in relation to these and other objects

that have negative (harmful) properties and violation of their legal regime (status) always means causing harm to the interests of subjects of social existence and the object of criminal legal protection as a whole.

So from the above, it follows that the definition of the object of a criminal offence using only categories [28, p. 142-154] "value" and "benefit", even "interest" has an incomplete and in many ways, according to the authors of this article, narrowed (limited) character, since values and benefits, as well as interests, the content basis of which are the corresponding values, always show their inherent qualities not by themselves, but only in the conditions of social reality, which is determined primarily by the system of certain social relations. The limitation of this position also lies in the fact that it excludes the possibility of further concretisation of the object [29, p. 313-335] by classifying it and dividing it into general, generic, direct and other, more detailed (and more specific) objects and therefore does not provide a further and in-depth study of the object of a criminal offence, which is unacceptable from both scientific and pragmatic (law enforcement) points of view. It is believed that values, benefits, as well as interests as phenomena of social-legal reality, in connection with which criminal offences are committed, are in public organic relations and unity with public relations – the object of criminal encroachment. Thus, E.K. Kairzhanov, defining interest as an important element of public relations, came to the conclusion that public relations and interest are interrelated as philosophical categories "essence" and "phenomenon" and therefore interest acts as a concrete expression of public relations [8, p. 51, 56-57]. E.A. Frolov argued that benefit and interest act as the "core" in the structure of public relations [14, p. 111]. Thus, as follows from the previously stated, social values, benefits and interests make up the content of the subject of public relations. It is on their account or on their basis that social ties are formed between the subjects of these relations, that is, they act as elements of the content of social relations and perform the functions of their subject.

This decision corresponds to the social nature of public relations, which, as an object of criminal legal protection, actually arise and exist (function) in relation to social values, benefits, and interests. S.S. Alekseev reasonably argued on this occasion that "... each phenomenon in society is revealed as social only when it is considered in the form of social relations" [3, p. 85]. In our case, the social connection between the subjects of social existence in relation to the subject of social relations as their mandatory element arises and exists in relation to the subject of these relations, which can act in the form of social value, material or ideal benefit, or the social Interest of the subjects of these social relations.

CONCLUSIONS

Based on the conducted research, the object of a criminal offence can be defined as follows: these are public relations protected by the law on criminal liability, which arise and function in society regarding social values, material and non-material benefits and interests of subjects of public relations, which are encroached upon by criminal offences and cause them significant harm or pose a threat of causing such harm.

The object of a criminal offence, for the purpose of concretisation, for a deeper clarification of its essence and meaning, authors propose to divide according to the scope of the concept (based on the logical operation of "classification") into types: general (the totality of all public relations protected from criminal-illegal encroachments by the norms of criminal legislation), generic (a certain circle (group) of identical or homogeneous in its social essence social relations, which are protected by a single complex (group) of interrelated criminal law) and direct (part of the generic object is a specific public relation protected by a certain to which harm is directly caused by a criminal offence or a threat of causing it is created), and direct can be devided into the main direct (a specific public attitude that the criminal offence encroaches on, and which is primarily placed under the protection of the relevant criminal law norm) and an additional direct object (public relation that complements the main object and to which harm is caused or a threat of causing it is created in connection with an attack on the main direct object), and the latter – to an additional-mandatory (public relations to which, when a criminal offence is committed, always (as a matter of law) harm if caused or a threat of causing it is created in connection with an infringement of the main object) and an additionalüoptional object (public relations, which in the commission of a certain criminal offense may be violated along with the main object, but may not be violated).

The analysis of the designated objects of criminal offences, as well as clarification using an axiological approach of the content of social values, benefits and interests as objects of public relations, on which a criminal-illegal encroachment is carried out, provides an opportunity in each specific case to establish the nature, content, scope and social significance of harm and, thus, to a large extent to identify the nature and essence of the public danger of a criminal offence and its legal properties: criminal illegality, criminal punishability, guilt.

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Suggested Citation: Panov, M.I., Kharytonov, S.O., & Haltsova, V.V. (2021). Object of criminal offence: Modern interpretations. *Journal of the National Academy of Legal Sciences of Ukraine,* 28(4), 262-269.

Submitted: 17.08.2021
Revised: 24.10.2021
Accepted: 27.11.2021

УДК 341.33
DOI: 10.37635/jnalsu.28(4).2021.270-278

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ПОРУШЕННЯ ПРАВ ЛЮДИНИ ВОЄННИМИ ЗЛОЧИНАМИ: ТЕОРІЯ ТА ПРАКТИКА

Аннотація. *Дана стаття присвячена комплексному дослідженню теоретичних та практичних проблем порушення прав людини воєнними злочинами, захисту законних інтересів осіб у національному та міжнародному праві внаслідок такого порушення. Мета даного дослідження полягає у комплексному аналізі теоретико-прикладних питань, що стосуються захисту порушених прав та законних інтересів осіб у міжнародному публічному прав і, внаслідок вчинення воєнних злочинів та формулювання науково обґрунтованих пропозицій щодо вдосконалення чинного законодавства України та практики його застосування у цій сфері. У роботі проаналізовано існуючі наукові позиції та законодавство щодо регулювання протиправного діяння та відповідальності за завдану шкоду потерпілим внаслідок порушення прав та основоположних свобод людини воєнними злочинами. Крім того, було визначено існуючи форми, способи та засоби захисту прав та законних інтересів таких осіб в Україні та на міжнародній арені. Проведено комплексне дослідження існуючого поняття, правової природи та основних ознак воєнних злочинів та їх правового регулювання у вітчизняному законодавстві. Запропоновано законодавчі зміни до нормативно-правових актів, які регулюють дане питання та обґрунтовано позицію про існування виключно судового порядку вирішення питань порушення прав людини воєнними злочинами, результатом якого має бути прийняття судового рішення. В результаті проведеного дослідження чітко виокремлені вже існуючі наукові твердження та здобутки, а також ті, що виникли з причин постійного розвитку суспільних відносин та суттєвих змін в міжнародних відносинах різних держав, що спричиняє збройні конфлікти та воєнні злочини. Одним із звершень наукової статті є доведеність важливості проблематики порушених прав людини в сучасному суспільстві та крайньою необхідністю її дослідження. Адже сучасне законодавство потребує суттєвих змін та вдосконалені вже існуючих норм з подальшою можливістю їх застосування на практиці*

Ключові слова: *права і свободи людини, збройні конфлікти, військові злочини, гуманітарне право*

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HUMAN RIGHTS VIOLATIONS BY WAR CRIMES: THEORY AND PRACTICE

Abstract. *This paper provides a comprehensive study of theoretical and practical issues of violation of human rights by war crimes, protection of legitimate interests of individuals in national and international law as a result of such violation. The purpose of this study is a comprehensive analysis of theoretical and applied issues related to the protection of violated rights and legitimate interests of individuals in public international law as a result of the commission of war crimes, and the formulation of scientifically sound proposals for improving the current legislation of Ukraine and the practice of its application in this area. The paper analyses the current scientific opinions and legislation on the regulation of illegal acts and liability for damage caused to victims as a result of violation of human rights and fundamental freedoms by war crimes. Furthermore, the existing forms, methods, and means of protecting the rights and legitimate interests of such persons in Ukraine and in the international arena were determined. The paper also provides a comprehensive study of the existing concept, legal nature and main features of war crimes and their legal regulation in Ukrainian legislation. Legislative amendments to the regulations governing this issue are proposed and the study justifies the position regarding the existence of an exclusively judicial procedure for resolving issues of human rights violations by war crimes, the result of which should be the adoption of a court decision. As a result of the study, the current scientific statements and achievements are clearly identified, as well as those that have emerged due to the constant development of public relations and substantial changes in international relations of various states, which causes armed conflicts and war crimes. One of the achievements of the scientific study is the proof of the importance of the problem of violated human rights in modern society and the extreme need for its research. After all, modern legislation requires substantial changes and improvement of the existing provisions with the subsequent possibility of their practical application*

Keywords: *human rights and freedoms, armed conflicts, war crimes, humanitarian law*

INTRODUCTION

A person, their life and health, honour and dignity, inviolability and security are recognised by the Constitution of Ukraine as the highest social value. Human rights and freedoms and their guarantees determine the content and areas of the state's activities. The state is accountable for its activities before the individual. The establishment and enforcement of human rights and freedoms is the main responsibility of the state. In a broad sense, the level of satisfaction of human rights is determined by the level of socio-economic development, perfection, and stability in the organisation of state power in the country and in the international arena [1-3]. In a narrower aspect, it depends on the existence of an effective mechanism for ensuring human rights and freedoms. This refers not only to the number of law enforcement and other state bodies, but also to the quality of their law-making, law enforcement and advocacy activities [4; 5].

In the international legal system and in the general system of international crimes (offences) and other acts that describe modern interstate relations, one of the leading places belongs to war crimes directed against humanity (civilian population, military personnel and prisoners of war, etc.) [6; 7]. Their illegal nature is determined as a result of serious and massive violations, and often on a large scale, of humanitarian provisions, basic human and civil rights and freedoms [8]. People in different parts of the world do not deny that

international war crimes are not only illegal in nature, but also undermine the foundations of international law, international security and a new worldview, and also have serious consequences, first and foremost, for the states against which they are committed [9-11].

In the modern world, a huge number of international treaties have been concluded with an aim of protecting individuals both in peacetime and during armed conflicts. Unfortunately, this codification has not led to greater protection of people during war and does not fully protect their rights from the arbitrariness of authoritarian regimes. In 1945, the UN Charter banned war [12], but since then more armed conflicts have begun than ended and they have claimed increasingly more civilian lives. This negative trend is clearly illustrated by the example of two conflicts of different centuries. In the 19th century, when war was allowed, its customs were not yet codified, and human rights were only on the brink of the discussion at the national level, only 2% of civilians died in the Franco-Prussian War. But the Vietnam War took 3 million lives of the civilian population compared to 150 thousand military personnel, that is, 95% [13].

The nature of armed conflicts is also changing. If in the 19th century these were mainly conflicts between states, nowadays they are more intra-state conflicts, often with the intervention of foreign armed forces of one or more states; asymmetric conflicts involving non-state armed groups; transnational conflicts that flow across state borders; conflicts with a variety of warring parties, whose participants can be the forces of international organisations, the armed forces of states, rebel groups, private military campaigns, and terrorist organisations. Accordingly, legal regimes for regulating such conflicts are becoming more complex [14; 15].

The purpose of this study is a comprehensive analysis of theoretical and applied issues related to the protection of violated rights and legitimate interests of individuals in public international law as a result of the commission of war crimes, and the formulation of scientifically sound proposals for improving the current legislation of Ukraine and the practice of its application in this area.

1. THEORETICAL OVERVIEW

It is noteworthy that after the declaration of independence of Ukraine, one of the priority areas for the development of the state's legal system was the development of an effective legal policy of the rapprochement with the international standards in the field of justice, criminal prosecution, international relations, and security of human rights and freedoms. More than two decades have passed since then, and the reform of legal institutions and tools for their regulation is still ongoing. During all these years, the areas and priorities of reform have changed, various kinds of research and scientific experiments have been observed, but the issue of protecting the rights and legitimate interests of Ukrainian citizens and persons in the criminal sphere, in particular the issue of human rights violations through the lens of war crimes, has always remained relevant.

Notably, such a violation is one of the examples where the issue of observing the rights and legitimate interests of a person as a result of their violation and ensuring a balance between the interests of a particular person and the state in general is most acute [16]. Measures to protect and implement the interests of national security, ensure the stable functioning of the political and economic systems of the state require a high level of effectiveness in combating criminal activity in this area and promoting the consolidation of the legal regime therein. The implementation of the military legal reform in Ukraine raises many questions for lawmakers and the Ukrainian legal science. Most of them require extensive theoretical research [17].

Nevertheless, scientists believe that the understanding of the term “war crime” was obtained in the second half of the 19th century and was adopted by the Geneva Convention [18], which regulated the procedure for conducting military operations. War crimes are also mentioned in the Lieber Code [19], but the term has not yet been used. The term “war crime” itself appeared only in 1945. In Article 6 of the Charter of the International Military Tribunal in Nuremberg [20], which stated that it should be considered as a violation of the laws and customs of war, including the killing, ill-treatment or deportation of civilians in the occupied territory, the killing or ill-treatment of prisoners of war, the killing of hostages, property, senseless destruction of settlements, not because of military necessity. Notably, the Geneva Conventions [21], which codified international humanitarian law after the Second World War, among other things, contain the first list of war crimes in history, which meant serious violations of the conventions, given the specific features of the relations regulated by each of them.

Moreover, each of the four Geneva Conventions [21] represents its own translation of serious violations of the conduct of war, which together create a single system. These include the following acts: premeditated murder; torture and inhuman treatment, including biological experiments; intentional infliction of serious suffering or serious injury; harm to health; unlawful destruction and seizure of property, if not caused by military necessity; forcing a civilian or prisoner of war to serve in the enemy's armed forces; deprivation of the right to an impartial trial; unlawful deportation, displacement of protected civilians; unqualified arrest of protected civilians; hostage-taking [22].

This list was substantially supplemented by Protocol Additional I [23], including the following violations: engagement in certain medical experiments; turning civilians, individual civilian or demilitarised and safe zones into targets for attack; engagement in an indiscriminate attack on the civilian population or civilian targets, knowing that such an attack would result in a large number of civilian deaths and injuries; perfidious use of the coat of arms of the Red Cross, Red Crescent and other protective and identification marks; transfer by the occupied state of part of its civilian population to the occupied territory or deportation; unjustified delay in the repatriation of prisoners of war or civilians; apartheid; attack on historical monuments and a number of others [24].

Some elements of war crimes are stipulated in a number of other documents. They are contained in Article 28 of the Hague Convention [25] for the protection of cultural property during military conflicts, Article 5 of the Convention on the Prohibition of military [26] or any other hostile use of means of influencing the natural environment. Furthermore, the constituent documents of international criminal justice bodies, in particular the charters of international and mixed military and criminal cases, should be highlighted separately. As for issues related to the protection of the rights and interests of victims, they currently remain understudied in legal science. At the same time, these issues, considering the modern realities, the adoption of amendments and approval of the new Criminal Code of Ukraine [27], acquire special significance both from the standpoint of theory, as well as legislative regulation and practice [28].

2. MATERIALS AND METHODS

The history of war crimes, their analysis in the modern world at the level of legislative consolidation and the periodicals of their commission have become the subject of comparative analysis in order to determine the main problems of human rights violations by war crimes in theory and practice. To achieve the purpose of this study, the paper focuses on solving the following main tasks: clarification of the state of scientific research on the subject in Ukraine and the world; identification of the legal nature, grounds, and concept of war crimes in Ukraine and the world; identification of the circle of persons who can acquire the status of victims as a result of committing war crimes in criminal law; establishment of the rights and legitimate interests of victims; identification of the forms and methods of protecting the rights and legitimate interests of persons as a result of committing a criminal illegal act; investigation of the procedure for protecting the rights and legitimate interests of persons in practice, and, on this basis, identification of negative actions and gaps in legislation and practice, which hinder the effective protection of the rights and legitimate interests of victims in Ukraine.

The methodological framework of the study is represented by the philosophy of individualism, which develops the terminology and allows describing the anthropological block of philosophical and legal problems from a new point of view. At present, the philosophy of individualism is considered a cultural guide to the development of society. Notably, collectivist or individualistic ideas can dominate at different stages of society's development. Which principle prevails, what content each of these concepts acquires, depends on the epoch, the level of material and spiritual culture, location, specific conditions, type of cultures. It should be agreed that philosophy of individualism absorbed all the progressive achievements of the philosophy of law, laid the foundation for a modern understanding of humanism and human rights, and became the foundation of modern European civilisation [29]. The main method used in the study is the general scientific dialectical method, which made it possible to analyse the social and legal phenomena covered by the problems of scientific research in development, interrelation, and interdependence. The historical legal method allowed tracing the historical origins and evolution of views on the content of violated human and civil rights and freedoms in Ukrainian legislation and the legislation of other countries, etc.

The comparative legal method was used to investigate the features of legal regulation of the protection of the rights of victims of war crimes in different countries and analyse published opinions on the subject matter in the legal literature. The Aristotelian method was used in the analysis of theoretical developments of the current legislation and the practice of its application, concerning the protection of the rights and legitimate interests of individuals, and made it possible to identify the existing contradictions in the legislation and scientific approaches to the subject under study, as well as to suggest amendments and additions to the legislation in order to improve it in the field of human rights violations caused by war crimes. System-structural method made it possible to identify the circle of persons who may be victims whose rights were violated by war crimes in international and national law.

Using the sociological method (analysis of published surveys), the study clarified the positions and opinions of lawyers, prosecutors, and judges regarding the current state of research on these issues. The statistical method is used to generalise and analyse the conclusions of Ukrainian and foreign scientists and investigate the subject matter. The theoretical basis of this study includes the papers of Ukrainian and foreign scientists in the field of criminal law and other branches of law related to the subject area. The statutory basis

of the study includes the Constitution of Ukraine [30], international legal treaties in force in Ukraine, the Criminal Code of Ukraine [27], and other Ukrainian regulations. The empirical base comprises the results of studied and processed 5 court cases on human rights violations caused by the commission of war crimes in Ukraine; statistical data on the implementation of these decisions and the results of the work of executive services at the stage of enforcement proceedings.

3. RESULTS AND DISCUSSION

In the classics of legal regulation, human rights are defined by the Universal Declaration of Human Rights [31] adopted by the UN on December 10, 1948. Since then, a considerable number of declarations and conventions (international agreements) have been created that contain a more detailed description of human rights. In addition, two World conferences were held, where states pledged to promote the protection of human rights around the world. That is why, in the theory of law, there are several ways to classify human rights. Most often, they are divided into civil, political, economic, social, and cultural ones. There are also various mechanisms for protecting human rights, including legislative initiatives, public campaigns, personal expression of the will of members of society, and public debates. Human rights are subject to interpretation on a case-by-case basis, and sometimes it is necessary to consider the positions that were proclaimed and discussed during the international debate on the adoption of a particular document.

Furthermore, the law is considered in the context of all legislation, so that its interpretation does not contradict other branches of law. A prime example of this is the possibility of restricting certain human rights after declaring a state of emergency in the country. However, there are some rights that are considered absolute and from the exercise of which it is forbidden to deviate by law. These include, first and foremost, the right to life, the prohibition of torture and slavery, as well as freedom of thought, conscience, and religion. This is just an example of them, because this list is much more extensive.

Along with this, there are international rules for waging war and protecting civilians during war. The rules for the protection of military and civilian populations are called humanitarian law, which was enshrined in the Geneva Conventions [21]. That was the time when the main provisions of humanitarian law in the world were laid down. However, the emergence of new types of war crimes, the development of public relations, and the speed of modernisation processes in the world required the adoption and approval of new regulations. The increase in the number of human rights violations, in particular of civilians, prisoners of war, and military personnel, provoked a number of international treaties between aggressor countries and conventions that were signed by most countries of the world. Some of them still regulate and consolidate the rights of victims of internal conflict (civil wars) or conflicts between the armed forces of the state and opposition military formations that control a certain part of the country. In international practice, there is an example of a similar military conflict between the Kosovo Liberation Army and Serbian government forces in 1998-1999, which led to large-scale violations of the rights of the civilian population and total insecurity [32].

Furthermore, war crimes against humanity also imply serious inhumane acts, for example: premeditated murder, torture, and rape, which are carried out in terms of widespread use during armed conflict by relevant actors of offences directed against the civilian population due to national, political, ethnic, racial, or religious motives. The definition of these crimes was given during the trial of German Nazis after World War II [33]. In the same process, the definition of genocide was provided, which is a particularly serious confrontation against humanity. In this case, states are obliged to prevent war crimes and crimes against humanity and punish those responsible for their commission. However, in many cases the national courts fail to handle this task or are guided by political bias. Most often, such crimes go unpunished. Therefore, it is crucial to establish an international court that would handle and consider such cases and pass sentences in cases for which the courts of the national justice system in the state are responsible.

In practice, the violation of human rights by war crimes in Ukraine has been manifested in recent years by armed conflicts in the country, which has a devastating impact on people's lives and the human rights system in the country. The events near Ilovaisk in August 2014 symbolise violations of human rights and international humanitarian law that have repeatedly occurred during the conflict in eastern Ukraine: shelling of residential areas resulting in civilian casualties, killing of civilians and other protected persons, illegal detentions, enforced disappearances and torture. Cases that have been documented and analysed by authorised persons indicate that during the fighting near Ilovaisk, all parties to the conflict committed serious violations of human rights and international humanitarian law, and some of the violations may constitute war crimes [34]. The events in the east of the country have left deep physical and emotional reminders to the civilian population of the cities and its environs, as well as to all those who have been deprived of their liberty, subjected to torture and ill-treatment, their relatives, and those who have gone missing and still have no relatives and friends found [35].

Analysing the judicial practice of this subject matter, on can conclude on the impunity for human rights violations committed in the context of the armed conflict in Ukraine, which also applies to the events near Ilovaisk. Notably, the efforts made by the country's authorities to date do not reflect the full scale of violations of rights and do not guarantee the punishment of those responsible for the damage and harm caused. Through the impartial collection and recording of testimonies of victims and witnesses of violations of human rights and international humanitarian law that took place during the events in the eastern Ukraine, activists and journalists seek to promote the exercise of the right of victims, their relatives, communities, and society, as well as to learn the truth in general. This imperative is closely linked to access to justice, the right to effective remedies and redress [36].

To date, there is a sufficient amount of reliable information, which is supported by numerous reliable sources and is consistent with them, in order to initiate a full-fledged criminal investigation by the relevant national and international judicial authorities regarding the events in the eastern Ukraine and facilitate its proceedings [37; 38]. As a result, analysing theoretical achievements and practical developments, one can identify some ways and tools for protecting violated rights as a result of war crimes:

1) law enforcement agencies need to conduct an effective, immediate, thorough, and impartial investigation of all allegations of human rights violations, with due regard to the rights of victims, regardless of who is responsible for the offence committed;

2) the government of a state shall ensure that those who claim to have been victims of a violation of human rights or international humanitarian law have equal and effective access to justice, as referred to in the Constitution of Ukraine and other regulations of the state [30];

3) it should be undertaken not to grant amnesty to persons suspected, accused, or convicted of international crimes, including war crimes, crimes against humanity or serious violations of human rights, given that amnesties are not granted if they conflict with the right of victims to an effective remedy, including compensation for damage and harm caused;

4) the legislative branch of government should convene a temporary commission of inquiry or establish another effective, independent commission with appropriate powers, which should complete the investigation of the events that took place in the east of Ukraine and publish a public report with its conclusions;

5) guarantee that documented violations of human rights and international humanitarian law will be comprehensively addressed in all future transitional justice processes covering the full scope of judicial and non-judicial measures, including criminal prosecution initiatives, truth-seeking programmes, reparations programmes, institutional reform or an appropriate combination, as well as the conduct of comprehensive national consultations, especially with those affected by human rights violations;

6) actively promote that judges, lawyers, and other employees of the justice system involved in the consideration of conflict-related cases are fully protected from threats, harassment, and other external pressures that threaten their independence and impartiality.

One of the most effective means of protecting violated rights in the state is to ensure the development and provision of timely and comprehensive aid to all persons affected by conflict, in particular affected civilians and victims of torture, including medical, psychological, and legal services. To urge all parties involved in the conflict to ensure a thorough and effective investigation of all allegations of human rights violations, regardless of the identity of the perpetrators, as an important element of sustainable peace and reconciliation is the key to a healthy population in a country of peace and tranquillity. Therefore, regardless of the presence or absence of armed conflicts that cause the commission of war crimes, it is necessary to always support measures aimed at strengthening confidence and respect for human rights, carry out work to protect human rights, monitor human rights, and investigate human rights violations, as well as measures aimed at resolving conflicts on both sides of the contact line.

In modern international legal doctrine and science, the prevailing opinions are that war crimes are understood as international actions of subjects who violate generally recognised laws and customs of war [39; 40]. In and of themselves, war crimes are expressed in various illegal actions: the use of means and methods of war, which are prohibited by current provisions and provisions of international law. However, one of the features is that the international legal prohibition of aggressive wars in itself does not eliminate the causes that give rise to armed conflicts and wars from public life. However, there is an international legal prohibition on the use of armed force in interstate relations. That is why states often resort to this prohibition in order to resolve disputes and conflicts that arise between them. This circumstance determines the need for legal regulation of public relations that arise during an armed conflict in order to humanise it as much as possible.

CONCLUSIONS

Thus, the laws and customs of war developed in international law were aimed at limiting the arbitrariness of the warring parties in order to humanise it to the fullest extent. It can be noted that these laws and customs have become an independent international legal branch, a set of convention and ordinary legal provisions regulating relations between actors operating in an armed conflict. Thus, one can conclude that currently there is a situation where the uneven development of different countries and regions, confrontations, economic, and other crises, and especially extremism, separatism and terrorism, seriously threaten and undermine interstate relations, create big problems for the world community, its existence and sustainable development. Due to these circumstances, any security is impossible without joint interstate efforts, since members of this community are known to be considered as special social phenomena and organisms with certain capabilities in solving these problems.

Therewith, this does not mean that the purpose of global security, for instance, should be limited to the survival of humanity, or that the role of international security should be limited exclusively to the task of preventing conflict. Instead, this means that the existence of an integral system for the dissemination of humanism and the development of humanitarian law in the world is the key to a peaceful existence, a democratic mechanism for resolving conflict situations in the international arena, as well as ensuring respect for and ensuring all types of rights and legitimate interests of a person and citizen in the world of each of the states.

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Suggested Citation: Pylypenko, V.P., Sliusarchuk, K.T., Pylypyshyn, P.B., & Boichenko, S.V. (2021). Human rights violations by war crimes: Theory and practice. *Journal of the National Academy of Legal Sciences of Ukraine,* 28(4), 270-278.

Submitted: 05.09.2021
Revised: 21.11.2021
Accepted: 09.12.2021

УДК 343.14
DOI: 10.37635/jnalsu.28(4).2021.279-288

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ВАГОМІСТЬ КРИМІНАЛЬНИХ СУДОВИХ ДОКАЗІВ

Анотація. *Статтю присвячено актуальній темі вагомості кримінальних судових доказів, яку в доктрині кримінального процесу України практично не досліджено. Законодавець, запровадивши 2012 р. це оцінне поняття (п. п. 1, 11 ч. 1 ст. 178КПК), не дав його нормативного тлумачення. У результаті виникла ситуація понятійної невизначеності, яка недоречна з огляду на вимоги засади верховенства права (ст. 8 Конституції України, ст. 8 КПК). Відтак метою розвідки є спроба сформулювати визначення поняття «вагомість доказів», а також запропонувати схему роботи юриста з визначення ознак цього діяльнісного феномену в ситуаціях ухвалення відповідних процесуальних рішень. Роботу написано на основі положень діяльнісної методології з використанням низки спеціальних методів: пошуково-бібліографічного; семантичного; формально-логічного; герменевтичного; історико-правового; порівняльно-правового (компаративістичного); функціонального аналізу; узагальнення. У статті сформульовано визначення поняття «вагомість доказів» як діяльнісної характеристики. Остання є результатом прагматичного логіко-юридичного оцінювання доказу ad hoc в рамках їхньої сукупності. Таким чином певний доказ виділяється завдяки приписуваній йому юристом більшої придатності слугувати переконливою доказовою основою процесуального рішення ніж інші наявні докази. Відтак обґрунтовується висновок, що поняття «вагомість наявних доказів» як їхня діяльнісна характеристика в заголовку цієї статті є «п'ятим елементом» структури поняття «кримінальні процесуальні докази» поряд з таким характеристиками, як «належність», «допустимість», «достовірність» та «достатність». Наводиться обґрунтування висновку, що запровадження законодавцем 2012 р. поняття «вагомість наявних доказів» відповідає вимогам доказової практики сучасного змагального процесу, а також ЄСПЛ*

Ключові слова: *кримінальні судові докази, вагомі докази, судове доведення, оцінювання доказів, вагомість судових доказів*

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THE WEIGHT OF CRIMINAL JUDICIAL EVIDENCE

Abstract. *The study is devoted to the current issue of the weight of criminal judicial evidence, which is understudied in the national doctrine. The legislator, having introduced this evaluative concept in 2012 (Paragraph 1, Part 11, Article 1 of 178 CCP), did not provide its normative definition. As a result, there is a conceptual uncertainty, which is inappropriate given the requirements of the rule of law (Article 8 of the Constitution of Ukraine, Article 8 of the CCP). Therefore, the purpose of study is to attempt to formulate a definition of the "weight of evidence", to propose a scheme of work of a lawyer to determine the signs of this activity phenomenon in situations of making appropriate procedural decisions. The study is based on the activity methodology using a number of special methods – search and bibliographic; semantic; Aristotelian; hermeneutic; historical-legal; comparative-legal; functional analysis; generalisation. The study formulated the definition of the "weight of evidence" as an activity characteristic. The latter is the result of a pragmatic logical and legal evaluation of ad hoc evidence within its totality. Thus, certain evidence is prioritised due to the greater suitability attributed to it by the lawyer to serve as a convincing evidence base of the procedural decision. Therefore, the conclusion is substantiated that the "weight of available evidence" as its activity characteristic is "the fifth element" of the structure of "criminal judicial evidence" along with such characteristics as "credibility", "admissibility", "reliability", and "sufficiency". The study includes conclusion that the introduction by the legislator in 2012 of the "weight of available evidence" meets the requirements of the evidentiary practice of the modern national adversarial process and the ECHR*

Keywords: *criminal judicial evidence, weighty evidence, court proof, evidence evaluation, weight of judicial evidence*

INTRODUCTION

The Criminal Procedure Code of Ukraine of 2012 (hereinafter referred to as the CCP), among many others, introduced such a new evaluative approach for national doctrine and practice as the "weight" of available evidence (Paragraphs 1.11 of Part 1 of Article 178 of the CCP). However, the legislator, having taken this further step in terms of constructing the concept of "criminal judicial evidence" [1], did not define their position on it. Thus, if the text of the law defines such concepts as "evidence" (Article 84), "credibility of evidence" (Article 85), "admissibility of evidence" (Article 86), the definition of "weight of evidence" was ignored by the legislator. It is clear that such a decision caused a conceptual uncertainty, which is inappropriate given the requirements of the rule of law (Article 8 of the Constitution of Ukraine, Article 8 of the CCP), and especially given the practical context of using this concept – the situation of choosing preventive measures by the accusatory authorities.

Despite the fact that law enforcement practice requires clear and understandable normative definitions of this concept and reasonable scientific recommendations, this issue has not been purposefully studied in the literature on the subject of this study. The only relevant studies are the ones by D. Sergeieva [2, p. 109], T. Lukashkina [3 p. 684-685], V. Rozhnova [4 p. 340-341], T. Fomina [5 p. 96], the authors of which *ad marginem* concern the issue of the weight of criminal judicial evidence. Notably, the attitude of national proceduralists to this legislative *novum* remains quite restrained. For example, D. Sergeieva, presenting a scientific position on the concept and essence of the reliability of evidence as its property, rightly notes: the investigating judge, the court, deciding on the choice of a preventive measure, is obliged to evaluate all the circumstances, including the weight of the available evidence about the commission of a criminal offence

by a person (Paragraph 1 of Part 1 of Article 178 of the CCP). The author, without objecting to the presence in the text of the law of such terminological formulations as "weight of evidence", "sufficiency of evidence", at the same time emphasises that they need to be clarified [2, p.109]. In turn, T. Lukashkina, upon analysing the conditions and grounds for applying preventive measures, notes that the legislator among the circumstances that are considered in deciding on the choice of a preventive measure indicated "the weight of the available evidence about the commission of a criminal offence" and "the weight of the available evidence to substantiate the relevant circumstances". However, in her opinion, it is impossible to agree with the attribution of these data to the above circumstances, because, firstly, the conditions, grounds, and circumstances that are considered when choosing a preventive measure constitute a local subject of proof, that is, these are certain circumstances, and, secondly, the "weight" of evidence is a concept that concerns the process of proof, more precisely, the availability of evidence and its evaluation. Therefore, the author argues that evidence is necessary to establish all the circumstances that constitute the local subject of proof; in addition, T. Lukashkina emphasises that it is impractical to introduce the concept of "weight" of evidence, because the CCP applies the concept of credibility, admissibility, and reliability of evidence, the sufficiency of the evidence to make a certain decision (Article 94 of the CCP) [3, p. 684-685].

Another researcher, V. Rozhnova, considering the issue of the weight of available evidence when choosing preventive measures in the aspect of compliance of national legislation with international standards, interprets the weight of evidence as an element of its sufficiency, characterised by the relative importance that should be given to each evidence when deciding whether a certain statement was proved with its help or not. The author states that this is a qualitative evaluation of evidence; weight is a rather subjective criterion, depending on the actual quality and characteristics of particular evidence, and on the quantity and quality of other available evidence of the same fact. Thus, she concludes, the weight of the available evidence characterises its sufficient totality and, according to its qualitative indicators, creates the conviction of the investigating judge and court of the possibility and necessity of making an appropriate procedural decision. The investigating judge, the court in this case should ascertain that the quantity and quality of available evidence are sufficient to ensure that there is no doubt about the possibility and necessity of making a decision, in particular on the application of a certain type of preventive measure [4, p. 340-341]. Sharing the scientific positions of T. Lukashkina and V. Rozhnova, T. Fomina, in the framework of analysing the circumstances that are considered when choosing preventive measures, draws the following conclusions. First, it is clear that the investigator, prosecutor, when filing a petition to the investigating judge, court for the application of a preventive measure, must justify it with certain evidence; secondly, use the wording "note the weight of the available evidence, which justifies the relevant circumstances" considering the theory of proof is unacceptable; third, it is necessary to replace the word "weight" with "sufficiency" in Paragraph 11 of Part 1 of Article 178 of the CCP [5, p. 96].

To summarise the data on the content of the scientific positions presented above, it is possible to outline the existing discrepancy among researchers regarding the "weight of evidence", and, – more importantly, – lack of scientific recommendations for working with it. The authors, considering the relevance and absolute importance of this scientific issue, selected an attempt to formulate a definition of this evaluation concept and model the scheme of work of a lawyer to determine the signs of the weight of evidence as the *purpose of the study*.

1. MATERIALS AND METHODS

According to the pattern of the basic research programme on the weight of criminal procedural evidence, the authors of the study chose the activity methodology of H. Shchedrovytskyi (1929-1994). The authors' choice of this version of the activity approach among others (philosophical, praxeological, and psychological) is conditioned by the following factors. First, in the national doctrine, the phenomena of criminal procedure and proof are conventionally considered as specific types of human purpose-oriented activity. Secondly, the activity methodology, (or system-thought-activity methodology (STA) methodology) in the post-Soviet scientific space is qualified by specialists as the most developed platform for effective work with social mass-like (population) objects. Therefore, the main characteristic feature of the activity-based approach and activity-based methodology is its consistent and sharp opposition to the naturalistic approach, which still reigns in modern science. The science of criminal procedure in this regard, admittedly, is no exception. The essence of the naturalistic approach is that everything in the world is declared natural, therefore it can be studied by scientific methods that correspond to nature, that is, by natural scientific methods. However, in the activity methodology, everything is stated exactly the opposite: for a person, not nature, but the activity itself is the only reality in which one lives, therefore, everything related to the activity is its "traces" ("organisations"); moreover, even "nature" itself is a kind of construction of activity and can be "material" for activity. It has

a substantive (speech) character, therefore, being an independent entity, phenomenon, exists independently of a person who can "come" to the activity either as a "variable material" (for example, someone comes to the judicial activity, works as a judge, and then leaves, while the place comes to another person; the activity exists further) or "source material" (for example, a person, after completing studies at the Faculty of Law, "turns" from a student to a specialist in the field of law). Activity methodology also rejects archaic the positivist idea of the possibility of the independent existence of the object and subject "from themselves". The latter, as stated by methodologists, can only exist within the framework of specific activities. This means that such objects as "offences" or "evidence" are not entities that exist outside of activity, as stated in the national substantive and procedural criminal law. From the standpoint of activity methodology, they are products, "organisations" of the activities of the court and the parties in adversarial criminal proceedings, the result of attributing certain legal characteristics to them. The chosen methodology rejects the so-called "reflection theory" and does not address the question of truth, offering in return other – activity criteria for achieving results – practicality, implementation capability, and efficiency.

Within the framework of the chosen basic research programme, special methods were used: search and bibliographic, which allowed conducting a systematic search of national and foreign sources of literature on the subject of research; semantic – to clarify the meaning of the term "weighty" and its place among its synonyms; Aristotelian was used to determine the state of national procedural thought regarding the issue under study, analysis of the provisions of the current CCP; hermeneutical, necessary to establish the legal content of the provisions of evidentiary law in solving the question of the place of the characteristic "weighty" in the structure of "criminal judicial evidence"; historical-legal – to identify trends in understanding the content and purpose of the modern model of criminal procedure and to distinguish the concepts of "evidence" and "proof"; comparative-legal was used to clarify the state of research on the activity of judicial evidence in Ukraine and in other countries. It was also necessary to compare the case-law of the ECHR and the practice of national courts in terms of using such a characteristic of criminal judicial evidence as its "weight"; functional analysis – allowed determining the place and role of the prosecution and judicial authorities in preparing evidentiary materials by the police and establishing criminal judicial evidence in an adversarial trial; generalisation allowed bringing the obtained scientific data and evaluations into a systematic whole and formulating reasonable conclusions and suggestions.

The main stages of the study of the weight of criminal judicial evidence were: (1) *putting forward* the scientific hypothesis that the "weight" of evidence (along with "admissibility", "belonging", "reliability", and "sufficiency") is their "fifth element", the fifth characteristic of "criminal judicial evidence"; (2) *verification* of hypotheses: (2.1.) linguistic analysis of "weight" in the context of Ukrainian and English languages; (2.2) comparative-legal analysis of "weighty evidence" in the doctrine of *common law* countries and the case-law of the European Court of Human Rights; (2.3) analysis of the practice of using the "weighty evidence" in national judicial practice; (2.4) clarification of the place and function of "weighty evidence" in the system of provisions of national evidentiary law; (2.5) research of the scientific positions of Ukrainian processalists regarding the interpretation of "weighty evidence"; (2.6) synthesis of the obtained scientific results; (2.7) development of scientific position; (2.8) making arguments in support of it; (2.9) reflexive criticism of the obtained scientific results from the position of interested parties opponents; (2.10) final formulation of conclusions and proposals in terms of further research on "weighty evidence in national criminal proceedings".

2. RESULTS AND DISCUSSION

The evaluative concept of "weight" of criminal judicial evidence introduced by the legislator is proposed to be *prima facie* defined as its activity characteristics (the general scientific concept of "characteristic" in this narrative is considered a *distinguishing feature* of something [6, p. 629]), according to which a certain proof as a result of a pragmatic logical and legal evaluation *ad hoc* is outlined from its totality due to the suitability attributed to it by a lawyer to serve as a more convincing, stronger evidentiary basis for a procedural decision in comparison with other available evidence.

Therefore, in the post-Soviet theory of proof, "criminal procedural evidence" (Article 84 of the CCP) is further considered using a natural-scientific method, that is, as a natural object, Kant's "thing-in-itself", having immanent "properties" that the lawyer can only identify; however, from the standpoint of activity approach, it can be considered completely differently – the result of the evidentiary activity of authorised participants in criminal proceedings. Such participants are the ones who can *attribute* the characteristics defined in the law to the evidence (Articles 85-86 of the CCP). As S. Pashyn convincingly emphasises in this regard, in a process where decisions are made based on internal conviction, the only purely *legal* characteristic of the evidence is its *admissibility* [7, p. 16]. In the current CCP of Ukraine, it is interpreted as compliance of evidentiary materials (factual data together with procedural sources of their origin) with the requirements of the established

standard of admissibility (Article 86 of the CCP) and the rules of the standard of inadmissibility of evidence (Articles 87-88 of the CCP). Legal *permits* and *prohibitions* enshrined in these two standards (positive and negative) are procedural *rules* of proof, following which allows deciding on the admissibility (inadmissibility) of materials as criminal court evidence. As J. Skorupka rightly notes in this regard, the standards of admissibility of evidence determine the scope of permitted procedural activities for the authorities, and, consequently, establish the limits of permissible interference with the rights and freedoms of participants in criminal proceedings [8, p. 97].

In addition to admissibility, the procedural law also mentions *other* legally unregulated logical and cognitive characteristics of evidence – its *credibility* (Article 85 of the CCP), *reliability* (Part 1 of Article 94 of the CCP), and for the totality of the evidence – *sufficiency* and *relationship* for making a relevant procedural decision (Part 1 of Article 94 of the CCP). The need and opportunity to attribute the mentioned characteristics to the materials (objects specified in Part 2 of Article 84) arises during the work of authorised participants in criminal proceedings with acceptable materials as part of solving problems caused by their procedural positions (prosecution – defence – arbitration). Therefore, according to the authors of the study, the above-mentioned characteristics of evidence can be called *activity-based* characteristics. Thus, the positive conclusion of the investigator, inquirer, prosecutor, and the court as an arbitrator-evaluator on the admissibility of evidence is a *conditio sine qua non* of their further use as procedural evidence in general. The decision on the possibility of attributing to materials the activity characteristics required by law allows using procedural evidence to solve specific practical problems of evidence activity in the conditions of *place* and *time*, a specific situation of criminal proceedings, for example, the choice of a certain preventive measure. Notably, the above refers to evidentiary materials (and not judicial evidence) provided by judicial charges, based on the following grounds. *Firstly,* the concept of "criminal procedure" covers only the activities of the court and the parties to consider a criminal legal claim (*sensu largo*), therefore, no evidence in out-of-court police detective activities is out of the question in general. Police detectives monopolistically perform an informative historical reconstruction of a right-wing event of the past in closed mode, and its products – facts as knowledge with a claim to reliability are used by the prosecutor to form a reasonable suspicion and accusation, which will be defended as part of the judicial proof procedure. *Secondly*, the possibility of the latter implies the presence of such indispensable *attributes* as a presence of *an arbitrator*(court) and equal *parties-players* (prosecution and defence) as procedural *proponents* and *opponents*, respectively. Proof also provides for the presence of *theses* – a legal position that one party defends (prosecutor-proponent), and the other – refutes (defender-opponent). While *in merito* issue is decided by the court. Evidently, all this in the pre-trial proceedings, guided by the principles of the *Inquisition*, do not exist. Accordingly, *thirdly*: procedural criminal judicial evidence as a *product* of the interpretive efforts of the parties and the court arise in court as part of the proper procedure of judicial proof of legal "raw materials", which is the evidence of the prosecution; approval of their use is given by the court, positively resolving the issue of their admissibility as evidence. It is unnecessary to prove that raw materials and products are different concepts. *Fourthly,* the analysis of the content of Part 2 of Article 23, and the related Part 4 of Article 95 of the CCP, leaves no room for rational doubts about the validity of the given position on "evidence materials". This statement does not detract from their weight and value: it is simply the task of the prosecutor to be able to show one's evidence in court.

In other words, if in the first case the lawyer decides on the fundamental possibility of *using* the collected materials in evidence as procedura*l evidence*, the second is the possibility of the most *efficient* use of the latter for evidentiary purposes in various procedural situations "*here and now"*. That is, the procurator (prosecutor) in the perspective of defending their legal position in court in pre-trial proceedings should be concerned about how *best* – from the standpoint of *evidence-based praxeology* – to justify the available evidence (*à propos*, the volume and quality of which in practice do not always correspond to the theoretical (ideal) ideas about it). In this situation, there is the need to attempt to attribute to the existing evidence material *other*, activity characteristics that are not covered by the normative template (Articles 85-86 of the CCP), but which are necessary for solving their evidence-based tasks. *Vice versa* the prosecutor must give an answer to the pragmatic question of how they should manage to properly use the evidentiary potential of both each individual piece of evidence and their available totality. Therefore, in this regard, it should be noted that in western doctrines, especially in *common law* countries (Great Britain, USA, Canada, Australia, New Zealand, Israel, India, Japan, South Korea, etc.) and – to a lesser extent – in the case-law of the European Court of Human Rights (ECHR), where, in contrast to national legislation, there is no legal (normative) *definition* of "procedural evidence", more attention is paid to work with performance *characteristics* (activity grounds) of evidence, the catalogue of which is much more meaningful than the current national CCP. Lawyers of these countries, remembering that *argumenta non numeranda, sed ponderanda sunt*, work with such concepts as "the best evidence"; "supporting evidence"; "irrefutable evidence"; "contradictory evidence"; "negative evidence";

"positive evidence"; "prima facie evidence"; "probable evidence"; "rebuttal evidence"; "side evidence", "credible evidence"; "weighty, strong, valuable evidence" etc. [9; 10, p. 1-4; 11, p. 1661; 12, p. 81-82]. The mentioned and other characteristics of procedural evidence are not a reflection of their objectively inherent *properties*, as is conventionally stated in the post-Soviet theory of proof but are *the result* of logical and cognitive operations and the reasons for their choice, because they are *derivative* from the evidentiary activity of authorized participants in criminal proceedings.

For example, an investigator finding a passport with traces of blood at the scene should not only decide on the criminal procedural *qualification* of the case, i.e., its classification in a certain type of evidence (evidence matrix specified in Part 2 of Article 84 of the CCP) – a document or physical evidence with the simultaneous determination of its affiliation and admissibility, but also – more importantly – properly *work* with this evidence (which, unfortunately, in the special and educational literature is not paid attention to). The above refers to the fact that within the framework of a specific evidentiary situation, the investigator (prosecutor) must decide what the evidence obtained in criminal proceedings is suitable for: for example, the same evidence can be used to prove some circumstances of criminal proceedings, but cannot be used to establish others; evidence can be evaluated for one situation as *prima facie evidence* or as "supporting evidence" in another, etc. This requires a lawyer to be very professional and creative because the law in this case, in contrast to situations of deciding on the admissibility of the use of materials as procedural evidence *does not contain* any substantive instructions on specific means and methods of their use to address these issues.

Notably, paragraphs 1.11 of Part 1 of Article 178 of the current CCP "Circumstances considered when choosing a preventive measure" mention another unconditional *activity* characteristic – "*weight*" of available evidence of a suspect, accused criminal offence, as and "weight" of available evidence justifying the amount of damage or amount suspected income. The European Court of Human Rights (hereinafter referred to as the ECHR) draws attention to this characterisation of procedural evidence both in its decisions on specific cases and in the context of doctrinal positions regarding the standard of proof "beyond a reasonable doubt" (Part 2 of Article 17 of the CCP). For example, the ECHR decision in Prade v. Germany of 03 March 2016 stated that "40… [drugs] found in the applicant's home constituted *weighty* evidence" [13], and in the case of Buid v. Belgium of 28 September 2015, the ECHR, in particular, noted: "82. Allegations of ill-treatment contrary to Article 3 must be supported by relevant evidence. To evaluate this evidence, the Court applies the standard of proof "beyond reasonable doubt" but adds that such evidence may result from a set of fairly clear, *weighty*, and consistent conclusions or similar compelling presumptions of fact" [14], which logically presupposes the existence of a body of *weighty*, clear, and consistent procedural *evidence*.

Based on this, there are grounds to assert that the "weight" of evidence in the practice of the ECHR is considered an important activity characteristic of procedural evidence in general, which is used not only to justify procedural decisions on choosing a preventive measure but also other decisions in criminal proceedings. This position is shared by individual Ukrainian courts. For example, the Kyiv Court of Appeal, in its ruling of 8 June 2015 in case № 757/16862/15-k, stated: "...with regard to a person, if the question of the application of an exceptionally strict measure of restraint arises, the investigating judge should pay special attention to evaluating the *weight* of evidence of the crime. Evidence that does not have signs of weight cannot justify a suspicion that was sufficient for the application of a preventive measure in the form of detention but is only the basis for further pre-trial investigation in a criminal proceeding" [15].

The procedural law does not provide a legal definition of the evaluative concept "weighty evidence", which creates the above-mentioned situation of conceptual uncertainty. Therefore, to clarify its content to a certain extent, it is advisable to turn to the linguistic characteristics of the *correlative* adjectives "weighty" and "strong", and then to the interpretation in the doctrine of Anglo-American evidentiary law of the *same root noun* – the concept of "*weight of evidence*" (weight, strength, value of evidence). Thus, according to linguists, the adjective "weighty" means one that has *weight*, is *meaningful, authoritative*, *convincing*, and the adjective "strong" is interpreted as *reasonable*, *sufficient* to convince someone of something, *convincing* [16, p. 72]. Thus, it logically follows that "strong evidence" is one of them that has the necessary *weight* for a lawyer, is *meaningful*, *authoritative*, *convincing, sufficient* to convince its addressee.

American and British jurists, in turn, associate the *weight of evidence* with the *weight*, *strength*, *value*, and *plausibility* of evidence provided by one party *compared* to the evidence provided by the other party. If, in accordance with Rule 401 of the Federal Rules of Evidence of the United States of America, "appropriate evidence" is evidence that *makes* any fact more or less *relevant* to the case more likely than it would be without it, [17] the "weight of evidence" is a tool for evaluating the *extent to which* the *degree of probability* of a fact may change in the case of the use of certain evidence. Thus, American lawyers, for whom working by plausible standards is a cultural norm (habit), believe that the *weight* of procedural evidence is *what* can cause the desired *evidentiary* or *rebuttal* (damaging) *competitive effect* in proving the circumstances of a criminal case in an

adversarial trial. In this context, it is worth mentioning that logic treats the strength of evidence – "*nervus probandi*", "*vis argumentationis*" – as a *strength* that consists in a strictly logical connection of the thesis with arguments, as a result of which the confessor of the truth of *arguments* must recognise the truth of the *thesis*, which logically follows from these arguments [18, p. 528].

The procedural law, as mentioned above, does not establish any formal rules for *determining* the weight (strength) of procedural evidence, except that for the proponent no evidence must have a *predetermined* strength (Part 2 of Article 94 of the CCP), including expert opinion (Part 10 of Article 102 of the CCP). In the plan under consideration, this means, firstly, a legal *prohibition* for the court to give *preference* to certain types of evidence over others (for example, direct over indirect or material over personal) and to *determine* the weight (strength) of evidence according to depending on the party *which* received it.

In this context, it should be noted that the rapid development of information technologies creates the possibility of new ideas about the procedures for obtaining criminal procedural evidence. Therefore, J. Du, L. Ding, G. Chen reasonably identify electronic evidence as a new type of evidence in the criminal procedure legislation of the PRC [19, p. 111-112]. According to Y.V. Francifirov, A.P. Popov, P.P. Muraev, Y.V. Komissarova, the development of the information society has led to the intensive introduction of telecommunications technologies in the field of criminal proceedings. This requires solving the actual issue of switching from paper documents to electronic ones [20, p. 674-675].

Lawyers, deciding in their practice on the presence (lack) of signs of the weight of procedural evidence may, in the opinion of the authors of the study, consider the following provisions.

1. The need to *evaluate* the weight of evidence is directly related to the legal *obligation* of the prosecution to comply with the *standards of proof* of the circumstances of criminal proceedings in the course of establishing the factual grounds for issuing important procedural decisions. For example, the "reasonable suspicion" and "beyond reasonable doubt" standards require the law enforcement officer to establish, on an *ad hoc* basis, *facts* sought in a particular criminal proceeding. This is due to the fact that the first standard of proof guides the establishment of grounds for *lawful* restriction of the human right to freedom and personal inviolability provided for in Article 29 of the Constitution, and the second – compliance with the requirement specified in Article 62 and Paragraph 3 of Part 3 of Article 129 of the Constitution to ensure the *guilt* of the defendant, i.e., in both situations, it is a question of the *validity* of the attempt to encroach on the accusatory power on the social *values* of fundamental importance. Therefore, Part 2 of Article 177 of the CCP establishes a direct *prohibition* for an investigator or prosecutor to initiate the application of a preventive measure without the existence of legal *grounds* for this, and in accordance with Part 1 of Article 290 and Article 291 of the CCP, an indictment cannot be sent to the prosecutor without *sufficient evidence* in criminal proceedings, while the performance of these tasks requires authorised persons primarily to form and rely on a reliable *body of strong evidence*.

2. The issue of determining the weight of available evidence is also directly related to the need for a well-thought-out, activity-based meaningful definition of *subject of proof* in specific criminal proceedings. This step should ensure that the evidence is *grouped* according to the circumstances of the case to *convince* the court of: (a) the existence of a criminal offence; (b) the existence of a criminal *offence* in the act; (c) the *commission* of this offence by the *suspect* (accused); (d) the *guilt* of the accused in committing the incriminated offence in accordance with the requirements of a particular *standard of proof* (for example, "reasonable suspicion" in deciding whether to choose a measure of restraint (Article 178 CCP) or "beyond reasonable doubt") in the case of a conviction (Part 2 of Article 17, Part 1 of Article 368, Part 1 of Article 373 of the CCP)

Such an approach allows the prosecution to form a *systematically* organised body of *evidence*, thus avoiding its submission to the court by a chaotic, disordered *mass* [21, p. 13]. Therewith, the procedure of grouping evidence allows identifying *links* and *interdependencies* both between evidence within a certain group and between individual groups of evidence, which, on the one hand, will help determine the degree (index) of the *real* weight of each "isolated" evidence, second, will "add" to it the weight of evidence within a specific body of evidence. Comparing individual separate evidence with the circumstances to be established helps to determine the weight of *specific* proof.

3. Simultaneously with the development of a *body of evidence* in criminal proceedings, the selection and examination of *certain* available procedural evidence (Paragraph 1 of Part 1 of Article 178 of the CCP) as its *components* should take place. This logical operation is of *paramount* importance because from the *activity* standpoint, *every* procedural evidence – no matter how "weak" – always has a certain *weight*, *somehow justifies itself*, independently of others [22, p. 13]. For example, failure to identify the valuables in the suspect's safe undoubtedly establishes the fact of their apparent *absence* at the time of the search, the interpretation of which allows the defence to insist that it is *exculpatory evidence* and the prosecution to claim that this is *strong*

evidence of criminal "qualification" of the offender, so the mentioned valuables should be sought elsewhere [23, p. 9-13].

Therefore, the selected evidence can and should be worked on in the *context* of its place in the existing *body* of evidence to form judgments about: (a) the *degree* of its potential *reliability* (*certainty*), (b) the *degree of sufficiency* of the evidence to prove a *particular* thesis (*factum probandum*), (c) its *inconsistency* (*harmony*) with other evidence, and (d) the possible *purpose* of using that evidence within a particular body of evidence; nevertheless, in the body of evidence, as in a special evidence structure, each of them is called to perform a certain *function*, for example, be "decisive" evidence, laxative, or reinforcing, etc.

In this regard, it should be emphasised that the *reliability* of evidence (as, indeed, its other characteristics) must be proved *independently*, regardless of the justified *theses*, since the latter, by its logic, is always a *plausible* judgment. Therefore, it is necessary to *separate* the evidence from the *fact* proved by it, from the *conclusion* about it, while the evaluator must be guided by the rule of *independence of arguments from the proved thesis* to avoid logical errors. For example, in the criminal proceedings on the death of a motorcyclist as a result of a collision at an unregulated intersection with a truck, the testimony of two identified witnesses suggested a probable logical thesis (version) that the motorcyclist, leaving the yard of the house on the main road, turned left, where the collision took place immediately. The truck driver categorically denied his guilt, explaining that he, turning left at the intersection, as a person with many years of experience, could not help but notice and miss a motorcyclist who was moving in the opposite area to him. The new investigator, who was assigned an investigation a year and a half later, decided to carefully check the arguments (witness statements) without seeming to be tied to the obvious reliability of the thesis. As a result, it was established that both witnesses were mistaken in stating on repeated interrogations not *what* they *actually* saw, but their own *judgments* about the critical day they perceived. As a result, very strong evidence on some facts of criminal proceedings immediately turned into no less *weighty* evidence on other circumstances. In turn, the degree of *sufficiency* of the evidence is determined by evaluating the probability of its real "contribution" to ensuring the *quality* and *quantity* of evidence taken in their entirety, if they logically followed the required *reliability* of the *proven* judgment and not some other thesis. Therefore, when deciding on the degree of the weight of evidence, firstly, it is necessary to strive to use only *those* evidence that within a specific *situation* and *purpose* to the *maximum* extent indicate the *reliability* of the proven thesis.

4. In the practice of proof, it is standard practice to attribute – with equal reliability – *more* weight to *direct* evidence than *indirect*. In *one* way, the situation is evaluated, for example, the detention of a person *at the time* of commission or attempt to commit a criminal offence or immediately after the commission of a criminal offence or during its direct prosecution (Paragraphs 1-2 part 2 of Article 207 CCP), and in *another* – the situation of finding stolen valuables in one's home. In the case of *direct* evidence, the rules of probabilistic logic must be taken into account, according to which the weight of this evidence is *greater the* more they *increase* the probability of the existence of a substantiated thesis. Therefore, for example, the expert's opinion on the individual *identification* of a person by fingerprint will always be more important than the *diagnostic* opinion on the sex and age of the alleged offender.

5. The procedural law (Part 2 of Article 242 of the CCP), without formally establishing a list of *pre*-established evidence, determines the grounds *for the mandatory* appointment of expertise in certain criminal proceedings. In addition, investigative and judicial practice establishes the grounds for the appointment of mandatory examinations in certain types of offences (e.g., automotive, drugs, economic, fire and technical, etc.), or mandatory in certain situations of criminal proceedings (eg, car science, ballistics, dactyloscopic, psychological, etc.). Therefore, the presence of evidence obtained as a result of the examination in the materials of the criminal proceedings is *mandatory*, and their *weight* to establish certain circumstances of the case is in fact presumed *a priori greater* than other evidence.

6. The weight of procedural evidence in criminal proceedings is always determined only "*here and now*", strictly *individually* within the *available* body of evidence, by examining each of them and correlating with the circumstances of the evidence, given their credibility, admissibility, reliability, and other performance characteristics; notably, in the totality of evidence each individual evidence has its function (purpose): for example, to be "weighty" evidence, to be "decisive" evidence, to be "reinforcing" evidence, to be "convincing" evidence, *etc*.

CONCLUSIONS

1. The authors of the study state that the introduction by the legislator in 2012 of the evaluative concept "weight of available evidence" is quite reasonable, meeting the requirements of the evidentiary practice of modern national adversarial proceedings, and the ECHR. Introducing this concept, the legislator thus required the judicial authorities to decide on the choice of precautionary measures, relying primarily on "weighty" evidence as the basis of a sufficient body of evidence, around which *other* evidence "gathers", which has other functions

in this body. This decision of the legislator can be interpreted in the sense of a procedural guarantee for the protection of two fundamental values – the good name of a person and the protection of one's property rights.

2. Upon evaluating *in merito* scientific positions analysed in the introductory part of this study, it can be assumed that they are a consequence, firstly, of the fundamental non-distinction between the "weight" and "sufficiency" of evidence (the first is a characteristic of an individual proof, and the second is their totality), secondly, the non-distinction between normative and activity characteristics of the evidence.

3. The "weight of available evidence" as its activity characteristic is the mentioned in the title of this study "fifth element" of the structure of "criminal procedural evidence" along with such characteristics as "credibility", "admissibility", "reliability", and "sufficiency"; the study of activity characteristics of criminal judicial evidence belongs to the field of the doctrine of evidentiary law and lays down the need for a deep examination of the practice of forming evidentiary aggregates in criminal proceedings based on the achievements of logic (the logic of evaluations), psychology, praxeology, pragmatism, theory of activity, axiology, theory of decision-making, rhetoric, etc.

3. The prospect of further research on the weight of evidence is the construction of the "weight of evidence" concept in the doctrine and the development of technology for issuing decisions on the weight of evidence within a specific evidentiary situation in criminal proceedings.

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Suggested Citation: Shumylo, M.Ye., Gmyrko, V.P., & Rudei, V.S. (2021). The weight of criminal judicial evidence. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(4), 279-288.

Submitted: 07.08.2021
Revised: 02.10.2021
Accepted: 20.11.2021

УДК 343.98
DOI: 10.37635/jnalsu.28(4).2021.289-300

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БІОМЕТРИЧНІ ПЕРСОНАЛЬНІ ДАНІ ТА ЇХ ВИКОРИСТАННЯ В РОЗСЛІДУВАННІ КРИМІНАЛЬНИХ ПРАВОПОРУШЕНЬ

Анотація. *Стаття присвячена аналізу біометричних персональних даних, які пропонується розглядати як джерело інформації про особу та використовувати під час досудового розслідування кримінальних правопорушень. Актуальність теми дослідження полягає в необхідності розроблення оптимального механізму використання біометричних персональних даних в діяльності органів досудового розслідування. Метою наукової роботи є аналіз чинного міжнародного та національного законодавства щодо визначення місця біометричних персональних даних в системі криміналістичних обліків, здійснення їх класифікації та надання рекомендацій з використання державними органами та приватними особами. Задля досягнення поставленої мети в роботі використовувалися діалектичний, історико-правовий, формально-логічний, догматичний, структурно-системний та порівняльно-правовий методи. Доведено, що накопичені в системі криміналістичних обліків різноманітні види біометричних персональних даних можуть успішно використовуватися в процесі розслідування кримінальних правопорушень, а в окремих випадках й приватними особами в межах їх статутних повноважень. Звернуто увагу, що поряд з позитивними результатами такої діяльності є певні ризики, а саме наявність загрози витоку та отримання доступу до біометричних даних сторонніми особами, про що свідчить негативна судова практика окремих країн щодо незадовільного збирання, обробки, зберігання та використання біометричних персональних даних. З огляду на зазначене, констатовано, що збирання, обробка та використання біометричних персональних даних з метою їх використання в процесі розслідування кримінальних правопорушень, мають відповідати певним вимогам, а саме: володільцем бази біометричних персональних даних має бути тільки держава в особі спеціального державного органу. Відповідно держава має забезпечувати зберігання й захист біометричних персональних даних*

Ключові слова: *кримінальне провадження, досудове розслідування, відбитки пальців, генетичні ознаки людини, криміналістичні обліки, криміналістична реєстрація*

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BIOMETRIC PERSONAL DATA AND THEIR USE IN THE INVESTIGATION OF CRIMINAL OFFENCES

Abstract. *The article is devoted to the analysis of biometric personal data, which is proposed to be considered as a source of information about a person and used during pre-trial investigation of criminal offences. The relevance of the research topic lies in the need to develop an optimal mechanism for using biometric personal data in the activities of pre-trial investigation bodies. The purpose of the research is to analyse the current international and national legislation on determining the place of biometric personal data in the criminal record system, implement their classification and provide recommendations for use by state bodies and individuals. To achieve this goal, the work used dialectical, historical-legal, formal-logical, dogmatic, structural-system and comparative-legal methods. It is proved that various types of biometric personal data accumulated in the criminal record system can be successfully used in the process of investigating criminal offences, and in some cases by individuals within the limits of their statutory powers. It was noted that along with the positive results of such activities, there are certain risks, namely, the presence of a threat of leakage and access to biometric data by unauthorized persons, as evidenced by the negative judicial practice of individual countries regarding unsatisfactory collection, processing, storage and use of biometric personal data. Taking into account the above, it is stated that the collection, processing and use of biometric personal data for the purpose of their use in the investigation of criminal offences must meet certain requirements, namely: the owner of the database of biometric personal data should only be the state represented by a special state body. Accordingly, the state should ensure the storage and protection of biometric personal data*

Keywords: *criminal proceedings, pre-trial investigation, fingerprints, human genetic characteristics, forensic records, forensic registration*

INTRODUCTION

Respect for the rule of law and maintaining law and order in society remains one of the most important functions of a democratic state. The system of state bodies and private individuals take a wide variety of measures to prevent offences in various spheres of socio-economic and socio-political life, as well as to investigate criminal offences that have already been committed. The development of technical means and the spread of digitalisation logically leads to their use in law enforcement activities. The data about the person that is the basis for their identification – personal data – comes to the fore. However, such activities contain not only undoubted benefits, but also potential threats to human rights and freedoms. Therefore, it is necessary to develop a balanced mechanism for their use with maximum efficiency and minimisation of risks.

The relevance of the research topic is due to two aspects: first, active legislative activity in this direction in Ukraine and the world. In particular, over the past few years, amendments have been made to the Law of Ukraine "On the Unified State Demographic Register and Documents Certifying Citizenship of Ukraine, a Person's Identity or Special Status" [1] and the Law of Ukraine "On Personal Data Protection" [2]. In 2017, the Regulations on national system of biometric verification and identification of citizens of Ukraine, foreigners and stateless persons was adopted (approved by the resolution of the Cabinet of Ministers of Ukraine of 27.12.2017 No. 1073) [3], and in 2018 – Instructions on the procedure for recording biometric data (parameters) of foreigners and stateless persons by officials of the State Migration Service of Ukraine, its territorial bodies and territorial divisions (approved by the order of the Ministry of Internal Affairs of Ukraine

of 23.11.2018 No. 944) [4]. At the end of 2020, draft law No. 4265 "On State Registration of Human Genomic Information" was submitted and considered [5].

In Europe, the GDPR came into effect on May 25, 2018 (*The General Data Protection Regulation*, 2016). The GDPR specifically identifies biometric data as a "sensitive" category of personal information, ensuring reliable protection. The GDPR defines biometric data quite broadly, including physical (physical or physiological characteristics of a person: face, fingerprints, iris scans, etc.) and behavioural characteristics of the person. An important advantage of the GDPR is that the data subject has the right to withdraw their consent to their storage and processing at any time. It is also worth noting that in April of this year, the European Parliament approved the creation of one of the world's largest biometric databases – *Common Identity Repository* (CIR), which will be designed to combine the records of more than 350 million people.

In the United States, the CCPA came into force on January 01, 2020 (*California Consumer Privacy Act*, 2018). It is impossible not to mention that the largest biometric database in the world is located in India (*Unique Identification Authority of India* – UIDAI), which includes more than 90% of the country's population, and biometrics are used everywhere.

Secondly, the relevance of the study is determined by a large number of offences in the field of collecting, storing and processing personal data. During 2017-2020 alone, more than 20 large-scale leaks of personal data of millions of people were recorded [6; 7]. At the same time, the owners of personal data databases were both public institutions and private companies. New, modern technologies that attackers use to their advantage also contribute to the activation of committing offences in this area. So, in 2016, *Vkansee* researchers unlocked an iPhone using fingerprints collected with *Play-Doh*. This indicates that even advanced biometric systems can still be vulnerable to forgery. Consequently, the challenge is to protect them from unauthorised use.

General theoretical issues of using personal data are considered by S. Dobrianskiy [8], M. Rizak [9], V. Shvydenko [10] and et al. Certain issues of using biometric personal data in the process of investigating criminal offences were covered by scientists V. Bondar [11], R. Melnyk [12], O. Petryshyn [13], V. Prykhodko [14], M. Shepitko [15; 16], V. Shepitko [17] and other scientists. However, there are no comprehensive studies on this issue in Ukrainian legal Science, which makes it difficult to develop a balanced mechanism for using biometric personal data, in particular in the process of investigating criminal offences, taking into account national and international legislation.

Consequently, the need to develop an optimal mechanism for using biometric personal data in the activities of pre-trial investigation bodies is an urgent need of modern forensic science. Considering the above, *the purpose of the article* is a development and provision of recommendations for the implementation of optimal mechanisms for collecting, processing, storing, and using biometric personal data. *Tasks of the author's team* are to analyse international legal acts and the current legislation of individual states on regulating the use of biometric personal data in conducting forensic records, classify personal data, develop, and provide recommendations on the work of state bodies and individuals with biometric personal data.

1. MATERIALS AND METHODS

The work was based on the following materials: the Law of Ukraine "On Personal Data Protection", departmental regulatory documents: "Instruction on the operation of the fingerprint accounting of the expert service of the Ministry of Internal Affairs of Ukraine", "Instructions on the procedure for forming and using automated accounting of human genetic traits".

The methodological basis of the research was a system of techniques and methods of scientific knowledge, in particular, the dialectical method was included, which made it possible to comprehensively perceive and systematically study theoretical and regulatory provisions concerning the collection, storage and processing of personal data in the process of investigating criminal offences. The study also applied such general scientific methods as description, which made it possible to study and describe a person as a single biological and social dynamic system, biometric data as a set of data about a person collected on the basis of recording its characteristics, having sufficient stability and significantly different from similar parameters of other persons (biometric data, parameters – digitized signature of a person, digitized face image of a person, digitized fingerprints), the dogmatic method became the basis for the interpretation of concepts used in the field of psychology, linguistics and other branches of non-legal knowledge, finding out the content and meaning of the concepts and terms used, justification of the proposal to change and supplement them. The formal-logical method made it possible to define terminology related to the digitisation of all spheres of human life, the use of innovative digital technologies, and so on. A comparative legal method that has a number of advantages, namely comparison, classification in order to determine the legal categories that characterise personal data, which are diverse information in content and uniform in origin. The structural-system method is used

to study the ways, forms, concentration and systematisation of information that accumulates in the criminal record system as a subsystem of means of forensic registration, which differs in accounting data, the system of recorded data and the procedure for collecting, registering, systematising, storing and searching such data. Also, algorithms for recognising a wide variety of biometric indicators of a person, which in the future can be introduced as interrelated fingerprint and portrait identification, identification features for which are taken into account in various automated identification systems.

Among the special methods used: the historical and legal method made it possible to study the formation and implementation of informatisation on the basis of the Ministry of Internal Affairs of Ukraine and central executive authorities, the introduction of a unified information system, which over the past five years has been improved in order to ensure a high level of its reliability and trouble-free functioning. One of the most important areas of such activity was the development of automated public data banks based on the existing unified software and hardware complexes of the DIT divisions and the Expert Service of the Ministry of Internal Affairs of Ukraine. The integration of these information resources was supposed to create prospects for automating the information and search engine for identifying a person based on a face image. The formal legal method made it possible to study the norms of the Law of Ukraine "On Personal Data Protection", other laws of Ukraine, departmental regulatory documents, namely "Instruction on the operation of the fingerprint accounting of the expert service of the Ministry of Internal Affairs of Ukraine", "Instructions on the procedure for forming and using automated accounting of human genetic traits". Sociological and statistical methods made it possible to elicit the views of academics, investigators and experts in the context of the study.

2. RESULTS AND DISCUSSION

Personal data is diverse information in content and uniform in origin. All of them describe the individual as a single biological and social dynamic system. One of the subspecies of personal data is biometric. They are widely used for identity verification (identification) in order to provide access rights to gadgets, office and industrial premises, vehicles and information with restricted access, for making payments, for crossing state borders and receiving financial services. Therefore, the collection, use and processing of biometric data has long been part of the daily life of society.

International law classifies biometric personal data as "sensitive", that is, such that improper use of which leads to a violation of human rights and freedoms. Article 6 of the Council of Europe Convention No. 108 stipulates that such information should not be processed automatically if the national legislation does not provide for sufficient guarantees for its protection. The Regulation of the Council of Europe clarifies that the mentioned Article 6 of the convention does not contain an exhaustive list of "sensitive" personal data in general and biometric personal data in particular [18, p. 28]. However, despite the significant history of the formation and development of the protection of human rights and freedoms, there is no reason to call the EU human rights protection system a fully formed system without the need for further improvements [8, p. 57].

National Ukrainian legislation defines biometric data as a set of data about a person collected on the basis of recording its characteristics, which have sufficient stability and significantly differ from similar parameters of other persons (biometric data, parameters — digitized signature of a person, digitized image of a person's face, digitized fingerprints) [1]. Biometric data is characterised by biometric parameters, which are measurable physical characteristics or personality behavioural traits that are used to identify a person or verify the identification information provided about a person. In a narrow sense, biometric data includes a person's fingerprint, iris or retina, features of limbs, face, ear, tongue print, voice, location of veins, DNA, ECG, signature. In a broad sense, biometric data also includes human behaviour (in terms of features that can be distinguished): physical movements (the way of walking); the force/speed of pressing the screen, keyboard; the way an individual enters data (with their finger (which one), stylus), how the device is held (for example, the angle of inclination of the phone), etc. [9, p. 92]. The special status of biometric personal data is also determined by the inability to change them, unlike other personal data [19]. Yes, one can change their first and last name, passport details, residential address, and phone number. In some cases, even the date and place of birth and taxpayer identification number must be replaced. However, fingerprints, the location of veins, DNA, and voice cannot be changed. Therefore, it is biometric personal data that requires a special procedure for collecting, processing and storing it. Biometric personal data is a part of the persona, and it can be "read" and recorded, so there is no risk of forgetting or losing it. However, because they are unique, they cannot be replaced. Therefore, if biometric data has been compromised, it can lead to the destruction of an individual's social life.

Complete digitisation of all spheres of human life, the use of innovative digital technologies has a number of advantages: reducing costs, resources, time for information processing, fast analysis of large amounts of data, increasing labour productivity, more accurate forecasts in various spheres of life, etc. [20, p. 186].

The level of security of these biometric data is directly proportional to the level of security of their protection on the part of the database owner and manager. It is believed that the storage of biometric personal data by distributing it in different places, as well as a multi-level method of identity authentication to grant access rights, are necessary conditions for the security of such data. Our belief in the need to strengthen the level of protection of biometric personal data is based on examples of numerous large-scale leaks of personal data around the world over the past few years.

In particular in supermarket chains *Morrisons* (£10,500 fine), *British Airways* (£183 million fine), data leak of 500 million *Marriott* users in November 2018, *Nova Poshta* (in the spring of 2018, screenshots of the customer passport data database were leaked, an unscheduled inspection found no evidence), *Uber* in December 2017 (the company paid a ransom of $ 100,000 for non-disclosure of data) [21]. In 2017, a personal data leak occurred in the largest bank in Ukraine, and in 2018 – in the world's most popular social network, the most common taxi service and the largest delivery service in Ukraine [10]. In 2019, access to the Chinese Smart city database could be obtained *from* a web browser without a password. This database contained gigabytes of information, including facial recognition data from hundreds of people. The data was hosted on the cloud platform of the Chinese tech giant Alibaba [22]. The FBI has arrested 33-year-old programmer Paige Thompson. She is suspected of stealing the data of 106 million users of the American bank Capital One, mainly citizens of the United States and Canada [6].

Well-known companies from various sectors of the economy also become targets of hacker attacks with theft of personal data, such as *FacebookInc* (there are already many cases, in one of which the fine is $5 billion). It contained data from 133 million Facebook users from the United States, 18 million from the United Kingdom, and 50 million from Vietnam [7]. There were also leaks of personal data in *Toyota* and *Lexus* (hackers stole information about car owners in March 2019), *Suprema Biostar* (August 2019), *Mastercard* (August 2019), *Habr.com* (August 2019), *Yves Rocher* (September 2019), Darimax (Russian Federation, September 2019), *Novaestrat* (data leak on almost all residents of Ecuador, September 2019) and many others [21]. Therefore, the issue of storing and processing biometric personal data is particularly relevant.

In most cases, users of digital technology and the Internet protect personal information individually, using a variety of technologies [13, p. 19; 23]. However, the security of using biometric personal data in the process of investigating criminal offences should be ensured by the state, since such activities are one of the main tasks of the state. Judicial practice in cases of misuse of biometric personal data by private individuals confirms the need for the state to guarantee the security of storage and use of such data. In 2019, the owner of a fitness club in Kazan (Russian Federation) challenged in court the decision of Roskomnadzor to impose a fine of 10,000 RUB for using the PACS system to identify visitors from a photo when passing through a turnstile without their written consent. The court did not satisfy the complaint, referring to the fact that the photo is biometric personal data, and their use requires the written consent of the owner [24].

Decision of the Supreme Court of Illinois (USA) of 25.01.2019 in the case of the corporation *Rosenbach v. Six Flags Entertainment Corporation* confirmed the need for written consent to the collection and processing of biometric personal data [21]. In this case the parents of a minor child filed a lawsuit against the amusement park *Six Flags Great America*. They claimed that their child's biometric data was collected without consent and violated BIPA (performing biometric scanning at the turnstile to prevent fraud and provide access in case of ticket loss). The Illinois Supreme Court ruled that *Six Flags Entertainment Corporation* violated BIPA. The court's decision concluded that it is not necessary to prove the damage and it is enough that the collection was incorrect.

Biometric personal data is now widely used in the banking sector, in the field of providing financial services and making payments for services rendered. Thus, from 2015 to 2020, the Ladoshki project (Russian Federation) collected data on the structure of palm veins of tens of thousands of Russian children for use in the school food payment system [25]. Despite the 5-year period of the project's existence, there is still no consensus even among representatives of state bodies on the legality of all aspects of its activities. There are the first attempts to use fingerprints to register an employee's working hours in private companies. Thus, they try to maintain work discipline, because the fingerprint is not a card, it is impossible to transfer it to another person to register.

Banks are increasingly investing in new technologies: machine learning; real-time fraud reporting; voice, face, and fingerprint recognition (biometric data), as well as so-called behavioural biometrics, which include customer interaction profiles with their devices and online banking tools. Since 2018, the Central Bank (Russian Federation) has started collecting biometric personal data to identify individuals when providing financial services. This data is entered in a single biometric system and collected by many banking institutions. Since 2019, PrivatBank (Ukraine) has launched FacePay24 payment technology [26]. To counteract this,

cybercriminals have created a digital fingerprint market, and fraudsters have learned to record and reproduce customer voices using new technologies [27, p. 174].

Only a few states are gradually beginning to fill in large-scale regulatory gaps in regulating the use of biometric personal data by digital banks. It is very likely that in the near future, innovative technologies will radically change the structure of the economy, the labour market and the construction of society as a whole [28, p. 159]. Currently, the analysis of the current legislation of Ukraine suggests that the Ukrainian legislation protects the rights of Ukrainians much more closely than the CCPA, BIPA and GDPR, resulting in possible abuses. Violation of the Ukrainian national legislation on the rules for handling biometric personal data entails administrative and criminal liability. At the same time, an important achievement of the GDPR is the consolidation of the "right to erasure". According to it, the subject of biometric personal data has the right to withdraw their consent at any time. The consequence of revoking such consent under national law may be the "archiving" of such data without the possibility of further use, or deletion from the database. In April 2020, the European Parliament approved the creation of one of the world's largest biometric databases. It will be called the *Common Identity Repository* (CIR) and will contain records of more than 350 million people. The largest biometric database in the world is currently created in India (it includes data on more than 90% of the country's population, and biometrics are used everywhere) – UIDAI (*Unique Identification Authority of India*). Each person is assigned a unique personal number – AADHHAAR.

Biometric personal data is widely used in criminal proceedings. One of the most important and effective ways to achieve forensic tasks is forensic registration in general and maintaining forensic records in particular. Forensic registration (in the scientific literature, the term "criminal registration" is also often used) is a system of material objects (file cabinets, databases, collections and other information repositories) and a practical registration activity [12, p. 186]. It was the materialistic understanding of the world around us, the laws of dialectics and the theory of knowledge that became the basis for the development of the doctrine of forensic registration. Its development is closely connected with the teachings on the mechanism of trace formation and methods of committing criminal offences, on recording evidentiary information, and directly with the theory of forensic identification. Forensic registration also occupies a prominent place in the activities of Interpol. V. Shepitko emphasises the importance of creating and using judicial (international) records of Interpol as the most effective means of countering international crime [17, p. 184]. The doctrine of forensic registration is a scientific theoretical basis for a whole criminal record system, its development and designing of organisational forms and technical support. Biometric personal data is used to achieve the goals of forensic registration, namely:

1) accumulation of data that can be used to investigate and prevent criminal offences;
2) providing conditions for identifying objects whose attributes are accumulated in the credentials;
3) assistance in finding objects whose attributes are accumulated in their credentials;
4) providing reference and orientation information to operational-search and investigative units of law enforcement agencies and judicial bodies.

Accounting as a subsystem of forensic registration tools differs in record data, methods and forms of their concentration and systematisation. Accounting is both a system of recorded data and a procedure for collecting, registering, organising, storing and searching such data. According to incomplete information of R. Melnik, the modern system of forensic registration unites more than 30 types of objects of different origin and features [12, p. 185]. Forensic registration is conducted not only in Ukraine, but also in foreign countries. Thus, the model legislation establishing effective control over persons who have committed sexual offences is the legislation of the United Kingdom. The law on sexual offences, adopted in 2003, provides that persons who have committed sexual crimes are registered in a special database [15, p. 6], which contains, among other things, biometric personal data.

Biometric personal data contained in forensic records is used in the investigation of all types of criminal offences. Thus, M. Shepitko notes that during the investigation of judicial errors, investigators should search for and seize case materials and documents relevant to the case, namely recordings of the court session, audio and video recordings of the court session, a document confirming payment of the court fee, etc. [16, p. 136]. It is impossible to identify individuals on video and audio recordings of court sessions without using biometric personal data, in particular voice, speech and facial images. In 2016, the creation of a Unified Information System (hereinafter, UIS) of the Ministry of Internal Affairs began in the system of bodies subordinate to the MIA. During 2016-2020, implementing the concept of informatisation of the Ministry of Internal Affairs of Ukraine and central executive authorities, the implemented UIs was improved in order to ensure a high level of its reliability and trouble-free operation. One of the most important areas of such activity was the development of automated public data banks based on the existing unified software and hardware complexes of the DIT divisions and the Expert Service of the Ministry of Internal Affairs of Ukraine. The integration

of these information resources was supposed to create prospects for automating the information and search engine for identifying a person based on a face image. Also, since 2016, the provisions of the Law of Ukraine "On the Unified State Demographic Register and Documents Certifying Citizenship of Ukraine, a Person's Identity or Special Status" have been implemented, in particular, the registration of a passport of a citizen of Ukraine in the form of a card containing an electronic contactless chip with simultaneous fingerprint registration. Another element of the integrated automated system was the automated identification systems used by the Expert service of the Ministry of Internal Affairs of Ukraine (fingerprinting, signs of appearance).

Taking into account the capabilities of modern algorithms for recognising a wide variety of biometric indicators of a person, it is possible in the future to introduce interrelated fingerprint and portrait identification, the identification features for which are taken into account in various automated identification systems. According to V. Bondar, the functioning of such a system provides for a qualitatively new level – information-analytical processing of information arrays [11, p. 30]. Agreeing with him, we believe that the collection and processing of experimental data and computational forensic methods, as well as image analysis in forensic research, occupy a special place in analytical processing. Therefore, the essence of information and analytical support can be expressed by the formula "source information – the subject of forensic science – technology and technique of forensic science – the necessary information", which can be understood as the process of movement of forensic information from its receipt to processing by special subjects with the use of special knowledge and scientific and technical means and technologies in order to solve forensic problems [11, p. 31].

The provisions of the Law of Ukraine "On Personal Data Protection" apply to maintaining forensic records of biometric personal data. They provide for the processing of personal data, which is carried out using both automated and non-automated means, which are contained in the file cabinet, or will be entered in the file cabinet. Also, today there are instructions for regulating the procedure for the formation and functioning of certain types of forensic records, in particular instructions for organising the functioning of forensic records of the expert service of the Ministry of Internal Affairs [29], instructions on the procedure for the functioning of fingerprint records of the expert service of the Ministry of Internal Affairs of Ukraine [30], instructions on the procedure for the formation and use of automated accounting of human genetic traits [31]. The operation of these instructions provides legal regulation of each of the links of activities for conducting forensic records, which, for its part, creates conditions for relativity, reliability, and the possibility of verifying the information contained in this record [14, p. 92].

It is worth considering forensic records containing biometric personal data in more detail. According to paragraph 1.5. of the Instruction on the organisation of the functioning of criminal records of the Expert Service of the [29], among the criminal records that include biometric personal data, the following can be distinguished:

1) Dactyloscopic records;
2) records of persons on the basis of their physical appearance;
3) records of genetic traits of a person;
4) records of voices and speech records of persons.

Dactyloscopic record is leading among other types of criminal records, due to a large number of traces of human hands that remain during the commission of criminal offences. This type of record is one of the first record-keeping activities in the history of the development and refinement of state authorities in the investigation of crime. Dactyloscopic record is used to search for people who are missing; to establish the identity of a person behind an unidentified corpse; to confirm the identity of a previously fingerprinted person; to identify persons who left handprints at the scene; to establish the facts of leaving handprints by one person during the commission of various criminal offences. Elements of the dactyloscopic record subsystem are the handprint card index and the fingerprint card index. Both elements of the subsystem are interrelated, complement each other, and are used in four areas of verification: fingerprint card index-print, print-fingerprint card index, print-print, and fingerprint card index-fingerprint card index. Modern automated dactyloscopic information systems (ADIS) facilitate and speed up the processing of dactyloscopic information, as well as the search for necessary data about specific accounting objects and individuals among a large number of similar data. The structural divisions of the State Scientific Research Forensic Centre (SSRFC) of the Ministry of Internal Affairs of Ukraine use ADIS software and hardware complexes: "Sonda" and "Dakto 2000". Also, for the purpose of registering dactyloscopic objects, ADIS software and hardware complexes are used, which are equipped with colourless image input scanners, which scan fingerprints, fingerprints index card or a photograph of a footprint and display them on a monitor screen. Having entered fingerprint information into the computer, such systems are used to check and establish the coincidence or discrepancy of certain objects [32, p. 282].

Record persons on the basis of their physical appearance is intended, first of all, to ensure the achievement of operational search tasks of pre-trial investigation of criminal offences. At the regional and local levels, subjective portraits of persons suspected of committing criminal offences are subject to registration. At the written request of employees of operational units of the National Police of Ukraine, such subjective portraits are compiled. If a person who has been subjected to a subjective portrait is identified, their photo after being detained is transferred to an expert unit by an employee of the National Police of Ukraine – the initiator of the subjective portrait assignment.

Automated record of genetic traits is conducted at the central and regional levels. Its functioning is carried out using the AIRS "MC-Lab", the database of which stores DNA profiles of persons suspected or accused of committing criminal offences, taken into custody, convicted persons only in the case of their voluntary consent, as well as biological traces seized during the inspection of the scene, other investigative actions and operational search measures, unidentified corpses. The draft Law of Ukraine "On State Registration of Human Genomic Information" offers a slightly different list of tasks of such registration, namely prevention of criminal offences; identification of persons who have committed criminal offences; search for persons who are missing; identification of unidentified bodies (remains); identification of the face of a person who, due to their state of health or age, cannot provide information about themselves. In contrast to the current legislation, which provides for exclusively voluntary registration of genetic traits of persons suspected or accused of criminal offences, detained, convicted persons, the draft law of Ukraine rightly provides for mandatory registration of genomic information, including concerning persons prosecuted for intentional crimes against life, health, sexual freedom, sexual integrity of a person in respect of whom a measure of restraint has been chosen; persons who have committed socially dangerous acts against the life, health, sexual freedom or sexual inviolability of a person to whom compulsory measures of a medical nature have been ordered by a court; persons convicted of intentional crimes against life, health, sexual freedom and sexual integrity or a person; information established in biological material seized during investigative actions from places of commission of criminal offences committed in conditions of non-obviousness, or obtained during pre-trial investigation and not identified; unidentified corpses of people and their remains, information about the discovery of which is registered in the Single Register of Pre-Trial Investigations and an investigation has been initiated; missing persons, which, by court order, can be ascertained through molecular genetic examination (research) of previously taken biological samples or biological material taken from the missing person's personal effects.

After conducting expert studies of objects (their copies or images), the experts who conducted them draw up registration cards and add them to the operational search records. The object is checked in the criminal record system upon a written request of the established sample. The initiator is informed about the results of such verification by sending them a standard document of the established sample [32, p. 283].

Records of voices and speech covers the following types of collections:

1) the first type of collection includes audio recordings of voices and speech of individuals, as well as transmitting messages about threats to the safety of citizens and other socially dangerous acts anonymously;

2) the second type of collection includes audio recordings of voices and speech of identified persons who transmit messages about a threat to the safety of citizens and other socially dangerous acts.

Audio recordings of voices and speech of identified and unidentified persons are included in the collections in analog and digital format. Audio recordings of the voices and speech of identified persons are carried out by employees of the National Police of Ukraine, who conduct a pre-trial investigation, which involves a specialist in the recording process. Audio recordings of voices and speech of unidentified persons are carried out by duty units of territorial divisions of the state emergency service of Ukraine. Audio recordings attached to collections can be used for conducting expert research and investigative (search) actions.

Biometric personal data is also recorded in the system of the National Police of Ukraine. Units of the Department of Information and Analytical Support of the National Police of Ukraine (hereinafter – DIAS) are responsible for the functioning of forensic records of operational-investigative and reference-informational purposes. These subdivisions include territorial departments of information-analytical support of the National Police, sectors of information and analytical support, as well as individual information support workers of district police bodies. These forensic records are formed into an automated database, the arrays of which comprise the records of the objects of record within a separate automated information subsystem. The data on the objects of record are contained in electronic cards. In 2017, the "information Portal of the National Police of Ukraine" (hereinafter – IPNP) was created, which combined numerous previously available forensic records. As an information and telecommunications system, it is an integral part of the unified information system of the Ministry of Internal Affairs of Ukraine. The information portal of the National Police of Ukraine consists of the following subsystems: "Person", "Wanted", "Inquest", "License plates", "Administrative

practice", "Harpoon", "Delivered", "Unified accounting", "Criminal weapons", "Registered weapons", "Road accidents", "Wanted vehicles", "Cultural values", "Document", "House arrest", "corruption", "Atrium", "Dactyloscopic record".

It is important to take a closer look at the subsystems that include recording biometric personal data of individuals. The information subsystem "Person" takes into account information about persons involved in the commission of criminal offences, as well as in respect of whom employees of the National Police of Ukraine carry out preventive activities. The entire data array is divided into categories [33, p. 123]:

– "defendants" includes data on accused persons whose indictment has been sent to court;

– "previously convicted" – data on persons who were released from prison and served a sentence for an intentional crime and in respect of whom the criminal record has not been removed;

– "released from serving a sentence with probation" – data on persons given a non-custodial sentence;

– "administrative supervision" – data concerning previously convicted persons for whom administrative supervision has been established on the basis of a court ruling on the initiative of the police or in places of deprivation of liberty;

– "formal supervision" – data on previously convicted persons who have not been sentenced to imprisonment, as well as persons in respect of whom the term of administrative supervision has expired, and the criminal record has not yet been repaid (removed);

– "mentally ill" – data on persons with severe mental disorders and diseases and at the same time registered in health care facilities;

– "prostitutes" – data on persons who have been brought to administrative responsibility for prostitution;

– "Involved in ITN" – data on persons who have committed offences related to illicit trafficking in narcotic drugs and psychotropic substances;

– "delinquent child" – data on children who are on preventive registration and in respect of whom accounting and preventive cases are conducted;

– "domestic abuser" – data on persons who have committed domestic violence and against whom a formal warning has been issued that such violence is inadmissible.

The specified subsystem has a reference-informational purpose. The use of the data contained in it ensures the verification of information about individuals and the establishment of their location. Thus, law enforcement officers, if they find information about a person in a particular category of the "person" information subsystem, receive approximate information about them, which in turn contributes to the correct qualification of the event.

The information subsystem "Wanted" contains data on persons evading pre-trial investigation, trial, serving sentences, missing persons and other categories of persons wanted. By its purpose, this subsystem is operational-search and contains information about persons who have been or are subject to criminal liability, as well as missing persons. At the same time, the information subsystem "Inquest" contains data on persons hiding from the authorities, unidentified corpses, missing persons, persons who cannot provide any information about themselves due to their health or age. Data in the specified subsystem is formed by categories, for example, "unknown child", "unidentified corpse", "unknown patient".

The information subsystems "Wanted" and "Inquest" are interrelated due to the features of the objects of record. Thus, the same object can be in both information subsystems at the same time, e.g. a person evading serving a criminal sentence is counted in the IS "Wanted" and the same person as an unknown patient is counted in the IS "Inquest" (if in the process of evading serving the sentence, there was a traffic accident that resulted in the person being admitted to hospital without consciousness or identity documents). Therefore, in the process of entering information into these information subsystems, cross-validation of data is mandatory.

An electronic registration card is created for each registered person in the information subsystems "Person", "Wanted" and "Inquest". It records personal data of the person, citizenship, place of registration and actual residence, passport data, type and amount of the last sentence and articles of the Criminal Code of Ukraine under which such is assigned; date of release from the place of deprivation of liberty (if a penalty related to deprivation of liberty was imposed); category of registration and basis of registration of the person; date of registration of the person for preventive registration; registration number and date of material; type of offence and articles of the Criminal Code of Ukraine; brief plot (place, time and brief description of the circumstances of the offence, the nature of violent actions, motives, other information collected concerning the offence); additional information about the person, that directly characterise their lifestyle, and so on.

The information subsystem "Dactyloscopic record" contains data with dactyloscopic information and is an electronic array of fingerprint card indexes that are compiled in relation to persons detained on suspicion

of committing offences, unidentified corpses and persons who cannot provide any information about themselves due to illness or age. Thus, the data of the specified subsystem contains fingerprint card indexes of persons registered in other information subsystems.

Access to information contained in the information resources of the Information Portal of the National Police of Ukraine is limited. Authorised users may use such data within the limits of their functional responsibilities and the level of access provided to them. In total, there are four levels of access to IPNP data, which provide for searching or viewing information, and one level for entering information into information resources. Each user can only have one level of access to search or view.

Information from the information subsystems of the IPNP in the form of extracts is provided at the official requests of the prosecutor's office, pre-trial investigation, court, operational divisions of the National Police of other regions, officials of state authorities and law enforcement agencies of other states [33, p. 123].

CONCLUSIONS

The study found that biometric data is important in organising pre-trial investigations, as it facilitates the identification of an individual. At the same time, their active use also creates new threats to the security of both the state and the individual, and can also cause new organisational and legal problems, primarily regarding the collection and storage of biometric data and ensuring their confidentiality. It is indicated that biometric data should be divided into two groups, where the first group includes information related to body characteristics (physical or physiological features of a person), and the second – information related to human behaviour (any behavioural characteristics that are unique to a person and therefore can be identified). It is proved that the collection, processing and use of biometric personal data for use in the pre-trial investigation of criminal offences must meet the following requirements:

1) the owner of the database of biometric personal data should only be the state represented by a special state body. Accordingly, the state should ensure the storage and protection of biometric personal data;

2) physically, the media (servers) that store the database with biometric personal data must be located on the territory of the state, as this is a matter of national security;

3) the state may allow individuals to use a limited amount of biometric personal data to carry out their statutory activities only with the written consent of the persons who identify such data, and without the possibility of copying and accumulating them.

These types of biometric personal data are subject to state registration with the possibility of their use in the process of pre-trial investigation of criminal offences. It is concluded that the creation of a single automated information and analytical system of accounting for biometric personal data in the system of law enforcement and permitting authorities will create conditions for solving important tasks, namely:

1) to ensure the collection of complete information about objects with the formation of an "electronic profile" of potential offenders, identification and analysis of existing links with other objects and events of a criminal and illegal nature;

2) to record the social activity of persons who become involved in criminal proceedings, the emergence and change of their networks, and to analyse the degree of interest in them;

3) to improve the planning of investigative (search) actions and secret (search) actions, taking into account the complex set of numerous factors that affect the development of a particular investigative situation;

4) to form a set of methodological recommendations based on the analysis of a constantly updated array of all investigative situations and options for their development.

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Suggested Citation: Konovalova, V.O., Stratonov, V.M., & Savelieva, I.V. (2021). Biometric personal data and their use in the investigation of criminal offences. *Journal of the National Academy of Legal Sciences of Ukraine,* 28(4), 289-300.

Submitted: 02.09.2021
Revised: 14.11.2021
Accepted: 03.12.2021

УДК 342.922
DOI: 10.37635/jnalsu.28(4).2021.301-309

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ЗАБЕЗПЕЧЕННЯ БЕЗПЕКИ ТРАНСПОРТУ ОРГАНАМИ ПОЛІЦІЇ ТА ПІДРОЗДІЛАМИ КРАЇН-ЧЛЕНІВ ЄВРОПЕЙСЬКОГО СОЮЗУ

Анотація. *Органи та підрозділи поліції є окремою ланкою в системі забезпечення всіх рівнів національної безпеки, у тому числі транспортного. Глобалізація, технічний прогрес і урбанізація призводять до збільшення автомобільного транспорту та вантажних перевезень, що робить необхідним забезпечення безпеки транспорту. Мета наукової роботи полягає в тому, щоб визначити фактори, що впливають на безпеку транспорту та вплив органів поліції та підрозділів Європейського Союзу на безпеку транспорту. Для досягнення поставленої мети були використані такі методи, а саме: статистичний аналіз, кореляція, факторний аналіз, узагальнення та аналогія. Встановлено, що існує позитивний взаємозв'язок між кількістю поліцейських, кількістю дорожньо-транспортних пригод та кількістю постраждалих на дорозі на Кіпрі. Доведено негативний взаємозв'язок між кількістю поліцейських та кількістю дорожньо-транспортних пригод у Німеччині, Фінляндії, Греції, Бельгії та Швеції. Виявлено позитивну взаємозалежність між кількістю поліцейських і постраждалих у дорожньо-транспортних пригодах на Кіпрі, Німеччині, Фінляндії та негативну взаємозалежність у Греції, Бельгії, Швеції. Виявлено низький рівень взаємозалежності між кількістю автомобілів і кількістю дорожньо-транспортних пригод у Швеції та Німеччині, негативний взаємозв'язок на Кіпрі, Греції, Бельгії та Фінляндії. Встановлено фактори, що впливають на безпеку транспорту, а саме: законодавче регулювання, рівень впровадження інноваційних цифрових технологій, транспортна інфраструктура, географічне розташування, протяжність доріг, психофізичні фактори водіїв, соціальні. Доведено, що органи та підрозділи поліції, враховуючи інші фактори, що впливають на безпеку транспорту, недостатньо забезпечують транспортну безпеку в Європейському Союзі*

Ключові слова: *дорожньо-транспортна пригода, транспортний засіб, аварія, дорожній рух, правоохоронні дії*

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ENSURING TRANSPORT SAFETY BY POLICE AUTHORITIES AND UNITS OF MEMBER STATES OF THE EUROPEAN UNION

Abstract. *Police authorities and units are a separate link in the system of ensuring all levels of national security, including a transport one. Globalization, technological progress and urbanization are leading to an increase in vehicular transports and freight carriage, which makes it necessary to ensure transport safety. The purpose of the academic paper is as follows: to identify the factors that affect transport safety and the impact of police authorities and units of the European Union on transport safety. In order to achieve the purpose outlined the following methods have been used, namely: statistical analysis, correlation, factor analysis, generalization and analogy. It has been established that there is a positive interrelationship between the number of police officers, the number of road traffic accidents and the number of casualties on the road in Cyprus. A negative interrelationship has been proved between the number of police officers and the number of road traffic accidents in Germany, Finland, Greece, Belgium and Sweden. The positive interdependence has been revealed between the number of police officers and casualties of road traffic accidents in Cyprus, Germany, Finland, and a negative interdependence in Greece, Belgium, Sweden. It has been found that there is a low level of interdependence between the number of cars and the number of road traffic accidents in Sweden and Germany, a negative interrelationship in Cyprus, Greece, Belgium and Finland. Factors influencing transport safety have been established, namely: legislative regulation, level of introduction of innovative digital technologies, transport infrastructure, geographical location, length of roads, psychophysical factors of drivers, social ones. It has been proved that police authorities and units, taking into account other factors that affect transport safety, do not sufficiently ensure transport safety in the European Union*

Keywords: *road traffic accident, vehicle, accident, road traffic, enforcement*

INTRODUCTION

Transport safety is a major problem in Europe due to human losses and social-economic costs connected with road traffic accidents [1]. The growth in the number of vehicular transports and freight carriage over the past decades has increased the likelihood of road traffic accidents and other negative aspects such as accidents, emissions, vibration and noise that cause social, economic and environmental problems. Considering that around 1.3 million people die annually in vehicular transports and the cost of accidents exceeds 200 000 000 000 euros in the European Union (EU), there is a need to develop measures in the field of transport security [2].

The bodies of the European Union' member states, which have one of the objectives, namely: to ensure transport safety, include police authorities and units. Therefore, it is important to identify the factors that negatively affect transport safety, as well as the level and effectiveness of police authorities and units in their elimination and ensuring transport safety. The key performance indicators for road safety are listed in the EU strategic action plan on road safety [3]. They will be used for an overall assessment of the indicators that will determine the level of road safety in the European Union in 2021-2030. These include: speed compliance, the use of safety belts and child's restraint systems, the use of protective equipment, driving under the influence of alcohol, driver's distraction by handheld devices, safety of new cars, infrastructure safety, post-crash care [4].

Police officers keep road users under supervision through monitoring, tracking and punishment [5; 6]. Law enforcement activities concerning assurance of transport safety involve a wide range of complex objectives, many of which can only be effectively accomplished through the use of state-of-the-art police technologies (for instance, fixed and mobile speed detection devices) [7-9]. The use of automated technologies will ensure the quality and effectiveness of law enforcement authorities by increasing the level of detection and recording of violations of traffic rules, or the likelihood of this, without increasing the number of police officers and measures to encourage drivers to comply with traffic laws [10-13].

All countries of the European Union seek to provide police officers' professional training for the quality performance of the tasks assigned to them, which can be achieved through the provision of knowledge, skills and the application of advanced technologies. Road safety is one of the most important areas of security, which requires special police officers' training, and, therefore, there are special state road safety units in many countries [14]. Transport is an important part of the national economy; it affects economic development, which determines the development of freight carriage. Consequently, the risk of road accidents has increased due to the growth of freight carriage. In general, transport is dangerous for the environment and road users, causing increased emissions of pollutants, accidents and road traffic collisions [15; 16].

The purpose of the academic paper is to identify the factors that affect transport safety and the impact of police authorities and units of the European Union on transport safety. Research objectives of the academic paper are as follows:

1. To identify the factors that affect transport safety in the member states of the European Union.
2. To analyze statistics on the number of police officers in individual countries of the European Union, the number of vehicular transports, the number of road accidents, the number of casualties of road accidents in the same countries of the European Union.
3. To investigate the interdependence between the number of police officers, road accidents, the number of casualties of road accidents, as well as between the number of vehicles and the number of road accidents.
4. To establish the influence of police authorities and units on transport safety in the countries of the European Union.

1. MATERIALS AND METHODS

The study of ensuring transport safety by police authorities and units of the European Union has been carried out by applying the method of statistical analysis in order to compare data on the number of police officers and road traffic accidents, casualties of road traffic accidents and the number of vehicles in individual countries of the European Union. The following interrelationship has been established due to the method of correlation analysis, namely: between the number of police officers and the number of traffic accidents in the period from 2015 to 2018 separately in Cyprus, Greece, Belgium, Germany, Sweden, Finland; between the number of police officers and the number of casualties of road traffic accidents from 2015 to 2018 separately in Cyprus, Greece, Belgium, Germany, Sweden, Finland; between the number of vehicles and the number of road accidents from 2015 to 2018 in Cyprus, Greece, Belgium, Germany, Sweden, Finland; between the number of police officers in Cyprus, Greece, Belgium, Germany, Sweden, Finland and the number of road traffic accidents in 2016.

Factors that affect transport safety have been identified by the method of factor analysis, generalization and analogy. In the course of the research, the most significant scientific works have been used, which reflect the development of scientific thought in the field of transport security for the period from 1980 to 2021. The following indicators have been analyzed in the research, namely:

– police officers per 100 thousand inhabitants for 2015-2018 reflected in Pordata [17];

– road deaths and relative change in road deaths for 2015-2019 reflected in European Transport Safety Council [18];

– passenger vehicles per 1000 inhabitants for 2015-2018 reflected in Eurostat [19];

– road traffic accidents for 2015-2019 reflected in Cyprus Police [20], Findicator [21], Statistics Finland [22], Hellenic Statistical Authority [23], Statbel [24], Bundesanstalt für Straßenwesen [25].

Traditional approaches to transport safety include regulatory and technical measures, leaving aside organizational factors that may contribute to road transport safety. However, modern theory of social-technical systems recognizes the need to take into account organizational factors [1]. Toward this end, member states have developed safety standards and rules concerning road safety throughout Europe [26]. Road safety policy should take into account the basic factors affecting the various peripherals identified by the World Health Organization (WHO) (finance, institutional framework, infrastructure, legislation, vehicles, as well as control and human influence). The range of measures to ensure transport safety includes: improving infrastructure (for example, safer design of roads, regulation of sidewalks and traffic lights, introduction of safe bicycle lanes), updating standards for cars, improving law enforcement authorities and training in order to increase the use of seat belts and wearing a helmet while reducing speed and driving under the influence of intoxicants [27]. Police traffic accident reports are the most common source of traffic accident data for analysis. Although the main purpose of such reports is to provide summary descriptions of accidents' statistics and information that can be used in litigation. Along with this, these reports are taken as the basis for inference analysis, especially for the development of programs to improve transport security. Therefore, the effectiveness of the transport safety program is assessed on the basis of police authorities' statistical reports. However, such reports are often biased and/or incomplete [28].

2. RESULTS

The countries of the European Union have different numbers of police officers. Therefore, in order to establish the interrelationship between the number of police officers and their impact on the number of road traffic accidents, it is necessary to identify countries that have a large number of police officers, medium and low. Cyprus has the largest number of police officers among the European Union's countries in 2015-2018, in 2018 their number was 566.3 per 100 thousand population, it is followed by Greece – 495.3 police officers, Belgium – 362 police officers, Germany – 295.3 police officers, Sweden – 196.9 police officers, Finland – 139.3 police officers. A clear trend is observed in Cyprus, Germany and Sweden in the decrease in the number of police officers during 2015-2018, and in Greece, Belgium, Finland in the increase in their number, except for Finland in 2015 (Table 1).

Table 1. Police officers per 100 thousand inhabitants

Country	2015	2016	2017	2018
Cyprus	580.7	570.7	581.8	566.3
Greece	486.6	490.1	494.6	495.3
Belgium	335.0	332.6	360.8	362.0
Germany	299.9	296.7	298.4	295.3
Sweden	203.1	201.8	196.3	196.9
Finland	140.4	137.2	136.4	139.3

***Source**: [17]*

Among the selected countries of the European Union, the largest number of road traffic accidents during 2015-2019 is observed in Germany – 300143-308721, Belgium – 40303-37699 with the dynamics of decrease, Sweden – 14086-14951 during 2015-2017, Greece – 11440-10712 with positive dynamics annually during 2015-2019, Finland – 5185-4002 with dynamics of decrease, Cyprus – 958-727 with positive dynamics (Table 2).

Table 2. Road traffic accidents

Country	2015	2016	2017	2018	2019
Cyprus	958	942	876	741	727
Greece	11440	11318	10848	10737	10712
Belgium	40303	40096	38020	38453	37699
Germany	305659	308145	302656	308721	300143
Sweden	14703	14086	14951	–	–
Finland	5185	4752	4432	4312	4002

***Source**: [20-25]*

In order to establish the interrelationship between police officers per 100 thousand inhabitants and road traffic accidents, it is necessary to conduct a correlation analysis of the indicators in Tables 1-2. The following

formula is applied in carrying out the analysis:

$$y = \frac{\sum(x_1 - x_1)\cdot(x_2 - x_2)}{\sqrt{\sum(x_1 - x_1)^2 \cdot \sqrt{\sum(x_2 - x_2)^2}}}, \quad (1)$$

where x_1 – police officers per 100 thousand inhabitants and x_2 – road traffic accidents, r – linear correlation coefficient.

The linear correlation indicator between police officers per 100 thousand inhabitants and road traffic accidents during 2015-2018 is as follows: Cyprus – r = 0.604, Greece – r = -0.975, Belgium – r = -0.973, Germany – r = -0.699, Sweden – r = -0.871, Finland – r = -0.363. Thus, a high correlation rate is observed in Cyprus; the correlation rate is negative in other surveyed countries, and, consequently, the interrelationship between the number of police officers and the number of road accidents is not significant. Confirmation of the established fact is shown by the correlation coefficient of the number of police officers of all surveyed countries and the number of road traffic accidents in 2016, which is r = -0.139.

In accordance with the tasks of the police authorities and units, the priority direction for ensuring transport security centers around reducing road traffic accidents with casualties. The highest number of road deaths in the surveyed countries during 2015-2019 was observed in Germany – 3459 in 2015; Greece – 824 in 2016, Belgium – 762 in 2015, Sweden – 324 in 2018, Finland – 270 in 2015, Cyprus – 57 in 2015. Along with this, the smallest number was observed in Cyprus – 46 in 2016, Finland – 209 in 2019, Sweden – 221 in 2019, Belgium – 604 in 2018, Greece – 699 in 2019, and Germany – 3095 in 2019. Therefore, it has been found that in most countries the highest rate of casualties was in 2015, and the lowest – in 2019 (Table 3).

Table 3. Road deaths and relative change in road deaths

Country	2015	2016	2017	2018	2019
Cyprus	57	46	53	49	52
Greece	793	824	731	700	699
Belgium	762	670	609	604	620
Germany	3459	3206	3177	3275	3059
Sweden	259	270	253	324	221
Finland	270	258	238	239	209

***Source**: [4]*

By applying the correlation method between police officers per 100 thousand inhabitants and Road deaths and relative change in road deaths, it has been established that the correlation coefficient in Cyprus amounts r = 0.796, Greece – r = -0.823, Belgium – r = -0.826, Germany – r = 0.535, Sweden – r = -0.378, Finland – r = 0.521. Thus, there is a positive interdependence in such countries, as: Cyprus, Germany, Finland, and negative interdependence in Greece, Belgium and Sweden. In order to reveal the impact on the effectiveness of transport safety by police authorities and units and on the number of road accidents in general, it is necessary to establish the dynamics of the number of vehicles owned by the population in the surveyed countries.

An increase in vehicles is observed in all surveyed countries during 2015-2018, namely: in Cyprus there were 575-629 vehicles per 1000 population from 2015 to 2018, in Greece there were 474-487 vehicles during 2015-2017, in Belgium there were 497-511 vehicles during 2015-2018, in Germany – 548-567, in Finland – 590-629 vehicles, except for Sweden, which amounted 474-479 vehicles during 2015-2018, however, in 2018 their number decreased from 479 to 476 (Table 4).

Table 4. Passenger vehicles per 1 000 inhabitants

Country	2015	2016	2017	2018
Cyprus	575	595	609	629
Greece	474	479	487	-
Belgium	497	503	508	511
Germany	548	555	561	567
Sweden	474	477	479	476
Finland	590	604	617	629

***Source**: [19]*

The correlation index between road traffic accidents and passenger vehicles per 1.000 inhabitants is as follows: in Cyprus – r = -0.936, in Greece – r = -0.981, in Belgium – r = -0.880, in Germany – r = 0.173, in Sweden – r = 0.166, in Finland – r = -0.979. Thus, weak interdependence has been revealed in Sweden and Germany, and negative interdependence has been found in Cyprus, Greece, Belgium and Finland.

3. DISCUSSION

The European integration of transport safety systems is in line with the transport policy of the European Union. Leading European organizations focus on safety (for instance, European Transport Safety Council (ETSC)), which is an important factor in building a new transport safety system [2]. Police authorities and units are obliged to ensure the safety of vehicular transport. Police officers, deeply involved with road traffic safety, have a unique opportunity to assess the effectiveness of road traffic safety policy, as they record, investigate traffic violations, apply sanctions and testify in court. There are significant differences in the requirements of the law and its enforcement, as well as between the current transport safety policy at the national and local levels and the priorities of road traffic safety, which are noted by the police officers [29]. Within the framework of a systems approach [30], law enforcement authorities are one of the tools to ensure or improve compliance with the requirements of transport safety legislation [31]. However, in the course of the research it has been found that there is no direct influence of the police authorities and units on road traffic safety. Therefore, there are other factors that affect transport safety.

According to the structural model, road traffic safety has technological, behavioral, sociological and value aspects [32]. Authors agree with F. Alonso, C. Esteban, L. Montoro S.A. Useche and C. Crowther-Dowey [33] that road traffic safety is a complex process depending mainly on the human factor and not only on technical improvements. Consequently, the need arises to study the implementation of the laws and other factors that precede behavior on the road. These include: attitudes, opinions and perceptions in the road traffic safety sphere, factors influencing the interaction with such categories as: traffic rules, police supervision, penalties. J. Bąk and D. Bąk-Gajda [34] adhere to the same position that road traffic is a complex system of actions and behavior in a specific situation in space, the interaction between a person and a vehicle. These scientists argue about three aspects of effective driving, namely: physical efficiency (determined by means of medical examinations) psychological efficiency (assessed in psychological tests of the driver) knowledge, skills and attitudes of the driver. The drivers' attitude to road traffic safety is formed not only by themselves, but also by external factors, including those that are a prerequisite for human errors on the road, namely: psychophysical properties, social adaptation, social discipline, emotional control and skills to solve such a complex task as driving a vehicle [14].

In addition to psychophysical and other human factors that affect road traffic safety, there are also external factors that shape transport safety and create conditions for the effective operation of police authorities and units, namely: introduction of innovative digital technologies, which are based on systems of automatic accounting of traffic offenses, digitization of transport infrastructure to ensure interaction between the subjects of automatic accounting of traffic offenses against the laws, implementation and operation of other systems [35], geographical location, length of roads, and infrastructure. Recent world events caused by the COVID-19 pandemic have shown that an important factor influencing transport safety is a social one. Preliminary data of 25 member states of the European Union show an average reduction in road deaths by 36% in April 2020 compared to the average of the same month over the previous three years, according to a new report of European Transport Safety Council [18]. The highest reduction in road deaths has been recorded in Italy (84%), followed by Belgium, Spain, France and Greece with a decrease of more than 59%. Authors agree with the viewpoint of L. Budd and S. Ison [36]. The scholars argue that national restrictions on staying at home and blocking, which have been introduced in many countries around the world in order to reduce virus transmission, have led to mass unemployment, distance learning, work, and unprecedented road traffic, air transport and public transport.

CONCLUSION

The results of the study and the analysis of scientific and theoretical conclusions has made it possible to conclude that the police authorities and units are a separate link in the system of ensuring transport security, performing control preventive functions and functions of legal responsibility. It has been established that only in Cyprus there is a high level of interdependence between the number of police, the number of road accidents and the number of casualties on the road. In other countries of the European Union, namely: Germany, Finland, Greece, Belgium, Sweden, the number of police officers does not affect the number of road accidents**.** However, the interrelationship between the number of police officers and casualties of road accidents has been

proven. There is a positive interdependence in such countries, as: Cyprus, Germany, Finland, and a negative interdependence in Greece, Belgium and Sweden.

A weak interdependence between the number of cars and the number of road accidents in Sweden and Germany has been proved as well as a negative interdependence has been revealed in Cyprus, Greece, Belgium and Finland. Consequently, transport safety is affected by other factors, such as: legislation, the level of implementation of innovative digital technologies, transport infrastructure, geographical location, and length of roads, psychophysical factors of drivers, and social ones. Therefore, ensuring transport safety by police authorities and units in combination with other factors is insufficient in order to achieve positive dynamics in transport safety in the European Union.

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Suggested Citation: Chervinchuk, A., Pylypenko, Ye., Veselov, M., Pylypiv, R., & Merdova, O. (2021). Ensuring transport safety by police authorities and units of member states of the European Union. *Journal of the National Academy of Legal Sciences of Ukraine,* 28(4), 301-309.

Submitted: 11.08.2021
Revised: 22.10.2021
Accepted: 02.12.2021

Journal
of the National Academy
of Legal Sciences of Ukraine

Volume 28, Issue 4
2021

Responsible for the release of *V. Zhuravel*

Desktop publishing *K. Sosiedko*

Signed to the print with the original layout 23.12.2021
Mind. print. ark. 36.1

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 for orders: sales@pravo-izdat.com.ua

Certificate of registration of the subject of publishingin 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, № 4
2021

(Англійською мовою)

Відповідальний за випуск *В. А. Журавель*

Комп'ютерна верстка *К. Д. Сосєдко*

Підписано до друку з оригінал-макета 23.12.2021
Ум. друк. арк. 36,1

Видавництво «Право» Національної академії правових наук України
та Національного юридичного університету імені Ярослава Мудрого
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Свідоцтво про внесення суб'єкта видавничої справи
до державного реєстру видавців, виготівників і розповсюджувачів видавничої продукції – серія ДК
№ 4219 від 01.12.2011 р.